

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

JOHN HOOKER, Chairman of the
PEOPLE'S MAP; FRANK CLARK; LEON
FINNEY; ELZIE HIGGENBOTTOM;
RAYMOND CHIN; FERNANDO GRILLO;
JORGE PEREZ; and CRAIG CHICO,

Plaintiffs,

v.

ILLINOIS STATE BOARD OF ELECTIONS;
CHARLES W. SCHOLZ, Chairman;
WILLIAM CADIGAN, ANDY
CARRUTHERS, BETTY COFFRIN,
ERNEST GOWEN, JOHN KEITH,
WILLIAM McGUFFAGE, and CASSANDRA
WATSON, members, in their official capacity;
LESLIE MUNGER, State Comptroller, in her
official capacity; MICHAEL FRERICHS,
State Treasurer, in his official capacity;
JESSE WHITE, State Secretary of State, in his
official capacity; DAVID D. ORR, County
Clerk of Cook County, in his official capacity;
BOARD OF ELECTION COMMISSIONERS
FOR THE CITY OF CHICAGO; MARISEL
HERNANDEZ, Chairwoman; WILLIAM
KRESSE, and JONATHAN SWAIN,

Defendants,

and

SUPPORT INDEPENDENT MAPS,

Intervenor-Defendant.

Case No. 16 CH 6539

Calendar 7

Judge Diane Joan Larsen

MEMORANDUM OPINION AND ORDER

John Hooker, Chairman of the People's Map, Frank Clark, Leon Finney, Elzie Higgenbottom, Raymond Chin, Fernando Grillo, Jorge Perez, and Craig Chico (collectively "Plaintiffs"), bring this action, with leave of court, for a declaratory judgment and to enjoin

disbursement of public funds in connection with a petition for a Redistricting Initiative (Compl., Ex. A) filed by Intervenor-Defendant Support Independent Maps (“Independent Maps”). The Defendants are the Illinois State Board of Elections (“Board of Elections”), Charles W. Scholz, Chairman, William Cadogan, Anthony Carruthers, Betty Coffrin, Ernest Gowen, John Keith, William McGuffage, and Cassandra Watson, members, in their official capacity, Leslie Munger, State Comptroller, in her official capacity (“Comptroller”), Michael Frerichs, State Treasurer, in his official capacity (“Treasurer”), Jesse White, State Secretary of State, in his official capacity (“Secretary of State”), David D. Orr, County Clerk of Cook County, in his official capacity (“Cook County Clerk”), Board of Election Commissioners for the City of Chicago, Marisel Hernandez, Chairwoman, William Kresse, and Jonathan Swain, Commissioners, in their official capacity (collectively “Defendants”).¹ The court has both subject matter and personal jurisdiction over the matter.

Plaintiffs and Independent Maps have cross-moved for judgment on the pleadings² pursuant to section 2-615(e) of the Illinois Code of Civil Procedure. 735 ILCS 5/2-615(e). For the following reasons, the court grants Plaintiffs’ motion for judgment on the pleadings and denies Independent Maps’ motion for judgment on the pleadings.

¹ On July 12, 2016, Defendants David D. Orr, County Clerk of Cook County, in his official capacity, and Board of Election Commissioners for the City of Chicago, Marisel Hernandez, Chairwoman, William Kresse and Jonathan Swain, Commissioners were voluntarily dismissed without prejudice pursuant to section 2-1009 of the Illinois Code of Civil Procedure. 735 ILCS 5/2-1009. (See Order dated July 12, 2016.)

² While neither motion specifically refers to the State Defendants, Plaintiffs’ request for relief in their motion seeks to have the “Defendants” enjoined from expending public funds in connection with the redistricting initiative. However, the injunction issue has not been briefed, and therefore, the court enters no judgment on counts VIII, X, and XI.

The Relevant Procedural History

On May 6, 2016, Independent Maps filed a petition for a Redistricting Initiative with Defendant Board of Elections to propose an Amendment to article IV, section 3 of the Illinois Constitution (Ill. Const. 1970, art. IV, § 3). (Compl., Ex. A, the Redistricting Initiative.)

On May 11, 2016, Plaintiffs (then “Petitioners”) filed a Petition for Leave to File an Action to Restrain and Enjoin the Disbursement of Public Funds. On May 18, 2016, Independent Maps filed a Petition to Intervene as a defendant to defend the Redistricting Initiative. (See Support Independent Maps’ Petition to Intervene at 1.) On May 20, 2016, the court granted Plaintiffs’ Petition finding reasonable ground for the filing of such action pursuant to Section 11-303 of the Illinois Code of Civil Procedure. 735 ILCS 5/11-303 (West 2014)). (See Order dated May 20, 2016.) The court also granted Independent Maps’ Petition to Intervene. (*Id.*)

Plaintiffs’ Complaint

Plaintiffs’ Complaint for Permanent Injunction to Enjoin the Disbursement of Public Funds and Declaratory Judgment (“Complaint”) contains the following allegations, which the court accepts as true for purposes of these cross motions for judgment on the pleadings:

The Parties

Plaintiff, the People’s Map, is a political committee organized pursuant to the Illinois Election Code to support and/or oppose referenda related to legislative redistricting. (Compl. ¶ 8.) Plaintiff John Hooker, Chairman of the People’s Map, is now and has been at all times pertinent to the Complaint, a citizen, resident, and taxpayer of the State of Illinois. (*Id.*) Plaintiff Frank Clark, is the President and Chairman of the Board of the Business Leadership Council, a not-for-profit organization composed of African-American business people. (Compl. ¶ 9.)

Plaintiffs Dr. Leon Finney, Elzie Higginbottom, and John Hooker, are members of the Business Leadership Council, and are now and have been at all times pertinent to the Complaint, citizens, residents, and taxpayers of the State of Illinois. (*Id.*) Plaintiff Raymond Chin is the President of the Chinatown Chamber of Commerce, a not-for-profit organization, and is now and has been at all times pertinent to the Complaint, a citizen, resident, and taxpayer of the State of Illinois. (Compl. ¶ 10.) Plaintiff Fernando Grillo is the Chairman of ASPIRA Illinois, a not-for-profit organization, committed to the self determination of Latinos, and is now and has been at all times pertinent to the Complaint, a citizen, resident, and taxpayer of the State of Illinois. (Compl. ¶ 11.) Plaintiff Jorge Perez is the Executive Director of the Hispanic American Construction Industry Association (“HACIA”), a not-for-profit organization that works to ensure the equitable participation of its constituents in the construction industry, and is now and has been at all times pertinent to the Complaint, a citizen, resident, and taxpayer of the State of Illinois. (Compl. ¶ 12.) Plaintiff Craig Chico is the Executive Director of the Back of the Yards Neighborhood Association, a community organization, and is now and has been at all times pertinent to the Complaint, a citizen, resident, and taxpayer of the State of Illinois. (Compl. ¶ 13.)

Defendant Board of Elections is responsible, pursuant to Section 1A-8 (10) of the Election Code (10 ILCS 5/1A-8 (10) (West 2014)), for determining the sufficiency of the petitions and signatures attached to the Redistricting Initiative petition. (Compl. ¶ 14.) Plaintiffs are informed and believe that in order to determine the validity and sufficiency of the petitions, the Board of Elections has already expended tens of thousands of taxpayer dollars and will continue to expend additional taxpayer dollars to do so. (*Id.*) The Board of Elections also has the duty of preparing and certifying the form of ballot for any proposed amendment to the Constitution of the State of Illinois, and such certification must occur no later than 74 days prior

to the November 8, 2016 election. 10 ILCS 5/1A-8 (5) (West 2014); 10 ILCS 5/28-5 (West 2014). (Compl. ¶ 15.)

