



Lake County, Illinois
Commission on Government Reform and
Accountability

January 2018

**Management
Partners**





Lake County Commission on
Government Reform and Accountability
www.lakecountyil.gov/govreform

18 North County Street – 10th Floor
Waukegan, Illinois 60085-4351
Phone 847 377 2300

January 10, 2018

The Honorable Aaron Lawlor
Chair
Lake County Board
18 North County Street
Waukegan, Illinois 60085

Dear Chair Lawlor:

On behalf of the members of the Lake County Commission on Government Reform and Accountability, we are pleased to submit this report of our recommendations for governance of the County.

Our charge was to examine the method of electing the County board chair, the size of the County board, and redistricting options. We conducted in-depth research, heard from distinguished experts, and participated in an extensive dialogue about the topics we were challenged to explore. In addition, we discussed and identified other topics that deserve additional consideration.

What was clear from the beginning is that each member is passionate about improving the quality of each of our resident's lives and is committed to identifying the best path forward.

We appreciate the opportunity to serve the residents of Lake County in this important endeavor.

Sincerely,

Fred Foreman, Chair

Kathy Ryg, Vice Chair

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Introduction

Lake County, Illinois was created by the state of Illinois in 1839. It has evolved from a rural agricultural county with a population of 2,634 persons to an urban county with a population of 703,047 (2016 American Communities Survey). It is the third largest county in Illinois and is one of the six “collar counties” surrounding Cook County, the home of Chicago. The other five collar counties are DuPage, Kane, Kendall, McHenry and Will. The seven-county metropolitan area had an estimated 8.3 million people in 2010. In 2010 the collar counties comprised 25% of the population of the state of Illinois, or 3,186,673 people, of which Lake County comprises 22%.

Lake County has a history of asking independent citizen commissions to study the efficiency and accountability of the county’s governance structure. Other recent commissions include the 1977 Lake County Governmental Study Commission I, which recommended some organizational and professional management changes. The 1990 Lake County Governmental Study Commission II and the 2000 Modernizing Lake County Commission followed with recommendations on the county board’s size, the election of the chair and appointment of some countywide elected officials. Although not all of the commissions’ recommendations were implemented, their appointment demonstrates the county board’s willingness to invite independent citizen input on critical structural reform questions.

On March 14, 2017, the Lake County Board adopted Resolution 17-0314 establishing the Lake County Commission on Government Reform and Accountability (Appendix 1). The County Board appointed fifteen residents broadly representative of the County’s diverse population to serve. The recommendations developed by the commission are listed in Attachment A.

Fred Foreman, retired U. S. Attorney and Chief Judge, served as chair and Kathy Ryg, retired Illinois State Representative, served as vice chair. Management Partners served as facilitator and staff to the Commission.

Commission Charge

The Lake County Board established the Lake County Commission on Government Reform and Accountability in response to State legislation (Senate Bill 669, filed by Senator Link, passed in House and Senate but vetoed by Governor Rauner, with no veto-override attempted) requiring the County Board Chair be elected countywide effective in 2020 and the subsequent County Board Resolution 17-026 seeking amendments to the legislation.

The County Board subsequently created the Lake County Commission on Government Reform and Accountability, requesting legislative support on specific reform measures on the 2018 ballot. The Commission's charge was to:

...evaluate proposed reform measures and report on key findings based on its ability to enhance accountability to the public, provide for an effective and responsive government structure, maintain strong professional and ethical standards, and reform redistricting to mitigate political influence.

The specific reform measures being evaluated are binding or advisory referenda questions on the ballot in 2018, including:

1. A countywide elected chairman in 2022;
2. Redistricting reform that leverages the Independent Map Amendment process; and
3. An advisory question on streamlining county government by reducing the size of the County Board.

The establishing resolution specified the responsibilities of the Commission to:

1. Analyze state and county governments that have transitioned to an independent redistricting system by evaluating their governance structure, methodology, implementation and outcomes. Utilize information from proposals, such as the Illinois Independent Map Amendment.

2. Study similar counties that transitioned to a countywide elected chairman by identifying key issues, including board rules, challenges, opportunities and decisions that were made to enhance the stated goals of this resolution. Identify best practices and policies used to balance authority between the County Board, Chairman and County Administrator. Prioritize models that ensure strong accountability by elected leaders to the public; maintain strong professional standards; and set high ethical standards as well as safeguards that are in line with the spirit and intent of Lake County's Ethics Ordinance and Standards of Conduct.
3. Examine, assess and report similar counties' efforts to reduce the size of the board. Identify positive and negative impacts on efficiency, constituent services, policy decisions and compliance with the federal Voting Rights Act.
4. Provide opportunities for stakeholders and the public to share ideas on additional reforms that could be studied in the future.

Lastly, the board requested that the Commission discharge its duties in a manner that demonstrates "understanding and appreciating the values and attributes" that they believe in, specifically:

Fiscally responsible, professional and ethical principles that have resulted in balanced annual budgets and a consistent AAA bond rating, as well as a collaborative and bipartisan culture that values relationships and commitment to service, trust in a professional staff and managerial form of government, and prohibitions against political patronage, nepotism or cronyism.

Members of the Commission

- Mr. Peter Bensinger, Board Member, Illinois Independent Maps Amendment
- Hon. Karen Darch, Mayor, Village of Barrington
- Hon. Fred Foreman, Retired U.S. Attorney and Chief Judge, *Chair*
- Mr. Steve Kim, Managing Partner, RKJ Legal and Commissioner, Illinois Human Rights Commission
- Mr. Chuck Lamphere, Lake County Partners Board of Governors
- Hon. Terry Link, Chairman, Lake County Democratic Party
- Mr. Ike Magalis, Retired County Administrator
- Mr. Laurence Msall, President, Civic Federation of Chicago
- Hon. JoAnn Osmond, Retired State Representative
- Hon. Kathleen O'Connor, Libertyville Township Supervisor

- Pastor Eugene Roberson, First Corinthian Baptist Church
- Hon. Mike Rummel, Republican Lake County Board Member, *ex-officio*
- Hon. Kathy Ryg, Retired State Representative, *Vice Chair*
- Ms. Mary Schaafsma, Executive Director, Illinois League of Women Voters
- Hon. Mark Shaw, Chairman, Lake County Republican Party

Methodology

When the Commission was established, a schedule of eight meetings was developed for conducting the research and discussion. The Commission chair and vice-chair were selected and worked with County staff to identify a general work plan.

To support the Commission's deliberations, Management Partners was engaged to staff the Commission meetings, provide support in developing agendas and meeting minutes (provided in Attachment B), conduct research into topics of interest to the Commission, identify background materials to inform Commission members on specific topics, identify and procure expert testimony at Commission meetings, write the draft and final reports, and provide technical advice on best practices in County governance and operations. Table 1 shows the meeting schedule for the Commission.

Table 1. Commission Meeting Schedule

Meeting Date	Location	Purpose
May 31, 2017	Central Permit Facility	Introduction and Commission purpose, background on the County structure and decision-making process, and an overview of the Open Meetings Act, Freedom of Information Act, Lake County Ethics Ordinance and Standards of Conduct provided by County Board Chair Aaron Lawlor and County Administrator Barry Burton.
June 21, 2017	Central Permit Facility	Introduction to the Management Partners team, initial discussion of the topics, identification of needed research, and adoption of the schedule.
July 19, 2017	Central Permit Facility	Expert testimony and discussion on redistricting including legal issues and by presenters Ruth Greenwood, Senior Legal Counsel for Voting Rights and Redistricting Campaign at the Campaign Legal Center and George Tzanetopoulos, partner at BakerHosteler.
August 23, 2017	Health Department	Expert testimony on redistricting principles by Cindi Canary, Executive Director of Independent Map Amendment. A presentation by and discussion with former Lake County Board Chair Jim LaBelle on his experience as a board elected chair. Presentation on "Opportunities for Government Efficiency" by Dr. Norman Walzer from Northern Illinois University.

Meeting Date	Location	Purpose
September 13, 2017	Health Department	Presentations and discussion with State Representative Mayfield, Representative Yingling and State Senator Bush on an at-large elected chair, redistricting and intergovernmental consolidation and collaboration. Interviews with at large elected neighboring county board chairs, Jack Franks of McHenry and Dan Cronin of DuPage and with an at large elected county executive, Lawrence Walsh of Will County. An interview with former at large elected Kane County Board Chair, State Senator Karen McConnaughay. Presentation by Dr. Eric Zeemering on "County Board Structure and the Goals of Institutional Reform."
October 4, 2017	Health Department	Workshop to discuss potential recommendations to the Lake County Board.
November 15, 2017	Department of Transportation	Review of the draft report and discussion.
December 20, 2017	Health Department	Ratification of the revised report.

To develop a common knowledge base among the commission members, the Commission embarked on a fact-finding process to review topical information about the election of the county board chair, the size of the county board, independent redistricting and other topics that emerged. Resources included presentations from experts and experienced officials (Appendix 2), research memos (Attachment C) and background reading (Appendix 3 and Appendix 4). Each meeting from July through September was organized to provide information on these topics with time for questions and discussion.

The strategy included:

- Learning about the current Lake County organizational structure from the Lake County Board Chair Aaron Lawlor and County Administrator Barry Burton.
- Hearing from experts on independent redistricting, including those with direct experience with previous Lake County redistricting and those involved in Illinois and national independent map initiatives.
- Getting the perspective of state officials and current and former at-large elected county chairmen from the collar counties on the proposed questions.
- Inviting a former Lake County Chair to share his insights on serving as a peer-elected county board chair and on how the size of the county board impacted representation and decision-making efficiency during his tenure.
- Listening to academicians involved in public policy studies describe their research and experience around collaboration and

consolidation and the method of electing a chair and setting the county board size.

- Inviting community groups representing minority populations to provide input to the Commission.
- Researching statutes, ordinances, articles and other information on these topics including resources from the Illinois Association of County Board Members and Commissioners and the National Association of Counties.
- Inviting Lake County Board Members to submit comments to the Commission.
- Providing time for Commission member questions and discussion with the presenters and each other.

Table 2 shows a detailed list of the presentations provided to the Commission.

Table 2. Presenters to the Lake County Commission on Government Reform and Accountability

Presenter	Organization(s)	Topic
Ruth Greenwood	Senior Legal Counsel for Voting Rights and Redistricting Campaign, Campaign Legal Center	Redistricting Reform Options for Lake County
George Tzanetopoulos	Partner at BakerHosteler	Redistricting Selected Legal Issues
Cynthia Canary	Executive Director, Independent Map Initiative	Redistricting Principles
Jim LaBelle	Former Lake County Board Chair 1984-1987; 1998-2000	The Role of the Chair and Size of the County Board
Dr. Norman Walzer	Senior Research Scholar Center for Governmental Studies, Northern Illinois University	Opportunities for Government Efficiency
Representative Rita Mayfield Representative Sam Yingling Senator Melinda Bush	State District # 60 State District # 62 State Senate District #31, Former Lake County Board member	The Method of Electing the Chair, Consolidation and Collaboration and other Reform Issues
Senator Karen McConnaughay Chair Dan Cronin Chair Jack Franks County Executive Larry Walsh	State District #33, Former Kane County Chair DuPage County McHenry County Will County	The Role of the Chair and Size of the County Board
Dr. Eric Zeemering	Assistant Professor, Public Administration, School of Public and Global Affairs, Northern Illinois University	County Board Structure and the Goals of Institutional Reform
Judge Jorge Ortiz	Nineteenth Judicial Court Chief Judge	Election of the Circuit Court Clerk

The information gathered through this methodology was used in evaluating the questions before the Commission in a facilitated workshop on October 4, 2017.

Based on the workshop, a draft report was developed and presented to the Commission for feedback and discussion on November 15, 2017 before finalizing the report and submitting it to the County Board in December 2017.

The Chair and Vice Chair will present this report to the Lake County Board in January 2018.

The remainder of this report reviews the current structure of Lake County governance in relation to the questions posed to the Commission and the recommendations developed by the Commission.

Current Lake County Government

According to the 2017 budget, Lake County has 219 taxing units (1 county government, 52 municipalities, 18 townships, 51 school districts, 21 park districts, along with a number of library districts, fire districts, and others.)

The county form of government is established by the Illinois Constitution Article VII Section 3, which mandates that a county board be elected in each county. The county board serves as the legislative and executive branch of county government. It can take the form of commission, county executive, or township government. Lake County is a township form of county government, which statute allows to have between five and 29 members. Lake County has 21 board members that are elected in single districts and serve four-year terms.

County Board

The County Board oversees a 2017 budget of \$512 million in six service areas: 1) public works and transportation, 2) judicial and public safety, 3) finance and administration, 4) election and records, 5) planning, building and zoning, 6) health and community services.

In general, the County Board:

- Approves the budget,
- Approves contracts,
- Provides policy direction,
- Members serve on five standing committee,
- Establishes the board rules, and
- Hires the County Administrator.

The board works through five standing committees. The committees and duties of each committee are defined in the County rules and operating procedures. The current committees are defined on the County's website and are either standing committees or other.

The standing committees are:

- *Financial & Administrative Committee*—Responsible for County budgeting, wages, employee benefits, capital improvements, and other administrative items.
- *Health & Community Services Committee*—Responsible for community and economic development, housing and tourism, and budget and ordinance reviews for health-related issues.
- *Law & Judicial Committee*—Responsible for setting many court fees, and oversight of the Emergency Telephone Systems Board (911).
- *Planning, Building & Zoning Committee*—Responsible for Land Use Planning, Comprehensive Planning, and building and zoning issues.
- *Public Works & Transportation Committee*—Responsible for County transportation, water districts, and sanitary districts.

The other committees are:

- *Committee of the Whole*—Responsible for overall standing committee coordination and overall County policies and objectives.
- *Diversity and Inclusion Committee*—Responsible for fostering an understanding of diverse cultures, races, religions and beliefs in Lake County.
- *Ethics and Oversight Committee*—Reviews and revises the County's Ethics Ordinance and to assist in the enforcement of the Lake County Standards of Conduct Ordinance authorized by Public Act 98-0779.
- *Rules Committee*—Responsible for reviewing and recommending changes to the Rules of Order and Operational Procedures.

County Board Chair

The chair is elected by peer board members for a two-year term. The chair's responsibilities are defined in the County Rules of Order and Operational Procedures, which are revised and adopted every two years with the election of the board chair. The chair:

- Serves as an ex-officio member on all committees,
- Presides over all County Board meetings,
- Serves as the Liquor Control Commissioner for unincorporated areas,
- Adds committee items deemed time sensitive with the concurrence of the committee chair,
- Authorizes the addition of recognition or items of extraordinary significance to the agenda,

- Executes board approved contracts,
- May authorize requests for a legal opinion from the state's attorney,
- Establishes ad hoc and special committees subject to majority approval by the Board,
- Establishes standing committees and appoints the chair, vice-chair and members subject to majority approval by the Board,
- Presents appointments to all other boards, commissions, districts and other authorities (over 300 appointees to 70+ units of government),
- Serves on the Lake County Partners Board of Directors
- Leads and provides oversight on economic development strategies, and
- Serves on regional groups (including the Chicago Metropolitan Agency for Planning).

County Administrator

The County Administrator is hired by and reports to the County Board. The County Administrator's duties are detailed in a county ordinance.

The County Administrator:

- Implements policies of the County Board, and the goals and strategies identified in the strategic plan,
- Oversees appointed department heads,
- Researches and analyzes policy decisions and makes recommendations to the board,
- Develops and oversees the annual budget and capital improvement plan,
- Oversees the day-to-day operations of the County, and
- Coordinates and/or collaborates on countywide activities involving departments with countywide elected and appointed department heads.

Countywide Elected Officials

There are eight countywide elected officials. Brief descriptions from the County's website describe the duties of each:

- *Clerk of Circuit Court* is the official keeper of records for all judicial matters brought into the County's circuit court.
- *County Clerk* maintains the County Board records, public filings, vital records and manages elections.

- *Coroner* provides medicolegal death investigations and maintains historical data, identifies trends and offers recommendations to help prevent deaths of similar circumstances.
- *Regional Official of Education* serves as an advocate for education by providing positive leadership, performing regulatory functions as directed by the School Code of Illinois and the Illinois State Board of Education, coordinating and delivering state and local services, and disseminating information for educators, school districts and the community.
- *Sheriff* protects the public health and safety of the County's diverse communities by maintaining order, upholding laws and defending the rights of all people.
- *Recorder of Deeds* records, preserves and provides access to public records in the most accurate, efficient, responsible and professional manner.
- *State Attorney* prosecutes criminal acts, recognizes victims' rights, works with criminal justice partners to make communities safe, and provides legal representation to the County and its elected and appointed officials.
- *Treasurer* manages banking relationships and invests temporary surpluses; as the Ex Officio County Collector, the Office bills, collects, and distributes real estate taxes to County taxing bodies.

Financial Condition

The County maintains an AAA bond rating and has demonstrated fiscal prudence. It is widely acknowledged as being well managed. Currently, the County represents 7% of the total property tax bill for many residents. A breakdown of the typical tax allocation was provided by the County and is provided in Figure 1.

Figure 1. Allocation of Lake County Property Tax Dollar by Entity



Ensuring that the Commission's recommendations support the continuation of the County's fiscal stability was a key consideration in the charge from the County Board.

Prior Commissions

Lake County's current structure has been informed by prior Lake County commissions on governance. The 1977 and 1990 Lake County Governmental Study Commissions I and II and the 2000 *Modernizing Lake County* report assessed the County's governance needs and made recommendations for improvement. Although not all of the Commissions' recommendations were implemented, many were—leading to the appointment of a County Administrator; changing the method of election of board members from multi-member districts to single-member districts; and encouraging the County Board to become a policy-focused body.

Perhaps more important than the outcome of the prior Commissions' recommendations is the demonstrated value that the County Board puts on hearing from independent citizens on key governance questions. The 2017 Lake County Commission on Government Reform and Accountability continues this tradition.

Commission Recommendations

The Commission considered the expert testimony presented as well as background information about the four areas (redistricting, the method of electing the chair, the size of the County Board, and other reform topics) to develop recommendations for the County Board.

For each of the subject areas described in the Commission charge, there are several options for reform. As part of the fact-finding, the Commission requested background research on each of the areas to determine what choices were available. The tables included under each topic were provided to the Commission prior to the October 4, 2017 workshop and were based on research and discussion by Commission members.

The Commission's final charge was to "provide opportunities for stakeholders and the public to share ideas on additional reforms that could be studied in the future." Those that seemed to have the most interest and potential impact are included below.

Redistricting

Based on the expert testimony and research conducted on redistricting, four options were developed for consideration by the Commission, as outlined in Table 3.

Table 3. Redistricting Options

Options		Redistricting Process
1	No Change. Continue with current County Board Practice.	Get input from stakeholders when the redistricting committee develops a plan. The County Board reviews and approves the final redistricting plan.
2	Independent Redistricting Principles Commission	The County Board establishes an independent commission to develop principles consistent with fair mapping for the County Board to follow when developing a redistricting plan.
3	Independent Redistricting Commission	The County Board establishes an independent commission to develop a redistricting plan based on fair mapping principles. The County Board then approves the redistricting plan.

Options		Redistricting Process
4	Independent Redistricting Review Board	The County Board establishes an independent review board to review the results of its County Board-generated redistricting plan against fair mapping principles.

During his presentation, Mr. Tzanetopoulos, Partner at BakerHosteler, spoke about the importance of those who are involved in the redistricting process having a clear understanding about legal requirements. He stressed the importance of applying the U.S. and Illinois Voting Rights Act to any redistricting proposal. Because redistricting involves balancing and prioritizing many competing interests, it is important to stay informed about the legal challenges to redistricting decisions to understand what issues are most important to voters.

Ms. Greenwood, Senior Legal Counsel for Voting Rights and Redistricting Campaign, Campaign Legal Center, spoke more specifically about using an independent redistricting commission, using an electoral system that permits voters to prioritize candidates rather than choosing one candidate, and choosing a redistricting process that is transparent to voters.

One way of ensuring fairness in redistricting is to adopt principles for undertaking reapportionment discussions and decisions. Agreeing to the principles to apply should come before choosing an option for how to proceed with the process. Cynthia Canary, the executive director of the Illinois Independent Map Amendment, identified elements that are considered most important in maintaining fairness:

- Meet the requirements of the U. S. Constitution and federal or state voting rights laws;
- Represent constituents;
- Represent “communities of interest” and minority communities;
- Maximize voter choice, encourage electoral candidacy and electoral competitiveness;
- Engage the public in understanding the plan;
- Ensure the plan is transparent;
- Take a nonpartisan approach;
- Ensure contiguous geography; and
- Consider criteria for selecting independent redistricting members.

It is critical to have a transparent process that is understandable to the public when discussing redistricting. New opportunities abound to expand public education and citizen involvement throughout the redistricting process. These include using mapping technology, clear

explanations, in English and common non-English languages present in the County, and disclosure of the outcomes of redistricting and the areas of disagreement.

At least three counties, San Diego, California; Tompkins, New York; and Dane County, Wisconsin have established independent redistricting commissions to draw maps for redistricting based on the 2020 census. The San Diego County Board required legislative approval followed by voter approval to establish its commission of five members of state or federal judges. The final map goes to the voters for approval.

In Tompkins County the commission has nine members appointed by the County Legislature and the final plan must be approved by the County Legislature.

Dane County's Board of Supervisors established an independent redistricting commission of nine to 11 members after a 2014 citizen advisory referendum. The commission will be appointed by the County Board chair and the County Clerk. The County Board retains final approval of the map.

Redistricting Recommendations

There is increased local, state and national attention to what assumptions or principles lie behind redistricting decisions. The term "fair maps" has emerged as a concept for creating an independent mapping approach to redistricting that minimizes gerrymandering. Although there are several variations on how a fair maps concept might apply to County redistricting, some recognized principles can be addressed at its outset.

During the Commission's deliberations, eight principles were developed by the Illinois Redistricting Collaborative that supported many of the concepts. Commission members felt these were appropriate for the County to adopt.

Recommendation 1. Apply redistricting principles adopted by the Illinois Redistricting Collaborative to any process for reapportionment following the 2020 census and advocate for these principles.

The principles published by the collaborative were:

1. *Comply with the U.S. Constitution.* The process must be in accordance with the requirements of the U.S. Constitution. All persons, regardless of age, citizenship, immigration status, ability or eligibility to vote, should be accurately counted through the

- Census. In accordance with the U.S. Constitution, districts should be populated equally, as nearly as is practicable.
2. *Comply with Federal and State Voting Rights Act.* The process must emphasize representation and be fully compliant with both the federal Voting Rights Act (VRA) and all state voting rights laws, including the Illinois Voting Rights Act. The letter and the spirit of the VRA should be reflected in redistricting to protect the rights of voters of color. To advance these foundational goals, redistricting decision-makers should exercise their latitude under the law to create majority-minority, coalition, and influence districts.
 3. *Comprise and Uphold a Non-Partisanship Process.* The process should be independent of partisan political considerations. Mapmaking must include provisions and resources ensuring independence from political parties and legislative leaders. The process must include diverse decision-makers who reflect a broad range of viewpoints and who prioritize people and communities. Mapping consultants and software contracts, paid for with public resources, should be awarded on merit rather than partisan affiliation.
 4. *Maximize Voter Choice, Electoral Candidacy and Competitiveness.* The process should result in maximizing voter choice, encouraging electoral candidacy and enhancing electoral competitiveness.
 5. *Recognize and Preserve Communities of Interest.* The process should give consideration to true communities of interest. To the extent possible, but secondary to the protection of voting rights, populations with common social, ethnic or economic interests and/or shared political and geographic boundaries should have unified representation.
 6. *Accurately Include Permanent Residence of All Illinoisans.* The process must accurately represent the permanent residence of all Illinoisans. All persons residing away from their permanent residence, such as students, incarcerated individuals, and missionaries, should be counted at their home address regardless of Census counting rules. The Census should be encouraged to expand its exceptions to the usual residence rule to include incarcerated individuals, as well as students, missionaries, and overseas Americans.
 7. *Comprise and Uphold a Transparent and Accountable Process.* The process must be transparent and accountable. Meetings of decision-makers, and their legal, political and mapping consultants, must be open and accessible to the public to the greatest extent possible. The criteria used to draw maps must be objective, clear and justifiable and districts must be drawn to offer

voter choice. Communications related to the redistricting process should be subject to the Open Meetings Act and the Freedom of Information Act. Clear conflict-of-interest rules must be adopted and applied.

8. *Provide for Open, Full, and Meaningful Public Participation.* The process must allow for meaningful public participation and have the confidence of the public. Opportunities for public education and engagement must be provided, including opportunities to offer comment and amend draft maps. Redistricting bodies must provide data, tools and ways for the public to have direct input into and impact on the specific plans under consideration.

The redistricting process requires public education and engagement from beginning to end. There are new opportunities to improve public education using computer mapping. It is critical that decisions be understandable, in English and non-English, and given by a non-elected person, who is not directly impacted by the outcome.

Recommendation 2. Use County data and technology to support the drafting of a redistricting map that complies with federal and state voting rights and other legal requirements of redistricting.

Recommendation 3. Develop a process for establishing an Independent Advisory Redistricting Commission, a transparent public awareness and engagement process, and public education efforts based on approved redistricting principles.

Recommendation 4. Monitor the Supreme Court case (*Gill v. Whitford*) along with other legal actions and decisions related to redistricting.

The Method of Electing the Chair

State statute identifies four methods for electing the County board chair as shown in Table 4.

Table 4. Options for Electing the County Board Chair

Options		Elected by	Term	Process	Chair's Duties
1	Board Elected	Peers on the County Board (55ILCS 5/2-1003)	Two years	Board decision every 2 years	Defined by state statute and board rules of order and operating procedures

Options		Elected by	Term	Process	Chair's Duties
2	Elected At-Large	County Voters (55ILCS 5/2-3002)	Four years	Referendum through Board decision or citizen petition	Defined by state statute and board rules of order and operating procedures
3	Elected At-Large	County Voters (55ILCS 5/2-3007)	Four years	During reapportionment process (no referendum required)	Defined by state statute and board rules of order and operating procedures
4	Elected At-Large as County Executive	County Voters (55ILCS 5/2-5004)	Four years	Referendum	Defined by state statute (55ILCS 5/2-5009) and board rules

The Commission considered the recommendations of prior study commissions, the experience of regional peers, available research, options allowed under Illinois law, and national models and trends.

The County is financially healthy and has professional management, which, according to public administration studies, improves County performance. It was also noted that the judicial branch of government elects the chief judge by caucus of the elected circuit court judges for a two-year term based on seniority. This similar approach works for them.

Elected At-Large Board Chair

Times have changed since the 1990 Lake County Study Commission II and 2000 Modernizing Lake County recommended an at-large elected chair. The reasons cited at that time were to assure voter choice, provide a countywide perspective by the chair, improve continuity with a four-year term, and increase visibility. These recommendations in the 1990's came when the County Board was very contentious, primarily due to development issues. Since the County is now nearly fully developed, these issues have subsided and may be the reason the county political culture is less divisive.

Former Lake County Chair, Jim LaBelle, testified that maintaining good relationships with his peers was critical to being chair. It was challenging at times since he represented both the whole County and his district at the same time. Having an at-large elected chair might reduce this tension.

The Commission heard from three legislators—Representative Mayfield, Representative Yingling, and Senator Bush—who support the at-large elected board chair because it gives voters the opportunity to choose the chair and provides the chair visibility on countywide, state and federal issues. Former at-large elected Kane County chair, now Senator, Karen McConnaughay described the importance of clarifying the role of the at-large elected chair with County Board members to avoid confusion in

roles and responsibilities. At-large elected chairs Dan Cronin of DuPage County and Jack Franks of McHenry County spoke to the challenges of working as a countywide elected chair.

When the chair is elected at-large, the powers of the board members may be perceived to dissipate because the chair, not the entire board, is viewed as the person responsible for managing issues, especially financial ones.

A collaborative model of leadership, also known as shared leadership, is a principle of successful governance. This model is more likely to be obtained and maintained by a peer-elected chair because the chair relies on other board members to get elected to the chair position and they share equally in County decisions.

The current chair's practice of assigning some committee chairs to minority party members with board approval, reinforces the collaborative working relationship among board members and likely improves minority party representation in County government.

Of the six collar counties in Illinois, all but Cook have the township form of county government which allows for a peer-elected chair, an at-large elected chair, or an elected county executive by referendum. The same is true of the 22 largest counties in Illinois, where eleven of the counties have an at-large elected board chair, nine have a peer-elected chair and two have adopted county executives without home rule. One of the collar counties, Kendall, has a board-elected chair. Three of the other collar counties, DuPage, Kane and McHenry, have at-large elected chairmen; the fourth, Will, has an elected county executive. All three of the at large elected collar county chairs are former state legislators; the elected executive is also a former state legislator.

In his presentation, Dr. Zeemering, Assistant Professor, Public Administration, School of Public and Global Affairs, Northern Illinois University, stated that there are no conclusive studies finding that counties with an at-large elected chair perform better than counties with a peer-elected chair. There are studies showing that a professional manager improves overall county performance, and collaborative leadership results in successful governance. He also noted that frequently, a local government looking at reform opportunities does what neighboring governments have been doing rather than recognizing the value and positive benefits of its own individual government and culture.

State statute allows a county board to change to an at-large elected chair by a referendum or during the redistricting process without holding a

referendum. A citizen petition for a referendum on the question can also lead to this change. In addition, if the county board wishes to understand voter interest in having an at-large elected chair, the board can ask voters the question through a non-binding referendum.

The current discussion on Lake County's change to an at-large elected chair reemerged because of a legislative bill (Senate Bill 0669) that required Lake County to hold a referendum on an at-large elected chair to provide voters the opportunity to weigh in on the idea. The bill was vetoed, but could be reintroduced in future legislative sessions.

Elected At-Large County Executive

State statute also allows the County to consider a county executive form of government through a referendum. The county executive is elected at-large and manages the day-to-day operations of the county. Currently, the Lake County administrator effectively manages the day-to-day operations of the County under the direction of the County Board. An elected county executive was defeated by a 2:1 margin in a 1988 Lake County referendum. The only township counties that have approved a county executive are Will and Champaign, and only Will currently operates in that manner. Champaign County will elect its first county executive during the November 2018 election.

The Illinois Constitution allows for home rule counties to have a county executive form of government (Article VII Section 6), although it is not required. A home rule county has the independent authority to regulate activities related to public health and safety, to borrow and to tax to meet the county's needs without asking for state legislative approval. Cook County is the only home rule county in Illinois. Since Lake County operates efficiently and has sound financial management, as evidenced by its AAA bond rating, the independent taxing authority and other home rules powers are not necessary or desirable for the County at this time. In addition, some County property taxpayers may value the state having some oversight over County decisions.

County Board Chair's Powers

Statutorily, under either the at-large elected or peer-elected county board chair, the chair's powers come through an ordinance adopted by the county board. This allows the board to define the responsibilities of the chair so the authority can be changed and clarified as the need arises. In Lake County, the Rules of Order and Operational Procedures are reviewed by the board every two years when the chair is elected.

Experience finds that regardless of the ordinance, the authority of the chair varies depending upon the how each individual chair defines the role. Engaged chairs do more than make appointments to committees and participate in redistricting, but actively lead on economic development, regional issues and state and national legislative initiatives.

Powers for the elected county executive are defined in State Statute.

It is best practice in county government to carefully define these powers, especially if there is an at-large elected chair. If an at-large elected Lake County chair is implemented through state legislation, referendum or through redistricting, the chair's powers may be revised by the board to clearly define expectations of the chair's responsibilities.

Electing the Board Chair Recommendations

While some presenters and one Commission member saw a benefit in transitioning to an at-large elected chair, the Commission as a whole did not see any benefit to making that change at this time. Nor did the Commission consider the county executive or home rule form of county government desirable options.

Recommendation 5. Maintain a peer-elected County Board chair.

Recommendation 6. Should a referendum on an at-large elected chair be required by citizen initiative, County Board action, or legislation, conduct a voter awareness campaign to share information gathered by the Lake County Government Reform and Accountability Commission.

Recommendation 7. Clarify the Chair's duties and responsibilities in rules of order and operational procedures prior to next election of County Board Chair in 2018.

The Size of the County Board

State statute identifies a minimum and maximum number of county board seats to be considered during the redistricting (reapportionment) process. Statutes allow for citizen advisory referenda on the size of the county board and on the method of election by single member or multi member districts (*55ILC 5/2-3002 Sec 2-3002*). The options for board size are detailed in Table 5.

Table 5. County Board Size Options

	Options	Board Size	District Types
1	No Change Maintain 21 members elected in single member	21	Single Member Districts ¹
2	Consider changing to a number between the statutory minimum of 5 members and statutory maximum of 29 members	5 to 29	Single or Multi-Member Districts
3	2000 Modernizing Lake County Study recommendation that the board be reduced from 23 members at the time to 12 members plus the chair	12 + chair	Single Member Districts
4	1990 Lake County Study Commission II recommendation from 24 members (at the time) to 15 members	15	Single Member Districts

¹ Lake County adopted the election of board members by single districts in 1991 following the recommendations of the 1990 Lake County Governmental Study Commission II.

The 1990 Lake County Governmental Study Commission II and 2000 Modernizing Lake County report recommended reducing the number of county board members to between 13 and 15 members to increase efficiency, be more visible and responsive to the electorate, and to increase political accountability. The 1990 study recommended board members be elected from single-member districts rather than from multi-member districts because this would allow for better representation of each district and improve opportunities for diverse candidates to be elected. Single-member districts were adopted by the County in 1991.

Of the 22 largest Illinois counties, all except Cook are township counties like Lake County. Statute allows for 5 to 29 board members for township counties. The number of board members in these 22 counties ranges from a low of 10 and a high of 29 with an average of 23 members. The collar counties range from 17 to 26 members. Lake County currently has 21 members on the Board. Since 1970, the number ranged from a high of 25 members in 1971 to a low of 19 members in 1991.

It is difficult to determine if reducing the number of County Board members would reduce County costs. It would remove the monthly part-time salary for the eliminated board positions, but may drive new costs, such as going to full-time County Board members or increasing staff support.

Dr. Zeemering testified that there are no conclusive studies that link the size of the county board to the performance of a county. In Lake County, the board has been as large as 37 members and is now 21 members with little identifiable difference in how the board was perceived or how it performed.

Single-Member and Multi-Member Districts

Multi-member districts with majority and minority party representation were used by the County in the past. Some members of the Commission remembered this approach and believe it may provide a more reliable way to get minority parties' voices into County government. Recognizing minority parties is now addressed through the practice of appointing minority party members as chairs of some committees. A change from single-member to multi-member districts can be made at the time of redistricting. A change to multi-member districts with majority and minority parties requires legislation.

County Board Size and District Recommendations

The Commission did not find evidence to suggest that a change in County Board size is needed or would be beneficial. They did, however, acknowledge that this was an appropriate question to raise during the redistricting process to promote representation.

Recommendation 8. Conduct an analysis of districts and services in advance of the redistricting process to determine if there would be a more effective distribution of representation with attention to differences in workload in unincorporated and incorporated areas.

Since 1991 the County Board has been elected by single member districts rather than multi-member districts with or without majority and minority party representation. The decision to go to single member districts was made, in part, to provide more electoral opportunities for ethnic minorities and to allow for better representation of individual districts. The value of having designated majority and minority representation elected to the County Board resurfaced as a possible way to assure a minority voice in County governance.

Recommendation 9. Research the potential to improve opportunities for minority party representation through the use of multi-member districts before making any changes.

Other Reform Proposals

The Commission was asked to gather other reform ideas for future study. Four ideas emerged that are shown in Table 6.

Table 6. *Other Reform Proposals*

Reform Idea	
1	Appointing rather than electing some countywide elected officials in County government: Coroner, Recorder of Deeds, and Clerk of Circuit Court. Evaluating the relationship in the duties and role of the Chief County Assessment Officer with Township assessors.
2	Explore opportunities for improved services and/or financial savings through: • Intergovernmental consolidation • Intergovernmental collaboration • Intergovernmental service sharing
3	Multi-member Districts vs. Single Member Districts Consider multi-member districts with majority and minority parties for better representation of minority party voters.
4	Use voting methods other than a simple majority winner for elections. There are many candidate-centric proportional methods. Here are three examples and how they might work with five districts that are combined into a single five-winner district: • Ranked Ballots. Instead of seeing (probably) just two candidates on the general election ballot, and filling in a bubble for one of them, voters see more candidates on the ballot, perhaps ten, and get to rank them. The top five-win seats. • Cumulative Ballots. Voters can distribute three votes as they want—giving all three to one favorite candidate, for example, or giving one to each of three candidates. The five candidates with the most total votes win seats. • Open List Ballots. Ten to twelve candidates are listed on the ballot by party. Voters can vote for any candidate. The top five candidates win, and each party wins a share of seats proportional to its share of votes.

The discussion in those four areas is summarized below.

1. Review of Elected Positions

The 1990 Lake County Governmental Study Commission II recommended appointing rather than electing the coroner and recorder of deeds due to the highly technical and administrative rather than policymaking nature of their work. It was also recommended that the clerk of circuit court be appointed rather than elected. The 1990 referenda questions related to the coroner and recorder were not endorsed by the County Board, but were put on the ballot. They failed 2:1. The clerk of circuit court was not put on the ballot. The 2000 Modernizing Lake County report recommended appointing the coroner and recorder. No referendum was held. The positions remained elected.

The elected County Auditor position was successfully changed to appointed by referendum in November 1978, after the 1977 Lake County Governmental Study Commission.

The potential of appointing some countywide officials that serve primarily technical and administrative functions rather than policy positions might include the coroner, the recorder and the clerk of circuit court.

2. Intergovernmental Collaboration

The County has more than 219 separate taxing districts. The Chair—with approval from the County Board—appoints more than 300 people to serve on various boards, commissions, and other special purpose units of government. To increase efficiencies and cost-effectiveness, several consolidation and collaborative efforts have been discussed and undertaken by the County. In addition, recent State legislation has attempted to address some of these concerns.

The issue was brought up numerous times by Commission members, speakers, and stakeholders.

On November 14, 2017, Lake County adopted a 2018 Consolidation Action Plan that proposes consolidations that will enhance efficiency, accountability, and quality of services as well as provide cost savings. The plan prioritizes three County Board-appointed units of government for consolidation, dissolution and transfer of appointment authority along with other specific strategies to address this issue.

3. Multi-Member Districts

The 1990 Lake County Governmental Study Commission II recommended electing County Board members by single districts to improve representation of localities and ethnicities. It was implemented in 1991. Prior to this, the County used multi-members districts with a majority and minority party. There may be some benefit in this multi-member model to assure that the minority party is represented in County government. To this end, the chair currently appoints minority party members to serve as chairs of some subcommittees.

4. Alternative Voting Methods

The Commission's in-depth research and discussion on methods of gerrymandering in reapportionment included the concept that other voting methods, such as ranked choice voting, could increase ethnic minority representation and competitiveness of the individual races. Additional research is needed to determine if any alternative voting methods are worth consideration and could be used under current State Statutes.

Additional Reform Proposal Recommendations

The County has eight countywide elected officials: the clerk of circuit court, the county clerk, the coroner, the recorder of deeds, the treasurer, the sheriff, the state attorney and the regional officer of education. Prior studies recommended the change to appointed positions for the coroner, recorder, and clerk of circuit court. Some of these positions may more appropriately serve as appointed rather than elected officials because the job duties are more administrative (e.g. recorder) or technical (e.g. coroner) than policy-oriented. The Illinois State Constitution identifies the treasurer, county clerk, clerk of circuit court, and sheriff as elected County officers, and are therefore not under the County's authority to change.

Recommendation 10. Review all countywide elected official positions subject to the County's authority (recorder, coroner) to understand their function, policy authority, costs and opportunities for increased effectiveness and cost efficiency to determine areas for consolidation or collaboration.

There are several on-going discussions about how to reduce the nearly 7,000 units of local government in Illinois to minimize overlapping services, improve service delivery, and minimize taxes and fees. Finding workable ways to overcome the barriers obstructing progress on these issues is critical.

The recent change in Federal tax law will likely place more pressure on local taxpayers, by reducing deductions for local income and property taxes.

The Commission supports local efforts to identify service-sharing, collaboration, and consolidation of local government bodies, and would encourage other efforts to modernized local government, increase efficiency in service delivery, and reduce the number of taxing authorities.

Recommendation 11. Establish a commission to actively explore potential collaboration, consolidation, or service-sharing opportunities, based on data that includes the impact on taxing bodies and potential cost savings.

The Commission should include local government leaders, taxpayers, and representatives of the business community. The charge to the commission should include assessing current conditions, identifying best

practices, finding and reviewing opportunities for consolidation, articulating potential savings or service improvements, and recognizing pre-conditions necessary for or barriers to implementation.

Lastly, voting methods other than simple majority are evolving as part of voting reform. They will get more local, state and national attention as redistricting discussions move ahead.

Recommendation 12. Research alternative voting options other than simple majority (e.g. ranked, cumulative, and open list ballots), using the information gathered by the Lake County Government Reform and Accountability Commission.

Conclusion

In keeping with Lake County's tradition of asking independent citizen commissions to study and advise the County Board on governance issues, the Lake County Commission on Government Reform and Accountability was established in March 2017 to study three reform topics: redistricting, the method of electing the chair, and the size of the County Board. It was also asked to identify other reform measures for future study that arose during the Commission's deliberations.

To accomplish this work, the Commission heard expert testimony, reviewed background information, and discussed the issues over a six-month period. The Commission concluded that the County functions well. They felt the County has the opportunity to become a leader in establishing an independent redistricting commission with clear principles for its work.

