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# Article XIV, Section 3 of the Illinois Constitution: A Limited Initiative to Amend the Article on the Legislature, 48 Loy. U. Chi. L.J. 899 (2017)

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# Article XIV, Section 3 of the Illinois Constitution: A Limited Initiative to Amend the Article on the Legislature

*Ann M. Lousin\**

*Article XIV, section 3 of the Illinois Constitution allows a limited initiative procedure to propose amendments to Article IV—The Legislature—of the Illinois Constitution. This Article describes the history of the section, analyzes the seven cases interpreting it, and suggests options for future actions regarding the section.*

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## INTRODUCTION

Article XIV, section 3 is one of the most controversial sections in the Illinois Constitution because it enables the public, rather than just the

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legislature, to make constitutional changes.<sup>1</sup> Under this section, and its established process, Illinoisans may gather signatures on a petition to seek certain amendments to article IV, which relates to the legislature.<sup>2</sup> If they collect enough signatures, the constitution may be amended by voters at a referendum.<sup>3</sup> This is normally called the “initiative and referendum” method of amending a constitution. Thus far, only seven cases have interpreted this provision, which is one of the most important political and legal controversies in recent Illinois political life.

This Article delineates the history of article XIV, section 3 against the history of Illinois’ constitutional amendments, describes its origin at the Sixth Illinois Constitutional Convention in 1969–70, and analyzes the seven cases concerning section 3. It offers the Author’s view of the proper way to interpret the section and prediction as to future developments.

#### I. THE PURPOSE AND HISTORY OF CONSTITUTIONAL AMENDMENTS IN ILLINOIS BEFORE 1969

The preamble and procedures for future constitutional changes are perhaps the two most significant parts of any constitution. The preamble describes, usually in aspirational and often grandiloquent language, the drafters’ reasons for creating the constitution. “We the people of . . .” is the customary opening. Most American state constitutions have preambles that track the language of the United States Constitution. It is generally agreed that preambles do not have the effect of positive law, but they do express the stated goals of the respective constitution, which can indirectly lead to constitutional changes.

The procedures for changing a given constitution are called the “amending provisions.” They set forth the ways that future generations may decide to change the provisions. In a way, the amending provisions act as the drafters’ admission that they are not omniscient, and that it will probably be necessary to amend their handiwork in the future. Drafting amending provisions is therefore an act of humility on their part.<sup>4</sup>

Prior to 1969, Illinois was governed by three different constitutions. The first was drafted in 1818 by Illinois settlers seeking admission to the union<sup>5</sup> This *statehood constitution* was a prerequisite for congressional

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1. ILL. CONST. of 1970, art. XIV, § 3.

2. *Id.*

3. *Id.*

4. GEORGE D. BRADEN & RUBIN G. COHN, THE ILLINOIS CONSTITUTION: AN ANNOTATED AND COMPARATIVE ANALYSIS 570 (1969).

5. ILL. CONST. of 1818.

approval of the admission of the Territory of Illinois as the twenty-first state.<sup>6</sup> The Illinois Constitution of 1818 provided for amendments by a constitutional convention.<sup>7</sup> Under the provision, if two-thirds of the General Assembly approved a call for a convention and a majority of the voters voting on the issue of a call approved the call, the legislature would have to provide for a convention.<sup>8</sup> But despite providing for amendment through the calling of a constitutional convention, the constitution failed to provide a method by which the legislature itself could propose amendments.

The second Illinois Constitution was the 1848 Constitution. This constitution made one very significant change to the amending process: it allowed the General Assembly to propose amendments to the constitution.<sup>9</sup> But to do so, two-thirds of the members of each house of the General Assembly had to approve the language of the amendment, and restrictions applied on how often amendments could be proposed to each article.<sup>10</sup> Clearly, the drafters of the 1848 Constitution were debating and writing in an age of Jacksonian populism—but not too much populism.

The third constitution was the 1870 Constitution, the one in effect when the Sixth Illinois Constitutional Convention met in 1969. While somewhat different from the 1848 Constitution, the 1870 Constitution clearly articulated that only a constitutional convention or the legislature could initiate amendments.<sup>11</sup> The role of “the people” was limited to voting upon whether to approve the amendments at a ratification referendum. Because Illinois used the “party circle ballot” until 1890, the two major political parties effectively controlled the amending process. With the party circle ballot, if party leaders approved an

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6. See, e.g., ANN M. LOUSIN, *THE ILLINOIS STATE CONSTITUTION: A REFERENCE GUIDE* 3–4 (2009) (discussing frontier Illinois developing the state constitution).

7. ILL. CONST. of 1818, art. VII, § 1.

Whenever two-thirds of the general assembly shall think it necessary to alter or amend this constitution, they shall recommend to the electors, at the next election of members to the general assembly, to vote for or against a convention; and if it shall appear that a majority of all the citizens of the [S]tate, voting for representatives, have voted for a convention, the general assembly shall, at their next session, call a convention, to consist of as many members as there may be in the general assembly, to be chosen in the same manner, at the same place, and by the same electors that choose the general assembly; and which convention shall meet within three months after the said election, for the purpose of revising, altering, or amending this constitution.

*Id.*

8. *Id.*

9. ILL. CONST. of 1848, art. XII, § 2.

10. *Id.* (“But the general assembly shall not have power to propose an amendment or amendments to more than one article of the constitution at the same session.”).

11. ILL. CONST. of 1870, art. XIV, §§ 1–2.

amendment, legislators would vote for it. The parties then printed the ballots at their own expense and indicated on the ballot that the “party position” favored the amendment. In effect, the party leaders were strongly suggesting to their voters that anyone who chose the party ballot should vote as the party wished. As a practical matter, the legislature did not submit amendments to the voters unless both parties agreed on them. Invariably, voters would follow the party’s suggestion by putting an “X” in the circle next to the party’s name.

In 1891, Illinois adopted the modern Australian ballot, which meant that a voter had to choose which candidate or proposition he or she approved. A voter could not simply place an “X” in the party circle, but rather had to identify which party candidate he or she approved. As a result of the change to the Australian ballot, amending the constitution became virtually impossible. Indeed, between 1890 and 1950, Illinois adopted no amendments.

During the twentieth century, it became clear that the districts from which legislators were elected were extraordinarily malapportioned. For example, Chicago and its near suburbs experienced huge growth, but that was not reflected in the redistricting map, which heavily favored the ninety-six downstate counties, especially the rural areas. After 1945, when the post-war boom in the suburbs was apparent, the situation became exacerbated. Those seeking to become statewide executive officers and United States Senators increasingly sought votes in Chicago and its near suburbs. Constitutional amendments had virtually no chance of adoption unless both the downstate legislators and the political forces in the Chicago area, notably Cook County, were able to agree. Constitutional revision was at a standstill.

After several unsuccessful attempts to liberalize the amending article, proponents of constitutional change succeeded in persuading the Illinois General Assembly to propose, and the voters to ratify, the Gateway Amendment of 1950.<sup>12</sup> The Gateway Amendment continued to require approval by two thirds of each house, but reduced the approval needed by the voters to “a majority of those voting on the question.”<sup>13</sup>

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12. *Id.* art. XIV, § 2.