Defendant Comptroller, pursuant to 15 ILCS 405/10.01, upon ascertaining the amount due any person from the Treasury of the State, has the duty to draw her warrant on the Treasury and to direct Defendant Treasurer, to pay the sum due. (Compl. ¶ 16.) Defendant Secretary of State, pursuant to 5 ILCS 20/2, is responsible for publishing a notice of the proposed amendments in various newspapers throughout the State, and for preparing and sending to all mailing addresses in the State a pamphlet containing both the current and proposed constitutional provisions, an explanation of the proposal, and arguments for and against each initiative. (Compl. ¶ 17.)

Plaintiffs' Challenges to the Redistricting Initiative

Plaintiffs' Complaint contains the following counts:

Count I seeks a declaratory judgment against all Defendants on the basis that the Redistricting Initiative violates article XIV, section 3 of the Illinois Constitution (Ill. Const. 1970, art. XIV, § 3) because it imposes duties on the Auditor General. (Compl. count I.)

Count II seeks a declaratory judgment against all Defendants on the basis that the Redistricting Initiative violates article XIV, section 3 of the Illinois Constitution (Ill. Const. 1970, art. XIV, § 3) because it changes the subject matter jurisdiction of the Illinois Supreme Court and the circuit courts. (Compl. count II.)

Count III seeks a declaratory judgment against all Defendants on the basis that the Redistricting Initiative violates article XIV, section 3 of the Illinois Constitution (Ill. Const. 1970, art. XIV, § 3) because it imposes new duties on two members of the Illinois Supreme Court. (Compl. count III.)

Count IV seeks a declaratory judgment against all Defendants on the basis that the Redistricting Initiative violates article XIV, section 3 of the Illinois Constitution (Ill. Const. 1970, art. XIV, § 3) because it requires political party affiliation by Illinois Supreme Court Justices. (Compl. count IV.)

Count V seeks a declaratory judgment against all Defendants on the basis that the Redistricting Initiative violates article XIV, section 3 of the Illinois Constitution (Ill. Const. 1970, art. XIV, § 3) because it does not change the structure and procedure of the General Assembly and it is not limited to the structure and procedure of the General Assembly. (Compl. count V.)

Count VI seeks a declaratory judgment against all Defendants on the basis that the Redistricting Initiative violates article XIV, section 3 of the Illinois Constitution (Ill. Const. 1970, art. XIV, § 3) because it removes the Attorney General's power to initiate actions concerning redistricting in the name of the People of the State. (Compl. count VI.)

Count VII seeks a declaratory judgment against all Defendants on the basis that the Redistricting Initiative violates the free and equal clause of the Illinois Constitution (Ill. Const. 1970, art. III, § 3). (Compl. count VII.)

Count VIII seeks a permanent injunction to enjoin Defendant Board of Elections and any of its officers or members from expending public funds related to the Redistricting Initiative. (Compl. count VIII.)

Count IX³ seeks a permanent injunction to enjoin Defendant Board of Election Commissioners for the City of Chicago and any of its officers or members and Cook County

³ Because the court entered an agreed order to voluntarily dismiss the named defendants in count IX, the court *sua sponte* has stricken count IX. (See Order dated July 13, 2016.)

Clerk David D. Orr from expending public funds related to the Redistricting Initiative. (Compl. count IX.)

Count X seeks a permanent injunction to enjoin Defendant Comptroller and Defendant Treasurer from expending public funds related to the Redistricting Initiative. (Compl. count X.)

Count XI seeks a permanent injunction to enjoin Defendant Secretary of State from expending public funds related to the Redistricting Initiative. (Compl. count XI.)

Defendants' Answers

On June 3, 2016, the State Defendants filed their answer. Also on June 3, 2016, Intervenor-Defendant Independent Maps filed its answer.

The Parties' Motions

On May 20, 2016, the court entered an agreed briefing schedule for the parties indicated desire to file cross motions for judgment on the pleadings and also granted each side leave to file oversized briefs. (*See* Order dated May 20, 2016.) On June 3, 2016, Plaintiffs filed Plaintiffs' Motion for Judgment on the Pleadings ("Plaintiffs' Motion"), and Intervenor-Defendant Independent Maps filed Support Independent Maps' Motion for Judgment on the Pleadings ("Intervenor-Defendant's Motion"), a Memorandum of Intervenor-Defendant Support Independent Maps in Support of its Motion for Judgment on the Pleadings ("Intervenor-Defendant's Memo"), and Exhibits to Memorandum of Intervenor-Defendant Support Independent Maps in Support of its Motion for Judgment on the Pleadings ("Intervenor-Defendant's Exhibits"). On June 17, 2016, Plaintiffs filed Plaintiffs' Response to Intervenor's Motion for Judgment on the Pleadings ("Plaintiffs' Response") and Intervenor-Defendant Independent Maps filed a Memorandum of Intervenor-Defendant Support Independent Maps in Opposition to Plaintiffs' Motion for Judgment on the Pleadings ("Intervenor-Defendant's

Response”). On June 24, 2016, Plaintiffs filed Plaintiffs’ Reply in Support of Their Motion for Judgment on the Pleadings (“Plaintiffs’ Reply”) and Intervenor-Defendant Independent Maps filed a Reply Memorandum of Intervenor-Defendant Support Independent Maps in Support of its Motion for Judgment on the Pleadings (“Intervenor-Defendant’s Reply”). Oral argument on the cross-motions was heard on June 30, 2016, and the court took the matter under advisement.⁴

Standard of Decision

“‘[A] motion for judgment on the pleadings is like a motion for summary judgment limited to the pleadings.’” *Lebron v. Gottlieb Memorial Hospital*, 237 Ill. 2d 217, 226 (2010) (citing *Employers Insurance of Wausau v. Ehlco Liquidating Trust*, 186 Ill. 2d 127, 138, (1999) quoting 3 R. Michael, Illinois Practice § 27.2, at 494 (1989), citing *Tompkins v. France*, 21 Ill. App. 2d 227 (1959)). “Judgment on the pleadings is proper if the pleadings disclose no genuine issue of material fact and that the movant is entitled to judgment as a matter of law.” *Lebron*, 237 Ill. 2d at 226 (citing *M.A.K. v. Rush-Presbyterian-St. Luke’s Medical Center*, 198 Ill. 2d 249 (2001)). See also 735 ILCS 5/2-615(e). “[C]onstitutionality is a pure question of law....” *Clark v. Illinois State Board of Elections*, 2014 IL App (1st) 141937, ¶ 15 (affirming grant of judgment on the pleadings regarding the unconstitutionality of a ballot initiative).

Discussion

Applicable Illinois Constitutional Provisions

Article IV, section 3, of our constitution (Ill. Const. 1970, art. IV, § 3) governs legislative redistricting. It provides that both Legislative Districts and Representative Districts “shall be compact, contiguous and substantially equal in population.” (*Id.* § 3(a).) Article IV, section 3 also provides that the General Assembly shall redistrict the Legislative Districts and the

⁴ The court notes that both sides to this controversy are passionate in their positions and exemplify the best of involved citizenry. Moreover, each side has been extraordinarily well-represented by highly experienced counsel whom the court commends.

