

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN HOOKER, et al.,

Plaintiffs,

vs.

ILLINOIS STATE BOARD OF ELECTIONS,
et al.

Defendants,

and

SUPPORT INDEPENDENT MAPS,

Intervenor-Defendant.

Case No. 16 CH 06539

Hon. Diane J. Larsen,
Judge Presiding.

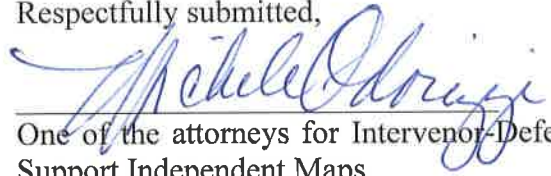
NOTICE OF MOTION

To: All attorneys of record

PLEASE TAKE NOTICE that on June 30, 2016, at 2:00 p.m. before the Honorable Judge Diane J. Larsen in Courtroom 2405, Richard J. Daley Center, Chicago, Illinois, we shall then and there present Support Independent Maps' Motion for Judgment on the Pleadings.

Dated: June 3, 2016

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Michele Odorizzi", is written over a horizontal line.

One of the attorneys for Intervenor-Defendant
Support Independent Maps

Michele L. Odorizzi
John A. Janicik
Lori E. Lightfoot
Chad Clamage
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
Telephone: (312) 782-0600
Facsimile: (312) 701-7711
Firm I.D. No. 43948

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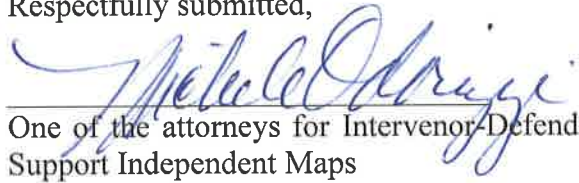
Hon. Diane J. Larsen,
Judge Presiding.

**SUPPORT FOR INDEPENDENT MAPS'
MOTION FOR JUDGMENT ON THE PLEADINGS**

Intervenor-Defendant, Support Independent Maps, hereby moves this Court pursuant to 735 ILCS 5/2-615(e) for judgment on the pleadings and dismissal of the complaint with prejudice for the reasons stated in the memorandum submitted herewith. "A trial court properly grants a judgment on the pleadings when the pleadings disclose no genuine issue of material fact and the movant is entitled to judgment as a matter of law." *State Bldg. Venture v. O'Donnell*, 239 Ill. 2d 151, 157-58 (2010). There are no material facts in dispute here and Support Independent Maps is entitled to judgment as a matter of law. Accordingly, the complaint should be dismissed with prejudice.

Dated: June 3, 2016

Respectfully submitted,

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One of the attorneys for Intervenor-Defendant
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Hon. Diane J. Larsen,
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**MEMORANDUM OF INTERVENOR-DEFENDANT
SUPPORT INDEPENDENT MAPS
IN SUPPORT OF ITS MOTION FOR JUDGMENT
ON THE PLEADINGS**

Michele Odorizzi
John A. Janicik
Lori E. Lightfoot
Chad M. Clamage
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
Telephone: (312) 782-0600
Facsimile: (312) 701-7711
Firm I.D. No. 43948

Dated: June 3, 2016

Intervenor-Defendant Support Independent Maps (“Independent Maps”), a non-partisan ballot initiative committee organized under section 9-1.8(e) of the Election Code, 10 ILCS 5/9-1.8(e), submits this memorandum in support of its motion for judgment on the pleadings.

INTRODUCTION

The 1970 Constitution sets forth a complex political process for redrawing the boundaries of the General Assembly’s legislative districts every ten years, following the decennial census. Article IV, § 3 gives the General Assembly the first crack at redistricting. If a new map is not adopted through the legislative process by June 30 of the year following the census, an eight-member Legislative Redistricting Commission is appointed, which is empowered to draw its own map. If the Commission, which will inevitably be evenly split between Democrats and Republicans, cannot agree by August 10, a ninth Commission member is chosen to break the tie by literally pulling a name out of a hat. Although this process was supposed to give the parties an incentive to work together to achieve bi-partisan redistricting solutions, in practice it has had the opposite effect: “Rather than forcing the parties to find common ground for fear of losing the random drawing, they are apparently willing to dig in their heels with the hope of *winning* the drawing.” *Winters v. Illinois State Board of Elections*, 197 F.Supp.2d 1110, 1115 (N.D. Ill. 2001).

The Legislative Redistricting Initiative (the “Redistricting Initiative”) was born out of citizen frustration with the current process. The Redistricting Initiative proposes to amend Article IV, § 3 of the 1970 Constitution by, among other things, entrusting the redistricting process to a non-partisan Independent Redistricting Commission. As the U.S. Supreme Court has observed, several other states have adopted such commissions as a way of curtailing partisan gerrymandering and improving voter and candidate participation in elections. *Arizona State*

Legislature v. Arizona Indep. Redistricting Comm'n, 135 S.Ct. 2652, 2661-62 (2015). Independent commissions have “‘succeeded to a great degree’ in limiting the conflict of interest implicit in legislative control over redistricting” and, in so doing, have promoted a “‘core principle of republican government,’ namely, ‘that the voters should choose their representatives, not the other way around.’” *Id.* at 2676-77.

The issue before the Court, however, is not whether the Redistricting Initiative is a good idea. Rather, the sole issue is whether Illinois *voters* are entitled to decide whether it is a good idea. That depends on whether the Redistricting Initiative is a permissible ballot initiative under Article XIV, § 3 of the 1970 Constitution. That provision allows proposed constitutional amendments to the Legislative Article (Article IV) to be put on the ballot through a citizen initiative process if the amendment (i) is “‘limited to structural and procedural subjects contained in Article IV” and (ii) is supported by a petition signed by the requisite number of voters (equal to at least 8% of the total votes cast in the last gubernatorial race). *See* Ex. A hereto.

The Staff of the Illinois State Board of Elections has completed its random sampling of the 563,974 signatures Independent Maps submitted in support of its petition and has concluded that it has submitted valid signatures well in excess of the 290,216 signatures required to put the Redistricting Petition on the ballot. *See* Ex. B hereto. The only issue in this case is whether the Redistricting Initiative meets the first requirement of Article XIV, § 3 because it is properly “‘limited to structural and procedural subjects contained in Article IV.” Essentially the same group of plaintiffs successfully challenged a similar initiative in 2014 in *Clark v. State Board of Elections*, No. 14 CH 07356. Judge Mikva struck that initiative down because she found certain provisions to be impermissible. At the same time, however, she concluded that “redistricting appears to be fair game for amendment by Article XIV, § 3” and that many of the challenges

plaintiffs repeat here were not well taken. *See* Ex. C hereto at 9. Independent Maps has eliminated the provisions Judge Mikva found disqualifying; as amended, the Redistricting Initiative meets all of the constitutional requirements for being put on the November ballot. Accordingly, Independent Maps is entitled to judgment as a matter of law.

