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THE QUESTION FOR ANOTHER DAY: *HOOKER V. ILLINOIS STATE BOARD OF ELECTIONS* AND ITS EFFECT ON THE VITALITY OF CITIZEN BALLOT INITIATIVES AND REDISTRICTING REFORM IN ILLINOIS

THOMAS Q. FORD\*

INTRODUCTION

Gerrymandering—the practice of manipulating the boundaries of an electoral district to favor one party’s candidate over another—is nothing new. The tactic dates back more than 200 years, to our country’s first Congressional election.<sup>1</sup> In 1788, founding father Patrick Henry tried to keep his political enemy James Madison from being elected to the U.S. House of Representatives. He drew Madison’s Virginia district to include as many Anti-Federalists as possible.<sup>2</sup> Henry’s plan didn’t work; Madison—a Federalist—still managed to win a spot in the First Congress.<sup>3</sup> But in the subsequent two centuries, politicians have taken Henry’s idea and perfected it.<sup>4</sup> Improvements in technology and in data collection have made partisan mapmakers more effective than ever.<sup>5</sup>

\* J.D., 2018, Chicago-Kent College of Law, Illinois Institute of Technology. The author would like to thank Kelsey Cox for her insight, her editorial guidance, and her patience.

1. Elizabeth Kolbert, *Drawing the Line: How Redistricting Turned America from Blue to Red*, *NEW YORKER* (June 27, 2016), <http://www.newyorker.com/magazine/2016/06/27/ratfcked-the-influence-of-redistricting> [<http://perma.cc/98CU-UGCP>]. While Patrick Henry offers what many consider to be the first instance of gerrymandering, the term is derived from critics of Elbridge Gerry, a former governor of Massachusetts. In 1812, Gerry approved a redistricting map which featured a salamander-shaped district for the purpose of benefitting his own party. See Laughlin McDonald, *The Looming 2010 Census: A Proposed Judicially Manageable Standard and Other Reform Options for Partisan Gerrymandering*, 46 *HARV. J. ON LEGIS.* 243, 244 (2009).

2. Kolbert, *supra* note 1.

3. *Congress Profiles: 1st Congress (1789–1791)*, U.S. HOUSE OF REPRESENTATIVES: HISTORY, ART & ARCHIVES, <http://history.house.gov/Congressional-Overview/Profiles/1st/> [<https://perma.cc/5YGE-5FKX>].

4. See generally DAVID DALEY, *RATF\*\*CKED: THE TRUE STORY BEHIND THE SECRET PLAN TO STEAL AMERICA’S DEMOCRACY*, at xx (2016) (noting that advances in technology and census data have led to higher predictability in voting behavior which has allowed for more effective gerrymandering).

5. See *Vieth v. Jubelirer*, 541 U.S. 267, 345 (2004) (Souter, J., dissenting) (noting that technology has allowed increased gerrymandering that “has damaged the democratic process to a degree that our predecessors only began to imagine”); see also Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 *HARV. L. REV.* 593, 624 (2002); Pamela S. Karlan, *The Fire Next Time: Reapportionment After the 2000 Census*, 50 *STAN. L. REV.* 731, 736 (1998).

On both the national and state level, in general, gerrymandering creates “safe seats” by establishing one-party constituencies, thereby reducing competition in elections.<sup>6</sup> Reformers argue that, as a result, the practice protects incumbents and incentivizes candidates in primary elections to be more partisan, ultimately producing lawmakers “that take [their] orders from party leaders, not from voters.”<sup>7</sup> This, in turn, contributes to increased political polarization among legislators and gridlock.<sup>8</sup>

On the state level, the nefarious effects of gerrymandering have prompted some states to take the role of redrawing electoral districts away from self-interested lawmakers and entrust the job to independent redistricting commissions.<sup>9</sup> California and Arizona serve as recent examples where voters passed ballot initiatives to remove state legislators from the re-mapping process.<sup>10</sup>

In recent years, reform advocates in Illinois have attempted to remove the General Assembly from redrawing state legislative districts altogether.<sup>11</sup> Reformers note the number of uncontested state elections as proof that the current system protects preferred incumbents. For example, in 2014, more than half of Illinois’s legislative races—82 of 137—were uncontested in the general election.<sup>12</sup>

6. See Richard Morrill, *A Geographer’s Perspective*, in *POLITICAL GERRYMANDERING AND THE COURTS* 213–214 (Bernard Grofman ed., 1990).

7. See generally Daley, *supra* note 4, at xxxvi–xxxvii (noting that gerrymandering leads to uncompetitive general elections). See also Editorial, *Redistricting Rerun: Independent Map Amendment Draws Lawsuit*, CHI. TRIB. (May 12, 2016, 6:11 PM), <http://www.chicagotribune.com/news/opinion/editorials/ct-madigan-illinois-redistricting-lawsuit-independent-maps-edit-0513-jm-20160512-story.html> [<http://perma.cc/Z42E-HBHU>] (noting that Illinois’s current redistricting system “discourages competition, robs voters of choices and protects mediocre incumbents,” and the system results in “a dysfunctional General Assembly that takes its orders from party leaders, not from voters”).

8. See generally Paul Krugman, Opinion, *How Republics End*, N.Y. TIMES (Dec. 19, 2016), <https://www.nytimes.com/2016/12/19/opinion/how-republics-end.html> [<http://perma.cc/3VW4-C3GM>] (noting “gerrymandered districts” is a cause of hyper-partisan politics).

9. McDonald, *supra* note 1, at 244–68 (noting that, as of 2009, twelve states employed a special redistricting commission).

10. See John Wildermuth, *Redistricting Victory a Big Win for Governor*, SFGATE (Nov. 27, 2008, 4:00 AM), <http://www.sfgate.com/politics/article/Redistricting-victory-a-big-win-for-governor-3260386.php> [<https://perma.cc/6VZM-F8WU>]; see also Adam Liptak, *Supreme Court Rebuffs Lawmakers over Independent Redistricting Panel*, N.Y. TIMES (June 29, 2015), <https://www.nytimes.com/2015/06/30/us/supreme-court-upholds-creation-of-arizona-redistricting-commission.html> [<http://perma.cc/39ZW-PPE4>]. California and Arizona shifted to redistricting commissions for creating both state legislative districts and U.S. congressional districts; Illinois reform efforts have been limited to state redistricting.

11. Editorial, *Redistricting Reform: Will an Amendment Finally Make It on the Ballot?*, CHI. TRIB. (Apr. 29, 2016, 4:51 PM), <http://www.chicagotribune.com/news/opinion/editorials/ct-madigan-rauner-redistricting-illinois-independent-map-amendment-edit-20160429-story.html> [<https://perma.cc/KY3X-WW53>].

12. See *Frequently Asked Questions*, INDEP. MAP AMENDMENT, <http://www.mapamendment.org/Resources-.html#4> (last visited Feb. 1, 2017).

The Illinois Constitution governs the process for redrawing state legislative districts and currently gives the General Assembly a central role in that process.<sup>13</sup> Thus, removing Illinois legislators from the redistricting process requires amending the state constitution. Such an amendment can happen in one of three ways: (1) a constitutional convention; (2) amendments passed by the General Assembly and subsequently approved by voters in a general election; or (3) a citizen ballot initiative approved by voters in a general election.<sup>14</sup> The first two options require affirmative action by the General Assembly,<sup>15</sup> making them an unlikely route to redistricting reform.<sup>16</sup>

In Illinois, two recent citizen ballot initiatives seeking to amend the constitution's redistricting provision have been struck down in court before reaching voters.<sup>17</sup> Most recently, a group called "Support Independent Maps"—a self-described "non-partisan statewide coalition"—sought to place an initiative on the November 2016 ballot. It would have overhauled the redistricting process by creating an independent redistricting commission to draw legislative districts and eliminating the General Assembly's role in the process.<sup>18</sup> The Illinois Supreme Court ultimately ruled in *Hooker v. Illinois State Board of Elections* that the initiative violated the Illinois Constitution.<sup>19</sup> Notably, for the purposes of this paper, the court declined to decide whether *any* hypothetical redistricting initiative would pass constitutional muster but instead chose to "leave that question for another day."<sup>20</sup>

This Note addresses the most recent push by interested parties to remove the Illinois General Assembly from the process of redrawing the state's

13. ILL. CONST. art. IV, § 3.

14. *Id.* art. XIV, §§ 1–3.

15. *Id.* Section 1 of article XIV does require a ballot initiative calling for a constitutional convention to be submitted to voters in a general election at least every twenty years. The most recent ballot initiative calling for a convention failed in 2008, meaning that Illinois voters will not be presented with the choice again until 2028 unless the General Assembly takes action. *Constitution of the State of Illinois: Amendments and Conventions Proposed*, ILL. GEN. ASSEMBLY, <http://www.ilga.gov/commission/lrb/conampro.htm> [<https://perma.cc/9AAS-SATW>].

16. See generally Editorial, *supra* note 7 (noting the Illinois General Assembly's inaction on redistricting reform despite "poll after poll after poll [that] has shown an overwhelming majority of voters support having an independent commission draw the [legislative] maps").

17. See *Clark v. Ill. State Bd. of Elections*, No. 14 CH 07356 (Ill. Cir. Ct. June 27, 2014) (declaring a proposed redistricting initiative invalid); *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶¶ 46–50, 63 N.E.3d 824, 839.

18. See generally INDEP. MAP AMENDMENT, <http://www.mapamendment.org/About.html> (last visited Jan. 30, 2016). See also Editorial, *Remap: Illinois Reformers Can Keep Losing to the Democratic Machine. Or . . .*, CHI. TRIB. (Sept. 2, 2016, 2:08 PM), <http://www.chicagotribune.com/news/opinion/editorials/ct-illinois-remap-amendment-madigan-democrats-edit-20160902-story.html> [<https://perma.cc/HXA6-AG46>].

19. *Hooker*, 2016 IL 121077, ¶¶ 45–50, 63 N.E.3d at 839.

20. *Id.* ¶ 45, 63 N.E.3d at 839.

legislative and representative districts. Part I will examine the history of Illinois's citizen ballot initiative, including the relevant constitutional provision—article XIV, section 3—as well as case law interpreting the provision. Part I will also provide the history of Illinois's redistricting, including the current redistricting framework provided for in article IV, section 3 of the Illinois Constitution and relevant case law. Part II will summarize the *Hooker* opinion and its procedural history and discuss the parties involved in the case. Part III will analyze the validity of the *Hooker* majority's reasoning as well as its potential effects on future citizen ballot initiatives; the analysis will also discuss whether, after *Hooker*, the citizen ballot initiative remains a viable means to amend the redistricting process in Illinois.<sup>21</sup>

In *Hooker*, the Illinois Supreme Court took another step to narrow article XIV, section 3, further restricting the public's ability to amend the state constitution through citizen ballot initiative. Judicial interpretation of article XIV, section 3 has been marked by limited analysis, and *Hooker* continues that trend. Rather than clarify judicial standards used to determine the constitutional validity of a popular initiative, the *Hooker* majority arguably muddied the waters, making it more difficult for future redistricting reformers to draft a citizen initiative that will pass constitutional muster.

## I. HISTORICAL BACKGROUND

Independent Maps' redistricting initiative marks the third time in Illinois history that a group has attempted to change the state's redistricting process through a ballot initiative.<sup>22</sup> In order to evaluate the *Hooker* decision, an overview of the constitutional provisions governing citizen ballot initiatives and legislative redistricting, relevant case law interpreting these provisions, and a brief history of state's redistricting is necessary.

21. This Note does *not* analyze Illinois's process of redrawing its U.S. congressional districts and does *not* discuss requirements—stemming from the U.S. Constitution, the Voting Rights Act, or the Illinois Constitution—that determine the legal validity of adopted maps. Nor does this Note analyze the extent of gerrymandering in Illinois or whether redistricting reform would address the ills associated with gerrymandering.

22. See *Clark*, slip op. at 8 (“[A] redistricting initiative has never [before] been proposed or challenged [in court in Illinois.]”); see also *Hooker*, 2016 IL 121077 (addressing legal challenge to redistricting initiative for the second time); Editorial, *Citizens First?*, CHI. TRIB. (Apr. 12, 2010), [http://articles.chicagotribune.com/2010-04-12/opinion/ct-edit-remap-20100412\\_1\\_house-and-senate-maps-democrats-republican-measure](http://articles.chicagotribune.com/2010-04-12/opinion/ct-edit-remap-20100412_1_house-and-senate-maps-democrats-republican-measure) [<https://perma.cc/8AVG-K2TH>] (noting 2010 citizen initiative entitled “Illinois Fair Map Amendment” that would modify tie-breaking provision in Illinois redistricting framework; the 2010 initiative ultimately failed to gather enough signatures to be placed on the ballot and thus never faced legal challenge concerning the constitutional merits of the initiative).

### A. Relevant History of Citizen Ballot Initiatives in Illinois

Illinois's current constitution, officially adopted in December 1970,<sup>23</sup> was the first to allow for amendment through a form of popular initiative, known as a citizen ballot initiative.<sup>24</sup> Prior to the 1970 constitution, the only means to amend Illinois's constitution was through a constitutional convention or a proposed amendment passed by the General Assembly and then submitted to voters.<sup>25</sup>

#### 1. Citizen Ballot Initiative Framework

Article XIV, section 3, of the Illinois Constitution provides for the citizen ballot initiative and states in relevant part:

Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted . . . . The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.<sup>26</sup>

As the plain language suggests, the constitution limits ballot initiatives to “structural and procedural subjects contained in Article IV.”<sup>27</sup> Article IV covers the state legislature,<sup>28</sup> and section 3 of article IV addresses legislative redistricting.<sup>29</sup> Thus, redistricting *is* subject to amendment by ballot initiative

23. See *Constitution of the State of Illinois*, ILL. GEN. ASSEMBLY, <http://www.ilga.gov/commission/lrb/conmain.htm> [<https://perma.cc/6ZM3-UCZN>]

24. *Coal. for Political Honesty v. State Bd. of Elections*, 359 N.E.2d 138, 145 (Ill. 1976) (“There has not been a prior constitution of Illinois which provided for its amendment by any form of popular initiative.”).