13. *Id.* (“Amendments to this Constitution may be proposed in either House of the General Assembly, and if the same shall be voted for by two-thirds of all the members elected to each of the two houses, such proposed amendments, together with the yeas and nays of each house thereon, shall be entered in full on their respective journals, and said amendments shall be submitted to the electors of this state for adoption or rejection, at the next election of members of the General Assembly, in such manner as may be prescribed by law. The proposed amendments shall be published in full at least three months preceding the election, and if a majority of the electors voting at said election shall vote for the proposed amendments, they shall become a part of this

Nonetheless, because amendments were so difficult to propose, much less get adopted, only one amendment succeeded between 1950 and 1968. That was the major overhaul of the judiciary wrought by the Judicial Amendment of 1962.

The restrictive nature of the 1870 Constitution's amending article, even after the adoption of the Gateway Amendment of 1950, was one of the major reasons for the call for a constitutional convention in 1968. Through a series of flukes, the General Assembly agreed to place the issue of a call on the ballot in 1968. Those favoring constitutional revision saw their opportunity and began a vigorous campaign. The two issues that dominated their campaign were first, the desire to modernize and liberalize the "horse and buggy constitution"; and second, the need to have a more workable amending process for the future.

## II. THE SIXTH ILLINOIS CONSTITUTIONAL CONVENTION

The Sixth Illinois Constitutional Convention met on December 8, 1969. Almost immediately, the convention delegates formed committees.<sup>14</sup> The president of the convention, Samuel W. Witwer, Sr., assigned the topic of constitutional amendments to the Committee on Suffrage and Amending. Mr. Witwer spent much of his adult life seeking to improve the Illinois Constitution and was one of the prime movers behind the Gateway Amendment and the call for a convention in 1968. By that time, it was generally agreed that amendments should be generated by either a constitutional convention or by the General Assembly. Disagreement remained, however, over the number of votes needed for such amendments, the possible submission of a periodic constitutional convention call to voters, and other amending-process regulations. These issues occupied much of the committee's time. But the committee generally agreed that "liberalization" from past constitutions was necessary.

The third possible method of amending the Illinois Constitution surfaced in one member proposal: the popular "initiative and referendum" method. The delegates were surely aware of the "initiative and referendum" system so popular in California. At the beginning of the convention, delegates submitted "member proposals," or suggestions for provisions in the new constitution. One proposal specifically called for a general initiative and referendum procedure for amending a new

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constitution. But the general assembly shall have no power to propose amendments to more than one article of this constitution at the same session, nor to the same article oftener than once in four years.").

14. The following is taken extensively from ALAN S. GRATCH & VIRGINIA H. UBIK, *BALLOTS FOR CHANGE: NEW SUFFRAGE AND AMENDING ARTICLES FOR ILLINOIS* (1973).

Illinois Constitution. This proposal, Member Proposal No. 481, offered by Louis J. Perona, Edwin F. Peterson, Roy C. Pechous, and Ray H. Garrison, read: "That the Amendment Article of any new constitution contain a provision as follows: That provision be made for amending the constitution by means of the initiative and referendum without approval of the General Assembly."<sup>15</sup> Two other members' proposals referred to the option of an initiative and referendum procedure as part of a more comprehensive proposal for an amending article.<sup>16</sup>

The nine members of the Committee on Suffrage and Amending split 5–4 over whether a general initiative for amending the Illinois Constitution should exist.<sup>17</sup> Generally, those favoring a general initiative considered the idea "populist" or "progressive" and viewed the reluctance of the Illinois General Assembly to propose amendments as evidence that the submission of separate amendments should not be left solely to the legislature. Those opposing the general initiative had diverse reasons, mostly arising out of a fear of denigrating representative government. Both sides apparently thought that voters would understand the voting issues. Certainly, neither side suggested otherwise.

The majority and minority reports regarding all facets of the amending process were debated on "first reading," the convention's method of discussing committee proposals. The debates mirrored the concerns of the committee. The votes crossed party lines and geographical areas. But those delegates of the faction called the "Chicago Regular Democrats" voted against having a general initiative. These were the delegates who had been supported by the Regular Democratic Party of Cook County, then headed by Chicago Mayor Richard J. Daley. In the end, the delegates voted down the general initiative by a vote of forty-four "ayes" to sixty "nays."<sup>18</sup>

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15. 7 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, COMMITTEE PROPOSALS MEMBER PROPOSALS 3061 (1970) [hereinafter 7 RECORD OF PROCEEDINGS].

16. *Id.* at 2979–80 ("5. Initiative by petition for constitutional amendments, with the initiating procedure sufficiently difficult to discourage unimportant proposals." (citing Joseph C. Sharpe, Sr., et al.'s Member Proposal No. 313)); *see id.* at 2981–82, (referencing Ray H. Garrison et al.'s Member Proposal No. 316, which included a lengthy proposal for initiatives to be presented to the General Assembly via petitions signed by voters, but to be approved by the legislators).

17. GRATCH & UBIK, *supra* note 14, at 33–34.

18. *Id.* at 48–50; 1 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, DAILY JOURNAL 186 (1970) (describing the vote on Suffrage and Amending Committee Minority Proposal 1A). The text and report of Minority Proposal 1A are found at 7 RECORD OF PROCEEDINGS, *supra* note 15, at 2307–13. This vote was taken on April 7, 1970. Among those voting "yes" were two delegates who were later plaintiffs in *Coalition for Political Honesty v. The State Board of Elections (Coalition I)*, 359 N.E.2d 138 (Ill. 1976); Delegates Elmer Gertz and Louis Perona. Among those voting "no" were four other plaintiffs in that case: Thomas McCracken, Lucy

Pursuant to convention rules, the draft of the article on “constitutional revision” then was sent to the Committee on Style, Drafting & Submission (“SDS”). That committee made drafting suggestions and then sent their re-draft back to the convention floor for “second reading.” At the second reading stage, delegates usually offered amendments to the “SDS draft.” But legislators had made no effort to amend the proposed SDS draft by reintroducing a general initiative system.

But around this time, and independently, the Committee on the Legislature had decided to propose a “limited initiative” method of amending the draft legislative article.<sup>19</sup> The Committee on the Legislature then submitted its proposals and report to the convention on June 30, 1970. The majority of the committee proposed a section creating an initiative and referendum procedure for the first time in Illinois history. The language of the committee’s proposed section 15 was almost identical to the language of the final version in article XIV, section 3.<sup>20</sup> The report shed some light on the thinking of the six members of the eleven-member committee who proposed the section.<sup>21</sup> The delegates favoring this proposal were the Chair, George J. Lewis; John L. Knuppel; Samuel L. Martin; Anthony M. Peccarelli; Louis J. Perona; and William L. Sommerschild. One of them, Louis J. Perona, was a plaintiff in *Coalition for Political Honesty v. The State Board of Elections* (“*Coalition I*”)<sup>22</sup> in 1976.

Much of the justification for the proposal reads like the dissent in the

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Reum, Maurice Scott, and Elbert Smith.

19. 6 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, COMMITTEE PROPOSALS 1399–1402 (1970) [hereinafter 6 RECORD OF PROCEEDINGS]. The constitutional initiative for legislative article reads:

Amendments to this Article on the Legislature may be proposed by a petition signed by electors of this State equal in number to at least eight percent of the total votes cast for all candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in this Article on the Legislature. 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, shall be signed by electors not more than twenty-four months preceding the general election at which the proposed amendment is to be submitted, and shall be filled with the Secretary of State at least six months before such election. 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, and shall become effective if approved by either three-fifths of those voting on the amendment or by a majority of those voting in the election.

*Id.* at 1399.

20. *Id.* at 1316, 1318.