Representative Districts in the year following each federal decennial census year. (*Id.* § 3(b).) If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be formed consisting of eight members, no more than four of whom shall be members of the same political party. (*Id.*) If the Commission fails to file an approved redistricting plan, the Illinois Supreme Court shall submit the names of two persons not of the same political party to the Secretary of State, who shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission. (*Id.*) The Illinois 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.*)

Article XIV, section 3, of our constitution (Ill. Const. 1970, art. XIV, § 3) governs the process for proposing amendments by ballot initiative and states, in relevant part, as follows:

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. *** 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.

Article III, section 3, of our constitution (Ill. Const. 1970, art. III, § 3) contains the free and equal clause and reads simply: “All elections shall be free and equal.”

The Proposed Amendments in the Redistricting Initiative

The Redistricting Initiative proposes significant amendments to article IV, section 3 of the Illinois Constitution (Ill. Const. 1970, art. IV, § 3) as follows:

Changes in Who Will Draw the District Maps

The Redistricting Initiative was circulated as a petition stating: “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.” (Compl., Ex. A.) The Redistricting Initiative would remove the General Assembly’s power to submit a redistricting plan currently provided in article IV, section 3 (Ill. Const. 1970, art. IV, § 3). Instead, the Redistricting Initiative would create a new “Independent Redistricting Commission” (“IRC”) with authority to draw redistricting plans. (*See* Compl., Ex. A., § (a).)

The IRC would be created through a two-step process. (*Id.*, § (b).) The first step would require the Auditor General to assume and perform the following new duties. Between January 1 and March 1 of each federal census year, the Auditor General shall request and accept applications to be a Reviewer. (*Id.*) The Auditor General must review the applications and select a pool of 30 applicants using the following considerations:

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 and adherence to standards of ethical conduct and has been unaffiliated with any political party for the three years preceding appointment. (*Id.*)

The Auditor General shall then publicly select by random draw three members of the pool to serve on an Applicant Review Panel. (*Id.*)

The second step of the process would require the Auditor General to assume and perform the following additional new duties. Between January 1 and March 1 of each Federal census year, the Auditor General shall request and accept applications to serve as a Commissioner on

the IRC. (*Id.*, § (c).) By May 31 of that year, the Applicant Review Panel shall select a pool of 100 potential Commissioners. (*Id.*) By June 23 of that year, the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate may each remove up to five potential Commissioners. (*Id.*, § (d).) By June 30 of that year, the Applicant Review Panel shall publicly select seven Commissioners by random draw. (*Id.*) The Redistricting Initiative also contains a number of requirements for the composition of the IRC. (*Id.*) The four legislative leaders would then complete the 11 member IRC by choosing one member each from among the remaining applicants “on the basis of the appointee’s contribution to the demographic and geographic diversity of the Commission.” (*Id.*)

The 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. (*Id.*, § (e).)

The IRC is required to file a district plan by June 30 of the year after the census is completed. (*Id.*, § (f).) 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. (*Id.*)

Changes in the Standards by Which District Maps are Drawn

In addition to removing the power of the legislature to draw district maps, the Redistricting Initiative would also change the requirements for drawing districts by imposing the following requirements on a new legislative map:

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). (*Id.*, § (a).)

Changes in How a District Map Plan Can be Challenged

Finally, the Redistricting Initiative would change how a district map plan can be challenged in two significant ways. First, the Redistricting Initiative states that “[t]he Supreme Court shall have original jurisdiction in cases relating to matters under this Section.” (*Id.*, § (h).) This would change the Supreme Court’s jurisdiction from its current “original *and exclusive* jurisdiction over actions concerning redistricting the House and Senate.” *See* Ill. Const. 1970, art. XIV, § 3 (emphasis added). Secondly, the Redistricting Initiative does not provide for the Attorney General to have the power and duty to initiate actions concerning redistricting in the name of the People of the State. (Compl., Ex. A.)

The Question Before the Court and the Relevant Cases

The court begins its analysis of this matter by noting that it voices no opinion as to the wisdom or desirability of the Redistricting Initiative before it for that is not a proper role for the court. Rather, the court's judgment is confined solely to "the question of whether a proposed amendment to our constitution satisfies the constitution's own requirements for its amendment." *Chicago Bar Ass'n v. Illinois State Board of Elections*, 161 Ill. 2d 502, 528 (1994) ("CBA II"). As set forth above, a provision to amend the legislative article of our constitution by direct initiative (Ill. Const. 1970, art. XIV, § 3) was added to our constitution in 1970. *The Chicago Bar Ass'n v. State Board of Elections*, 137 Ill. 2d 394, 398 (1990) ("CBA I"). The Illinois Supreme Court has held that "determination of whether a proposed amendment meets the Constitution's requirements for amendment is a question for the courts." *Coalition for Political Honesty v. State Board of Elections*, 65 Ill. 2d 453, 463 (1976) ("Coalition I").

In *Coalition I*, the Illinois Supreme Court found that the word "and" in the "structural and procedural subjects" clause of article XIV, section 3 (Ill. Const. 1970, art. IV, § 3) meant that proposed amendments must be both structural and procedural, such as a proposal to convert from a bicameral to a unicameral legislature or to convert from multiple- to single-member legislative districts. 65 Ill. 2d at 466. It expressly rejected an interpretation that amendments could be either "structural" or "procedural." *Id.* Since then, five other cases have interpreted the requirement in article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) that such amendments must be limited to structural and procedural subjects contained in the legislative article (Ill. Const. 1970, art. IV, § 3). 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.

In *Coalition for Political Honesty v. State Board of Elections*, 83 Ill. 2d 236 (1980) (“*Coalition I*”), the Illinois Supreme Court held that a petition which proposed to amend the legislative article of the Illinois Constitution by reducing the size of the House of Representatives, abolishing cumulative voting, and electing representatives from single member districts related “directly to the ultimate purpose of structural and procedural change in the House of Representatives.” *Coalition II*, 83 Ill. 2d at 260. This is the only reported decision to uphold a ballot initiative for submission to the electorate.

In *Lousin v. State Board of Elections*, 108 Ill. App. 3d 496, 503-04 (1st Dist. 1982), the appellate court affirmed the grant of summary judgment to plaintiffs who sought to strike an initiative that would have allowed bills to be initiated by voters and created a process for such measures to become law. The appellate court found that “[l]egislative power is a concept rather than an institution which has a structure such as the General Assembly.” *Id* at 503. This finding led the appellate court to “conclude that the constitutional initiative proposed by the Coalition is an attempt to expand article XIV, section 3, beyond the scope intended by the delegates of the constitutional convention of 1970.” *Lousin*, 108 Ill. App. 3d at 504.

In *CBA I*, the Illinois Supreme Court considered a proposal that was commonly called “the Tax Accountability Amendment,” which would have required each house of the General Assembly to have a revenue committee, hold public hearings, and require a three-fifths vote on bills that would result in a State revenue increase. *CBA I*, 137 Ill. 2d at 395, 400. In reversing the circuit court’s judgment allowing the amendment, the Court found “that the proposed Amendment is not *limited* to the structural and procedural subjects of article IV.” *Id.* at 404 (emphasis in original). It held 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.” *Id.*

In *CBA II*, the Illinois Supreme Court considered a proposal which would have required a limit on the number of years a State legislator may serve in the General Assembly. *CBA II*, 161 Ill. 2d at 504. In affirming the circuit court’s judgment striking the amendment, the Court found that “the proposed amendment does not meet the ‘structural and procedural’ requirement of article XIV, section 3.” *CBA II*, 161 Ill. 2d at 509. The Court explained its finding as follows:

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. *Id.*

The final case to interpret the requirements of article XIV, section 3, of the Illinois Constitution (Ill. Const. 1970, art. XIV, § 3) was *Clark*, 2014 IL App (1st) 141937. In *Clark*, a group of not-for-profit organizations and citizen taxpayers of Illinois (many of whom are Plaintiffs in the present case) brought an action to restrain the use of public funds related to two petitions that proposed amendments to our constitution. “One petition, known as the Term Limits Initiative, sought to amend three sections of the legislative article (Ill. Const 1970, art. IV), while the other petition sought to change the legislative redistricting process.” *Clark*, 2014 IL App (1st) 141937, ¶ 1. The trial court found the Term Limits Initiative violated article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) governing ballot initiatives, and article III, section 3

(Ill. Const. 1970, art. III, § 3), the free and equal clause.⁵ In affirming the trial court that the Term Limits Initiative violated article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3), the Illinois Appellate Court for the First District held that the proposed Term Limits Initiative contained a provision that was neither structural nor procedural because the Illinois Supreme Court has already held that term limits involve “the eligibility or qualifications of an individual legislator.” *Id.* ¶ 24 (quoting *CBA II*, 161 Ill. 2d at 509-10).