Although the Commission saw no benefit to changing to a countywide elected Board Chair or in changing the size of the Board, these issues can be changed by County Board action in a redistricting process. This means the redistricting effort required after the 2020 census provides an opportunity for an Independent Advisory Redistricting Commission to address the issues of redistricting reform, election of County Board Chair and size of the County Board based on current data per the recommendations made by the Commission and outlined in this report.

Appendix 1 – Board Resolution Establishing the Commission

Appendix 2 – Presentations Made to the Commission

The following presentations were made to the Commission during fact-finding and are included in this attachment in chronological order.

1. “Overview for the Lake County Commission on Government Reform and Accountability.” Presentation by Chair Lawlor and County Administrator Burton, May 31, 2017
2. “Redistricting Reform Options for Lake County.” Presentation by Ruth Greenwood, Senior Legal Counsel for Voting Rights and Redistricting Campaign at the Campaign Legal Center, July 19, 2017
3. “Redistricting Selected Legal Issues.” Presentation by George Tzanetopoulos. Partner at BakerHosteler, July 19, 2017
4. “Redistricting Principles.” Presentation by Cindi Canary, Independent Map Amendment, August 23, 2017
5. “Opportunities for Government Efficiency.” Presentation by Dr. Norman Walzer. August 23, 2017
6. “County Board Structure and the Goals of Institutional Reform.” Presentation by Dr. Eric Zeemering, September 13, 2017



Welcome & Introductions Commission Chair: Hon. Fred Foreman, Retired U.S. Attorney and Chief Judge Commission Vice-Chair: Hon. Kathy Ryg, Retired State Representative Commission Member Introductions	
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Commission Purpose

Chairman Aaron Lawlor

1. Independent Redistricting

- Analyze state and county governments... evaluate their governance structure, methodology, implementation and outcomes

2. Countywide Elected Chairman

- Study similar counties...identify key issues, challenges, opportunities, decisions...Identify best practices and policies to balance authority between the County Board, Chairman and County Administrator...ensure strong accountability, professional standards and high ethical standards and safeguards

3. Reduce the size of the board

- Examine, assess and report on similar counties' efforts... Identify positive and negative impacts on efficiency, constituent services, policy decisions and compliance with the federal Voting Rights Act

4. Other Reform Proposals

- Share ideas on additional reforms that could be studied in the future

Board Chair Overview

- Elected every 2 years by County Board
- Presides over County Board meetings
- Appoints standing committee members; Establishes Ad Hoc & Special Committees
- May add agenda items deemed time sensitive to the regular CB meeting agenda w/ concurrence of the Committee Chair
- An ex-officio member of all committees; votes only in the case of a tie or to constitute a quorum.
- Executes approved contracts
- Appoints 300 appointees to 70+ local units of government
- Liquor control commissioner for unincorporated area
- Serves on Lake County Partners Board of Directors; leads and provides oversight of economic development strategies
- Serves on regional groups (CMAP)



Lake

- 21 member single district county board; 2 and 4 year staggered terms
- Chair elected by county board members (2 years)
- Presides over meetings; Appoints committee members
- County Board sets rules
- County Administrator prepares proposed budget, prepares agendas (in coordination w/ chairs)

McHenry

- 24 member county board; 6 districts, 4 per district; 2 and 4 year staggered terms
- 2014 referendum creating countywide chair; 2016 first directly elected chairman (4 year term)
- CB Chair presides over meetings; sets CB agenda; breaks ties; Committee Chairs set committee agendas (in coordination with County Administrator)
- County Administrator prepares proposed budget

Collar County Governance Structure

DuPage

- 18 member county board; 6 districts, 3 per district; 2 and 4 year staggered terms
- Countywide elected chairman (4 years)
- Serves as Chief Executive Officer
- Chair schedules meetings, presides over board meetings, prepares agendas, prepares proposed budget, appoints committee and chair assignments
- County Administrator serves as Chief Operating Officer (reports to Chair)
- Department heads report through the County Administrator to the Chairman/CEO

Will

- 25 member county board; 13 districts, 2 from each
- County board appoints committees and sets agenda
- County Executive elected countywide; voters elected to go to a county executive form w/o home rule in 1988; Only County Exec form of government in IL
- Executive responsible for day to day operations; oversight of 26 departments; prepares proposed budget and annual report; breaks ties

County Board

Rules of Order and Operational Procedures



Revised December 12, 2016
lakecountyil.gov

Lake County Government Overview

Barry Burton
County Administrator

Local Government Structure

- State
- County
- Municipal
- Township

IL local taxing bodies: 6,693

**highest in the nation*

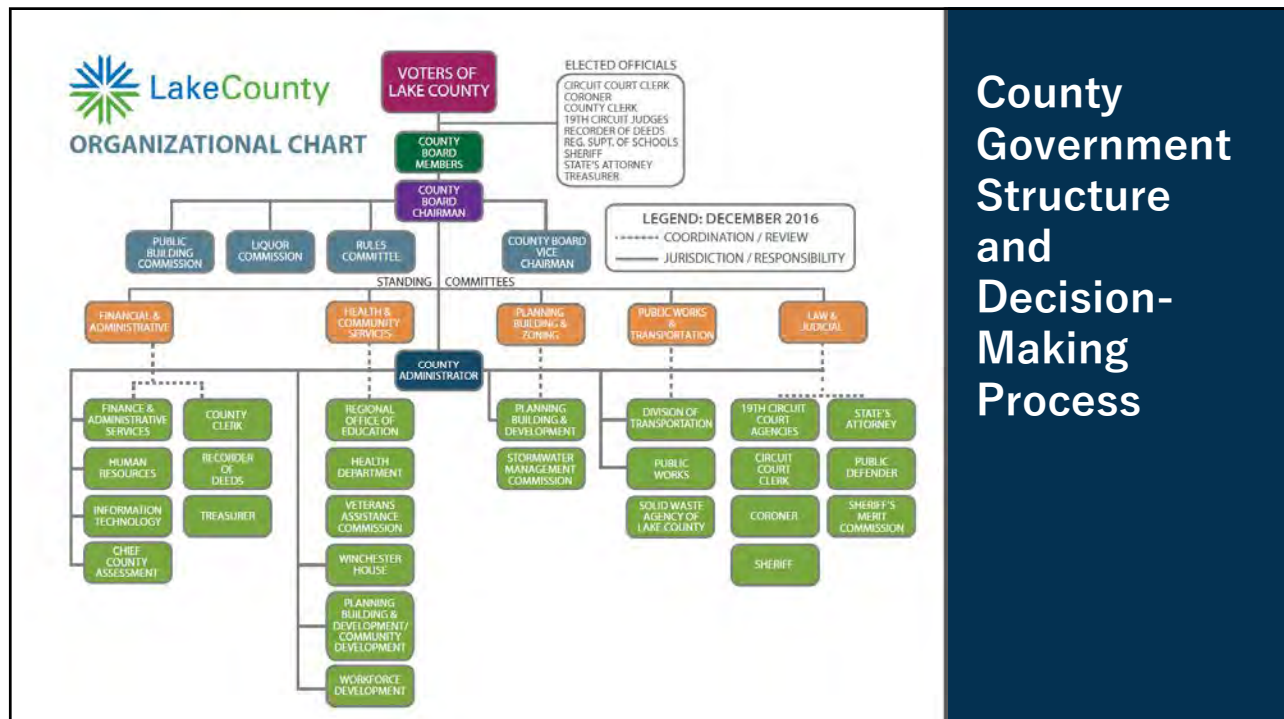
Lake County

- 1 County Government
- 1 Forest Preserve District
- 52 municipalities
- 18 townships
- 200+ special taxing districts



Lake County Governance Structure

- **County Board**
 - Authority in Illinois Counties Code (55 ILCS 5/)
 - Lake County does not have Home Rule Authority
 - Members serve 2 or 4 year terms; Staggered terms
 - Approve budget & provide policy direction
 - 5 Standing Committees
 - Establishes County Board Rules
- **County Board Chair**
 - 2 year term; Elected by peers; Makes CB Committee assignments; Appoints to 300+ to 70 units of gov't
- **Administrator**
 - Implements policies of the County Board, and goals/strategies in the strategic plan
 - Appointed department heads (that report to the Board) report to the County Administrator
 - Researches and analyzes policy decisions and makes recommendations to the board
 - Develops and oversees the annual budget and capital improvement plan





Laws and Standards

Illinois Freedom of Information Act (FOIA) & Open Meetings Act (OMA)

- Business of Commission is subject to FOIA and OMA
- Must complete OMA electronic training once during term of appointment w/in 90 days
- Quorum: 8 members needed to conduct a meeting; 5 majority of a quorum (Can't discuss commission business)

Lake County Ethics Ordinance

- State Act and local ordinance regulating/prohibiting political activities, solicitation and acceptance of gifts, and influence in hiring

Lake County Standards of Conduct

- Requirements and guidelines for appointed units of government and appointees related to Accountability, Fiscal Responsibility, Transparency, Efficiency and Ethics

Statement of Economic Interests



Commission Governance

Discussion

- Roles/responsibilities
- What success could like
- Value statements

Commission Facilitator

- Jerry Newfarmer, President/CEO of Management Partners, will oversee the project and Kevin Knutson will serve as project manager
- The MP team will develop a proposed plan of work; facilitate Commission meetings, conduct research, and perform other tasks



2017 Meeting Schedule

Meetings will (generally) be the 3rd Wednesday of month in the morning (8:30 a.m. – 10:30 a.m.)

- June 21, Central Permit Facility
- July 19, Central Permit Facility
- Aug. 23, Lake County Health Department, 3010 Grand Ave., Waukegan
- Sept. 13, Lake County Health Department
- Oct. 11, Central Permit Facility
- Nov. 22, Central Permit Facility
- Dec. 20, Lake County Health Department



Questions & Comments

Lake County Commission on Government Reform and Accountability
May 31, 2017

Resources/Contact Info

Email documents to communications@lakecountyl.gov

Plan to create a secure group website to store resource materials

www.lakecountyl.gov/govreform

Jennie Vana, Lake County Communications Manager
jvana@lakecountyl.gov 847-377-2154

Kevin Knutson | Management Partners Regional Vice President
kknutson@managementpartners.com
513-805-2021

Lake County Government Reform

In response to proposed State legislation (SB0569) that would require a referendum for voters to decide whether they support a countywide elected chairman—and fundamentally change Lake County's current structure where the Chairman is selected by county board members every two years—the Lake County Board Chairman and Lake County Board are taking steps to enact meaningful good government reforms.

Commission on Government Reform and Accountability

In March 2017, the County Board created a bipartisan commission to evaluate proposed reform measures and report on key findings that enhance accountability to the public, provide for an effective and responsive government structure, maintain strong professional and ethical standards, as well as redistricting reform to mitigate political influence. The group consists of community members, elected officials, faith leaders, major political party representatives, and other advocates of good government.

- [View the meeting calendar and agendas](#)
- [Resolution creating a Lake County Commission on Government Reform and Accountability](#)
- [Commission Membership](#)
- [Resolution providing for the appointment of members to the Lake County Commission on Government Reform and Accountability](#)

communications@lakecountyl.gov

Phone: 847-377-0250

REDISTRICTING REFORM OPTIONS FOR LAKE COUNTY

*Lake County Commission on Government Reform and
Accountability*

Wednesday, July 19, 2017

Ruth Greenwood,
Senior Legal Counsel, Voting Rights and Redistricting



OVERVIEW

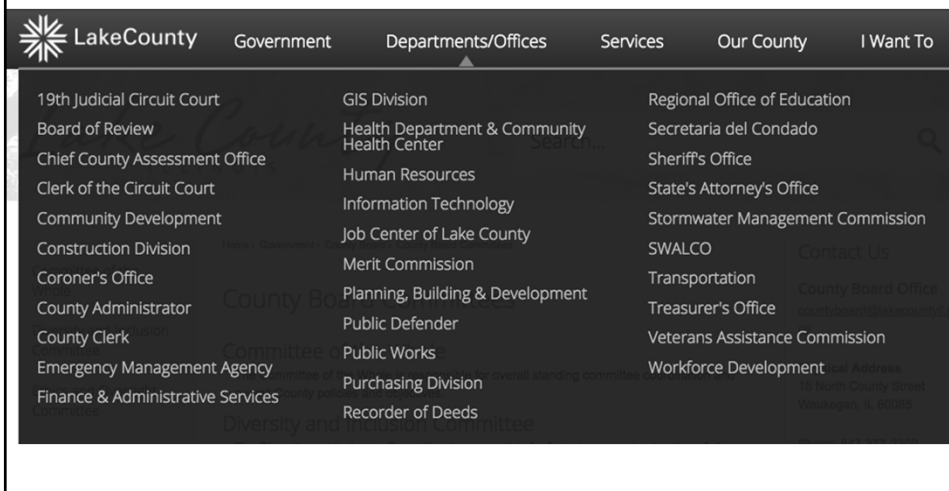
1. Goals of county board representation
2. Choosing an electoral system
3. Choosing a redistricting process

1. GOALS OF COUNTY BOARD REPRESENTATION

REPRESENTATION



COUNTY BOARD RESPONSIBILITIES



LakeCounty Government Departments/Offices Services Our County I Want To

- 19th Judicial Circuit Court
- Board of Review
- Chief County Assessment Office
- Clerk of the Circuit Court
- Community Development
- Construction Division
- Coroner's Office
- County Administrator
- County Clerk
- Emergency Management Agency
- Finance & Administrative Services
- GIS Division
- Health Department & Community Health Center
- Human Resources
- Information Technology
- Job Center of Lake County
- Merit Commission
- Planning, Building & Development
- Public Defender
- Public Works
- Purchasing Division
- Recorder of Deeds
- Regional Office of Education
- Secretaria del Condado
- Sheriff's Office
- State's Attorney's Office
- Stormwater Management Commission
- SWALCO
- Transportation
- Treasurer's Office
- Veterans Assistance Commission
- Workforce Development

LAKE COUNTY DEMOGRAPHICS

Race / Ethnicity	Percent, 2016
White (Non-Latino)	62.3%
Black (Non-Latino)	7.5%
Asian (Non-Latino)	7.7%
Latino	21.5%

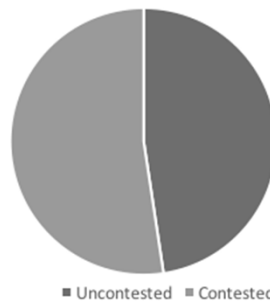
Source: American Community Survey, 2016:
<https://www.census.gov/quickfacts/fact/table/lakecountyillinois/PST045216>

LAKE COUNTY DEMOGRAPHICS



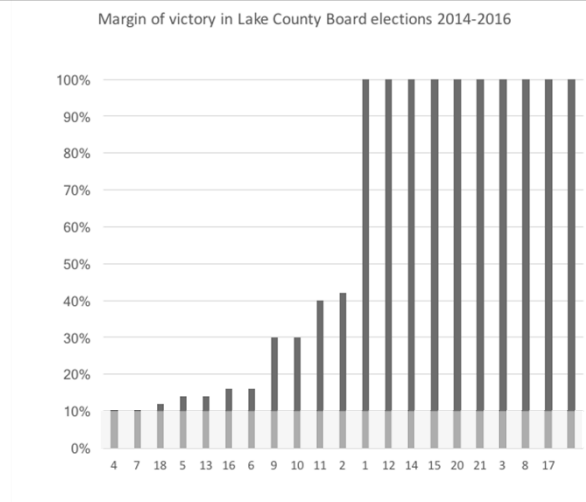
LAKE COUNTY BOARD ELECTIONS

Rate of Contestedness in General Election
Ballot for Lake County Board in 2014-2016
elections



Source: <https://www.lakecountyil.gov/320/Election-Results-Archive-2006---Present>

LAKE COUNTY BOARD ELECTIONS



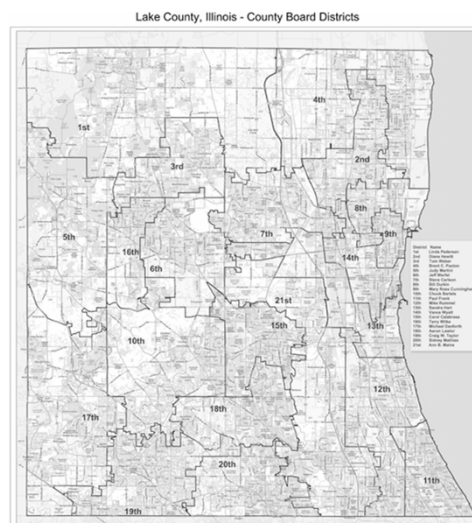
Source: <https://www.lakecountyil.gov/320/Election-Results-Archive-2006---Present>

LAKE COUNTY BOARD ELECTIONS

- Total voter turnout in Lake County board elections 2014-2016: 233,455
- Total registered voters in Lake County: 405,000
- **Turnout rate = 58%**

2. CHOOSING AN ELECTORAL SYSTEM

THE CURRENT SYSTEM



RESEARCH SHOWS...

Maurer School of Law: Indiana University
Digital Repository @ Maurer Law

Indiana Journal of Law and
Social Equality

Volume 5 | Issue 1

Article 9

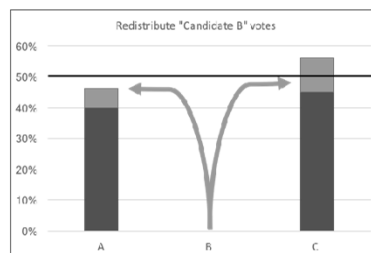
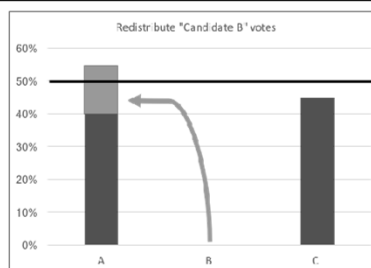
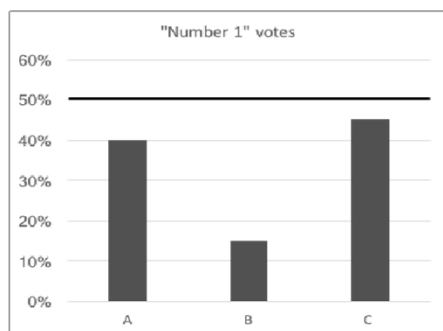
Winter 3-6-2017

Fair Representation in Local Government

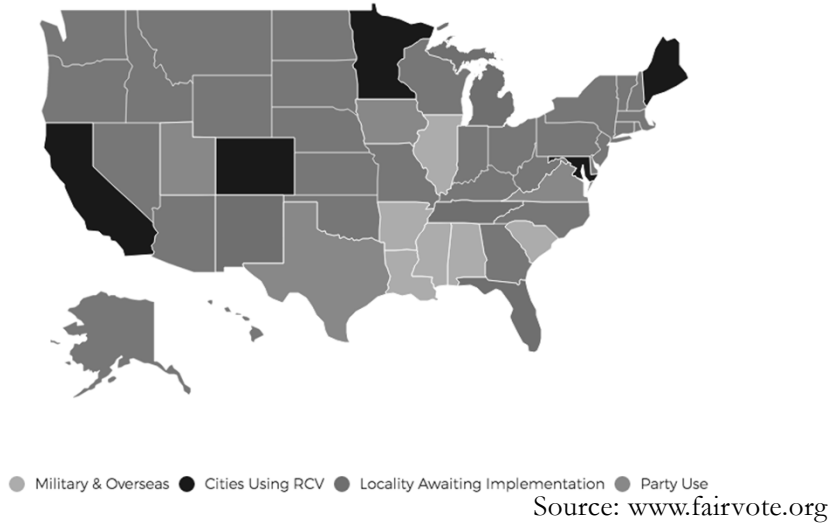
Ruth Greenwood

Campaign Legal Center, rgreenwood@campaignlegalcenter.org

RANKED CHOICE VOTING



USE OF RCV IN THE USA



3. CHOOSING A REDISTRICTING PROCESS

INDEPENDENT REDISTRICTING COMMISSIONS: SETUP

- Size of Commission
- Composition (partisan makeup)
- Selection process
- Eligibility
- Disqualifications
- Diversity
- Public participation / transparency
- Map Approval process

INDEPENDENT REDISTRICTING COMMISSION: POSSIBLE CRITERIA

- Rank the criteria?
- Require contiguity?
- Enhance compactness?
- Maintain geographic boundaries of cities, towns and villages?
- Promote minority representation?
- Protect communities of interest?
- Consider political data?
- Promote competition?

IF YOU DO WELL...

THE DAVIS
enterprise

Local News

**Citizen redistricting
commission receives
\$100,000 award to help
other states replicate work**

By Anne Ternus-Bellamy

From page A4 | July 12, 2017



Stan Forbes and Kathay Feng, executive director of California Common Cause, present the work of the California Citizens Redistricting Commission (which Forbes chairs) at the Ash Center for Democratic Governance and Innovation at Harvard University in May. The commission was awarded the center's 2017 Public Engagement in Governance Award. Courtesy photo

QUESTIONS?

www.campaignlegalcenter.org

rgreenwood@campaignlegalcenter.org

REDISTRICTING: SELECTED LEGAL ISSUES

Presented By:
George J. Tzanetopoulos
Partner, Baker & Hostetler LLP

TRADITIONAL DISTRICTING PRINCIPLES

1. Compactness
2. Contiguity
3. Preservation of counties and other political subdivisions
4. Preservation of communities of interest
5. Preservation of cores of prior districts
6. Protection of incumbents
7. Compliance with Section 2 of the Voting Rights Act

Equal Population

- Equal Protection Clause Of 14th Amendment Requires Districts Of Substantially Equal Population
- 10% Standard – Prima Facie Case Of Discrimination Not Made Out Where Maximum Population Variance Is 10% Or Less
- Under 10% *IS NOT* A Safe Harbor – Indicia Of Invidious Purpose And Lack Of Consistent Application Of Stated Principles Subject Plan To Attack. But Challenger Bears Initial Burden Of Showing Violation Of The 14th Amendment
- Rational State Policies That Justify Exceeding 10% - Political Subdivisions
- Consistent Application Is Key

Racial And Language Minorities

- Section 2 Of The Voting Rights Act
- Equal Protection Clause Of The 14th Amendment

Section 2 Of The VRA

Currently, a violation of Section 2 of the VRA is established if:

[B]ased on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of ... [a racial, color, or language minority class] ... in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected ... is one circumstance which may be considered: Provided, That nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

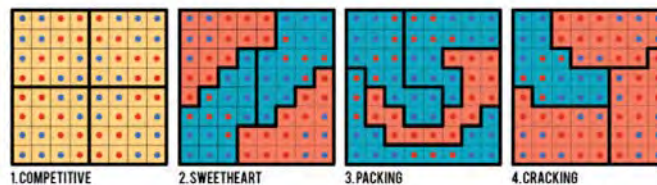
Recurring Issues

- Multimember Districts
- Packing and Cracking - Particularly In Single Member Districts

Multimember Districts

- A Multimember District Plan Is Not *Per Se* Unconstitutional Or a Violation Of Section 2
- It Can Be, However, If Under The Totality Of The Circumstances, It Denies Equal Opportunity To Participate In The Electoral Process

Packing And Cracking In Single Member District Plans



Section 2 Vote Dilution Claim Requirements

The Supreme Court In *Thornburg V. Gingles* Developed A New Three-part Test That A Minority Group Must Meet In Order To Establish A Vote Dilution Claim Under Section 2. The Test Requires That A Minority Group Prove That:

1. It Is Sufficiently Large And Geographically Compact To Constitute A Majority In A Single-member District;
2. It Is Politically Cohesive; And
3. In The Absence Of Special Circumstances, Bloc Voting By The White Majority Usually Defeats The Minority's Preferred Candidate.

Once All Three Are Shown, The Decision Is Made Based On The Totality Of The Circumstances.

N.b., There Is No Requirement To Maximize And Proportionality Is No Defense.

14th Amendment Equal Protection Claims

- Race-conscious Redistricting Is Not Always Unconstitutional.
- Race-based Districting Is Subject To Strict Scrutiny.
- The Fourteenth Amendment Requires State Legislation That Distinguishes Among Citizens Because Of Their Race To Be Narrowly Tailored To Further A Compelling Governmental Interest.

Passing Strict Scrutiny

- Compelling Government Interests
 - Remediating Past Discrimination
 - Complying With Section 2 Of The VRA
- Narrowly Tailored: To survive strict scrutiny, the challenged plan must: (1) remedy the violation or achieve compliance; and (2) not go further than is reasonably required to do so.

Partisan Gerrymandering

- Justiciability
- Standards
- *Whitford, et al., v. Gill, et al.* (Wisconsin Legislature)

Whitford Case

- Three-Judge Panel (2-1)
- Justiciable
- Equal Protection Violation Established:
 - Legislators' Conduct Showed Discriminatory Intent
 - Disproportionate Election Results Demonstrated Discriminatory Effect That Was Confirmed By The Plan's "Efficiency Gap"
 - Discrimination Not Justified By Narrowly Tailored Action To Further A Compelling Governmental Interest

Efficiency Gap

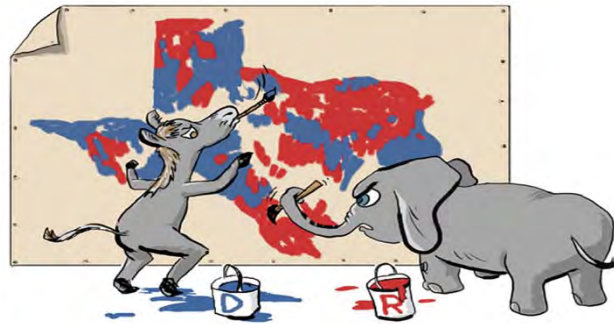
- "Wasted Vote" = All Votes Cast For Losing Candidates + All Votes In Excess Of 50% +1 For Winning Candidates
- $$EG = \frac{R \text{ Wasted Votes}}{\text{Total Votes Cast}} - \frac{D \text{ Wasted Votes}}{\text{Total Votes Cast}}$$

Conclusion & Questions

Redistricting Principles

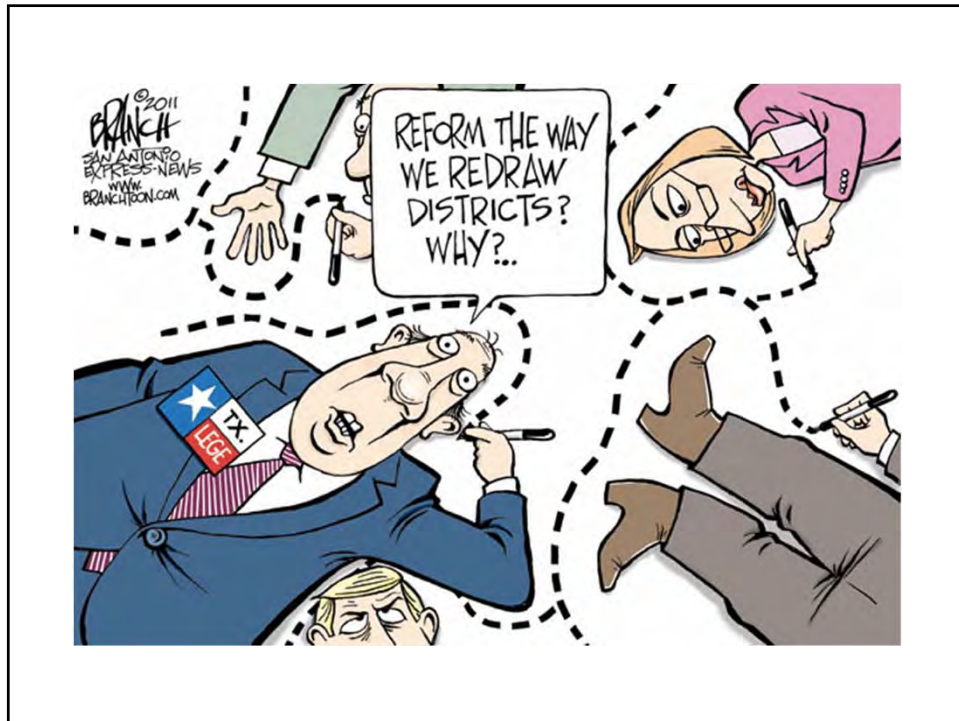
Presentation to the Lake County Commission on
Government Reform and Accountability

August 23, 2017



Framing Your Principles

GOAL: Representative democracy works best when the *public actively engages* with policy discussions and elections. Redistricting reform will offer *diverse voices and independent thinkers* an opportunity to serve. *Breaking partisan gridlock and restoring functional state government* is essential for Illinois' future and is an especially urgent call to action as we near the *2020 Census*.



HOW: Redistricting plans must be drawn to allow *Illinois residents, including communities of color, to elect candidates of their choice who represent and are held accountable to, the interests of that community.*

WHY: Fundamentally improving Illinois' redistricting process will strengthen our communities, foster a more robust democracy and restore public confidence in government

Values Can Conflict

- Any meaningful redistricting plan must provide transparency and allow true public participation. However, we recognize that principles of *voter choice, geographic cohesiveness and competitiveness can at times come into conflict with one another*. These criteria are presented in priority order to help guide considerations in Illinois' mapmaking.

PRINCIPLE 1

- **The process must be in accordance with the requirements of the U.S. Constitution.** All persons -- regardless of age, citizenship, immigration status, ability or eligibility to vote -- should be accurately counted through the Census. In accordance with the U.S. Constitution, districts should be populated equally, as nearly as is practicable.



PRINCIPLE 2

- The process must emphasize representation and be fully compliant with both the federal Voting Rights Act (VRA) and all state voting rights laws, including the Illinois Voting Rights Act. The letter and the spirit of the VRA should be reflected in redistricting to protect the rights of voters of color.



PRINCIPLE 3

- **The process should be independent of partisan political considerations.** Mapmaking must be independent from political parties and legislative leaders. The process must include diverse decision-makers who reflect a broad range of viewpoints and who prioritize people and communities. Mapping consultants paid for with public resources, should be awarded on merit rather than partisan affiliation.

The Fox shouldn't guard the Henhouse



PRINCIPLE 4

- The process should result in maximizing voter choice, encouraging electoral candidacy and enhancing electoral competitiveness.



PRINCIPLE 5

- **The process should give consideration to true communities of interest.** To the extent possible, but secondary to the protection of voting rights, populations with common social, ethnic or economic interests and/or shared political and geographic boundaries should have unified representation.



PRINCIPLE 6

- **The process must accurately represent the permanent residence of all Illinoisans.** All persons residing away from their permanent residence, such as students, incarcerated individuals, and missionaries, should be counted at their home address regardless of Census counting rules.

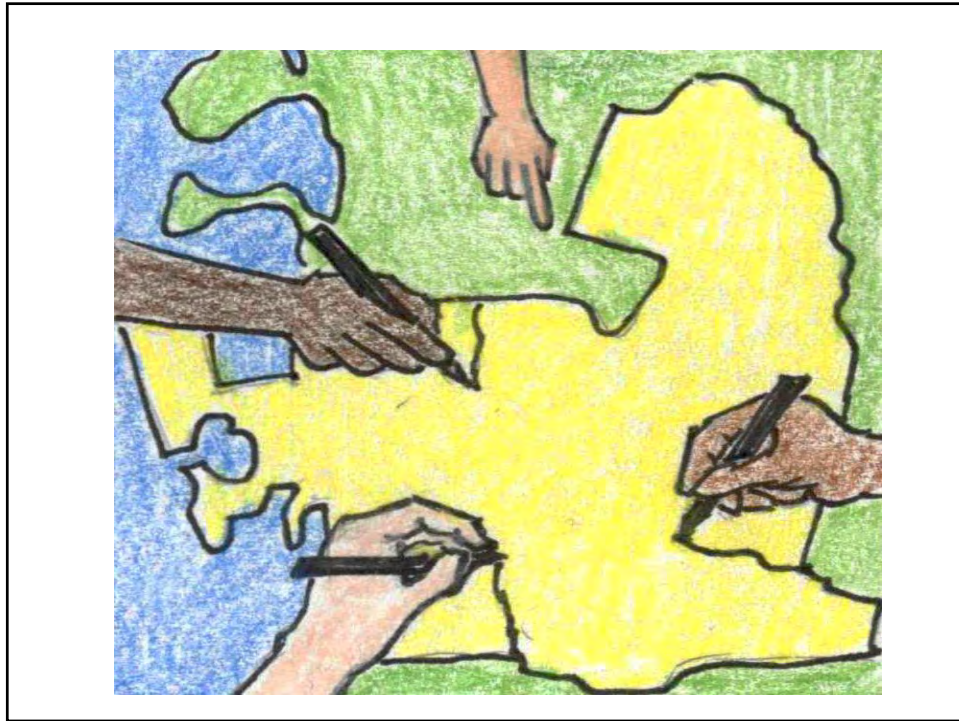
PRINCIPLE 7

- **The process must be transparent and accountable.** Meetings of decision-makers, and their consultants, must be open and accessible to the public to the greatest extent possible. The criteria used to draw maps must be objective, clear and justifiable. Communications related to the redistricting process should be subject to the OMA and FOIA. Clear conflict-of-interest rules must be adopted and applied.



PRINCIPLE 8

- **The process must allow for meaningful public participation and have the confidence of the public.** Opportunities for public education and engagement must be provided, including opportunities to offer comment and amend draft maps. Redistricting bodies must provide data, tools and ways for the public to have direct input into and impact on the specific plans under consideration.





Opportunities for Government Efficiency

Norman Walzer, Ph.D.
Senior Research Scholar

Presented to

Lake County Commission on Government Reform and Accountability

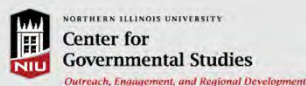
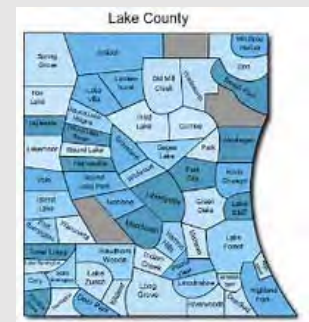
Lake County Health Department
Waukegan, IL

August 23, 2017



Presentation Overview

- Background on Task Force
- Local government structure
- TF Recommendations
- Recent additions with SB 203 signed into law
- Main issues to consider in discussions
- Current work at CGS on a template



Task Force on Consolidation and Unfunded Mandates

- Bi-Partisan Membership
- Driven by Local Interest & Discretion in Modernizing Service Delivery
- Interest in Promoting Shared Services to Lower Costs
- Informed by Local Input and Information (> 500 survey responses)
- Focus was on Enabling and Empowering Residents & Local Officials
- Ultimate Aim is to Reduce Duplication & Property Taxes
- Submitted 27 Recommendations Based on Local Input
- Five Recommendations Included in Recently Signed SB-3



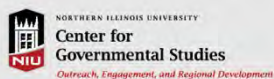
Rising Costs of Public Services* 1992 to 2012

Increase in Operating Expenditures/Capita
(constant dollars)

Illinois	23.8%
Indiana	12.6%
Wisconsin	17.5%
Iowa	31.6%
Michigan	17.6%
Texas	22.4%



*Census of Governments, Finances Division, respective year.



Effective Property Taxes 2015*

Residential Property (State Median Value)

Illinois	2.30%	2nd highest
Indiana	.87%	29 th
Iowa	1.48%	14 th
Wisconsin	1.96%	5 th
Michigan	1.78%	8 th
Missouri	1.00%	26 th
Ohio	1.56%	12 th



*as percent of market value in calendar year 2015.

Source: 2014 American Community Survey; Wallet-Hub; Tax Foundation

Governments in Lake County (Population 703,462)

Type of Government	Number
General Purpose	64
County	1
Municipal	45
Township	18
Special Purpose	128
Special Districts (non education)	82
Independent School Districts	46
Total	192



Effective Tax Rates

(Compared with 89 Illinois Municipalities, \$250K House)*

Rank in Year				Municipality	Effective Tax Rate (%FMV)	
2005	2008	2010	2013		2010	2013
5	5	3	1	Zion	4.84%	7.98%
42	13	7	9	North Chicago	3.91%	5.04%
28	12	5	14	Waukegan	4.23%	4.62%
57	67	73	72	Lake Zurich	2.35%	2.64%
72	73	74	68	Libertyville	2.34%	2.72%

(Higher rank means higher taxes compared with other municipalities)

*published by Tax Foundation in *Tax Facts* (Summer 2013 and 2015). 2013 taxes collected in 2014.



NORTHERN ILLINOIS UNIVERSITY
Center for
Governmental Studies

Outreach, Engagement, and Regional Development



Contributing Factors to Property Taxes

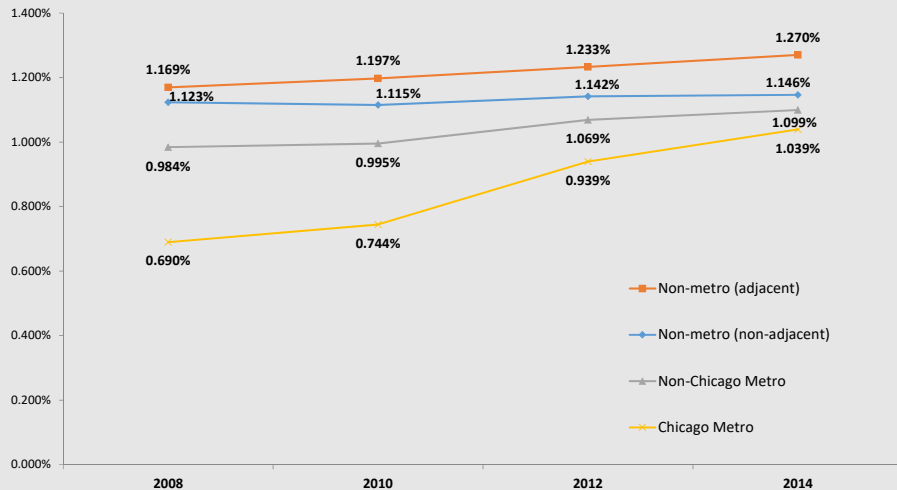
- Changed Technology, Population Distribution, and Services Needed
- Large Number of Governments (well > 7,000) some duplication
- Unfunded Mandates Increase Costs
- Bond and Debt Limits promote new governmental units
- Relative Ease in Creating Governments
- Statutory Obstacles to Removing Existing Governments
 - Citizen Initiatives
- Lack of Organized Approach to Governmental Review
- No "Permission to Act"



NORTHERN ILLINOIS UNIVERSITY
Center for
Governmental Studies

Outreach, Engagement, and Regional Development

Residential Property Tax Extensions / Residential EAV



Task Force Recommendations

(Partial list of 27 recommended actions)

- Create 4-year Moratorium on New Governments (unless merger)
- Referendum Signature-- 5 percent of Votes in the Last General Election
- DuPage County's pilot consolidation program to all 102 counties
- Townships can Consolidate with Coterminous Municipalities via Referendum
- Extend to 19 Coterminous Municipalities/Townships Same Authority Granted Voters in Evanston Township
- Remove 126 Square Miles Limitation on Township Size
- County Form of Government Not Required to Change If Consolidates Townships
- Road/bridge Districts Can Merge if < 25 miles

Issues to Consider

- Types and Levels of Services Needed and Desired
- How does Current Spending/Taxes Compare with Other Agencies
- Which Services are Mandated and Which are Optional
- Current Arrangements for Service Delivery
 - Are known opportunities to reduce costs for same service
- Is the Political Climate Right for Modernization
- Who can Spearhead the Evaluation of Opportunities
- Do the Potential Savings (over the long term) Justify the Effort?
- Current CGS Project to Create a Modernization Template with Governor's Rural Affairs Council (in progress)



Possible Avenues.....

- Form independent group to examine governmental structure & possible changes
 - Identify planning horizon—5 years and beyond?
- Compare current levels, spending, & quality of services delivered with others
- Determine which are mandated & which are elective functions
- Identify legal options and authority for governments
- Look for possible overlaps in service delivery & who has best capacity
- Determine apparent cost-saving measures already under consideration
 - Include options suggested by current employees
 - Alternative approaches
- Study alternative approaches and impacts on level of service
- If changes makes sense, determine procedures to follow (e.g., referendum)



Information on Best Practices

Journal of Local Government Shared Services Best Practices, Office of Lt. Governor Evelyn P. Sanguinetti, 2016. <https://www.illinois.gov/ltg/issues/localgovernments/Documents/Journal-of-Local-Government-publication-request.pdf>

Local Government Collaboration in Wisconsin, Best Practices. 2012. <http://www.localgovinstitute.org/library/publications/id/100/local-government-collaboration-in-wisconsin-case-studies>

Counties Matter Challenge: 100 Brilliant Ideas that Work. 2016-17. <http://www.naco.org/resources/counties-matter-challenge-100-brilliant-ideas-work>

Service-Sharing: How Counties Do More With Less. NACO County Futures Lab. <http://www.naco.org/resources/service-sharing-1>

Road Map for Aligning Local Governments in Wisconsin, Local Government Institute, 2010. <http://www.localgovinstitute.org/library/publications/id/149>

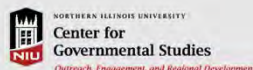
Alternative Service Delivery: A Readiness Check. International City and County Management Association. 2016. e-book.



For Further Information, Contact:

Norman Walzer, Ph.D.
Senior Research Scholar
nwalzer@niu.edu
815-753-0933

Center for Governmental Studies
Northern Illinois University
DeKalb, IL 60115
www.cgs.niu.org





Northern Illinois
University

County Board Structure and the Goals of Institutional Reform

Eric Zeemering, Ph.D.
Department of Public Administration
School of Public & Global Affairs
September 13, 2017

Three Questions



- *First, what evidence do we have about county government reforms?*
- *Second, what advice have experts in local government provided regarding the work of governing boards?*
- *Third, by discussing board structure, are we enhancing the accountability of county government?*

What evidence do we have about county government reforms?