21. *Id.* at 1399–1402.

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

most recent Illinois Supreme Court case on article XIV, section 3, *Hooker v. Illinois State Board of Elections*,<sup>23</sup> discussed below. The first sentence of the explanation reads: “The primary reason for offering a limited constitutional initiative proposal for the legislative article is quite simple: members of the General Assembly have a greater vested interest in the legislative branch of government than any other branch or phase of governmental activity.”<sup>24</sup>

But the report also says that: “Any amendment, so proposed, would be required to be limited to subjected contained in the Legislative Article, namely matters of structure and procedure and not matters of substantive policy.”<sup>25</sup> The majority report elaborated and explained what it meant by “structural and procedural.”<sup>26</sup> It explained that “[a]ll proposed Constitutional amendments submitted through use of this proposal would be expressly limited to subject matter specifically contained in the Legislative Article. The subject matter contained in this proposed Article pertains only to the basic qualities of the legislative branch—namely structure, size, organization, procedures, etc.”<sup>27</sup>

Section 15 specifically limited amendments to “structural and procedural” subject matter. Clearly the subject matter of the proposed article could not be construed to permit initiative amendments of a statutory nature. And noticeably, the subject matter of the proposed article was not laden with the highly complex and emotionally charged issues which have plagued the constitutional initiative process in other states.<sup>28</sup>

Five members of the committee opposed section 15<sup>29</sup> and submitted Minority Proposal II.<sup>30</sup> They pointed out that the convention had already rejected allowing an initiative and referendum procedure for amending the constitution in its consideration of the amending article and that voters who do not like what legislators do, or do not do, can always vote them out of office.<sup>31</sup> They opposed section 15 on the grounds that it would result in the submission of many proposed amendments that would not

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23. *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, 63 N.E.3d 824.

24. 6 RECORD OF PROCEEDINGS, *supra* note 19, at 1399.

25. *Id.* at 1400.

26. *Id.* at 1400–01.

27. *Id.*

28. *Id.* at 1401.

29. The five were Vice-Chair Lucy Reum; Clifford P. Kelley; William J. Laurino; Mary A. Pappas; and Frank J. Stemberk. Delegate Reum was one of the plaintiffs in *Coalition I* in 1976.

30. 6 RECORD OF PROCEEDINGS, *supra* note 19, at 1495–1501.

31. *Id.* at 1498.

have the benefit of study and deliberation,<sup>32</sup> and that there was no method of retracting a proposal.<sup>33</sup> Finally, it disputed the conclusion that legislators would never place matters relating to their interests upon the ballot.<sup>34</sup> At no time did the minority discuss the meaning of “structural and procedural.”

The floor debates on section 15 and Minority Proposal II began on July 15, 1970. Mr. Perona presented the arguments for the limited initiative, while Mrs. Pappas presented the arguments against it. The debates indicate that at least some of the delegates thought that a “unicameral legislature” and “cumulative voting” were the key areas in which a constitutional initiative would be appropriate.<sup>35</sup>

On July 21, 1970, the delegates entertained the “perfecting process” of the proposals of the Committee on the Legislature, which is to say, adoption on the first reading stage. The debate on section 15 followed extensive debates on other parts of the proposed article, especially the highly contentious issue of whether to select representatives through

32. *Id.* at 1498–99.

33. *Id.* at 1500.

34. *Id.* at 1500–01.

35. 4 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION, VERBATIM TRANSCRIPTS 2710–12. The colloquy between Delegates Perona and Tomei indicates that the amending process would allow changes to various aspects of the legislature:

MR. TOMEI: . . . 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 procedural subjects contained in this article, I take it it [sic] 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. . . . If you get too specific with the limitation, you inhibit the possibility of change within the legislative setup; and if you leave it broad, of course, they say, “Well you might be able to bring in something else under it.” So we’ve attempted to do it by the explanation as to what our purposes are, and then to leave the question of abuse to the courts. A unicameral legislature would be an area where you’d have to change many things that would be in here if anyone would ever want to go to that. . . .

MR. TOMEI: So, in other words, that’s a change in . . . 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 of 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.* at 2711–12.

single-member districts versus cumulative voting.<sup>36</sup> The vote on section 15 took the form of a motion to adopt the Minority Proposal II, which would have deleted section 15. By a “show of hands,” the delegates voted to reject the minority’s motion to delete, thereby allowing section 15 to continue as part of the proposed legislative article.<sup>37</sup> In the end, the SDS Committee moved the Committee on the Legislature’s idea for an initiative from the legislative article to article XIV—Constitutional Revision.

What was the reason for the limited initiative, which arose fairly late in the convention? The answer lies in the convention’s continuing debate over a key issue regarding the legislature: whether the Illinois House of Representatives should be elected from three-member districts, with each voter being able to “cumulate” votes, or whether the Illinois House should be elected from single-member districts, as is usually the case in the United States. A brief history of the unique Illinois House election system is in order.

In 1869, Illinois was divided sharply between Republicans in the growing northern part of the state and Democrats in the rest of the state. Many of the Democrats in Southern Illinois even favored the Confederacy during the Civil War. This deep division along party lines made it almost certain that no Democrat could be elected in the northern part and no Republican could be elected in the southern part. In effect, a voter favoring a “minority party” in each area cast a useless vote.

To ameliorate this polarization, Delegate Joseph Medill, publisher of the *Chicago Tribune*, proposed that each legislative district be comprised of three members, and that a voter could cast three votes for one candidate (the so-called “bullet vote”), one-and-a-half votes each for two candidates, or one vote for each of the three candidates.<sup>38</sup> If each party ran two candidates for three positions, it was quite clear that two representatives would usually come from the majority party and one candidate from the minority party.

For most of the next century, this prediction held true. Control of the House shifted back and forth between the two parties, although the legislative-districting map favored downstate until the 1960s. In the early twentieth century, when Chicago and a few other areas became Democratic strongholds, and most of downstate, including the Chicago suburbs, became Republican strongholds, a “minority member” invariably existed in each district. The pros and cons of the system are

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36. *Id.* at 2912–15 (quoting the debate on section 15 and the vote).

37. *Id.* at 2915.

38. LOUSIN, *supra* note 6, at 10.

debatable.

And debate was what the delegates did. It is perhaps impossible to perceive today how passionately many people, including delegates, felt about the unique Illinois House system. At various points, it seemed as though the convention would fall apart over this issue. Delegates would sometimes threaten to walk out of the convention if they thought that the proposed constitution favored the House-election method that they opposed.

By the end of the convention, in August 1970, it was clear that the amending process was already quite liberalized, and the advocates of single-member districts feared that they might not be able to obtain their desired change through the 1970 Constitution. As to the first issue, there was no felt need for a general initiative for constitutional amendments, given the reduced votes needed for proposing and ratifying amendments and the introduction of a periodic call on whether a convention should be called.<sup>39</sup> As to the second issue, there was still the fear that the system of electing the House would not be changed. Proponents of the single-member district system saw their goal receding fast and were furious.

The stage was set for a classic political compromise: find a way for future generations of Illinoisans to institute single-member districts for House elections. But, it was clear that the General Assembly would not approve such a measure. Many did not want to rely on a new convention, the call for which would be placed on the ballot no less frequently than every twenty years. What could be done? The answer was a multipronged compromise concerning the form of the ballot for the ratification referendum and the insertion of something new: the limited initiative for amendments to the legislative article.