The appellate court also affirmed the trial court’s ruling that the Term Limits Initiative violated the free and equal clause of article III, section 3 (Ill. Const. 1970, art. III, § 3). *Clark*, *Id.* ¶ 30. It observed that “in the context of a ballot initiative, our supreme court has stated that separate questions may be combined in a single proposition as long as they are reasonably related to a common objective in a workable manner.” *Clark*, *Id.* ¶ 28. The appellate court in *Clark* noted that the amendment had six components: “(1) establish term limits for members of the General Assembly; (2) require a two-thirds vote in each house to override a Governor’s veto; (3) abolish two-year senatorial terms; (4) increase the size of the House of Representatives to 123 representatives; (5) decrease the size of the Senate to 41 Senators; and (6) divide senatorial districts into three representative districts instead of two.” *Id.* ¶ 29. It found “that these components are separate and unrelated.” *Id.* The court specifically commented that it was “not convinced by the Committee’s attempt to unify these various components under the common objective of increasing the responsiveness of the General Assembly and reducing the influence of partisan and special interests.” *Id.*

⁵ The trial court also found the Redistricting Initiative unconstitutional under article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3, but found it did not violate article III, section 3 (Ill. Const. 1970, art. III, § 3). (See *Frank Clark, et al. v. Illinois State Board of Elections, et al.*, 14 CH 7356, Order and Opinion dated June 27, 2014 (Intervenor-Defendant’s Ex. C)). The trial court’s decision on the Redistricting Initiative was not appealed by any party.

The Court's Conclusions

Count I

In count I of the Complaint, Plaintiffs challenge the Redistricting Initiative on the basis that it assigns duties to the Auditor General. (*See* Compl. count I, Ex. A.) The Office of the Auditor General is created by article VIII, section 3 (Ill. Const. 1970, art. VIII, § 3) and is not referenced in article IV (Ill. Const. 1970, art. IV). The Auditor General, is, thus, a subject outside of article IV. Plaintiffs assert that on this basis alone the Redistricting Initiative must fail. (Plaintiffs' Motion at 14-16.)

Independent Maps forwards no argument to this point standing alone. Instead, Independent Maps posits a two-part argument as follows. First, it claims that "an initiative that addresses a structural and procedural subject contained in Article IV, § 3, such as redistricting, does not transgress the boundaries of Article XIV, § 3 simply because it reduces powers granted in Article IV to state officers who are not part of the legislative branch." (Intervenor-Defendant's Response at 16.) Independent Maps cites to the *Clark* trial court decision as support for this point where the court agreed that "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." (*See* Intervenor-Defendant's Ex. C at 9-10.) Next, Independent Maps contends that

[t]he same principle applies where the initiative would assign new duties to state officers like the Auditor General who are not part of the legislative branch. So long as those duties are strictly limited to redistricting – as they are here – the initiative meets the requirement that it be 'limited to structural and procedural subjects contained in Article IV.'

(Intervenor-Defendant's Response at 16.)

However, there is no controlling authority to support Independent Maps' position, and the court disagrees with Independent Maps that an initiative which assigns duties to state officers

who are not part of the legislative branch does not take the initiative outside of Article IV so long as the duties are strictly limited to redistricting. The court concludes the Redistricting Initiative violates article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) because it is not limited to the “structural and procedural subjects contained in Article IV” for two separate reasons. First, the Office of the Auditor General is in itself a subject outside of article IV (Ill. Const. 1970, art. IV) and so the Redistricting Initiative is not confined to a subject of article IV (Ill. Const. 1970, art. IV). Second, the assignment of duties to the Auditor General by the Redistricting Initiative violates article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) because it would be a substantive change to the Auditor General’s duties, which are defined in article VIII (Ill. Const. 1970, art. VIII, § 3). Therefore, the court grants Plaintiffs’ motion for judgment on the pleadings as to count I of the Complaint and denies Independent Maps’ motion for judgment on the pleadings as to count I of the Complaint.

Count II

In count II of the Complaint, Plaintiffs challenge the Redistricting Initiative on the basis that it changes the subject matter jurisdiction of the Illinois Supreme Court and the circuit courts. (*See* Compl. count II, Ex. A.) Article IV, section 3 grants the Illinois Supreme Court “original and exclusive jurisdiction” over redistricting cases. Ill. Const. 1970, art. IV, § 3. Article VI, section 9 states that “Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to the redistricting of the General Assembly and to the ability of the Governor to serve or resume office.” Ill. Const. 1970, art. VI, § 9. The Redistricting Initiative states that “[t]he Supreme Court shall have original jurisdiction in cases relating to matters under this Section.” (Compl. Ex. A.) Plaintiffs assert that by omitting “and exclusive” the Redistricting Initiative would

confer subject matter jurisdiction on the circuit court to hear redistricting cases. (Plaintiffs' Motion at 19.) It would also create a third type of original jurisdiction for the Supreme Court and the circuit courts: mandatory and concurrent original jurisdiction where both would exercise original jurisdiction simultaneously. (*Id* at 19-20.) Plaintiffs contend that the structural and procedural clause of article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) does not allow an initiative to change the jurisdiction of the courts.

Independent Maps responds "that the only change being made is to a provision of the Legislative Article that relates directly to (and only to) redistricting, which is a structural and procedural subject contained in Article IV." (Intervenor-Defendant's Response at 20.) Independent Maps insists that "the Redistricting Initiative does not purport to alter the jurisdiction conferred by the judicial article. Instead, the Redistricting Initiative is silent on the question of whether the Supreme Court's original jurisdiction is concurrent or exclusive, leaving that issue to be decided elsewhere." (Intervenor-Defendant's Response at 20.) Independent Maps claims that there is no inconsistency between the Redistricting Initiative and article VI, section 9 (Ill. Const. 1970, art. VI, § 9) which provides that "Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office." Independent Maps claims that "[t]his section *could* be read as a reference to the judicial review provisions in the legislative article, such that concurrent Circuit Court jurisdiction is eliminated only 'when' original and exclusive jurisdiction is conferred on the Supreme Court by Article IV." (Intervenor-Defendant's Response at 21 (emphasis added).) Independent Maps concludes then, "if so, the Redistricting Initiative would not alter the judicial article at all." (*Id.*)

The court finds Independent Maps' position unavailing for two reasons. First, there is no controlling authority holding that the jurisdiction of Illinois courts to determine whether a redistricting plan is legally sufficient is a structural and procedural subject of article IV (Ill. Const. 1970, art. IV), and the court finds it is not. While the jurisdiction of the Illinois Supreme Court on redistricting cases is delineated in article IV, section 3 (Ill. Const. 1970, art. IV, § 3) and is, thus, a subject of Article IV, the Illinois Supreme Court's jurisdiction is not a *structural and procedural* subject of Article IV as those terms have been defined in the case law. "Structure" refers to "the structure of the legislature as an institution." *CBA II*, 161 Ill. 2d at 509. "Procedural" refers to "the General Assembly's procedures." *Id.* Likewise, there is no indication that the framers to our constitution intended to allow a ballot initiative under article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) to change Illinois courts' subject matter jurisdiction on redistricting cases.

