

## Redistricting reform hangs on court action

By Jim Nowlan

Only the Illinois Supreme Court stands between voters and the opportunity to strike back, constructively, at a state political system that has hung a huge pension albatross round our necks, brought us budget gridlock and, many think, has the state circling the drain.

The state election board has said the petition drive for a redistricting reform initiative has passed muster. The issue is now before the state courts as to whether the proposal is constitutional.

The 1970 state constitution provision for redistricting has not worked. The process has become highly political, with the party in power drawing lines to benefit incumbents.

[At present, for example, Democrats have majorities of three-fifths and two-thirds in the House and Senate, respectively, far higher than the typical split between the two major parties.]

The Independent Maps initiative has proposed a complicated process that would try to siphon off the partisan politics and give the job of drawing state legislative maps to an independent commission, rather than leave it with lawmakers.

[Independent commissions seem to be working effectively in Arizona and California.]

The provision in the Illinois Constitution that allows use of the citizen initiative for Legislative Article limits amendments to “structural and procedural” subjects.

The state high court subsequently ruled that this means a proposal must encompass *both* structural *and* procedural matters. As a result, this has been used to knock several proposals, e.g. term limits, off the ballot.

I agree with the late, distinguished state supreme court justice Walter Schaefer that this was a gross misinterpretation of the language. As he wrote, in dissent, “When I see a restaurant menu that says ‘we serve only beef and chicken,’ it doesn’t mean that all the dishes have both beef and chicken in them; it means the dishes have one or the other.”

In 2014, a similar proposal was rejected at the circuit court level on what I think was a technicality, but it mattered not, as that group’s petition drive was botched, and the effort fell of its own weight.

More recently, a new group is trying again. Using top-drawer lawyers, the group believes it has corrected any defects necessary to pass the high bar for constitutionality set by earlier state courts.

Opponents have filed a brief asking the court to dismiss the legislative initiative. Led by savvy election lawyer Mike Kasper, the opponents have thrown every possible objection except the kitchen sink against the wall, hoping something will stick. (By the way, Kasper just happens to be the lawyer for the Illinois Democratic Party, chaired by House Speaker Mike Madigan, who absolutely hates the idea of losing his control over redistricting.)

Kasper complains the proposal is not both structural and procedural, includes unrelated items, provides a new role for the state auditor general, and more.

The proponents argue that all those contentions are rubbish. The case will be appealed by one of the groups to the state high court, soon.

Different from most states, Illinois elects its supreme court, and on a partisan basis, which injects politics from the get-go.

The Illinois Constitution of 1970 structured the high court to be Democratic. It gives three of seven seats to Cook County on a county-wide basis, which means that county always

elects three Dems. If the county had been districted, like the rest of the state, a fair process would have likely resulted in 2 Ds and 1R. The court has been Democratic, mostly 4-3, ever since 1970.

The Democratic majority on the court may be fine people, yet they all have deep political roots.

Anne Burke is the wife of 40-year Chicago alderman Ed Burke, an ally of Speaker Madigan. Mary Jane Thies is a longtime friend of state Senate president John Cullerton, himself a protégé of Madigan.

Downstate Democrat Thomas Kilbride was elected in 2000 by a 52-48 percent margin, largely because Madigan put nearly a million dollars into Kilbride's campaign late, when Madigan saw it was in play; this district had always been GOP, though often narrowly so.

Justice Charles Freeman is the only Africa-American on the court. Some Chicago blacks oppose the redistricting reform, saying it might dilute black representation, as blacks continue their exodus from violence-plagued Chicago neighborhoods.

Backgrounds don't, of course, predict judicial decisions. Yet the political observers I have talked with suggest that if Speaker Madigan puts his thumb down on his party's justices, it could affect a vote or more.

My graduate degrees are in political science, not law. Yet the redistricting proposal and arguments in support of it persuade me the proposal is constitutional.

[A rejection of the proposal would have to be drawn so narrowly that it would probably, in effect, render inoperative the citizen initiative provisions in a charter the justices swore to uphold.]

I think a 4-3 Democratic rejection of the proposal would be tragic for Illinois democracy and for future trust, that is lack of it, in the court itself. We'll have to wait and see.