The “great compromise” was two-faceted. First, the convention submitted the issue of election of members of the Illinois House of Representatives to the voters as a “separate issue” at the referendum on the constitution held on December 15, 1970. Voters were asked to choose between a modified system of multimember districts with cumulative voting and a new single-member-districts system. Ultimately, voters chose the modified multimember-districts-with-cumulative-voting system.<sup>40</sup> Second, the voters could utilize what became article XIV, section 3 to change to a single-member-districts system.<sup>41</sup> Arguably,

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39. ILL. CONST. of 1970, art. XIV, § 1(b) (“If the question of whether a Convention should be called is not submitted during any twenty-year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.”).

40. Ann M. Lousin, *45 Years Later, Three Unsolved Issues from 1970 Won't Go Away*, CHI. DAILY L. BULL., June 30, 2012, at 5.

41. *Id.*

there was a third facet to the compromise: article XIV, section 1(b) allows voters to decide whether to call a constitutional convention every twenty years. If the single-member-districts coalition had not succeeded in 1980 with the “Cutback Amendment,” they would have almost certainly advanced the cause of calling another convention in 1988, when that issue appeared on the ballot for the first time.

### III. THE EARLY CASES: *COALITION I*, *COALITION II*, AND *LOUSIN*

The first attempt to use article XIV, section 3 occurred shortly after the 1970 Constitution became effective on July 1, 1971. The League of Women Voters of Illinois (“League”) attempted to gather enough signatures to place a “single-member-districts initiative” on a referendum in 1974.<sup>42</sup> The League had a long-standing position that favored electing the members of the Illinois House by the traditional single-member-districts system.

This effort failed because few voters were willing to engage in redistricting the Illinois House only four years after redistricting both chambers in 1971. Even those who favored switching to a single-member-districts system were unwilling to cause chaos in the middle of the decade by having a second redistricting. In short, the effort failed, although many proponents said they were simply waiting until 1980 when another Illinois General Assembly redistricting would transpire.

The first petition to gather enough signatures did not concern single-member districts. Instead, it concerned three “ethics” measures proposed by the Coalition for Political Honesty, a new political action group spearheaded by Pat Quinn. Quinn, a former member of Governor Walker’s staff, saw the possibilities of the initiative and referendum process in an age of computers.

By the 1970s, computers had begun to transform political campaigns, including “issues” referenda, such as constitutional amendments. California, which has long used the initiative and referendum process to adopt both constitutional amendments and statutes, saw a proliferation of initiatives. Political operatives established consulting offices that oversaw the gathering of petition signatures. But the majority of the petitions were never filed and therefore never voted upon. Indeed, the whole point of the petition drive was often the gathering of signatures of voters who had indicated their preference for a policy. The political operatives could then sell those signatures to candidates running for office, so that the candidates would be better able to find “likely supporters” in their districts. Computers made the process more efficient.

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42. LOUSIN, *supra* note 6, at 92.

Quinn and his supporters found three issues almost guaranteed to win the support of many Illinois voters. One in particular arose from a mini-scandal: the payment of an entire term's salary to legislators at the beginning of their term, rather than monthly or semi-monthly throughout the term, which had been the custom for decades. In the time when the General Assembly met only for six months every two years, and then rarely met again, this custom may have made some sense. If a legislator vacated office, usually by death, there was usually no need to fill the vacancy.

But by the early 1970s, the General Assembly met for a substantial period every spring and then for approximately two weeks every autumn, in the "veto session." In effect, it was "in continuous session." The 1970 Illinois Constitution enabled, indeed encouraged, the filling of a legislative vacancy. This meant that there could be two salaries paid to two separate legislators over a two-year term.

In 1975, Senator Esther Saperstein of Chicago resigned her office early in the term, but after she accepted the full-term salary.<sup>43</sup> Her successor also received a full-term salary. Understandably, many voters grew angry over the potential of multiple salaries and demanded that the legislature change the system. The legislature refused to do so.

The three article IV, section 3 petitions thus became very popular. Quinn and his colleagues had little difficulty garnering enough signatures and filed the petitions with the Illinois State Board of Elections so they could be placed on the ballot in November 1976.

#### A. 1976: Coalition I (Gertz)

At this point, five former delegates to the Sixth Illinois Constitutional Convention and one staff member<sup>44</sup> filed a taxpayer's suit to prevent any expenditure of funds in an effort to hold the referendum. Because the lead plaintiff was Elmer Gertz, a delegate, it was filed as *Gertz v. The State Board of Elections*; but in reporters, the name of the Quinn coalition, the Coalition for Political Honesty, appears as the plaintiff of *Coalition I: Coalition for Political Honesty v. The State Board of Elections*.<sup>45</sup>

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43. She was running for a seat as an alderman in Chicago. When she won, she considered keeping both her senate seat and her seat on the Chicago City Council. This was legally permissible as long as she did not take her municipal salary for days spent attending senate sessions. In the end, she resigned her senate seat, but her actions annoyed, indeed infuriated, many Illinoisans.

44. This staff member was the Author of this Article.

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

The first issue was whether the case was timely; in particular, whether the court could rule on the constitutionality of the three amendments *before* the election was held.<sup>46</sup> After all, if the amendments were not adopted by the voters, the issue of the constitutionality of the amendments would be moot. The plaintiffs argued that as taxpayers they wanted to prevent unnecessary expenditures of public funds to hold a referendum on amendments that were, in their view, clearly improper under article XIV, section 3.<sup>47</sup> The Illinois Supreme Court agreed with the plaintiffs.<sup>48</sup> Since 1976, the issue of whether proposed amendments met the standards for validity under the Illinois Constitution has been decided *before* the November referendum.

The second and central issue of the case concerned the construction of the sentence, “[a]mendments shall be limited to structural and procedural subjects contained in Article IV.”<sup>49</sup> Clearly, the language evidenced an intent to countenance a rather narrow, *limited* initiative, rather than a broad initiative. There were two subissues: the meaning of “and” and the definitions of the words “structural” and “procedural.” The plaintiffs claimed that “and” was a true conjunction, and that none of the amendments were truly “structural” or “procedural.”<sup>50</sup>

In the end, the case was decided upon the meaning of “and.” Drafters of documents have long dealt with the conundrum of “and” and “or” in the English language. Sometimes, the phrase “A and B” means that *both* A and B must be present. The Latin language was simpler: *et* meant A and B together. *Vel* meant A and B together, A but not B, or B but not A; in effect, what we now call “and/or.” *Aut* meant A but not B, or B but not A.

Because the phrase “and/or” is not favored in modern English,<sup>51</sup> most drafters of documents convey *vel* or “and/or” choice by saying this:

If one or more of the following conditions is met, then . . . (such and such may occur):

- 1) A;
- 2) B.

In effect, most modern drafters really *intend* to convey *vel* (and/or).

In 1970, the constitutional provision in question arose on the floor of the convention. The motive for it, as we saw, was to provide a mechanism

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46. *Id.* at 140.

47. *Id.* at 142.

48. *Id.* at 143.

49. *Id.* at 144.