BACKGROUND

The Current Constitutional Provisions Regarding Redistricting

The 1870 Constitution provided that the General Assembly would “apportion the State” every ten years into 51 senatorial districts, drawing the districts so they would be “formed of contiguous and compact territory, bounded by county lines, and contain as nearly as practicable an equal number of inhabitants.” Constitution of 1870, Article IV, § 6. A century later, the delegates to the 1970 Constitutional Convention considered assigning responsibility for re-apportioning the General Assembly to a redistricting commission, but chose instead to give the General Assembly the opportunity to draw a new map in the first instance. *See People ex rel. Scott v. Grivetti*, 50 Ill.2d 156, 161 (1971). If a new map is not signed into law by June 30 of the year following the decennial census, however, Article IV, § 3(b) reassigns responsibility for redistricting to an eight-member Legislative Redistricting Commission. That Commission is appointed on a 50-50 basis by House and Senate party leaders, who choose two sitting Representatives, two current Senators, and four others who are not members of the General Assembly.¹ Because it is appointed through a partisan process, the Legislative Redistricting Commission is inevitably split evenly between Democrats and Republicans.

The Legislative Redistricting Commission is supposed to file a redistricting plan with the

¹ The House Speaker, the Senate President, and the minority leaders in the House and Senate are each entitled to choose one member and one non-member to serve on the Legislative Redistricting Commission. *See* Article IV, § 3(b).

Secretary of State that has been approved by at least five of its members by August 10. Art. IV, § 3(b). If the Commission is unable to meet that deadline, the Supreme Court is tasked with submitting the names of two additional individuals “not of the same political party” to the Secretary of State, who then “draw[s]” one of the names by “random selection” to serve as the tie-breaking vote on the Commission. *Id.* Once the Commission has five votes for a new map, that map is filed with the Secretary of State and becomes law, subject to review by the Illinois Supreme Court to ensure that the map meets the constitutional requirement that legislative districts be “compact, contiguous and substantially equal in population.” Article IV, § 3(a).

Redistricting Under the 1970 Constitution

In 1971, the General Assembly failed to pass a redistricting plan, so a Legislative Redistricting Commission was formed, which agreed on a new map. In reviewing the new district plan, the Supreme Court rejected the argument that giving a Commission the power to adopt a map constituted an improper delegation of legislative power. *People ex rel. Scott v. Grivetti*, 50 Ill.2d at 160-61. But the Court held that the Commission was improperly constituted because the legislative leaders had appointed themselves and two staff members to the Commission, leaving only two commissioners who were truly public members (both of whom had voted against the Commission map). Although it provisionally approved the map, the Supreme Court held that the appointments were contrary to the intent of the framers:

It is abundantly clear that the intent of the delegates to the 1970 Constitutional Convention was to create a redistricting commission composed of four legislators and four public members, and that their purpose in so doing was to bring into the commission a fresh, perhaps more objective, approach to the apportionment problems which had deadlocked the legislature. By requiring one half of the commission’s membership to be individuals not theretofore involved in the legislative redistricting struggles, the prospects of the commission’s success were thought to be enhanced.

Id. at 162.

Ten years later, in 1981, the General Assembly once again failed to enact a redistricting plan by the June 30 deadline and a Legislative Redistricting Commission was once again created. This time the Commission, made up of four Democrats and four Republicans, deadlocked, so a ninth member was chosen by the prescribed method. The tie-breaker was a Democrat, who supplied the fifth vote to approve the Democratic plan.²

In 1991, a similar scenario played out: while the Democratic-controlled General Assembly enacted a redistricting plan, Governor Edgar vetoed it. When a Legislative Redistricting Commission was appointed, it deadlocked. This time a Republican name was pulled out of the hat, and the Republican map was adopted. The Attorney General challenged the map in the Supreme Court, which remanded for further study. The Commission then approved yet another new map, which the Supreme Court upheld, by a 4-3 vote. *People ex rel. Burris v. Ryan*, 147 Ill.2d 270 (1992). While upholding the map, the Court roundly criticized the “tortuous process” mandated by the 1970 Constitution, observing that it “is not in the best interests of the voters of this State”: “we do not find that a lottery or a flip of a coin is in the best interests of anyone except the party which has won the toss. The rights of the voters should not be a part of a game of chance.” *Id.* at 295.³

In 2001, the General Assembly failed to pass a plan and once again the Commission could not agree, so the tiebreaker procedure was employed. This time, the ninth member whose

² Attached hereto as Ex. D is a report prepared by the General Assembly’s Legislative Research Unit which describes the history of redistricting from 1970 through 2001. For background purposes, the Court can take judicial notice of this report, which is posted on the Illinois General Assembly’s website at <http://www.ilga.gov/commission/lru/28.RedistrictingSince1970.pdf>.

³ A number of the justices recognized that the map the Court upheld had been “drawn with a view to securing a partisan political advantage.” *Id.* at 302 (Heiple, J., concurring); *see also id.* at 307 (Clark, J., dissenting on the ground that the “type of political gerrymandering” evident in all of the maps submitted by Commission members impermissibly put the members’ “own political self-interests above the citizens’ right to a fair and representative form of government”).

name was picked out of a hat was a Democrat and so the Democratic map was chosen. A lawsuit was filed in federal court challenging the tiebreaker provision as a violation of federal constitutional guarantees. In *Winters*, 197 F.Supp.2d at 1114-15, a three-judge federal court rejected that challenge, holding that the provision was rationally related to the State's interest in legislative redistricting. The court agreed that "it would seem, at first blush anyway, [that] picking [the ninth] member's name out of a hat is anything but rational." *Id.* at 1114. The court noted, however, that the delegates to the 1970 Convention had adopted the provision in the belief that it would give "both political parties an incentive to compromise because neither side would want to risk losing the random drawing." *Id.* at 1114-15. The court found this justification to be "perfectly reasonable, or at least not so totally unreasonable that it fails the rational basis test." *Id.* at 1115. The court acknowledged, however, that the delegates' assumptions about the likely impact of having a random-draw tiebreaker had turned out to be wrong: "History proves it has had just the opposite of its desired effect. Rather than forcing the parties to find common ground for fear of losing the random drawing, they are apparently willing to dig in their heels with the hope of *winning* the drawing." *Id.* (emphasis in original).

The redistricting plan that is currently in effect is the only one since the 1970 Constitution was adopted in which the General Assembly was able to pass a redistricting plan, which the Governor signed, before the June 30 deadline. The only reason why that was possible, however, was that the House, the Senate and the Governor's mansion were all controlled by one political party and the drafters did not have to compromise with their political opponents.