- Streib and Waugh (1991b) identify that urbanization was positively related with the scope of county service delivery, and many U.S. counties continue to add policy responsibilities. In related research, Streib and Waugh (1991a) suggest county officials have been more focused on financial reforms and negotiation of legal authorities with their states than with internal political reforms.
- Benton (2002) reports a strong association between a variety of county government reforms and service delivery spending.
- In a recent study of counties in Florida, Alejandro Rodriguez (2007) found a positive relationship between key institutional reforms, including the adoption of home rule and the presence of professional managers, and a series of metrics related to the performance of the county road system.
- **Few researchers engage the narrow distinction between appointed board chairs and those elected at-large by the electorate and the consequence of this reform for county governance.**

What advice do experts have for the work of governing boards?



"Chief elected officials are usually not chosen through a jurisdictionwide electoral mechanism that serves to promote recognition and the generation of a mandate, and even county executives who are elected countywide are probably eclipsed in the public's view by mayors occupying political space in the same jurisdictions. Elected and administrative leaders in counties must necessarily rely more heavily on personal and informal resources than on formal resources in performing their duties."

James Svara (1996)

By discussing board structure, are we enhancing the accountability of county government?



A discussion about accountability might also consider:

- Performance Reporting
- Collaborative Efficiency
- Strategic Planning, Foresight Exercises, and Public Goal Setting



Lake County Illinois

Legislation Details (With Text)

File #:	17-0314	Version:	2	Name:	Resolution creating a Lake County Commission on Government Accountability and Reform.
Type:	resolution	Status:			Passed
File created:	3/3/2017	In control:			Lake County Board
On agenda:		Final action:			3/14/2017
Title:	Resolution creating a Lake County Commission on Government Reform and Accountability.				
Sponsors:					
Indexes:					
Code sections:					
Attachments:					

Date	Ver.	Action By	Action	Result
3/14/2017	2	Lake County Board	placed on the floor	Pass

Resolution creating a Lake County Commission on Government Reform and Accountability.

RESOLUTION

WHEREAS, the Lake County Board unanimously adopted Resolution 17-0206 on February 14, 2017 that requests legislative support to place binding referenda questions on the ballot in 2018 on reform measures, including: 1) a countywide elected chairman in 2022; 2) redistricting reform that leverages the Independent Map Amendment process; and 3) an advisory question on streamlining county government by reducing the size of the county board; and

WHEREAS, Chairman Aaron Lawlor believes this is a time for bold leadership and has proposed reforms to position Lake County as a model for government reform statewide; and

WHEREAS, these reforms provide the framework for innovative changes to county government that enhance accountability and would benefit from the creation of an ad hoc committee to facilitate wide-ranging and thoughtful input from leaders around Lake County, as well as respected, bipartisan voices at the regional level; and,

WHEREAS, Chairman Lawlor requests the County Board approve the creation of the "Lake County Commission on Government Reform and Accountability" as an ad hoc committee comprised of a bipartisan and diverse group of community members, current and former elected officials, faith leaders, major political party representatives, local and regional representatives of good government, political reform and voter advocacy organizations; and

WHEREAS, the Lake County Board prides itself on the many strengths of the County's current structure and will steadfastly protect the fiscally responsible, professional and ethical principles that have resulted in balanced annual budgets and a consistent AAA bond rating, as well as a collaborative and bipartisan culture that values relationships and commitment to service, trust in a professional staff and managerial form of government, and prohibitions against political patronage,

nepotism or cronyism; and

WHEREAS, the Lake County Board believes it is critical that the Commission begin its work by understanding and appreciating the values and attributes described above; and

WHEREAS, the Commission is to evaluate proposed reform measures and report on key findings based on its ability to enhance accountability to the public, provide for an effective and responsive government structure, maintain strong professional and ethical standards, and reform redistricting to mitigate political influence; and

NOW THEREFORE BE IT RESOLVED, that it is the desire of the Lake County Board to create the "Lake County Commission on Government Reform and Accountability" as an ad hoc committee with the specific purpose, charge and responsibilities limited to and enumerated in this resolution; and

NOW THEREFORE BE IT FURTHER RESOLVED, the ad hoc committee is specifically charged with the following responsibilities: 1) Analyze state and county governments that have transitioned to an independent redistricting system by evaluating their governance structure, methodology, implementation and outcomes. Utilize information from proposals, such as the Illinois Independent Map Amendment; 2) Study similar counties that transitioned to a countywide elected chairman by identifying key issues, including board rules, challenges, opportunities and decisions that were made to enhance the stated goals of this resolution. Identify best practices and policies used to balance authority between the County Board, Chairman and County Administrator. Prioritize models that ensure strong accountability by elected leaders to the public, maintains strong professional standards and sets high ethical standards and safeguards in line with the spirit and intent of Lake County's Ethics Ordinance and Standards of Conduct; 3) Examine similar counties' efforts to reduce the size of the board, assess and report on similar counties' efforts to reduce the size of their boards. Identify positive and negative impacts on efficiency, constituent services, policy decisions and compliance with the federal Voting Rights Act; 4) provide opportunities for stakeholders and the public to share ideas on additional reforms that could be studied in the future; and

NOW THEREFORE BE IT FURTHER RESOLVED, the makeup of the Commission shall reflect the diversity of Lake County, including political, racial gender, age, and socioeconomic diversity and be representative of a bipartisan group of leaders with diverse perspectives and backgrounds; and

NOW THEREFORE BE IT FURTHER RESOLVED, Commission members shall be appointed in accordance with the Lake County Board's Rules of Procedure; and

NOW THEREFORE BE IT FURTHER RESOLVED, terms for all Commission members will begin immediately upon an affirmative vote of the County Board and will terminate by board resolution or, if no action is taken, on the first Monday of December 2018; and

NOW THEREFORE BE IT FURTHER RESOLVED, as an ad hoc committee of the Lake County Board, the Commission will conduct itself in a transparent manner that complies with the Lake County Board Rules of Operations and Procedure, Illinois Open Meetings Act and provides information on the Commission's progress on the Lake County government website; and

NOW THEREFORE BE IT FURTHER RESOLVED, the Commission may convene meetings as often as deemed necessary by the Chair of the Commission in consultation with commission members, and not less than monthly. It is the responsibility of the Chair and Vice Chair of the Commission to

coordinate with commission staff on the scheduling of meetings, setting of agendas and management of the Commission's work. This work should be conducted in a manner that permits a complete and timely report is submitted to the to the Lake County Board Chairman and County Board Members by December 31, 2017; and

NOW THEREFORE BE IT FURTHER RESOLVED, the Commission shall receive sufficient staff and administrative support and resources to complete the scope and purpose defined in this resolution. The County Administrator's Office will be responsible for designating staff and/or contracting with outside individuals, firms and/or organizations to assist the Commission completing its work in an independent manner; and

NOW THEREFORE BE IT FURTHER RESOLVED, the County Board believes it is critical that the Commission be formed in a manner that seeks to engender a high level of credibility with the public, media and stakeholders by ensuring commission members and assigned staff act in a manner that is highly professional, ethical and free from any conflict of interest. As such, members shall comply with the Lake County Ethics Ordinance and Lake County Standards of Conduct Ordinance for the duration of their term. Commission members shall also commit to conduct their personal and professional affairs in a manner that does not impugn the integrity, credibility or ethics of the Commission by complying with all state and federal tax, elections, campaign finance and disclosure laws.

DATED at Waukegan, Illinois, on this 14th day of March, 2017.

Appendix 3 – Research Documents Provided to the Commission

The following documents were provided to the Commission during fact-finding and are included in this attachment in alphabetical order by author.

1. Blankenship, L. Vaughn and Thompson James, *Modernizing Lake County Action Plan*, December 2000
2. Choi, Euirim; “How a Law School Professor is Helping SCOTUS Rethink Gerrymandering;” *The Chicago Maroon*, June 24, 2017.
3. Greenwood, Ruth; “Fair Representation in Local Government”; *Indiana Journal of Law and Social Equity*, Indiana University Maurer School of Law, Volume 5, Issue 1, Winter 3-6-2017.
4. Stephanopoulos, Nicholas O. and Eric M. McGhee; “Partisan Gerrymandering and the Efficiency Gap;” *University of Chicago Law Review*, 831, 2015.

Modernizing Lake County Government

ACTION PLAN

Report submitted by:

L. Vaughn Blankenship, Ph.D.

James R. Thompson, Ph.D.

With the assistance of:

Mimi Stockton and Shelley Fulla

December 2000

Graduate Program in Public Administration
College of Urban Planning and Public Administration
University of Illinois at Chicago

UIC University of Illinois
at Chicago



Modernizing Lake County Government

Executive Summary

There are many reasons for Lake County residents to be satisfied with their county government. First, elected and appointed officials support a professional approach to the conduct of county business. There is a virtual absence of patronage practices and sweetheart deals. Second, the county is in good financial shape with large reserves and a triple-A bond rating. Third, members of the county board take their policymaking responsibilities seriously and work hard on behalf of county residents. They are able, conscientious and many put in long hours to keep up with their legislative and constituent obligations. Fourth, the county has retained top-flight administrative talent. This is apparent in the administrator's office as well as at the departmental level.

Despite these strengths however, county government also evidences some weaknesses. One is that the current structure has not been conducive to the resolution of long-standing, high-profile, and controversial issues such as highway funding, Route 53, and affordable housing. In significant part, we attribute this outcome to the fact that it is very difficult to exercise leadership in the present configuration.

Power in Lake County is extremely diffuse. Legislative powers are shared by 23 board members with key policymaking roles played by the heads of eight separate committees. Administrative powers are shared by the board, the county administrator and department heads. The existence of eight, separately-elected department heads further fragments power and accountability as does the existence of over thirty separate boards and commissions, six of which have important policymaking responsibilities.

Unlike many other counties of similar size and stature around the country, Lake County does not have at the head of its government an official elected by all county residents to serve as a focus of both action and accountability. While the board chair is titular head of county government, s/he is elected from a single district, representing 1/23 of all county residents. Further, few significant powers are delegated to that position by the board. As a result, it is very difficult for the board chair to exercise policy and political leadership 1) in putting forth proposals that can gain widespread support and heal divisions among residents, 2) in securing support for county initiatives at the state and federal levels, and 3) in garnering the support of local officials in addressing issues of common concern.

We believe that structural changes are in order. One is that the board chair be elected on a county-wide basis. We believe that such a change, in conjunction with a reduction in the size of the board and enhanced administrative authority for the county administrator would significantly improve the prospects of effectively dealing with the intractable problems relating to growth which now beset the county. Those problems are severe and promise only to get worse.

In a recent poll conducted by the Forest Preserve, traffic congestion was identified as the single most important issue facing the county, yet for ten years, the county has been unable to secure an additional source of funding to meet highway construction needs. Positions are polarized over whether or not Route 53, which some tout as a potential solution to the congestion problem, should be constructed. The affordable housing issue has also led to deep, geographically-based divisions. Notable in each instance is the absence of an official positioned to bring together those with opposing viewpoints in developing solutions that could work to the benefit of all county residents.

Many board members with whom we talked expressed reservations about prospects for the electing a board chair county-wide. Foremost among their concerns was that only those with access to large amounts of financial resources would be able to mount an effective campaign for such a position. However, others pointed out that Lake County has become more and more competitive politically, both within and between parties. Further, a campaign for board chair would inevitably gain extensive media coverage effectively dampening the monetary advantage enjoyed by any one political faction. A political campaign would serve the important purpose of stimulating debate and vetting important county issues in a manner that facilitates public involvement and engagement. There is currently no alternative venue suitable for the discussion of issues which cut across municipal, county and state jurisdictional lines.

Another key step which we believe would improve the effectiveness of county government is to reduce the size of the board to 12 members, excluding the chair. We believe that expanding the constituencies of the board members in this fashion will make it more likely they will take a broad, county-wide perspective on issues and less likely that members will engage in inappropriate levels of involvement in predominantly administrative activities. Compared to counties in other states similar to Lake, twelve is still a large number. However, it is important that districts be of a size that board members can still be responsive to constituent needs. It is further important that the county board reflect the diversity of the county's population.

We further recommend that the progression which began over twenty years ago, whereby the board has delegated more and more authority over administrative matters to the county administrator, continue. We believe that the capacity of the county administrator to enforce the board's policy direction will improve to the extent that the administrator is given clear authority over departments. Present arrangements contribute to a high level of ambiguity as to the respective roles of committee chairs, department heads and the administrator such that the administrator is at times unable to adequately perform the essential function of ensuring that administrative units abide by board priorities. Present arrangements further lend themselves to domination of individual policy areas by committee chairs. As experience with the budget process has demonstrated, the most effective means of ensuring that all board

members have equivalent access and influence in different policy areas is to accord an intermediary role to the county administrator.

Consistent with our concerns about the highly diffuse nature of power in the present system, we recommend that both the Coroner and Recorder of Deeds positions be made appointed. These positions are substantially administrative in nature and have minimal policymaking responsibilities. The incumbents of both these positions are, by all accounts, performing well. In recognition of this, the board might wish to time any referendum changing the status of these positions to correspond with the departure of the current incumbents.

Finally, we recommend that the board undertake a systematic review of the various county boards and commissions with policymaking and/or administrative responsibilities to examine where efficiencies can be gained and how program effectiveness can be improved through consolidation. The proliferation of these boards deters unified direction of policy and impedes the uniform application of administrative practices.

Appendix B lists these and other recommendations according to the specific charges given the authors by the county.

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Modernizing Lake County Government

I. Introduction

By July 1, 2001, the County Board of Lake County, Illinois, is required by statute to reapportion itself based on the results of the 2000 U.S. census.¹ With this act, fundamental to a democratic society, the board will put in place a significant part of the basic governmental and political framework by which the citizens of Lake County will govern themselves during the first decade of the 21st century.

This act also presents a unique opportunity to assess other parts of the county's basic governmental and political framework in light of demographic, economic, social, and technological developments occurring since the last census. Are the parts working well? Are they effectively and efficiently performing their expected roles? Do they require incremental adjustment or significant change to enhance their performance or to make them mesh better with each other as well as with the county board? Under the state constitution and the laws of the State of Illinois, county boards are given a substantial degree of latitude and authority for periodically considering and acting on such matters to facilitate needed change.

The Lake County Board took advantage of the opportunity presented by the censuses of 1980 and 1990 to examine a range of issues related to various parts of the county's governmental structure. In early 1976, it appointed a Governmental Study Commission consisting of citizens, a selection of board members and others to "analyze the functions and roles of the County Board and its related departments."² The results of their work appeared in two reports, the first issued in April of 1977, the second a year later. A second Governmental Study Commission, similarly composed, was appointed in early 1989 to undertake an analysis of some of the same issues along with new ones.³

The board made a number of changes in the county governmental structure based on the work of these two commissions. The most significant were:

- Establishment of the position of **County Administrator** charged with responsibilities, among others, to recommend an annual budget, receive reports of departmental activities, and direct administrative services, among others (the ordinance creating the position of county administrator is included as Appendix C).
- Abolition of the county-wide, elected position of **County Auditor** by referendum in November,

¹ Pursuant to Chapter 55 Illinois Compiled Statutes, 5/2-3002.

² *Lake County Governmental Study Commission First Year Report*, p. 1, April 12, 1977.

³ *Final Report of the Lake County Governmental Study Commission II*, p. 1, Transmittal Letter, July 1, 1990.

1978

- The decision in 1990 to go **from multi-member to single member districts** for election to the county board

Equally notable was the failure to adopt, either by subsequent board action or a successful referendum, some of the other commission recommendations in one or both reports including:

- **Reduction in the size** of the county board from 25 to 15 during the 1980 reapportionment and from 24 to 15 during the 1990 reapportionment
- Electing the **chairman of the county board at-large** rather than through election by the board itself
- Changing the status of the **Recorder of Deeds**, the **Coroner**, and the **Circuit Court Clerk** from county-wide, elected positions to appointed positions.

I. A. Reapportionment 2000: Laying the Groundwork

In the spring of 2000, in preparation for its consideration of reapportionment following the census, the board decided to follow a different path from that pursued in conjunction with the two preceding censuses. In early July, 2000, an agreement between Lake County and the University of Illinois-Chicago (UIC) was executed to have Professors Vaughn Blankenship and James Thompson of the Graduate Program in Public Administration (see Appendix A) conduct a study of the structure of Lake County government. The results of the analysis were to be available by December in time for their consideration by the newly-formed county board. As outlined in the UIC study proposal to the county administrator, the agreed upon issues to be addressed were:

1. The appropriate size and manner of electing the county board;
2. The appropriate manner of selecting a county board chair;
3. The scope of county board functions and the restructuring and/or altering of existing jurisdictional responsibilities;
4. The internal governance of the county board, including its committee structure and the role of the county board in policy development and administration;
5. The pros and cons of home rule for Lake County with or without a county executive; and
6. The current status of county offices as elected vs. appointed officials.

Several of these issues, namely numbers 1,2,5, and 6, were almost identical to those considered in one or the other or both of the previous study commission reports. That they were still on the agenda for analysis pointed up two important things. First, significant change in county governmental structures *can*

occur as the elimination of the elected auditor position, the establishment of the county administrator role, and the shift to single-member electoral districts demonstrated. On the other hand, the continued presence of the remaining four issues demonstrated that change can be slow, incremental, and politically challenging, *if and when it occurs*. During the last two and a half decades, Lake is and has been a growing, and changing county. In such circumstances, difficult issues like these remain viable and need periodic reexamination, even if the basic “facts” of the their case don’t change very much. *Timing, changing public priorities and concerns, consensus building* and, above all, *leadership* are always critical to their ultimate outcome.

It was equally clear that issues 3 and 4 were new to the list or at least had a different ‘flavor’ to them. While the others dealt with more structural, ‘constitutional’ matters, these two were more related to the board’s role in governing, it’s operational structure for carrying out that role, and the relationships among the board, the county administrator and the administrative department heads. Their emphasis on ‘policy and management’ matters indicated much about the incremental but positive progress that had been made in the evolution of Lake County government since the 1970’s. On the other hand, it was recognized immediately that they were nested in the resolution of the broader issues.

Significant changes in the size of the County Board, or the county-wide election of the board chair and/or a county executive, for example, would have a highly significant bearing on the ‘conduct of business’ and the relationships among the various parties in county government. Alternately, the choice to remain with the 2000 *status quo* on these larger questions would mean a continuation of the strategy of ‘fine tuning’ on the ‘policy and management’ matters. In the data collection and subsequent analysis for the study, each of the six questions were examined independently. But the study began with the realization that they were, in practice, *highly interdependent* both in terms of implementation and results. Constitutional structures are the framework within which day-to-day policies, relationships, and processes work themselves out. (More detail on the approach used by the authors in conducting the study and in preparing the recommendations is included in Appendix D.)

II. The Context for the Study

Consistent with our premise that issues such as those we are investigating cannot be understood or analyzed apart from their context, we present below an overview of those elements of the national and Lake County environments that we regard as most relevant to the issues we are addressing.

II. A. Setting the Context: County Government in the U.S.

The structure of county governments in the United States has long been somewhat of an anomaly. State governments and many city governments have long featured a separation between the executive and legislative functions similar to that which exists at the Federal level. This division provides for checks and balances of power between the branches while facilitating unified and energetic direction of the administrative apparatus of government. Having experienced the severe limitations of a system in which the executive was **elected annually by the Continental Congress**, the Founding Fathers opted for a unitary executive elected every four years by the people as a whole. This model was generally followed by states and many municipalities during the various constitutional reforms of the 19th and early 20th centuries.

At the federal level executive power is lodged with the president and at the state level with the governor. They have traditionally played leadership roles within their respective jurisdictions and have served as sources of energy and innovation. At the federal level and in many states, the chief executive appoints and dismisses department heads, prepares an annual budget, and can veto legislative acts subject to being overridden by an extraordinary majority.

County government in the United States emerged from a different tradition, that of English county government. In that inherited tradition, there was a blending of legislative, executive, and even judicial powers with little regard for the separation of powers doctrine. Similarly, there was a tradition of dividing the executive among separately-elected county officers. This practice was exacerbated in the United States during the early 19th century when a wave of Jacksonian, 'frontier democracy' increased the number of independently-elected county officers further fragmenting executive power.

During and immediately after the colonial period, cities and towns had been the principal local government units in the states of New York and New Jersey. When counties were constituted in these states, the unit of electoral representation was based on cities and towns. This pattern was later adopted by several Midwest states, including Illinois. This tradition accounts for the large number of board members in those Illinois counties with the township form. Finally, the county, in English law, was an administrative arm of the state rather than a local government unit delivering services to citizens. Reverberations of this past still affect county government generally today.

The International City/County Management Association has identified three prevalent county government structures: the "commission" form, the "council-administrator" form, and the "council-elected executive" form (for a breakdown of the numbers of each type as of 1988, see Appendix E). In the "commission" form, commissioners not only serve as legislators but each oversees one or more county departments. In contrast, the "council-elected executive" form provides for a chief executive elected at-large with a more distinct separation of executive and legislative powers similar to the state and federal models. In this model, the executive generally appoints department heads and has veto authority over council actions. The "council-administrator" form of government represents something of a hybrid between the "commission" and "council-elected executive" models with an appointed administrator performing executive functions under the direction of the legislative body.

There are variations on the "council-administrator" model based on the degree of authority vested in the county administrator. In some jurisdictions, the administrator serves basically as an administrative assistant assigned to follow up on matters on the county board's behalf but not permitted to take any initiative on his/her own. In other jurisdictions, in contrast, the county administrator is granted broad authority over administrative matters including the authority to appoint and dismiss department heads.

The strong tradition of the 'plural executive' also continues as a unique feature of county government in many states with popular elections replacing appointments by governors or other higher level officials to positions such as sheriff, county clerk, assessor, treasurer, and recorder of deeds. This was intended to facilitate attempts by ordinary citizens to obtain and hold office. Selection by popular election rather than appointment also presumed that no special qualifications were required to hold and perform these offices, in keeping with the Jacksonian tradition.

In 1868, Justice John Dillon of the Iowa Supreme Court in the case of *Merriam v. Moody's Executors*, wrote that local governments only had the powers expressly delegated to them by the legislature or those powers which were absolutely necessary and incident to the discharge of those express powers. 'Dillon's Rule,' as this came to be known and accepted, was in keeping with the previous position that counties were arms of the state. They had to have specific enabling state legislation in order to function as units of local government and to have the flexibility to respond to the changing needs of their citizens.

The major reforms of government during the Progressive Era (1890-1920) were aimed primarily at states and municipalities. However, reformers did pay some attention to counties, urging the appointment rather than election of officials as part of the larger movement to upgrade and professionalize government, reduce opportunities for graft and corruption, and sharpen the distinction

between 'policy making' and 'administration.' In addition, they advocated that state legislatures grant counties 'home rule' powers and the flexibility to act more independently as local governing units.

In order to ascertain how other counties have coped with this historical legacy, the authors investigated how seven other large, metropolitan counties have structured their governments. The seven, two of which are in Illinois, are listed in Table 2. A review of the governments of these counties was helpful for the purpose of identifying alternative configurations available to Lake County.

Table 1
Comparison Counties

	Overall Population-- 1997	% Change in Pop. Between '90 & '97	Median Household Income '93	% White-- 1996	Metropolitan Area	% persons 25 years and over high school grads., 1990	% persons 25 years and over college grads., 1990
Non-Illinois Counties							
Johnson County, Kansas	429,563	18.0%	\$50,174	95.4%	Kansas City	92.9%	40.5%
Fairfax County, Virginia	914,259	12.0%	\$62,607	80.6%	Washington DC	91.4%	49.0%
Multnomah County, Oregon	624,619	7.0%	\$29,759	86.2%	Portland	82.9%	23.7%
Montgomery County, Maryland	826,766	8.5%	\$55,604	75.0%	Wash. DC/Baltimore	90.6%	49.9%
Oakland County, Michigan	1,166,512	7.7%	\$48,367	88.7%	Detroit	84.6%	30.2%
Illinois Counties							
DuPage	870,378	11.3%	\$52,917	91.2%	Chicago	88.6%	36.0%
Will	444,469	24.4%	\$46,096	86.4%	Chicago	80.4%	18.0%
Lake	594,799	15.2%	\$52,266	89.5%	Chicago	84.7%	32.0%

II. B. Focusing the Context: County Government in Illinois

Each county in the United States has its own particular variant of the general government structure described above. Illinois State law provides for three types of county governments: the commission form, the township form and the county executive form.⁴ Under the commission form, which is in place in 17 counties in the southern part of the state, three commissioners elected at-large perform both legislative and administrative functions. The other 83 counties (except Cook and Will) have a township form of government. Prior to 1970, county boards in these counties consisted of the supervisor and deputy supervisor of each township.

Since 1970 and pursuant to Supreme Court apportionment rulings, in most township counties board members are now elected from either single- or multi-member districts. However, the legacy of a large number of board members characteristic of the pre-1970 arrangements lives on in most township counties in the state.

⁴ The "commission" form referenced in the context of Illinois law is different from the "commission" form reference by ICMA. The Illinois "commission" form includes both the ICMA "commission" and "council-administrator" forms.

Under the Illinois constitution, home rule is available only to counties with an elected chief executive. At present, two counties have a chief executive elected at-large, Will and Cook. Will County voters however, opted not to have home rule so that only Cook of Illinois' 102 counties currently has home rule.

Illinois law also provides counties the option of electing the board chair at-large. Of the twelve largest counties in Illinois, DuPage, Kane, St. Clair and Winnebago all have board chairs elected at-large. The board chairs for Lake, Madison, McHenry, Sangamon, Peoria, and Champaign counties are elected by the board. As noted above Will and Cook have elected chief executives (see Appendix F for a summary of the structure of the 12 largest Illinois counties).

Responding to the complaints of many suburban homeowners in the rapidly growing collar counties about double-digit increases in property taxes, the state passed the Property Tax Extension Limitation Law (PTELL) in 1991. The new law limited the annual increase in property tax extensions to the lesser of 5 percent or the increase in the CPI, plus allowances for new construction and voter approved increases. The existence of the property tax cap has had policy and structural implications for rapidly growing counties. It has limited the extent to which such counties can take on and fund new programs and it has fostered a search for other non-property tax funding arrangements.

The plural executive tradition is still strong in Illinois. The state constitution provides that the sheriff, the county clerk and the treasurer be elected by the voters of each county. Pursuant to the state constitution, the General Assembly has determined that circuit court clerks should be elected by the voters rather than appointed by the judges of the circuit court in each county. The constitution provides that the positions of auditor, coroner, and recorder of deeds can be eliminated or the method of selection changed from elected to appointed with the approval of the voters in a countywide referendum.⁵ A series of so-called "internal control statutes"⁶ provide these elected officials with an additional source of independence. These statutes give them the latitude to determine how best to control the inner workings of their offices, subject only to the county board's control of the purse strings. Efforts by boards to achieve such things as uniformity of pay and benefits and other policies throughout a county can be frustrated by the fact that they do not control these conditions in offices run by these elected officials.⁷

⁵ We did not address the position of Superintendent of Schools in this study.

⁶ Auditor: 55 ILCS 5/3-1004; Coroner: 55 ILCS 5/3-3003; County Clerk: 55 ILCS 5/3-2003.2; Recorder: 55 ILCS 5/3-5005.2; Sheriff: 55 ILCS 5/3-6018; State's Attorney: 55 ILCS 5/3-9006; and Treasurer: 55 ILCS 5/3-10005.1. The Circuit Court Clerk derives similar authority by virtue of several provisions in the statutes applicable to that position.

⁷ It should be noted that the elected officials in Lake County have in general, voluntarily agreed to abide by county-wide policies relating to personnel, purchasing, and budgeting.

Only the knowledge that they might have to account for their actions the next time that they appear before the board to justify their budget request serves, potentially, to dampen their total independence.⁸

II. C. Focusing the Context Further: Lake County

The population of Lake County increased by 17% between 1980 and 1990 and at a 15% rate between 1990 and 1997 based on an estimated 1997 population of 595,000. There are 52 municipalities in Lake County containing approximately 84% of the population. Approximately 60% of Lake County's 471 square miles are incorporated. Lake County residents are highly educated; thirty-two percent of those over the age of 25 are college graduates. The median household income of \$52,266 is one of the highest in the country.

Rapid growth and the suburbanization of previously rural counties since the 1950's has had a significant impact on county government across the United States.⁹ New populations arriving from more urban areas expected the types of services they were used to in the cities. Faced with demands for new services and different types of citizens with different expectations, county governments began to realize the need to change, both in what they did as well as how they did it. These changes were often difficult. They lacked some of the structural tools available to cities and suffered from the traditional uncertainties about the proper role and purpose of county governments described earlier. And there were the inevitable tensions to deal with between the 'good old boys' of a more settled rural past where township government loomed large, and the newer residents with their newer ideas and concerns.

The 1970 Illinois Constitution provided for a new electoral form of county government in Lake County and in 1972 the previous system of a county board consisting of township and deputy township supervisors was replaced by 25 elected members, with 5 coming from each of 5 districts. Three important practices did, however, continue. First, the board chair was elected every two years from among the board membership. Secondly, executive and legislative functions were "blended" in a series of standing committees which oversaw the operations of different county agencies. Finally, there were eight county-wide elected officials exercising some degree of executive authority independently of the county board.

⁸ See, for example, Pat Lord, "The nonending power struggle: County board vs. elected officers," *Local Government Law*, June 1999, v. 35, No. 9. Illinois State Bar Association Publication. A recent court case, *Pucinski v. Co. of Cook*, July 6, 2000, draws some boundaries around this independence.

⁹ For example, Lawrence L. Martin, "American County Government: An Historical Perspective," Ch. 1, in David R. Berman, *County Governments in an Era of Change*, (Westport, CT; Greenwood Press, 1993), esp. pp. 11-12.

In 1975, following a Lake County Management Improvement Training Program, the board recognized the need to begin working to change the *status quo* in light of the dual pressures of growth and urbanization. In a very prescient introduction to its Summary of Findings, the report of the first governmental study commission, described earlier, observed that:

The County now finds itself involved in issues related to health care, solid waste disposal, law enforcement, open space development...all of which have major impact on the future character of the county...To deal effectively with all of these...the County Board must be freed from some of its present involvement in operational details and given increased time and staff support for long-range planning and innovative program implementation and evaluation. [p.6]

It went on to recommend such things as the establishment of the position of county administrator as a way to carry out and provide consistency in board policies between meetings of the functional standing committees. It followed with a number of other recommendations intended to "modernize" Lake County government, make it more efficient and effective. Finally, and clearly it observed that:

The standing committee system must begin to function more effectively. Specifically, more emphasis should be placed on policy-making and long-range planning and less committee activity dedicated to routine operational matters. [p. 7]

As was already noted earlier, in its first and second reports, the 1977-78 study commission went on to recommend specific structural and procedural changes intended to advance the "modernization" of Lake County government and its ability to operate more effectively in its changing environment. Also as noted earlier, some of the same structural and procedural questions appeared on the list of issues posed for this study almost 25 years later.

Under the state law,¹⁰ the county board also serves as the Board of Commissioners of the Lake County Forest Preserve. The Forest Preserve is an independently organized governmental unit and taxing entity with its own mission, staff and administrative structure, budget, and facilities. Likewise, the board of commissioners is separately organized with its own president, vice president, treasurer and assistant treasurer, standing committees and board operating procedures. While county board members receive an annual salary, commissioners receive only a per diem for their Forest Preserve services. As commissioners of the Forest Preserve, they have been extraordinarily successful during the past decade in supporting successful referenda to increase property taxes for purchasing additional property, opening and improving hiking, biking and preserve trails, and restoring wetlands, lakes, rivers, forests and prairie areas.

Though the Forest Preserve *per se* was not a focus for this study, this dual role of county board members engendered a significant amount of comment in the course of some of our interviews. At their

heart was the issue of 'conflict of interest', both at the level of individual board members as well as at the institutional level between the two different entities. Several of those interviewed asserted that at least *some* county board members were really interested primarily in their role as a Commissioner of the Forest Preserve. Concerns were also expressed about how conflicts that occasionally occur between the Forest Preserve and the county are resolved.

¹⁰ 70 ILCS 805/3a.

III. Modernizing Lake County Government: Strategic Analysis

The framework often used in strategic planning is useful for organizing and presenting an analysis of Lake County government in 2000. It calls on those undertaking a strategic planning exercise to begin by identifying the perceived *internal* strengths and weakness of the unit under consideration in relation to the *external* threats and opportunities it faces. Our extensive interviews, reviews of relevant documentation, and observations of board activities have provided us with a rich skein of data and observations on Lake County and its government. Presenting it in this manner creates the contextually rich pictures within which our recommendations for the future can be nested, developed and explained. It also underlines the fact, as explained earlier, that the answers to the *six “independent” questions we were asked to address* in this study are in fact *highly interdependent in both their analysis and, especially, their implementation*.

III. A. Strengths

III. A. 1. Dedicated Officials

Lake County is well-served by the dedication and commitment board members give their jobs. From our interviews as well as from board activities we’ve observed, it is apparent that board members take their responsibilities seriously and work hard on behalf of residents. For modest remuneration, many of these officials put in long hours; several estimated that they spend 30 hours or more per week in meeting their legislative and constituent responsibilities. Board members whose districts include significant amounts of unincorporated land seem to maintain the heaviest workloads. They serve in a dual capacity, performing the same functions as municipal officials do in incorporated areas while attending to county legislative and administrative matters. Most board members also serve as representatives on one or more of the approximately 30 different county boards and commissions (see Appendix G for a list of county boards and commissions).

III. A. 2. Goal Setting

Board members generally regard the goal-setting process instituted in recent years as a positive development. The process centers around a two-day workshop at which they have an opportunity to identify and prioritize the most important issues facing the county. The primary outcome is a list of policy objectives which has served to guide both board activities and budget policy. It points a way for the board to begin focusing on policy rather than on administrative matters. How information is structured, how it is used to structure things like budget presentations, evaluate performance, organize the board’s legislative agenda for the year, and, perhaps most importantly, structure it’s own internal committee processes is crucial to changing this focus. The existence of this list is a major step forward.

The *2000 Lake County Legislative Program* for the first time **relates legislative requests to county priorities**. The recasting of the legislative program moves it from being a disaggregated 'wish list' to having some policy organization and conveying a sense of real priorities. It also communicates a much clearer sense of why particular recommended actions are important in the larger scheme of county objectives. The structure of the budget document for FY 2001 moved things in the same direction, shifting from a 'line item' focus with a functionally-oriented committee structure towards a more goal-oriented structure.

These are very positive steps in the right direction. Over time they will help link long-term goals to resource allocation and the pursuit of strategic objectives through the legislative agenda. They are important steps in shifting from a focus on administrative details to more of a policy focus and in providing a framework for program evaluation each year: **How much and what kind of progress have we made in accomplishing our longer term objectives?**

III. A. 3. Professionalism

An important strength of Lake County government is the strong commitment to professional administration on the part of both board members and administrators. One of the first steps which the board took towards 'modernization' was the creation of the position of county administrator. The first person to occupy this position was a long-time county employee with a deep understanding of the people, governmental structures, politics and 'sociology' of Lake County. By all reports he also had the management style and skills necessary to ease the transition towards a different way of conducting county business.

Upon this individual's retirement, the board undertook a national search for his replacement, selecting an individual from outside the county with a long and distinguished record as a professional city and county administrator. This commitment to professionalism is further demonstrated by the qualifications of many subordinate administrative officials and department heads with a virtual absence, according to all accounts, of any patronage activity.

III. A. 4. Budget

In interviews, the current budget process was widely praised by board members as well as by department heads. The process is an open one with all parties afforded ample opportunity for input and comment. There has been an attempt in the past few years to integrate the policy priorities expressed by the board at its annual goal-setting session into the budget process. Members of the board, including those not currently part of the majority, say that there is adequate opportunity to argue for and secure funding for their priorities.

The budget process serves as a primary means by which the board and the county administrator are able to exercise influence over both elected and appointed department heads as well as over county-funded boards and commissions. The budget thus serves as a critical policy and management integrating mechanism in a structure where power and authority are highly diffused. The positive attitude toward the process by which the county budget has been developed in recent years appears attributable to two factors, 1) the general deference accorded the administrator as a result of the authority delegated by the board, and 2) the constructive relationship maintained by the board chair with the administrator.

III. A. 5. Human Resource Management

The human resource management function of the county has been centralized for a number of years. In practice, however, progress towards an integrated human resources management system for the county has been slowed by the fragmentation of responsibility for personnel particularly among the elected officials, some of whom had held their positions for many years. In such an environment, success has depended on the professionalism of the administrators responsible for this function as well as on their ability to convince semi-autonomous department heads and elected officials of the value of a more rationalized, standardized system of classification, pay scales, leave policies, workmen's compensation policies, and the like. These objectives have been largely realized in recent years. Elected officials have, in general, voluntarily complied with county policies and the county has been able to carry out a very successful early retirement system program.

III. B. Weaknesses

III. B. 1. Diffusion of Power

The most glaring deficiency in the current structure of county government is the extent to which authority is diffused among multiple officials. A consequence is that it is very difficult to mobilize the critical mass of support that is generally required for major policy initiatives. We have identified multiple dimensions along which power is diffused as follows:

- Legislative power is diffused within the board among committee chairs. The board is characterized by what several interviewees described as a "strong committee" system in which committee chairs exert a high degree of influence in the policy areas for which they are responsible. In some instances, the chair directly oversees the activities of departments within his/her jurisdiction.
- Executive power is diffused between the board, department heads, and the administrator. The administrator wields authority primarily with regard to the budget process and with regard to administrative policy in areas such as personnel and procurement. Personnel decisions below the

department head level as well as routine decisions regarding county programs are handled by department heads. Departmental matters with policy implications or that affect other departments are addressed by some mix of the department head, the relevant committee chair, and the county administrator. Other members of the board have the opportunity to express their preferences on any items which require board approval.

- The large number of departments headed by elected officials further diffuses executive power. Due to state laws which provide these officials with substantial internal autonomy, the administrator and board have limited ability to affect administrative practices in these units. The board and the administrator are able to exercise a degree of oversight by virtue of the fact that the budgets for these offices have to be approved by the board. But compliance here, as in matters of personnel policy, depends a good deal on persuasion, some degree of mutual self-interest, and the continued willingness of each party to avoid direct confrontations over policies and practices. The elected officials have in general, voluntarily complied with county administrative policies.
- Executive and legislative power is further diffused by the presence of multiple boards and commissions each of which exercises authority in a particular policy area. Six boards are particularly relevant in this regard: the Board of Health, the Stormwater Management Commission (SMC), the Solid Waste Agency of Lake County (SWALCO), the Veterans Assistance Commission (VAC), the Public Building Commission (PBC), and the Tuberculosis Sanitarium Board (TSB). The county has taken action to integrate PBC operations with those of the county and has gained the compliance of both the Board of Health and SMC with county administrative policies. The status of the Board of Health, TSB, SWALCO, and VAC is governed by state law however, limiting the extent to which the board and administrator can exercise oversight or enforce administrative integration. Finally, the court system with its own executive director operates as still another autonomous administrative function.

III. B. 2. Leadership

While the board chair is titular head of Lake County government, the limited authority and stature accorded that position impedes authoritative representation of the county's interests at the Federal, state, and local levels. In other jurisdictions and at other levels of government, such representation has been accomplished through a unitary executive office—a president, a governor, or a mayor. Different presidents, governors and mayors have used these offices more or less effectively, more or less wisely. And different times require different measures; different leadership styles. However, the institutional powers of the executive are flexible and available when the times and public opinion require them to be exercised energetically. And, as presidents as different as Andrew Jackson and Theodore Roosevelt

understood, they also provide a platform from which the executive can mobilize that opinion and build consensus.

The governing imagery which several board members called up during our interviews was that of a 'cabinet' government. A majority of the board get together and elect, from among their own members and sometimes only after many ballots and considerable horse trading of committee assignments, a chair who then 'leads'. But only for two years until the next election when a 'new' government needs to be formed.

In a classical 'parliamentary system' with 'cabinet' government like that in Great Britain, the 'government' is determined by the number of seats which a party wins. The key leadership of each party is known at the time of the election. The prime minister is 'first among equals' and the 'government' rules by virtue of its control of the political party. Elections are held at least every five years or at the call of the governing party. Though individual electors vote in their district for their MP, they are usually fully aware of the connection between their individual representative and the leadership and policies they are voting for. This is because of the strong organizing role of political parties in England.

Such a structure bears only a superficial resemblance to the 'cabinet system' in Lake County government. The chair is certainly not the leader of a party nor is there a 'shadow government' in the wings, whose leadership and policy positions on key issues is widely known to the electorate at the time of the election. Through the internal bargaining which goes on every two years, he or she *may* be able to put together a majority coalition and even to keep it together over a period of time. Indeed this seems to have happened during in the first part of the 90's, partly in reaction to what several of those interviewed referred to as a 'tumultuous' two year period at the end of the 80's.

For the present at least, the experience of the first part of the 90's is fresh in many memories and seems to have 'poisoned the well' for a number of current board members making them leery of even the *appearance* of 'strong' leadership in **their** 'cabinet system'. They perceived themselves as having been shut out and, as some members described their committee assignments, "sent to Siberia" and don't want it to happen again! And even *with* this temporary stability in the early 90's, it doesn't appear to have been particularly effective, externally, in moving the county towards resolving some large and contentious issues such as traffic congestion/highway funding, Route 53, and, more recently, affordable housing.