50. *Id.*

51. Though the Author of this Article prefers it, the grammar books do not.

by which supporters of the single-member-districts method of election could place the issue on the ballot without having to engage in the futile exercise of first attempting to convince the General Assembly that the method of electing one of the houses of the legislature should be abandoned. Scant attention was paid to such niceties of *et, vel, and aut*.<sup>52</sup>

Six of the seven justices of the Illinois Supreme Court adopted the plaintiffs' argument that "and" meant a true conjunctive, an *et*.<sup>53</sup> One justice, the highly respected jurist Walter V. Schaefer, dissented because he believed that the proper construction was "and/or," or *vel*.<sup>54</sup>

After 1976, it was evident that a taxpayer's action was the proper method of challenging an initiative and referendum proposition and that the issues should be decided before the referendum could be held. It was also clear that those seeking to put an initiative amendment on the ballot would have to place *both* a structural and procedural subject into the package. Having just a structural subject, or having just a procedural subject, would not suffice.

#### B. 1980: Coalition II (*the Cutback Amendment*)

As the 1980 federal decennial census approached, another attempt to use article XIV, section 3 to transform Illinois House elections into a single-member-districts system seemed almost certain. A few months earlier, the legislature had voted its members a substantial pay raise, which angered many voters.

This time, Pat Quinn and the League joined forces with some other advocates of single-member districts. They gathered signatures on petitions. Because they needed both a "structural" change and a "procedural" change, they actually placed two changes into the amendment: besides changing to single-member districts, the amendment would cut the size of the House by one-third, from 177 members to 118 members.

This second change gave the amendment its popular name: the Cutback Amendment. Quinn maintained that "cutting back" and having fewer legislators would save the State money. The League's primary objective was to abolish three-member districts and the cumulative-voting system, but that change remained secondary in the public's view.

Those gathering petitions would stand at bus stops and say loudly, "sign a petition to get rid of a third of the Illinois House." Very few

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52. This is perhaps true in other parts of the Illinois Constitution; it is certainly true in legislation drafted about that time and in older constitutions and statutes.

53. *Coalition I*, 359 N.E.2d at 143–44.

54. *Id.* at 147–49 (Schaefer, J., dissenting).

commentators, let alone members of the public, discussed the other change. Observers of Illinois state government were aware that first, cutting the size of the House, would probably save little or no money because the number of serious issues to be dealt with would remain the same, and second, the change to single-member districts would virtually eliminate bipartisan representation in each district.<sup>55</sup>

The Illinois Supreme Court decided the inevitable challenge in *Coalition for Political Honesty v. The State Board of Elections* (“*Coalition I*”).<sup>56</sup> In 1980, it was clear that, whatever “structural” and “procedural” meant, the main thrust of the amendment conformed to the motive behind article XIV, section 3: to provide a single-member districts system for electing the Illinois House. But those filing objections raised a different argument, one based on the long-standing “free and equal elections” clause contained in article III, section 3 of the Illinois Constitution: “All elections shall be free and equal.”<sup>57</sup>

Case law had indicated that putting two unrelated subjects together into one referendum violated that guarantee of “free and equal.”<sup>58</sup> Therefore, pursuant to case law, the objectors pointed out that cutting the size of the House and changing the method of election were not necessarily related. In fact, the constitutional convention had offered voters the choice of methods of electing the House in 1970, *without* changing the number of members of the House. The first separately submitted proposition offered a choice of multimember districts with cumulative voting (a modification of the system then in place) or of single-member districts. Clearly, the method or *procedure* of electing House members was different from establishing the *structural* question of the number of House members. The court found that though the procedural method and the structural question were different, “combining the two questions relating to the same subject was not a violation of the ‘free and equal’ elections clause.”<sup>59</sup>

To date, the 1980 Cutback Amendment remains the only proposed amendment to pass muster in article XIV, section 3. The voters adopted

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55. The Author encountered one of the young petition passers at the corner of Michigan Avenue and Pearson Street in Chicago, Illinois. He was shouting: “Sign this petition and get rid of a third of the Illinois House.” The Author asked him what else the petition did. He said: “It gets rid of legislators and saves money.” When the Author asked to see the petition before she signed it, he said petulantly: “If you’re not going to sign my petition, I won’t let you look at it. You’re wasting my time!” There were reports of similar encounters around the state.

56. *Coal. for Political Honesty v. State Bd. of Elections (Coalition I)*, 415 N.E.2d 368 (Ill. 1980).

57. ILL. CONST. of 1970, art. III, § 3.

58. *Vill. of Deerfield v. Rapka*, 296 N.E.2d 336, 339–40 (Ill. 1973).

59. *Coalition II*, 415 N.E.2d at 379.

the amendment in November 1980, and the redistricting that took place in 1981 had to take into account both the reduction in numbers and the need to split a senate district into two “legislative districts” for election of two House members.

### C. 1982: Lousin

After the 1976 and 1980 cases, it was not clear which types of amendments would be permitted. The Illinois Supreme Court seemed to indicate that the main reason for having the initiative method, changing the method of electing the Illinois House, would certainly be acceptable.<sup>60</sup> But it also maintained that there had to be *both* structural and procedural changes, a situation that arguably could run afoul of the “free and equal” elections clause in article III, section 3.<sup>61</sup>

The next challenge came in 1982. The Coalition for Political Honesty proposed a system by which initiatives and referenda could enact statutes. In other words, it was a “legislative bypass” system for voters, similar to the one used for decades in California. Again, former delegates and a staffer from the 1970 convention objected. This time, the case went no further than the Illinois Appellate Court. In *Lousin v. The State Board of Elections*,<sup>62</sup> the court held that such a proposal went to the *powers* of the legislature, not to structural and procedural subjects.<sup>63</sup> Therefore, it was not within the requirements of article XIV, section 3 and could not appear on the November 1982 ballot.

After the first three cases, it was clear that Illinois judges favored interpreting article XIV, section 3 narrowly, requiring that *both* structural and procedural subjects be present. The judges also looked at the purpose of the section, which was primarily, if not exclusively, to find a way to elect members of the Illinois House of Representatives by single-members districts.

## IV. THE TWO 1990S CASES: *CBA I* AND *CBA II*

Between 1982 and 1990, there was apparently little appetite to use the initiative system to amend the Illinois Constitution. But with the growth of conservative or libertarian political groups in the Chicago suburbs in the 1980s, the political impetus to amend the constitution shifted from

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60. *Id.* at 375–76.

61. *Id.* at 382.

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

63. The Author was lead plaintiff, at the suggestion of the former President of the Convention. Mr. Witwer generously said that she labored for the constitution “in the background” and ought to have her name prominently featured in at least one case.

“liberal” groups, like the Coalition for Political Honesty, to more “conservative” groups.

This change gave rise to two separate cases—*The Chicago Bar Association v. The State Board of Elections* (“*CBA I*”), in 1990,<sup>64</sup> and *The Chicago Board Association v. The Illinois State Board of Elections* (“*CBA II*”), in 1994.<sup>65</sup> In these two cases, the Chicago Bar Association (“CBA”) attempted to prevent proposed amendments from appearing on the ballot.<sup>66</sup>

In *CBA I*, a group called the Tax Accountability Amendment Committee (“TAAC”) sought to put on the ballot an amendment to article IV that would make substantial changes in how the General Assembly treated tax bills.<sup>67</sup> Among other things, it established the structure of a Revenue Committee in each house and most importantly, required a three-fifths vote in each house to raise taxes.<sup>68</sup> The CBA filed a challenge

64. Chi. Bar Ass’n v. State Bd. of Elections (*CBA I*), 561 N.E.2d 50 (Ill. 1990).

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

66. In *Chicago Bar Association v. State Board of Elections (CBA I)*, the Chicago Bar Association (“CBA”) sought to prevent the Illinois State Board of Election from spending public money to place the proposed “Tax Accountability Amendment” on the Illinois election ballot. *CBA I*, 561 N.E.2d at 51–52. In *CBA II*, the CBA filed another taxpayer action to prevent the placement of a proposed amendment to the Illinois Constitution regarding term limits on the ballot. *CBA II*, 641 N.E.2d at 526.