25. *Id.*

26. ILL. CONST. art. XIV, § 3.

27. *Id.*

28. See generally *id.* art. IV. In addition to legislative redistricting, article IV covers: the power and structure of the legislature; legislative composition; elections occurring in even-numbered years; sessions of the General Assembly; internal organization of the General Assembly; the manner in which committees conduct business; the procedural requirements for passing bills; veto procedures; effective date of laws; legislators' salary and other compensation; legislative immunity; special legislation; impeachment procedures; and adjournment of the General Assembly. *Id.*

29. *Id.* art. IV, § 3.

whereas other subjects—for example, gubernatorial succession, addressed in article 5—cannot be amended by ballot initiative.<sup>30</sup>

Another constitutional provision also governs the validity of a proposed ballot initiative. Article III, section 3, of the constitution contains the “free and equal” clause, which states “[a]ll elections shall be free and equal.”<sup>31</sup> This seemingly innocuous language effectively prohibits separate questions from being combined into a single ballot initiative.<sup>32</sup>

Illinois courts have commented that the general purpose of article XIV, section 3 was to create a popular means for legislative reform because amending the constitution’s legislative article “presented unique problems.”<sup>33</sup> The 1970 constitutional convention delegates feared that legislators could not represent the will of the people when it came to questions of the structure of the Illinois General Assembly because legislators’ own self-interest could conflict with the people’s wishes. Delegate Louis J. Perona, who served as spokesman for the Committee on the Legislature at the convention,<sup>34</sup> explained “[t]he 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.”<sup>35</sup> So the delegates created the citizen ballot initiative to allow voters to make such changes. The delegates made clear they did not intend for the broad ballot initiative to serve as a vehicle to pass “ordinary legislation,” because they feared that special interest groups could abuse such a mechanism or that “hasty and ill-conceived” legislation would bypass the ordinary, deliberative legislative process.<sup>36</sup>

## 2. Relevant Case Law Addressing Citizen Ballot Initiatives

There have been six reported cases involving challenges to citizen ballot initiatives proposed under article XIV, section 3.<sup>37</sup> These cases—four of

30. *See id.* art. V, § 6

31. *Id.* art. III, § 3.

32. *See Coal. for Political Honesty v. State Bd. of Elections*, 415 N.E.2d 368, 378–79 (Ill. 1980).

33. *See id.* at 374–75.

34. *Coal. for Political Honesty v. State Bd. of Elections*, 359 N.E.2d 138, 139 (Ill. 1976).

35. *Coal. for Political Honesty*, 415 N.E.2d at 374 (citing 4 RECORD OF PROCEEDINGS: SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 2911 (1972)).

36. *Coal. for Political Honesty*, 359 N.E.2d at 145 (citing 4 RECORD OF PROCEEDINGS, *supra* note 35, at 2712; 7 *id.* at 2298).

37. *See generally id.*; *Coal. for Political Honesty*, 415 N.E.2d 368; *Lousin v. State Bd. of Elections*, 438 N.E.2d 1241 (Ill. App. Ct. 1982); *Chi. Bar Ass’n v. State Bd. of Elections*, 561 N.E.2d 50 (Ill. 1990); *Chi. Bar Ass’n v. Ill. State Bd. of Elections*, 641 N.E.2d 525 (Ill. 1994); *Clark v. Ill. State Bd. of Elections*, 2014 IL App (1st) 141937, 17 N.E.3d 771.

which were decided by the Illinois Supreme Court—have construed the language of article XIV, section 3 narrowly, thereby restricting what may constitute a valid citizen ballot initiative. Notably, only one proposed ballot initiative has ever reached the voters.

In *Coalition for Political Honesty v. State Board of Elections* (“*Coalition I*”), the Illinois Supreme Court struck down all three proposed ballot initiatives to article IV.<sup>38</sup> The court interpreted the scope of article XIV, section 3’s language that any ballot initiative “shall be limited to structural and procedural subjects contained in Article IV.”<sup>39</sup> The court held that a valid ballot initiative *must* address both structural *and* procedural subjects in article IV.<sup>40</sup> The court held that this narrow construction was required because the delegates to the 1970 constitutional convention intended that the initiative provision *not* be abused by interest groups to pass ordinary legislation.<sup>41</sup>

Four years later, the court decided *Coalition for Political Honesty v. State Board of Elections* (“*Coalition II*”). The court considered a proposed ballot initiative which sought to (1) reduce the size of the Illinois House of Representatives, (2) provide for the election of only one representative from each representative district, and (3) abolish cumulative voting for representatives.<sup>42</sup> The court upheld the ballot initiative, finding that the proposed amendment related to a structural and procedural change in the state House of Representatives, a subject found in article IV, section 3.<sup>43</sup> The decision marks the *only* time that an Illinois court has found that a ballot initiative comports with article XIV, section 3.<sup>44</sup> The *Coalition II* court also addressed the application of article III’s “free and equal” clause to ballot initiatives. The challengers argued the ballot initiative violated article III, section 3 because it contained three separate questions; a voter could be forced to answer “yes” to a question he or she disagreed with in order to approve another

38. *Coal. for Political Honesty*, 359 N.E.2d at 147. The three initiatives aimed to strengthen conflict-of-interest provisions in the legislative article by (1) limiting and qualifying compensation a lawmaker could receive, (2) forcing disclosure of a conflicts of interest, and (3) prohibiting a lawmaker with a conflict from voting. *Id.* at 140.

39. *Id.* at 140, 146–47.

40. *Id.* at 146–47.

41. *Id.* (quoting Delegate Perona’s remarks that “limitation on this initiative eliminates the abuse which has been made of the initiative in some states . . . [and] prevent[s] it 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”). Notably, the *Coalition I* court also held that a taxpayer suit is the proper vehicle to challenge the constitutionality of a proposed ballot initiative. *Id.* at 141–42.

42. *Coal. for Political Honesty*, 415 N.E.2d at 370–72.

43. *Id.* at 382.

44. *Hooker v. Ill. State Bd. of Elections*, No. 16 CH 6539, 2016 WL 4581493, at \*7 (Ill. Cir. Ct. July 20, 2016) (“This is the only reported decision to uphold a ballot initiative for submission to the electorate”), *aff’d as amended*, 2016 IL 121077, 63 N.E.3d 824.

question contained in the initiative.<sup>45</sup> The challengers argued such a predicament violated the constitution's requirement that "[a]ll elections be free and equal."<sup>46</sup> The court agreed that unrelated questions would violate the free and equal clause but held that an initiative can constitutionally combine multiple questions so long as they are "reasonably related to a common objective in a workable manner."<sup>47</sup>

In *Lousin v. State Board of Elections*, an appellate court in Illinois's First District addressed the constitutionality of a ballot initiative which would allow voters to introduce bills to the Illinois General Assembly directly by initiative.<sup>48</sup> The First District found the ballot initiative would "vest [legislative] power . . . in the electors," which it viewed as a *substantive* change to article IV rather than a structural and procedural change.<sup>49</sup> The court cited the convention delegates' concerns over special interest groups abusing the initiative process to pass ordinary legislation and cited *Coalition P's* narrow construction of article XIV, section 3 that barred initiatives affecting the "power of the legislature."<sup>50</sup>

In *Chicago Bar Association v. State Board of Elections* ("CBA I"), the Illinois Supreme Court again reigned in the reach of article XIV, section 3. In *CBA I*, the court considered an initiative which would have (1) required a three-fifths vote from each house on bills that would raise state revenues, (2) required each house to have a revenue committee, and (3) required the committees to hold public hearings before voting on revenue bills.<sup>51</sup> The court held that, even though the initiative addressed structural and procedural subjects of article IV,<sup>52</sup> it was still unconstitutional because it was not *limited* to those subjects.<sup>53</sup> The court found that "[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."<sup>54</sup> The court noted that holding the initiative was constitutional would allow cleverly drafted ballot initiatives to amend "substantive matters" outside of article IV.<sup>55</sup>

45. *Coal. for Political Honesty*, 415 N.E.2d at 378–79.

46. *Id.*; see also ILL. CONST. art. III, § 3.

47. *Coal. for Political Honesty*, 415 N.E.2d at 380, 382.

48. *Lousin v. State Bd. of Elections*, 438 N.E.2d 1241, 1242–45 (Ill. App. Ct. 1982).

49. *Id.* at 1246.

50. *Id.*

51. *Chi. Bar Ass'n v. State Bd. of Elections*, 561 N.E.2d 50, 52 (Ill. 1990).

52. *Id.* at 55 (noting that the initiative's proposed revenue committee satisfied the structural requirement and the proposed public hearings satisfied the procedural requirement).

53. *Id.*

54. *Id.*

55. *Id.* at 56.

The court addressed a term limits initiative in *Chicago Bar Association v. Illinois State Board of Elections* (“*CBA I*”).<sup>56</sup> The proposed amendment prohibited a legislator from serving more than eight years.<sup>57</sup> The *CBA II* majority held the proposed initiative violated article XIV, section 3 because it did not address either structural or procedural subjects in article IV.<sup>58</sup> The court found that the initiative affected the “eligibility or qualifications” of an individual legislator; such qualifications did not address the “structure of the legislature *as an institution*” because the General Assembly would remain a bicameral legislature with the same number of seats.<sup>59</sup> Likewise, the court found the initiative did not address procedural subjects in article IV because it would not change the “*process* by which the General Assembly adopts a law.”<sup>60</sup>

The final reported decision addressing a ballot initiative under article XIV is *Clark v. Illinois State Board of Elections*.<sup>61</sup> In *Clark*, Illinois’s First District addressed another ballot initiative proposing term limits.<sup>62</sup> The court noted that the trial court had also addressed a second initiative aimed at amending the redistricting process but stated the trial court’s decision on the redistricting initiative was not an issue before the court.<sup>63</sup> Relying on *CBA II*, the First District essentially held a term limits amendment was per se unconstitutional because it unavoidably related to the “eligibility or qualification of an individual legislator,” which *CBA II* had held was neither a structural nor procedural subject of article IV.<sup>64</sup>

Notably, the trial court in *Clark* also struck down the redistricting initiative.<sup>65</sup> The proposed amendment created qualifications for members of a redistricting commission, and those qualifications included that a commissioner could not serve in the Illinois legislature or in various other elected or appointed positions for ten years after serving on the redistricting commission.<sup>66</sup> The trial court found that this essentially created a new qualification on potential candidates for the General Assembly—that they had not served

56. *Chi. Bar Ass’n v. Ill. State Bd. of Elections*, 641 N.E.2d 525, 526 (Ill. 1994).

57. *Id.* at 526–27.

58. *Id.* at 528–29.

59. *Id.* at 529.

60. *Id.*

61. *Clark v. Ill. State Bd. of Elections*, 2014 IL App (1st) 141937, 17 N.E.3d 771.

62. *Id.* ¶ 1, 17 N.E.3d at 773.

63. *Id.*

64. *Id.* ¶ 24, 17 N.E.3d at 778 (quoting *Chi. Bar Ass’n*, 641 N.E.2d at 529) (“We are bound by our supreme court’s holding—sparse as its reasoning was—that term limits . . . are neither structural nor procedural . . .” (citation omitted)).

65. *Clark v. Ill. State Bd. of Elections*, No. 14 CH 07356 (Ill. Cir. Ct. June 27, 2014).

66. *Id.*, slip op. at 2.

as a commissioner within a decade of running for office—and that such a qualification, like in *CBA II*, was neither structural nor procedural. The trial court also noted that this new qualification would apply to positions outside of article IV, which would independently violate article XIV, section 3.<sup>67</sup> Interestingly, the trial court rejected the challengers' arguments that the redistricting initiative unconstitutionally took power from the General Assembly to enact substantive laws, i.e., the General Assembly's power to pass a new electoral map each decade.<sup>68</sup> The trial court disagreed and held that the initiative did not limit the General Assembly's power to enact substantive law but rather merely limited the legislature's role in redistricting which was a subject contained in article IV.<sup>69</sup> The trial court also found the redistricting initiative did not violate the "free and equal" clause of article III because all portions of the initiative addressed the same subject, redistricting.<sup>70</sup>

### *B. Relevant History of Redistricting in Illinois*

The citizen ballot initiative at issue in *Hooker* sought to fundamentally change the redistricting process by essentially removing the Illinois General Assembly from the process.<sup>71</sup> Evaluating the current redistricting framework, past results of that framework, and the modified framework proposed in *Hooker* is helpful in analyzing the *Hooker* decision.

#### 1. Current Redistricting Framework

As mentioned above, the process for legislative redistricting is established in article IV, section 3.<sup>72</sup> The article provides for redrawing the state's *legislative districts*, from which state senators are elected, and for redrawing

67. *See id.*, slip op. at 9–11.

68. *Id.*, slip op. at 10. The challengers argued that this was a substantive change like those rejected in *Lousin* and *CBA I*.

69. *Id.* (“[N]othing in the initiative limits the General Assembly’s power to enact substantive laws; rather, it limits redistricting power that derives from Article IV.”).

70. *Id.* (“The Redistricting Initiative contains a complicated and detailed plan for redistricting, yet the plan appears to have ‘a reasonable, workable relationship to the same subject.’” (citing *Coal. for Political Honesty v. State Bd. of Elections*, 415 N.E.2d 368, 381 (1980))).

71. *See generally* *2016 Illinois Independent Redistricting Amendment*, INDEP. MAP AMENDMENT, [http://www.mapamendment.org/uploads/mapamendment/documents/illinois\\_independent\\_redistricting\\_amendment.pdf](http://www.mapamendment.org/uploads/mapamendment/documents/illinois_independent_redistricting_amendment.pdf) (last visited Feb. 1, 2017).

72. To note, article IV, section 3—along with the Illinois Constitution as a whole—is silent on the process for congressional redistricting. Federal law bestows that duty of redrawing Illinois’s U.S. congressional districts on the Illinois General Assembly or—should the General Assembly fail to act—on a federal court. *See* ROBERT M. ROGERS, LEGISLATIVE RESEARCH UNIT, ILL. GEN. ASSEMBLY, ILLINOIS REDISTRICTING HISTORY SINCE 1970, at 3 (2008).

the state's *representative districts*, from which state representatives are elected.<sup>73</sup>

The current language of article IV, section 3 gives the General Assembly and, in particular, party leaders a central role in drawing its own electoral districts.<sup>74</sup> The General Assembly is given the first chance to redraw the electoral map after each census.<sup>75</sup> If the General Assembly fails to do so by June 30 following the census year, party leaders—the Speaker of the House, the House Minority Leader, the Senate President, and the Senate Minority Leader—collectively pick every member of the eight-member Legislative Redistricting Commission.<sup>76</sup> If the commission fails to adopt a plan, a ninth commissioner is randomly picked between two candidates, neither of whom

73. ILL. CONST. art. IV, § 2 (“One Senator shall be elected from each Legislative District . . . [O]ne Representative shall be elected from each Representative District . . .”).

74. *See id.* art. IV, § 3(b). The full text of the section states:

(a) Legislative Districts shall be compact, contiguous and substantially equal in population. Representative Districts shall be compact, contiguous, and substantially equal in population.

(b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts and the Representative Districts.

If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.

The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.

The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.

Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.

Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General.

*Id.* art. IV, § 3.

75. *Id.* art. IV, § 3(b) (“In the year following each Federal decennial census year, the General Assembly by law *shall redistrict* the Legislative Districts and the Representative Districts.” (emphasis added)).

76. *Id.*

can be from the same political party, to break the tie between the commissioners.<sup>77</sup> This final step has been criticized by the Illinois Supreme Court as reducing the rights of voters to “a game of chance” that is not “in the best interests of anyone except the [political] party which has won [the game].”<sup>78</sup>

Thus, under the current framework, legislators—namely party leaders—either directly or indirectly control the redistricting process.