Failure to Resolve High-profile Issues. The leadership deficiency is particularly apparent with regard to the general difficulties encountered by the county board in attempting to resolve long-standing, controversial issues such as highway funding, Route 53, and affordable housing. Both highway funding

and Route 53 have been on the agenda for over a decade. Little, if any progress toward a resolution of either is apparent (see Appendices H, I and J for timelines on these issues).

The highway funding issue has been particularly nettlesome. According to a recent poll, a high proportion of county residents regard traffic congestion as the single most important problem facing Lake County.¹¹ The *Transportation Action Plan for Congestion Mitigation* prepared in 1999 by the Lake County Division of Transportation projects that the problem will get worse absent a major investment in the county and state road networks. The report identifies a need for approximately \$131 million for “congestion mitigation improvements” including lane additions, intersection improvements and road extensions.¹²

Among the options being investigated as potential sources of funding for this improvement program are a gas tax and a sales tax. Ten years ago, Lake County missed an opportunity to obtain the authority to levy a gas tax for purposes of road county improvements. At that time, it was left out of a state law authorizing the other “collar” counties including DuPage, Kane, and McHenry to levy a tax for road improvement purposes. With benefit of hindsight, many now consider this a “mistake.” The people came anyway to Lake County, they observe, and the congestion has just become worse.

In 2000, Lake County joined with other counties to seek authority from the state to levy a ¼% sales tax instead of a gas tax to support county highway funding. That proposal failed to secure state approval. Various explanations were offered for this failure; that the timing was bad in terms of other things going on in the General Assembly; that tax increases of *any* kind, with or without a referendum, have become the ‘third rail’ of politics in Illinois; that the legislative delegation and the county board were ‘playing chicken’ hoping to get the other party to take the lead on a tax increase. The Lake County Board has recently authorized a survey of county residents to ascertain the extent of support for a tax increase dedicated to road construction. Presumably, if the survey shows that such support exists, that will be presented to the state legislative delegation for purposes of convincing them to allow the county this authority. That Lake and the other counties are required to obtain state approval to levy a tax which affects only their own residents and which would, in Lake County, address the county’s single most pressing problem, highlights the subordinate role of non-home rule counties under current Illinois law.

¹¹ As noted above, sixty-one percent of respondents to the poll conducted by the Forest Preserve in July identified traffic congestion as the “most important issue or problem facing Lake County.” See “An Attitude & Interest Study of Lake County Residents for the Lake County Forest Preserve District,” prepared by Richard Day Research, Inc., April 17, 1998.

¹² *Transportation Action Plan for Congestion Mitigation*, Lake County Division of Transportation, 1999.

The proposed extension of Route 53, a state highway, into Lake County has also been part of the debate over traffic congestion. The project has been under study for over thirty years and under active consideration for about ten years. Three options have been identified to date: the status quo; building Route 53 as planned; or improving a network of other state roads including routes 83, 12, and 45. The debate has been contentious with no option obtaining broad support. Absent from the discussion thus far has been a party accountable to groups on all sides of the debate and with sufficient clout to begin to move those groups toward a possible solution.

A third issue on which there is deadlock is affordable housing. According to some interviewees, a suitable policy in this regard would contribute in a significant way to a positive economic climate in the county. Since April when the county board created a task force to make recommendations on the issue, the matter has bounced between the Affordable Housing Task Force, the board and the Zoning Board of Appeals (ZBA). Recent action by the board to amend the Unified Development Ordinance to require that at least 10 percent of all new residential developments in unincorporated areas be affordable housing stock may resolve the issue. However, concerns have already been raised about the workability of this proposal and hearings by the ZBA are pending. The issue is particularly important for the opportunity it presents the county to play a leadership role by developing a policy which municipalities could emulate.

III. B. 3. Board involvement in administrative matters

Although it is impossible to make a strict demarcation between policy and administrative matters, in recent years the board appears to have drifted toward involvement in more and more matters that are appropriately left to the administration. From our review of the committee minutes for the period December 1999 to August 2000, a disproportionate amount of time is spent on relatively minor matters (a summary of the analysis of committee minutes is presented in Appendix K). One board member commented that;

We get overly involved in a lot of tedious and laborious types of things which are better left to the staff. What happens is the board tries to run the day-to-day operations of the county and they should not, but they want to show that, "I'm in charge and I'm running it."

A contrary opinion by another board member was that, "asking a question is not micromanaging." Legislators can and should probe on selected issues of particular concern or interest. However, when such probing becomes the norm, problems arise. As committee meetings are prolonged by protracted discussion, the time commitments of board members escalate and it becomes more and more difficult for individuals who cannot devote full time to serving as a board member to serve. The more time spent on small issues, the less that is available to deliberate over the large issues. Further, as the decisions of those at lower administrative levels are questioned and as their judgment is second-guessed, there is tendency

for these officials to gradually cede more and more decision making authority to the board. There is a potential for the professionalism of the decision making process to be compromised for the board to be inundated with minutia.

We touched earlier on some of the steps which have been taken to refocus the board's attention on broader policy matters: the goal-setting meeting at which the board discusses its objectives and strategies for the year; the recasting of the most recent legislative program document in that language and the introduction of a more policy-focused budget structure for the FY 2001 budget. These are all very positive moves in the right direction. They are also difficult to implement and will take time and concerted effort before they 'take'.

A shift to more of a policy orientation has important implications for the budget process. Since the early part of the 20th century, budget reformers have been attempting to move decisions makers away from the traditional 'line item' focus. It is a traditional tool of micro-management by legislative bodies trying to exert their control over resources as well as over their administration and use. Unfortunately, it does *not* indicate what the expenditures have *produced* by way of outcomes let alone how well you have *accomplished your objectives*. Nor does it tell you how *efficiently* those resources have been used relative to other ways of accomplishing objectives. But none of these things are grasped as easily as the simple cost of a tree or a road improvement or a police car which is why most jurisdictions are still struggling with this different way of looking at and assessing things.

III. C. Opportunities

III. C. 1. Reapportionment

Over the past twenty-five years, the Lake County Board has taken advantage of the opportunity presented by the state requirement that it "...reapportion its county so that each member of the county board represents the same number of inhabitants" and, in so doing, "...shall first determine the size of the.. board," to undertake a 'mini-constitutional' review of the many facets of county government. The present study is intended to support that review for the third time.

Important changes have been initiated in the past and continue to affect the present. The population, economic, social and demographic trends that have shaped the present will, in all likelihood, continue over the next decade, exacerbating present needs and creating new ones. They will also bring new human, social, and economic resources to the county for helping to meet those needs. The decennial reapportionment opens a window of opportunity to accelerate the modernization of county government, better positioning it to be a leader in organizing these new resources to meet those needs.

III. C. 2. The County Role in Controlling Growth

The General Assembly created the Illinois Growth Task Force in 1999 and shortly thereafter it adopted a mission statement to guide its deliberations and activities:¹³

- To begin a public discussion in Illinois leading to a set of land use, housing, and transportation goals;
- To promote balanced land use, housing and transportation policies;
- To encourage orderly development that preserves farmland and natural areas, and increases housing options and transportation alternatives; and
- To propose possible legislation to reach these goals.

The problems of sprawl and congestion may have reached a point where officeholders at the state and local levels may be willing to reconsider the appropriate role of the county in addressing matters of land use and growth. Students of local government have long noted that by virtue of their size, counties are well positioned to play a larger role in solving area-wide problems.

The Report of the Working Group on Land Use and Transportation of the Illinois Growth Task Force recommends expanded county authority in matters of development and growth. It points out that, “inconsistency among municipal and county-level plans often results in lengthy, costly delays for developers and inefficient land use patterns,” and envisions “county-level coordination of municipal land use plans to ensure that municipal land use plans are compatible and consistent with each other as well as with the county plan.”¹⁴ The report further proposes that counties be permitted to levy impact fees that would allow full recovery from developers of the cost of providing services and infrastructure.

Obtaining and exercising such authorities for purposes of controlling growth and sprawl is likely to take a concerted educational and lobbying effort. Lake County has been a leader statewide with regard to the preservation of open space and stormwater regulation. With its combination of large size, high degree of professionalism, and a well-educated and sophisticated populous, Lake County is well positioned to provide leadership on other growth-related matters at the state level. At present however, no one official nor office is well-positioned to lead such an effort.

III. C. 3. Evolution in the Role of the County Administrator

A number of the board members we interviewed commented on the contrasting styles of the current and prior county administrators. To a considerable extent, management practices in Lake County evolved in manner suited to the abilities and style of the previous administrator. That individual had long

¹³ *Economic Strength Through Balanced Growth: A report of the Working Group on Land Use and Transportation Submitted to the Illinois Growth Task Force*, September 1, 2000.

¹⁴ *Ibid.*

tenure in the job and extensive familiarity with county personnel as well as close relationships with prior board chairs. Hence, he could exercise considerable control over operating units without explicit authorization from the board. With a new administrator who lacks the advantage of such long-standing personal relationships, it is appropriate for the board to rethink old rules and policies. If the current incumbent as well as his successors are to effectively serve the function of ensuring that board priorities and policies are enforced, the board needs to consider according that position additional authorities. Particularly important are the authority to hire and fire department heads, to appraise the performance of department heads, and to control the flow of items from administrative units to the board.

III. D. Threats

III. D. 1. Land Use Regulation

Perhaps the greatest threat to the high quality of life in Lake County is that nothing is done to affect the trends that have led to the present predicament. Projections are that the population of Lake County will increase by approximately an additional 200,000 people by 2020, exacerbating the already serious problems regarding overcrowded schools, high taxes, and congested roads. Under current law, the county has limited ability to take a leading role in addressing these problems. Thus land use decisions in incorporated areas which represent about 60% of the land area of the county and 84% of the population are made by the municipalities. Annexation laws exacerbate the problems of growth by permitting developers to play one jurisdiction off against another to obtain the highest density development possible. It appears that only through some sort of coordinated effort involving both the county and the municipalities is there a prospect for other than a reactive approach to the problems that accompany growth. Leadership will be required at both the state and local levels if progress is to be made in this regard.

III. D. 2. Intra-county Divisions

A second threat to the welfare of the county are the divisions that have developed between different groups and areas. These divisions are apparent with regard to a number of important issues such as affordable housing, Route 53, and economic development. At the same time that jurisdictions in central Lake County are struggling to accommodate growth pressures, those along the northern shoreline are seeking investment that can enhance the industrial and commercial base and provide jobs for residents. Whereas proposals to make housing more affordable in central and western portions of the county have encountered resistance, housing costs in Waukegan and Zion remain reasonable. Whereas there is resistance to Route 53 in jurisdictions through which it would run, in other areas it is perceived as part of a solution to congestion problems. In each instance, effective leadership could serve to bring

together opposing factions or help identify win-win solutions of benefit to the county as a whole. The current governance structure provides no obvious point from which such leadership could be provided.

III. D. 3. Economic cycles

The high level of both national and local prosperity obscures to a degree concerns about jobs that will surface should there be an economic downturn. In the case of such a downturn, traffic and housing problems are likely to deter businesses from locating and expanding in the county. It is important that the county take a long-term perspective to see that an appropriate balance is achieved between concerns for jobs and quality of life but it is not clear where in county government that responsibility is assigned.

The county currently benefits from the additional tax revenues that accompany the expansion in assessed value associated with high rates of growth. Those revenues have helped the county address current priorities without having to make painful trade-offs among programs. With a slowing of growth, the trade-offs will become more difficult. Additional demands for funds such as that for a new jail have already surfaced. The preeminent role afforded the county administrator in the budget process and the support provided by the board and the board chair have helped ensure a satisfactory resolution of budget issues in the past. As money gets tight, these processes are likely to undergo strain. It is important in that instance that the roles of both the administrator and the board chair be protected. One means of doing so would be to grant the administrator, working with the board chair, additional authority on personnel matters as recommended below.

III. E. Political Risks of Change

The county's ability to meet these and other challenges hinges, in part, on three interrelated things: continuing the drive to 'modernize' and stabilize its governmental structure, processes, goals and policies; developing and implementing long range strategies to work effectively with municipalities, the state and other counties to implement needed changes in state statutes for these goals to be accomplished; and providing a focal point of vision, energy and leadership to bring various groups in the county together in pursuit of their shared interests while helping to reconcile them in their differences.

There are risks in all of this. Nobody likes change when personal interests or deeply held philosophical points of view might suffer. As the saying goes, 'better to go with devil you know' or to 'muddle through' than to risk the unknown. Significant changes in the board's size or in the manner of electing the chair, for example, goes to the heart of the matter. Each threatens personal as well as political interests.

Though present working relationships with the state legislative delegation or with municipalities seem "okay", for example, the real successes appear to have been somewhat limited. And each party to

the relationship can and does point, anecdotally, to opportunities which, by their own accounting, were not taken or even "failed" because of something the other party did or didn't do. These experiences and the feelings they engender build on each other over time and, in doing so, may make it even harder to move ahead.

There is no guarantee that far sightedness and 'doing the right thing' will even be recognized let alone rewarded. But the need to reapportion is a chance to put political mettle to the test for the benefit of the future and the county as a whole. People, in a democracy, always have their own views on what the 'right thing' is, as frustrating, even angering as that can be for those of a different persuasion. And what is 'right' has a way of becoming clear only in hindsight. *So who wants to take all those risks by taking the first step? What in it for them?*

IV. Recommendations for Change

The effectiveness of Lake County government is compromised by antiquated structural features many of which derive from practices put in place many decades ago. That structure may work in small rural counties but is of doubtful effectiveness in a modern, urbanized, and growing county of 620,000. Our recommendations for changes are categorized according to those that can enhance legislative capacity, administrative capacity, and political capacity. Some changes are politically complex and likely to be longer term while others could be implemented more quickly.

IV. A. Building Legislative Capacity

A first step toward enhancing the policy making capacity of the county board would be to more clearly distinguish between those matters which are primarily administrative in nature and hence appropriately handled by staff those which require board involvement. Clearly board members will, on occasion, have an interest in a particular issue that warrants in-depth involvement. However, when such involvement becomes the norm, the board's policymaking capacity is diminished. The energy, attention and time of board members are limited. To the extent those resources are expended on secondary matters the board's effectiveness on the large issues is compromised. Three such issues discussed below are affordable housing, highway funding, and Route 53. Others mentioned during the course of our interviews included the lack of a comprehensive plan for the Lake Michigan waterfront, the large number of residents without health insurance and the need for programs to accommodate the rapidly-growing minority populations in the county. In citing these issues we do not intend to diminish the board's accomplishments on other matters such as University Center and revision of the Unified Development Ordinance. Our primary point is that the county would be well served by an enhanced level of attention to the major policy issues by the board.

In the present structure, the board should be the focal point of political and budgetary responsibility and policy making for the county. Consistent with the approach endorsed by political and management theorists and widely applied in the business world, the board should set goals and policy parameters and monitor compliance with them by the administrative staff. Where board policy or intent is not fully adhered to, additional explanation and refinement may be in order. When board members reverse or second guess decisions made at subsidiary levels however, minor matters escalate to policy status.

There are many suitable means of monitoring administrative activity. In addition to normal processes of questioning and requesting reports, the board could set up a system of measures providing it with important indicators of performance. Many counties including Fairfax County, Virginia,

Mecklenburg County, North Carolina and Multnomah County, Oregon employ this technique. Measures would enable the board to effectively monitor administrative activity without intense supervision of officials. For example the Department of Transportation might be asked to routinely report on the number of lane miles of street resurfaced or reconstructed, the lane miles of county road in excellent, good, fair and poor condition, and the number of intersection improvements completed. Coupled with measures of citizen satisfaction and cost data of various types, the board could better target its transportation priorities and evaluate their accomplishment.

Units with direct contact with the public such as building permits could be required to develop measures of customer satisfaction, wait time, and/ or customer complaints. The administrator and department heads would be accountable to the board for variations in the level of performance as determined by such measures. Ideally, the measures would be incorporated in the budget document and process (an example of the kinds of measures utilized by Fairfax County, Virginia Department of Planning and Zoning is included as Appendix L). The Urban Institute, among others, have developed and helped implement such indicators in jurisdictions across the United States.

IV. A. 1. Board Size, Structure and Functioning

One of the most effective changes which the board could make would be to reduce its own size. The present size is undoubtedly a hold over from the days when it was made up of township supervisors and deputy supervisors. Chapter 55 of the Illinois State Code imposes an upper limit of 29 and a lower limit of 5 members on the size of the board, giving the board considerable discretion in actually choosing the limit. Following the 1980 census, the board reduced the number of members to 24 from 25, then reduced it one more to 23 after the 1990 census. This, we were told, was to reduce the likelihood of a tie vote, especially in the selection of the chair.

There are a several factors which favor a *significantly* smaller Board with larger electoral districts. Among them, four in particular stand out:

- They tend to be less faction ridden and somewhat more cohesive. In reflecting on the county's previous experience with large, multi-member districts, one board member commented, "it was large enough to have enough of a diversity where it kept you from getting too far out there. It tended to bring you more toward the center." This is because of the underlying electoral dynamics. Smaller single districts can be more easily dominated by a small 'single issue' interest group or socio-economic perspective. Because interest and turnout is often *very* low in local elections they are the committed few who can be mobilized to vote. Larger districts contain more diverse constituencies and successful candidates have to be able to appeal to this diversity and are thus less likely to be beholden to a 'single issue' group. Under such circumstances, the

potentiality is there for greater policy flexibility and easier compromise among conflicting view points.

- It facilitates a change in the orientation, role and visibility of board members. The job becomes more professional, more attractive in its own right. The stature, public visibility, and attractiveness of the position is enhanced.
- Most importantly, it facilitates a shift in attention to longer term policy objectives and away from micro-level administrative details. This occurs more or less naturally because of the demands on time, energy and attention which such a change entails. The board should become more effective as a legislative body because of its increased focus on major issues.
- It deters parochialism. One interviewee commented, "the more segmented to make the county, the more parochial the interest. The more parochial the interest, the less likely they are to handle the big issues." Many interviewees referred to an "aldermanic" mentality on the part of some board members who tend to focus on districts needs to the substantial exclusion of larger concerns.

What is the 'right' size for a board in a county like Lake? State law, as noted earlier, gives the county board wide latitude in making this judgment so long as the resulting electoral districts meet certain criteria. However, after January 2, 2001, counties with a population between 800,000 and 3,000,000 are to have no more than 18 members on the board.

In our review of the governance structures of other counties we found wide variation in the size and make-up of county boards, commissions, and councils (see Appendix M). Multnomah County (Portland), Oregon, with a population similar to that of Lake has five commissioners, four elected from districts and one at-large. Montgomery County, Maryland, with a population of 840,000 has a nine-member board with five members elected by district and four at-large. As noted earlier, Illinois counties tend to have larger boards as a result of the legacy of the township form. Thus, the Will County Board has 27 members, Kane County has 26 members plus a board chair elected at-large, and Winnebago County has 28 members plus a board chair elected at-large.

The Lake County Board has gradually declined in size since 1972 and though it is not out of line with other Illinois counties, it is on the upper end of the range of similar counties that we identified around the country. Cook County's board has 17 members. DuPage County, closer to Lake in size and demographics, will reduce the size of its board from 24 to 18 in 2002. Prior Lake County Government Study Commissions twice recommended a total of 15 members.

In the final analysis, our recommendation regarding the size of the board is intimately tied to a later recommendation regarding the position of county board chair and its functions in county

government. With this in mind and after examining these alternatives and weighing the many advantages of a significantly smaller board, we recommend a total of 12 members excluding the board chair. While this is *still* large by the national standards of comparable counties, it should move Lake County government further towards realizing the legislative, political and policy benefits of a smaller body while still ensuring that diverse perspectives will be brought to bear on county issues.

Associated with the issue of size, of course, is that of how members should be elected. Many counties elect part or all of the county board at-large. In the past Lake County has had multi-member districts. If the board size is reduced, there is less justification for either reestablishing multi-member districts or, with one exception to be developed later, electing a portion of the board at large. There is a strong sense on the part of those interviewed that single-member districts have promoted accountability and responsiveness on the part of board members to their constituents. Single-member districts will also enhance the prospect that the board will be diverse geographically as well as ethnically and, we believe, should be continued.

A smaller board implies larger districts and hence more time on constituent matters by board members. The vast majority of those interviewed believe that the position of board member should remain part-time. Many expressed apprehension about the prospect of a board dominated by "professional politicians." It is apparent that the tradition of the citizen-legislator is well engrained in Lake County. It is a valuable tradition and should be retained. However, with many board members already spending 20-30 hours per week on their duties, it is apparent that larger districts will have to be accompanied by an expanded staff. The intent would be that this staff perform primarily a support function, assisting board members in handling complaints and communicating with constituents. Apparent from the experience of other jurisdictions is the danger of legislative staff being utilized for political purposes. To guard against such an eventuality, we recommend that staff be centrally supervised. It would be further appropriate that additional staff resources be allocated to members whose districts include large unincorporated areas.

In conjunction with a positive decision to substantially reduce the size of the board, we would strongly recommend that the board undertake a careful review of its practices and policies relative to the delegation of responsibility to the county administrator, department heads and other administrative staff. We explicitly address this issue in the following section. Such a review might even constitute a significant part of the annual board retreat along with a review of the paper flow to and among board committees. Consonant with its responsibility to maintain oversight of administrative activities and to set broad policies, the board should consider producing a clear policy on the delegation of administrative responsibilities to the county administrator, department heads, and administrative staff. Paper flow

should be reduced to essential legal documents requiring board approval and those necessary to help it formulate policies and evaluate their implementation

At present, the committee structure of the board tends to parallel functional and administrative domains. Several board members interviewed thought a reduction in the number of committees was possible and suggested that one or more of the committees with relatively low levels of legislative activity be abolished. This would have the advantage of reducing time demands on board members. However it is also the case that the number of committees is not out of line with those of other similar jurisdictions. We are not recommending any specific changes to the current structure but we believe that in general, a smaller number of committees would be conducive to a more efficient and effective policymaking process.

An innovative alternative that the board should consider and one that would help reinforce a more policy-oriented legislative role would be to structure committees according to the long-range strategic goals that have been identified. Such a change, together with the recommended reduction in board size and the adoption of new guidelines and policies regarding administrative delegation and paper flow reduction, should greatly enhance the legislative and policy capabilities of the county board.

We are also sympathetic to a suggestion made by some that board members be provided training on matters relating to county government and to board operations. While recognizing the extreme time demands already placed on board members, we nevertheless believe that such training would be valuable. Topics covered could include issues relating to growth and planning, as well as economic development and environmental protection. The training could include an investigation of how counties in other parts of the state and the country address such problems such as those confronting Lake County. In order to minimize the time demands on board members, new "distance education" tools including teleconferencing and internet technologies could be utilized.

Table 1

Action Plan – Building Legislative Capacity

	Time Dimension			Type of Action	
	short	medium	long	Local Action*	State Action**
1 Encourage a policy focus on the part of board members	x			x	
2 Adopt performance measures to hold administrators accountable.		x		x	
3 Reduce the number of board members (excluding the board chair) to 12	x			x	
4 Provide board members with support staff		x		x	
6 Retain single-member districts.	x			x	
7 Organize committees according to key policy objectives.		x		x	
8 Make available to board members training on county issues	x			x	

* an ordinance, resolution or procedural change

** change in state law or the state constitution

IV. B. Building Administrative Capacity

The position of county administrator was established in 1980. That was a major transition, at least formally, from the past. The recruitment and hiring of a professional administrator from outside Lake County was another major step forward in the 'modernization' of county administration. As detailed earlier in this report, a number of additional positive steps have been taken since then to continue this advance. It is our belief, supported by experiences elsewhere in both government and private industry, that *improvements in the governing and policy-making capacity of legislative bodies and governing boards* go hand-in-hand with *strengthening and professionalizing the administration and implementation of that policy..*

One of the more immediate changes the board could undertake would be to provide the county administrator with the authority necessary to ensure that the board's priorities prevail at the department level. As pointed out in the earlier strategic analysis, administrative authority is extremely diffuse. While the county administrator plays a key role with regard to budget matters, the authority of that position has not been extended to other executive functions. For example, final decisions on the hiring and firing of department heads and on appraising the performance of department heads are now made by the board. It is impossible for the administrator to exert the authority necessary to adequately oversee departmental activities on behalf of the board without more direct lines of accountability.

Similarly, the county administrator should be the primary conduit for communication between the board and departments on policy matters. The call for items to be transmitted to the board and its committees for their information, review, and/or action should *come from the county administrator's*

office. That office would then be responsible for deciding what is *on* the agenda as well as what is *not* in consultation with the committee chairs, and then be responsible for following up on items with departments as well as with the board. At present, agendas for some committees are prepared by the department head in consultation with the committee chair. The proposed change would avoid some of the problems which have arisen under this practice and, most importantly, enhance the board's own policy effectiveness in line with the recommendations in the preceding section.

With delegation by the board to the county administrator of the authority to, 1) hire and fire department heads, 2) appraise the performance of department heads, and 3) control the flow of administrative items to the board, the county administrator could better ensure that programs are executed according to the board's priorities. If the board desires to hold the administrator accountable for policy and program execution, it needs to accord that position the authority necessary to perform that role. The present structure greatly limits the extent to which the county administrator can intervene at the departmental level to insure that policy execution occurs according to the board's wishes.

The departure of a previous high-ranking official is symptomatic of the kinds of problems that can arise where administrative authority is not sufficiently centralized. One board member commented that this individual "got in trouble" because, "he felt that he reported directly to the board and not to Karl." Another board member said that this individual "was getting mixed signals" from the board and as a result, "couldn't decide what he needed to do first." Apparent from the experience is that the situation was allowed to deteriorate to a point that a majority of the board felt a need to intervene, even though he was a relatively recent hire. Had there been a more direct line of accountability between the county administrator and the unit for which this individual was responsible, remedial action might have been taken much sooner. Where administrative officials believe that their primary point of accountability is the chair of the committee to which they report, a circumstance created by the policy that only the board can dismiss department heads, the administrator is inhibited from exercising needed oversight.

Although a memo was issued by the board chair in 1999 advising department heads that they report to the county administrator, apparent from our discussion with several department heads was that this memo muddled rather than clarified reporting relationships. One department head commented that the memo,

really created a kind of gray area that county board members even today don't quite understand because I get a mixed message. My county board committee chairman saying, "we ought to do this," and Karl saying, "I think we ought to do that," and I'm going, now, okay guys, these don't mesh and it creates some uncertainty once in a while.

The long tenure of some department heads is both a strength and a weakness of the present system. A strength is that these individuals are uniformly able and well-regarded. The evidence suggests that each runs a professional organization. However, it is also apparent that these officials resent intrusion on their spheres of influence. Each had substantial autonomy under the prior county administrator but, according to those we interviewed, there was no ambiguity about who was ultimately in charge because of the close relationship maintained by the prior administrator with previous board chairs. With a new administrator, a new board majority, and a new board chair, those relationships no longer hold. Department heads now exercise an even greater degree of autonomy than previously. The ambiguity about reporting relationships contributes to this dynamic.

There is no evidence that any of the current department heads have abused that autonomy. Problems that are presented however, are 1) in a situation such as that cited above, the administrator is inhibited from taking appropriate steps to keep a bad situation from getting worse, 2) as current department heads retire, their replacements will not have equivalent levels of experience to operate in this system, 3) as the board undertakes initiatives which cut across departmental lines, for example should the board implement a comprehensive system of performance measures across the government, the county administrator will need additional authority to ensure that the program is implemented according to the board's wishes.

An additional problem with the present system is that committee chairs sometimes develop an attitude of ownership towards a particular department. Department heads contribute to that attitude by consulting with their respective committee chairs on key issues and on committee agendas. Such a dynamic impedes the ability of other board members to have an equal say on policy matters. Where the county administrator serves as the primary point of accountability for department heads, all board members can be insured of equal access and equal influence. Thus the budget process, which is regarded favorably by virtually all the board members interviewed, is substantially managed by the county administrator in close cooperation with the board chair.

It is particularly important that the administrator have the exclusive authority to dismiss department heads. Those decisions are currently made by the board based on recommendations from the board chair and relevant committee chairs. This arrangement contributes to a perception by department heads that they are accountable primarily to the chair of the committee with jurisdiction over their department. In these circumstances, there is little incentive for department heads to keep the

administrator and his staff apprised on departmental matters even on issues that may affect county policy more broadly. Board members can and should have access to department heads for purposes of obtaining information about departmental operations and for purposes of resolving constituent complaints. However, for purposes of coordinating administrative activities across departments and ensuring program execution according to board priorities, the ambiguity in reporting relationships that current arrangements promote should be removed.

Some board members expressed skepticism about the desirability of centralizing authority in the position of county administrator. The assignment of authorities such as those described above does not necessarily imply a diminished board role in these activities however. Appointments should take effect only with the board's consent. It is further appropriate for the administrator to consult with board members about their preferences on matters of pay, promotion and dismissal. In fact it would be self-defeating for the administrator to act unilaterally on such matters. One board member commented,

I would not be bothered if Karl had the authority to hire and fire department heads, but I would not be comfortable unless we had policies and procedures so that we were sure that he went out and did a search and that he used the committee where it made sense.

Such considerations need to be accommodated and could be incorporated by the board in any formal delegation of responsibility. However, the final decisions on matters of pay, promotion, and dismissal should be those of the administrator and the administrator should expect to be held accountable for them.

The delegation of this authority to the county administrator is consistent with practices in other counties we investigated such as Fairfax County, Virginia and Johnson County, Kansas. It would also be consistent with the National Civic Review in its *Model County Charter*. That document includes the following language;

The county manager shall appoint and, when necessary for the good of the service, suspend or remove all county employees and appointive administrative officers provided for by or under this charter, except as otherwise provided by law, this charter, or personnel rules adopted pursuant to this charter (p. 28).

The delegation of removal authority to the county administrator is further consistent with the guidelines of the International City/County Management Association's "Criteria and Guidelines for Recognition." According to those guidelines, a council-manager position is recognized as such only if, "The manager shall have authority by legislation for the appointment and removal of at least most of the heads of the principal departments and functions of the local government."¹⁵

¹⁵ International City/County Management Association, *Who's Who in Local Government Management*, 2000.

Lake County government has a long tradition of professionalism both at the departmental and corporate levels. Those at the department level are charged with overseeing particular functional areas. Those at the corporate level are charged with making sure that policies are integrated across departments, that competing perspectives are taken into account, that resources are allocated efficiently. They also have to make tactical decisions about how overall ends can best be served. Where department heads perceive that their primary point of accountability is the chair of the relevant committee, the capacity of the county administrator to perform that corporate level function is compromised.

IV. B. 1. Elected Officials

At present, there are eight county-wide elected officials, a tradition which has deep roots in the history of county government in the U.S.¹⁶ Unfortunately, as pointed out earlier, this represents a substantial diffusion of executive power and limits the ability of the board to set and evaluate policies and administrative practices in these units except through the annual budget process.

The status of four of these positions--- State's Attorney, Sheriff, County Clerk and Treasurer---is rooted in the Illinois constitution. The appointed status of the Circuit Court Clerk is determined by state law. The other three may be changed from elected to appointed status through a referendum. In 1978, the position of Auditor was changed in this way. A similar referendum was held on two more of these offices, Coroner and Recorder of Deeds in the fall of 1990 following a recommendation of the second Governmental Study Commission. Neither proposal was approved.

It is still the case that both administrative capacity and the legislative capacity of the board would be strengthened by making these two offices---Coroner and Recorder of Deeds---appointed rather than elected. The incumbents seem, in general, to be well regarded. However, the positions are primarily professional and administrative rather than policymaking in nature and should therefore be consolidated under the authority of the county administrator. Further, it is difficult for the public to know enough about the operation of these offices to make educated decisions regarding the qualifications of those heading them or the quality of their performance. With consolidation of these administrative operations, the board will be able to provide more unified policy direction and the leadership of county government will be considerably less fragmented than it is at present. Abolition of the Coroner position should be accompanied by the creation of an appointed position of Medical Examiner.

The kind of problems that can arise from having these positions independent are apparent from the experience with a previous Recorder of Deeds. According to those interviewed, this individual bought a new information system without adequate review of the contract by either the State's Attorney

or Management Services. The county ended up with a system which was isolated and not compatible with other county systems. Due to the efforts of the current Recorder and the vendor, the situation is being rectified. However, the incident demonstrates the liability from the county's perspective of having multiple, autonomous department heads.

Other counties that we have researched have made similar attempts to curtail the number of separately elected positions. For example, Johnson County, Kansas recently converted the offices of County Clerk, Registrar of Deeds, and Treasurer from elected to appointed status. Multnomah County, Oregon similarly did away with the elected District Court Clerk, County Clerk, and County Assessor. These actions are consistent with the recommendations of the Winter Commission on State and Local Public Service, which recommended that, "executive authority" be "strengthened," "by reducing the number of independently elected cabinet officials." The Commission adds, "The Commission believes that the public is best served when they can identify a single elected or appointed executive at the top of government who is responsible for what government does."¹⁷

At present, the state constitution precludes the county from changing the status of the positions of County Clerk and Treasurer. It is our position that these functions eventually should be made appointive rather than elective, fully recognizing that this will not be easy or, most likely, popular.

The Illinois state constitution requires a referendum every 20 years regarding the calling of a new constitutional convention. The next window of opportunity for the citizens of the state will be 2010. If approved, it will present highly urbanized counties like Lake County with their most important opportunity since the 1970 convention to shape the future of county government in the state. This will require two important things: a strong, state-level association of county governments, ideally in conjunction with NACO and associations representing cities like the International City/County Managers Association and the National League of Cities and, secondly, long range planning, energy and effective leadership to establish such a coalition in order to make full use of this constitutional opportunity.

As described earlier, county government historically, has lagged far behind cities in the modernization of their structures and professionalization of their management. In this regard, it is telling that there presently is no state level professional association representing county government per se. There was certainly no such association at the time that the 1970 constitution was adopted. We therefore recommend that Lake County, in cooperation with other appropriate counties and county associations

¹⁶ There are eight county-wide elected officials including the Superintendent of Schools which was not part of this study.

¹⁷ *Hard Truths/Tough Choices: An Agenda for State and Local Reform. The First Report of the National Commission on the State and Local Public Service.* 1993, p. 16-17.

initiate the creation of a state-wide association of counties. While a number of constitutional issues should be addressed on behalf of counties, two are particularly relevant to the present analysis: the flexibility, under state law, to determine the status of officials that are currently elected, and the flexibility to decide on home rule status *with or without* an elected County Executive.

IV. B. 2. Boards and Commissions

The organizational structure of the county is characterized by a large number of autonomous or semi-autonomous boards and commissions. There are a variety of justifications for these boards. Some such as the Board of Health were created to protect against politicization. Others such as Stormwater Management were created as a means of inducing cooperation between the county and municipalities. The Public Building Commission was created in part as a means of coping with tax and debt limitations on county governments.

The presence of so many autonomous and semi-autonomous units creates problems of both coordination and accountability. Recent disclosures about a separation payment to a former employee by the Public Building Commission make apparent the importance of ensuring direct accountability of commissions responsible for the expenditure of public funds to elected officials and through them to the electorate.

The capacity of the county board to effectuate changes in the status of these boards is contingent on the legal status of each. Some, such as the Board of Health and the Veterans Assistance Commission are mandated by state law. Others such as the Stormwater Management Commission and the Tuberculosis Sanatorium Board were created at the county's option but operate according to state law. Still others, such as SWALCO are created pursuant to an intergovernmental agreement between the county and the municipalities.

In general it will serve purposes of accountability, efficiency and policy coordination to limit the proliferation of these boards. The functions of some boards such as the Board of Health and the Tuberculosis Sanitarium Board should be combined as a means of enhancing coordination among subordinate units. This recommendation was made by the First Governmental Study Commission in 1978 but has yet to occur. The county has already moved toward operational consolidation of the Public Buildings Commission with the county and has prevailed on the Stormwater Management Commission and the Board of Health to abide by county administrative procedures. We believe that the county would be well served by a review of the legal status and original purpose of each such board as well as by a review of the extent to which administrative consolidation is desirable and feasible.

IV. B. 3. Forest Preserve

Recent history has made apparent the extent to which the Forest Preserve and the county are linked both governmentally and politically. Current arrangements whereby board members also serve as Forest Preserve commissioners provide some degree of policy integration. Any comprehensive land use planning, economic development policy, or transportation policy by the county must include the mission and programs of the Forest Preserve. Despite such board-level integration and policy interdependence, however, various points of conflict between the county and the Forest Preserve seem to have arisen in the last decade or so in matters relating to sewers, roads, and development.

While we did not begin this study with an intent to address the Forest Preserve, it quickly was brought to our attention in the course of interviews with board members and others. A number of issues were raised in this regard:

- The fact that a unit whose operating budget and staff, compared with other units of county government, is quite small yet it has its own 23 member board.
- Concern over the potential for 'conflict of interest' at both the individual and the institutional level because of the dual roles county board members play.
- The belief that some board members run for office primarily because of their desire to play an important role in the Forest Preserve.

In following up these and other observations, we asked a number of our interviewees to consider three possibilities: (a) continuing the present arrangement, hopefully with a substantially smaller board; (b) separating the two bodies as was done recently in DuPage County again resulting in a much smaller Forest Preserve board; or (c) making the Forest Preserve another department of county government and abolishing its status as an autonomous entity.

Responses to these options were mixed. More than one board member indicated that if the two were split, they would opt to remain with the Forest Preserve. Others were satisfied with the present arrangement though recognizing some of the difficulties with it. And not many had really considered the Forest Preserve as part of county government, a common arrangement in many other municipalities and counties across the country. Clearly, that seemed the most 'radical' possibility to most. Yet that option offers some advantages, including a reduction in administrative redundancies and the associated operating costs. Given the constraints of Illinois law, it appears that such consolidation would have to occur through an intergovernmental agreement whereby the Forest Preserve was operationally consolidated with the county but retained separate legal status.

It was pointed out one interviewee that the Forest Preserve has a tremendous impact on land use patterns but that there is little integration between the county and Forest Preserve planning units.

Consolidate along the lines we have suggested would allow such integration to occur. Greater integration might also facilitate the expansion of active recreational uses on Forest Preserve properties. We fully recognize how uneasy this is likely to make some but it should be given careful consideration. As a first step, the fiscal and legal issues associated with such a change need to be investigated. In the long term we feel that such a change holds potential as a 'win-win' situation for all parties as well as the people of Lake County.

Table 2
Action Plan – Building Administrative Capacity

	Time Dimension			Type of Action	
	short	medium	long	Local Action*	State Action**
1 Provide the county administrator with the authority to hire department heads with the consent of the Board.	x			x	
2 Provide the county administrator with the authority to fire department heads:	x			x	
3 Provide the county administrator with authority over the flow of administrative items to the board.	x			x	
4 Provide the county administrator with the authority to appraise the performance of department heads in conjunction with annual decisions about pay increases.	x			x	
5 Immediately or upon retirement of the incumbents, provide for a referendum on whether the positions of Coroner and Recorder of Deeds should be appointed rather than elected. Abolition of the position of Coroner should be accompanied by the creation of an appointed position of Medical Examiner.		x		x	
6 Work with other Illinois counties toward changes in state law and the state constitution to make the offices of Circuit Court Clerk, Treasurer, and County Clerk appointed rather than elected.			x	x	x
7 Work with other Illinois counties to create a state-wide association of counties to lobby on common issues.		x		x	
8 Initiate a study of all county boards and commissions to ascertain which can and should be restructured, abolished and/or consolidated		x		x	
9 Initiate a study of possible consolidation of the Forest Preserve with the county.		x		x	

* an ordinance, resolution or procedural change

** change in state law or the state constitution

IV. C. Building Political Capacity and Leadership

IV. C. 1. Chair of the County Board

At present, the position of board chair is a weak one though obviously different individuals have brought different talents, abilities, and energy to it in performing their responsibilities over the years. Still, the board chair is elected biennially by his/her peers. There has been a relatively high rate of turnover with four different board chairs in the past ten years. It is difficult for an incumbent to provide

leadership on county-wide issues with the short tenure and relative lack of authority that accompanies the position. More than one board member characterized the role more in terms of 'facilitating' and 'coordinating' than in terms of 'leadership', even when describing the "governmental system" as a "cabinet" government.

Although the chair is the only position which represents county government as a whole, ultimately he/she is accountable only to the residents of his/her electoral district and to the other board members, or at least the majority who elected him/her. Under such circumstances, it is difficult for the board chair to leverage that position into one which can serve as a catalyst for the resolution of major issues and serve as a strong spokesperson for the county at other levels of government. And if the county administrator's authority is enhanced as recommended previously, the position of board chair, serving as liaison between the administrator and the board, would gain in importance as the primary vehicle of communication and policy direction from the board to the administrator.

Views such as these, articulated by a number of the individuals we interviewed including present and past board members, lead us to recommend that the chair of the board be elected at-large. This gives the public the opportunity to select the individual who would fill this position and who would speak authoritatively for the county as a whole before other local, state and national officials and agencies. While the board chair would be just one of 13 board members, under the proposed downsizing of the board recommended earlier, election at-large would, we believe, confer particular status on the incumbent enabling him/her to broker solutions to problems that the county has been unable to resolve otherwise, especially as the change would require the incumbent to perform the responsibilities of the office on a full-time basis.