67. *CBA I*, 561 N.E.2d at 51–52.

68. *Id.* at 52. The proposed amendment regarding the “Passage of Revenue Bills” contained the following text:

(a) A bill that would result in the increase of revenue to the State may become law only by a vote of three-fifths of the members in each house of the General Assembly.

(b) Each house of the General Assembly shall have a revenue committee. It shall be the sole and the exclusive responsibility of the revenue committees to consider all bills which would result in an increase or decrease of revenue to the State. A bill pending in a revenue committee must be approved by a majority of members of that committee before it is sent to the full house for consideration or vote.

(c) There shall be 25 members on the revenue committee in the House of Representatives. The members of the House Revenue Committee shall be appointed by the Speaker of the House and the House Minority Leader. The membership of the committee shall be proportionally as close arithmetically as possible to the percentage of members in the House of Representatives who vote for the Speaker and who vote for the Minority Leader. There shall be 13 members on the revenue committee in the Senate. The members of the Senate Revenue Committee shall be appointed by the President of the Senate and the Senate Minority Leader. The membership of the committee shall be proportionally as close arithmetically as possible to the percentage of members in the Senate who vote for the Senate President and who vote for the Senate Minority Leader. Revenue committee members may be removed from the committee only by a majority, recorded, roll call vote of all members of the committee’s respective chamber. No member of the General Assembly may serve more than four consecutive years on a revenue committee.

(d) The revenue committees may not vote upon a bill until a public hearing on the bill

based on the holdings in the *Coalition I* and *Lousin* cases.

As expected, the case went to the Illinois Supreme Court, which held unanimously that the amendment violated the limitations set forth in article XIV, section 3.<sup>69</sup> The nub of the opinion was that the changes sought would go to the substantive “powers” of the General Assembly, not just to “structural” and “procedural” changes, and therefore could not be proposed as an amendment on a ballot through the initiative procedure.<sup>70</sup>

The second case—*CBA II*—arose in 1994.<sup>71</sup> Two separate organizations, the “Eight is Enough Committee” and the “Term Limits Committee,” sought to put on the ballot a measure to limit each legislator’s service in the General Assembly to eight years.<sup>72</sup> Again, the

has been held. Reasonable notice of the hearing, which in no event may be less than two weeks, shall be given to the public.

*Id.* at 52–53.

69. *Id.* at 55–56.

70. *Id.*

71. *CBA II*, 641 N.E.2d at 525.

72. The two organizations sought to impose limits on “the number of years a member of the General Assembly may serve.” *Id.* at 529. The organizations’ amendments regarding the “Legislative Composition” provision in the Illinois Constitution read (additions are italicized):

(a) One Senator shall be elected from each Legislative District. Immediately following each decennial redistricting, the General Assembly by law shall divide the Legislative Districts as equally as possible into three groups. Senators from one group shall be elected for terms of four years, four years and two years; Senators from the second group, for terms of four years, two years and four years; and Senators from the third group, for terms of two years, four years and four years. The Legislative Districts in each group shall be distributed substantially equally over the State. *For the exclusive purpose of calculating of service under the tenure limitation contained in Section 2(c), a person who serves two years or less of a term of a Senator shall be deemed to have served two years and a person who serves more than two years of a four-year term of a Senator shall be deemed to have served four years.*

(b) Each Legislative District shall be divided into two Representative Districts. In 1982 and every two years thereafter one Representative shall be elected from each Representative District for a term of two years. *For the exclusive purpose of calculating length of service under the tenure limitation contained in Section 2(c), a person who serves any part of a term of a Representative shall be deemed to have served two years.*

(c) To be eligible to serve as a member of the General Assembly, a person must be a United States citizen, at least 21 years old, and for the two years preceding his election or appointment a resident of the district which he is to represent. *No person shall be eligible to serve as a member of the General Assembly for more than eight years. No person who has served six years in the General Assembly shall be eligible to be elected to a four-year term as a Senator. This tenure limitation is not retroactive and shall not apply to service as a member of the General Assembly before the second Wednesday in January, 1995.* In the general election following a redistricting, a candidate for the General Assembly may be elected from any district which contains a part of the district in which he resided at the time of the redistricting and reelected if a resident of the new district he represents for 18 months prior to the reelection.

CBA filed a challenge. The 1994 Illinois Supreme Court case, *CBA II*, was quite different from the 1990 *CBA I* case.

In *CBA II*, the majority of the court signed a per curiam opinion holding that the eight-year-term-limit proposal went to the issue of the eligibility of people running for legislative seats, not to either structural or procedural subjects, as article XIV, section 3 requires.<sup>73</sup> This posture conforms to the “narrow” or “conservative” approach exhibited in *Coalition I*, *Lousin*, and *CBA I*. But Justices Harrison, Miller, and Heiple wrote a dissent. Although the rather lengthy dissent touched upon the philosophy expressed in previous cases, especially in *CBA I*, the heart of the dissent significantly consisted of these sentences: “The proposed term-limit amendment challenged here would in no way produce a substantive change in the constitution. The proposal relates solely to the composition of the legislature as set forth in section 2 of article IV . . . .”<sup>74</sup> In effect, the dissenters hearkened back to the 1980 case, *Coalition II*, which discussed the Cutback Amendment.<sup>75</sup> That, too, dealt with the “composition” of the legislature, although it concerned the issue at the core of the initiative proposal, namely single-member districts. The fact that *CBA II* was a 4–3 decision ought to have signaled that a window of opportunity might exist to craft a successful amendment to the Illinois Constitution under article XIV, section 3. Despite the window of opportunity created by the Cutback Amendment in 1980 and suggested by the three-justice dissent in 1994, no attempts to use article XIV, section 3 occurred throughout the next decade.

#### V. THE “REDISTRICTING” AND “TERM-LIMITS” CASES IN 2014 AND 2016: THE *CLARK* AND *HOOVER* CASES

In 2014, two organizations separately attempted to place amendments on the ballot: the Yes for Independent Maps Committee sought to place a new method of redistricting the General Assembly on the ballot,<sup>76</sup> and

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*Id.* at 529–30.

73. *Id.* at 528–29.

74. *Id.* at 533–34 (Harrison, J., dissenting) (referring to ILL. CONST. of 1970, art. IV, § 2).

75. *Id.*

76. *Clark v. Ill. State Bd. of Elections*, 2014 IL App (1st) 141937, ¶ 1, 17 N.E.3d 771, 773. Pursuant to article XIV, section 3, the Term Limits Initiative would amend three sections of the legislative article of the constitution (Ill. Const. [of] 1970, art. IV). In section 1 of the legislative article, titled ‘Legislature—Power and Structure,’ the amendment would decrease the number of legislative districts from 59 to 41 and increase the number of representative districts from 118 to 123. The proposed amendment would also make changes to three parts of section 2 of the legislative article, titled ‘Legislative Composition.’ In section 2(a), the amendment would eliminate staggered terms for Senators and make all Senate terms four years. In section 2(b), each legislative district

the Committee for Legislative Reform and Term Limits Committee sought to put an “eight-is-enough” proposal on the ballot, similar in nature to the one struck down in 1994.<sup>77</sup> Apparently, the two groups gathered petition signatures separately from each other.