## 2. Redistricting Since the Passage of the 1970 Constitution

To the layperson, how the current redistricting scheme has worked in practice may be surprising. Since 1970, five legislative maps have been drawn, but the General Assembly has directly approved a new legislative map only once—in 2011.<sup>79</sup> Following the four previous censuses, Illinois resorted to the backup provision of creating a legislative redistricting commission.<sup>80</sup> In three of those instances, the eight-member commission failed to approve a map in time, and the tie-breaking provision was triggered.<sup>81</sup>

Since 1970, each time a new legislative map was finally created, legal challenges followed; these challenges generally target the validity of the maps themselves, such as claims that a particular map violated U.S. Constitution, the Voting Rights Act or the state constitution’s requirement that legislative districts be compact.<sup>82</sup> These issues are outside the scope of this Note.

However, there are two notable cases in which the Illinois Supreme Court addressed challenges to the redistricting framework itself. The first case, *People ex rel. Scott v. Grivetti*, affirmed the validity of the legislative

77. *Id.*

78. *People ex rel. Burris v. Ryan*, 588 N.E.2d 1033, 1035 (Ill. 1992) (“[W]e 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 part of a game of chance. The consequences of such a method affect everyone.”).

79. General Assembly Redistricting Act of 2011, 10 ILL. COMP. STAT. ANN. 91/1–91/99 (West 2018).

80. ROGERS, *supra* note 72, at 3–12; *see also* *People ex rel. Scott v. Grivetti*, 277 N.E.2d 881 (Ill. 1971); *Schrage v. State Bd. of Elections*, 430 N.E.2d 483 (Ill. 1981); *Burris*, 588 N.E.2d 1033; *Cole-Randazzo v. Ryan*, 762 N.E.2d 485 (Ill. 2001); *Beaubien v. Ryan*, 762 N.E.2d 501 (Ill. 2001).

81. ROGERS, *supra* note 72, at 5–12; *see also* *Schrage*, 430 N.E.2d at 484–85; *Burris*, 588 N.E.2d at 1035–36; *Beaubien*, 762 N.E.2d at 505–06.

82. *See, e.g., Scott*, 277 N.E.2d 881; *Schrage*, 430 N.E.2d 483; *Rybicki v. State Bd. of Elections*, 574 F. Supp. 1082 (N.D. Ill. 1982), *supplemented*, 574 F. Supp. 1147 (N.D. Ill. 1983), and *supplemented*, 574 F. Supp. 1161 (N.D. Ill. 1983); *Burris*, 588 N.E.2d 1033; Ill. Legislative Redistricting Comm’n v. LaPaille, 786 F. Supp. 704 (N.D. Ill. 1992); *Cole-Randazzo*, 762 N.E.2d 485; *Beaubien*, 762 N.E.2d 501; *Winters v. Ill. State Bd. of Elections*, 197 F. Supp. 2d 1110 (N.D. Ill. 2001), *aff’d*, 535 U.S. 967 (2002); *Campuzano v. Ill. State Bd. of Elections*, 200 F. Supp. 2d 905 (N.D. Ill. 2002); *Radogno v. Ill. State Bd. of Elections*, No. 1:11-CV-04884, 2011 WL 5868225 (N.D. Ill. Nov. 22, 2011), *aff’d sub nom. Radogno v. Ill. State Bd. of Elections*, 568 U.S. 801 (2012).

redistricting commission but qualified its membership.<sup>83</sup> *Grivetti* followed the adoption of the 1971 legislative map, which was drafted by a redistricting commission.<sup>84</sup> In creating the commission, party leaders had appointed themselves and their legislative aides to the commission; the *Grivetti* court held that their self-appointment violated the state constitution based on “long standing and well known” public policy and the fact that article IV, section 3 did not explicitly condone such a practice.<sup>85</sup> Moreover, the *Grivetti* court also rejected the appointment of the legislative aides to the commission and cited convention proceedings that showed the non-legislator commissioners were intended to be members of the public, not aides who were not truly independent from the General Assembly.<sup>86</sup>

The second relevant case addressed the validity of the tie-breaking provision of section 3(b). In *Winters v. Illinois State Board of Elections*, plaintiffs sued in federal court, alleging that the random selection of the ninth redistricting commissioner in the event of deadlock violated the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the U.S. Constitution.<sup>87</sup> The federal district court rejected both arguments, finding that the tie-breaking provision did not create any sort of equal protection classification nor did implicate a fundamental right under substantive due process.<sup>88</sup>

In summation, courts have generally held that Illinois’s current redistricting framework is valid, regardless of whether the maps it produces run afoul of federal law or the Illinois constitution. Moreover, although the Illinois General Assembly plays a central role in the process, in practice, the maps have largely *not* been the result of direct action by the General Assembly. Four of the five maps have been produced by a legislative redistricting commission, and three of those commissions triggered the tie-breaking provision, which, again, the Illinois Supreme Court has criticized as allowing a “game of chance” to determine the rights of voters.<sup>89</sup>

## II. HOOKER V. ILLINOIS STATE BOARD OF ELECTIONS

*Hooker v. Illinois State Board of Elections* marks the most recent attempt at redistricting reform and is the first occasion that the Illinois Supreme

83. *Scott*, 277 N.E.2d at 883–86.

84. *Id.* at 883.

85. *Id.* at 886.

86. *Id.* at 885.

87. *Winters*, 197 F. Supp. 2d at 1112.

88. *Id.* at 1114–18.

89. *People ex rel. Burriss v. Ryan*, 588 N.E.2d 1033, 1035 (Ill. 1992).

Court has addressed the validity of a citizen ballot initiative that would amend the constitution's legislative redistricting provision.<sup>90</sup>

### A. Relevant Background

#### 1. Primary Parties

The citizen ballot initiative at issue in *Hooker* was proposed by Support Independent Maps (“Independent Maps”), a ballot initiative committee formed in April 2015.<sup>91</sup> The group’s purported purpose was to pass a citizen ballot initiative in November 2016 that would amend legislative redistricting to increase transparency and essentially remove the Illinois General Assembly from the mapmaking process.<sup>92</sup> The self-described “nonpartisan statewide coalition” touted civic organizations, community organizations, and current and former elected officials from both political parties among its “supporters.”<sup>93</sup> The group raised more than \$4 million<sup>94</sup> and collected about

90. See *Hooker v. Ill. State Bd. of Elections*, No. 16 CH 6539, 2016 WL 4581493, at \*7 (Ill. Cir. Ct. July 20, 2016) (“While one trial court has dealt with a differing version of a Redistricting Initiative, no appellate or Illinois Supreme Court case has ruled on the issue presented in this case, and thus, this case presents an issue of first impression.”), *aff’d as amended*, 2016 IL 121077, 63 N.E.3d 824.

91. Support Independent Maps is still registered as an active ballot initiative committee with the Illinois State Board of Elections as of this writing. See SUPPORT INDEP. MAPS, FORM D-1, STATEMENT OF ORGANIZATION (2015), <http://www.elections.il.gov/CampaignDisclosure/CDPpdfViewer.aspx?FiledDocID=fwpimoQ6hTS%2bCchYH5kqwQ%3d%3d&DocType=%2fwY5Q6gLz9EZSXGO4xdasQ%3d%3d> [https://perma.cc/W3Q7-F34H]; see also *Committee Details: Support Independent Maps*, ILL. STATE BD. OF ELECTIONS, <http://www.elections.il.gov/CampaignDisclosure/CommitteeDetail.aspx?id=IW3HETzSGD8S%2fUVEcqt%2fUw%3d%3d&pageIndex=gVMkr%2fdFU6w%3d> [https://perma.cc/C9BJ-3NT5].

92. See *Frequently Asked Questions*, *supra* note 12 (“We can, and must, change [the redistricting] system by removing partisan consideration from map-making and making the process transparent.”); see also *2016 Illinois Independent Redistricting Amendment*, *supra* note 71.

93. See *Supporters*, INDEP. MAP AMENDMENT, <http://www.mapamendment.org/SUPPORTERS.html> (last visited Feb. 1, 2017). The committee’s board of directors included Chairman Dennis FitzSimons, Peter Bensinger, and Mary Kubasak. See *Board of Directors*, INDEP. MAP AMENDMENT, <http://www.mapamendment.org/About/Board-of-Directors.html> (last visited Feb. 1, 2017).

94. See SUPPORT INDEP. MAPS, FORM D-2, REPORT OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES: QUARTERLY REPORT (2017), <http://www.elections.il.gov/CampaignDisclosure/CommitteeDetail.aspx?id=IW3HETzSGD8S%2fUVEcqt%2fUw%3d%3d&pageIndex=gVMkr%2fdFU6w%3d> [https://perma.cc/L4PV-J4U7]; SUPPORT INDEP. MAPS, FORM D-2, REPORT OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES: QUARTERLY REPORT (2016), <http://www.elections.il.gov/CampaignDisclosure/CommitteeDetail.aspx?id=IW3HETzSGD8S%2fUVEcqt%2fUw%3d%3d&pageIndex=gVMkr%2fdFU6w%3d> [https://perma.cc/YY27-6XGN]; Editorial, *supra* note 7.

563,000 voter signatures,<sup>95</sup> nearly twice the amount of signatures needed to place a citizen initiative on the 2016 ballot.<sup>96</sup>

The challenge to the initiative was led by The People’s Map (“People’s Map”), another ballot initiative committee formed in August 2015.<sup>97</sup> The group was chaired by John Hooker, the current chairman of the Chicago Housing Authority Board of Commissioners,<sup>98</sup> and its stated purpose was “[t]o support or oppose referenda regarding redistricting.”<sup>99</sup> To that end, the group raised a total of \$25,000 in contributions.<sup>100</sup> Although *Hooker v. Illinois State Board of Elections* involved multiple parties,<sup>101</sup> the dispute was essentially between People’s Map and Independent Maps.

## 2. Independent Maps Proposed Amendment

The amendment proposed by Independent Maps’ initiative would entirely replace the current section 3 of article IV with a new redistricting framework.<sup>102</sup> This new section 3 provided:

95. Rick Pearson, *Illinois Supreme Court Rejects New Hearing for Redistricting Amendment*, CHI. TRIB. (Sept. 13, 2016, 12:54 PM), <http://www.chicagotribune.com/news/local/politics/ct-illinois-supreme-court-remap-amendment-met-09-20160913-story.html> [<http://perma.cc/ZB67-G7US>].

96. See ILL. CONST. art. XIV, § 3 (requiring initiative to have signatures equal to eight percent of number of votes cast in last gubernatorial election); see also *Election Results: General Election 11/4/2014*, ILL. STATE BD. OF ELECTIONS, <https://www.elections.il.gov/ElectionResults.aspx?ID=XEXru5CD3O8%3d%3d> [<https://perma.cc/U7NF-8M63>].

97. See THE PEOPLE’S MAP, FORM D-1, STATEMENT OF ORGANIZATION (2015), <https://www.elections.il.gov/CampaignDisclosure/CDPpdfViewer.aspx?FiledDocID=GAp16Iig0nKx%2bWCaAhivOA%3d%3d&DocType=%2fwY5Q6gLz9EZSXGO4xdasQ%3d%3d> [<https://perma.cc/Y52W-5D9N>].

98. See *Board of Commissioners*, CHI. HOUS. AUTH., <http://www.thecha.org/about/board-of-commissioners/> [<https://perma.cc/3D3K-GBKE>]; see also Editorial, *Who’s Financing the Fight Against Fair Legislative Maps?*, CHI. TRIB. (Aug. 10, 2016, 11:58 AM), <http://www.chicagotribune.com/news/opinion/editorials/ct-illinois-remap-supreme-court-madigan-edit-20160810-story.html> [<http://perma.cc/E4QJ-6PG5>].

99. See *Committee Detail: The People’s Map*, ILL. STATE BD. OF ELECTIONS, <https://www.elections.il.gov/CampaignDisclosure/CommitteeDetail.aspx?id=mXO3CqAigT8WGLjSoQtEjQ%3d%3d> [<https://perma.cc/6P4J-SXNZ>].

100. The contributions—which came from Chicago-based personal injury law firms and union groups—were disclosed in December 2016 when the committee was dissolved. See THE PEOPLE’S MAP, FORM D-2, REPORT OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES: FINAL REPORT (2016), <https://www.elections.il.gov/CampaignDisclosure/CommitteeDetail.aspx?id=mXO3CqAigT8WGLjSoQtEjQ%3d%3d> [<https://perma.cc/R2KU-RT32>].

101. The named defendants included the Illinois Board of Elections, State Comptroller Leslie Munger, Secretary of State Jesse White, State Treasurer Michael Frerichs, Cook County Clerk David Orr, and the Board of Election Commissioners for the City of Chicago. In addition to John Hooker, the named plaintiffs included Leon Finney, Elzie Higgenbottom, Raymond Chin, Fernando Grillo, Jorge Perez, Craig Chico, and Frank Clark. See *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶¶ 9–10, 63 N.E.3d 824, 830.

Notably, with the exception of Jorge Perez, all the *Hooker* plaintiffs were also named plaintiffs in *Clark v. Illinois State Board of Elections*, 2014 IL App (1st) 141937, 17 N.E.3d 771, which had invalidated the citizen redistricting initiative in 2014.

102. *Hooker*, 2016 IL 121077, ¶ 6, 63 N.E.3d at 827–30.

(a) The Independent Redistricting Commission comprising 11 Commissioners shall adopt and file with the Secretary of State a redistricting plan for Legislative Districts and Representative Districts by June 30 of the year following each Federal decennial census. Legislative Districts shall be contiguous and substantially equal in population. Representative Districts shall be contiguous and substantially equal in population. The redistricting plan shall comply with Federal law. Subject to the foregoing, the Commission shall apply the following criteria: (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. The 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).

(b) For the purpose of conducting the Commissioner selection process, an Applicant Review Panel comprising three Reviewers shall be chosen in the following manner. Beginning not later than January 1 and ending not later than March 1 of the year in which the Federal decennial census occurs, the Auditor General shall request and accept applications to serve as a Reviewer. The Auditor General shall review all applications and select a pool of 30 potential Reviewers. The Auditor General should select applicants for the pool of potential Reviewers who would operate in an ethical and non-partisan manner by considering whether each applicant is a resident and registered voter of the State and has been for the four years preceding his or her application, has demonstrated understanding of and adherence to standards of ethical conduct and has been unaffiliated with any political party for the three years preceding appointment. By March 31 of the year in which the Federal decennial census occurs, the Auditor General shall publicly select by random draw the Panel of three Reviewers from the pool of potential Reviewers.

(c) Beginning not later than January 1 and ending not later than March 1 of the year in which the Federal decennial census occurs, the Auditor General shall request and accept applications to serve as a Commissioner on the Independent Redistricting Commission. By May 31, the Panel shall select a pool of 100 potential Commissioners. The Panel should select applicants for the pool of potential Commissioners who would be diverse and unaffected by conflicts of interest by considering whether each applicant is a resident and registered voter of the State and has been for the four years preceding his or her application, as well as 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. The Panel shall act by affirmative vote of two Reviewers. All records of the Panel, including applications to serve

on the Panel, shall be open for public inspection, except private information about applicants for which there is no compelling public interest in disclosure.