The appropriate role of the board chair is described in the National Civic League's *Model County Charter* as follows,

The chairman fills three facilitative roles that offer enormous leadership opportunities. First, the chairman can coordinate the activities of other officials by providing liaison between the manager and the [Board], fostering a sense of cohesion among [Board members] and educating the public about the needs and prospects of the county. Second, the chairman can provide policy guidance through setting goals for the [Board] and advocating the adoption of policies that address the county's problems. Third, the chairman is an ambassador who promotes the county and represents it in dealing with other governments as well as the public.¹⁸

The election of the board chair at-large would strengthen the "cabinet" system that has developed within the county board. As the only non-departmental official who can speak for the people of Lake County as

¹⁸ National Civic League, *Model County Charter*, p. 21, 1990.

a whole, the board chair would play a unique representational and ceremonial role and would also be well positioned to "facilitate" a policy focus on the part of the board.

A number of those we interviewed were uneasy about, and some expressed outright opposition to, having the board chair elected at-large. Three general considerations underlay their position; 1) the cost of a county-wide campaign for board chair would increase significantly, changing the kind of person who would/could afford to run for it and, most importantly, opening the way for the candidate of 'big money' to gain the upper hand, 2) dependence on the 'majority coalition' which characterizes the present arrangement maximizes the ability of those in the coalition to influence events and policies, 3) present arrangements keep the position from becoming a 'career' and the incumbent from using it as a stepping stone to a higher level political position.

On the other hand, we also heard from those who lamented the current lack of leadership. One official commented that a board chair elected at-large,

would be able to govern more fairly because he would not or she would not be obligated to any faction of the board regardless of their party affiliation. Some people feel that all the big money interests will control wealth. They don't now. If you've got a good candidate, they can win.

Another individual from outside county government noted, "without an elected official speaking for the county, I think you're lacking decisive leadership to go out there and lead the county forward." This individual added, "with the county board chairman, the county board members can take him out of there. You should let your citizens choose who they want to play that role."

Several other Illinois counties have decided to have their board chair elected at-large. While DuPage has long had such a position Kane and Winnebago counties have moved to such a system in just the past few years. Such an electorally-strong position would provide leadership for the board in its political and policy-formulation roles. In addition, the chair would be a spokesperson who can speak for and energetically pursue the county's interests externally would provide a focal point of leadership for the solution of the pressing short and longer-term problems facing the county as it continues to grow. With such a position, Lake County would be able to retain the county administrator as chief executive, preserving the tradition of professionalism in that position. Pursuant to state law, the powers of the board chair elected at-large would be set by local ordinance.

IV. C. 2. Home Rule and the Elected County Executive

Home Rule is one of several legal/constitutional mechanisms adopted by state governments across the country to give their local governments the opportunity to enjoy greater flexibility and autonomy in making their decisions and running their affairs. It is intended, in theory at least, to reduce

their dependence on state legislative action and to curb the necessity to turn to the state capital to get the authority to address some particular problem, including raising revenue from a range of sources.

Under the Illinois constitution and county government statutes, home rule power would allow the county to act within broad limits on matters pertaining to its government and affairs without further explicit statutory authorization. With home rule, Lake County would not be beholden to the state for a revenue source dedicated to highway improvements. In the words of the 1978 Lake County Governmental Study Commission, which was the first to recommend home rule, "home rule can offer distinct advantages to our county government in the form of more discretionary authority to solve local problems with greater latitude to respond to the demands, wishes, and desires of our citizens."

It is not coincidental that home rule has failed previously in Lake County and in other counties that have put it on the agenda for adoption. Based largely on the Cook County experience, home rule is associated with higher taxes as well as new types of taxes.¹⁹ That experience has been utilized by opponents of home rule to argue that if home rule were granted, taxes would go up more than they otherwise would. To date however, there is no evidence to support this contention. A 1985 study of the tax and borrowing practices of all Illinois cities and villages over 10,000 indicate that home rule governments do not have higher property taxes than comparable non-home rule cities and villages.²⁰ Although many of the home rule municipalities have used their power to levy taxes not available to non-home rule governments, many of these taxes such as hotel-motel and sales taxes shift the burden away from local residents.²¹

It is anomalous for Lake County itself not to have home rule power when eleven municipalities within the county already have home rule power including relatively small jurisdictions such as Lake Barrington (population – 4,500), Park City (population – 5,500), and Mettawa (est. population – 380)(a list of all Lake County municipalities showing those with home rule is included as Appendix N). One official from outside county government observed that, "we've got many municipalities that have home rule right here in Lake County. People have the option to take it away and it's never been done in Lake

¹⁹ Using home rule powers, Cook county imposed a retail sales tax on the sale of new motor vehicles, levied a wheel tax on motor vehicles registered in unincorporated areas, imposed local taxes on the sale of alcoholic beverages, added a local gasoline tax, and established a special tax on mobile homes. However, as pointed out in the Report of the Lake County Governmental Study Commission in 1978, Cook County also utilized those powers to replace the Coroner with a Medical Examiner, implement modern budgetary procedures, and provide the Auditor with the power to audit special districts to which the Board President made appointments.

²⁰ James Banovetz and Thomas Kelty, "Home Rule, Part 3 – Debt, Taxes and Home Rule," *Illinois Issues*, December 1985.

County. Another official commented, "that a county of 600,000 people doesn't have home rule cuts at the very heart of democracy."

It is the case that with home rule the county would no longer have to abide by the state's property tax cap.²² As a means of reassuring taxpayers however, the county could, with home rule power, adopt its own property tax limit. Cook County has imposed such a limit as has Montgomery County, Maryland. Montgomery County allows the limit to be exceeded by an extraordinary majority of the county council in the event of an emergency.

In moving to a system where the board chair is elected at large, the county would not thereby gain option of also deciding on whether or not it wished to adopt home rule and the potential advantages which it entailed. That option only comes *with* the county executive form, though the voters *can* bypass home rule if they so chose while adopting the county executive form. We've taken a careful look at this option, as a part of our study, both in Illinois and elsewhere and raised the possibilities in a number of our interviews.

There is clearly a certain appeal to the idea of an elected county executive. He/she would act much as does the president at the national level or the governor at the state level. Elected at large, they would serve as head of the executive branch of government with the powers to appoint (with board consent) and dismiss administrative officials, to prepare an annual budget, and to veto ordinances subject to being overridden by a 3/5 vote of the board. Like the elected board chair, the position would serve as titular head of the county government. Unlike the elected board chair, the executive would have formal authority to oversee county administrative units, authority which would enhance the executive's capacity to take a leadership role on the large issues facing the county.

An executive position would not preclude the retention of a professional county administrator to oversee the day-to-day operation of the executive branch although the administrator would be subject to direction by the executive. Will County, the only Illinois county to have adopted the county executive form (which opted to do so without home rule) has a county administrator as does Montgomery County, Maryland. With the resources of the executive branch at his/her disposal and with political incentives to appear activist, the county executive position, similar to the president and governor, would be the a likely source for policy innovation of the type needed to resolve the complex problems facing the county.

²¹ Shelley Fulla, The Financial Impact of Home Rule on Municipalities, unpublished manuscript, Graduate Program in Public Administration, University of Illinois – Chicago, 2000.

²² Even with home rule, the county would have to comply with provisions of the Property Tax Limitation and Extension Law which require a public hearing when proposed tax increases exceed statutory guidelines.

There are other trade-offs in any such change. Many of those interviewed expressed more apprehension about the prospect of a county-wide, elected executive than they did about a county-elected board chair. These concerns included that the administrative function would be politicized, that only those with access to large amounts of financial resources could run, and that it would provide too much power to a single individual.

If we were unconstrained by present Illinois law, we would recommend that home rule be adopted by the county. This reflects both our willingness to trust in the political system and the ability of people, generally, to make decisions about their own future. While recognizing some of the political and financial risks in such a choice, we place a high value on reducing the need to secure state approval in order to make decisions about revenue levels and sources or find the solutions to their own local problems. At the same time, the most pressing issues of growth, development, land use, and safety require both a cooperative relationship with the state and other local governments and a strong energetic voice capable of representing county government views and working to find solutions to these issues.

While there are good reasons for Lake County to consider implementing a county executive form of government we cannot recommend such a structure at this time. One reason is that Illinois law currently provides that a county executive preside over board meetings and vote on board matters in cases of a tie. We believe that this provision blurs the line between appropriate executive and legislative responsibilities. Should the board at some point decide that the county executive form is desirable, it would be appropriate to have this section of the law changed so as to allow a more traditional separation of executive and legislative powers such as is found at the federal and state levels.

It may well be that in the future, there will be a clearer need for a county executive in Lake County. For the present, we believe that the other changes we have recommended, especially a serious reduction in the size of the county board, the county-wide election of the county board chair, strengthening the authority of the county administrator over county operations, and taking serious steps towards consolidating administrative and budgetary accountability by replacing as many as possible of the elected officials with officials appointed on the basis of their professional qualifications will continue the progress towards the 'modernization' of Lake County government begun in the '70's.

Table 3
Action Plan – Building Political Capacity

	Time Dimension			Type of Action	
	short	medium	long	Local Action*	State Action**
1 Provide for election of the board chair at-large.	x			x	
2 Lobby for changes in state law/constitution to 1) allow counties home rule without a county executive, 2) to provide for a clear separation of executive and legislative responsibilities under the county executive form.			x		x
3 Initiate a study of how home rule powers could be utilized by the county to address growth-related problems		x		x	

* an ordinance, resolution or procedural change

** change in state law or the state constitution

V. Summary

The difficult situation currently facing Lake County is in part attributable to features of the broader system in place at the state level of which the county is part. Those features include 1) the proliferation of units of government, many of which have substantial autonomy, 2) municipal control over land use matters and corresponding limits on the county's ability to influence land-use patterns, 3) a heavy reliance on the property tax as a means for funding government service which creates incentives for municipalities to seek new development, and 4) annexation laws which leave the county at a disadvantage relative to municipalities. The net effect of these rules, in conjunction with the attractiveness of Lake County as a place to live and the strong economy, is that development pressures are extreme while the unit of government best suited to address the adverse consequences of growth has limited authority to intervene.

While the county government is to some extent hostage to larger forces however, it labors under the additional burden of an antiquated structure. It is within the power of the county board, in conjunction with the electorate, to change that structure to one better suited for the challenges of the 21st century. A key is to create a structure which facilitates the exercise of leadership that appears requisite to meeting those challenges.

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Appendix A

Curriculum Vitae of L. Vaughn Blankenship and James R. Thompson

Lloyd Vaughn Blankenship

Graduate Program in Public Administration
College of Urban Planning and Public Affairs
University of Illinois - Chicago

EDUCATION/DEGREES RECEIVED

Ph.D., Cornell University, Graduate School of Business and Public Administration, Ithaca, N.Y., 1962

B.A. (*Honors*), Political Science. University of California, Riverside, 1956.

ACADEMIC POSITIONS

Professor of Public Administration and Director, Doctoral Program, College of Urban Planning and Public Affairs, University of Illinois – Chicago, 1996-present

Professor of Political Science and Research Professor, Institute of Government and Public Affairs, University of Illinois at Chicago, 1991-1995.

Associate Chancellor for Planning & Resources Management and Professor of Political Science and Management, University of Illinois at Chicago, 1984-1991.

Professor of Political Science, State University of New York, Buffalo, 1972-1975.

Associate Professor and Chairman, Department of Political Science, State University of New York, Buffalo, 1968-1969.

Associate Professor and Vice-Chairman, Department of Political Science, State University of New York, Buffalo, 1968-1969.

Visiting Associate Professor of Business Administration, University of California, Berkeley, Summer 1968.

Associate Professor of Political Science and Management, and Chair, Department of Management, School of Business Administration, State University of New York, Buffalo, 1967-1968.

Assistant Professor of Business Administration and Assistant Research Economist, School of Business Administration and Space Sciences Laboratory, University of California, Berkeley, 1962-1967.

Lecturer in Administration, Graduate School of Business and Public Administration, Cornell University, Ithaca, N.Y., 1960-1962.

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"The Scientist as 'Apolitical' Man," *British Journal of Sociology*, v. 24, Sept. 1973, pp. 269-287.

"On the Methodology of the Holistic Experiment: An Approach to the Conceptualization of Large-Scale Social Experiments," (with Ian Mitroff) *Technological Forecasting and Social Change*, v. 4, 1973, pp. 339-353.

"Public Administration and the Challenge to Reason," in *Public Administration in a Time of Turbulence*, Dwight Waldo, ed., (San Francisco; Chandler Publishing, 1971).

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"Theory and Research as an Act of Faith," *Public Administration Review*, Sept., 1967.

"Power Structure and Organizational Effectiveness," in *Men at the Top: A Study in Community Power*, Robert V. Prentiss, (N.Y.; Oxford Univ. Press, 1964).

PROFESSIONAL POSITIONS

LEGIS Fellow, Science Policy Research Division, Congressional Research Service, Library of Congress, 1980-1981.

L. Vaughn Blankenship

Director, Division of Applied Research, National Science Foundation.
1977-1981.

Head, Office of Planning and Policy Analysis, National Science Foundation, 1975-1977.

Senior Program Analyst, U.S. Office of Management and Budget, Natural Resources, Energy and Science
Division, 1974-1975.

Program Manager, Division of Social Systems and Human Resources, RANN, National Science
Foundation, 1973-1974.

James R. Thompson

Graduate Program in Public Administration
College of Urban Planning and Public Affairs
University of Illinois - Chicago

EDUCATION/DEGREES RECEIVED

Ph.D. in Public Administration, Maxwell School of Citizenship and Public Affairs, Syracuse University, 1996

Masters in Public Administration, State University of New York at Albany, 1976

B.A. History, Swarthmore College, 1973

ACADEMIC POSITIONS

Assistant Professor of Public Administration
University of Illinois-Chicago, 1996 - present

SELECTED PUBLICATIONS

"Reinvention as Reform: Assessing the National Performance Review." *Public Administration Review*, Vol. 60, No. 6 (November/December 2000).

"The Dual Potentialities of Performance Measurement: The Case of the Social Security Administration." *Public Productivity and Management Review*, Vol. 23, No. 3 (March 2000).

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"Skill-based Pay as an Organizational Innovation." (with Charles LeHew). *Review of Public Personnel Administration*, Vol. 20, No. 1 (Winter 2000).

"Devising Administrative Reform That Works: The Example of the Reinvention Lab Program." *Public Administration Review*, Vol. 59, No. 4 (July/August 1999).

"Strategies for Reinventing Federal Agencies: Gardening vs. Engineering." (with Ronald Sanders) *Public Productivity and Management Review*, Vol. 21, No. 2 (December 1997).

"The Reinvention Game." (with Patricia Ingraham) *Public Administration Review*, Vol. 56, No. 3 (May/June 1996).

"Political Management Strategies and Political/Career Relationships: Where Are We Now in the Federal Government?" (with Patricia Ingraham and Elliot Eisenberg) *Public Administration Review*, Vol. 55, No. 3 (May/June 1995).

"Reinventing the Federal Government: The Role of Theory in Reform Implementation." (with Vernon D. Jones) *The American Review of Public Administration*, Vol. 25, No. 2 (June 1995).

James R. Thompson

"Quasi Markets and Strategic Change in Public Organizations." *Advancing Public Management: New Developments in Theory, Methods, and Practice*. (Jeffrey Brudney, Laurence O'Toole, Hal Rainey, eds.) Washington: Georgetown University Press. 2000.

"Human Resource Flexibilities in the United States." (with Raymond Cachares). *Human Resources Flexibilities in the Public Services: International Perspectives*. (David Farnham and Sylvia Horton, eds.) London: MacMillan Press LTD. 2000.

Coeditor (with Patricia Ingraham, Ronald Sanders and Associates) of *Transforming Management/Managing Transformation: The Realities of Managing Change in Public Organizations*. Jossey-Bass Publishers. 1998.

PROFESSIONAL POSITIONS

Assistant to the County Executive, Monroe County, N.Y., 1988-1991

Clerk of the Legislature/Chief of Staff, Monroe County Legislature, 1981-1987

Administrative Analyst, Senior Administrative Analyst, Office of Management and Budget, City of Rochester, N.Y. 1977-1980.

Legislative Assistant, Congressman Floyd V. Hicks, U.S. House of Representatives, 1973-1975.

TRAINING

Instructor, "The Promise and Challenges of Performance Measurement." Session for State of Illinois officials sponsored by the Office of Governor George Ryan. April 1999.

Instructor, Illinois Municipal League, Leadership Enhancement and Development Program. 1997, 1998, 1999, 2000.

Appendix B

Recommendations By Charge

The appropriate size and manner of electing the county board

- Reduce the number of board members (excluding the board chair) to 12..
- Retain single-member districts.

The appropriate manner of selecting a county board chair

- Provide for election of the board chair at-large.

The scope of county board functions and the restructuring and/or altering of existing jurisdictional responsibilities

- Encourage a policy focus on the part of board members.
- Provide the county administrator with the authority to hire department heads with the consent of the board.
- Provide the county administrator with the authority to fire department heads.
- Provide the county administrator with authority over the flow of administrative items to the board.
- Provide the county administrator with the authority to appraise the performance of department heads in conjunction with annual decisions about pay increases.
- Initiate a study of all county boards and commissions to ascertain which can and should be restructured, abolished and/or consolidated.
- Initiate a study of possible consolidation of the Forest Preserve with the county.

The internal governance of the county board, including its committee structure and the role of the county board in policy development and administration

- Encourage a policy focus on the part of board members.
- Organize committees according to key policy objectives.
- Adopt a system of performance measures to hold administrators accountable.
- Provide the county administrator with the authority to hire department heads with the consent of the board.
- Provide the county administrator with the authority to fire department heads.
- Provide the county administrator with the authority to appraise the performance of department heads in conjunction with annual decisions about pay increases.
- Provide board members with support staff.
- Make available to board members training on county issues.

The pros and cons of home rule for Lake County with or without a county executive; and

- Work with other Illinois counties to create a state-wide association of counties to lobby on common issues.
- Lobby for changes in state law/constitution to 1) allow counties home rule without a county executive, 2) to provide for a clear separation of executive and legislative responsibilities under the county executive form, 3) to have the positions of County Clerk, Circuit Court Clerk, and Treasurer made appointed rather than elected.
- Initiate a study of how home rule powers could be utilized by the county to address growth-related problems.

Appendix B - Recommendation by Charge

The current status of county offices as elected vs. appointed officials

- Immediately or upon retirement of the incumbents, provide for a referendum on whether the positions of Coroner and Recorder of Deeds should be appointed rather than elected. Abolition of the position of Coroner should be accompanied by the creation of an appointed position of Medical Examiner.
- Lobby for changes in state law/constitution to 1) allow counties home rule without a county executive, 2) to provide for a clear separation of executive and legislative responsibilities under the county executive form, 3) to have the positions of County Clerk, Circuit Court Clerk, and Treasurer made appointed rather than elected..
- Work with other Illinois counties to create a state-wide association of counties to lobby on common issues.

Appendix C

Ordinance Creating the Position of Lake County Administrator

AN ORDINANCE CREATING A POSITION TO BE KNOWN AS CHIEF ADMINISTRATIVE OFFICER PRESCRIBING THE POWERS AND DUTIES THEREOF AND ALSO PRESCRIBING THE DUTIES AND PROCEDURES OF OTHER OFFICERS, COMMITTEES, SERVICES, INSTITUTIONS AND DEPARTMENTS IN RELATION TO SAID CHIEF ADMINISTRATIVE OFFICER.

SECTION 1. There is herewith created, under the Classification and compensation Ordinances of the County of Lake, the position which shall be known and designated as "Chief Administrative Officer," Said Chief Administrative Officer shall be appointed by the Chairman of the Board with the approval of the Lake County Board, hereinafter referred to as the Board, in accordance with the Lake County Board Rules.

SECTION 2. The Chief Administrative Officer shall be a person having demonstrated administrative and executive ability as shown by at least five years of experience in private or public employment in a responsible or executive position requiring the planning and execution of work programs of administrative operations, the budgeting and control of expenditures, and the coordination of varied activities, and who shall conform substantially to the requirements of a description to be established under the auspices of the Lake County Personnel System.

SECTION 3. The Chief Administrative Officer shall serve at the pleasure of the Board, provided that he or she may not be removed except after at least ten (10) days, and not more than thirty (30) days written notice, and if he or she requests in writing, not until after a public hearing at a regular meeting of the Board, in accordance with such procedures as are prescribed by the Board.

SECTION 4. The Chief Administrative Officer shall generally advise, assist, act as an agent for and be responsible to the Board for the proper and efficient administration of such affairs of the County as are placed in his or her charge by the Board. He or she shall be responsible for the enforcement of ordinances, orders, or regulations as directed by the Board. All appointed Department Heads under the jurisdiction of the Board shall report to the Chief Administrative Officer.

SECTION 5. In order to serve effectively, the Chief Administrative Officer Shall:

- Recommend an annual County budget and exercise continuous budgetary supervision in conjunction with the Director of the Budget;

Appendix C - Ordinance Creating the Position of Lake County Administrator

- Confer with and assist all Department Heads and receive reports of the activities of such departments under the jurisdiction of the Board;
- Recommend improved or standardized forms and procedures;
- Assist in the coordination of the functions and work of all officers, committees, institutions, and departments of the County, and devise ways and means whereby, efficiency and economy may be secured in the operation of all offices, institutions, departments and their functions;
- Conduct continuous research in administrative practices;
- Represent the County of Lake in its intergovernmental relationships as directed by the Board;
- Recommend long-term plans of capital improvement with accompanying financial plans;
- Direct such administrative services as may be found desirable by the Board to be rendered centrally;
- Direct the enforcement of personnel policies and practices through a central Personnel Department;
- Examine regularly at periods fixed by the Board the accounts, records, and operations of every commission, department, office, and agency under control of the Board and report these findings to the Board. On a regular basis he or she shall make recommendations to the Board for action to be taken relative to the efficient operation of the County, the betterment of public service, and the future needs of Lake County;
- Direct the purchase of all property, equipment, supplies, services and related contracts and the enforcement of the Purchasing Ordinance through the centralized Purchasing Department;
- Develop financial plans in which revenues and expenditures are projected against anticipated County Growth;
- Make recommendations to the Board on new and revised state statutes which he or she considers desirable and worthy of endorsement by the Board. The Chief Administrative Officer shall also recommend to the Board the adoption of new and revised ordinances, orders, and resolutions when in his or her judgement these actions will promote improved County services and operations and are in the public interest; and;
- Have, a respect to the management of County-owned property and facilities, such responsibility as the Board may from time-to-time direct.

SECTION 6. The Chief Administrative Officer may employ assistants as the Board may authorize.

SECTION 7. No provisions of the Ordinance is intended to vest in the Chief Administrative Officer any duty or grant to him or her any authority which is vested by general law or County ordinance in or on any other County Officer or employee. No provision of this Ordinance shall be construed to delegate to the Chief Administrative Officer any authority required to be performed by the Board, nor shall the Chief Administrative Officer have the power to bind, obligate, nor commit the County of Lake in any manner, except as provided herein or by the express grant of authority by the Board. It is the intention of the Board in adopting this Ordinance only to create a position to which may be delegated certain administrative duties to be performed in and under its direction.

Appendix C - Ordinance Creating the Position of Lake County Administrator

SECTION 8. The Board herewith declares that it would have passed this ordinance and each section, subsection, paragraph, sentence, clause and phrase thereof, irrespective of the fact that one or more of such sections, subsections, paragraphs, sentences, clauses or phrases might be declared invalid, unconstitutional, or void. Should any section, subsection, paragraph, sentence, clause or phrase of the ordinance be declared invalid, such declaration shall not affect the validity of any other section, subsection, paragraph, sentence, clause or phrase.

SECTION 9. This Ordinance shall take effect and be in full force on December 1, 1977. Within thirty (30) days after the date of its passage, this ordinance shall be published in the newspaper of widest public circulation in the County of Lake.

DATED, in WAUKEGAN, LAKE COUNTY, ILLINOIS. on this 11th day of October, A.D., 1977.

Appendix D

Structuring and Collecting the Information

Studies on issues like those posed in the preceding section require collecting and organizing information related to three questions:

1. What **is** being done now? Why?
2. What **can** be done? How?
3. What **should** be done? Why?

What is being done now? Why? There is a need to determine what is being done at the present and to assess the reasons for it. This provides the “base” information on governing processes and structures in Lake County, the “realities” from which any recommended change or adjustment will have to begin. It also provides an historical and behavioral context for “understanding” a good deal about how things got the way they are and suggests some of the political and institutional factors which may shape the *possibility* for change as well as the likely *direction* and *degree* of any change.

The study relied on two primary sources of information regarding the present status of governing structures and processes: *semi-structured interviews* and *observation* of County Board meetings and meetings of Board committees. At the beginning of the study, we identified three sets of individuals with whom we wished to conduct our interviews: (1) county board members; (2) county-wide elected officials; and (3) administrators, key staff and department heads. A ‘strategic sample’ of board members was selected for interviews to reflect different experiences, perspectives, and roles on the Board in recent years. All but one of the county-wide elected officials were interviewed along with all of the key Administrators and Department heads.²³

In each case, we began with a list of questions intended to elicit information about and evaluations of existing structures, relationships and practices as well as some historical detail on their evolution. Clearly there had been some important changes, e.g., from multi-member to single member electoral districts, and we wanted to understand their origins as well as perceived benefits and costs. On average the interviews lasted about an hour and a half and were generally conducted by two members of the research team. They were recorded and subsequently transcribed for later reference. The interviewees were promised anonymity in their responses.

²³ A list of interviewees is included as Appendix O.

Appendix D - Structuring and Collecting the Information

The list of interviewees was subsequently expanded beyond this core group for two primary reasons. There was a clear need to get different perspectives on these same issues from key, informed individuals in roles which interacted in important ways with county government and the County Board. Among others, this included members of the State legislative delegation from Lake County as well as some village mayors. In addition, we wanted to get additional perspectives and/or historical details on certain key issues which have been at the center of attention in the county over the last few years. It was our feeling that an understanding of some of the dynamics of such issues, like transportation or affordable housing, provided a snap shot of the 'County Board in action'.

Our opportunity to observe the meetings of board committees and the county board as a whole in action was, of course, limited by the time period of our study. Again, however, at least two members of the research team were usually present so that they could discuss and compare notes after sitting through meetings. In addition, the dynamics of relationships are especially well displayed during the early fall of the year. This is when board committee hearings on the proposed budget for the upcoming fiscal year are held. The budget itself has been developed during the preceding months according to board policy and broad financial guidelines and involves intensive work by the staff and interactions among all key elected and appointed administrative officials.²⁴

The hearings over a period of weeks present a public opportunity for the various board program committees, meeting jointly with the board Finance & Administration Committee, to examine, question, and react to the results produced by the earlier budget process. No other single action of government, federal, state, or local, reveals the interactions among the 'parts' of government and their respective roles, behaviors, and values like the budget process. This is as true in Lake County as it is in any other governmental entity in the United States.

In addition to these direct observations, we obtained a set of board committee agendas and minutes for the period December 1999 through September 2000. After some discussion with board staff, the research team did a rough 'content analysis' of the minutes, classifying items by level of priority according to those requiring committee action only (informational items, action items and "business items") and those requiring action by the full board. The results, reviewed and discussed further with board staff, provided another important source of information regarding board proceedings and relationships with administrative staff, county-wide elected officials and others.

What can be done? How? Unlike federal and state governments which have separate constitutional status, local governments are creatures of state governments, shaped by their constitutional

²⁴ A budget timetable is included as Appendix P.

Appendix D - Structuring and Collecting the Information

provisions and statutes as well as by court decisions. The famous 'Dillon rule' of strict construction of local government powers, i.e., that local governments can exercise *only* those powers granted by the state in *express words* or those *necessarily or fairly implied or incident* to the powers expressly granted or *essential* to the accomplishment of their purposes, has been widely accepted as the standard since the late 19th Century.²⁵ Thus one answer to the questions requires attention to Article VII of the Illinois Constitution of 1970 as well as to Illinois Statutes and court cases related to county government.

In so far as possible within the time available, we examined the relevant statutes and court cases applying to local government in Illinois consulting in several instances with legal experts on the subject in Lake County and elsewhere. Previous studies on certain relevant topics were somewhat uneven in their coverage and a bit dated though local government law is generally not an area that changes very rapidly. We also consulted directly with several other well known students of Illinois local government to check on some of our interpretations and conclusions regarding home rule and related issues like the election of a county executive.²⁶

Another approach to the question of what *can* be done is to examine what other county governments in Illinois and elsewhere in the United States have *attempted* to do as well have actually *done*. Of course each situation is different even within the same state and certainly across states. Still such information, properly selected and assessed, goes beyond the legal and constitutional parameters of governing structure and form to the issue of the *feasibility* and *sensibility* of change in a particular direction. If it's possible in *other* counties that are similar to Lake County in significant ways, *why is or isn't it feasible in Lake County if it makes political and institutional sense?* In short, such comparative data helps to point out alternative possibilities and stimulate focused discussions about local opportunities as well as constraints.

We consulted a number of references on county governments in the United States and had several conversations with staff people at the National Association of Counties (NACO) as we developed our comparative research strategy and data base. We wanted some counties in Illinois and in the Middle West. We also wanted counties that were similar to Lake in certain important population, demographic, economic and governmental aspects. Finally, we wanted to select some counties that had a national reputation for being innovative and well governed. The results are summarized in Table 2.

²⁵ Dillon, John, Municipal Corporations, V. 1, p. 448, as cited in Frug, Gerald E., Local Government Law, 2nd Ed, (West Publishing Co; St. Paul, Minn., 1994), p. 53.

²⁶ We talked with Sam Gove, former director of the Institute of Government and Public Affairs of the University of Illinois and John Wenum of Illinois Wesleyan University.

Appendix D - Structuring and Collecting the Information

Two of our case studies, Will and DuPage counties, are in Illinois and a third, Oakland, is in Michigan. The others are from outside the Midwest: Johnson County, Kansas; Fairfax County, Virginia; Montgomery County, Maryland; and Multnomah County, Oregon. All are suburban in character but near to a large city like Chicago. Four, like Lake County, have experienced substantial increases in population during the 90's and the other three have experienced significant growth in this same period. In 1996, seventy-five percent or more of their population in 1996 was White. Only Multnomah County had a median household income just below \$30,000 in 1993. The others, including Lake County, ranged between a high of \$62,607 for Fairfax County to a low of \$46,096 for Will County. Four of these counties enjoyed a national reputation for governmental excellence.

We were able to draw on other recent national survey's of county government in the United States to supplement these case studies and to provide additional comparative information on the range of governmental possibilities which exist.²⁷ Together these provide us with a reasonable understanding of what *can* be done.

What should to be done? Why? The answers to what *is* being done at present and what *can* be done in the future provides the context for *addressing* the third question. But it is also necessary to set forth, as explicitly as possible, the *criteria* to be used in answering the "should" question. For the present study, we have chosen three:

- The *cost effectiveness* of an alternative;
- The *equity* in the results of selecting a particular alternative; and
- The political and institutional *feasibility* of realizing it.

Lake County government, like other governments, is appropriately concerned about achieving their mission--- representing the interests of their constituents and delivering their services in terms of those interests at an acceptable level--- at a the least possible cost. If, for example, it can be shown that a better result can be produced with the same or less expenditure of resources, it is to be preferred over the present situation. It is said to be more *cost effective* than the alternative. Crudely put, you 'get more bang for the buck'.

However, in a democracy, government should be concerned about more than just "efficiency" or "cost effectiveness". It is also concerned about equity, the distribution of the *results* of an alternative. Who benefits from its adoption? And, conversely, who loses? How are the "costs" distributed? Do the overall results meet some test of 'fairness' and 'reasonableness'? These are extraordinarily difficult questions to answer. While "facts" and technical issues are important, just as they are in describing what

²⁷ Legislative Research Unit, Illinois General Assembly, Illinois County Data Book, 1998;

Appendix D - Structuring and Collecting the Information

is currently being done, and in identifying what *can* be done, reasonably informed judgment plays a significantly larger role in evaluating these questions of efficiency, effectiveness and equity.

In our society, it is the 'political market place' at different levels of government, which ultimately makes these judgments through a process of discussion, negotiation and compromise. The 'best' alternative as to what *should* be done from some "ideal", reasoned perspective, may not be acceptable from a political perspective. It is not *politically feasible* as recommended or even acceptable after extensive discussion. Occasionally a crisis--- a natural disaster like a flood, the threatened loss of a major employer in a jurisdiction, a major political scandal, a severe recession--- will produce a sudden consensus, and majority coalition, on the need for immediate action and change.

More typically, however, unresolved issues are put on the back burner; resurrected again; and again postponed, 'sent to Siberia', or else changed just enough to put the matter to rest for awhile. Alternately, they occasionally can produce short, abrupt changes in basic policy, only to swing in another direction with a change in the governing coalition and then back in another still another direction with another marginal change in the majority group. Eventually some may lose their cogency all together or be surpassed by other more pressing problems. A few become settled policy or permanent structural change.. There is some evidence all of these things have occurred in Lake County in the recent past. "Democracy," several of our interviewees told us, "is a messy business!"

In any event, the *political feasibility* of what *should* be done needs to be considered in arriving at any recommendation for action--- or inaction! Is it likely to be acted upon positively? Should we be "realistic" in our recommendations and only put forth the position likely to be accepted or do we put forth the one that is "best" according to other criteria? The research team has had these particular questions in mind from the beginning to the end of this study!

Appendix E

County Form of Government

(Excluding Those Counties That Did Not Report Form of Government)

Classification	No. of counties reporting a form of government (A)	Form of Government		
		Commission % of (A)	Council- administrator % of (A)	Council-elected executive % of (A)
Total, all counties	772	40.0	40.4	19.6
Population group				
Over 1,000,000	9	11.1	33.3	55.6
500,000-1,000,000	15	6.7	80.0	13.3
250,000-499,999	39	10.3	69.2	20.5
100,000-249,999	75	20.0	70.7	9.3
50,000-99,999	104	26.9	54.8	18.3
25,000-49,999	137	30.7	51.1	18.2
10,000-24,999	215	46.5	31.6	21.9
5,000-9,999	101	56.4	14.9	28.7
2,500-4,999	45	84.5	4.4	11.1
Under 2,500	32	71.9	15.6	12.5
Geographic region				
Northeast	39	25.6	51.3	23.1
North Central	254	52.0	25.6	22.4
South	322	27.6	51.3	21.1
West	157	49.7	39.5	10.8

Source: ICMA, Special Data Issue

Appendix F

Comparison of the Structural Features of the Largest Illinois Counties

	# of Board Members	Term of Board Members	# of Districts	# of Members/District	Forest Preserve Dist.?	Home Rule?	County Exec.?	How is Chairman chosen?	County Appointed Admin?
Cook	17	4 years	17	1	Yes*	Yes	President	Elected At Large (4-year term)	Yes
DuPage	24 + Chair	4 years	6	4	Yes*	No	No	Elected At Large (4-year term)	Yes
Lake	23	2 years	23	1	Yes*	No	No	Elected by Board (every 2 years)	Yes
Will	27	2,3, or 4 year term; done by lot	9	3	Yes*	No	Yes	Chairman of Executive Committee is Chair of Board	Yes
Kane	26 + Chair	4 years	26	1	Yes*	No	No	Elected At Large (4-year term)	No
Winnebago	28 + Chair	4 years	14	2	Yes*	No	No	Elected At Large (4-year term)	Yes
St. Clair	29 + Chair	4 years	29	1	No	No	No	Elected At Large (4-year term)	Yes
Madison	29	2 or 4 years (they draw for their term)	29	1	No	No	No	Elected by Board (every 2 years)	Yes
McHenry	24	2 or 4 years (depending on year they run)	6	4	No**	No	No	Elected by Board (every 2 years)	Yes
Sangamon	29	2 or 4 years (depending on lottery)	1	1	No	No	No	Elected by Board (every 2 years)	Yes
Champaign	27	2 or 4 years (depending on year they run)	9	3	Yes***	No	No	Elected by Board (every 2 years)	Yes
McLean	20	4 years	10	2	It appears No	No	No	Elected by Board (every 2 years)	Yes
Peoria	18	4 years	18	1	No****	No	No	Elected by Board (every 2 years)	Yes
* All Members of the County Board also serve as Forest Preserve Commissioners.									
**There is a McHenry County Conservation District which is governed by 7 trustees who are appointed by the McHenry County Board and have the authority to levy taxes.									
***The Champaign County Forest Preserve District is governed by a non-partisan, unpaid, five-member Board of Commissioners appointed by the County Board for staggered five-year terms.									
****It appears that the Department of Planning and Zoning and the various committees (Land Use for example) under its umbrella handle all land and development issues in Peoria County.									

Appendix G

Lake County Boards, Commissions, Agencies and Districts

<u>Commissions/Committees</u>	<u>Boards</u>
Affordable Housing Commission	Board of Health
Community Development Commission	Board of Review
Community Health Partnership	Emergency Telephone Safety Board for the Lake County 9-1-1 Service Area
Route 53 Corridor Planning Council	Tuberculosis Sanatorium Board
Lake County Partnership for Economic Development	Waukegan Port District Board
Emergency Planning Committee	Zoning Board of Appeals
Farmland Assessment Committee	
Housing Authority	
Industrial Revenue Bond Allocation Advisory Committee	<u>Districts</u>
Liquor Control Commission	Drainage Districts
Sheriff's Office Merit Commission	Fire Protection Districts
Minority Affairs Committee	Lake Bluff Mosquito Abatement District
Northeastern Illinois Planning Commission	Southlake Mosquito Abatement District
Northwest Regional Sewer System Advisory Committee	Cary Area Public Library District
Public Aid Committee	Public Water District
Public Building Commission	Sanitary Districts
Regional Planning Commission	
Stormwater Management Commission	
<u>Agencies/Associations</u>	
Central Lake County Joint Action Water Agency	
Fox Waterway Agency Advisory Committee	
Solid Waste Agency of Lake County (SWALCO)	
Lakeside Cemetery Association	

Appendix H

Highway Funding/Gas Tax Timeline

02/12/1988 → *Boost in Gas Tax Tops on Mayors' List:* A group of northwest and north suburban mayors revives a 2-year-old proposal to levy a 3-cent tax on each gallon of gasoline sold in the six-county metropolitan area to help pay for road and mass transit projects. The Northwest Municipal Conference, an organization of 31 north and northwest suburbs and 7 townships, votes to include the gas-tax proposal in its package of legislation that it wants the General Assembly to consider this year.

06/24/1988 → *State Senate Oks DuPage Gas Tax:* Legislation giving DuPage the option of levying a 4-cent-a-gallon county motor-fuel tax passes the Illinois Senate and is sent to the House for concurrence.

06/30/1989 → *Legislature Grants Gas-Tax:* As part of a major effort to finance transportation, the Illinois legislature gives the county boards in Du Page, Kane and McHenry Counties the authority to levy a local motor fuel tax of up to four cents. Lake County is not given authority to levy this tax.

10/11/1989 → *DuPage County Becomes First to Approves Gas Tax.*

04/10/1991 → *Kane County Approves 2-Cent Gas Tax; 4-Cent the Following Year:*

06/19/1991 → *McHenry County Approves 2-Cent Gas Tax.*

02/27/1992 → *Lake County Committee Proposes 4-cents-a-gallon Gas Tax:* A Lake County Committee proposes a gas tax, although the tax needs authorization by the General Assembly.

09/18/1992 → *Lake County Gas Tax Given No Chance in Legislature:* A proposed 4 cents-a-gallon gasoline tax for Lake County does not have the support of the county's state legislators and will not be debated until next year if at all, thus casting doubt on the future of the county's ambitious \$300 million road improvement program.

11/12/1992 → *Lake May Join Drive for Gas-Tax Legislation:* Lake County Board Chairman Robert Depke says that imposing his proposed 4-cent-a-gallon gas tax is the only solution to providing new or upgraded roads.

02/11/1993 → *Lake County Betting on Impact Fees to Help Roads:* Lake County officials present a wish list to local legislators, an agenda that includes a call for help for the county's road system, but does not ask for the state's permission to impose their discussed 4-cents-a-gallon gasoline tax.

05/19/1994 → *The Illinois Supreme Court Upholds a 1989 State Law That Permitted DuPage, Kane and McHenry Counties to Impose Gasoline Taxes.*

6/01/1995 → *Lake County is Still Holding Out for License to Pump Up Gas Price:* Illinois legislature takes no formal action this spring session on a proposal that would have opened the door for the Lake County Board to impose a much-sought-after 4-cent gas tax.

6/29/1995 → *Lake County Unveils \$86.6 Million Road Work Plan*

Appendix H – Timeline on Highway Funding

07/27/1996 → Depke Stresses Need for Gas Tax as 5-Year Road Plan is Disclosed: Lake County Board Chairman Robert W. Depke renews his call for a 4-cent local gas tax as county highway officials unveil a five-year, \$86.6 million road program.

01/14/1999 → Lake County Tries to Press State for Gas-Tax Revenue: Members of the Lake County Board take a new approach when they ask the General Assembly for more money for county roads. Despite the pleas of county officials, State Sen. Adeline Geo-Karis and other state lawmakers from Lake County consistently balk at the request for the 4-cent gas tax, saying it is an issue that should be decided by in a referendum rather than by state lawmakers.

02/23/1999 → Lake County Board Ponders Raising Sales Tax Instead of Gas Tax: The county board committee that crafts Lake County's legislative agenda eliminates the gas tax from the list of issues to pursue in Springfield and replaces it with the sales tax.

03/10/1999 → Proposal to Double Sales Tax Shelved in Lake: A proposal to double Lake County's sales tax to help pay for road improvements runs out of gas when the County Board formally removes it from the agenda of its regular monthly meeting.

05/23/1999 → Lake County Reps Target Roads in Lobby Efforts: A contingent of Lake County Board members and staff go to Springfield on a mission to push for the board's No.1 goal—local road improvements. Funding sources for a list of \$131 million improvements remain unclear. One option is the implementation of a new ¼ cent sales tax to finance local road improvements and other county projects. Lake County is one of several counties seeking authority from the Legislature to implement such a tax through referendum.