The history of *Clark v. The State Board of Elections* is different from the preceding five cases in several respects.<sup>78</sup> First, the case involved two separate proposals, each arguably presenting different issues. Second, the circuit court’s opinion discussed the redistricting proposal, although that issue was not yet ripe.<sup>79</sup> It was not yet ripe because the Board of Elections was still trying to determine whether the petition had

would be divided into three representative districts, instead of two.

*Id.* ¶ 5, 17 N.E.3d at 774.

77. “Additionally, the amendment would create section 2(f), which would impose an eight-year term limit on all members of the General Assembly.” *Id.* ¶ 5, 17 N.E.3d at 774.

78. *Id.* ¶ 5, 17 N.E.3d at 774.

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

[R]edistricting appears to be fair game for amendment by Article XIV, § 3, initiative. . . . [T]he structural and procedural subjects of Article IV, § 3, titled Legislative Redistricting, could be the basis of a valid Article XIV, § 3, initiative. Plaintiffs are correct, however, that the Redistricting Initiative contains provisions that are neither structural nor procedural under CBA II and, therefore, the initiative is not limited to the structural and procedural subjects in Article IV. . . . The clearest example of an impermissible subject is the inclusion of eligibility or qualification requirements for Commissioners, including a prohibition on any Commissioner or Special Commissioner serving as a legislator or in various appointed or elected offices for ten years after serving as a Commissioner. Though the Redistricting Initiative does not speak directly to eligibility or qualifications of legislators, the ten-year bar on any Commissioner or Special Commissioner serving in the General Assembly effectively adds the qualification that a legislator not have served as a Commissioner in the past ten years. This qualification renders some potential candidates ineligible and might, in effect, bar as many individual from serving as legislators at any given time as do term limits, depending on how many potential legislative candidates have already served two terms. Furthermore, the service ban is not limited to legislators, but applies to positions outside of Article IV. . . . Whatever the intent, the ban’s effect is the disqualification of otherwise eligible candidates. Further, there is no reason to assume that the eligibility or qualifications of Commissioners is a permissible subject. If eligibility or qualifications is neither structural nor procedural, then it would appear improper for an initiative to describe eligibility or qualifications for any positions defined in Article IV. . . . [Also,] nothing in the initiative limits the General Assembly’s power to enact substantive laws; rather, it limits redistricting power that derives from Article IV. . . . Yes for Independent Maps [argues] that the Redistricting Initiative is limited to Article IV subjects and eliminating 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. This court agrees. . . . 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” . . . because the entire proposition is a new redistricting approach that is focused exclusively on addressing perceived problems in the current Article IV, § 3.

*Id.* at 9–11 (internal citations omitted).

enough valid signatures. Because it was determined that the redistricting petitions did not contain enough valid signatures, the redistricting issue should never have been considered and, at least arguably, any statements made by any court about the constitutional validity of the petitions should be considered dicta, not holdings.

But the Circuit Court of Cook County entertained, and Judge Mary Lane Mikva discussed, the challenges to both petitions in *Clark*.<sup>80</sup> Judge Mikva noted that the five reported cases on article XIV, section 3 indicate that the precedents favor a narrow interpretation of that section.

Turning to the Term Limits Initiative first, she held that the proposed amendment was beyond the scope of the initiative system for reasons indicated in the 1994 *CBA II* case<sup>81</sup> and that it also violated the “free and equal elections” guarantee in article III, section 3, because it combined term limits with changes in the staggered terms of the state senate.<sup>82</sup>

She then discussed Yes for Independent Maps’ proposal. She said that there were topics in the proposal that were neither structural nor procedural; in particular, the requirements for being commissioners, “including a prohibition on any Commissioner or Special Commissioner serving as a legislator or in various appointed or elected offices for ten years after serving as a Commissioner.”<sup>83</sup> But she also said that the proposal did not violate the “free and equal” elections clause, because all of the parts of it came together as a whole.<sup>84</sup>

This part of Judge Mikva’s opinion appeared to show how future petitioners could draft a valid proposed amendment, but it is important to note that all of her comments about the Yes for Independent Maps proposal are, strictly speaking, dicta, because that proposal had not yet been certified as having sufficient signatures and was thus not really ripe for consideration by the court. In fact, the State Board of Elections found shortly thereafter that the petition had too few valid signatures.

As expected based on the preceding cases, the term-limits-amendment proponents appealed to the Illinois Appellate Court. But the Illinois Appellate Court affirmed Judge Mikva’s decision that this was an improper amendment in *Clark*.<sup>85</sup> And the Illinois Supreme Court refused to take an appeal. Thus, neither proposed amendment appeared on the

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80. *Id.*

81. See text accompanying notes 73–74 (discussing *CBA II*).

82. *Clark*, No. 14 CH 07356, at 4–6 (Ill. Cir. Ct. June 27, 2014).

83. *Id.* at 9.

84. *Id.* at 10–11.

85. *Clark v. Ill. State Bd. of Elections*, 2014 IL App (1st) 141937, ¶¶ 34–35, 17 N.E.3d 771, 780.

2014 ballot. The Yes for Independent Maps proposal failed because the backers had gathered insignificant signatures. The term limits proposal failed because it did not meet the requirements of article XIV, section 3.

The seventh and most recent case addressing article XIV, section 3 is *Hooker v. Illinois State Board of Elections*.<sup>86</sup> It arose when a group called Independent Maps made another attempt to change the legislative redistricting process in 2016. This time the group followed Judge Mikva's suggestion that limits on the ability of redistricting commissioners to run for office were what doomed the previous redistricting proposal.

In May 2016, Independent Maps—essentially a regrouping of the same group of plaintiffs from 2014—filed a petition for a redistricting initiative with the Illinois State Board of Elections.<sup>87</sup> The petition proposed significant amendments to article IV, section 3 of the Illinois Constitution involving changes to who will draw the district maps,<sup>88</sup> the standards by which district maps are drawn, and how a district map plan can be challenged.<sup>89</sup> Judge Diane Joan Larsen of the Circuit Court of Cook

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86. *Hooker v. Ill. State Bd. of Elections*, No. 2016CH06539, 2016 WL 4581493 (Ill. Cir. Ct. July 20, 2016) (order granting the plaintiffs' motion for judgment on the pleadings).

87. *Id.* at \*1–2.

88. *Id.* at \*10.

The purpose of the 2016 Illinois Independent Redistricting Amendment is to change the current system of redistricting, where legislators draw the maps of General Assembly districts after each decennial census, and provide for a restructured, independent redistricting commission to draw the maps. . . . The Redistricting Initiative would remove the General Assembly's power to submit a redistricting plan currently provided in article IV, section 3 . . . . [and instead] would create a new 'Independent Redistricting Commission' ('IRC') with authority to draw redistricting plans. The IRC would be created through a two-step process. The first step would require the Auditor General to . . . request and accept applications to be a Reviewer. . . . The Auditor General shall then publicly select by random draw three members of the pool to serve on an Applicant Review Panel. The second step of the process would require the Auditor General to . . . request and accept applications to serve as a Commissioner on the IRC. . . . The Redistricting Initiative provides that approval of a district plan by the IRC requires the affirmative vote of seven Commissioners, including at least 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 two Commissioners not affiliated with either of those parties. The IRC is required to file a district plan by June 30 of the year after the census is completed. If the IRC does not meet that deadline, the Redistricting Initiative assigns new duties to two individual Justices of the Illinois Supreme Court. It requires the Chief Justice of the Illinois Supreme Court and the most senior Illinois Supreme Court Justice who is not affiliated with the same political party to appoint a Special Commissioner for Redistricting, who would be responsible for conducting an abbreviated version of the IRC map-drawing process and filing a district plan by August 31 (internal citations removed).