Additionally, by removing the Illinois Supreme Court's original and exclusive jurisdiction in art. IV, section 3 (Ill. Const. 1970, art. IV, § 3), the Redistricting Initiative would arguably conflict with the clause in article VI, section 9 (Ill. Const. 1970, art. VI, § 9) "when the Supreme Court has original and exclusive jurisdiction relating to redistricting." Even if there were no actual conflict, the circuit courts would then no longer be limited by "when the Supreme Court has original and exclusive jurisdiction relating to redistricting" (Ill. Const. 1970, art. VI, § 9) because, under the amendment, the Supreme Court would no longer have original and exclusive jurisdiction relating to redistricting, and that would certainly effect an actual change in subject matter jurisdiction of circuit courts. Independent Maps' counsel candidly admitted in oral argument its position that "the circuit courts are an appropriate venue to have trials about redistricting issues...." (June 30, 2016 hearing, Tr. at 53:23-25.) It is apparent then that one of

the purposes of the Redistricting Initiative's removal of exclusive jurisdiction in the Supreme Court in redistricting cases is in fact to change circuit court subject matter jurisdiction. However, whether or not the Supreme Court's subject matter jurisdiction could somehow be considered a structural and procedural subject of article IV, section 3 (Ill. Const. 1970, art. IV, § 3) (which the court finds it cannot), the subject matter jurisdiction of the circuit courts is clearly a substantive matter beyond a structural and procedural subject of article IV, section 3 (Ill. Const. 1970, art. IV, § 3). The court concludes the Redistricting Initiative violates article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) because, even apart from the Illinois Supreme Court's subject matter jurisdiction, the circuit courts' subject matter jurisdiction is not among the "structural and procedural subjects contained in Article IV." Therefore, the court grants Plaintiffs' motion for judgment on the pleadings as to count II of the Complaint and denies Independent Maps' motion for judgment on the pleadings as to count II of the Complaint.

Count III

In count III of the Complaint, Plaintiffs challenge the Redistricting Initiative on the basis that it assigns duties to two individual Illinois Supreme Court justices. (*See* Compl. count III, Ex. A.) The Illinois Supreme Court is created by article VI, section 3 of our constitution. Ill. Const. 1970, art. VI, § 3. Article IV, section 3 (Ill. Const. 1970, art. IV, § 3) currently provides for the Illinois Supreme Court to pick two names if the eight member redistricting commission is deadlocked. The Redistricting Initiative would remove the Supreme Court's current role in selecting two names and instead require only the Chief Justice and the most senior Judge of the Supreme Court who is not affiliated with the same political party as the Chief Justice" to pick one person to be the Special Commissioner for Redistricting. (Compl. Ex. A.) Plaintiffs assert

this violates the structural and procedural clause of article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) for the following two reasons.

First, Plaintiffs contend that the Illinois Supreme Court and individual justices are not a subject of article IV (Ill. Const. 1970, art. IV) at all, much less a structural or procedural one. (Plaintiffs' Motion at 17.) This argument and Independent Maps' response follow along the lines of the arguments regarding the Auditor General in count I of the Complaint. The court disagrees with Plaintiffs' contention that the Illinois Supreme Court is not a subject of article IV (Ill. Const. 1970, art. IV). The text of article IV, section 3 (Ill. Const. 1970, art. IV, § 3) delineates the Illinois Supreme Court's jurisdiction over redistricting cases and the Illinois Supreme Court itself has acknowledged that, stating "we have original and exclusive jurisdiction under article IV, section 3, of the constitution (Ill. Const. 1970, art. IV, § 3)...." *People ex rel. Burris v. Ryan*, 158 Ill. 2d 469, 473 (1994). However, for the reasons stated above regarding count II, the court agrees that the Illinois Supreme Court is not a *structural and procedural* subject of article IV (Ill. Const. 1970, art. IV).

Secondly, the Redistricting Initiative on this point does not impose any duties on the Illinois Supreme Court *qua* Court, but imposes duties only on two individual Illinois Supreme Court justices (*see* Compl. Ex. A). Individual Supreme Court justices are not a subject of article IV (Ill. Const. 1970, art. IV) at all. Therefore, for the reasons stated above regarding count I involving the Auditor General, the court finds that the Redistricting Initiative violates article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) by assigning duties to Illinois Supreme Court justices, who are officials outside of article IV (Ill. Const. 1970, art. IV). Such duties would also constitute impermissible substantive changes. *See CBA I*, 137 Ill. 2d at 403 (finding that "the proposal and the debates reflected the intent that the limited initiative not be used to accomplish

substantive changes in the constitution, but that the proposals pertain only to the basic qualities of the legislative branch – namely, structure, size, organization, procedures, etc.”).

Additionally, article VI, section 16 provides that “[g]eneral administrative and supervisory authority over all courts is vested in the Supreme Court and shall be exercised by the Chief Justice in accordance with its rules. The Supreme Court shall appoint an administrative director and staff, who shall serve at its pleasure, to assist the Chief Justice in his duties.” Ill. Const. 1970, art. VI, § 16. Pursuant to article VI, section 16 (Ill. Const. 1970, art. VI, § 16), the duties of the Chief Justice of the Illinois Supreme Court have been established by Illinois Supreme Court Rule 30 (Ill. S. Ct. R. 30 (eff. Jan. 1, 1989)). The new duties on the two individual Supreme Court justices imposed by the Redistricting Initiative would work a substantive change to article VI, section 16 (Ill. Const. 1970, art. VI, § 16) and is unconstitutional for that reason as well. Therefore, the court grants Plaintiffs’ motion for judgment on the pleadings as to count III of the Complaint and denies Independent Maps’ motion for judgment on the pleadings as to count III of the Complaint.

Count IV

In count IV of the Complaint, Plaintiffs challenge the Redistricting Initiative on the basis that imposing a requirement that the Chief Justice and another Illinois Supreme Court justice must affiliate with a political party so that a Special Commissioner can be selected is not a structural or procedural subject of article IV (Ill. Const. 1970, art. IV). (*See* Comp. count IV, Ex. A; Plaintiffs’ Motion at 18.) The arguments on this challenge are similar to those regarding count III.

In addition to individual Illinois Supreme Court justices not being a subject of article IV, section 3 (Ill. Const. 1970, art. IV, § 3) at all, Plaintiffs argue as follows. First, article VI, section

12(a) (Ill. Const. 1970, art. VI, § 12(a)) allows a Supreme Court justice to be nominated at primary elections or by petition.⁶ Additionally, article VI, section 12(d) provides that “[t]he names of Judges seeking retention shall be submitted to the electors, separately and without party designation, on the sole question whether each Judge shall be retained in office for another term.” Ill. Const. 1970, art. VI, § 12(d). Finally, article VI, section 13(a) states that “[t]he Supreme Court shall adopt rules of conduct for Judges and Associate Judges.” Ill. Const. 1970, art. VI, § 13(a). Pursuant to article VI, section 13(a) (Ill. Const. 1970, art. VI, § 13(a)), the Illinois Supreme Court regulates the political party activity of sitting judges. *See* Ill. S. Ct. R. 67 (eff. Mar. 24, 1994). Thus, our constitution does not require an Illinois Supreme Court justice to have a political affiliation, and the Supreme Court by rule has exercised its power to regulate the political party affiliation of judges. Plaintiffs conclude that the political party affiliation of Illinois Supreme Court justices is not a structural and procedural subject of Article IV. Ill. Const. 1970, art. IV. Because article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) limits amendment by initiative to structural and procedural subjects contained in article IV (Ill. Const. 1970, art. IV), the Redistricting Initiative is unconstitutional on this basis. (Plaintiffs’ Motion at 17-18.)