05/26/1999 → Senate Buries Lake County Sales Tax in Committee: State Sen. Adeline Geo-Karis, who sponsored the bill giving Lake authority to hold a referendum for a quarter-cent sales tax increase, said Senate leaders, including Senate President James "Pate" Philip, refused to bring the bill out of the Senate Rules Committee this session. Geo-Karis said that concerns over additional taxation were the main reason.

01/05/2000 → Lawmakers Urge Lake to go Home Rule: Illinois lawmakers ask county officials to help make some of the proposals on *their* wish list come true, like adopting Home Rule. With Home Rule, Lake County can adopt a Gas Tax without having to get approval from the Legislature.

06/10/2000 → Lake County to Plumb Gas Tax Support: Lake County officials plan to formally canvass residents to see if support exists for some form of tax to help finance needed improvements to county roads. County Board Chairman, Jim LaBelle, said that Richard Day Research would be retained to do the survey work at a cost not to exceed \$25,000.

Appendix I

Route 53 Timeline

1962 → *The Idea for Route 53 is Put Into a Chicago Area Transportation Study:* This study includes a vision not only for Route 53, but for other Northwest Highways as well.

1963 through the late 1960's → *Engineering for Route 53 is Started:* Illinois Department of Transportation (IDOT) tries to minimize environmental impacts of the roadway.

Late 1960's → *National Environmental Policy Act is adopted by Congress.*

Early 1970's → *IDOT Works on Environmental Impact Statement; is Forced to Change Some of Its Plan in Order to Comply with the Act:* A draft impact statement is not formally circulated for public comment, nor is a public hearing held however, due to a change in priorities (not due to IDOT not being able to meet the Environmental Policy Act requirements). The priority in Lake County becomes the Lakefront Freeway.

Early 1970's through 1988 → *Route 53 becomes a dormant issue in Lake County.*

01/17/1989 → *Issue Resurfaces Due to Anticipation There Will be Tremendous Growth in Central Lake County- Freeway's Foes Form Coalition:* Members of the open space faction that controls the Lake County Board join with citizens groups and municipal officials to form powerful opposition to a proposed Route 53 expressway.

04/26/1990 → *5-Year State Road Plan Is On the Way – Includes Environmental Work on Route 53.*

05/25/1990 → *Interchanges Planned Along A Longer Version of Route 53 – Estimated Cost of Extension is \$300 to \$350 Million.*

06/27/1990 → *Route 53 Tollway Bill Is Sidelined by Gov. James Thompson and State Tollway Officials Until Autumn Due to Pressure from Lake County Residents and Politicians Who Oppose the Tollway.*

07/12/1990 → *State Buys More Land for Illinois Route 53 Project in Mundelein subdivision.*

12/06/1990 → *State Holds Public Meetings On Route 53 Extension; IDOT Officials Discuss the Possible Schedule, Scope and Route of the Highway and Receive Public Views.*

01/25/1991 → *Lake County Communities Form First Intergovernmental Group Called Corridor Planning Council for Central Lake County.*

03/13/1991 → *Lake County Board Narrowly Votes to Include Extension of Route 53 in Its Long-Range Transportation Plan.*

08/30/1991 → *IDOT Announces Agreement Giving the Corridor Planning Council of Central Lake County a Big Role in Drafting an Environmental Impact Statement for Route 53.*

01/28/1992 → *Route 53 Environmental Report Delayed A Year; Due in Late 1994.*

06/30/1993 → *Budget Deal Between Gov. Edgar and Illinois' Four Legislative Leaders Includes Approval of Route 53 Extension.*

07/22/1993 → *General Assembly Takes Route 53 Out of Jurisdiction of IDOT and Gives it to Illinois State Toll Highway Authority (ISTHA).*

08/28/1993 → *Tollway Agency, IDOT Announce They Will Work as "Equal Partners" to Plan Route 53-expressway extension through Lake County.*

08/02/1994 → *Group of State, Local Officials Reach an Agreement Outlining Design and Construction Standards for the Controversial Extension of Route 53.*

02/24/1995 → *With Avoiding Wetlands as Their Priority, State Highway Engineers Lay Out What They Believe is the Best Routing for Route 53. .*

09/29/1995 → *Extension Plans Get Specific: ISTHA Leaning Towards Only One Toll Plaza in an Industrial Area on the Northern Edge of Mundelein.*

12/09/1995 → *State Has Backup For Illinois 53 Plan:* If the state backs away from its controversial plans to extend Route 53, transportation officials have an alternative plan that calls for multilane expansion of Lake County roads, including U.S. Highway 41, IL Highway 60 and Lake Cook Road.

05/14/1996 → *The Environmental Law and Policy Center Contends Extension Would More Than Double the Number of Vehicles on Some Traffic-Plagued Main Roads.*

10/25/1996 → *The Corridor Planning Council of Central Lake County (CPC) votes unanimously to approve adoption of construction standards for the extension of Route 53.*

03/21/1998 → *IDOT and ISTHA Announce Lake County Transportation Improvement Project.* The joint venture project, given a \$7.8 million budget, will study mobility alternatives, and be in charge of all studies pertaining to improving transportation in Lake.

03/27/1999 → *Illinois Toll Highway Authority Releases Poll That Shows a Majority of Lake County Respondents Prefer Alternatives to Proposed Route 53 Extension.*

06/30/1999 → *Lake County Transportation Improvement Project Announces Its First Proposals to Upgrade the Road System, Including Proposals to Extend Route 53.*

05/17/2000 → *Latest Route 53 Study Narrows Options:* Either extend Route 53 north or improve existing roads, including Route 83 and 12. Cost estimates for Route 53 extension are \$830 million, while local road improvements are pegged at \$1.1 billion.

6/21/2000 → *Nearly Half of the Lake County Board Signed a Letter Last Month Presented to Gov. George Ryan Opposing the Extension of Route 53.*

07/06/2000 → *Sentiment from Recent Public Hearings Favors Route 53 Extension.*

08/07/2000 → *Route 53 Plan Could Stall Without a Consensus:* "If there is no support, I don't see anything moving forward," says Chris Synder, deputy director of the Lake County Transportation Improvement Project. The Lake County Board, which supported the extension in a 1991 resolution, has since taken on an environmentally conservative tone.

11/03/2000 → *Lake County Still Divided On Highway Proposals:* Despite months of exposure to the pros and cons of two competing roadway projects proposed for Lake County, consensus seems no closer as the long fact-finding process moves into its final stages.

Appendix J

Affordable Housing Timeline

07/04/1997 → *Lake County Board Puts a Plan in the Works to Expand Housing Opportunities for the Poor.*

12/09/1997 → *Board Members Release the First Complete Draft of A Proposed Unified Development Ordinance (UDO).*

09/22/1998 → *Lake County Officials Release Draft of UDO to Public*

01/19/1999 → *Board Members React to Predictions That the Process Would Take Until 2000, and Insist That the Proposed UDO be Adopted This year.*

08/03/1999 → *Mixed-Housing Plan Comes Under Attack:* A three-year push by some Lake County officials favoring development of mixed housing while preserving open spaces comes under attack at a meeting of the county's Planning, Building and Zoning Committee.

10/27/1999 → *County Board Displays Maps Of Proposed Zoning Districts:* The new UDO is expected to take effect April 1st after approval by the Lake County Board.

11/04/1999 → *Lake Struggles To Balance Housing Needs, Space Preservation:* Lake County officials approve setting aside \$300,000 to develop affordable-housing strategies, a move that triggered a debate over whether the county's goal of preserving open space conflicts with affordable-housing goals. The proposed UDO encourages large lots in developments as a way to preserve green space.

01/06/2000 → *Affordable Housing Seen As Endangered:* Within the next five years, it will be almost impossible to find a house for less than \$220,000 in townships such as Libertyville, Fremont and Warren. In Cuba and Vernon townships, homes selling for less than \$350,000 are expected to be scarce.

02/01/2000 → *Voluntary Density Bonuses, Offered to Builders Who Leave Green Space in Their Housing Developments or Create Affordable Housing, Are Proving to be the Final Hurdle in Adopting Lake County's Proposed UDO.*

03/02/2000 → *Unity Over the Proposed UDO Crumbles:* Lake County officials question whether they can preserve open space while providing more housing, especially affordable housing, for a growing population. The rift could derail attempts to adopt on March 14 the proposed ordinance. Officials have been working on the ordinance for five years.

04/04/2000 → *Panel Backs Unified Development Ordinance:* A Lake County Board committee adopts a resolution that recommends that the board adopt the Unified Development Ordinance at the next County Board Meeting without the Affordable Housing Section.

04/11/2000 → *A Streamlined UDO That Will Guide Future Development in Unincorporated Lake County is Adopted, 18-3, After Teetering on the Brink of Oblivion Because of Complaints That the Document Lacks a Section on Affordable Housing.*

Appendix J – Timeline on Affordable Housing

04/27/2000 → *Affordable-Housing Task Force Will Try to Break Deadlock Over Drafting Language on Low-Income Housing That Hopefully will be Added to the Newly Adopted Lake County UDO.*

06/02/2000 → *Affordable Housing Is Tied To Rail, Bus Lines:* Affordable housing task force recommends so-called Transit Oriented Developments clustered within a mile of transit lines in municipalities and unincorporated Lake County to promote affordable housing and mixed-use developments.

06/20/2000 → *Two Lake County Board Committees Adopt a Proposed Affordable-Housing Section, Containing Transit-Oriented Developments, for the New UDO.*

07/27/2000 → *Affordable Housing Hearings On Hold:* The affordable-housing section of Lake County's UDO is back in limbo, with the Zoning Board of Appeals deciding to send the controversial issue back to the County Board for clarification.

08/02/2000 → *New Affordable Housing Plan Targets Where Jobs Are:* A new twist on affordable housing calls for building housing units costing \$160,000 or less near access to public transportation and near large employment centers.

08/09/2000 → *Affordable Housing Part of UDO Bounced Back to Zoning Board for the Second Time:* The County Board directed the Zoning Board of Appeals to conduct public hearings on a proposed affordable housing section for the UDO.

08/31/2000 → *Chairman LaBelle Floats Ideas on Affordable Homes:* LaBelle's proposals call for property owners adjacent to proposed affordable housing developments be notified of plans, that a proposal to build affordable housing near the College of Lake County bus stop be dropped and that space slated for affordable housing be less than a mile from bus or train stations.

11/03/2000 → *Affordable Housing Plan Gets Rejected:* Proposed measures to encourage affordable housing in Lake County are overwhelmingly rejected by County Board members due to concerns that density incentives could negatively affect crowded schools and neighboring areas. The proposed language, which would be incorporated into the county's Unified Development Ordinance, was struck down 7-1 by the Planning, Building and Zoning Committee. The lone vote in favor of the proposal came from County Board Chairman Jim LaBelle. Committee Chairman Larry Leafblad said the proposal will not be forwarded for consideration to the full County Board. Instead, the staff will be directed to try again.

11/11/2000 → *New Affordable Housing Plan Reviewed:* Less than a week after the last proposal failed, board members announce a simple and workable solution. It requires all residential developments of more than 10 units in unincorporated areas to provide at least 10% of what the county defines as affordable housing. The resolution urges formal adoption of the amendment as soon as the state's attorney has signed off on the legalities of it.

11/15/2000 → *Affordable Housing Plan Hits Snag:* Board members send the new proposal back to Zoning Board of Appeals for another hearing. The proposal was made available to the public a week ago, but had not been open to public scrutiny. As a result, the state's attorney's office advises that a new public hearing is required because the proposal is substantially different from the earlier version.

Appendix K

Summary of Committee Activity – December 1999 Through August 2000

Committee	Informational Items	Action Items	Business Items	Board Items
Community & Economic Development Committee	27	12	9	9
Public Works & Transportation Committee	65	52	13	105
Law & Judicial Committee	29	3	5	62
Health & Human Services Committee	22	1	7	20
Taxation, Election & Records Committee	6	3	0	17
Legislative & Intergovernmental Affairs Committee	19	0	0	4
Financial & Administrative Committee	53	23	37	232
Planning, Building & Zoning Committee	65	75	17	16

Key

For the purposes of this analysis, we divided all committee agenda items into four categories as follows;

Information items: Those items which were on the agenda exclusively for informational purposes and with regard to which no formal action was taken by the committee

Action items: Items on which a formal motion was made and (in most cases) a vote taken but which did go to the full board for action

Business Items: Those items on which committees took formal action on behalf of the board.

Board Items: Items which, upon committee approval, were forwarded to the full board for action.

We utilized these categories to ascertain 1) the distribution of the workload among committees and 2) the breakdown of items on the committee agendas according to relative importance with board items the most important, and informational items the least important.

Appendix L

Performance Measures – Department of Planning and Zoning, Fairfax County, Virginia

Indicator	Prior Year Actuals			Current Estimate	Future Estimate
	FY 1977 Actual	FY 1988 Actual	FY 1999 Estimate/Actual	FY 2000	FY 2001
Output:					
Zoning compliance letter requests processed	207	314	275 / 357	275	375
Permits (excluding sign permits) processed	36,049	37,603	38,000 / 43,742	38,000	44,520
Sign permits processed	1,133	1,174	1,200 / 1,110	1,200	1,100
Zoning Complaints resolved	3,109	2,588	2,500 / 1,981	2,500	2,000
Applications reviewed for submission compliance (all types)	NA	650	650 / 649	650	650
Written responses to inquiries	NA	643	645 / 606	625	625
RZ applications to be scheduled	NA	173	165 / 235	235	235
SE applications to be scheduled	NA	121	120 / 85	85	85
Efficiency:					
Staff hours per zoning compliance letter	NA	NA	5.0 / 5.0	5.0	5.0
Staff hours per permit request (excluding sign permits)	0.32	0.28	0.30 / 0.22	0.30	0.30
Staff hours per sign permit application	1.07	1.03	1.50 / 1.32	1.50	1.50
Staff hours per zoning complaint filed	7.52	8.40	8.00 / 12.10	12.00	12.00
Average staff hours to determine application submission compliance	NA	5	5 / 5	5	5
Average staff hours per written response	NA	12.0	12.0 / 8.5	10.0	10.0
Service Quality:					
Percentage of Zoning Compliance letters processed within 10 days ¹	69%	73%	80% / 51%	65%	65%
Percentage of permits (excluding sign permits) processed in time	99%	99%	98% / 98%	98%	98%
Customers satisfied with sign permitting services ²	NA	NA	95% / 100%	95%	95%
Percentage of sign permits processed within 5 days	81%	86%	90% / 94%	90%	90%
Percentage of complaints resolved within 60 days ³	NA	66%	66% / 71%	70%	70%
Percentage of zoning applications reviewed within 5 working days	NA	50%	75% / 62%	75%	75%
Percentage of zoning applications reviewed within 10 working days	NA	85%	100% / 97%	100%	100%
Percentage of responses within 30 working days	NA	76%	90% / 70%	90%	90%
Percentage of RZ applications scheduled within 5 months	NA	81%	90% / 83%	90%	90%
Percentage of SE applications scheduled within 4 months	NA	58%	90% / 53%	90%	90%
Outcome:					
Percentage point change in zoning compliance letters processed within 10 days	NA	4	7 / (22)	0	14
Percentage point change in permits (excludes sign permits) processed correctly within time frame	NA	0	(1) / 0	0	0
Percentage point change in sign permits processed within 5 days	NA	5	4 / 8	0	0
Percentage point change in complaints resolved within 60 days	NA	0	0 / 5	0	0
Percentage point change of zoning applications reviewed within 5 days	NA	NA	25 / 12	0	0
Percentage point change of zoning applications reviewed within 10 days	NA	NA	15 / 12	3	0
Percentage point change of written responses within 30 days	NA	NA	14 / (6)	20	0
Percentage point change of residential zoning applications scheduled within 5 months	NA	NA	9 / 2	7	0
Percentage point change of SE applications scheduled within 4 months	NA	NA	32 / (5)	37	0

¹ The agency is developing an additional measure relative to capturing the number of letters that require reissue which will be included in subsequent years.

Appendix M

Summary of Structural Features of Counties Similar to Lake

County	# of Board Members	Term of Board Members	# of Districts	# of Members/District	Forest Preserve Dist.?	Home Rule?	County Exec.?	How is Chairman chosen?	County Appointed Admin?
Fairfax	9	4 years	9	1	Park Authority ¹	No	No	Elected at Large	Yes
Johnson	6 + Chair	4 years	6	1	Parks & Recreation ²	Yes	No	Chairman elected at large	Yes
Montgomery	9	4 years	5 (the other four members are elected at large)	1	Maryland-National Capital Park and Planning Commission (M-NCPPC) ³	Yes	Yes	Elected by Council Members every year	Yes
Multnomah	4 + Chair	4 years (limited to 2 terms)	4	1	Planning Commission ⁴	Yes	No	Elected at Large	No
Oakland	25	2 years	25	1	Dept. of Parks & Rec. ⁵	No	Yes	Elected by Board Members every year	No (but there are two appointed Dep. County Executives)
¹ The Park Authority maintains and operates the public parks and recreational facilities located in the County. The Board of Supervisors appoints the Park Authority's governing board, and the County provides funding for the Park Authority's general fund and one of its capital projects funds.									
² Parks & Recreation is one of five Governing Boards in Johnson County (all 5 of these Boards do not fall under the County Administrator's control). The membership of these Boards is appointed by the Board, but they are completely autonomous; they have their own policies and procedures that they follow.									
³ The Maryland-National Capital Park and Planning Commission is comprised of ten commissioners -- five appointed by each County as the Montgomery County Planning Board and the Prince George's County Planning Board.									
⁴ The Planning Commission is designated as the Land Use Planning Advisory Body to the County Board. The commission consists of nine members, who are appointed pursuant to law and the charter of Multnomah County. Members serve four-year terms and receive no compensation. The commission elects and installs a chairperson and vice-chairperson.									
⁵ In Oakland County, the Department of Parks and Recreation stands separate and apart from the County Executive's control; the Department reports to the Board of Commissioners. The Parks and Recreation Commission consists of 10 members.									

Appendix N

Lake County Municipalities

Name	Home Rule	1980 Pop.	1990 Pop.	Current Pop.	Form of Government	Tax Rate Per \$100 AV (7/98)
Antioch	No	4,419	7,093	7,923	Administrator/Mayor	6.334 - 6.914
Bannockburn	No	unk.	1,388	1,342	Administrator/President	5.286 - 6.522
Barrington ¹	No	9,029	9,538	10,554	Manager/Council	5.135 - 5.971
Barrington Hills ²	No	3,631	4,202	unk.	Administrator/President	5.625 - 5.950
Beach Park	No	9,000	9,513	10,500	President/Trustees	6.043 - 7.754
Buffalo Grove ¹	Yes	22,230	36,427	43,146	Manager/Trustees	5.896 - 12.746
Deer Park	No	1,368	2,887	3,253	Administrator/President	4.779 - 5.474
Deerfield ¹	Yes	17,430	17,327	18,002	Manager/Council	5.971 - 7.224
Fox Lake ³	No	6,831	7,430	9,500	Mayor/Board/Village	7.002 - 7.789
Fox River Grove ³	No	2,515	3,674	4,257	President/Trustees	unk.
Fox River Valley Gardens ³	No	520	665	unk.	President	5.438 - 6.882
Grayslake	No	5,260	7,388	16,967	Mayor/Council	6.829 - 9.047
Green Oaks	No	1,415	3,024	2,964	Administrator/President	5.218 - 7.041
Gurnee	Yes	7,179	13,701	25,862	Trustee	6.425 - 7.729
Hainesville	No	187	996	2,000	Administrator/President	7.618 - 8.945
Hawthorne Woods	No	1,658	4,602	5,817	Administrator/President	5.857 - 7.186
Highland Park	Yes	30,611	30,575	unk.	Manager/Council	4.124 - 9.095
Highwood	No	5,452	5,331	5,130	Mayor/Aldermen	3.760 - 6.498
Indian Creek	No	236	247	246	President	6.629 - 7.576
Island Lake ³	No	2,293	4,459	7,611	Trustee	6.970 - 7.536
Kildeer	No	1,609	2,633	2,967	Administrator/President	5.601 - 6.749
Lake Barrington	Yes	2,320	3,855	4,514	Administrator/President	4.7 - 8.892
Lake Bluff	No	4,434	5,486	5,613	Admin./President/Trustees	5.664 - 7.971
Lake Forest	No	15,245	17,269	18,606	Mayor/Council	4.223 - 7.094
Lake Villa	No	1,462	2,857	5,000	Trustee	6.765 - 8.456
Lake Zurich	No	8,225	14,927	17,591	Administrator/Trustees	6.155 - 7.3
Lakemoor ³	No	723	1,787	unk.	President/Trustees	6.688 - 7.162
Libertyville	No	16,520	19,174	19,174	Board/Village	5.418 - 7.329
Lincolnshire	Yes	4,151	5,898	6,139	Mayor/Trustees	5.217 - 9.193
Lindenhurst	No	6,525	8,038	12,000	President/Board	6.743 - 10.856
Long Grove	No	2,013	4,747	5,500	Manager/Trustees	6.361 - 7.352
Mettawa	Yes	330	348	380	President	5.398 - 7.710
Mundelein	Yes	17,053	21,215	28,012	President/Trustees	7.034 - 8.637
North Barrington	No	1,475	2,547	2,370	President	5.070 - 5.385
North Chicago	Yes	38,774	34,978	42,435	Mayor/Aldermen	6.082 - 8.622
Old Mill Creek	No	84	73	70	President	unk.
Park City	Yes	3,673	4,677	5,537	Mayor	6.477 - 7.663
Riverwoods	No	2,804	3,862	3,760	Mayor	4.889 - 7.573
Round Lake	No	3,175	3,550	4,750	Trustee	7.746 - 10.458
Round Lake Beach	No	12,921	22,211	28,000	Administrator/Board	7.391 - 9.550
Round Lake Heights	No	1,192	1,251	1,366	Trustee	7.6 - 8.578
Round Lake Park	No	4,032	4,045	5,246	Mayor/Trustees	8.044 - 10.432
Third Lake	No	222	1,248	1,498	President	6.593 - 8.252
Tower Lakes	No	1,177	1,333	1,335	President	5.779 - 5.801
Vernon Hills	No	9,827	18,500	21,000	Manager/Board	5.648 - 9.494
Volo	No	unk.	193	220	President	6.176 - 6.650
Wadsworth	No	1,104	3,082	2,419	President	6.207 - 7.951
Wauconda	No	5,488	8,229	8,759	Administrator/President	6.932 - 7.465
Waukegan	Yes	67,653	69,392	77,324	Mayor/Aldermen	6.478 - 8.713
Winthrop Harbor	No	5,438	6,240	7,200	Trustee	6.947 - 7.891
Zion	No	17,861	19,775	20,792	Commission/Town	7.248 - 8.499

¹ Also Cook County

² Also Cook, McHenry & Kane Counties

³ Also McHenry County

Appendix O

List of Interviewees

	Board Members	Administrative Officials	Elected Officials	State and Local	Other
Pam Newton	x				
Carol Spielman	x				
Bob Buhai	x				
Suzi Schmidt	x				
Carol Calabresa	x				
Steve Mountsier	x				
Angelo Kyle	x				
Martha Marks	x				
Bonnie Carter	x				
Jim LaBelle	x				
Sandy Cole	x				
Karl Nollenberger		County Administrator			
Patrick Ulrich		Dep. County Administrator			
Gary Gibson		Dep. County Administrator			
Mark Danaj		Human Resources			
Randy Murphy		Management Services			
Martin Galantha		Public Works			
Martin Buehler		Transportation			
Dale Galassie		Health			
Phil Rovang		Planning			
Mitch Hoffman		State's Attorney's office			
Michael Waller			State's Attorney		
Willard Helander			County Clerk		
Mary Ellen Vanderventer			Recorder of Deeds		
Sally Coffelt			Circuit Court Clerk		
Barbara Richardson			Coroner		
Bob Skidmore			Treasurer		
Adeline Geo-Karis				State Senator	
Terry Link				State Senator	
William Peterson				State Senator	
Andrea Moore				State Representative	
Dick Welton				Mayor, Gurnee	
Ken Marabella				Village Manager, Mundelein	
Joanne Eckman				former Mayor, Libertyville	
Bob Churchill				former State Representative	
Ike Magalis					former county administrator

Appendix P

Lake County Budget Calendar – Fiscal Year 2001

May 3, 2000 -Wednesday @ 1:00 P.M.

Review of FY 2001 Budget Policies by Financial & Administrative Committee

May 5, 2000 – Friday @ 9:00 A.M.

Review of FY 2001 Budget Policies at the Committee of the Whole Meeting

May 9, 2000 – Tuesday @ 9:00 A.M.

Adoption of FY 2001 Budget Policies

May 12, 2000 – Friday

Distribution of Budget Packages to Departments

June 30, 2000 – Friday

Completed Budgets due in County Administrator's Office (CAO)

July 19 through August 4, 2000

Budget Reviews with Individual Departments

August 7 through 11, 2000

New Program Review by CAO

September 1, 2000

Recommended Book to Printers

September 8, 2000 – Friday @ 9:00 A.M.

Presentation of the Budget at the Committee of the Whole meeting

September 15, 2000 – Friday immediately following the forest Preserve Meeting

Review of process for development of FY 2001 budget at Financial & Administrative Committee

September 25-27, 2000 – Committee Review

October 2, 3, and 4, 2000 – Regular Committee Schedule – Agenda Week

Additional Joint Committee meetings if necessary.

October 25, 2000 – Wednesday @ 1:00 P.M.

Truth in Taxation (if needed) – Finance and Administrative Committee

November 3, 2000 – Wednesday @ 1:00 P.M.

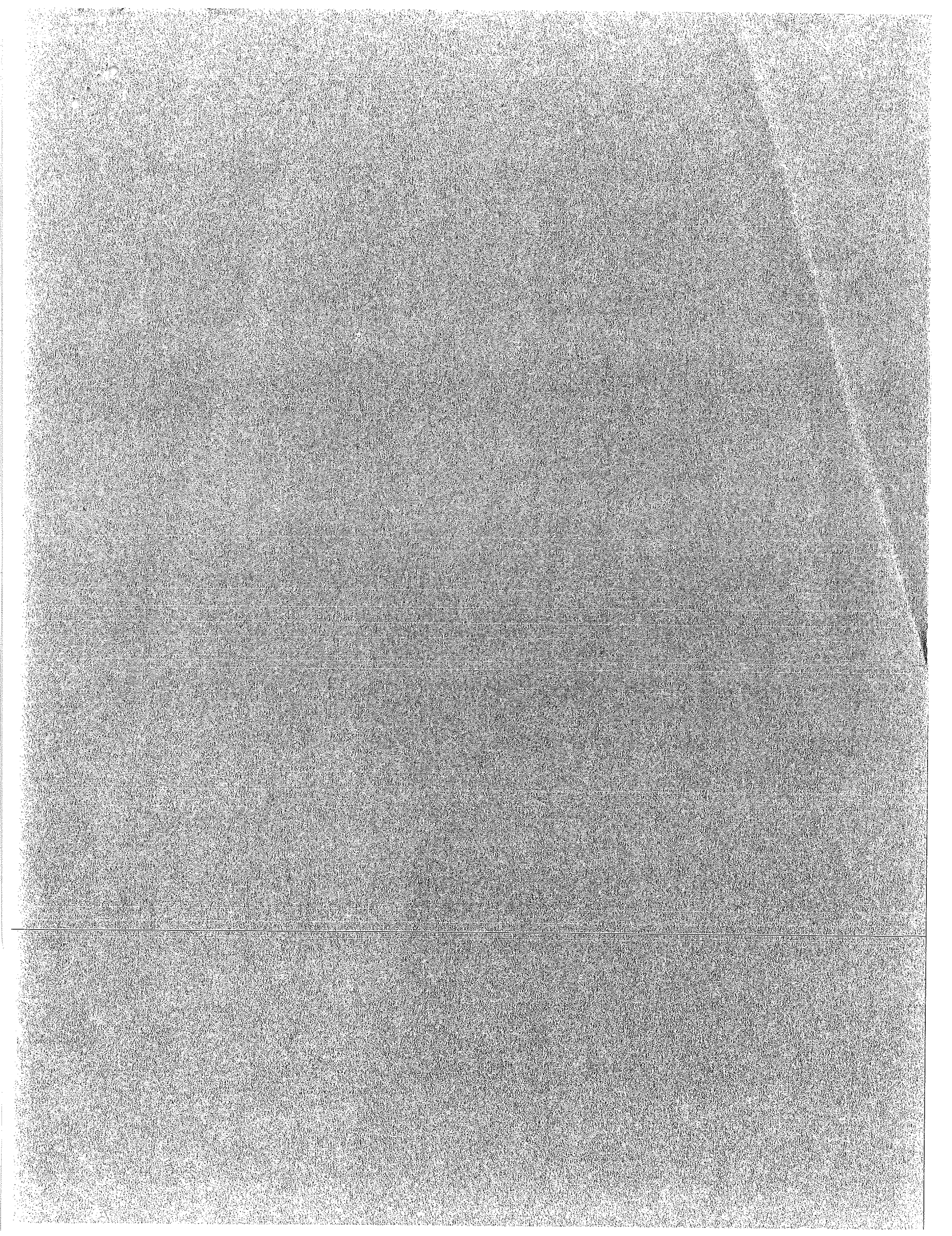
Final recommended actions to County Board by Financial & Administrative Committee (if needed)

November 10, 2000 – Friday @ 8:00 A.M.; Agenda Review Meeting

Review by Committee of the Whole

November 14, 2000 – Tuesday @ 9:00 A.M. Regular County Board Meeting

For the purpose of adopting the Budget, Appropriation, and Levy Ordinances



June 24, 2017

How a Law School Professor is Helping SCOTUS Rethink Gerrymandering



University of Chicago Law School Assistant Professor Nicholas Stephanopoulos.

Courtesy of The New York Times

By Euirim Choi

A University of Chicago professor's research and litigation helped convince the Supreme Court to announce on Monday that it will take up a potentially landmark electoral redistricting case that could dramatically transform American politics.

Law School assistant professor Nicholas Stephanopoulos developed a redistricting model that has led justices to reconsider whether it is impossible to measure partisan gerrymandering. Stephanopoulos has been working with the plaintiff in *Gill v. Whitford* to argue that the Court does have the ability to measure and declare partisan gerrymandering constitutionally limited.

While the Supreme Court has ruled that racial gerrymandering is prohibited under the 1965 Voting Rights Act, the widespread and bipartisan practice of drawing electoral districts to weaken the power of unfriendly voters, known as partisan gerrymandering, has resisted legal challenges.

In the 2004 case *Vieth v. Jubelirer*, the Court, in a plurality decision by its conservative wing, held that challenges to partisan gerrymandering were a political question beyond the competency of the courts as it was impossible to create a standard or legal test that could be used to assess the extent of politically motivated redistricting.

While concurring with the ruling in *Vieth*, Reagan-appointed Justice Anthony Kennedy refused to rule out the possibility that a legal standard for partisan gerrymandering could be created in the future. Kennedy's apparent openness to considering limiting partisan redistricting if a discernible standard for adjudicating politically motivated gerrymandering was proposed sparked renewed interest in creating such a standard in academia.

Stephanopoulos and Public Policy Institute of California research fellow Eric McGhee suggested a solution in a widely circulated 2014 paper. Their metric—which played an important role in the litigation now appearing before the Supreme Court—known as the *efficiency gap*, is a measure of how equitably a party's share of the vote translates into legislative seats, known as partisan symmetry.

The efficiency gap metric is calculated by taking the difference in the number of wasted votes of each party and dividing by the the total number of votes cast. The authors considered "wasted" votes to be either those that were cast for a losing candidate or for a winning candidate in excess of what was required for victory. If this was true of more than 7 percent of voters, they argued that it would constitute as excessive partisan gerrymandering.

For example, suppose a district is composed of 10 voters, where seven voted for a candidate from party A and three voted for party B's equivalent. Party B, as the losing party, has three "wasted" votes. Since only five votes (50 percent) were required to draw the race, any votes in excess of this threshold is considered as "wasted." Thus, party A has two "wasted" votes. Ultimately, the "wasted" votes of party A and B in all districts in a state are used to then calculate the efficiency gap metric.

The efficiency gap metric quickly transitioned from theory to practice when Stephanopoulos became a litigator in *Gill*. He was part of a team that argued on behalf of the plaintiff in the U.S. District Court of the Western District of Wisconsin that a 2011

Wisconsin state assembly district map drawn by Republican legislators was unconstitutional under the 14th Amendment's equal protection clause and the First Amendment's freedom of association because, as shown by the efficiency gap metric, it discriminated against Democratic voters.

The special three-judge federal panel of the District Court ultimately sided in a 2–1 decision with the plaintiff, accepting Stephanopoulos and McGhee's efficiency gap metric as a possible standard for measuring partisan gerrymandering. The state consequently appealed the decision to the Supreme Court.

With the decision to hear this appeal announced Monday, many observers are hopeful that the Court will be receptive to concretely limiting partisan gerrymandering using measures of partisan symmetry. Perhaps motivated by the fact that justices Stephen Breyer and Ruth Bader Ginsburg said that they were enthusiastic about measures of partisan symmetry as a whole in *Vieth* and that Sonia Sotomayor and Elena Kagan, the other justices of the Court's liberal wing, are expected to share this enthusiasm, Stephanopoulos told *The Maroon* that his side will not exclusively rely on the efficiency gap metric.

"Even though we think the efficiency gap is the best of [partisan symmetry] metrics, we're advocating a *set* of them to the Court. There's no need to choose between them here since they all point in the same direction (namely, that the Wisconsin plan is an extreme outlier)."

But the conservative wing of the Court is unlikely to label partisan gerrymandering as unconstitutional and may even reject constitutional limits on the practice. Justices Kennedy and Samuel Alito as well as Chief Justice John Roberts stated in their partial dissent in *Cooper v. Harris*—where the Court ruled in a 5–3 decision earlier this year that the North Carolina legislature engaged in racial gerrymandering when redrawing congressional districts—that states have the right to engage in political gerrymandering.

Justices Clarence Thomas and Neil Gorsuch are expected to agree with their fellow conservatives. While Thomas joined the liberal wing of the Court in concurring with the ruling, he did so because *Cooper v. Harris* mainly addressed racial and not partisan gerrymandering, the latter which he believed was impossible to limit in *Vieth v. Jubelirer*. Gorsuch, who did not take part in deciding the case as he was not yet a justice when it was argued, could also be sympathetic to the idea that limiting partisan redistricting would violate states' rights.

Partisan gerrymandering opponents are hopeful, however, that they can sway skeptical justices. "I wouldn't necessarily read too much into *Harris* since it was a racial gerrymandering case that only addressed partisan gerrymandering in passing," Stephanopoulos told *The Maroon*. "And even the dissent in *Harris* didn't say outright that partisan gerrymandering is always constitutional."

Kennedy appears to be the conservative justice that is most likely to side with the Court's liberal wing. Kennedy stated in *Vieth* that partisan symmetry may not be a sufficient test to adjudicate politically motivated redistricting, but he seemed, according to Stephanopoulos and McGhee, open to being convinced.

Kennedy may therefore only require that Stephanopoulos's efficiency gap standard, or some other measure of partisan symmetry, be compelling to side with the Court's liberal wing in *Gill*, especially as the plaintiff's attorneys already chose to argue that partisan redistricting violates the First Amendment's freedom of association, which Kennedy believes is the strongest approach to examining the constitutionality of political gerrymandering.

While Stephanopoulos said he does not expect to argue the case, which will be done by appellate specialist Paul Smith, he does anticipate being heavily involved in drafting his side's brief. If his efforts help convince the Court that partisan gerrymandering is constitutionally limited, he would play a role in reshaping the American political landscape for the foreseeable future, with Democrats likely to benefit electorally from an end to a mostly, at least recently, Republican practice.

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Fair Representation in Local Government

Ruth Greenwood

Campaign Legal Center, rgreenwood@campaignlegalcenter.org

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Fair Representation in Local Government

Ruth Greenwood*

ABSTRACT

This Article focuses on my work in Illinois to use the Voting Rights Act¹ (VRA) to improve minority representation at the local level, but the themes and findings are applicable across the country because many states have growing minority populations in the suburbs just outside of large city centers.² These minority populations tend to be much less segregated than the minority communities in the cities,³ and so it is more difficult to use Section 2 of the VRA⁴ (“Section 2”) to ensure both descriptive and substantive representation. I recommend the use of fair representation systems like ranked choice and cumulative voting (with multi-member districts) to improve minority representation in these decreasingly segregated areas. I introduce three case studies from Illinois to highlight the numerous burdens facing those that seek to reform their local government redistricting systems. I finish with some thoughts on how litigation and legislative advocacy may be used to promote fair representation systems in local government.

INTRODUCTION

“It is an essential part of democracy that minorities should be . . . represented. No real democracy, nothing but a false show of democracy, is possible without it.”⁵

John Stuart, Mill 1862

Representation in a democracy is “a substitute for the meeting of citizens in person.”⁶ Federal, state, and local governments could not function if all of the millions of citizens with a stake in the decisions of government were involved in every decision. Americans long ago decided that they did not want a single leader to determine issues

* Ruth Greenwood is the Deputy Director of Redistricting for the Campaign Legal Center and an Adjunct Professor at Loyola University Chicago School of Law. This Article adapts and expands the research I did for a report while at the Chicago Lawyers’ Committee for Civil Rights Under Law, *The Color of Representation*, CHICAGO LAWYERS’ COMMITTEE FOR CIVIL RIGHTS UNDER LAW, INC. (Apr. 2015) <http://www.votingrightsillinois.org/color-of-representation>. I would like to thank Annabelle Harless, Devin Race, J. Cunyon Gordon, George Cheung, Jorge Sanchez, Nicholas Stephanopoulos, Maria Aracelia Rosas Urbano, Mark and Kathy Kuehner, and Willie Scott for their inspiration and assistance in this important work.

1 52 U.S.C.A. §§ 10301–14 (West 2016).

2 William H. Frey, *Melting Pot Cities and Suburbs: Racial and Ethnic Change in Metro America in the 2000s*, METROPOLITAN POL’Y PROGRAMS AT BROOKINGS, 9–11 (May 2011), https://www.brookings.edu/wp-content/uploads/2016/06/0504_census_ethnicity_frey.pdf.

3 See Nicholas O. Stephanopoulos, *Civil Rights in a Desegregating America*, 83 U. CHI. L. REV. 1329, 1343–48 (2016).

4 52 U.S.C.A. § 10301.

5 John Stuart Mill, *Representative Government*, in THREE ESSAYS BY JOHN STUART MILL 143, 252 (Oxford 1960).

6 HANNA FENICHEL PITKIN, *THE CONCEPT OF REPRESENTATION* 191 (Univ. of Cal. Press 1967) (quoting Alexander Hamilton, James Madison & John Jay, *THE FEDERALIST* No.52, in *THE FEDERALIST* 269, 270 (Max Beloff ed. 1948)).

of the commonwealth. Thus, governmental systems were chosen whereby some people represent others to determine the rules by which we live.

To be represented has four relevant meanings in the context of voting rights.⁷ One can be said to be represented if:⁸

1. she can register, vote, and have that vote count;
2. she can join with her community to elect candidates of their choice;
3. people with the same demographic or social characteristics are part of a governmental decision making body (I will refer to this as descriptive representation); and
4. there is a congruence between the actions and behavior of a representative and one's policy preferences (I will refer to this as substantive representation).

The first form of representation is not a focus of this Article but has been a focus of recent successful litigation efforts across the country.⁹ It is the latter three types of representation that this Article discusses.

Recognizing that representation is required in a democracy is only the first step. A community must then decide how it will choose its representatives. What mechanism is chosen will depend on a community's conception of democracy and of representation. Is democracy served by a purely majoritarian representative body whereby representatives do only what those they represent want and the decision made in each case is by majority rule (majoritarianism)?¹⁰ Is it served by a representative body where the most talented members of society are trusted to deliberate and act in favor of the national interest, even if it involves unpopular choices (trusteeship)?¹¹ Is it served by a representative body that is a vibrant marketplace of ideas, where every demographic and interest group is represented, and decision makers from different coalitions come to different compromises depending on the issue (pluralism)?¹² Perhaps a little of each of these drove the decisions of the Founders to establish the decision-making structures of federal government.

The federal government structure is laid out in our almost-unamendable Constitution,¹³ but the structure of a local government is, in many states, relatively

7 For a full discussion of definitions of representation, see PITKIN, *supra* note 6, at 1–11.

8 Adapted from PITKIN, *supra* note 6, at 38–59.

9 Successful litigation on this form of representation has occurred in Wisconsin, *One Wisconsin Inst., Inc. v. Thomsen*, No. 15-cv-324-jpd, 2016 WL 4059222 (W.D. Wis. July 29, 2016), Texas, *Veasey v. Abbott*, 830 F.3d 216 (5th Cir. 2016), North Carolina, *North Carolina State Conference of the NAACP v. McCroy*, No. 1:13CV861, 2016 WL 1650774 (M.D.N.C. April 25, 2016), and Kansas, *Fish v. Kobach*, No. 16-2105-JAR-JPO, 2016 WL 2866195, May 17, 2016 (D.C. Kan).

10 See PITKIN, *supra* note 6, at 30.

11 *Id.* at 181.

12 *Id.* at 191.