The 2014 Redistricting Initiative

In 2014, an organization called Yes! For Independent Maps obtained hundreds of thousands of signatures on petitions to put a redistricting initiative on the ballot. Like the current

Redistricting Initiative, the 2014 initiative sought to depoliticize the redistricting process by creating a new, independent commission to draw district lines and by specifically prohibiting that commission from seeking to protect incumbents or to promote the interests of one political party over another. That ballot initiative was challenged in May 2014 by essentially the same group of plaintiffs who have brought the instant lawsuit. After hearing competing motions for judgment on the pleadings, Judge Mikva concluded that the ballot initiative did not pass muster under Article XIV, § 3 because it prohibited any member of the redistricting commission from serving in the General Assembly or holding a variety of other positions for the ten years the map was in effect. *See Clark v. Illinois State Bd. of Elections*, No. 14 CH 07356 (June 27, 2014), slip op. (Ex. C hereto) at 9-10. Judge Mikva characterized this as an “eligibility” requirement which, under Supreme Court precedent, is beyond the scope of a permissible ballot initiative. *Id.*

Although Judge Mikva granted the *Clark* plaintiffs the relief they sought, she rejected their argument that “any redistricting initiative is impermissible.” *Id.* at 9. After reviewing the legislative history of the 1970 Constitutional Convention, she concluded that “redistricting appears to be fair game for amendment” through the ballot initiative process under Article XIV, § 3. *Id.* Judge Mikva rejected several other challenges that plaintiffs repeat here, concluding that the initiative did not impermissibly alter the roles of the General Assembly, the Governor, or the Attorney General in the redistricting process and did not violate the Free and Equal Clause in Article III, § 3 of the 1970 Constitution. *Id.* at 10-11. Yes! For Independent Maps did not appeal Judge Mikva’s decision.

The Current Redistricting Initiative

After the failure of the 2014 initiative, a different organization called Support Independent Maps developed, sponsored, and gathered more than 500,000 signatures on a

petition seeking to put a revised version of the initiative on the November 2016 ballot. The new Redistricting Initiative, attached as Ex. A to the complaint, eliminates the eligibility requirements that caused Judge Mikva to strike down the 2014 initiative and makes a number of other changes as well.

Like the 2014 proposal, the Redistricting Initiative substantially alters the redistricting process, taking the responsibility for drawing up a redistricting plan out of the hands of the General Assembly and giving it to an eleven-member Independent Redistricting Commission. That Independent Redistricting Commission is appointed through a two-step process. First, an Applicant Review Panel is formed. The Auditor General accepts applications to serve on that Panel and then selects a pool of 30 potential Reviewers who “would operate in an ethical and non-partisan manner.” The Auditor General then “publicly select[s] by random draw” three members to serve on the Applicant Review Panel. *See* Compl. Ex. A, subsection (b).

In the second step of the process, the Independent Redistricting Commission is appointed. The Applicant Review Panel selects from those who apply to the Auditor General a pool of 100 applicants “who would be diverse and unaffected by conflicts of interest,” by taking into account (among other things) “each applicant’s prior political experience, relevant analytical skills, ability to contribute to a fair redistricting process and ability to represent the demographic and geographic diversity of the State.” *Id.*, subsection (c). After the 100-person pool is established, the Speaker and Minority Leader of the House and the President and Minority Leader of the Senate each have the opportunity to strike up to five individuals from the pool. *Id.*, subsection (d). The Applicant Review Panel would then publicly select seven Commissioners based on their political affiliations (two Democrats, two Republicans, and three who are not affiliated with

either major party)⁴ and residence (three from the First Judicial District and one each from the other four districts) by randomly drawing from remaining applicants. *Id.* The four legislative leaders would round out the eleven-member Commission by choosing one member each from among the remaining applicants “on the basis of the appointee’s contribution to the demographic and geographic diversity of the Commission.” *Id.*

The Commission is required to hold public hearings throughout the State both before and after releasing its initial redistricting plan; before it can finalize its map, the Commission is required to issue a report explaining why it believes the map complies with the redistricting criteria described below. To promote transparency, the Redistricting Initiative requires the Commission to hold its meetings in public unless privileged communications are involved and to make virtually all of its records available for public inspection. *Id.*, subsection (e).

Approval of a district plan requires the affirmative vote of seven Commissioners, including at least two Democrats, two Republicans, and two unaffiliated members. *Id.* The Commission is required to file a district plan by June 30 of the year after the census is completed. If the Commission does not meet that deadline, the Chief Justice of the Supreme Court and the most senior Supreme Court Justice not affiliated with the same political party would appoint a Special Commissioner for Redistricting, who would be responsible for conducting an abbreviated version of the Commission map-drawing process and filing a district plan by August 31. *Id.*, subsection (f).

In addition to changing the redistricting process, the Redistricting Initiative alters the standards governing redistricting. Like the current Article IV, § 3, the Redistricting Initiative

⁴ The proposed amendment speaks in terms of the political parties whose nominees for Governor had the two highest vote totals in the last election. For simplicity’s sake, we will assume that these are the Democratic and Republican parties.

provides that districts “shall be contiguous and substantially equal in population” and shall comply with federal law. Compl. Ex. A, subsection (a). It then goes on to add, “subject to the foregoing,” a number of other criteria that the Independent Redistricting Commission “shall apply”:

(1) the redistricting plan shall not dilute or diminish the ability of a racial or language minority community to elect the candidates of its choice, including when voting in concert with other persons; (2) the redistricting plan shall respect the geographic integrity of units of local government; and (3) the redistricting plan shall respect the geographic integrity of communities sharing common social and economic interests, which do not include relationships with political parties or candidates for office.

Id. Finally, the Redistricting Initiative prohibits partisanship in the decisionmaking process, providing that “[t]he redistricting plan shall not either intentionally or unduly discriminate against or intentionally or unduly favor any political party, political group or particular person. In designing the redistricting plan, the Commission shall consider party registration and voting history data only to assess compliance with the requirements in this subsection (a).”

Plaintiffs’ Allegations

Plaintiffs’ complaint seeks an injunction prohibiting the various State election authorities they have sued from putting the Redistricting Initiative on the November 2016 ballot. Plaintiffs argue that the Redistricting Initiative does not meet the requirement in Article XIV, § 3 that the proposed amendment be “limited to structural and procedural subjects contained in Article IV.” Plaintiffs repeat the argument they unsuccessfully made in 2014 that the Initiative fails this test because it supposedly does not affect the structure or procedures of the General Assembly (Count V). They also repeat their argument that the Redistricting Initiative poses multiple unrelated questions for voters and thus violates the “free and equal” elections provision of Article III, § 3 of the 1970 Constitution (Count VII).

In the other counts of their complaint, plaintiffs contend that specific provisions in the

Redistricting Initiative do not relate to “structural and procedural subjects contained in Article IV” and therefore the Initiative is not “limited” to those subjects as Article XIV requires. They claim in Count I that the Initiative impermissibly imposes duties on the Auditor General that do not appear in Article VIII, § 3, which creates the Office of the Auditor General. In Count II, plaintiffs allege that the Redistricting Initiative impermissibly alters the Supreme Court’s jurisdiction over challenges to a redistricting plan by providing that it has original jurisdiction without stating that its jurisdiction is exclusive. In Counts III and IV, plaintiffs contend that the Redistricting Initiative improperly imposes new duties on two members of the Supreme Court by requiring them to choose a Special Commissioner and by supposedly “requiring” Supreme Court justices to be affiliated with a political party. Finally, in Count VI plaintiffs repeat another claim Judge Mikva rejected, arguing that the Redistricting Initiative improperly “removes a duty and power of the Attorney General” by eliminating the current provision that gives the Attorney General the exclusive authority to challenge a redistricting plan.