Independent Maps responds that “this provision simply recognizes that the Illinois Constitution provides for the partisan election of Supreme Court justices and that historically justices have run as Democrats or Republicans when they are elected to the Court.” (Intervenor-Defendant’s Response at 18.) Independent Maps continues that “it is easy to determine which two justices would select the Special Commissioner -- the Chief Justice has only to consider how

⁶ On this point, the court notes that “the concept of nomination by petition [is] to accommodate independent candidates.” *Phelan v. County Officers Electoral Board*, 240 Ill. App. 3d 368, 376 (referring to Delegate (later Appellate Court Justice) John M. Karns’ presentation on the Convention floor of the proposal to provide for nomination of judges “in primaries or by petition”).

her colleagues identified themselves when they ran for office.” (*Id.* at 19.) Independent Maps concludes that nothing in the Redistricting Initiative requires a sitting justice to announce a current political affiliation. (*Id.*)

Plaintiffs reply that Independent Maps’ aspect is improperly focused on how members of the Supreme Court politically identified themselves when they ran for office whereas the Redistricting Initiative is phrased in the present tense and requires the Chief Justice and “the most senior Judge of the Supreme Court who *is* not affiliated with the same political party as the Chief Justice” to pick the Special Commissioner. (Comp., Ex. A (emphasis added).) Plaintiffs note that it is mandatory in Illinois that judicial retention ballots are without party designation, and therefore, the only way for the particular Supreme Court justices to fulfill the proposed amendment contained in the Redistricting Initiative would be to declare a party affiliation to determine that he or she does not have the same party affiliation as the Chief Justice. (Plaintiffs’ Reply at 9.) Plaintiffs conclude that this requirement is a subject outside of the structural and procedural subjects of article IV (Ill. Const. 1970, art. IV).

The court finds that the text of Redistricting Initiative requires the Chief Justice and at least one other justice not have the same political affiliation at the time of selection of the Special Commissioner. The court concludes that the Redistricting Initiative violates article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) for the following reasons. First, as stated above regarding count III, individual Illinois Supreme Court justices are not a subject of article IV (Ill. Const. 1970, art. IV) at all. Thus, *a fortiori*, the political affiliation of judges is not a structural and procedural subject of Article IV (Ill. Const. 1970, art. IV). Secondly, the requirement that at least two Illinois Supreme Court justices not have the same political affiliation adds a new eligibility requirement for the office of Judge of the Illinois Supreme Court and would change

art. VI, section 11 (Ill. Const. 1970, art. VI, § 11). While Independent Maps' counsel denied at oral argument that this was an eligibility requirement and took the position that the tiebreaker provision would simply not work if all the justices were of the same political party (*see* June 30, 2016 hearing, Tr. at 69:6-70:22), the court disagrees. To clarify, the court's focus is not on whether a particular part of the Redistricting Initiative would work or whether it would be easy to determine political affiliation, the court's sole focus is on whether the proposed amendment is constitutional. The court finds the amendment adds new eligibility requirements for the office of Illinois Supreme Court Justice and is unconstitutional on that basis. Therefore, the court grants Plaintiffs' motion for judgment on the pleadings as to count IV of the Complaint and denies Independent Maps' motion for judgment on the pleadings as to count IV of the Complaint.

Count V

In count V of the Complaint, Plaintiffs challenge the Redistricting Initiative on the basis that it violates article XIV, section 3 (Ill. Const. 1970 art. XIV, § 3) because it does not change the structure and procedure of the General Assembly. (*See* Compl. count V, Ex. A.) Plaintiffs' argument proceeds as follows. The Redistricting Initiative does not change article IV, section 1 (Ill. Const. 1970, art. IV, § 1) which establishes the structure of the General Assembly because, if it were enacted, the General Assembly would still consist of a Senate and a House of Representatives elected by the electors from 59 Legislative Districts and 188 Representative Districts. (*See* Plaintiffs' Motion at 20.) The Redistricting Initiative only attempts to change the procedure for how Legislative and Representative maps are drawn which does not involve any of the General Assembly's procedures. (*Id.*)

Independent Maps responds that "redistricting is inherently a structural subject because how districts are drawn is one of the key factors in determining the makeup of the General

Assembly.” (Intervenor-Defendant’s Response at 6.) Independent Maps further responds that “the redistricting process is a quintessential example of a ‘procedural subject[] contained in Article IV.’” (*Id.*) Independent Maps relies on several points to support its argument regarding redistricting, in general, and the Redistricting Initiative, in particular, as being structural and procedural subjects of article IV (Ill. Const. 1970, art. IV).

First, Independent Maps cites to the legislative history regarding the limited initiative process established by article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3), quoting its sponsor, Delegate Perona, who was asked at the Constitutional Convention by Delegate Tomei as follows about the application of the proposed article XIV:

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?

(Intervenor-Defendant’s Ex. F at 2712 (emphasis added).) Delegate Perona responded “Yes. Those are the critical areas, actually.” (*Id.*) Independent Maps continues that the delegates “recognized that it is a ‘fundamental fact of life’ that legislators have a ‘vested interest in the legislative branch’ that would make them less likely to propose needed changes in the legislature article.” (Intervenor-Defendant’s Response at 6; Intervenor-Defendant’s Ex. E at 1399-1400.) Independent Maps argues that these concerns apply with particular force to redistricting, which creates an inherent conflict of interest for legislators. (Intervenor-Defendant’s Response at 7.) Independent Maps cites to the United States Supreme Court case of *Arizona State Legislature v. Arizona Indep. Redistricting Comm’n*, __U.S.__, 135 S. Ct. 2652, 2676-77 (2015) as further support for this point where the Court recently noted the “conflict of interest implicit in legislative control over redistricting.”

Secondly, Independent Maps emphasizes that the Illinois Supreme Court has never stated that *only* an initiative that resulted in a change to the total number of legislators or to a conversion to a unicameral legislature would be constitutional. (Intervenor-Defendant's Response at 8.) Independent Maps also continues that the Illinois Supreme Court has not stated that the *only* way an initiative could constitute a procedural subject was to change the process by which a law was made. (*Id.*) In this regard, Independent Maps maintains that the references in *CBA II*, 161 Ill. 2d at 509, in striking down a term limits initiative because "there would still be the same number of Senators and Representatives" and "laws would be passed in the same manner" are *examples* of structural and procedural subjects, rather than the entirety of permissible structural and procedural subjects under article IV (Ill. Const. 1970, art. IV). (Intervenor-Defendant's Response at 8.)