13 Eric Posner, *The U.S. Constitution Is Impossible to Amend*, SLATE (May 5, 2014, 4:22 PM), http://www.slate.com/articles/news_and_politics/view_from_chicago/2014/05/amending_the_constitution_is_much_too_hard_blame_the_founders.html.

easily amended. For example, in Illinois, home rule jurisdictions¹⁴ can change their system of government (that is, their county, town, or school board) by majority vote at a general election after collecting a relatively small number of signatures to place the question on the ballot.¹⁵

At the local level then, we are all potential founders.

In a world of relatively infinite choice, what system of democracy suits local government? And, therefore, what system of representation is preferable? Some guidance can be drawn from Hanna Pitkin's seminal 1967 book, *The Concept of Representation*. Pitkin found that political decisions are "questions about action, about what should be done; consequently they involve both facts and value commitments."¹⁶ While decisions based on facts may be delegated to experts, decisions based on value commitments—like the decisions of what rules a community wants to live by—require diverse representation.

Not every type of diversity will be relevant for representation. For example, it is hard to think of a reason why blue-eyed people need specific representation that they could not get from brown-or green-eyed people. Additionally, in some communities, different religions or ages need not be represented, but in others, religion or age may be a key cleavage in a community, and so establishing a system that ensures diverse representation with respect to religion or age will be necessary. In every community in America one thing is for certain: race and ethnicity will be an issue that requires diverse representation.¹⁷

This Article proceeds as follows: It starts by defining minority representation and outlining the normative and practical case for promoting minority representation, highlights the importance of focusing on local government representation, discusses the legal routes currently available to improve minority representation, goes through two case studies of work I have done at the local level to try to improve minority representation (in Joliet and Blue Island), and concludes with thoughts for the strategies that can be used going forward to advocate and litigate for local government structures that will better protect and promote minority representation.

I. MINORITY REPRESENTATION

If the goal of democracy is majority rule, why is pluralism or an explicit protection of racial justice needed? This question strikes at the basic paradox of

14 See ILL. CONST. art. VII, § 6.

15 See 10 ILL. COMP. STAT. 5/28-7 (2016) (the number of signatures required is equal to 8% of total vote of that jurisdiction in most recent gubernatorial election).

16 PITKIN, *supra* note 6, at 212.

17 See Ian F. Haney Lopez, *Post-Race Racialism: Racial Stratification and Mass Incarceration in the Age of Obama*, 98 CALIF. L. REV. 1023 (2010); Mario L. Barnes, *Reflections on a Dream World: Race, Post-Race and the Question of Making It Over*, 11 BERKELEY J. AFR.-AM. L. & POL'Y 6 (2009); Eduardo Bonilla-Silva, *RACISM WITHOUT RACISTS: COLORBLIND RACISM AND THE PERSISTENCE OF RACIAL INEQUALITY IN THE UNITED STATES* (2d ed. 2006); see also JOHN D. GRIFFIN & BRIAN NEWMAN, *MINORITY REPORT 196* (2008) (citing Kinder and Sanders 1996, and Sniderman and Carmines 1997 as examples of how race continues to divide American society and politics).

democracy—can a society be equally committed to majority rule and minority protection?¹⁸ Because it conflicts with government by the majority, the commitment to minority protection must be grounded in some other value. A commitment to minority representation can be grounded in pluralism and/or a commitment to racial justice. Failing to focus on minority representation is not a choice in favor of race neutrality, but instead a de facto vote against racial justice.

For minority representation to exist, all four types of representation outlined above should be present. That is, minority communities must be able to register and vote, to elect candidates of their choice, and to be both descriptively and substantively represented in federal, state, and local government. These types of representation stand in contrast to various kinds of disenfranchisement and political disempowerment minorities have experienced in America's history.

A. *The Voting Rights Act*

It wasn't until the Voting Rights Act (VRA) in 1965 that part of the promise of the Fifteenth Amendment was codified by Congress.¹⁹ Though passed in direct response to the violence in Selma, Alabama, on Bloody Sunday, March 7, 1965, the aims of the VRA were broader than simply allowing Black people to register to vote without fear of losing their lives. Dr. Martin Luther King Jr.'s views on the topic were summarized by Lani Guinier in 1991: "King advocated full political participation by an enlightened electorate to elect blacks to key political positions, to liberalize the political climate in the United States and to influence the allocation of resources."²⁰ Guinier also notes that Roy Wilkins, Executive Director of the NAACP and Chairman Lawyers' Committee for Civil Rights (LCCR), advocated for the VRA before the House Committee on the Judiciary, on the grounds that eliminating voting restrictions would mean that elected officials "will become responsive to the will of all the people."²¹

Provisions protecting language minority communities (Latinos, Asian Americans, American Indians, and Native Alaskans and Hawaiians) were not

18 See Alexis de Tocqueville, *Tyranny of the Majority*, in *DEMOCRACY IN AMERICA* 306 (Schocken Books 1961); see also JACQUES DERRIDA, *ROGUES: TWO ESSAYS ON REASON* 31–36 (Pascale-Anne Brault & Michael Naas trans., Stanford Univ. Press 2005).

19 There are other statutes that indirectly protect minority voting rights by protecting voting rights of particular communities that include people of color, e.g., the National Voter Registration Act (NVRA), 42 U.S.C. §§ 1973gg–10 (1993); the Uniformed and Overseas Citizens Act (UOCAVA), 42 U.S.C. § 1973ff-7 (1998); the Help America Vote Act (HAVA), 42 U.S.C. §§ 15301–545 (2002); and the Military and Overseas Voter Empowerment Act (MOVE Act), 42 U.S.C. § 1973ff-7 (2009).

20 Lani Guinier, *The Triumph of Tokenism: The Voting Rights Act and The Theory of Black Electoral Success*, 89 MICH. L. REV. 1077, 1084 n.26 (1991) (citing MARTIN LUTHER KING, JR., *WHY WE CAN'T WAIT* 166 (1963)).

21 *Id.* at 1077 n.26 (citing *Voting Rights: Hearings Before Subcomm. No. 5 of the House Comm. on the Judiciary*, 89th Cong. 377–80 (1965) (statement of Roy Wilkins)).

included in the VRA until 1975.²² These were added to help non-English-speaking voters to “cast an effective ballot”²³

The definition of minority political participation used during the 1975 debates included registering, voting, running for office, and holding office as civic participation goals.²⁴ The 1975 Act’s added protections were written to apply to “language minority groups,” defined as “persons who are American Indian, Asian American, Alaskan Natives or of Spanish heritage.”²⁵

B. Promoting Minority Representation

i. Registering, Voting, and Having that Vote Count Today

The removal of practices that directly prevented minority voters from registering and voting (for example, literacy tests, and some of the practices prevented through Section 5 preclearance, such as not opening voter registration opportunities when Black citizens appeared at the relevant office to register) supported the most basic type of minority representation: allowing people of color to register, vote, and have that vote count.

There are still laws that disproportionately disenfranchise voters of color, such as felon disenfranchisement laws, photo ID laws, citizenship requirements, and restrictions on early voting that are either currently on the books or are being advanced in legislatures or through ballot initiatives.²⁶ Advocates for minority representation are using Section 2 of the VRA somewhat effectively²⁷ where previous litigation under the Fourteenth Amendment has not been successful.²⁸

ii. Electing Candidates of the Minority Community’s Choice

The VRA, though originally interpreted by the Supreme Court to protect against only intentional discrimination with respect to the right to vote, was clarified by Congress in 1982 such that today it prohibits systems of election that prevent minority communities from electing candidates of their choice.²⁹ The classic example of such a system is a town council that elects all of its representatives at large, meaning that every voter chooses someone for each of, say, seven positions. The result

22 The expansion was both through the coverage formula in Section 4 of the Voting Rights Act, 42 U.S.C. §§ 1973–1973aa-6 (1965), and the addition of Section 203 that required election materials to be printed in multiple languages in areas where there was a significant community with a common language that also spoke English less than well.

23 *Voting Rights Act: Ten Years After*, U.S. COMM. ON CIVIL RIGHTS 1, 117 (1975).

24 *Id.* at 39–58.

25 *Section 4 of the Voting Rights Act*, U.S. DEPT. OF JUSTICE, <https://www.justice.gov/crt/section-4-voting-rights-act> (last updated August 8, 2015).

26 For a full list of restrictive voting laws introduced and passed in 2015, see *Voting Laws Roundup 2015*, BRENNAN CTR. FOR JUST. (June 3, 2015), <https://www.brennancenter.org/analysis/voting-laws-roundup-2015#Restrictive>.

27 See *supra* text accompanying note 9.

28 See generally *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181 (2008).

29 52 U.S.C.A. § 10301(b).

of at-large systems is that the majority white population, if there is racial polarization in voting, will elect all seven members, and the minority community will never be able to elect a candidate to the local office. In places where it is possible to divide the jurisdiction into single-member districts (SMDs) such that one or more will have a majority of minority citizens, Section 2 of the VRA has been interpreted to require that SMDs (or another remedy) be implemented.³⁰

iii. Descriptive Representation

The VRA says nothing explicitly about descriptive representation, but the Senate, in passing the amendments to Section 2 in 1982, added in a list of factors that a court must consider as part of the “totality of the circumstances” test.³¹ Factor seven, in particular, is concerned with descriptive representation: “the extent to which members of the minority group have been elected to public office in the jurisdiction.”

In many cases, the VRA’s protection of communities electing candidates of their choice has resulted in a protection of descriptive representation because people of color have largely been the choice of the minority community and white people have largely been the choice of the white community. For example, at the congressional level in elections from 1966–96 (the thirty years after the VRA was passed) only 35 of the 6,667 elections in white majority districts provided Black winners (that is 0.005%).³² There are more white winners in majority Black or Latino districts than this low rate, but not a sufficient amount to threaten the ability of representatives of color to be elected at the local, state, and national level.

iv. Substantive Representation

Substantive representation can have both an individual representative component and a whole legislature/policy outcomes component. With respect to individual representatives, the VRA protection of communities of color’s ability to elect candidates of their choice should protect substantive representation (if the community votes in its self-interest and is able to hold the legislator to account). In addition, the Senate factors in the Section 2 amendments to the VRA outline the issues that a court should consider as part of the “totality of the circumstances” test required by the section. One of the Senate factors requires a court to look at whether the relevant minority group bears the effects of discrimination in areas such as education, employment, and health.

Additionally, political scientists have found strong evidence that substantive representation follows directly from descriptive representation. For example, Kerry L. Haynie finds, in analyzing agenda-setting behavior, that “a legislator’s race tends

30 See *Thornburg v. Gingles*, 478 U.S. 30 (1986); see also *Bartlett v. Strickland*, 556 U.S. 1 (2009).

31 See S. Rep. No. 97-417, 97TH CONG., 2D SESS., at 28–29 (1982).

32 DAVID T. CANON, RACE, REDISTRICTING, AND REPRESENTATION 12 (1999).

to have a stronger effect on substantive representation than does a legislator's party membership.”³³

With respect to whole legislature/policy outcomes, the story is somewhat different due to the nature of winner-take-all district elections. Whether substantive policy outcomes are promoted by the VRA depends on the size and distribution of the minority communities and the level of racially polarized voting.

The need to divide minority representation into a substantive and descriptive component reveals how differently the political world is experienced by whites and people of color (and hence why it is important to approach the political world with an appreciation of racial difference). Since ninety percent of elected officials are white (and sixty-five percent are white men),³⁴ a white person will almost never need to worry about whether the candidate who will substantively represent him will also descriptively represent him.

C. *The Benefits of Minority Representation*

Q: Now why would you come from Crittenden County to participate in a fundraiser for a county race that was basically a local race to Philips County?

A: Well, the reason I would come, first of all, there are no blacks elected to a county position in eastern Arkansas and no blacks serving in the House of Representatives in eastern Arkansas and no blacks elected to anything other than school boards in districts that are predominantly black. And I feel like blacks should be elected to public office because they should have a chance to serve.

And I want to help get blacks elected so little black children can see them serving and I want to dispell (sic) the myth that some white kids might have that blacks can't serve or shouldn't be serving at the courthouse. And when my little girl goes to the courthouse or when other little girls go to the courthouse, I want them to be able to see black people working up there.

And if we can get some blacks elected at the local level, eventually we can—blacks will have the expertise and we can groom them to the point where they can run for the state legislature and other positions

Ben McGee, 1988³⁵

i. Black Americans

Though the Black community is not homogenous, and Black community groups will differ in their support for various policies and laws, it is possible to find a large

33 KERRY L. HAYNIE, *AFRICAN AMERICAN LEGISLATORS IN THE AMERICAN STATES* 25, 30 (2001). Haynie justifies assessing agenda-setting behavior as a method of assessing substantive representation by relying on R. Douglas Arnold's finding that "analyzing legislator's bill introductions is often superior to a reliance on roll-call votes for attempting to establish a linkage between constituency interests or preferences and the legislative behavior of representatives." *Id.* at 25.

34 *Do America's Elected Officials Reflect Our Population?*, WHO LEADS US, <http://wholeads.us/electedofficials/> (last visited Oct. 10, 2016).

35 LANI GUINIER, *TYRANNY OF THE MAJORITY* 54 (1994) (citing *Whitfield v. Democratic Party*, 686 F.Supp. 1365 (E.D. Ark. 1988), *aff'd by an equally divided court*, 890 F.2d 1423 (8th Cir. 1989) (en banc) (trial transcript at 654–55)).

body of common ground between black citizens on questions of public policy, ideology, and candidate choice, and therefore to define “Black interests,” for the purpose of studying whether these interests are furthered by an increased presence of black legislators, by greater seniority of black legislators, or other practices aimed at promoting minority representation. Kerry L. Haynie finds that Black citizens “have been the most cohesive and consistent political subgroup in U.S. politics.”³⁶

This coherence has made it easier for researchers to draw conclusions as to whether white or Black representatives are better able to represent the views of the Black community. Canon researched thousands of Congressional representatives over a thirty-year period and found that

white representatives from districts that are 30–40 percent Black *can* largely ignore their Black constituents, and many do. Black representatives from districts that are 30–40 percent white cannot ignore their white constituents *because they are operating in an institution that is about 86 percent white and a nation that is 82.5 percent white.*³⁷

He concludes that there is “very little support” for the claim that “whites are just as able to represent black interests as blacks.”³⁸

Additionally, Haynie, in analyzing state legislatures, found that Black members did not need to be in positions of power (for example, on legislative committees) to exert an influence over substantive outcomes, instead “the mere presence of African Americans in state legislatures . . . was sufficient to yield significant institutional and governmental responsiveness to black interests.”³⁹ Haynie also examined the introduction of bills by state legislatures and found that “the race of the representative has a powerful and statistically significant effect on the introduction of traditional civil rights legislation.”⁴⁰

A corollary of the Canon and Haynie findings is that “districts with a majority black population had no significant impact on whether legislators representing such districts introduced black interest legislation.”⁴¹ That means that majority-Black districts without a Black elected official are not likely to see Black-interest legislation introduced on their behalf, even though the minority community voted that representative into office. Thus, the candidate of choice of a minority community will best represent them substantively if—and only if—that candidate also descriptively represents them. There are of course exceptions to this statistical finding: there have been and are a small number of majority Black communities that elect white candidates to represent them, and those candidates provide substantive representation for their communities. Those exceptions do not undercut the link between descriptive and substantive representation, but rather should give us hope

36 HAYNIE, *supra* note 33, at 19.

37 CANON, *supra* note 32, at 13.

38 *Id.* at 12.

39 HAYNIE, *supra* note 33, at 90.

40 *Id.* at 30.

41 *Id.*

that in a future time it will be possible for *all* white candidates to represent *all* of their constituents, not just the white ones.

ii. Latinos

The Latino community is not as politically cohesive as the Black community, largely because of group differences by country of origin, e.g., Mexico, Puerto Rico, and Cuba.⁴² This makes it difficult to assess whether on the whole, the Latino community is able to get “what it wants” because there is no “it.”

However, it is possible to assess whether Latinos are more likely to get the outcomes they desire than white Americans. It has been shown that, in Congress, Latinos, like Black Americans, are less likely to have policies implemented that they care about when their representatives are white, with the exception of districts that are over fifty percent Latino and represented by white members.⁴³ In the latter case, Latinos are as likely to have their policies represented by their congressional members as the whites in that district.⁴⁴ Thus, having a Latino representative generally leads to substantive representation for Latinos.

For Latinos (as well as Blacks), the substantive representation that results from descriptive representation also goes beyond just being more generally liberal. An analysis of voting patterns in several Congresses shows that “rather than simply greater intensity on a liberal-conservative spectrum, which generally emphasizes economic/class cleavages, minority representatives see a second, racial dimension of policies as highly salient.”⁴⁵ This finding also tends to discredit those who say that substantive representation for minorities can be achieved by simply increasing the number of liberal representatives in office. White representatives—even liberal ones—do not have the “sense of racially ‘linked fate’” or “personal experience with discrimination” to draw upon, which shows up in how they vote.⁴⁶

iii. Asian Americans

Though the Asian American community does not share a common history, language, or country of origin, political scientists conclude that an “Asian American identity does exist and frequently works as a collective group.”⁴⁷ Unlike Black

42 See JOHN D. GRIFFIN & BRIAN NEWMAN, MINORITY REPORT 51 (2008).

43 See *id.* at 197.

44 See *id.*

45 Robert R. Preuhs & Rodney E. Hero, *A Different Kind of Representation: Black and Latino Descriptive Representation and the Role of Ideological Cuing*, 64 POL. RES. Q. 157, 157–71 (2011).

46 See *id.* at 158, 160. Preuhs and Hero used a measure of how liberal a representative was (the DW NOMINATE score) along with scores on race issues from the NAACP (for Blacks) and NHLA (National Hispanic Leadership Council) to analyze voting patterns. They found that for white liberals, the DW NOMINATE score was highly explanatory of voting patterns whereas for Black and Latino representatives, the scores from NAACP and NHLA indicating how sensitive a candidate is to minority issues were far more predictive of representatives votes on certain issues. *Id.*

47 Neilan Chaturvedi, *Responding to Silence: Asian American Representation through Bill Sponsorship and Co-Sponsorship* (2011 Annual Meeting Paper), AM. POL. SCI. ASS'N 5–6 (last revised Aug. 5, 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1902228.

Americans and Latinos, Asian Americans, though exhibiting a reasonable level of political cohesion, largely do not exhibit party loyalty.⁴⁸

An example of Asian political cohesion is the fight to keep an Asian neighborhood together during a redistricting process in New York in the 1990s. Latinos challenged the Twelfth Congressional District in New York, and a group of Asian Americans intervened to argue that the redrawn district should not split up their community.⁴⁹ The community was defined by common neighborhoods, language, level of education, employment in similar industries, use of public transport, and immigration status.⁵⁰ The Court found this argument compelling, and the first constitutionally permissible Asian-influence district was formed. The district remains a multi-racial opportunity district (with 40% Latino and 20% Asian American population).⁵¹

When there are common interests amongst Asian American groups,⁵² it is possible to study whether Asian American legislators effectively represent those interests, and it has been found that they do, indeed, further such interests.⁵³

iv. Minority Representatives as Role Models

Guinier explains role model theory as Black representatives “who convey the message ‘We Have Overcome’ and inspire those not yet overcoming. Thus, in general, Black role models are powerful symbolic reference points for those worried about the continued legacy of past discrimination.”⁵⁴

The most prominent example of a candidate of color inspiring others is, of course, President Obama. The ability of a Black man to be elected to the highest office in the land conveys the message to Black children everywhere that they too can do great things even though they may experience racism along the way. Similarly, Senator Daniel Inouye served as a role model to a generation of Japanese Americans,⁵⁵ as did Mayor Villaraigosa, Senator Rubio, and Congressman Castro for Latinos.

48 See Glenn D. Magpantay, *Asian American Voting Rights and Representation: A Perspective from the Northeast*, 28 FORDHAM URB. L. J. 739, 764 n.163 (2001) (“Political cohesion around candidates can be discerned, but party loyalty is largely absent.”).

49 *Id.* at 766–67.

50 See *id.* at 766–67.

51 New York’s 12th Congressional District in the 1990s is now the 7th District, and is still represented by Nydia Velásquez. The District is 43% Latino and 19% Asian according to the 2013 American Community Survey estimates. See U.S. CENSUS BUREAU, *2013 American Community Survey* (2013), <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>.

52 See Magpantay, *supra* note 48, at 768 (explaining that communities of interest can be identified within the Asian American community).

53 See Chaturvedi, *supra* note 47, at 20 (“Asian American legislators represent Asian Americans well.”).

54 GUINIER, *supra* note 35, at 57.

55 See Paul Watanabe, *Remembrance: Daniel Inouye Was My Role Model*, COGNOSCENTI (Dec. 20, 2012), <http://cognoscenti.wbur.org/2012/12/20/daniel-inouye-paul-watanabe>.

v. Improved Civic Participation by People of Color

In 1965, Black voter registration rates were as low as 6.7% in some states.⁵⁶ This was the intended outcome of the white power structure in place. Following the adoption of the VRA, voter registration rates increased. Voter turnout also largely followed a similar trajectory. Guinier theorized in 1994 that this is because there is a key role that “group identity plays in mobilizing political participation and influencing legislative policy.”⁵⁷ She noted also that: “blacks can be encouraged to participate in the political process, the possibility of electing a ‘first’ Black tends to increase election day turnout. Indeed, the courts and commentators have recognized that the inability to elect Black candidates depresses black political participation.”⁵⁸

Studies of each of the minority groups under consideration bear out this hypothesis. For Blacks, this effect was dramatically illustrated in the 2008 election where black turnout eclipsed that of white turnout for the first time,⁵⁹ likely because Black voters wanted to elect the first black President. Additionally, political scientists have found a link between the election of black mayors and greater Black political participation.⁶⁰

For Latinos, a study of Southern California over five years shows that Latino voter turnout increases when Latino voters have a chance to elect their candidate of choice out of a majority-minority district.⁶¹ That boost to turnout increases with each additional overlapping district where electing a Latino is possible: the highest turnout came from Latino voters who lived in overlapping majority-minority districts for State Assembly, State Senate, and U.S. House of Representatives.⁶²

For Asian Americans, Taofang Huang finds that Asian Americans are more likely to vote when an Asian American is a candidate, particularly when the candidate’s ties to a specific Asian country are a prominent part of his or her presentation during a campaign.⁶³

It seems likely that, beyond mayoral races, increased minority representation at the local level will drive minority civic participation. For example, each additional Latino majority-minority district increases turnout by the Latino community. Thus, descriptive representation should increase substantive representation on both ends; the elected official is more likely to take the interests of the minority community

56 *Introduction to Federal Voting Rights Laws*, U.S. DEP’T OF JUST., https://epic.org/privacy/voting/register/intro_c.html (last visited Nov. 16, 2016).

57 GUINIER, *supra* note 35, at 57.

58 *Id.* at 58.

59 See Thom File, *The Diversifying Electorate—Voting Rates by Race and Hispanic Origin in 2012 (and Other Recent Elections)*, U.S. CENSUS BUREAU (May 2013), <http://census.gov/content/dam/Census/library/publications/2013/demo/p20-568.pdf>.

60 See ZOLTAN L. HAJNAL, CHANGING WHITE ATTITUDES TOWARD BLACK POLITICAL LEADERSHIP 1 (2007).

61 Matt A. Barreto, Gary M. Segura & Nathan D. Woods, *The Mobilizing Effect of Majority—Minority Districts on Latino Turnout*, 98 AM. POL. SCI. REV. 65, 74 (2004).

62 *Id.*

63 See Taofang Huang, *Electing One of Our Own: Descriptive Representation of Asian Americans* (2010 Annual Meeting Paper), W. POL. SCI. ASS’N 2, 21, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1580953 (last revised Mar. 31, 2010).

seriously and the community will become more engaged, mobilized, and better able to hold that representative accountable.

vi. Confidence in Government

Jane Mansbridge explains the connection between increased descriptive representation, legitimacy, and confidence in government:

Seeing proportional numbers of members of their group exercising the responsibility of ruling with full status in the legislature can enhance de facto legitimacy by making citizens, and particularly members of historically underrepresented groups, feel as if they themselves were present in the deliberations.⁶⁴

Haynie and Guinier accept this argument, but they clarify that they believe descriptive representatives will only contribute a basic level of trust in political institutions if the minority members actually speak for the communities from which they come.⁶⁵

The benefit of an increased confidence in government will not necessarily only be felt by members of the relevant minority community but may also increase the confidence of elected officials that they have made decisions based on the views of the entire community, rather than just the white majority. There is also a possibility that this confidence could flow over to white voters themselves if they believe that all community members are having their voices heard on local decision-making bodies.

vii. Changing Attitudes to Minority Legislators and Minority Community Members

There is some evidence that Black political leadership can help to break down the “myth that some white kids might have that Blacks [and other minority candidates] can’t serve or shouldn’t be serving.”⁶⁶ For example, Zoltan Hajnal shows that “the transition from white to Black leadership frequently leads to notable shifts in white attitudes and behavior.”⁶⁷ Hajnal argues that this shift in behavior occurs where information about the Black political leadership is credible and widely disseminated such that the white community perceive their black leader to have real

64 HAYNIE, *supra* note 33, at 114 (citing Jane Mansbridge, *Should Blacks Represent Blacks and Women Represent Women? A Contingent Yes*, 61 J. POL. 628, 650 (1999)).

65 HAYNIE, *supra* note 33, at 114.

66 *Id.* at 63.

67 HAJNAL, *supra* note 60, at 7. Unfortunately, Hajanal finds exceptions to his rule, and Chicago is one of the notable exceptions: “Although Black representation in most cases leads to decreased racial tension and greater acceptance of Black incumbents, there are a select number of cities where racial tension remains high, voting continues to be highly racially polarized, and few new white voters begin to support Black leaders despite years under Black leadership . . . Chicago represents perhaps the most famous case of ongoing white resistance.” *Id.* at 123 (though Hajnal can explain the unique circumstances that set Chicago out from other cities).

control over outcomes and policies, and white community members are therefore more likely to reduce their negative attitudes to black leadership.

At the congressional level, some studies on white voting behavior following Black leadership support Hajnal's findings,⁶⁸ but some find the opposite result, with whites being eight to ten percent less likely to support Black incumbents than white incumbents.⁶⁹ Despite this finding, the number of Black congressional representatives that represent majority white districts has increased from zero in 1960 to six in 2000, representing sixteen percent of all Black representatives.⁷⁰ Though change in the level of racially polarized voting is slow, it seems change has indeed followed from increased examples of Black leadership (in both majority white and majority Black communities).

The number of Latino and Asian American representatives has only started to grow in the past three decades, but the data so far suggest that white voters respond to Latino and Asian American leadership positively. Hajnal finds "there does appear to be a pattern of changing white behavior in response to experience with Latino elected officials. The evidence is clearer for whites who experience Latino leadership than it is for whites who live under Asian American incumbents but in both cases there are signs that white Americans are learning."⁷¹

The effect of minority political leadership on white racial attitudes is therefore one of caution and hope. Though minority representation "cannot solve all or even most of America's racial ills . . . if it can begin to reduce racial divisions in the political arena, then it is a goal well worth pursuing."⁷²

viii. Minority Representation and the Representation of Women

Focusing on minority representation gives us a chance to explore "the interaction and coalition formation that may occur between women and minority groups with corresponding interests" and to find ways to advance representation for both of these underrepresented groups of people.⁷³

A finding that reveals corresponding interests is that the improvement in minority representation over the past few years has largely been driven by women of color. This is particularly true for black elected officials. For example, in 2001, the increase in Black elected officials in office was entirely due to the increase in Black women in office. Since 1998, the number of Black men has actually decreased, and overall (from 1970–2005) black female elected officials

68 *Id.* at 145.

69 *Id.*

70 *Id.* at 146.

71 ZOLTAN HAJNAL, *AMERICA'S UNNEVEN DEMOCRACY* 153 (2010).

72 *Id.* at 161.

73 Michael D. Minta, *Gender, Race, Ethnicity, and Political Representation in the United States*, 8 *POL. & GENDER* 541, 544 (2012).

increased twenty-fold while black male elected officials increased only four-fold.⁷⁴

The fights for gender and racial/ethnic equality should be seen as connected because achieving minority representation is not just about narrowly satisfying the interests of some racial groups. Rather, it is grounded in a view of democracy that says that all of those who are historically or currently disempowered still deserve respect and recognition. This connection has been important in the advances of racial and gender justice: the civil rights movement of the 1960s was dominated by discussions of race, but coalition building allowed protections for gender to be included in the Civil Rights Act of 1964.⁷⁵

II. MINORITY REPRESENTATION IN LOCAL GOVERNMENT

Now that we have set the boundaries for our discussion of what constitutes minority representation and why we may desire to increase it, let us turn our attention to local government representation in particular. The starkest recent example of the importance of local government in the fight for racial equality comes from Ferguson, Missouri.

Many will remember Ferguson only for the shooting and killing of an unarmed, Black teenager, Michael Brown, by a white police officer in 2014.⁷⁶ A large part of the blame for this terrible event was rightly attributed to the racially discriminatory culture within the Ferguson Police Department.⁷⁷ But there are deeper issues. Ferguson, along with St. Louis, is highly segregated not only in housing patterns, but also in the distribution of local power.⁷⁸ Although Ferguson's population is majority Black, it is run by a white mayor and a white police chief, with a police department known for brutality against Black⁷⁹ youth and racist conduct by police officers.

While Ferguson is over sixty-seven percent Black, its city council included only one Black member out of six seats.⁸⁰ In addition, seventy-seven percent of students

74 Carol Hardy-Fanta et al., Race, Gender, and Descriptive Representation: An Exploratory View of Multicultural Elected Leadership in the United States 6 (Sep. 1, 2005) (unpublished manuscript) (on file with the American Political Science Association).

75 See Minta, *supra* note 73, at 544–45.

76 See, e.g., Editorial, *The Death of Michael Brown: Racial History Behind the Ferguson Protests*, N.Y. TIMES (Aug. 12, 2014), <http://www.nytimes.com/2014/08/13/opinion/racial-history-behind-the-ferguson-protests.html> (last visited Aug. 2016).

77 See U.S. DEPT. OF JUST. CIVIL RTS. DIV., *Investigation of the Ferguson Police Department*, (Mar. 4, 2015), http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf.

78 See *The Death of Michael Brown*, *supra* note 76.

79 This report uses “Black” rather than African American to ensure that people without slave ancestry but who still hail from Africa are included in the analysis. The Census Bureau uses both terms in its work. This report capitalizes “Black” because the terms Latino and Asian are also usually capitalized.

80 Karen Shanton, *The Problem of African American Underrepresentation on Local Councils*, DEMOS.ORG, <http://www.demos.org/publication/problem-african-american-underrepresentation-city-councils> (last visited Mar. 12, 2015).

in the Ferguson-Florissant School District are Black,⁸¹ yet only one school board member out of seven total was Black.⁸² City councils, school boards, and other local government systems can influence city agencies and the allocation of resources in many important ways. For example, if Ferguson's city council looked like Ferguson itself, it could choose to ensure that the police force is racially diverse, better trained to understand racial justice issues, and held accountable for racially disparate treatment and racially discriminatory conduct.

The situation on the ground in Ferguson serves to highlight a truth about local governments across our country: they control many aspects of our daily lives, not just criminal law but also many other policy areas that are crucial for the civil rights agenda. Local government decisions can affect whether a community is integrated,⁸³ whether public employees include people of color,⁸⁴ whether police target people based on race,⁸⁵ whether schools disproportionately suspend and expel Black students,⁸⁶ whether food deserts exist,⁸⁷ whether minority-owned businesses can thrive,⁸⁸ whether people of color's right to vote is disproportionately burdened,⁸⁹

81 David Hunn, *ACLU Alleges Ferguson-Florissant School District Elections Favor White Candidates*, ST. LOUIS POST-DISPATCH (Dec. 18, 2014), http://www.stltoday.com/news/local/education/aclu-alleges-ferguson-florissant-school-district-elections-favor-white-candidates/article_f5e8a48f-c586-5593-9aed-440a353efd86.html.

82 Jessica Bock, *Suspension of Ferguson-Florissant Superintendent Questioned*, ST. LOUIS POST-DISPATCH (Nov. 9, 2013), http://www.stltoday.com/news/local/education/suspension-of-ferguson-florissant-superintendent-questioned/article_d26b81af-7010-55b1-8233-50b33a08bb09.html.

83 Policies that can influence the level of neighborhood integration including redlining (see, e.g., Alexis C. Madrigal, *The Racist Housing Policy That Made Your Neighborhood*, THE ATLANTIC (May 22, 2014), <http://www.theatlantic.com/business/archive/2014/05/the-racist-housing-policy-that-made-your-neighborhood/371439/>), and by contrast, an explicit mission in a community to "achieve meaningful and lasting diversity throughout Oak Park and the region," see *About us*, THE OAK PARK REGIONAL HOUSING CTR., <http://www.oprh.org/news-media-releases-updates/> (last visited Mar. 12, 2015).

84 City policies about standards for hiring can affect diversity in public employees. See, e.g., *Lewis v. City of Chicago*, 643 F.3d 201 (7th Cir. 2011).

85 See, for example, New York's "Stop and Frisk" laws that were found to have disparately impacted the Black community in New York. See generally *Floyd v. City of New York*, 959 F. Supp. 2d 540, 562 (S.D.N.Y. 2013).

86 See, e.g., *School Discipline and Disparate Impact*, U.S. COMM'N ON CIVIL RIGHTS (2014), http://www.usccr.gov/pubs/School_Disciplineand_Disparate_Impact.pdf (last visited Mar. 12, 2015) (reporting on Fresno's disparate expulsion referrals for people of color).

87 Governor Pat Quinn appropriated \$10 million to go to cities, towns, and villages across Illinois to address the problem of food deserts. City council members had to apply to receive that money, and some used the media in that lobbying effort. Landon Cassaman, *Rockford "Food Desert" Seeks State Funding*, WIFR.COM (Aug. 3, 2012, 9:32 PM), <http://www.wifr.com/home/headlines/Rockford-Food-Desert-Seeks-State-Funding-164970226.html>.

88 For example, Chicago has a Minority and Women-Owned Business (e.g., (M/WBE)) Certification Program that provides contracting opportunities to M/WBE certified companies. *Businesses & Professionals*, CITY OF CHICAGO, <http://www.cityofchicago.org/city/en/ofinterest/bus/mwdbe.html> (last visited March 12, 2015).

89 For example, the Department of Justice was asked to investigate the placement of voting machines in Franklin County. The DOJ found that more registered voters were allocated to a single machine in predominantly Black precincts, and less registered voters per machine in predominantly white precincts (the amount of actual voters for each machine did not show a discriminatory impact). Dan Tokaji, *DOJ: No Discrimination in Ohio Election*, MORTIZ COLLEGE OF LAW: ELECTION LAW @ MORTIZ BLOG (July 5, 2005), <http://moritzlaw.osu.edu/blogs/tokaji/2005/07/doj-no-discrimination-in-ohio-election.html>. In addition, decisions on the allocation of voting machines and election judges can affect

whether first-time offenders are prosecuted for felonies under the criminal justice system,⁹⁰ and where for-profit detention centers will be located,⁹¹ to name a few examples.

Local governments are often overlooked and understudied compared with federal or state governments when it comes to civil rights protections. Local governments contribute to whether we make our society a place where people can thrive economically, politically, and socially, regardless of their race or ethnicity, or whether people of color will face an uphill battle just to live, work, and be educated. Local governments are at the forefront of civil rights issues, and so it is at that level that we should be trying to ensure that minority communities are fairly represented.

Unlike Congress and state legislatures, which can contain many hundreds of legislators, local school boards and city councils are usually comprised of five to fifteen members. Adding even a single minority voice to the deliberations of a small body can help the rest of the members better understand issues from the perspective of the minority community, and that member can raise issues or introduce motions for a vote, without needing to have the support in a legislative committee. Thus, the introduction of one or more people of color to a local council has the potential to make a larger difference at the local level than at the state or congressional level.

A. Descriptive Representation at the Local Level May Increase Descriptive Representation at the National Level

Even if one's ultimate goal is to improve state or federal minority representation, local minority representation is still fundamentally important to that end. Local government representation by minority candidates can "build the bench" of candidates for higher office. Minority representatives at the federal level are more likely than their White peers to ascend through the political ranks by first serving as local elected officials.

An analysis of the background of the House members in the 114th Congress found that while twenty-two percent of White representatives started their political careers as elected representatives in local government, representatives of color were

the length of lines in predominantly Black and white communities. In the 2012 election, Black and Latino voters waited in lines 2 and 1.5 times as long as white voters. Charles Stewart III & Stephen Ansolabehere, *Waiting in Line to Vote*, SUPPORT THE VOTER 11 (July 28, 2013), <https://www.supportthevoter.gov/files/2013/08/Waiting-in-Line-to-Vote-White-Paper-Stewart-Ansolabehere.pdf> (last visited Dec. 2, 2016).

90 The Cook County State's Attorney is an elected position in local government. In March 2011, the Cook County State's Attorney implemented a Deferred Prosecution Program to attempt to divert first time offenders from the justice system. *Deferred Prosecution Program*, TREATMENT ALTERNATIVES FOR SAFE COMMUNITIES, <http://www2.tasc.org/program/deferred-prosecution-program> (last visited Mar. 13, 2015).

91 The Corrections Corporation of America sought to build a for-profit immigration prison in Joliet in 2013. In order for that to go ahead, the Joliet City Council had to approve a special use permit. Ashlee Rezin, *Pressure Against Joliet's Proposed For-Profit Immigrant Detention Center Escalates*, PROGRESS ILL. (May 16, 2013, 7:11 PM), <http://www.progressillinois.com/quick-hits/content/2013/05/16/pressure-against-joliets-proposed-profit-immigrant-detention-center-es>.

much more likely to have started in local government: 29% percent of Asian American representatives, 38% of Black representatives (over 1.5 times as many as white representatives), and 44% of Latino representatives (double the number of white representatives) started their political careers as local government representatives.⁹²

This disparity holds specifically for people of color: there is little difference by gender (twenty-five percent of male and female representatives started in local elected office) and party (twenty-one percent of white Republicans and twenty-four percent of white Democrats started in local elected office).

Therefore, improving local minority representation could create a cadre of trained representatives of color that are ready to go on to state and national office to represent the interests of their communities. In addition, the reluctance of white voters to vote for Black candidates breaks down (even if only to some extent) after experiencing Black leadership.⁹³ Thus, the opportunities for local Black candidates to get elected to higher office, even if the higher offices are not majority-minority communities, improves.

B. Descriptive Representation Improves Substantive Representation at the Local Level

Descriptive representation for people of color at the local level has the potential to significantly improve the lives of communities of color.

At the county level, a minority commissioner can influence whether services and administrative positions will be distributed equitably. For example, in Chilton County, Alabama, during the late 1980s, the county decided which roads got paved and re-paved (as many county boards do). Their system was ad-hoc and resulted in the all-white board of commissioners prioritizing white neighborhoods. Once Bobby Agee, the county's first Black commissioner, was elected in 1988, he was able to implement a systematic and objective way to determine which roads got paved.⁹⁴ As a result, Black communities had their roads paved (and the overall process was more responsive to community needs). The county board also has the power to suggest and appoint administrative personnel. After Bobby Agee was elected, Black representatives were appointed by the county board to administrative board positions.⁹⁵

At the municipal level, descriptive representation for Black Americans has led to an improvement in police and social welfare policies for the Black community. Having a Black mayor is consistently associated with an increase in the number of Black officers on the police force.⁹⁶ A Black mayor also makes it more likely that there

92 All research for this small study was conducted by the author.

93 See HAJNAL, *supra* note 60, at 160–63. (“[B]lack mayoral leadership [can] . . . change white voting behavior, [and] also [] alter white racial attitudes.”).

94 LANI GUINIER, *LIFT EVERY VOICE: TURNING A CIVIL RIGHTS SETBACK INTO A NEW VISION OF SOCIAL JUSTICE*, 259–60 (1998).

95 *Id.*

96 See Daniel J. Hopkins & Katherine T. McCabe, *After It's Too Late: Estimating the Policy Impacts of Black Mayoralities in U.S. Cities*, 40 AM. POL. RES. 665, 665–700 (2012); see also Jihong Zhao, Ni He & Nicholas

are police department policies that aim to improve the relationship between police and the over-policed Black communities, such as citizen accountability boards.⁹⁷ Black descriptive representation also leads to better responsiveness of social service agencies to the needs of the Black community, particularly when the program managers and the representatives engage in community networking and learning.⁹⁸

And, at the school board level, school boards that include Latino representatives are more likely to hire Latino school administrators, such as principals and superintendents, who, in turn, hire more Latino teachers. Qualitative⁹⁹ and quantitative¹⁰⁰ studies, including randomized experiments,¹⁰¹ find that the academic achievement of Latinos, as well as non-Latinos, increases when a school has Latino teachers. In addition, a majority of Latinos would prefer for their children to have more Latino teachers.¹⁰²

III. IMPROVING LOCAL MINORITY REPRESENTATION

If we accept that improving minority representation at the local level is a valid goal, then how are we to achieve this improvement? Perhaps everything appears to be able to be changed by litigation or legislative change if one is a lawyer (much like a hammer sees everything as a nail), but I believe that there are great strides to be made through these two methods. The third, complementary, and in many ways a *sine qua non* of legal change, method is to engage in community organizing. That is beyond the scope of my expertise though, so I will leave it to others to comment on the best ways to integrate community organizing into a fully-fledged litigation and legislative advocacy campaign.