For the reasons outlined below, all of these arguments fail as a matter of law and therefore plaintiffs’ complaint should be dismissed with prejudice.⁵

ARGUMENT

There are no threshold questions that this Court must decide before addressing the constitutional issue raised by plaintiffs’ complaint. We agree that a taxpayer action for injunctive relief is the appropriate vehicle for raising the constitutional issue. *See Chicago Bar Ass’n v. Illinois State Bd. of Elections*, 161 Ill.2d 502, 507 (1994). We also agree that, as taxpayers, plaintiffs have standing and that the constitutional issue is ripe even though the State Board of

⁵ Counts VIII-XI do not allege any substantive claims for relief, but rather seek injunctive relief based on the substantive allegations in the first seven counts of the complaint.

Elections has not yet “officially declared the petition valid and certified the proposition for the ballot.” *Id.* at 516; *see also id.* at 506 (agreeing with dissent that “issues of standing and ripeness do not preclude a review of the merits” of the constitutional challenge to a ballot initiative).⁶

I. The Redistricting Initiative Relates To Both “Structural And Procedural Subjects Contained In Article IV.”

A. Redistricting Is One Of The “Critical” Areas For Which The Ballot Initiative Procedure In Article XIV Was Created.

During the Constitutional Convention, delegates considered—and rejected—a wide-ranging, California-style right to propose constitutional amendments through ballot initiatives. The delegates rejected a general initiative provision because it “would be subject to abuse by special interest groups and might result in hasty and ill-conceived attempts to write what should have been the subject of ordinary legislation into the Constitution.” *Coalition for Political Honesty v. State Bd. of Elections*, 65 Ill.2d 453, 467 (1976) (“*Coalition for Political Honesty I*”). The delegates did, however, adopt a “limited constitutional initiative proposal for the Legislative Article.” Ex. E hereto, at 1399. As the Legislative Committee explained in its report on Article XIV, “[t]he primary reason” for allowing citizen initiatives to amend the Legislative Article (Article IV) “is quite simple: members of the General Assembly have a greater vested interest in the legislative branch of government than any other branch or phase of governmental activity” and thus are less likely to propose needed improvements. *Id.* at 1399-1400; *see also Coalition for Political Honesty I*, 65 Ill.2d at 468 (it was important that “some form of constitutional initiative be developed to amend the legislative article, since self-interest might make it unlikely that the

⁶ As noted above, the Staff of the State Board of Elections has completed its review of the signatures and concluded that they meet the required threshold. Any challenge to the signatures must be filed with the Board by June 28 and would be decided by the Board. *See* 10 ILCS 5/1A-8(10) (State Board of Elections has the authority to “[d]etermine the validity and sufficiency of petitions filed under Article XIV, Section 3 of the Constitution of the State of Illinois of 1970”).

legislature itself would propose changes”). The initiative procedure provides a “method to circumvent a legislature which might be dominated by interests opposing legislative changes.” *Id.* at 1400.

In *Coalition for Political Honesty I*, the Supreme Court rejected the argument that “any matter now within article IV” was fair game for a ballot initiative. *Id.* at 464 (emphasis added). Article XIV, § 3 requires any ballot initiative to be “limited to structural and procedural subjects contained in Article IV.” The Court held that this limitation was designed to ensure that the initiative process “could not be used as a substitute for legislative action.” *Id.* at 468.⁷ In support, the Court cited the Report of the Committee on the Legislature, which explained that the “subject matter contained in the proposed [Legislative] Article pertains only to the basic qualities of the legislative branch—namely structure, size, organization, procedures, etc.” and that any ballot initiative ““would be required to be limited to subjects contained in the Legislative Article, namely matters of structure and procedure and not matters of substantive policy”” and ““could not be construed to permit initiative amendments of a statutory nature.”” *Id.* at 468-69.

The sponsor of the ballot initiative measure, Delegate Perona, confirmed that the limitation to “structural and procedural subjects in Article IV” was intended to limit initiatives to issues concerning “the legislature itself, to its structure, makeup, and organization, and details concerning it” and to prevent the initiative procedure from ““being applied to ordinary legislation or to changes which do not attack or do not concern the actual structure or makeup of the legislature itself.”” *Id.* at 469-70. Delegate Perona also explained that this was precisely the area

⁷ Although Justice Schaefer dissented, he agreed with the majority’s view that the limitation to structural and procedural subjects was intended to prevent the initiative procedure from being used to enact substantive legislation. *Id.* at 474-75. For example, he noted that the initiative procedure could not be used to amend the Legislative Article to prohibit the General Assembly from enacting a law abolishing the death penalty or directing it to enact legislation prohibiting abortions. *Id.*

in which an initiative process was most needed:

“This provision has been structured to apply only to the legislative article and to be limited to the area of government which it is most likely will not be changed in the constitution by amendment. The legislature, being composed of human beings, will be reluctant to change the provisions of the constitution that govern its structure and makeup, the number of its members, and those sort of provisions.”

Id. at 470 (quoting 4 Proceedings 2911).

During the debates, the delegates discussed the specific types of issues that ballot initiatives could raise. It was agreed that a ballot initiative could be used to suggest amendments changing the size of the General Assembly, eliminating cumulative voting, or even converting from a bicameral to a unicameral legislature. 4 Proceedings 2712, Ex. F hereto. Following that discussion, one of the delegates asked whether the same would “be true for questions of elections.” “Amplify[ing]” on what he meant by “questions of elections,” the delegate explained that

under the pertinent sections of this proposed article, the first grouping of them—power, structure, composition, **and apportionment**—you do deal with size and with elections. You deal with cumulative voting—matters of that nature—and is that the kind of thing, also, that would be subject to initiative under this proposed section 15?

Id. (emphasis added). Delegate Perona responded unequivocally in the affirmative: “Yes. **Those are the critical areas, actually.**” *Id.* (emphasis added). Thus, redistricting—a synonym for “apportionment”—is precisely the type of subject that the framers created a ballot initiative to address. *See Clark v. Illinois State Bd. of Elections*, 2014 IL App (1st) 1419367, ¶ 17 (noting that “during the [constitutional] convention, it was stated that ‘power, structure, composition, and apportionment’ were ‘critical areas’ that would be subject to a ballot initiative”).

Supreme Court decisions confirm that the ballot initiative process can be used to propose amendments that would alter the size of the General Assembly or eliminate cumulative voting. The only initiative that has ever been put on the ballot proposed precisely this type of

amendment. The so-called “Cutback Amendment” proposed a reduction in the size of the House of Representatives, the abolition of cumulative voting, and the election of Representatives from single member districts. In *Coalition for Political Honesty v. State Bd. of Elections*, 83 Ill.2d 236, 260 (1980) (“*Coalition for Political Honesty II*”), the Supreme Court described this amendment as relating “directly to the ultimate purpose of structural and procedural change in the House of Representatives.” Although no appellate or Supreme Court decision has ever addressed redistricting, the very fact that the convention delegates mentioned “apportionment” as one of the “critical areas” that would be subject to a ballot initiative demonstrates that redistricting is, as Judge Mikva concluded, “fair game for amendment by Article XIV, §3, initiative.” *Clark*, Ex. C hereto, at 9.