Third, Independent Maps further argues that *Coalition I*, 65 Ill. 2d 453, demonstrates that the Illinois Supreme Court did not intend to limit initiatives to the specific examples it gave in *CBA II*, 161 Ill. 2d 502, 509. In *Coalition I*, the Illinois Supreme Court explained that a citizen initiative seeking to convert from multiple- to single-member districts could be put to the electorate under article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) because it would relate to both a structural and procedural subject of article IV (Ill. Const. 1970, art. IV). 65 Ill. 2d at 466. Independent Maps points out that this in fact occurred in *Coalition II*, 83 Ill. 236, the only citizen initiative placed on the ballot. (Intervenor-Defendant's Response at 9-10.) Independent Maps analogizes that if changes to the number and size of districts are structural and procedural, then so are changes to the criteria for drawing those same districts every ten years. In both situations, the makeup of the entire General Assembly as an institution would be affected by redrawing the district lines. (Intervenor-Defendant's Response at 9.) Independent Maps emphasizes that "[t]he

Redistricting Initiative would alter the process by which legislative redistricting is accomplished in a variety of ways, including by giving the revamped Independent Redistricting Commission the responsibility for formulating a district plan in the first instance,” and therefore, the procedural requirement is also satisfied. (Intervenor-Defendant’s Memo at 19.)

Finally, Independent Maps contends that *Lousin*, 108 Ill. App. 3d 496, has no relevance here because it stands for the proposition that the General Assembly’s legislative power on subjects outside of Article IV cannot be altered or diminished by ballot initiative. Nothing in *Lousin* suggests that a ballot initiative cannot be used to change the General Assembly’s legislative powers on issues, like redistricting, that appear only in Article IV. (Intervenor-Defendant’s Response at 10-11.)

Plaintiffs’ Reply to Independent Maps on this count critiques its reliance on the legislative history of article XIV. Plaintiffs argue that “redistricting” is not synonymous with “apportionment.” (See Plaintiffs’ Reply at 12 and Plaintiffs’ Response at 24, n. 6.) On this point, the court finds that while “redistricting” is not synonymous with “apportionment” in United States Supreme Court jurisprudence (see *Department of Commerce v. U.S. House of Representatives*, 525 U.S. 316, 328 (1999) (distinguishing between the calculation of numbers necessary to apportion representation and drawing district lines)), the delegates to the 1970 Constitutional convention used the term “apportionment” to mean “redistricting.” (See 6 Proceedings, Committee on the Legislature, Committee Proposal 1298-99 (providing a section titled “Apportionment” setting forth standards, methods, and post-apportionment residency requirements for defining districts).) Even our Supreme Court used the terms “apportionment” and “redistricting” interchangeably in 1971 in *People ex rel. Scott v. Grivetti*, 50 Ill. 2d 156, 161-63 (1971) (noting “[i]t is abundantly clear that the intent of the delegates to the 1970

Constitutional convention was to create a redistricting commission composed of four legislators and four public members, and that the purpose in so doing was to bring into the commission a fresh, perhaps more objective, approach to apportionment problems which had deadlocked the legislature.”).

Other than challenging Independent Maps’ use of the word “apportionment” by Delegate Perona in the Constitutional convention debates, Plaintiffs reiterate their contention that what was true in *CBA II* – that the General Assembly would remain a bicameral legislature consisting of a House and Senate with 177 members – is true in the present case and that, therefore, the initiative does not address a structural subject and violates article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3). (Plaintiffs’ Response at 12.) In this regard, Plaintiffs point out that the word “structure” appears nowhere in Article IV other than the heading of section 1 and that when *CBA II*, 161 Ill. 2d at 509, struck down the term limit initiative as not addressing the structural subjects of Article IV, the Illinois Supreme Court was referring to those subjects found in section 1 which would be unchanged by the present Redistricting Initiative. (Plaintiffs’ Response at 13.) Plaintiffs also reiterate their contention that the Redistricting Initiative changes how district maps are drawn, who draws the maps, and how the maps are challenged, but it does not change the legislature’s process and, therefore, does not address a procedural subject of article IV (Ill. Const. 1970, art. IV). (Plaintiffs’ Response at 13.)

After weighing the relative merits of the parties’ arguments, the court finds that redistricting in general is a structural and procedural subject of article IV (Ill. Const. 1970, art. IV), and that the Redistricting Initiative at issue addresses a structural and procedural subject of article IV (Ill. Const. 1970, art. IV). The court bases its decision on the following. First, the legislative history of article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3), and, in particular, the

statements made by Delegate Perona, the sponsor of article XIV (Ill. Const. 1970, art. XIV), that it was intended to address “apportionment” which was understood at that time to mean “redistricting” make clear that citizen initiatives could encompass redistricting. Also, the text of article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) limits amendments only to structural and procedural subjects contained in article IV (Ill. Const. 1970, art. IV) generally, without a further limitation of any particular section of article IV (Ill. Const. 1970, art. IV). Thus, nothing in the text of article XIV, section 3 (Ill. Const. 1970, art. XIV, § 3) excludes article IV, section 3 (Ill. Const. 1970, art. IV, § 3) as a subject for a citizen initiative. The very title of article IV, section 3 (Ill. Const. 1970, art. IV, § 3) is “Legislative Redistricting,” so just giving it its plain meaning, the structural and procedural subjects of article IV, section 3 should encompass redistricting.

Secondly, the Redistricting Initiative addresses a structural subject of the General Assembly as an institution because changing the rules for drawing decennial redistricting maps relates “directly to the ultimate purpose of structural and procedural change” (*see Coalition II*, 83 Ill. 2d at 260) of the General Assembly. Also, the Redistricting Initiative would restructure the existing Commission by not only increasing the number of members who serve on it, but also changing the way they are chosen. This is a change affecting the General Assembly as an institution.

Lastly, the Redistricting Initiative also addresses a procedural subject because the proposed changes to the redistricting process would fundamentally alter the way the General Assembly currently enacts district plans. In sum, the court shares the same view held by the trial court in *Clark* that redistricting is “fair game” for a citizen initiative. However, the issue raised by Plaintiffs in count V also includes a claim that “the Redistricting Initiative is not *limited* to a structural and procedural subject contained in Article IV” (Compl. ¶ 66 (emphasis added)). The

court cannot grant judgment on the pleadings to Independent Maps on count V because the court finds that the Redistricting Initiative is not limited to structural and procedural subjects contained in article IV (Ill. Const. 1970, art. IV) for the reasons stated-above regarding the other counts.⁷ Therefore, the court grants Plaintiffs' motion for judgment on the pleadings as to count V of the Complaint and denies Independent Maps' motion for judgment on the pleadings as to court V of the Complaint.

Count VI

In count VI of the Complaint, Plaintiffs challenge the Redistricting Initiative on the basis that it removes the Attorney General's power to initiate actions concerning redistricting in the name of the People of the State. (*See* Compl. count VI, Ex A.) Article IV, section 3, of our constitution states that "[t]he 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." Ill. Const. 1970, art. IV, § 3. Article V, section 15, of our constitution provides that "[t]he Attorney General shall be the legal officer of the State, and shall have the duties and powers that may be prescribed by law." Ill. Const. 1970, art. V, § 15. The Redistricting Initiative does not provide for the Attorney General to initiate action concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State. (*See* Compl. Ex. A.)

Plaintiffs argue two points in this count. First, the duties and powers of the Attorney General are not structural and procedural subjects of article IV (Ill. Const. 1970, art. IV). (*See* Plaintiffs' Motion at 20.) Secondly, how a redistricting plan's legality may be challenged is not

⁷ Had count V not included such a claim, the court would have granted Independent Maps judgment on the pleadings on count V, having found that redistricting can be a structural and procedural subject of article IV (Ill. Const. 1970, art. IV) and that the Redistricting Initiative at issue addresses a structural and procedural subject of article IV (Ill. Const. 1970, art. IV).

a structural and procedural subject of article IV (Ill. Const. 1970, art. IV). (*See* Plaintiffs' Motion at 20.)