(d) Within 45 days after the Panel has selected the pool of 100 potential Commissioners, but not later than June 23 of the year in which the Federal decennial census occurs, the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate each may remove up to five of those potential Commissioners. Thereafter, but not later than June 30, the Panel shall publicly select seven Commissioners by random draw from the remaining pool of potential Commissioners; of those seven Commissioners, including any replacements, (1) the seven Commissioners shall reside among the Judicial Districts in the same proportion as the number of Judges elected therefrom under Section 3 of Article VI of this Constitution, (2) two Commissioners shall be affiliated with the political party whose candidate for Governor received the most votes cast in the last general election for Governor, two Commissioners shall be affiliated with the political party whose candidate for Governor received the second-most votes cast in such election and the remaining three Commissioners shall not be affiliated with either such political party and (3) no more than two Commissioners may be affiliated with the same political party. The Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate each shall appoint one Commissioner from among the remaining applicants in the pool of potential Commissioners on the basis of the appointee's contribution to the demographic and geographic diversity of the Commission. A vacancy on the Panel or Commission shall be filled within five days by a potential Reviewer or potential Commissioner from among the applicants remaining in the pool of potential Reviewers or potential Commissioners, respectively, in the manner in which the office was previously filled.

(e) The Commission shall act in public meetings by affirmative vote of six Commissioners, except that approval of any redistricting plan shall require the affirmative vote of at least (1) seven Commissioners total, (2) two Commissioners from each political party whose candidate for Governor received the most and second[-]most votes cast in the last general election for Governor and (3) two Commissioners not affiliated with either such political party. The Commission shall elect its chairperson and vice chairperson, who shall not be affiliated with the same political party. Six Commissioners shall constitute a quorum. All meetings of the Commission attended by a quorum, except for meetings qualified under attorney-client privilege, shall be open to the public and publicly noticed at least two days prior to the meeting. All records of the Commission, including communications between Commissioners regarding the Commission's work, shall be open for public inspection, except for records qualified under attorney-client privilege. The Commission shall adopt rules governing its procedure, public hearings and the implementation of matters under this Section. The Commission shall hold public hearings throughout the state both before and after releasing the initial proposed redistricting plan. The Commission may not adopt a final redistricting plan unless the plan to be

adopted without further amendment, and a report explaining its compliance with this Constitution, have been publicly noticed at least seven days before the final vote on such plan.

(f) If the Commission fails to adopt and file with the Secretary of State a redistricting plan by June 30 of the year following a Federal decennial census, the Chief Justice of the Supreme Court and the most senior Judge of the Supreme Court who is not affiliated with the same political party as the Chief Justice shall appoint jointly by July 31 a Special Commissioner for Redistricting. The Special Commissioner shall adopt and file with the Secretary of State by August 31 a redistricting plan satisfying the requirements set forth in subsection (a) of this Section and a report explaining its compliance with this Constitution. The Special Commissioner shall hold at least one public hearing in the State before releasing his or her initial proposed redistricting plan and at least one public hearing in a different location in the State after releasing his or her initial proposed redistricting plan and before filing the final redistricting plan with the Secretary of State. All records of the Special Commissioner shall be open for public inspection, except for records qualified under attorney-client privilege.

(g) An adopted redistricting plan filed with the Secretary of State shall be presumed valid and shall be published promptly by the Secretary of State.

(h) The Supreme Court shall have original jurisdiction in cases relating to matters under this Section.<sup>103</sup>

On its face, the amendment would drastically alter Illinois's legislative redistricting. The role of the Illinois General Assembly would be all but eliminated. The Illinois General Assembly would no longer have the first chance to adopt an electoral map; instead, the job would fall to an eleven-member "Independent Redistricting Commission."<sup>104</sup> Further, lawmakers would not have a say in selecting the members of the commission, save for a limited role for party leaders.<sup>105</sup>

For purposes of analyzing the *Hooker* decision, the amended article IV, section 3 would make six significant changes to the current framework. First, the bulk of the work of establishing the Independent Redistricting Commission would fall to the Illinois Auditor General, who currently has no role in redistricting.<sup>106</sup> Second, the proposed language would modify the Illinois Supreme Court's jurisdiction under article IV, section 3 to eliminate the court's

103. *Id.* (alteration in original); *2016 Illinois Independent Redistricting Amendment*, *supra* note 71.

104. *Hooker*, 2016 IL 121077, ¶ 6, 63 N.E.3d at 827–30.

105. *See id.* Subsection (d) of the new framework allows the House Speaker, the House Minority Leader, the Senate President, and the Senate Minority Leader to each strike five members of the pool of 100 potential commissioners; the leaders are also permitted to each appoint one commissioner from the pre-selected pool "on the basis of the appointee's contribution to the demographic and geographic diversity of the Commission." *Id.*

106. *Id.*

exclusive jurisdiction.<sup>107</sup> Third, instead of a randomized tie-breaking provision, the proposed framework would require that two justices of the Illinois Supreme Court jointly appoint a “Special Commissioner” who would then unilaterally submit the final map.<sup>108</sup> Fourth, under the amended framework, the justices appointing the special commissioner could not be members of the same political party.<sup>109</sup> Fifth, the amendment would remove from section 3 language granting the Illinois Attorney General the exclusive ability to initiate actions concerning legislative redistricting.<sup>110</sup> Finally, in describing the requirements for each electoral district, the proposed framework removes the word “compact” while adding language ostensibly aimed at curbing gerrymandering and ensuring compliance with federal voting law.<sup>111</sup>

Notably, although ultimately not germane to the *Hooker* opinion, the amendment also adds transparency measures; it requires that all applications to serve on the Independent Redistricting Commission be made publicly available and requires that the commission—and any special commissioner—hold public meetings and make all its records public as well.<sup>112</sup>

### B. Procedural History

On May 6, 2016, Independent Maps filed a petition with the Illinois Board of Elections to bring their proposed amendment before voters in the

107. Compare *id.* (“The Supreme Court shall have *original jurisdiction* in cases relating to matters under this Section.” (emphasis added)), with ILL. CONST. art. IV, § 3(b) (“The Supreme Court shall have *original and exclusive jurisdiction* over actions concerning redistricting the House and Senate . . . .” (emphasis added)).

108. See *Hooker*, 2016 IL 121077, ¶ 6, 63 N.E.3d at 827–30.

109. *Id.*

110. See *id.*

111. Compare *id.* (“[T]he Commission shall apply the following criteria: (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. The 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).”), with ILL. CONST. art. IV, § 3(a) (“Legislative Districts shall be *compact*, contiguous and substantially equal in population. Representative Districts shall be *compact*, contiguous, and substantially equal in population.” (emphasis added)).

112. See *Hooker*, 2016 IL 121077, ¶ 6, 63 N.E.3d at 827–30; 2016 *Illinois Independent Redistricting Amendment*, *supra* note 71 (removing altogether the language from ILL. CONST. IV, § 3(b) which states “actions . . . shall be initiated in the name of the People of the State by the Attorney General”).

2016 general election.<sup>113</sup> Five days later, on May 11, 2016, People's Map<sup>114</sup> filed a "taxpayer's suit"—an action to restrain and enjoin the disbursement of public funds in relation to the proposed amendment—in the Circuit Court of Cook County's Chancery Division.<sup>115</sup> The suit was filed before Independent Maps' petition was officially declared valid and certified for placement on the ballot.<sup>116</sup>

People's Map named as defendants the Illinois State Board of Elections and various other state officials who would necessarily expend public funds related to the citizen initiative.<sup>117</sup> Independent Maps filed a petition to intervene to defend their citizen initiative; the trial court granted Independent Maps' petition.<sup>118</sup>

In relevant part, People's Map complaint alleged that the proposed initiative was unconstitutional in seven ways.<sup>119</sup> Count I alleged that imposing duties on the state's Auditor General violated article XIV, section 3.<sup>120</sup> Count II alleged that the initiative unconstitutionally changed the subject matter jurisdiction of both the Illinois Supreme Court and the circuit courts.<sup>121</sup> Count III alleged that the initiative unconstitutionally imposed new duties on two members of the Illinois Supreme Court, i.e., requiring the justices to select a special commissioner in event of deadlock.<sup>122</sup> Count IV alleged that the initiative required political party affiliation by Illinois Supreme Court justices, which violated article XIV, section 3.<sup>123</sup> Count V alleged that the initiative

113. *Hooker v. Ill. State Bd. of Elections*, No. 16 CH 6539, 2016 WL 4581493, at \*1 (Ill. Cir. Ct. July 20, 2016), *aff'd as amended*, 2016 IL 121077, 63 N.E.3d 824.

114. Again, the named plaintiffs in the suit were: John Hooker, Chairman of The People's Map; Frank Clark; Leon Finney; Elzie Higgenbottom; Raymond Chin; Fernando Grillo; Jorge Perez; and Craig Chico. Hooker is the only individual associated with The People's Map; the other plaintiffs are members of various other civic and political organizations. *See id.* at \*2. The plaintiffs are collectively referred to as "People's Map."

115. *Id.*; *see also Hooker*, 2016 IL 121077, ¶ 8, 63 N.E.3d at 830.

116. *See Hooker*, 2016 IL 121077, ¶ 8 n.2, 63 N.E.3d at 830 n.2 (noting that taxpayer suit is proper means to challenge constitutionality of a proposed ballot initiative and that the issue was ripe despite that Independent Maps' petition had not yet been certified for November 2016 ballot).

117. Again, the named defendants were: Illinois Board of Elections and its members; State Comptroller Leslie Munger; Secretary of State Jesse White; State Treasurer Michael Frerichs; Cook County Clerk David Orr; and the Board of Election Commissioners for the City of Chicago and its members. *Hooker*, 2016 WL 4581493, at \*1.

118. *Id.*

119. *Id.* at \*3. The complaint alleged a total of eleven counts but Counts VIII through XI merely sought permanent injunctions against expenditure of public funds in connection with the proposed initiative.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

violated article XIV, section 3 because it did not change the structure or procedure of the General Assembly and was also not limited to structural and procedural changes to the General Assembly.<sup>124</sup> Count VI alleged that removing the Attorney General’s power to initiate redistricting actions violated article XIV, section 3.<sup>125</sup> Additionally, Count VII alleged that the proposed citizen initiative violated the “free and equal” clause of article III, section 3 because it combined separate questions.<sup>126</sup>

After People’s Map and Independent Maps filed cross motions for judgment on the pleadings, Judge Diane Joan Larsen issued an opinion on July 20, 2016 finding the proposed citizen initiative unconstitutional and granting People’s Map’s motion as to Counts I through VII.<sup>127</sup> In its analysis, the court made clear that considering the “wisdom or desirability of the Redistricting Initiative before it” was not the court’s role; rather, its sole responsibility was determining whether the proposed amendment comported with Illinois’s constitution.<sup>128</sup>

In regard to Count I, the court found the initiative’s provision relating to the Auditor General did indeed violate article XIV, section 3 for two reasons.<sup>129</sup> First, the court noted that the Auditor General was not a subject found in article IV, so the amendment was not *limited* to subjects in article IV. Second, the court viewed assigning duties to the Auditor General a substantive change to the Auditor General’s duties, which are provided in article VIII.<sup>130</sup> Notably, the court apparently disregarded Independent Maps’ reliance on the conclusion drawn by the *Clark* trial court in dictum that eliminating the roles of certain officials—like the Governor or Attorney General—provided in the current redistricting framework does *not* take a citizen initiative “outside of article IV.”<sup>131</sup>

In regard to Count II, the trial court found that the initiative impermissibly modified the subject matter jurisdiction of both the Illinois Supreme Court and the state’s circuit courts.<sup>132</sup> The court first found that although article IV, section 3 discusses the “original and exclusive” jurisdiction of the

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.* at \*18; *see also id.* at \*1 n.2 (refusing to enter judgment on counts seeking injunction because the issue had not been briefed).

128. *Id.* at \*6.

129. *Id.* at \*9.

130. *Id.*

131. *Id.*; *see also Clark v. Ill. State Bd. of Elections*, No. 14 CH 07356, slip op. at 10 (Ill. Cir. Ct. June 27, 2014) (“[E]liminating the Governor’s right to veto a plan or the Attorney General’s role in redistricting litigation does not take this initiative outside of Article IV.”).

132. *Hooker*, 2016 WL 4581493, at \*9.

Illinois Supreme Court, the matter was not “structural” or “procedural” as defined in *CBA II* and thus could not be changed by a citizen ballot initiative.<sup>133</sup> Second, the court found that the change would effectively expand the circuit court’s subject matter jurisdiction, a “substantive matter beyond a structural and procedural subject of article IV, section 3.”<sup>134</sup>

Count III of People’s Map’s complaint, again, alleged that the proposed initiative impermissibly assigned new duties to two individual Illinois Supreme Court justices, i.e., jointly selecting a special commissioner in the event of deadlock. Although the court acknowledged that the Illinois Supreme Court—as a whole—is a subject of article IV, it is “not a *structural and procedural* subject of article IV” and thus outside the reach of a citizen initiative.<sup>135</sup> Moreover, the court found that the proposed initiative would impose duties on two *individual* justices—not the supreme court as a whole—and that the duties of individual justices is *not* a subject of article IV but rather is a subject of article VI.<sup>136</sup> The court found that either reason warranted granting judgment for People’s Map on Count III.

In regard to Count IV, the court granted judgment in favor of People’s Map because it concluded that the proposed amendment would impermissibly require Illinois Supreme Court justices to be affiliated with a political party.<sup>137</sup> The court found that the Illinois constitution does not currently require an Illinois Supreme Court justice to have a political affiliation, and thus, the initiative would effectively create a new eligibility requirement for an Illinois Supreme Court justice and would thereby impermissibly change article VI of the constitution.<sup>138</sup>

Count V attacked the proposed initiative by arguing it would not change the structure and procedure of the General Assembly and was not limited to the structure and procedure of the General Assembly.<sup>139</sup> After discussing the convention’s legislative history and case law considering citizen ballot initiatives, the court found that the proposed initiative *did* include structural *and* procedural subjects contained in article IV.<sup>140</sup> However, the court found the

133. *Id.* at \*10. The court relied on the narrow definition of structural—“the structure of the legislature as an institution”—and procedural—“the General Assembly’s procedures”—given in *CBA II. Id.* (quoting *Chi. Bar Ass’n v. Ill. State Bd. of Elections*, 641 N.E.2d 525, 529 (Ill. 1994)).

134. *Id.*

135. *Id.* at \*11.

136. *Id.*

137. *Id.* at \*13.

138. *Id.*

139. *Id.* at \*3.

140. *Id.* at \*15.

proposed initiative was not *limited* to structural and procedural subjects, given its conclusions on Counts I through IV.<sup>141</sup>

In regard to Count VI, the court found that the proposed amendment's removal of the Attorney General's explicit responsibility to initiate actions concerning redistricting also violated article XIV, section 3 because that responsibility could not be deemed "*structural and procedural* subjects of article IV."<sup>142</sup> Thus, the proposed citizen was unconstitutional.