*Id.* at \*10–11. (internal citations removed).

89. *Id.* at \*6.

County initially heard the challenge in *Hooker*.<sup>90</sup> On July 20, 2016, she issued her opinion, in which she held the proposed amendment invalid under article XIV, section 3.<sup>91</sup>

Judge Larsen noted that the convention debates suggested that “legislative redistricting” could indeed be a subject for an initiative proposal.<sup>92</sup> But she also held that the inclusion of roles for the Auditor General (in article VIII), new duties for the courts (in article VI), and new duties for the Attorney General (in article V) caused the proposal to exceed “structural and procedural subjects” (in article IV).<sup>93</sup> She further held that the conglomeration of topics violated the “free and equal elections” clause in article III, section 3.<sup>94</sup>

Independent Maps appealed, and the Illinois Supreme Court took the case. In *Hooker*, issued August 25, 2016, the Illinois Supreme Court split 4–3.<sup>95</sup> The majority, the four Democrats on the court, essentially followed Judge Larsen’s reasoning and followed the precedents in the previous six cases, refusing to extend validity to the Independent Maps proposal.<sup>96</sup>

The minority opinion (really three separate dissents in which the dissenters joined each other’s dissenting opinion) is of great interest. For the first time, the Illinois Supreme Court enunciated a comprehensive argument in favor of a broader interpretation of article XIV, section 3.<sup>97</sup> To be sure, three justices had dissented in *CBA II*, but only on whether “term limits” was a structural or procedural change.<sup>98</sup> The dissenters in *Hooker* took a broader view, claiming that it was obvious that the legislature would be unlikely to propose a change in redistricting that reduced the power of the legislators. Taken in total, they saw the reference to other officers, including judges, as a way to rearrange the redistricting process so that nonlegislators could help draw the districts. The dissenters saw this as an interrelated package, one that dealt with

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90. *Id.*

91. *Id.* at \*18.

92. *Id.* at \*15 (stating that the “very title of article IV, section 3 . . . is ‘Legislative Redistricting,’ so just giving it its plain meaning, the structural and procedural subjects of article IV, section 3 should encompass redistricting”).

93. *Id.* at \*9–15.

94. *Id.* at \*18.

95. *Hooker v. Ill. State Bd. of Elections*, 2016 IL 121077, ¶ 1, 63 N.E.3d at 824.

96. *Id.* at ¶¶ 48–49, 63 N.E.3d at 839.

97. *Hooker*, 2016 IL 121077, 63 N.E.3d 824 (Garman, J., dissenting) (Thomas, J., dissenting) (Karmeier, J., dissenting).

98. *Chi. Bar Ass’n v. Ill. State Bd. of Elections (CBA II)*, 641 N.E.2d 525, 529–34 (Ill. 1994) (Harrison, J., dissenting).

“structural and procedural subjects” as indicated in the convention debates and one that did not violate the “free and equal” elections clause.<sup>99</sup>

Thus, while the thrust of the seven cases is to espouse a rather conservative interpretation of article XIV, section 3, in line with the constitutional history of Illinois, there may well be an opening to reconsider this interpretation in the future.

#### VI. THE INTERPRETATION OF ARTICLE XIV, SECTION 3: POSSIBLE COURSES OF ACTION FOR THE FUTURE

The Author believes that her firsthand involvement with the Illinois Constitution over the years, and especially as a participant and observer in the litigation concerning article XIV, section 3, has given her insights into how this provision should be interpreted.

First, article XIV, section 3 is a departure from previous constitutional history. The Illinois tradition has been very conservative in its approach to amending the State’s constitutions. Illinois did not play an important part in the progressive reform movement at the beginning of the twentieth century. While initiatives and referenda are part of Illinois *local* government, at least as to certain issues, they are not an important part of *state* government.

Second, the overwhelming purpose of article XIV, section 3 was to give the advocates of single-member districts an opportunity to achieve their goal in case the voters chose to retain the multimember-district system at the constitutional ratification referendum on December 15, 1970. But the text of article XIV, section 3 and the debates on it were phrased a little more broadly to suggest that, perhaps under certain circumstances, the initiative process could be used to effectuate other types of changes. It is unclear from the debates which other changes could be included.

Moreover, it is the Author’s recollection from many days spent observing the debates in the summer of 1970 that mentions of these “other changes” were really window dressing for the real motive: to protect the opportunity to have a single-member-districts system. It was necessary to find some way to satisfy that powerful faction favoring single-member districts.

Third, the advent of computerization means that a primary goal for collecting signatures on petitions is to obtain signatures. It is *not* to see the measure enacted or anything else. The political operatives who often advise petition gatherers know how valuable a list of petition signatories

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99. *Hooker*, 2016 IL 121077, ¶¶ 90–91, 63 N.E.3d at 850 (Karmeier, J., dissenting).

is. It is a financial asset, as far as they are concerned. They further use the signatures in other campaigns.

Fourth, it seems clear to the Author that both the *Coalition I* case in 1976 and the *Coalition II* case regarding the Cutback Amendment in 1980 were decided erroneously, at least in part. As to *Coalition I*, the word “and” in the text of article XIV, section 3 really should be read as “and/or.” But it is debatable in the Author’s opinion whether any of the three amendments proposed was really either structural or procedural.

As to the Cutback Amendment, it is clear to the Author that it was improper to combine a reduction in the size of the House (the “cutback”) with a change in the method of election (cumulative voting for three seats to single-member districts). The two were completely separate topics in violation of the “free and equal” elections clause in article III, section 3. In fact, when the convention submitted the issue of the manner of selection to the voters as a separate issue, it made no change in the size of the House. It was clever of the proponents to call the 1980 amendment the “Cutback Amendment” because that engaged the attention of voters who were angry with the General Assembly. Many voters were unaware that they were also voting to change the method of election to the House.

Fifth, the cases since 1980 have shown that arguments can be made for and against the propriety of the topics covered: how taxation bills are passed, creation of statutory initiatives, term limits for legislators, and revising the method of legislative redistricting. The Author believes that, as a matter of policy, each of the proposals was a bad idea. And more importantly, the Author believes that the “conservative” approach to interpretation is the preferable one.

The Author has observed the chaos California’s initiative and referendum system has created. The Author fears that if Illinois allowed a liberal approach to initiatives for constitutional amendments (and God forbid, statutes!), professional political operatives would place petition gathers on every street corner.

But, in fairness, there is an argument to be made for a broader approach: one that at least takes into account some of the topics mentioned in the convention debates. Indeed, now that Illinois has a single-member-districts system for electing the House, would it not be proper, based on the Cutback Amendment case in 1980, to place before the voters an amendment returning to multimember districts with cumulative voting? The General Assembly is truly unlikely to put such a proposal before the voters, but why can’t voters obtain petition signatures to place that issue on the ballot? This reflects a southern Illinois phrase: “What goes around, comes around.” If the single-member-districts people can place their issue on the ballot, why can’t the

multimember-districts-with-cumulative-voting people do it as well?

It remains to be seen what the politically active organizations in Illinois will propose in the future, and what the Illinois Supreme Court will decide while interpreting article XIV, section 3.