B. The Redistricting Initiative Relates To Both Structural And Procedural Subjects Contained In Article IV.

In *Coalition for Political Honesty I*, the Supreme Court held that, in order to pass constitutional muster, an initiative had to relate to **both** structural and procedural subjects contained in Article IV. Although we believe that is a misreading of Article XIV, § 3,⁸ it is of no

⁸ Justice Schaefer dissented in *Coalition for Political Honesty I*, arguing that the majority had misread the plain language of Article XIV, which in his view required that an initiative deal with either a procedural **or** a structural subject. As he explained, if a menu is “limited to” chicken “and” beef, that does not mean that every dish must contain both chicken and beef. Instead, it means that the only available dishes are chicken “or” beef. 65 Ill.2d at 473. In the last Supreme Court case to consider Article XIV’s initiative procedure, *Chicago Bar Ass’n v. Illinois State Bd. of Elections*, 161 Ill.2d 502 (1994), the Court once again considered whether an initiative must relate to both structural and procedural subjects. Three Justices would have adopted the position taken on that issue in Justice Schaefer’s dissent. *Id.* at 519-20. But the majority disagreed, invoking the principle of *stare decisis*. *Id.* at 510.

We recognize that this Court is bound by the Supreme Court’s decisions and therefore cannot rule in Independent Maps’ favor unless it finds that the Redistricting Initiative relates to both procedural and structural subjects contained in Article IV. Nevertheless, should this case reach the Supreme Court, Independent Maps reserves the right to argue that it need only show that the Redistricting Initiative relates to structural **or** procedural subjects contained in Article IV.

moment here because the Redistricting Initiative does relate to both structural and procedural subjects contained in Article IV and thus falls squarely within the scope of permissible ballot initiatives.

1. The Redistricting Initiative Relates To Structural Subjects Contained In Article IV.

Redistricting is inherently a “structural subject contained in Article IV.” How districts are drawn is one of the key factors that determines the makeup of the General Assembly—including its political makeup and the number of minority-preferred candidates who are elected. Indeed, that is the very reason why redistricting battles are so hard-fought and why there is frequently litigation over whatever map is ultimately adopted. As noted above, the constitutional debates show unequivocally that the framers of the 1970 Constitution intended the word “structural” in Article XIV to refer to critical subjects like apportionment, which “govern [the General Assembly’s] structure and makeup, the number of its members, and those sort of provisions.” 4 Proceedings 2911 (Ex. F hereto); *see also id.* at 2711 (explaining that the initiative process is “to be limited to the makeup—the organization and the makeup of the legislature itself”).

The conclusion that the framers of the 1970 Constitution intended to allow redistricting amendments by initiative is further bolstered by the purpose of the ballot initiative process. The delegates recognized as a “fundamental fact of life” that legislators have a “vested interest in the legislative branch” which would make them less likely to propose needed changes in the legislative article. *See* Ex. E hereto at 1399-1400. The Committee also noted that “[t]he greatest virtue in having this provision rests in the potential for keeping the General Assembly more responsive on matters directly and vitally affecting them” and that “voters can better decide on the merits of proposals suggesting changes in the Legislative Article since they are not directly and personally involved.” *Id.* at 1400. All of these points apply with particular force to changes

in the redistricting process. Indeed, it is hard to imagine a matter that more “directly and vitally affect[s]” legislators than redistricting; accordingly, as the delegates recognized more than forty-five years ago, it is particularly “critical” that citizens be allowed to put a proposal aimed at reforming the redistricting process directly to the voters.

The Supreme Court’s analysis of the Cutback Amendment in *Coalition for Political Honesty II* also demonstrates that redistricting is a “structural” subject. The Cutback Amendment created single-member districts in the House of Representatives, thus requiring legislative districts to be redrawn. The Court held that each aspect of the proposed amendment related “directly to the ultimate purpose of structural and procedural change in the House of Representatives.” 83 Ill.2d at 260. If changing the rules for drawing district lines for House seats constituted a “structural” change for purposes of Article XIV, it necessarily follows that changing the rules for decennial redistricting also relates “directly to the ultimate purpose of structural and procedural change” in the General Assembly.

Apart from the fact that the Redistricting Initiative directly relates to the structure and makeup of the General Assembly, it also directly relates to another “structural subject contained in Article IV”—the Legislative Redistricting Commission. The Initiative would restructure (and rename) the existing Commission by not only increasing the number of members who serve on it, but also changing the way in which its members are selected so that decision-making is less likely to be influenced by partisanship and the interests of incumbent legislators. That provides yet another, independent reason why the Redistricting Initiative passes muster under Article XIV.

In Count V, plaintiffs contend that the Redistricting Initiative does not change the basic structure of the General Assembly because it would still consist of a Senate and a House of

Representatives, elected by voters from 59 Legislative Districts and 188 Representative Districts. Compl. ¶ 63. This is a reprise of an argument plaintiffs lost two years ago. The *Clark* plaintiffs relied on a short discussion of the “structural” requirement that appeared in a 1994 Supreme Court decision striking down a term limits initiative. In *Chicago Bar Ass’n v. Illinois State Bd. of Elections*, 161 Ill.2d 502, 509 (1994) (“*CBA IP*”), the Supreme Court first noted that “amendments whose subjects would be both structural and procedural” would include a proposal “for the conversion from multiple- to single-member legislative districts.” (quoting from *Coalition for Political Honesty I*, 65 Ill.2d at 466). It then stated that “[t]he eligibility or qualifications of an individual legislator does not involve the structure of the legislature *as an institution*. The General Assembly would remain a bicameral legislature consisting of a House and Senate with a total of 177 members, and would maintain the same organization.” *Id.* (emphasis in original). Seizing on the second sentence, plaintiffs argued in 2014, as they do now, that a redistricting initiative also would not involve the structure of the legislature “as an institution” because, after each decennial redistricting, the General Assembly would remain a bicameral legislature consisting of a House and Senate with a total of 177 members.

Judge Mikva properly rejected this argument. As she explained, “*CBA II*’s references [to certain types of structural changes] are best understood in context as examples of permissible Article XIV, § 3, initiatives, rather than a description of the entirety of permissible subjects.” *Clark*, Ex. C, at 9. Indeed, to interpret those references as limiting ballot initiatives to changes in the number of chambers in the legislature or the number of members in the House or Senate would render Article XIV, § 3 virtually useless—and ignore both the legislative history and the text of that provision. Surely if the framers had intended to so tightly limit the scope of permissible initiatives, they would have said so explicitly in Article XIV. And they certainly

would not have said in debates that apportionment was one of the “critical” areas that the initiative process was available to address.

**2. The Redistricting Initiative Relates To
Procedural Subjects Contained In Article IV.**

There can be no doubt that the Redistricting Initiative also relates to “procedural subjects contained in Article IV.” As described above, the current Article IV contains a lengthy, step-by-step description of the procedure to be employed in redistricting. The Redistricting Initiative would alter the process by which legislative redistricting is accomplished in a variety of ways, including by giving the revamped Independent Redistricting Commission the responsibility for formulating a district plan in the first instance. That makes the Redistricting Initiative fundamentally different from other types of initiatives that have been found unconstitutional. For example, in *CBA II*, the Court held that a term limits initiative failed to meet the requirements of Article XIV because it did not “involve any of the General Assembly’s procedures. The *process* by which the General Assembly adopts a law would remain unchanged.” 161 Ill.2d at 509 (emphasis in original). Here, by contrast, the *process* by which the General Assembly is redistricted would be altered by the Redistricting Initiative and therefore the procedural requirement is satisfied.