Finally, the court also granted judgment in favor of People's Map on Count VII; the court found that—independent of issues relating to article XIV, section 3—the proposed initiative violated the "free and equal" clause of article III, section 3.<sup>143</sup> The court found that the proposed initiative presented questions relating to: (1) state officials other than members of the General Assembly; (2) "the circuit court's [subject matter] jurisdiction"; and (3) "the method of challenging a redistricting plan."<sup>144</sup> The court found that these matters were significantly unrelated to redistricting and thus the initiative presented separate, unrelated questions, which ran afoul of article III's "free and equal" clause.

Following the trial court's opinion, Independent Maps appealed and moved to transfer the case directly to the Illinois Supreme Court.<sup>145</sup> The Illinois Supreme Court granted the motion.<sup>146</sup>

### C. Hooker v. Illinois State Board of Elections *Opinion*

The court issued its opinion without hearing oral argument.<sup>147</sup> The court affirmed the decision of the trial court—albeit through different reasoning—and held that the citizen ballot initiative proposed by Independent Maps violated the Illinois Constitution.<sup>148</sup> Observers noted the decision divided the

141. *Id.*

142. *Id.* at \*16.

143. *Id.* at \*17–18.

144. *Id.* at \*18.

145. *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶ 18, 63 N.E.3d 824, 832. Independent Maps' motion was filed pursuant to Illinois Supreme Court Rule 302(b). *See* ILL. SUP. CT. R. 302(b) ("After the filing of the notice of appeal to the Appellate Court in a case in which the public interest requires prompt adjudication by the Supreme Court, the Supreme Court or a justice thereof may order that the appeal be taken directly to it. Upon the entry of such an order any documents already filed in the Appellate Court shall be transmitted by the clerk of that court to the clerk of the Supreme Court. From that point the case shall proceed in all respects as though the appeal had been taken directly to the Supreme Court.").

146. *Hooker*, 2016 IL 121077, ¶ 18, 63 N.E.3d at 832.

147. *Id.* Notably, more than two dozen groups filed amicus curiae briefs in support of Independent Maps. *See id.* ¶ 18 n.4, 63 N.E.3d at 832 n.4 (listing groups).

148. *Id.* ¶ 50, 63 N.E.3d at 839. Also, the court's opinion was originally filed in August 25, 2016 and was modified on September 12, 2016 after the Court denied Independent Maps' motion to reconsider

Illinois Supreme Court along political party lines with the four Democratic justices voting to affirm the trial court's decision and the three Republican justices voting to reverse.<sup>149</sup>

### 1. Majority Opinion

The majority's opinion, issued by Justice Thomas L. Kilbride, essentially struck down the ballot initiative for one reason: the proposed amendment contained at least one "subject"—the duties of the Auditor General—that was not found in article IV.<sup>150</sup> This alone was enough to violate article XIV, section 3. Unlike the circuit court's decision, the *Hooker* majority did not address the merits of all challenges to the ballot initiative made by People's Map.<sup>151</sup>

The opinion characterized People's Map's challenge to the proposed ballot initiative as raising "two basic lines of constitutional argument": (1) that the initiative violated article XIV, section 3 of the Illinois Constitution because it was not "limited to structural and procedural subjects contained in Article IV"; and (2) that the initiative violated article III, section 3 because it "impermissibly combine[d] separate and unrelated questions into a single ballot [initiative]."<sup>152</sup>

In regard to the first line of argument, the court reaffirmed its view that the framers of the 1970 Illinois Constitution intended the citizen ballot initiative to be "a very limited form of constitutional initiative."<sup>153</sup> The court also noted that the limitations that article XIV, section 3 places on citizen ballot initiatives "is apparently unique to Illinois" and, as such, case law from other states could not be looked to for guidance.<sup>154</sup>

The court then addressed Count I of People's Map's complaint, concerning the amendment's proposed role of the Auditor General. The court found this issue dispositive.<sup>155</sup> It identified and addressed three arguments

the decision. See *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, 2016 WL 4485084, *modified on denial of reh'g*, 2016 IL 12077, 63 N.E.3d 824. The synopsis contained in this Note reflects the modified opinion.

149. See generally *Hooker*, 2016 IL 121077, 63 N.E.3d 824. See also Rick Pearson, *Sharply Divided Illinois Supreme Court Keeps Redistricting Question off Fall Ballot*, CHI. TRIB. (Aug. 26, 2016, 5:19 AM), <http://www.chicagotribune.com/news/local/politics/ct-illinois-supreme-court-independent-map-ruling-met-0826-20160825-story.html> [https://perma.cc/EZN9-XLW2].

150. *Hooker*, 2016 IL 121077, ¶ 42, 63 N.E.3d at 838. The court found this issue dispositive and thus did not rule on any other issue raised by People's Map. See *id.* ¶ 25, 63 N.E.3d at 834.

151. See generally *id.* ¶¶ 19–50, 63 N.E.3d at 832–39.

152. *Id.* ¶ 22, 63 N.E.3d at 833.

153. *Id.* ¶ 23 (citing Chi. Bar Ass'n v. State Bd. of Elections, 561 N.E.2d 50, 54 (Ill. 1990)).

154. *Id.* ¶ 22, 63 N.E.3d at 833 (quoting Coal. for Political Honesty v. State Bd. of Elections, 415 N.E.2d 368, 375 (1980)).

155. *Id.* ¶ 25, 63 N.E.3d at 834.

made by Independent Maps: (1) that assigning the Auditor General a role in redistricting—which is a subject of article IV—did not change the Auditor General’s other duties described in article VIII, section 3; (2) that the new duties were not the sort of substantive change that the framers of the 1970 constitution sought to prevent by limiting citizen ballot initiatives; and (3) that meaningful redistricting reform would require assigning duties to non-legislative actors.<sup>156</sup>

The court rejected the first argument, finding that the new role would have a “material effect” on article VIII.<sup>157</sup> Article VIII, section 3 provides the duties of the Auditor General, which include conducting audits of public funds, creating reports and conducting investigations directed by the General Assembly, and reporting its findings to the General Assembly and Governor.<sup>158</sup> The proposed amendment would give the Auditor General the additional duties of accepting and screening applicants for the review panel as well as accepting applications for redistricting commissioner.<sup>159</sup> The court found these new duties to be “time-consuming and resource-intensive” and that their performance would necessarily take time away from the Auditor General’s duties outlined in article VIII, section 3. As such, the court found the opportunity cost of performing the new duties had a “material effect on another section of our constitution[, i.e., article VIII, section 3], in violation of article XIV, section 3.”<sup>160</sup> Moreover, the court rejected the argument that the new duties did not change article VIII, section 3 because the new duties would not be “unduly burdensome.”<sup>161</sup> The court found that the Auditor General’s “hypothetical ability” to perform all its duties adequately—including the proposed duties—did not affect the constitutionality of the proposal.<sup>162</sup>

Similarly, the court found the second argument—that the newly proposed duties were not the sort of change that the constitutional delegates sought to bar from citizen initiatives—unpersuasive.<sup>163</sup> Distinguishing the proposed initiative from the one at issue in *CBA I*, Independent Maps argued that the proposed initiative’s role for the Auditor General was “not being used as a subterfuge to undermine the duties the Constitution assigns to the Auditor General in Article VIII,” but rather was “aimed solely at reforming

156. *Id.* ¶ 26, 63 N.E.3d at 834.

157. *Id.* ¶ 29, 63 N.E.3d at 835.

158. ILL. CONST. art. VIII, § 3(b).

159. See *2016 Illinois Independent Redistricting Amendment*, *supra* note 71.

160. *Hooker*, 2016 IL 121077, ¶ 29, 63 N.E.3d at 835.

161. *Id.* ¶ 30, 63 N.E.3d at 835.

162. *Id.*

163. *Id.* ¶ 31, 63 N.E.3d at 836.

the redistricting process.”<sup>164</sup> Put another way, Independent Maps argued that the initiative was not intended to affect substantive change to the Auditor General’s duties but rather was meant to reform the redistricting process, and thus, the initiative was not the sort of nefarious citizen initiative the delegates sought to prevent. However, the court rejected this argument, noting simply that the “*propriety*” of the underlying intent of an initiative is not a “*factor in the test*” to determine whether a proposed initiative comports with article XIV, section 3.<sup>165</sup> While acknowledging that the convention delegates sought to prevent ballot initiatives from being used as a “backdoor” to affect substantive change to the constitution, the court stressed that the only limitations *actually* placed on citizen ballot initiatives was that they be limited to structural and procedural subjects contained in article IV.<sup>166</sup>

The court then went on to clarify that its sole role was to determine whether the proposed initiative complied with the “strict limitations set out in article XIV, section 3.”<sup>167</sup> It found that the language of article XIV, section 3 was unambiguous<sup>168</sup> and then went on to discuss its past holdings interpreting the section’s language as well comments made by convention delegates.<sup>169</sup> In particular, the court relied on *CBA I*, which found that an initiative’s requirement that any bill increasing state revenue receive a three-fifth vote violated article XIV, section 3 because revenue was a substantive subject not found in article IV.<sup>170</sup>

In ultimately striking down the proposed initiative, the court found that the Auditor General is not a “subject” of article IV because the Auditor General is not mentioned in the text of article IV.<sup>171</sup> Since the Auditor General was not a subject of article IV, the proposed initiative’s provisions relating to the Auditor General violated article XIV, section 3.<sup>172</sup> The court also conclusively stated in passing that the new duties created by Independent Maps’ initiative “creates changes that neither ‘attack [n]or . . . concern the actual structure or makeup of the legislature itself’” but then uses that assertion to

164. *Id.*

165. *Id.* ¶ 32, 63 N.E.3d at 836.

166. *Id.* ¶ 33, 63 N.E.3d at 836.

167. *Id.* ¶ 34, 63 N.E.3d at 836.

168. *Id.* ¶ 36, 63 N.E.3d at 837.

169. *Id.* ¶¶ 36–41, 63 N.E.3d at 837–38 (citing *Coal. for Political Honesty v. State Bd. of Elections*, 359 N.E.2d 138, 141, 144–45, 146 (Ill. 1976); *Coal. for Political Honesty v. State Bd. of Elections*, 415 N.E.2d 368 (Ill. 1980); *Chi. Bar Ass’n v. State Bd. of Elections*, 561 N.E.2d 50, 54, 55–56 (Ill. 1990); *Chi. Bar Ass’n v. Ill. State Bd. of Elections*, 641 N.E.2d 525, 528–29 (Ill. 1994)).

170. *Id.* ¶ 41, 63 N.E.3d at 838.

171. *Id.* ¶ 42, 63 N.E.3d at 838 (“As presently constituted, article IV does not mention the ‘subject’ of the Auditor General’s office or its duties, even in passing.”).

172. *Id.*

support its conclusion that the Auditor General is not a subject of article IV.<sup>173</sup>

After striking down the initiative, the majority concluded by addressing Independent Maps' third argument. In response to Independent Maps' "policy argument" that striking down its proposed initiative would make it all but impossible to achieve meaningful redistricting reform, the court "respectfully disagree[d]."<sup>174</sup> The court noted that it would not comment on the wisdom or desirability of Independent Maps' initiative because it was not the role of the court to do so.<sup>175</sup> However, the court noted—broadly and conclusively—that the Auditor General "is not the only potential nonlegislative actor capable of filling the duties outlined in its proposal" because "[c]ertainly Illinois has other offices or individuals that are unencumbered by the limitations expressed in Article XIV."<sup>176</sup>

The court then stated its decision was based "solely on the constitutional infirmity of the particular ballot initiative before [the] court" and that its decision was "not intended to reflect in any way on the viability of other possible redistricting reform initiatives."<sup>177</sup> The court said that because it found Count I of People's Map's complaint dispositive, it would not address any of the other remaining issues, including *both* parties request that the court determine whether any hypothetical redistricting initiative could be constitutional.<sup>178</sup> The court noted it would "leave that question for another day."<sup>179</sup>

## 2. Dissenting Opinions

The three Republican judges—then-Chief Justice Rita B. Garman, Justice Robert R. Thomas, and Justice Lloyd A. Karmeier—each wrote dissenting opinions.<sup>180</sup> Chief Justice Garman wrote separately to voice her view that redistricting is "clearly" an issue encompassed by article XIV, section 3 because redistricting is an issue where the interests of legislators naturally conflict with the people of Illinois.<sup>181</sup> She also cited her dissents in *Cole-Randazzo v. Ryan* and *Beaubien v. Ryan* and argued, again, that the court had

173. *Id.* (alterations in original) (quoting *Coal. for Political Honesty*, 359 N.E.2d at 146).

174. *Id.* ¶ 43, 63 N.E.3d at 838.

175. *Id.* ¶ 48, 63 N.E.3d at 839.

176. *Id.* ¶ 43, 63 N.E.3d at 838.

177. *Id.* ¶ 44, 63 N.E.3d at 839.

178. *Id.* ¶ 45, 63 N.E.3d at 839.

179. *Id.*

180. *Id.* ¶ 52, 63 N.E.3d at 840 (Garman, J., dissenting); *see also id.* ¶ 57, 63 N.E.3d at 840 (Thomas, J., dissenting); *id.* ¶ 66, 63 N.E.3d at 841 (Karmeier, J., dissenting).

181. *Id.* ¶ 53, 63 N.E.3d at 840 (Garman, J., dissenting).

a duty to ensure the redistricting process served Illinois voters and not legislators; Chief Justice Garman viewed the majority's opinion as failing to perform that duty.<sup>182</sup>

Justice Thomas's dissent is notable for its fiery language. Justice Thomas opened by stating "[t]he Illinois Constitution is meant to prevent tyranny, not to enshrine it."<sup>183</sup> Justice Thomas argued the majority's opinion essentially nullified the citizen ballot initiative and that the opinion should be distributed along with "bright orange warning sticker[s] . . . reading, 'Out of Service'" that readers could place over article XIV, section 3 of the Illinois Constitution.<sup>184</sup> Similar to Chief Justice Garman, Justice Thomas argued that the framers intended citizen ballot initiatives to serve as a check against self-interested legislators; he concluded by stating that "a muzzle has been placed on the people of this State, and their voices supplanted with judicial fiat. . . . The whimper you hear is democracy stifled."<sup>185</sup>

Justice Karmeier's lengthy dissent provided a substantive analysis of why reversal was warranted.<sup>186</sup> In its analysis, the dissent also identified "two basic lines of constitutional argument": (1) that the initiative violated article XIV, section 3 of the Illinois Constitution because it was not limited to structural and procedural subjects contained in article IV, and (2) that the initiative violated article III, section 3 because it impermissibly combined separate and unrelated questions into a single ballot initiative.<sup>187</sup>

The dissent addressed the latter argument first. Citing *Coalition II*, it stated that a ballot initiative may contain multiple questions without violating article III, section 3, so long as they "have a reasonable, workable relationship to the same subject" and are "germane to the accomplishment of a single objective."<sup>188</sup> The dissent viewed the proposed initiative as offering one question "narrowly focused" on a single subject—redistricting; it viewed each part of the proposal as "integrally related to that purpose and no other."<sup>189</sup> The dissent conceded that the proposed initiative touched on a range of subjects but reasoned that initiative's components were all "essential pieces" of a new redistricting framework, and thus, the initiative was an

182. *Id.* ¶¶ 54–55, 63 N.E.3d at 840.