Independent Maps responds that the reference in Article V, section 15 that the Attorney General shall have the duties and powers that may be prescribed by law" means the General Assembly prescribes the Attorney General's duties by statute, which has been done by the Attorney General Act, 15 ILCS 205/4 (West 2014). Independent Maps then suggests that "[i]f that statute is construed to give the Attorney General the power to litigate redistricting issues on behalf of the People of the State of Illinois, the Redistricting Initiative would not alter that power one wit." (Intervenor Defendant's Response at 13-14.) Independent Maps also maintains that litigation regarding redistricting plans is a structural and procedural subject of article IV (Ill. Const. 1970, art. IV) and so deleting the Attorney General's role also is limited to a structural and procedural subject of article IV (Ill. Const. 1970, art. IV).

The court finds Independent Maps' position unavailing. While the Attorney General and her duties are subjects of article IV, section 3 (Ill. Const. 1970, art. IV, §3) that does not make her and her duties *structural and procedural* subjects of article IV. Also, there is no controlling authority holding that how a redistricting plan may be challenged is a structural and procedural subject of article IV (Ill. Const. 1970, art. IV), and the court finds it is not. Therefore, the court grants Plaintiffs' motion for judgment on the pleadings as to count VI of the Complaint and denies Independent Maps' motion for judgment on the pleadings as to count VI of the Complaint.

Count VII

In count VII of the Complaint, Plaintiffs challenge the Redistricting Initiative on the basis that it violates article III, section 3, the free and equal clause of the Illinois Constitution (Ill. Const. 1970, art. III, § 3) because it improperly combines unrelated questions. (*See* Compl.

count VII, Ex. A.) “The free and equal clause guarantees the right to vote in Illinois and reflects a broad public policy to expand the opportunity to vote.” *Clark*, 2014 IL App (1st) 141937, ¶ 27. “[C]ombining of separate and unrelated questions prevents a voter from giving a free and equal expression of preference as to each proposition.” *Id.*, ¶ 28 (citations omitted). In the context of a ballot initiative, “separate questions may be combined in a single proposition as long as they are reasonably related to a common objective in a workable manner.” *Coalition II*, 83 Ill. 2d at 256. “An additional consideration is whether the questions are compatibly interrelated to provide a consistent and workable whole in the sense that reasonable voters can support the entire proposition.” *Clark*, 2014 IL App (1st) 141937, ¶ 28 (citing to *Coalition II*, 83 Ill. 2d at 260).

Plaintiffs claim that the Redistricting Initiative violates the free and equal clause because it presents separate and unrelated questions that could be answered separately. (Plaintiffs’ Motion at 22.) Plaintiffs identify three questions presented by the Redistricting Initiative that they claim are separate and unrelated: (1) whether the substantive requirements for legislative maps should be changed; (2) whether an Independent Redistricting Commission should be created to take the power to draw legislative maps from the legislature; and (3) whether the manner in which a redistricting plan is challenged should be changed. (Plaintiffs’ Motion at 22.)

Independent Maps responds that Plaintiffs’ “argument fails because the Redistricting Initiative is not a collection of disparate provisions relating to matters scattered throughout the Constitution; rather, the common thread that ties everything together is that *all* of the proposed changes relate directly to (and only to) redistricting.” (Intervenor-Defendant’s Response at 29.) Independent Maps continues that because the Redistricting Initiative has a “reasonable, workable relationship to the same subject,” it meets the requirements of the free and equal elections clause.

(Intervenor-Defendant's Response at 29.) Independent Maps notes that in *Coalition II*, the Illinois Supreme Court first noted that "it is only separate and *unrelated* questions which cannot be combined in a single proposition." *Coalition II*, 83 Ill. 2d at 254. (Intervenor-Defendant's Response at 29.) The Illinois Supreme Court ultimately concluded in *Coalition II* that the questions posed by the "Cutback Amendment" "related directly to the ultimate purpose of structure and procedural change in the House of Representatives," and therefore, the voters were entitled to vote on it as a single proposition. *Coalition II*, 83 Ill. 2d at 260.

Plaintiffs reply that the questions presented by the Redistricting Initiative are not interrelated for a number of reasons. First, the Redistricting Initiative mandates that the redistricting plan shall respect the geographic integrity of units of local government. (Compl., Ex. A.) During the Constitutional Convention there was extensive debate about this issue, but an amendment was passed to apportion on the basis of equal population without a requirement that government boundaries be considered in drawing maps. (Plaintiffs' Reply at 14.) Plaintiffs argue that the delegates believed that the boundary question was a separate question that required significant debate that was not intertwined with who would draw the maps. (*Id.* at 15.) Plaintiffs also point out that the Redistricting Initiative changes the judicial process for challenging a redistricting plan by removing the Supreme Court's original and exclusive jurisdiction, thus allowing circuit courts to exercise subject matter jurisdiction over redistricting cases and that actions could then be filed in all 102 counties. (*Id.*) Plaintiffs further note that the Attorney General would be removed from the requirement to file a redistricting case. (*Id.*) Plaintiffs' final point is that a plan submitted under the Redistricting Initiative will have the presumption of validity, but is no longer deemed to have "the full force and effect of law." (Plaintiffs' Reply at 15.) Plaintiffs conclude that these questions are significant and unrelated. (*Id.*)

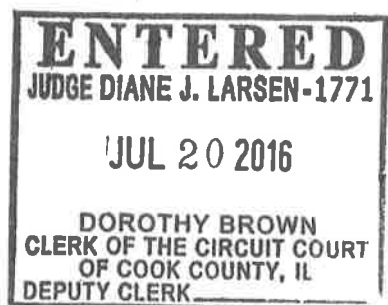
The court has again engaged in the process of weighing the relative merits of the parties' arguments. The court finds that Plaintiffs have the better argument on this count and that the Redistricting Initiative violates article III, section 3, the free and equal elections clause of our constitution (Ill. Const. 1970, art. III, § 3) because it presents questions that are unrelated.

The main reason the court comes to this conclusion is based directly on language in the *Coalition II*, which found the proposition questions there were not separate and unrelated because "they related directly to the ultimate purpose of structural and procedural change in the House of Representatives." *Coalition II*, 83 Ill. 2d at 260. The court in the present case has already found that the Redistricting Initiative is not limited to the structural and procedural subjects of article IV (Ill. Const. 1970, art. IV) for the reasons previously indicated. Therefore, under *Coalition II*, the fact that parts of the Redistricting Initiative involve (1) state officials other than in the legislature, (2) the circuit court's jurisdiction, and (3) the method of challenging a redistricting plan, makes these questions significant individually and unrelated to redistricting itself. Therefore, the court grants Plaintiffs' motion for judgment on the pleadings as to count VII of the Complaint and denies Independent Maps' motion for judgment on the pleadings as to count VII of the Complaint.

ORDER

WHEREFORE, the court:

- (1) grants Plaintiffs John Hooker, Chairman of the People's Map, Frank Clark, Leon Finney, Elzie Higgenbottom, Raymond Chin, Fernando Grillo, Jorge Perez, and Craig Chico judgment on the pleadings on counts I through VII of the Complaint;
- (2) denies Intervenor-Defendant Support Independent Maps judgment on the pleadings on counts I through VII of the Complaint; and
- (3) pursuant to Illinois Supreme Court Rule 304 (a) (Ill. S. Ct. R. 304(a)), finds no just reason to delay enforcement or appeal of this judgment.



IT IS SO ORDERED.

Judge Diane Joan Larsen