This conclusion is also supported by the Supreme Court’s analysis in *Coalition for Political Honesty II*, which described the Cutback Amendment as relating “directly to the ultimate purpose of structural and procedural change in the House of Representatives.” 83 Ill.2d at 260. That analysis confirms that changes to election procedures—such as the abolition of cumulative voting—fall within the scope of “procedural subjects contained in Article IV.”

In Count V, plaintiffs reiterate another argument that failed two years ago, claiming that a ballot initiative does not relate to a “procedural subject contained in Article IV” unless it

proposes a change in the way the General Assembly adopts a law. Compl. ¶¶ 64-67. In 2014, plaintiffs relied on *CBA II*'s statement that the proposed term limits amendment "does not involve any of the General Assembly's procedures" and that the "*process* by which the General Assembly adopts a law would remain unchanged." 161 Ill.2d at 509 (emphasis in original). But, as Judge Mikva properly concluded, the Court did not hold that every initiative had to alter the process by which the General Assembly adopts a law in order to meet the "procedural requirement." See Ex. C hereto, at 9. Instead, that was merely one way that it *could* meet that requirement.

To adopt plaintiffs' reasoning would be contrary to the plain language of Article XIV. Article XIV does not say that ballot initiatives must relate to the process by which laws are enacted. Instead, it limits ballot initiatives to a "procedural subject[] contained in Article IV." There is simply no way to avoid the conclusion that the elaborate procedures for redistricting currently set forth in Article IV fall within the category of "procedural subjects contained in Article IV."

II. The Redistricting Initiative Is Properly "Limited To" Structural And Procedural Subjects Contained In Article IV.

Plaintiffs also contend that even if the Redistricting Initiative relates to structural and procedural subjects contained in Article IV, it is not "limited" to those subjects. Plaintiffs tease out various aspects of the Redistricting Initiative, recharacterize them as pertaining to something other than redistricting, and then claim that, when viewed in isolation, they do not relate to either structural or procedural subjects contained in Article IV. For example, in Count VI, plaintiffs allege that the Redistricting Initiative omits the provision that is currently in Article IV, § 3, giving the Attorney General the power to initiate actions in the name of the people to challenge redistricting plans. They argue (1) that this provision removes a "duty and power of the Attorney

General prescribed by law,” (2) that the duties and powers of the Attorney General are not structural and procedural subjects contained in Article IV, and therefore (3) that the Redistricting Initiative is not “limited to” structural and procedural subjects. Plaintiffs make the same kind of argument in Counts I-IV. But the syllogism plaintiffs offer makes no sense because it ignores the fact that each provision they challenge is inextricably intertwined with redistricting, which for all of the reasons outlined above is **both** a structural and procedural subject contained in Article IV.

The 2014 First District decision in *Clark v. Illinois State Board* supports Independent Maps’ position. The *Clark* plaintiffs challenged not only the redistricting initiative put forth by Yes! For Independent Maps, but also a term limits initiative proposed by a different group. Judge Mikva struck down the term limits initiative in the opinion attached hereto as Ex. C. The term limits initiative contained a grab-bag of unrelated proposals: in addition to limiting members of the General Assembly to two four-year terms, it changed the number of Senators and Representatives, increased the threshold needed to override the Governor’s veto, eliminated staggered terms for Senators, and divided each legislative district into three representative districts, instead of two. The First District agreed that some of these provisions related to structural and procedural subjects in Article IV, but held (based on the Supreme Court’s earlier rejection of a term limits initiative) that term limits did not and that the initiative failed because it was not “limited to” structural and procedural subjects in Article IV. 2014 IL App. (1st) 141937, ¶ 25. The Court rejected the proponent’s argument that term limits were inextricably linked to the structural and procedural subjects in the initiative, finding its attempt to “connect the term limits provision with other parts of the amendment” unpersuasive. *Id.* ¶ 24; *see also* ¶ 29 (finding the various components of the proposed amendment to be “separate and unrelated”).

Notably, the First District did **not** criticize the theory the term limits proponents

advanced—that aspects of an interrelated proposal cannot be pulled apart to determine whether, when viewed in isolation, they relate to structural and procedural subjects in Article IV. Furthermore, that theory is supported both by the case law and the legislative history of Article XIV, § 3. As described above, the framers of the 1970 Constitution decided that ballot initiatives must be limited to structural and procedural subjects already contained in the Legislative Article to prevent the initiative process from being used to introduce substantive legislation in the guise of constitutional amendments to the Legislative Article. In light of that principle, the First District held in *Lousin v. State Bd. of Elections*, 108 Ill.App.3d 496 (1st Dist. 1982), that an initiative could not end-run Article XIV by amending the Legislative Article to provide for an initiative method of proposing new legislation. The First District held that this was precisely the kind of substantive change that the Convention delegates had chosen to avoid by limiting initiatives to structural and procedural subjects contained in Article IV. *Id.* at 504.

The Supreme Court adopted the same analysis in *Chicago Bar Ass'n v. State Bd. of Elections*, 137 Ill.2d 394 (1990) (“*CBA I*”), in striking down a “tax accountability amendment” initiative. The initiative in that case would have created new “revenue” committees in the House and Senate and would have imposed supermajority requirements on the General Assembly to pass any measure that raised revenue. The Court held that this proposed amendment did not meet Article XIV’s requirements because “[w]rapped up in this structural and procedural package is a substantive issue not found in article IV—the subject of increasing State revenue or increasing taxes.” *Id.* at 404. Citing with approval Justice Schaefer’s dissent in *Coalition for Public Honesty I*, see n. 7 *supra*, the Court held that substantive changes could not be smuggled into an initiative proposal by the simple expedient of casting it as an amendment to the Legislative Article: “To permit this would violate the intent so clearly expressed in the convention committee reports and

debates to limit constitutional Amendment by initiative to structural and procedural subjects of the legislative article and to prohibit the incorporation into such amendments of substantive matters.” *Id.* at 406.

Unlike the proposals at issue in *Lousin* and *CBA I*, the Redistricting Initiative does not alter the General Assembly’s ability to enact substantive laws. Nor is it a subterfuge to make changes that properly belong in entirely different articles of the Constitution.⁹ On the contrary, the only place where the proposed amendment to the redistricting process could have been put is in Article IV, § 3. Furthermore, *every* aspect of the Redistricting Initiative directly relates to the structural and procedural subject of redistricting and thus is “limited” as Article XIV, § 3 requires.

A. The Omission Of Any Mention of The Attorney General Does Not Affect The Article XIV, § 3 Analysis.

The 2014 redistricting initiative deleted the reference in the current Constitution to the Attorney General’s right to bring a lawsuit in the name of the People challenging a redistricting plan. It also expressly provided that the redistricting commission would have the exclusive right to defend its redistricting plan. The Redistricting Initiative at issue here is slightly different in that it is silent on the question of who has standing either to challenge or defend a redistricting plan. In Count VI, plaintiffs allege that the omission of any reference to the Attorney General’s power “removes a duty and power of the Attorney General prescribed by law” and thus relates to Article V, § 15 (creating the position of Attorney General) rather than to any structural or procedural subject contained in the Legislative Article.