183. *Id.* ¶ 58, 63 N.E.3d at 840 (Thomas, J., dissenting).

184. *Id.* ¶ 59, 63 N.E.3d at 840.

185. *Id.* ¶¶ 61–63, 63 N.E.3d at 840–41.

186. *See generally id.* ¶¶ 67–172, 63 N.E.3d at 841–71 (Karmeier, J., dissenting). Curiously, Justice Karmeier's dissent also included a full background section; while the section did not repeat the majority's background section verbatim, it was not materially different. *Compare id.* at ¶¶ 68–85, 63 N.E.3d at 841–49, *with id.* ¶¶ 2–19, 63 N.E.3d at 825–32 (majority opinion).

187. *Id.* ¶ 88, 63 N.E.3d at 849–50 (Karmeier, J., dissenting).

188. *Id.* ¶ 90, 63 N.E.3d at 850.

189. *Id.* ¶ 91, 63 N.E.3d at 850.

“all-in-one, take-it-or-leave-it proposition.”<sup>190</sup> The dissent also noted that forcing Independent Maps to present each component as a separate ballot question was unworkable and could result in a system “that no one wanted, that no one had ever suggested, and that could not possibly work.”<sup>191</sup> Finally, the dissent noted that the current redistricting system is complex and also touches on a range of subjects, so any meaningful reform would necessarily reach a number of subjects.<sup>192</sup> Additionally, in a footnote, the dissent dismissed an argument that the proposed initiative’s deletion of the requirement that electoral districts be “compact” also presented a separate question to voters. The dissent found the proposed initiative’s language in subsection (a) essentially served the same purpose as the “compact” requirement.<sup>193</sup>

The dissent then turned to Counts I through VI of People’s Map’s complaint, the validity of which the dissent viewed as dependent on the construction of article XIV, section 3.<sup>194</sup> The dissent looked to the text of article XIV, section 3, and, unlike the majority, it concluded the relevant text *was* ambiguous. It cited past cases interpreting article XIV, section 3 as proof of ambiguity.<sup>195</sup>

After a brief overview of the ballot initiative in general and constitutional theory,<sup>196</sup> the dissent consulted proceedings of the 1970 constitutional convention. While acknowledging that article XIV, section 3 is limited to subjects found in article IV,<sup>197</sup> the dissent focused on the delegates discussion of the *purpose* of article XIV, section 3—namely, providing the electorate a means to amend the legislative article of the constitution where the General Assembly would choose not to act out of their own self-interest.<sup>198</sup> The dissent also quoted Delegate Ray H. Garrison, a member of the convention’s finance committee,<sup>199</sup> who specifically mentioned establishing a redistricting commission “comprised entirely of nonlegislative members” as

190. *Id.* ¶ 93, 63 N.E.3d at 851.

191. *Id.* ¶ 94, 63 N.E.3d at 851.

192. *Id.* ¶ 96, 63 N.E.3d at 851–52.

193. *Id.* ¶ 92 n.9, 63 N.E.3d at 850 n.9.

194. *Id.* ¶¶ 98–100, 63 N.E.3d at 852–53.

195. *Id.* ¶ 101, 63 N.E.3d at 853.

196. *Id.* ¶¶ 102–05, 63 N.E.3d at 853–54. The dissent cited Illinois case law and sources like the Declaration of Independence and John Locke’s *Two Treatises of Government* for the basic proposition that sovereignty is derived from the governed and that the people can reserve power for themselves.

197. *Id.* ¶ 106, 63 N.E.3d at 854–55.

198. *Id.* ¶¶ 106–12, 63 N.E.3d at 854–56.

199. 1 RECORD OF PROCEEDINGS, *supra* note 35, at xxii.

one example of a constitutional amendment legislators could never be expected to propose themselves.<sup>200</sup>

The dissent then cited *Coalition II* for the proposition that the court “must avoid unduly technical and/or restrictive constructions that would tend to defeat [the] purpose” of article XIV, section 3, as stated by the convention’s delegates.<sup>201</sup> Contrary to the majority’s analysis, the dissent reviewed the approach taken by other states in interpreting their constitution’s citizen initiative provision<sup>202</sup> and concluded that when construing such a provision, “[t]he standard is a liberal one.”<sup>203</sup>

Using this broader standard, the dissent then turned to addressing Counts I through VI. It began with Count V, which, again, argued the initiative violated article XIV, section 3 because it did not include structural and procedural changes to the General Assembly. The dissent viewed this argument as alleging the proposed initiative was invalid because it did not include a change to section 1 of article IV, which provides for the structure of the General Assembly itself.<sup>204</sup> The dissent viewed this as relying on a misreading of *CBA II*<sup>205</sup> and dismissed the argument as against the plain language of article XIV, section 3, which allowed citizen initiatives to reach structural and procedural subjects in *all* of article IV.<sup>206</sup> The dissent also noted Count V’s argument conflicted with the records of the convention debates, in which Delegate Louis J. Perona noted that redistricting was not only intended to be a matter covered by the citizen initiative but was, in fact, one of the “critical areas” intended to be covered.<sup>207</sup>

200. See *Hooker*, 2016 IL 121077, ¶ 108, 63 N.E.3d at 855 (quoting 2 RECORD OF PROCEEDINGS, *supra* note 35, at 584). Garrison’s remarks were given during a debate to include a citizen initiative in section 2 of article XIV, which ultimately failed.

201. *Id.* ¶ 113, 63 N.E.3d at 857.

202. *Id.* ¶¶ 114–115, 63 N.E.3d at 857–58 (citing decisions from Oklahoma, Arizona, Nebraska, Maine, Michigan, Hawaii, Alaska, Arkansas, California, Colorado, Montana, Ohio, and Oregon).

203. *Id.* ¶ 115, 63 N.E.3d at 857.

204. *Id.* ¶ 119, 63 N.E.3d at 858–59; see also ILL. CONST. art. IV, § 1 (“The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives, elected by the electors from 59 Legislative Districts and 118 Representative Districts.”).

205. *Hooker*, 2016 IL 121077, ¶ 129, 63 N.E.3d at 860–61.

206. *Id.* ¶¶ 120–123, 63 N.E.3d at 859–60.

207. *Id.* ¶ 128, 63 N.E.3d at 860; see also 4 RECORD OF PROCEEDINGS, *supra* note 35, at 2712. As noted in the proceedings:

MR. TOMEI: So, in other words, that’s a change in—that’s a structure, a particular structure not contained in the present article but one which would be a proper subject for initiative under this clause, that is, unicameral—

MR. PERONA: That is correct. That is the major reason that we could not limit it to certain sections.

MR. TOMEI: All right. And would the same be true for questions of election? And I amplify that by saying that you refer to structure, size, et cetera; and under the pertinent sections

The remaining counts, the dissent stated, alleged in various ways that the proposed initiative was not *limited* to article IV. The dissent dismissed Count II, which alleged the initiative would alter article VI by effectively changing the circuit court's subject matter jurisdiction, as "simply incorrect."<sup>208</sup> Again, article VI grants circuit courts original jurisdiction over all matters "except when the Supreme Court has original and exclusive jurisdiction relating to redistricting."<sup>209</sup> The dissent viewed this provision as "entirely conditional."<sup>210</sup> The proposed initiative's removal of the Illinois Supreme Court's exclusive jurisdiction over redistricting claims would likewise merely remove the condition provided in article VI; thus, the terms of article VI would still operate as written even if the circuit courts' subject matter jurisdiction was effectively expanded.<sup>211</sup>

Similarly, the dissent dismissed Count IV as erroneous. It rejected the claim that the proposed initiative would impose political affiliation requirements on supreme court justices.<sup>212</sup> The dissent noted that while political affiliation is not technically a requirement to serve on the Illinois Supreme Court, the court has never seen an independent elected to its bench.<sup>213</sup> Moreover, the portion of the initiative at issue required that the chief justice and the other justice who select the special redistricting commissioner not be from the same political party; the court noted that the plain language did not bar two independents or an independent and a justice affiliated with a party from selecting a commissioner.<sup>214</sup> The dissent then dismissed as impossible a scenario where all seven justices belonged to the same political party; it also found that the possibility of such a scenario would not render the proposed initiative unconstitutional.<sup>215</sup>

The dissent dismissed Count III's claim that altering the supreme court's role in redistricting—from the court's current role of submitting two

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?

MR. PERONA: Yes. Those are the critical areas, actually.

*Id.* (emphasis added).

208. *Hooker*, 2016 IL 121077, ¶ 133, 63 N.E.3d at 862.

209. See ILL. CONST. art. VI, § 9.

210. *Hooker*, 2016 IL 121077, ¶ 134, 63 N.E.3d at 862.

211. *Id.*

212. *Id.* ¶ 136, 63 N.E.3d at 862–63.

213. *Id.* ¶ 137, 63 N.E.3d at 863.

214. *Id.*

215. The dissent noted that such a scenario was an entirely different "question" than the one before the court. This remark observes that the possibility—while a possible pitfall of the proposed framework—did not render it unconstitutional. *Id.* ¶ 138, 63 N.E.3d at 863.

names for a random drawing to the role of two justices jointly selecting a special commissioner—was impermissible because it affects the constitution’s judicial article, a subject outside of article IV.<sup>216</sup> The dissent argued that the court already plays an “integral role in the redistricting process,” and that role is derived *only* from section 3 of article IV. The proposed initiative, the dissent found, “would therefore have no spillover effects on any other provisions of the constitution.” While the *nature* of the court’s role in redistricting would change, it would nevertheless remain a structural and procedural subject found in article IV.<sup>217</sup>

The dissent employed a similar rationale in regard to Count VI. It also found that the proposed initiative’s removal of expressly granting the Attorney General the duty to bring redistricting actions would not have an effect past section 3 of article IV.<sup>218</sup> Further, the dissent viewed “[a]ssigning responsibility for who is to bring an action and specifying how it is to be styled and where it should be filed are quintessentially procedural aspects of the redistricting process” within the bounds of article XIV, section 3.<sup>219</sup>

Lastly, the dissent addressed Count I, which argued the proposed initiative was invalid because the proposed role of the Auditor General was not a subject contained in article IV. The dissent acknowledged that the Auditor General was not mentioned in article IV; it then determined that the new role proposed by Independent Maps would not fall under any of the Auditor General’s existing duties<sup>220</sup> nor would it alter any of its existing responsibilities.<sup>221</sup> Thus, the dissent concluded that the proposed role would create entirely new, separate duties that would be found in section 3 of article IV, and because the proposed role did not alter or affect the Auditor General’s existing duties found in article VIII, the proposed initiative could not be viewed as including a subject outside of article IV.<sup>222</sup> The dissent bolstered its reasoning by considering what the majority would not. It again recited the delegates’ concerns that a citizen initiative would be abused and found that Independent Maps’ initiative was not “a subterfuge to alter other substantive

216. *Id.* ¶ 139, 63 N.E.3d at 863–64.

217. *Id.*

218. *Id.* ¶ 140, 63 N.E.3d at 864.

219. *Id.*

220. *Id.* ¶ 142, 63 N.E.3d at 865.

221. *See id.* ¶ 144, 63 N.E.3d at 865. The dissent did not address any of the majority’s practical concerns concerning opportunity costs of performing the new duties in concluding that the Auditor General’s existing duties would not be altered under the proposed framework.

222. *Id.* ¶¶ 143–144, 63 N.E.3d at 865.

provisions of the constitution,” i.e., the substantive provision regarding the Auditor General.<sup>223</sup>

Justice Karmeier closed his dissenting opinion by highlighting that the framers acknowledged self-interest of legislators and therefore intended for citizen initiatives to be able to amend structural and procedural subjects of article IV, which included the structure of the redistricting commission provided in section 3.<sup>224</sup> He argued that the majority’s holding essentially required any redistricting initiative to keep all the “current actors” included in section 3 of article IV; Justice Karmeier observed that “[i]f all that can be done is rearrange the pieces, it is difficult to see how meaningful reform could ever be accomplished.”<sup>225</sup> He argued that the majority’s narrow construction of article XIV, section 3 rendered citizen initiatives essentially meaningless, which violated a basic principle of constitutional construction to give “every word and phrase” some effect.<sup>226</sup> While noting that his dissent was not meant in any way to express support for the proposed initiative,<sup>227</sup> Justice Karmeier criticized the majority’s assertion that *some* redistricting initiative could pass constitutional muster as “an empty [promise].”<sup>228</sup>

Finally, after the court denied Independent Maps’ motion for a rehearing, Justice Karmeier supplemented his dissent to criticize the majority for not providing a more complete analysis which addressed the dissent’s rationale.<sup>229</sup> Justice Karmeier also cited *City of Chicago v. Reeves*, a case from 1906 concerning a constitutional amendment to the 1870 Illinois Constitution.<sup>230</sup> Justice Karmeier relied on the *Reeves* case to show that the Illinois Supreme Court has upheld constitutional amendments that are not technically limited to one constitutional article so long as the amendment’s effects on other articles are incidental and all changes are germane to the object of the amendment.<sup>231</sup>

223. *Id.* ¶ 145, 63 N.E.3d at 865–66.

224. *Id.* ¶ 146, 63 N.E.3d at 866.

225. *Id.* ¶ 146, 63 N.E.3d at 866.

226. *Id.* ¶ 147, 63 N.E.3d at 866–67.

227. *Id.* ¶ 153, 63 N.E.3d at 868.

228. *Id.* ¶ 151, 63 N.E.3d at 867.

229. *Id.* ¶¶ 158–61, 63 N.E.3d 824, 868–69.

230. *Id.* ¶¶ 161–67, 63 N.E.3d 824, 869–70.

231. *Id.* ¶¶ 162–64, 63 N.E.3d 824, 869–70. *Reeves* decided whether a proposed amendment which included changes to more than one constitutional article violated article XIV of the 1870 constitution, which contained materially different language than the current article XIV. *City of Chicago v. Reeves*, 77 N.E. 237, 237–40 (Ill. 1906).

### III. ANALYSIS

At first blush, *Hooker v. Illinois State Board of Elections* offers a clear decision which settles the case on the narrowest grounds possible, apparently following generally accepted principles of judicial restraint.<sup>232</sup> But the clarity is only skin-deep. The *Hooker* decision further constricts article XIV, section 3 but fails, in large part, to illuminate the contours of a permissible citizen ballot initiative. Where the majority could have harmonized its past interpretations of article XIV, section 3, it chose instead to provide very little substantive analysis. Clearly, what emerges from the majority's decision is a narrower construction of the citizen initiative, but the opinion creates more questions than it answers. From a litigation perspective, the proposed initiative was far from perfect.<sup>233</sup> However, the majority's reasoning muddies the legal standards for evaluating a citizen initiative and arguably misconstrues case law. As a result, *Hooker* leaves both the future of redistricting reform and the vitality of the citizen ballot initiative uncertain.