Judge Mikva rejected this argument in *Clark*, explaining that “eliminating . . . the

⁹ In *CBA I*, it was apparent that any amendment to the General Assembly’s broad power with respect to raising revenues should have been made in Article IX’s provisions regarding “Revenue.”

Attorney General’s role in redistricting litigation does not take this initiative outside of Article IV.” Ex. C, at 10. That is clearly right. As plaintiffs point out, Article V, § 15 provides only that “[t]he Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law.” Compl. ¶ 70. The reference to duties “prescribed by law” means that the General Assembly prescribes the Attorney General’s duties by statute. *See Illinois State Treasurer v. Illinois Workers’ Comp. Comm’n*, 2015 IL 117418, ¶ 14 (constitutional provision giving Illinois courts the power to review administrative actions as “prescribed by law” limits the courts’ powers to those set forth in statutes). In fact, that is precisely what the General Assembly has done, in 15 ILCS 205/4.¹⁰ Nothing in the Redistricting Initiative purports to alter or restrict in any way the General Assembly’s ability under Article V, § 15 to prescribe the Attorney General’s duties, nor does it purport to alter or restrict any of the duties the General Assembly has already prescribed by statute.

All the Redistricting Initiative does is to omit a provision that appears in the current version of Article IV, § 3, which gives the Attorney General the power to bring challenges to redistricting plans. As such, any change in the Attorney General’s powers is strictly limited to the subject of redistricting, which is a structural and procedural subject contained in the Legislative Article. Because it remains within the four corners of the Legislative Article, the failure to mention the Attorney General in the Redistricting Initiative does not cause it to fall outside the scope of a permissible ballot initiative under Article XIV, § 3.

¹⁰ The Attorney General’s statutory duties broadly include appearing for and representing the people of the State before the Supreme Court in all cases in which the State or the people are interested, instituting and prosecuting all actions and proceedings in favor of or for the use of the State and defending all actions and proceedings against any State officer. *Id.*

B. The Provisions Relating To The Auditor General Do Not Affect The Article XIV, § 3 Analysis.

In Count I, plaintiffs argue that the Redistricting Initiative impermissibly imposes new duties on the Auditor General to accept applications from people to serve as Reviewers, to select a pool of 30 potential Reviewers, and to randomly draw the names of three Reviewers. Article VIII, § 3 creates the Office of Auditor General, requires the General Assembly to provide by law for the “audit of the obligation, receipt and use of public funds of the State,” and then designates the Auditor General (who is chosen by the General Assembly for a ten-year term) to conduct that audit. Nothing in the Redistricting Initiative, however, purports to change any provision in Article VIII; unlike the initiative struck down in *CBA I*, for example, the Redistricting Initiative is not being used as a way of limiting the Auditor General’s existing duties under Article VIII or changing the General Assembly’s duty to provide for audits. Instead, the Redistricting Initiative simply assigns an existing state official a limited role in the redistricting process. Because that role is directly related to the structural and procedural subject of redistricting, it is well within the scope of Article XIV, § 3.

That the Auditor General was not previously mentioned in the redistricting provisions of Article IV, § 3 is irrelevant to the constitutional analysis. So long as the Redistricting Initiative is limited to redistricting—as it clearly is—it falls within the scope of Article IV, § 3.

C. The Provisions Relating To The Supreme Court Do Not Affect The Article XIV, § 3 Analysis.

Plaintiffs also argue that two provisions in the Redistricting Initiative relating to the Supreme Court render it unconstitutional under Article XIV, § 3. In Count II, plaintiffs point to the fact that the Legislative Article currently provides that the Supreme Court has “original and exclusive” jurisdiction over challenges to a redistricting plan, while the Redistricting Initiative

provides only that the Supreme Court will have “original” jurisdiction over such a challenge. Plaintiffs contend that the effect of omitting the reference to exclusive jurisdiction is to give the circuit courts concurrent jurisdiction over redistricting challenges; they argue that the extent of the circuit courts’ subject matter jurisdiction is not a structural and procedural subject.

The difficulty with this argument is, once again, that the only change being made is to a provision of the Legislative Article that relates directly to (and only to) redistricting, which is a structural and procedural subject contained in Article IV. Plaintiffs point to Article VI, § 9, which provides that “Circuit Courts shall have original jurisdiction of all justiciable matters except *when* the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office.” (Emphasis added). But however this provision is interpreted, the Redistricting Initiative does not affect the scope of the jurisdiction conferred on the Circuit Courts *by the Judicial Article*. If Article VI, § 9 is read as conferring exclusive jurisdiction on the Supreme Court, nothing in the Redistricting Initiative withdraws it. Section 9 also remains unaffected if it is read as a reference to the Legislative Article, such that Circuit Court jurisdiction is eliminated only “when” exclusive jurisdiction is conferred on the Supreme Court by Article IV. Either way, the provisions relating to Supreme Court jurisdiction in the Redistricting Initiative directly relate to redistricting and thus fall within the scope of Article XIV, § 3.

Plaintiffs also complain about the Redistricting Initiative’s designation of two Supreme Court justices to select a Special Commissioner for Redistricting in the event the Independent Redistricting Commission is unable to adopt a redistricting plan in a timely manner. In Count III, plaintiffs argue that this provision imposes new duties on two members of the Supreme Court, which is not a “structural and procedural subject of Article IV.” Compl. ¶¶ 40-44. In Count IV,

plaintiffs contend that the Redistricting Initiative improperly requires at least two members of the Supreme Court to have a political affiliation, which is also not a “structural and procedural subject of Article IV.” Compl. ¶¶ 51-54. Both of these arguments should be rejected.

It is clear that the purpose of the provisions relating to the Supreme Court justices is not to expand their judicial duties; rather, it is simply to provide a more neutral and less random process for appointing a Special Commissioner in the event the Independent Redistricting Commission is unable to reach a timely agreement. The current version of Article IV also uses the Supreme Court in a non-judicial capacity, requiring it to appoint two individuals from different political parties to serve as tiebreakers in the event the redistricting commission cannot agree; one of those two is then selected by picking a name out of a hat. The Supreme Court’s current role relates directly to (and only to) the structural and procedural subject of redistricting. So too does the proposed alternative.

Nothing in the Redistricting Initiative alters the Chief Justice’s duties as set forth in the Judicial Article (Article VI, § 16). And nothing in the Judicial Article precludes the Chief Justice from being assigned additional duties in other parts of the Constitution. Indeed, Article IV, § 14 already gives the Chief Justice other duties, by requiring the Chief Justice to preside over an impeachment trial. Thus, the provisions concerning the appointment of a Special Commissioner do not take the Redistricting Initiative outside of Article IV. Instead, the Redistricting Initiative remains strictly limited to issues relating to redistricting, which falls within the scope of Article XIV, § 3.

Plaintiffs’ argument in Count IV that the Redistricting Initiative somehow requires Supreme Court justices to have or maintain political affiliations also misses the mark. The Redistricting Initiative simply recognizes that the Illinois Constitution provides for the partisan

election of Supreme Court justices and that historically justices have run under the banner of one of the two major parties when they are first elected to the Court. Indeed, the Court can take judicial notice of the fact that all seven members of the current Court ran as either Democrats or Republicans. Thus, it is simple to identify which two justices would choose a Special Commissioner. If the designation were made today, Chief Justice Garman would be one. Since the Chief Justice was elected as a Republican and Justice Freeman is the most senior Justice on the Court and was elected as a Democrat, Justice Freeman would be the second Justice.

To be sure, the Constitution and the Election Code allow judges, including Supreme Court justices, to be nominated and run as independents through petitions (as opposed to participating in the primary process). Article VI, § 12(a); 10 ILCS 5/10-3. And all justices run for retention without any party affiliation. Article VI, § 12(d). But that hardly means that the Redistricting Initiative requires the justices to be partisan. Indeed, the obvious reason for having Supreme Court justices make the selection is to *avoid* partisanship in the selection process. The only reason for requiring the justices to have been elected from different parties is to ensure that the selection process not only *is* non-partisan but *appears* so as well.

In any event, the Supreme Court's involvement in selecting a Special Commissioner is not a veiled attempt to change any substantive laws, nor is it designed to accomplish some goal unrelated to redistricting. On the contrary, the provision is strictly limited to redistricting and thus is limited to a structural and procedural subject contained in Article IV.

III. The Redistricting Initiative Does Not Violate The "Free And Equal" Elections Provision Of Article III, § 3

The final argument plaintiffs make (in Count VII) is also one they lost two years ago—plaintiffs contend that the Redistricting Initiative violates the "Free and Equal" Elections provision of Article III, § 3 because it supposedly raises "separate and unrelated questions" that

voters should have the opportunity to vote on separately. Plaintiffs define those questions as pertaining to the “General Assembly’s power to draft a redistricting map; the jurisdiction of the Illinois Courts; the duties and political affiliations of Judges of the Supreme Court; the duties of the Auditor General; the powers and duties of the Attorney General; and the duties of the Secretary of State.” Compl. ¶ 79. This argument fails because the Redistricting Initiative is not a collection of disparate provisions relating to matters scattered throughout the Constitution; rather, the common thread that ties everything together is that *all* of the proposed changes relate directly to (and only to) redistricting. As Judge Mikva concluded in 2014, “the entire proposition is a new redistricting approach that is focused exclusively on addressing perceived problems in the current Article IV, § 3.” Ex. C, at 11. Because the initiative has a “a reasonable, workable relationship to the same subject,” it meets the requirements of the Free and Equal Elections Cause. *Id.* at 10.

Indeed, that result is mandated by the Supreme Court’s decision in *Coalition for Political Honesty II*, upholding the Cutback Amendment against a challenge under Article III, § 3. There, the opponents of the initiative argued that the proposed amendment presented three separate questions: “(1) whether the size of the House of Representatives should be reduced, (2) whether cumulative voting should be abolished, and (3) whether representatives should be elected from single-member districts.” *Id.* at 253. The Supreme Court first noted that “it is only separate and *unrelated* questions which cannot be combined in a single proposition.” *Id.* at 254 (emphasis in original). It then held that “separate questions may be combined in a single proposition as long as they are reasonably related to a common objective in a workable manner.” *Id.* at 256. Because the questions posed by the Cutback Amendment “relate[d] directly to the ultimate purpose of structural and procedural change in the House of Representatives,” the Court held that voters

were entitled to vote on it as a single proposition. *Id.* at 260.

The Supreme Court recognized that “[a]lmost any proposition can be broken into simpler questions” and that reasonable voters might agree with some parts of the proposal and not others. *Id.* at 258. But the Court concluded that this was **not** a reason to deprive voters of the opportunity to vote an amendment up or down. As the Court observed, breaking related proposals down into separate ballot questions could create even more confusion and lead to “incongruous results.” *Id.* at 255. By allowing separate questions to be combined in a single proposition “as long as they are reasonably related to a common objective in a workable manner,” *id.* at 256, the Court struck a sensible balance between these competing concerns.

Here, all of the issues plaintiffs identify in ¶ 79 of their complaint are closely related. Indeed, they are **more** closely related than the issues were in *Coalition for Political Honesty*. There, the size of the House of Representatives was not directly tied to the question of whether Representatives should be elected from single or multimember districts. Here, by contrast, all of the provisions of the Redistricting Initiative deal with the common issue of redistricting reform. As in *Coalition for Political Honesty I*, voters might like some aspects of the Redistricting Initiative and not others. But that does not mean that having them vote on the entire Initiative, rather than breaking it down into simpler, separate questions, is constitutionally required.

CONCLUSION

For the foregoing reasons, Independent Maps urges the Court to grant its motion for judgment on the pleadings and to dismiss plaintiffs’ complaint with prejudice.

Respectfully submitted,


One of the attorneys for Intervenor-
Defendant Support Independent Maps

Michele Odorizzi
John A. Janicik
Lori E. Lightfoot
Chad M. Clamage
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
Telephone: (312) 782-0600
Facsimile: (312) 701-7711
Firm I.D. No. 43948

Dated: June 3, 2016

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

JOHN HOOKER, et al.,

Plaintiffs,

vs.

ILLINOIS STATE BOARD OF ELECTIONS,
et al.

Defendants,

and

SUPPORT INDEPENDENT MAPS,

Intervenor-Defendant.

Case No. 16 CH 06539

Hon. Diane J. Larsen,
Judge Presiding.

CERTIFICATE OF SERVICE

I, Alexander Kritikos, an attorney, hereby certify that on June 3, 2016, I caused a copy of Notice of Motion, Support For Independent Maps' Motion for Judgment on the Pleadings and Memorandum of Intervenor-Defendant Support Independent Maps In Support of its Motion for Judgment on the Pleadings dated June 3, 2016 to be served by e-mail or first class mail, postage prepaid upon:

Michael J. Kasper
222 North LaSalle, Suite 300
Chicago, IL 60601
312-704-3292
mjkasper60@mac.com
Firm No. 33837

Robert T. Shannon
Adam R. Vaught
Hinshaw & Cullbertson LLP

Richard J. Prendergast
Michael T. Layden
Richard J. Prendergast, Ltd.
111 West Washington, Suite 1100
Chicago, IL 60602
312-641-0881
rprendergast@rjpltd.com
mlayden@rjpltd.com
Firm No. 113831

222 North LaSalle Street, Suite 300
Chicago, IL 60601-1081
312-704-3000
rshannon@hinshawlaw.com
avaught@hinshawlaw.com
Firm No. 90384

Kent S. Ray
Assistant State's Attorney
Supervisor, Municipal Litigation Section
Daley Center, Room 545
Chicago, Illinois 60602

James M. Scanlon
Legal Counsel
Chicago Board of Elections
69 West Washington Street, 8th Floor
Chicago, Illinois 60602

Thomas Ioppolo
Assistant Attorney General
General Law Bureau
100 W. Randolph Street, 13th Floor
Chicago, Illinois 60601


Alexander Kritikos

Michele L. Odorizzi
John A. Janicik
Lori E. Lightfoot
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606-4637
Telephone: (312) 782-0600
Facsimile: (312) 701-7711
Firm I.D. No. 43948

Attorneys for Support Independent Maps