#### A. *Hooker's Reasoning and its Effects*

The majority's rationale in reaching its decision is misguided because it takes a superficially narrow view of the term "subject" found in article XIV, section 3 and it arguably ignores the intent of the framers of the 1970 Illinois Constitution. Moreover, the opinion fails to provide much-needed clarity, including explanation of what constitutes a "structural and procedural subject" and whether an initiative's "material effect" on another constitutional article is enough to violate article XIV, section 3.

##### 1. Is the Proposed Role of the Auditor General Truly a "Subject"?

In his dissent, Justice Karmeier offered a useful distillation of the majority's reasoning:<sup>234</sup> the proposed initiative included a new role for the Illinois Auditor General, and this is a *subject* of the proposed initiative. Because

232. See, e.g., *People v. White*, 2011 IL 109689, ¶ 148, 956 N.E.2d 379, 414–15 ("Certainly, it is a fundamental rule of judicial restraint that a court not reach *constitutional* questions in advance of the necessity of deciding them."); see also *Reichle v. Howards*, 566 U.S. 658, 664 (2012) (acknowledging the Supreme Court's "usual reluctance to decide constitutional questions unnecessarily").

233. The author did not conduct interviews with Independent Maps to gain insight into the reasoning used in authoring the proposed initiative. The author merely observes that the proposed initiative makes a variety of changes to the redistricting framework that invite legal challenge. See *infra* Section III.B.

234. *Hooker*, 2016 IL 121077, ¶ 161, 63 N.E.3d 824, 868–69 ("Distilled to its essence, the majority's position is that Independent Maps' initiative fails to meet the article XIV, section 3 requirement that proposed amendments 'be limited to structural and procedural subjects contained in Article IV' because it assigns additional duties to the Auditor General, whose current responsibilities are set forth in a different part of the constitution, namely article VIII, section 3." (citations omitted) (quoting ILL. CONST. art. XIV, §3)).

the Auditor General is not mentioned in article IV but rather is only mentioned in article VIII, the Auditor General is not a *subject* of article IV. Thus, the proposed initiative was not *limited* to “structural and procedural subjects contained in Article IV” and was therefore unconstitutional.<sup>235</sup> Although the majority arguably alluded to other reasons that the Auditor General’s role was impermissible under article XIV, section 3,<sup>236</sup> this is the only justification clearly relied upon by the majority in its decision.

Thus, a threshold question that the majority seems to ask and answer is: what is the meaning of “subject” as it appears in article XIV, section 3? The majority seems to answer that any provision of a proposed initiative can be a separate and distinct “subject” within the meaning of article XIV, section 3. As the result of *Hooker* shows, this is an extremely narrow construction, and the majority reaches the answer via a questionable analysis, essentially relying on—and arguably misconstruing—the holding in *CBA I*.

The majority found that evaluating the proposed initiative required it to construe the meaning of article XIV, section 3 and then found that the plain language of section 3 was unambiguous.<sup>237</sup> As such, the majority said it would not consult drafting history or convention debates to interpret section 3.<sup>238</sup> Interestingly, in the next breath, the majority uses its decisions in *Coalition I*, *Coalition II*, and *CBA II* to essentially cite the convention debates to show that section 3 was intended to be “a very limited form of constitutional initiative” which was only intended to reach a subset of topics—structural and procedural subjects—in article IV.<sup>239</sup>

To support its conclusion that the proposed initiative is not limited to “structural and procedural subjects” of article IV, the majority then analogizes to *CBA I*,<sup>240</sup> where the court invalidated a ballot initiative which would have required a three-fifths vote from the General Assembly on bills raising revenue and would have created a revenue committee that was required to hold public meetings.<sup>241</sup> The *CBA I* court found that the initiative there was not *limited* to structural and procedural subjects because “[w]rapped up in

235. See *id.* ¶¶ 41–42, 63 N.E.3d at 838 (majority opinion); ILL. CONST. art. XIV, §3.

236. The majority also seemed to suggest that the Auditor General’s proposed role was not a structural or procedural subject. See *id.* ¶ 42, 63 N.E.3d at 838. Additionally, the majority seemed to note that the actual performance of the new duties would have a “material effect” on article VIII because it would take time away from performing the Auditor General’s duties outlined in article VIII. See *id.* ¶ 29, 63 N.E.3d at 835.

237. *Id.* ¶ 35, 63 N.E.3d at 836–37.

238. *Id.* ¶ 36, 63 N.E.3d at 837.

239. *Id.* ¶ 36, 63 N.E.3d at 837 (quoting *Chi. Bar Ass’n v. State Bd. of Elections*, 561 N.E.2d 50, 54 (Ill. 1990)).

240. *Id.* ¶¶ 40–41, 63 N.E.3d at 838.

241. *Chi. Bar Ass’n*, 561 N.E.2d at 52–53.

th[e] structural and procedural package is a substantive issue not found in article IV—the subject of increasing State revenue or increasing taxes.”<sup>242</sup> The *Hooker* majority viewed the proposed role of the Auditor General in the same way—a subject outside article IV. This basis was used to invalidate the proposed initiative.

However, the court’s analysis is flawed for two reasons: (1) the majority contorts the holding in *CBA I* and (2) it fails to properly construe article XIV, section 3. In regard to the first point, the ballot initiative in *CBA I* is entirely distinguishable from Independent Maps’ proposed initiative. In *CBA I*, the *subject of the initiative* was increasing state revenue and increasing taxes.<sup>243</sup> The initiative had aspects that covered structural and procedural subjects—i.e., creating revenue committees and requiring the committees to hold meetings—but the central subject of the initiative was passing revenue bills.<sup>244</sup> The *CBA I* court recognized this was the type of ordinary, substantive legislation that the framers specifically wanted to be inaccessible through citizen ballot initiative.<sup>245</sup> Moreover, article IX speaks directly about the General Assembly’s ability to raise revenue, so the initiative would explicitly qualify that article, which is, of course, outside article IV.<sup>246</sup> So “increasing State revenue or increasing taxes”<sup>247</sup> was the substantive subject of the initiative, and structural and procedural aspects were “wrapped” around this subject; the court viewed this as violating article XIV, section 3 and going against the framers’ stated purpose for the citizen ballot initiative.<sup>248</sup>

To the contrary, the subject of Independent Maps’ proposed initiative is *redistricting*, a subject found in article IV. So while the role of the Auditor General plays a part in the proposed initiative, it is not the subject of the initiative. This points to the second error in the majority’s reasoning.

In regard to the second point, the majority was correct in that resolving *Hooker* required it interpret article XIV, section 3, but it did not address what really needed to be interpreted—namely, what constitutes a “subject” under article XIV, section 3. Without looking to drafting history, the majority’s answer seems to be that every portion of a proposed initiative must be a

242. *Id.* at 55.

243. *Id.* at 52–53 (citing the proposed amendment which added an entirely new section entitled “Passage of Revenue Bills”).

244. *See id.*

245. *Id.* at 55–56.

246. *See* ILL. CONST. art IX, § 1 (“The General Assembly has the exclusive power to raise revenue by law except as limited or otherwise provided in this Constitution. The power of taxation shall not be surrendered, suspended, or contracted away.”).

247. *Chi. Bar Ass’n*, 561 N.E.2d at 55.

248. *Id.* at 56–57.

“subject” of article IV. This is a very limiting view; if the majority had honestly looked to the drafting history of article XIV, section 3, they would have had a difficult time harmonizing their construction with the delegates’ comments.

The framers of the 1970 constitution seemed to have a wider view of the term “subject,” which could include subjects not yet in the legislative article. When asked what sort of subjects were contemplated as being within the purview of the citizen initiative, Delegate Louis J. Perona made it clear that the initiative was *not* limited “just to those things presently contained in the legislative article”; instead, Delegate Perona stated that the authors intended it to reach anything in the “legislative setup”—i.e., anything concerning a structural and procedural subject of article IV—even if that included something that was not then in the legislative article.<sup>249</sup> This seems to support Justice Karmeier’s view on the Auditor General’s duties expressed in his dissent.<sup>250</sup> So long as the Auditor General’s proposed role (1) related to redistricting and (2) did not fall under or alter any of the office’s existing duties, the framers viewed it as fair game for a ballot initiative.

Given the views of the framers and the holding in *CBA I*, it seems that merely mentioning the Auditor General in the proposed initiative should not be enough to deem the Auditor General a “subject” of the initiative.

## 2. “Material Effect” and What Constitutes a “Structural and Procedural Subject”—Muddying the Waters

For any redistricting reformers with plans to go back to the drafting table, two other points in the majority opinion seem to muddy the waters. The majority alluded to the Auditor General’s proposed role as having a “material effect” on article VIII, which, on its own, appeared to be enough to violate article XIV, section 3.<sup>251</sup> Moreover, the majority also seemed to suggest that

249. See 4 RECORD OF PROCEEDINGS, *supra* note 35, at 2711. As noted in the proceedings:

MR. TOMEI: Thank you, Mr. Vice-President. I had a question for Delegate Perona on the language of this proposal. With respect to this limitation, that I think has just been discussed, on structural and procedural subjects contained in this article, I take it is not the intention of the committee to limit the initiative just to those things presently contained in the legislative article.

MR. PERONA: Yes. That’s correct. We—that’s the problem. If you get too specific with the limitation, you inhibit the possibility of change within the legislative setup . . . .

*Id.*

250. Hooker v. Ill. State Bd. of Elections, 2016 IL 121077, ¶ 142–44, 63 N.E.3d 824, 865 (Karmeier, J., dissenting).

251. *Id.* ¶ 29, 63 N.E.3d at 835 (majority opinion).

the Auditor General's proposed role was not a "structural or procedural subject" as required by article XIV.<sup>252</sup> These points seem to cloud the standards used by the court to address the validity of a ballot initiative. The majority had the opportunity to clarify these standards, but instead, it seemed to inject more uncertainty.

As to the first point, the majority seemed to address the real-world concerns raised by People's Map in regard to the Auditor General's proposed role. As the court noted, People's Map argued that the proposed role would require "extensive screening steps and applicant interviews to ensure compliance with the criteria established in the initiative for members of the Applicant Review Panel."<sup>253</sup> This prediction is undoubtedly true, and the majority acknowledged it. The majority viewed the role as "requir[ing] considerable effort, time, and expense."<sup>254</sup> Performing these duties, it noted, would necessarily mean the Auditor General would not have time to perform the already-existing duties under article VIII: "That alteration in the duties of the Auditor General, in itself, has a material effect on another section of our constitution, in violation of article XIV, section 3."<sup>255</sup> While the majority does not rely on this point to reach its decision, it is unclear whether it created this practical test and will apply it to future ballot initiatives. As such, future drafters face uncertainty in the court's standards.

As to the second point, the majority confusingly seemed to reference the "structural and procedural" requirement, apparently concluding that the Auditor General's proposed role did not meet it. Without analysis, the majority conclusively stated "the additional duties the ballot initiative imposes on the Auditor General creates changes that neither 'attack [n]or . . . concern the actual structure or makeup of the legislature itself.'"<sup>256</sup> Confusingly, the majority seemed to use this in support of its analysis that the ballot initiative was not *limited* to subjects in article IV.<sup>257</sup> This conclusive, throwaway line

252. *Id.* ¶ 42, 63 N.E.3d at 838.

253. *Id.* ¶ 28, 63 N.E.3d at 835.

254. *Id.* ¶ 29, 63 N.E.3d at 835 ("First, winnowing the number of applicants statewide down to a pool of 30 reviewers is likely to be a time-consuming and resource-intensive task. Indeed, the mandate that the Auditor General evaluate the 'ethical conduct' and partisan leanings of 'each applicant' who applies from across the state is likely to require considerable effort, time, and expense.").

255. *Id.*

256. *Id.* ¶ 42, 63 N.E.3d at 838 (alterations in original) (quoting *Coal. for Political Honesty v. State Bd. of Elections*, 359 N.E.2d 138, 146 (1976)).

257. *Id.* ("Therefore, the duties of the Auditor General have never been and are not now a 'subject contained in Article IV' as currently constituted. Thus, that provision is not a proper 'subject' of the legislative article, in violation of the limitation in article XIV, section 3.").

of the majority's opinion highlights another major gap in the case law concerning citizen ballot initiatives: has the court fully defined what a "structural and procedural subject" is?

At least one court has noted the dearth of explanation as to what constitutes a "structural and procedural subject."<sup>258</sup> The closest the Illinois Supreme Court has come to explaining a "structural and procedural subject" was in *CBA II* in the context of a ballot initiative proposing term limits. In rejecting the initiative, the court found that it did not address structural or procedural subjects in article IV.<sup>259</sup> The court stated that term limits were not structural because they did not address "the structure of the legislature *as an institution*"—it would remain a bicameral legislature with the same number of members; likewise, it found term limits were not procedural because they would not change the "*process* by which the General Assembly adopts a law."<sup>260</sup> The First District followed this narrow definition in *Clark v. Illinois State Board of Elections* when it struck down another term limits initiative.<sup>261</sup> Further, this narrow view of a "structural and procedural subject" was also given in *Lousin v. State Board of Elections*, twelve years before *CBA II*. In *Lousin*, the First District stated simply: "An amendment is structural and procedural if it relates to the structure, and, of necessity, incidentally affects the procedure of the General Assembly."<sup>262</sup>

The *Hooker* majority seems to echo this definition in bolstering its findings that the Auditor General's proposed role violates article XIV, section 3. This definition seems to exclude redistricting altogether because it does not affect the literal structure of the General Assembly or the process by which it passes laws. However, this narrow definition of "structural and procedural subject" is troublesome for two reasons: (1) it seems to exclude redistricting altogether, thereby conflicting with the plain meaning of article XIV, section 3 and (2) it runs contrary to the framers' stated intentions.

258. See *Clark v. Ill. State Bd. of Elections*, No. 14 CH 07356, slip op. at 6 (Ill. Cir. Ct. June 27, 2014) (noting that *Coalition II*—the one case to uphold a ballot initiative—"contains no discussion of what was substantive or procedural").

259. *Chi. Bar Ass'n v. Ill. State Bd. of Elections*, 641 N.E.2d 525, 528–29 (Ill. 1994).

260. *Id.* at 529 ("The 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. Likewise, the eligibility or qualifications of an individual legislator does not involve any of the General Assembly's procedures. The *process* by which the General Assembly adopts a law would remain unchanged.").

261. See *Clark v. Ill. State Bd. of Elections*, 2014 IL App (1st) 141937, ¶ 24, 17 N.E.3d 771, 778.

262. *Lousin v. State Bd. of Elections*, 438 N.E.2d 1241, 1246 (Ill. 1982).

The first point is straightforward. Article XIV, section 3 states that “[a]mendments shall be limited to structural and procedural subjects contained in Article IV.”<sup>263</sup> A subject of article IV is certainly redistricting, which is provided for in section 3. The redistricting process has a structural component;<sup>264</sup> the redistricting commission is made up of eight members and, at times, a ninth member. The process also, quite obviously, has procedural components. The entire process laid out in section 3 of article IV is a procedure.<sup>265</sup> Thus, under the plain meaning of phrase, redistricting is a “structural and procedural subject.”

Moreover, the convention debates—as pointed out in Karmeier’s dissent<sup>266</sup>—seem to reject this narrow definition of “structural and procedural subject” by explicitly mentioning redistricting in discussing article XIV, section 3. Delegate Ray H. Garrison, in discussing the role of the citizen ballot initiative, cited an independent redistricting commission as the type of change legislators could never be expected to enact due to self-interest.<sup>267</sup> More directly, an exchange between Delegate Perona and Delegate Peter A. Tomei show that citizen initiatives were intended to reach redistricting:

MR. TOMEI: So, in other words, that’s a change in— that’s a structure, a particular structure not contained in the present article but one which would be a proper subject for initiative under this clause, that is, unicameral—

MR. PERONA: That is correct. That is the major reason that we could not limit it to certain sections.

MR. TOMEI: All right. And would the same be true for questions of election? And I amplify that by saying that you refer to structure, size, et cetera; and 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?

MR. PERONA: Yes. *Those are the critical areas, actually.*<sup>268</sup>

263. ILL. CONST. art. XIV, § 3.

264. See *Structure*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/structure> [<http://perma.cc/QMY4-NJ3K>] (“[S]omething arranged in a definite pattern of organization.”)

265. See *Procedure*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/procedure> [<http://perma.cc/M35V-7VFW>] (“[A] series of steps followed in a regular definite order.”)

266. See *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶ 128, 63 N.E.3d 824, 860 (Karmeier, J., dissenting).

267. See 2 RECORD OF PROCEEDINGS, *supra* note 35, at 584. Garrison’s remarks were given during a debate to include a citizen initiative in section 2 of article XIV, which ultimately failed.

268. See 4 RECORD OF PROCEEDINGS, *supra* note 35, at 2712 (emphasis added).

As the trial court in *Hooker* observed, for the 1970 delegates, the term “apportionment” was synonymous with “redistricting.”<sup>269</sup> The above exchange and Delegate Garrison’s comments show that the framers intended for the citizen initiative to address redistricting, so a definition of “structural and procedural subject” that excludes redistricting would run contrary to their intentions.

Despite the plain meaning of article XIV, section 3 and relevant drafting history, the *Hooker* majority bolstered its conclusion with the assertion that the Auditor General’s proposed role violated article XIV, section 3 because it created “changes that neither ‘attack [n]or . . . concern the actual structure or makeup of the legislature itself.’”<sup>270</sup> This seems to adopt the reasoning of *CBA II* rather than qualify it, and such a reading severely limits the reach of permissible citizen initiatives. Both this point in the majority’s opinion and the point concerning the “material effect” of a proposed initiative create uncertainty when it comes to permissible ballot initiatives. As such, both points present more questions that the Illinois Supreme Court will eventually have to answer.

### 3. Future of Redistricting Reform and Citizen Ballot Initiatives

The future of redistricting reform and citizen ballot initiatives looks dimmer after *Hooker*. The majority’s opinion reigns in what was already a narrow opening for permissible citizen initiatives. Further, in ignoring Karmeier’s call for a response to his dissent,<sup>271</sup> the majority has left future groups pushing redistricting reform to essentially guess at what legal standards will be applied when their ballot initiatives are inevitably challenged.

In regard to a redistricting initiative in particular, the majority very clearly left the door open. It declined to address whether any hypothetical redistricting initiative would pass constitutional muster, stating it would “leave that question for another day.”<sup>272</sup> However, the majority seemed to imply such an initiative was possible:

Independent Maps makes the policy argument that upholding the circuit court’s finding that the plaintiffs were entitled to judgment on the pleadings will “make it largely impossible to make meaningful reforms in the redistricting process.” We respectfully disagree. The Auditor General is

269. See *Hooker v. Ill. State Bd. of Elections*, No. 16 CH 6539, 2016 WL 4581493, at \*14 (Ill. Cir. Ct. July 20, 2016); see also 6 RECORD OF PROCEEDINGS, *supra* note 35, at 1298–99.

270. *Hooker*, 2016 IL 121077, ¶ 42, 63 N.E.3d at 838 (majority opinion) (alterations in original) (quoting *Coal. for Political Honesty v. State Bd. of Elections*, 359 N.E.2d 138, 146 (1976)).

271. *Id.* ¶¶ 160–61, 63 N.E.3d at 868–69 (Karmerier, J., dissenting).

272. *Id.* ¶ 45, 63 N.E.3d at 839 (majority opinion).

not the only potential nonlegislative actor capable of filling the duties outlined in its proposal. Certainly Illinois has other offices or individuals that are unencumbered by the limitations expressed in Article XIV. Indeed, the scheme proffered in the instant proposal is not the only model of redistricting reform that could be imagined. The constitutional right of the citizens of this state to alter the legislative article by ballot initiative is not tied to any particular plan, and we trust that the constitutional confines of article XIV, section 3, are sufficiently broad to encompass more than one potential redistricting scheme.<sup>273</sup>

But time will tell if the majority's statement rings hollow. The *Hooker* majority leaves unclear whether a valid initiative could only include nonlegislative actors *already found* in article IV or whether an entirely new actor could be created. As to the former, the Illinois Secretary of State, Attorney General, supreme court and governor are technically the only options.<sup>274</sup> None of these are ideal, and if the "material effect" consideration is indeed enough to invalidate a proposed initiative, then none of these options would likely work. As to the possibility of an entirely new nonlegislative actor, the specter of compensating such an official may be enough to violate article XIV, section 3.

As unlikely as a redistricting initiative looks after *Hooker*, it remains the reformer's best hope for change in the near future.<sup>275</sup> In the wake of *Hooker*, Governor Bruce Rauner urged the General Assembly to place the redistricting question on the ballot.<sup>276</sup> That did not happen, and although relations between the General Assembly's leadership and Governor Rauner is acrimonious to say the least, the prospect of a future governor making the pitch successfully is doubtful. Likewise, Illinois voters will not have the chance to compel the General Assembly to hold another constitutional convention until 2028.<sup>277</sup>

273. *Id.* ¶ 43, 63 N.E.3d at 838.

274. *See* ILL. CONST. art. IV.

275. Again, the only other means of amending the constitution are through a constitutional convention or through an amendment passed by the General Assembly and then ratified by voters. *See* ILL. CONST. art. XIV.

276. *See* Tom Schuba, *NBC 5 Exclusive: Rauner Pushes Redistricting Reform, Term Limits*, NBC 5 CHI. (Aug. 30, 2016, 1:15 PM), <https://www.nbcchicago.com/blogs/ward-room/Rauner-Pushes-Redistricting-Reform-Despite-Illinois-Supreme-Court-Ruling-391765171.html> [http://perma.cc/72MR-MR3W].

277. ILL. CONST. art. XIV, § 1. Section 1 of article XIV does require a ballot initiative calling for a constitutional convention to be submitted to voters in a general election at least every twenty years. The most recent ballot initiative calling for a convention failed in 2008, meaning that Illinois voters will not be presented with the choice again until 2028 unless the General Assembly takes action. *Constitution of the State of Illinois: Amendments and Conventions Proposed*, *supra* note 15.

However, popular support for removing the General Assembly from redistricting continues to rise.<sup>278</sup> And the three, separate attempts to get a redistricting reform initiative on the ballot since 2010 evidence the fact that reformers will not easily quit.<sup>279</sup> As Justice Thomas noted in his dissent in *Hooker*, “[i]n Illinois, as throughout the United States, there is a palpable sense of frustration by voters of every political affiliation that self-perpetuating institutions of government have excluded them from meaningful participation in the political process.”<sup>280</sup> Though “palpable frustration” may spur action, *Hooker* created a smaller window for change to Illinois’s redistricting process.

### *B. Brief Observations on Independent Maps’ Proposed Initiative*

Although any meaningful analysis of the proposed initiative’s potential effectiveness is outside the scope of this Note, the author wishes to make some observations about Independent Maps’ proposed framework in the hopes of adding to the public’s general discussion on redistricting reform.

The proposed aim of the Independent Maps’ initiative is to “establish a non-partisan, independent commission responsible for drawing state legislative districts in a way that is transparent and open to the public.”<sup>281</sup> The group contends that creating an independent redistricting commission would, in general, promote competitive elections and incentivize lawmakers to serve their constituents rather than serve the interests of their respective political parties.<sup>282</sup> The proposed framework would undoubtedly increase transparency in the redistricting process; it mandates that the redistricting commission hold public meetings and make its work public whereas the current

278. See Press Release, S. Ill. Univ. Paul Simon Pub. Policy Inst., Gas Tax “Lockbox,” Term Limits and Independent Redistricting Draw Big Support (Oct. 5, 2016), [http://paulsimoninstitute.siu.edu/\\_common/documents/opinion-polling/simon-institute-poll/2016/oct-5-psppi-simon-poll-gas-tax.pdf](http://paulsimoninstitute.siu.edu/_common/documents/opinion-polling/simon-institute-poll/2016/oct-5-psppi-simon-poll-gas-tax.pdf) [<https://perma.cc/FD3T-EDTL>] (noting that poll of likely voters found that about seventy-two percent favor independent redistricting commission where about fifty-three percent supported such a commission in 2010); see also Editorial, *Independent Map Amendment’s Moment of Truth*, CHI. TRIB. (July 19, 2016, 5:00 PM), <http://www.chicagotribune.com/news/opinion/editorials/ct-remap-amendment-illinois-madigan-larsen-0720-jm-20160719-story.html> [<http://perma.cc/W5C7-5PLX>] (“In poll after poll after poll, Illinois voters have supported such a change [to the redistricting process] . . .”).

279. See generally *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, 63 N.E.3d 824 (addressing a proposed redistricting initiative for the 2016 general election); *Clark v. Ill. State Bd. of Elections*, No. 14 CH 07356 (Ill. Cir. Ct. June 27, 2014) (addressing a proposed redistricting initiative for the 2014 general election). See also Editorial, *supra* note 22 (noting 2010 citizen initiative entitled “Illinois Fair Map Amendment” that would modify redistricting framework to eliminate tie-breaking provision).

280. *Hooker*, 2016 IL 121077, ¶ 60, 63 N.E.3d at 840 (Thomas, J., dissenting).

281. See Support Indep. Maps, *The Independent Map Amendment Explained*, WTTW CHI. PUB. MEDIA, [https://chicagotonight.wttw.com/sites/default/files/article/file-attachments/amendment\\_explanation.pdf](https://chicagotonight.wttw.com/sites/default/files/article/file-attachments/amendment_explanation.pdf) [<https://perma.cc/QZA5-4LNZ>].

282. See *Frequently Asked Questions*, *supra* note 12.

framework has no similar provision.<sup>283</sup> Such a change is laudable, with the benefits of increased transparency being self-evident. The proposed framework, however, would not give rise to a truly non-partisan redistricting commission.

While the proposed framework would require that at least seven members of the redistricting commission have no political affiliation, it would *not* remove the General Assembly from the redistricting process altogether.<sup>284</sup> The proposed initiative would allow the Speaker of the Illinois House of Representatives, the Minority Leader of the House of Representatives, the Illinois Senate President, and the Senate Minority Leader to each *select* one commissioner from the pool of applicants gathered and vetted by the state's Auditor General.<sup>285</sup> The initiative would also allow these party leaders to exercise a sort of preemptive challenge in the process; each leader would have the ability to remove five applicants from the pool of potential commissioners.<sup>286</sup>

Additionally, the proposed framework would curiously require that the committee have four members who are affiliated with a political party—two members affiliated with the Democratic party and two members affiliated with the Republican party. Thus, the redistricting commission would not technically be non-partisan.<sup>287</sup> Moreover, it should be noted that although the Auditor General is not a member of the General Assembly, he or she is appointed by the General Assembly.<sup>288</sup> As such, in reality, the Auditor General may not be the non-partisan actor that some redistricting reformers imagine.<sup>289</sup> While it is likely impossible—especially in the wake of the *Hooker* decision—to create a completely non-partisan independent redistricting commission, the proposed framework explicitly reserves a continued role, albeit a far more limited one, for members of the General Assembly in redistricting.

283. Compare 2016 Illinois Independent Redistricting Amendment, *supra* note 71 (subsections e–f), with ILL. CONST. art. IV, § 3.

284. See 2016 Illinois Independent Redistricting Amendment, *supra* note 71 (subsection d).

285. *Id.* (subsection d).

286. *Id.* (subsection d).

287. *Id.* (subsection d).

288. See ILL. CONST. art. VIII, § 3.

289. See generally Editorial, *Bow Out, Auditor General Mautino: A Top Finance Watchdog Won't Turn over His Own Financial Records*, CHI. TRIB. (Dec. 27, 2016), <http://www.chicagotribune.com/news/opinion/editorials/ct-auditor-general-mautino-madigan-investigation-edit-1227-md-20161227-story.html> [<http://perma.cc/UB9B-ZXDn>] (noting that the then-Auditor General was a partisan appointee who served as a member of the General Assembly for more than twenty years).

Another drawback to the framework apparent on the face of Independent Maps' proposed initiative is that it employs vague or questionable standards that would undoubtedly require litigation to construe. These standards are found throughout the proposed framework and include, for example, the language requiring that any redistricting plan not favor or discriminate against any political group or person, or the language setting out criteria that party leaders must use to select their respective commissioners.<sup>290</sup> Other questions may also naturally arise from the proposed framework, such as something as simple as: How is one deemed to be "affiliated" with a certain political party?

These issues notwithstanding, Independent Maps' proposed framework would undoubtedly make progress in removing legislators from the map-making process and thereby curb the practice of gerrymandering. While no framework can be perfect, the one proposed by Independent Maps would have certainly satisfied some redistricting reformers. However, it is notable that, given Independent Maps' stated purpose, the proposed amendment would not *completely* remove lawmakers from the redistricting process.

#### CONCLUSION

Illinois's case law concerning article XIV, section 3 has been marked by limited analysis, but it has undoubtedly moved in one direction: constricting the citizen ballot initiative. *Hooker v. Illinois State Board of Elections* is yet another step in reigning in the ability of the public to directly amend the constitution. Where existing case law was unclear concerning article XIV, section 3, *Hooker* did not offer clarity but rather muddied the waters. It remains unclear what a "structural and procedural subject" is, and *Hooker* arguably injects another layer of analysis, i.e., whether an initiative would have a "material effect" on another constitutional provision outside article IV. Answers—including an answer to the majority's "question for another day"—will likely take years, millions of dollars, and a *lot* of work. Moreover, those seeking redistricting reform will be working in the dark, unable to know if all their effort is for nothing.

290. See *2016 Illinois Independent Redistricting Amendment*, *supra* note 71 (subsections a, d).