A. Litigating over minority vote dilution

The difficulty with using litigation to develop solutions to a complex problem like minority representation is that an impact case will set a precedent based on a unique factual scenario and with a single or limited set of remedies. In the case of minority representation, *Thornburg v. Gingles* was a watershed for minority representation because it set the floor—a base level of representation of people of color in the halls of power—below which the country would not return.¹⁰³

Lovrich, *Predicting the Employment of Minority Officers in U.S. Cities: OLS Fixed-Effect Panel Model Results for African American and Latino Officers for 1993, 1996, and 2000*, 33 J. CRIM. JUST. 377, 377–79 (2005), [http://nuweb.neu.edu/nhe/race and police emp.pdf](http://nuweb.neu.edu/nhe/race%20and%20police%20emp.pdf).

97 See Grace Hall Saltzstein, *Black Mayors and Police Policies*, 51 J. POL. 525, 525–44 (1989).

98 See Belinda Creel Davis, Michelle Livermore & Younghee Lim, *The Extended Reach of Minority Political Power: The Interaction of Descriptive Representation, Managerial Networking, and Race*, 73 J. POL. 494, 497 (2011).

99 David L. Leal, Valerie Martinez-Ebers & Kenneth J. Meier, *The Politics of Latino Education: The Biases of At-Large Elections*, 66 J. POL. 1224, 1229–30 (2004).

100 *Id.* at 1230–31.

101 *Id.* at 1230.

102 *Id.* at 1224.

103 478 U.S. 30 (1986).

Unfortunately, *Gingles* has also come to represent a ceiling. That ceiling prevents the adoption of an election system that would allow for fairer representation for people of color.

The concept of vote dilution was recognized as a constitutional harm in the “one person, one vote” (OPOV) Supreme Court cases of the 1960s.¹⁰⁴ The Court found that an individual’s vote could be diluted if she was in an election district that had a huge disparity in population to another district for election to the same legislature. For example, in *Baker v. Carr*, districts for the state legislature in the urban centers of Tennessee had ten times the number of people as districts in rural areas.¹⁰⁵ This meant that a voter in an urban district had one-tenth the voting power of a voter in a rural area. The court labeled the requirement of rough population equality¹⁰⁶ a OPOV requirement:

[A]ll who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be The concept of ‘we the people’ under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications.¹⁰⁷

The OPOV requirement recognizes that an individual’s vote can be diluted by the size of election districts. Minority vote dilution operates in a similar, but more complex way than individual vote dilution, and it describes a group rather than an individual harm.¹⁰⁸ As Pamela S. Karlan explains, “[u]nlike the white suburban plaintiffs in *Reynolds* whose voting strength was diluted because of *where* they lived, the political power of Black citizens is diluted because of *who* they are.”¹⁰⁹

Thus, in 1971, in *Whitcomb v. Chavis*, a group of Black voters in Indiana argued that vote dilution could also occur based on race, rather than geography.¹¹⁰ The plaintiffs argued that by electing multiple legislators in the Marion County area using at-large elections, the Black community was left with “almost no political force

104 See generally *Baker v. Carr*, 369 U.S. 186 (1962); *Gray v. Sanders*, 372 U.S. 368 (1963); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964).

105 *Baker v. Carr*, 369 U.S. 186, 253–267 (1962) (Douglas, J., concurring).

106 The OPOV started as a rough population equality measure, but later was changed to require a population deviation of no more than one person for each congressional district (and at the state legislative and local level, the population requirement only allowed that the largest and smallest districts deviated by no more than 10%). See *Karcher v. Daggett*, 462 U.S. 725, 730–41 (1983) (regarding congressional districts); *Larios v. Cox*, 305 F. Supp. 2d. 1335, 1337 (2004), *aff’d*, 124 S. Ct. 2806 (2004) (citing *Brown v. Thomson*, 462 U.S. 835, 842–43 (1983) (regarding state legislative districts)).

107 *Gray*, 372 U.S. at 379–80.

108 The concept of minority vote dilution was first hinted at in *Fortson v. Dorsey*, 379 U.S. 433 (1965), but not relied upon by the appellees, and so it was only briefly addressed by Justice Brennan writing for the Court. *Id.* at 439 (“It might well be that, designedly or otherwise, a multimember constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population.”).

109 Pamela S. Karlan, *Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation*, 24 Harv. C.R.-C.L. L. REV. 173, 174 (1989).

110 403 U.S. 124 (1971).

or control over legislators because the effect of their vote [was] cancelled out by other contrary interest groups.”¹¹¹ The problem with winner-take-all, at-large elections (those where fifty-one percent of the community can elect one hundred percent of the representatives) is that “a slim majority of voters has the power to deny representation to all others.”¹¹² The Court declined to find that there was in fact a constitutional violation caused by the use of at-large districts in Indiana, but it left open the question of whether, in the right factual scenario, the rights of minority voters might be diluted.

Shortly thereafter, plaintiffs from Texas, in *White v. Regester*, convinced the Supreme Court that there was invidious discrimination in the drawing of the Texas legislative redistricting plan in violation of the Equal Protection Clause of the Fourteenth Amendment.¹¹³ The plaintiffs showed that “the political processes leading to nomination and election were not equally open to participation by the group in question—that its members had less opportunity than did other residents in the district to participate in the political processes and to elect legislators of their choice.”¹¹⁴ The court analyzed a number of practices that prevent political participation by Black voters in Dallas County and Latino voters in Bexar County. These included party slating, poll taxes, cultural barriers, and the use of multi-member districts (MMDs) with at-large, winner-take-all plurality voting.

Another set of plaintiffs tried to build on the theory of minority vote dilution as caused by at-large voting in MMDs from *Regester* to argue that such dilution was occurring in the city of Mobile, Alabama. In *Mobile v. Bolden*, the plaintiffs alleged that the Fourteenth and Fifteenth Amendments, and Section 2 of the VRA, were violated by the City Commission’s election system that elected the three-person Commission at-large, thereby denying the Black population (that constituted 35.4% of the total population) the ability to elect a single candidate.¹¹⁵ The Court held that there was no difference between the Fifteenth Amendment and Section 2 of the VRA, and found that both the Fourteenth and Fifteenth Amendments were not violated because a showing of purposeful discrimination was required for each, and such a purpose was not shown.¹¹⁶

The holding in *Bolden* appeared to make it all but impossible for plaintiffs to overturn redistricting plans or election systems that diluted the minority vote. As Chandler Davidson describes, in the context of an attempted minority vote dilution case in the town of Taylor, Texas (where, despite high Latino turnouts in elections

111 *Id.* at 129.

112 *Fair Representation and the Voting Rights Act: Remedies for Racial Minority Vote Dilution Claims*, FAIRVOTE, <http://www.fairvote.org/assets/Racial-Minority-Representation-Booklet.pdf> (last visited Mar. 14, 2015).

113 412 U.S. 755, 765–66 (1973).

114 *Id.* at 766.

115 446 U.S. 55, 58–59 (1980).

116 *Mobile*, 446 U.S. at 66–68 (citing *Whitcomb v. Chavis*, 403 U.S. 124, 149 (1971); *Washington v. Davis*, 426 U.S. 229 (1976)).

and Latino candidates running regularly for office between 1967 and 1974, no candidate that was the choice of the minority community was elected):

The decision presented serious problems to the plaintiffs in Taylor, whose at-large system had been established in 1914. The files of the local newspaper only went back to the 1930s, and official city documents relating to the charter revision shed no light on the motives for the change. After much soul searching, the plaintiffs withdrew the suit, at the cost of three years of trial preparation, dashing the minorities lingering hopes that the U.S. Constitution might provide them relief.¹¹⁷

The difficulties *Bolden* created were foremost on the minds of legislators when they amended Section 2 of the VRA in 1982. Congress added paragraph (b) to Section 2 that explained that Section 2(a) could be violated if a “totality of circumstances” test was met, rather than the more stringent purposeful discrimination test of the Fourteenth and Fifteenth Amendments. The totality of the circumstances test means that plaintiffs can present evidence that an election system *in effect* dilutes the minority vote, along with examples of *other types of racial discrimination* that occur in the jurisdiction, rather than having to show that the particular election system was adopted with a racially discriminatory purpose.

The amended Section 2 was used effectively in litigation immediately after 1982, with the seminal case of *Thornburg v. Gingles* in 1986 establishing a three-part test that plaintiffs could meet in order to prove a Section 2 violation even if they could not prove that an election system was instituted for the purpose of discriminating with respect to voting on the basis of race. The *Gingles* test requires the racial, ethnic, or language minority group to prove that it is:

- (1) sufficiently large and geographically compact to constitute a majority in a single-member district;
- (2) politically cohesive; and
- (3) in the absence of special circumstances, that bloc voting by the white majority usually defeats the minority’s preferred candidate.¹¹⁸

The Court will also look at factors identified by the Senate in the 1982 amendment of Section 2. These factors clarify the “totality of circumstances” requirement in Section 2.¹¹⁹ Modern legal strategies to overcome minority vote dilution must still operate within the *Gingles* framework. However, this does not mean that the remedy imposed in *Gingles* (majority-minority SMDs with winner-take-all plurality voting) must be applied wherever a Section 2 violation occurs. In addition, Section 2 litigation is not the only strategy that can be used to remove

117 Chandler Davison, *Minority Vote Dilution: An Overview*, in MINORITY VOTE DILUTION 1, 2 (Chandler Davidson ed., 1984).

118 *Thornburg*, 478 U.S. at 49–51.

119 The list of Senate factors and a brief discussion of how they are used in litigation is available here: *Section 2 of the Voting Rights Act*, U.S. DEPT OF JUST., http://www.justice.gov/crt/about/vot/sec_2/about_sec2.php (last updated Aug. 8, 2015).

minority vote dilution. The remainder of this section compares the *Gingles* remedy to other election systems used in the United States to prevent minority vote dilution.

B. Remedying Minority Vote Dilution: The Problem of Majority-Minority SMDs

The benefits of the *Gingles* remedy are most clear where the fact scenario is similar to that in *Gingles*. That is, where an “at-large scheme consistently, systematically dilutes the voting strength of a geographically isolated racial or ethnic minority.”¹²⁰ There are multiple reasons why this particular scenario is becoming less common, and therefore why systems other than majority-minority SMDs are more likely to protect the voting rights of racial and ethnic minorities. These reasons are discussed below.

i. Decreasing Residential Segregation

America is becoming less residentially segregated.¹²¹

The movement of people of color into relatively white suburban areas causes those suburbs to become more diverse (in that they include people of multiple races and ethnicities) but not necessarily residentially integrated.

Many of the areas that have new populations of color still have almost entirely white representation at the school board or local government level. In many cases this is because at-large districts are used to elect the local board. For example, the Hanover Park, Illinois, town council is all white, yet forty-four percent of the population is Black, Latino, or Asian American.

The consequence of reduced segregation is that majority-minority SMDs cannot be drawn to protect the voting rights of people of color. The *Gingles* remedy only protects geographically compact minority communities. As long as people of color do not make up a majority of new neighborhoods and racially polarized voting persists,¹²² there will be no minority representation on local representative bodies.

ii. Irregular Town Boundaries

Unlike county boundaries, which are mostly square in Illinois, and school board boundaries, which are also fairly smooth, town boundaries are often uneven, winding in and out of communities, along some roads and not others, and very often including unincorporated areas within the town boundary. In order to keep SMDs as contiguous as possible (it may not be possible if the town itself is non-contiguous),

120 Jim Blacksher & Larry Menefee, *At-Large Elections and One Person, One Vote: The Search for the Meaning of Racial Vote Dilution*, in MINORITY VOTE DILUTION 203, 233 (Chandler Davidson ed., 1984).

121 Stephanopoulos, *supra* note 3, at 1343–48.

122 Racially polarized voting occurs when one racial or ethnic minority group prefers one candidate or set of candidates and a different racial or ethnic minority group prefers different candidates. For example in Alabama in 2012, white voters voted for President Obama at a rate of about eight percent, while Black voters voted for the President at a rate of around ninety-eight percent. This represents a huge polarity in voting preferences by race.

district boundaries can only be drawn in certain ways, which can prevent the drawing of majority-minority districts.

iii. Lack of Minority Voting Cohesion

There are a number of cities or school boards that have a combined minority population over fifty percent and yet, in at-large elections, all of the elected officials are white. It may be that minority voter turnout is lower than that of white voters. However, it could also be that the minority communities do not vote together to elect candidates of choice, so if the plurality of voters are white and vote cohesively, they will be able to elect all of the candidates for the local board.

iv. Low Turnout or Lack of Candidates

There are some city councils and school boards that are majority-minority or even plurality Black or Latino, and yet they continue to elect an all-white council or board. An explanation for this is lower voter turnout by the minority community. The Joint Center for Political and Economic Studies notes that minority turnout in local elections is worse than white turnout (this does not always hold for federal general elections).¹²³ As long as this situation continues, even with cumulative or ranked choice voting, it will be hard to improve minority representation.

v. The Problem of Prison-Based Gerrymandering

Prison-based gerrymandering occurs because prisoners are counted at their prison addresses by the U.S. Census Bureau, but they cannot actually vote. Thus, if a district is drawn to include a nearby prison, it will consist of far fewer actual eligible voters than a neighboring district (though they have the same total population). The most egregious example in the country is in the city of Anamosa, Iowa, where each City Council ward has around 1,370 people, but one ward has 1,321 prisoners and 58 non-prisoners. This means that 58 people have the voting power of 1,370 for the city council.¹²⁴

In Illinois, the biggest distortion of prison gerrymandering occurs because sixty percent of the prison population comes from Cook County, yet ninety-nine percent of the population is housed and counted in districts outside of Cook County.¹²⁵ This leads to less comparative urban representation and greater rural representation.

vi. Growing Minority Populations

123 KHALILAH BROWN-DEAN, ZOLTAN HAJNAL, CHRISTINA RIVERS & ISMAIL WHITE, JOINT CTR. FOR POL. & ECON. STUD., 50 YEARS OF THE VOTING RIGHTS ACT: THE STATE OF RACE IN POLITICS 12–14, <http://jointcenter.org/sites/default/files/VRA%20report%2C%208.5.15%20%28540%20pm%29%28update%29.pdf> (last visited Mar. 14, 2015).

124 See *Prison Gerrymandering Project*, PRISON POL'Y INITIATIVE, <http://www.prisonersofthecensus.org/impact.html> (last visited Mar. 14, 2001).

125 *Id.*

The Census only occurs every ten years and it is usually accompanied by redistricting (except where at-large elections with winner-take-all voting is used), but throughout the decade people move, citizens turn eighteen, and residents are naturalized. If fair representation systems are used, then the election system can ensure that as soon as a minority community is large enough to elect a candidate of their choice, they can do so. If at-large systems are used, then the jurisdiction does not need to change to SMDs or move district boundaries until it is sued under Section 2 of the VRA or until the next census is released.

vii. Problems with Majority-Minority Districts for the Black Population

Many researchers have found that district-based elections increase Black representation when they replace winner-take-all at-large systems.¹²⁶ Despite this, there are three main criticisms leveled at majority-minority districts for the Black community. First, as a matter of substantive representation, packing Black voters, who are predominantly Democratic, into single districts can create districts in the surrounding areas that are more Republican, resulting in the election of more Republicans to the legislature, which may be less likely to support the interests of the Black community.¹²⁷ Cameron, Epstein, and O'Halloran found in 1996 that the 1990 round of congressional redistricting's focus on using majority-minority districts to ensure that communities of color could elect candidates of choice diluted the minority influence in surrounding areas and led to "an overall decrease in support for minority sponsored legislation."¹²⁸

Cameron, Epstein, and O'Halloran believe that if SMDS are used, there is a tradeoff between increasing the number of minority officeholders and enacting legislation that furthers the interests of the minority community. Their finding held true in the South, where they determined the optimal minority population in any district to be forty-seven percent (rather than over fifty percent as has been imposed

126 See Richard Engstrom & Michael McDonald, *The Election of Blacks to City Councils: Clarifying the Impact of Electoral Arrangements on the Seats/Population Relationship*, 75 AM. POL. SCI. REV. 344, 344–54 (1981); Richard Engstrom & Michael McDonald, *The Underrepresentation of Blacks on City Councils*, 44 J. POL. 1088, 1089 (1982). See also Theodore Robinson & Thomas Dye, *Reformism and Black Representation on City Councils*, 59 SOC. SCI. Q. 133, 136–37 (1978); Joseph Stewart, Robert England & Kenneth Meier, *Black Representation in Urban School Districts: From School Board to Office Classroom*, 42 W. POL. Q. 287, 291 (1989); ALBERT KARNIG & SUSAN WELCH, BLACK REPRESENTATION AND URBAN POLICY 134–49 (1980); see generally Richard Engstrom & Michael McDonald, *The Effect of At-Large Versus District Elections on Racial Representation in U.S. Municipalities*, in ELECTORAL LAWS AND THEIR POLITICAL CONSEQUENCES 203, 203–25 (G. Bernard & A. Lijphart eds., 1986).

127 See, e.g., Charles Cameron, David Epstein & Sharyn O'Halloran, "Do Majority-Minority Districts Maximize Substantive Black Representation in Congress?", 90 AM. POL. SCI. REV. 794, 795 (1996) (finding a tradeoff "between maximizing the number of Black representatives in Congress and maximizing the number of votes in favor of minority-sponsored legislation"); David Epstein et al., *Estimating the Effect of Redistricting on Minority Substantive Representation*, 23 J. L., ECON. & ORG. 499, 505–06 (2007); Christine L. Sharpe & James C. Garand, *Race, Roll Calls, and Redistricting: The Impact of Race-Based Redistricting on Congressional Roll-Call*, 54 POL. RES. Q. 31, 44 (2001).

128 Cameron et al., *supra* note 127, at 794.

by the Courts in Section 2 cases).¹²⁹ Outside of the South, they found that “substantive minority representation is best served by distributing Black voters equally among all districts.”¹³⁰

A second criticism of majority-minority districts, articulated, by Professor Abigail Thernstrom, is that a preoccupation with creating majority Black districts entrenches the racial segregation of minority voters. Thernstrom argues that “minority representation might actually be increased not by raising the number of black officeholders [elected from Black districts] but by increasing the number of officeholders, black or white, who have to appeal to blacks to win.”¹³¹

A version of this argument has been made by Professor Lani Guinier, who argues that “single-member districts may aggravate the isolation of the black representative”¹³² and possibly even lead to Black representatives being viewed as tokens that let the white majority feel that their role in the winning coalition has greater value.¹³³

In addition to opposing the tokenism of minority representation, Guinier highlights that the purpose of the VRA was—and the purpose of civil rights activists should be—minority empowerment, not just minority legislative presence.¹³⁴ She has argued that the current interpretation of the VRA (to protect majority-minority districts seemingly at the expense of all other protections) has “‘inescapably closed the door’ on the real goal of the civil rights movement, which was to alter the material condition of the lives of America’s subjugated minorities.”¹³⁵ Whether the door is closed is debatable, but the research in *The Color of Representation* shows that remedies other than SMDs will need to be used with more frequency if we are to improve the substantive representation of communities of color.

A third criticism is leveled by the national organization FairVote, which has long argued that one of the main problems with majority-minority districts is that they “require the continuation of some degree of housing segregation that concentrates minority populations within easily drawn boundaries.”¹³⁶ They elaborate:

129 Bartlett v. Strickland, 556 U.S. 1, 17 (2009) (“We find support for the majority-minority requirement in the need for workable standards and sound judicial and legislative administration. The rule draws clear lines for courts and legislatures alike. The same cannot be said of a less exacting standard that would mandate crossover districts under § 2.”).

130 Cameron et al., *supra* note 127, at 809.

131 ABIGAIL M. THERNSTROM, WHOSE VOTES COUNT? AFFIRMATIVE ACTION AND MINORITY VOTING RIGHTS 21 (1987); *Voting Rights Trap: The Resegregation of the Political Process*, NEW REPUBLIC, Sept. 1985.

132 GUINIER, *supra* note 35, at 81.

133 *Id.* at 64.

134 *Id.* at 55.

135 *Id.* at 54.

136 Robert Richie, Douglas Amy & Frederick McBride, *New Means for Political Empowerment: Proportional Voting*, POVERTY & RACE RES. ACTION COUNCIL, Nov.–Dec. 2000, at 1, 10, as reprinted in *How Proportional Representation Can Empower Minorities and the Poor*, PROPORTIONAL REPRESENTATION LIBR., <https://www.mtholyoke.edu/acad/polit/damy/articles/empower.htm> (last visited Mar. 14, 2015).

[A SMD system] has been effective for racial minorities and has remedied thousands of minority vote dilution lawsuits and dramatically increased racial minority representation where it has been applied. However, the effectiveness of majority-minority districts as voting rights remedy is dependent upon the geographic concentration of racial minorities. Geographic dispersion can limit majority-minority districts to fewer seats than a given racial minority's share of population. Even where districts provide an effective remedy in the short-term, they may not adequately represent the jurisdiction's diversity after its demography changes. Finally, many racial minority voters will be unable to elect preferred candidates when not living in majority-minority districts.¹³⁷

viii. Problems with Majority-Minority Districts for the Latino Population

SMDs do not increase descriptive representation for Latinos as much as they do for blacks and may actually decrease Latino descriptive representation.

Latinos are not as segregated from whites or from other minority groups as are Blacks.¹³⁸ This means that there are fewer places where it is even possible to draw a Latino majority-minority district. This is one of the major reasons why Latinos are more underrepresented than Blacks. Since the 1980s, Latinos have moved from more-segregated to less-segregated areas, becoming more integrated with both white and Black Americans.¹³⁹

In addition, any attempt to enfranchise minority communities must take into account varying levels of citizenship and political incorporation.¹⁴⁰ Even in communities where there are a significant number of Latinos who are American citizens, they may be still new enough to the country that they lack the social networks and community knowledge to run a successful campaign¹⁴¹ (and the community may be more resistant, especially in local races where candidates often run on a platform of how long they and their families have been in the community). In a city with low levels of citizenship and political incorporation, there may be one viable candidate and just enough Latino citizens across the city to elect that person, with a fair representation electoral system rather than SMDs with winner-take-all plurality voting system providing the only likelihood of that happening.

The scenario of the city with a high number of Latino noncitizens represents a particularly important case for minority representation. In a single-member-district system, each candidate may not have enough Latino citizens to ever be concerned with the interests of Latinos because they do not influence his or her chances for re-election. A system that allowed at least one Latino representative to be elected would then give that population some chance of having a voice.

137 *Fair Representation and the Voting Rights Act: Remedies for Racial Minority Vote Dilution Claims*, *supra* note 112.

138 Paru Shah, *Racing Toward Representation: A Hurdle Model of Latino Incorporation*, 38 AM. POL. RES. 84, 87. (2010).

139 See Stephanopoulos, *supra* note 3.

140 *Id.* at 88–89.

141 *Id.* at 90.

ix. Problems with Majority-Minority Districts for the Asian American Population

SMDs with winner-take-all plurality voting are even more problematic for the Asian American population, because their population is comparatively low throughout the country, making it hard to draw majority Asian American districts in most places.¹⁴² New York City elections provide the clearest example of how SMDs have failed the Asian American population. The use of ranked choice voting in New York City school board elections from 1970 to 1999 led to descriptive representation of Asian Americans, “many with almost exclusive support from Asian American voters.”¹⁴³ This result provided a “stark contrast” with the experiences of Asian American candidates in elections for other legislative bodies representing New York (that do not use ranked choice voting): in the late 1990s, “[e]ven with 800,000 Asian Americans, though there [we]re fifteen Asian American elected officials in the school boards, no Asian ha[d] been elected to the city council, state legislature, or Congress.”¹⁴⁴

C. Remedying Minority Vote Dilution: Fair Representation Systems

Given the myriad of potential problems with using SMDs to improve minority representation, I recommend the use of “fair representation systems” to overcome these boundaries. Fair representation systems used in the United States include cumulative and ranked choice voting (where used with MMDs). Overall, fair representation systems ensure that “a majority cannot control the outcome of every seat up for election. Instead, they ensure that the majority wins the most seats, but guarantee[s] access to representation for those in the minority.”¹⁴⁵

Cumulative voting was used to elect the Illinois House of Representatives for more than a century (1870–1980)¹⁴⁶ and was initially enacted to ensure that the minority party would have representation in a politically polarized state.¹⁴⁷ Cumulative voting is currently used in local elections in Alabama, California, Illinois,

142 California’s 49th state legislative district is the first majority Asian American state legislative district outside of Hawaii. See Daniela Gerson, *California’s First Asian Majority Legislative District*, ALHAMBRA SOURCE (Aug. 17, 2011), <http://www.alhambrasource.org/stories/californias-first-asian-majority-legislative-district>.

143 Magpantay, *supra* note 48, at 739, 773. This history led to the Department of Justice, in 1999, denying preclearance to a state law seeking to replace ranked choice voting for the school boards. Ultimately, school boards were shifted to not being elected at all, which is why ranked choice voting is not used in the city today.

144 *Id.*

145 *Fair Representation and the Voting Rights Act: Remedies for Racial Minority Vote Dilution Claims*, *supra* note 112.

146 *Black Representation Under Cumulative Voting in IL*, FAIRVOTE, <http://archive.fairvote.org/?page=419> (last visited Mar. 14, 2015).

147 *Effectiveness of Fair Representation Voting Systems for Racial Minority Voters*, FAIRVOTE (Jan. 2015), <https://d3n8a8pro7vhmx.cloudfront.net/fairvote/pages/127/attachments/original/1449690096/Fair-Representation-Systems-Voting-Rights.pdf?1449690096>.

New York, South Dakota, and Texas,¹⁴⁸ and ranked choice voting was previously used at the local level in Ohio and New York and is currently used in California, Maine, Minnesota, and Massachusetts.¹⁴⁹ Overall, more than 100 jurisdictions in the United States currently use fair representation voting to elect their representatives.¹⁵⁰

Fair representation systems not only improve many measures of minority representation, but they also lead to improved democratic outcomes generally.

i. Improved Minority Representation

First and foremost, for my purposes, the benefit of fair representation systems is that they allow people of color to elect candidates of their choice, where winner-take-all, at-large systems would, and SMD systems may, prevent them from doing so. As FairVote found, “in a study of 96 elections in 62 jurisdictions with cumulative voting or the single vote, black candidates were elected 96 percent of the time and Latino candidates 70 percent of the time when a black or Latino candidate ran.”¹⁵¹

In New York:

African Americans, [Latinos], and Asian Americans made up 37 to 47 percent of [the] City’s population during the three decades in which it used [ranked choice] voting for its school board elections. The minority groups won 35 percent to 57 percent of these positions, compared to only 5 percent to 25 percent of seats on the city council, which were elected using single-member districts.¹⁵²

During a period when the South elected zero Black representatives to Congress and State legislatures, Illinois’s cumulative voting system meant that at all times from 1894 to 1980 there was at least one Black legislator in the Illinois House (and in most years there were many more than that) despite the Black population in the state averaging roughly fourteen percent throughout that period.¹⁵³

148 Nicholas O. Stephanopoulos, *Our Electoral Exceptionalism*, 80 U. CHI. L. REV. 769, 835 (2013); *Communities in America Currently Using Proportional Voting*, FAIRVOTE, <http://archive.fairvote.org/?page=2101> (last visited Mar. 14, 2015).

149 *Id.* at 835.

149 *Fair Representation and the Voting Rights Act: Remedies for Racial Minority Vote Dilution Claims*, *supra* note 112. In addition, many corporations in the US (about ten percent of the S&P 500) use cumulative voting to elect their boards, including AON, Toys ‘R’ Us, Walgreen’s, and Hewlett-Packard. *See also Cumulative Voting—A Commonly Used Proportional Representation Method*, FAIRVOTE, <http://archive.fairvote.org/?page=226>.

151 *Effectiveness of Fair Representation Voting Systems for Racial Minority Voters*, *supra* note 147. *See also* David Brockington et al., *Minority Representation Under Cumulative and Limited Voting*, 60 J. OF POL. 1108, 1115 (1998); Steven Hill & Rob Richie, *New Means for Political Empowerment in the Asian Pacific American Community*, 11 HARV. J. ASIAN AM. POL’Y REV. 335, 340 (2001) (citing election of Bobby Agee in Chilton County, AL despite being outspent twenty to one by the highest spending candidate).

152 Stephanopoulos, *supra* note 148, at 849 (citations omitted).

153 *See, e.g.,* Campbell Gibson & Kay Jung, *Historical Census Statistics on Population Totals by Race, 1790 to 1990, and by Hispanic Origin, 1970 to 1990, for Large Cities and Other Urban Places in the United States* 50–51 tbl. 14 (U.S. Census Bureau Population Div., Working Paper No. 76, 2005) (listing statistical population information by demographic for large cities in Illinois from 1840 to 1990); Kathryn M. Harris, *Generations of Pride: African American Timeline, A Selected Chronology*, ILL. HIST. PRESERVATION AGENCY, <https://www.illinois.gov/iHPA/Research/Pages/GenPrideAfAm.aspx> (last visited Nov. 2, 2016) (detailing the chronology of African American presence in Illinois).

Where fair representation systems have been implemented to remedy a Section 2 violation, the system has resulted in communities of color being able to elect their candidates of choice and has improved descriptive representation. This has been shown for the Black, Latino, and Native American communities.¹⁵⁴

Ranked choice voting (RCV) provides additional value for racial and ethnic minorities. Because it creates incentives for candidates to reach out to more voters, it tends to result in less racially polarized campaign tactics and more inclusion for racial minority voters. Even in single-winner, winner-take-all elections, ranked choice voting appears to have an impact. For example, the imposition of ranked choice voting in San Francisco and Oakland led to the first Asian American mayor being elected in San Francisco and to the first Asian American—and first female—mayor being elected in Oakland.¹⁵⁵ In San Francisco, of eighteen offices elected by RCV, sixteen are held by people of color—up from nine when RCV was first used in 2004.¹⁵⁶

The ability of communities of color to elect candidates of their choice in fair representation systems is not limited to groups that are residentially segregated, which, as Nicholas Stephanopoulos has argued, is more equitable because “[s]patially dispersed groups are just as deserving of representation” as segregated ones.¹⁵⁷ This ability also means that all members of a community of color in a jurisdiction can have a say in who is elected to represent that community of color, rather than just those people of color that happen to live in the majority-minority district.

ii. Cross-Racial Coalition Building

As well as improving descriptive representation and allowing communities of color to elect candidates of their choice, fair representation systems have also been shown to foster the construction of cross-racial coalitions among both voters and legislators.¹⁵⁸ This is particularly true for RCV, given that voters have every incentive

154 FairVote’s Amicus Curiae Brief Regarding Proposed Remedial Plans at 17–18, *Montes v. City of Yakima*, 40 F. Supp. 3d 1377 (E.D. Wash. 2014) (No. 12-3108) (citing Richard Engstrom, Cumulative and Limited Voting: Minority Electoral Opportunities and More, 30 ST. LOUIS U. PUB. L. REV. 97, 125 (2010) (describing the first Latino representative)) (citing Robert R. Brischetto & Richard L. Engstrom, *Cumulative Voting and Latino Representation: Exit Surveys in Fifteen Texas Communities*, 78 SOC. SCI. Q. 973, 975 (1997) (describing the first Latino and Native American representatives)) (citing Richard H. Pildes & Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. CHI. LEGAL F. 241, 272–73 (describing the first Black representative)).

155 *About the Mayor*, CITY & COUNTY OF S.F., <http://sfmayor.org/about-mayor> (last visited Nov. 18, 2016); Tina Trenkner, *Oakland, Calif. Elects First Female, Asian-American Mayor*, GOVERNING (Mar. 2011), <http://www.governing.com/topics/politics/oakland-california-elects-first-female-asian-american-mayor.html>. But see Troy M. Yoshino, *Still Keeping the Faith: Asian Pacific Americans, Ballot Initiatives, and the Lessons of Negotiated Rulemaking*, 6 ASIAN AM. L. J. 1, 19–20, 22 (1999). Yoshino discussing the fact that in many places the Asian American community will be too small to reach the threshold of exclusion. This is less relevant in Illinois because there are local jurisdictions with an Asian American population much greater than the three percent he writes of.

156 Richard DeLeon & Arend Lijphart, *In Defense of Ranked Choice Voting*, SFGATE (Jan. 22, 2013, 6:49 PM), <http://www.sfgate.com/opinion/openforum/article/In-defense-of-ranked-choice-voting-4215299.php>.

157 Stephanopoulos, *supra* note 148, at 847, n.3.

158 FairVote’s Amicus Curiae Brief, *supra* note 154, at 16 (citing Steven J. Mulroy, *Alternative Ways Out: A Remedial Map for the Use of Alternative Electoral Systems as Voting Rights Act Remedies*, 77 N.C. L.

to rank candidates outside their own racial group (in addition to selecting their preferred candidate in the number one position). Even when voters in a racial minority are below the threshold of exclusion necessary to elect their most preferred candidate, their second choice vote will be sought after by multiple candidates, possibly from a variety of racial, ethnic, and political backgrounds.

iii. Increased Representation for All Political Minorities

Fair representation systems show huge benefits to racial minorities, but they may also “open up the political process for politically cohesive minorities, not just racial minorities.”¹⁵⁹ In addition to the minority political party being able to gain representation, other demographic minorities can also have a better chance at being elected. For example, alternative election systems can lead to greater diversity by gender, age, religion, sexuality, or country of origin, depending on the communities of interest in the jurisdiction.

iv. Reduced Partisan Polarization

Cumulative voting in Illinois historically increased “the variance of the policy views held by both Democratic and Republican members of the state house.”¹⁶⁰ This holds not just historically for Illinois but has also been suggested as a way to reduce polarization across the board in modern America: “[i]f one’s greatest concern in a . . . legislature is partisan gridlock, multi-member districts could potentially ease the partisan feuding by making each party more ideologically diverse.”¹⁶¹

v. Improved civic engagement

Fair representation systems can lead to improved civic engagement by communities of color. For example, a study of cumulative voting “found that their elections feature higher turnout, more active campaigning by candidates, greater mobilization by outside groups, and more contested races than either single-member districts or at-large regimes” and “voters worldwide in preferential systems [for example, ranked choice voting] exhibit greater satisfaction with democracy and are more likely to believe their elections are conducted fairly.”¹⁶²

REV. 1867, 1903 (1999)) (citing Richard H. Pildes & Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. CHI. LEGAL F. 241, 297 (1995)).

159 GUINIER, *supra* note 35, at 71.

160 Stephanopoulos, *supra* note 148, at 855.

161 *Id.* (quoting Greg D. Adams, *Legislative Effects of Single-Member Vs. Multi-Member Districts*, 40 AM. J. POL. SCI. 129, 141–42 (1996); *see also* Gary W. Cox, *Centripetal and Centrifugal Incentives in Electoral Systems*, 34 AM. J. POL. SCI. 903, 927 (1990) (“In multimember districts, cumulation promotes a dispersion of competitors across the ideological spectrum.”).

162 Stephanopoulos, *supra* note 148, at 851–52.

vi. Removal of Race Conscious Districting

While many racial justice advocates do not accept that redistricting should avoid being race conscious, there are skeptics in the community and on the Supreme Court¹⁶³ of an over-zealous focus on race in redistricting¹⁶⁴ and in remedying past discrimination generally.¹⁶⁵ For these critics, fair representation systems may be more acceptable than SMD systems because they “do not compel any consideration of race in their design or operation. They promise levels of minority representation comparable to those produced by Section 2, but without any of the ‘dividing’ and ‘segregating’ that are sometimes linked to the provision.”¹⁶⁶

IV. APPLYING THE THEORY: THREE CASE STUDIES

Armed with the knowledge that I could help my community by improving minority representation, in particular through the use of fair representation systems, I set out to find communities to work with on these important issues.

The overwhelming lesson from these efforts was that creating change at the local level is tough but possible. Some of the constraints include that there are limited resources to support local organizing efforts; the central authorities are powerful and able to control, or even manipulate, the ballot initiative process, and litigation is costly and time consuming. In this section, I present three stories from communities that I have worked with on minority representation issues. None can be considered a complete success, but all show that there is some hope for positive change if attorneys and community members work hard together toward common goals.

A. Joliet...The Dice Were Loaded from the Start

Joliet is the fourth largest city in Illinois, with a population of almost one hundred and fifty thousand people.¹⁶⁷ The heart of Joliet is about an hour’s train ride southwest of downtown Chicago. Joliet has seen a large increase in its minority population from 1990 to 2010. As of the 2010 Census, Joliet was approximately fifty-three percent white, twenty-eight percent Latino, sixteen percent Black, and two percent Asian American.¹⁶⁸ It had eight council members, of which two were Black,

163 See *Parents Involved in Cmty. Sch. v. Seattle Schs. Dist. No. 1*, 551 U.S. 701, 748 (2007) (“The way to stop discrimination on the basis of race is to stop discriminating on the basis of race.”).

164 See *Shaw v. Hunt*, 517 U.S. 899 (1996); *Bush v. Vera*, 517 U.S. 952 (1996); *Shaw v. Reno*, 509 U.S. 630 (1993).

165 *Fisher v. Univ. of Texas at Austin*, 133 S. Ct. 2411 (2013).

166 *Holder v. Hall*, 512 U.S. 874, 908–12 (1994); Stephanopoulos, *supra* note 148, at 849.

167 *Quick Facts: Joliet City, Illinois*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/1738570> (last visited Nov. 18, 2016).

168 *Voting Age Population by Citizenship and Race (CVAP)*, U.S. CENSUS BUREAU, https://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html (last updated Feb. 10, 2016) (All numbers reported in this section are calculated using the following Census demographics: “white:” non-Hispanic white; “Latino:” Hispanic or Latino origin; “Black:” non-Hispanic Black plus non-Hispanic Black+White; “Asian American:” non-Hispanic Asian plus non-Hispanic

and six were non-Hispanic white. The city council was chosen from five single-member districts (of which two were majority-minority) and three council members were elected at-large. I have been privileged to work with the Concerned Citizens of Joliet (CCJ) and Jorge Sanchez of the Mexican American Legal Defense and Educational Fund. Jorge and I have attended multiple local meetings, discussions, education sessions, church events, and fairs to discuss redistricting with the local community. By 2014, Joliet was ready for change.

The CCJ is a multi-generational, multi-ethnic, multi-religious organization that focuses on helping all the people of Joliet—not just the wealthy elites. CCJ worked effectively as a diverse coalition to prevent a for-profit immigration detention prison from being erected in Joliet. High from their victory on this important issue, the group set out to tackle a new issue. The CCJ decided that they could not sufficiently hold their city council accountable for its policy positions and suspected that the redistricting system was to blame.

CCJ sensed that the redistricting system was unfair, with almost all of the city council members living in the tiny (and comparatively wealthy) “Cathedral District”, leaving the south, east, and west sides all without a council member close to them. This resulted, they believed, in an unequal distribution of resources (trash and snow are quickly cleaned up in the center of town, but left for days on the outskirts; the center of town has its parks upgraded while the edge of town has chain link fences and broken playground equipment); and there was a lack of awareness of the concerns of the outlying areas, in particular those that pertain to the Black and Latino communities.

The CCJ developed a campaign “Joliet for 8 districts,” seeking to place an initiative on the ballot asking the city to vote to have eight single-member districts. In 2016, the CCJ submitted their signatures for this proposition for the third time, and for a third time were blocked from the ballot. There have been a series of roadblocks to their community action, well beyond the usual struggles of a meagerly funded volunteer group seeking to create change.

One initial challenge I faced as a practitioner was that the CCJ had already decided that they wanted eight SMDs. I had wanted to articulate the benefits of ranked choice voting and MMDs (at least for the three already at-large seats), but the community found that option to be foreign to its experiences, and the community had already decided that having council members be geographically spread across the town was of prime importance to them. This experience led me to refine the ways I present ranked choice voting discussions to community groups and helped me to understand that there is more to representation than just descriptive and substantive issues—spatial patterns (of communities and candidates) are intertwined with our beliefs about effective representation.

Asian+White. Other races and ethnicities make up the remainder of the population, but are not reported in every case. American Community Survey 2010–14).

i. The Ballot Initiative Strategy

To place an initiative on the ballot in Illinois, a home rule county,¹⁶⁹ a group must gather the number of signatures equal to eight percent of the vote in that jurisdiction for governor in the most recent election. In 2014, when the CCJ first gathered signatures, the local authorities were not able to determine how many signatures they actually required because the gubernatorial vote is collected at the precinct and county level, and the city crosses two counties and splits some twenty precincts.

A local citizen—with connections to the incumbent council members—challenged the signatures gathered by the CCJ in 2014, resulting in the challenger, the CCJ (and Jorge and I with them), and the authorities holding a week of hearings and signature review sessions to determine whether the CCJ had met the statutory signature requirement. The most farcical, and quite possibly unconstitutional, aspect of the whole week was that the local review board (staffed, by Illinois statute, by the mayor, a current city council member, and the city attorney)¹⁷⁰ was informed that we would not be told how many signatures needed to be gathered until the number of signatures had been counted. Somewhat unsurprisingly, it turned out, a week later, that the number of signatures needed was just a few hundred more than those that had been validated. In addition to this, another questionable legal decision was made by the city council member on the local review board: he refused to recuse himself despite the fact he was elected from one of the three at-large positions and therefore subject to be removed if the ballot initiative went ahead and was approved.

Aside from the review board process, the room where signatures were validated quickly degenerated into a power play, as the county staff members claimed that people who had moved away from the address where they signed the petition could not be counted as a valid signature. The Illinois statutes are unclear on this point, so it was left to the local review board to decide how to interpret the law, resulting—again unsurprisingly—with those signatures being considered invalid.

One of the volunteer signature gatherers with the CCJ had toured a local short-term housing facility, Evergreen Terrace, to gather hundreds of signatures. Another CCJ member was a pastor to this community, and the residents there represent exactly the people that CCJ was trying to enfranchise (poor, predominantly minority, often sick and/or struggling with homelessness). Many of these residents of Evergreen Terrace had moved since signing the petition (the signature gathering had been going for around nine months by the time the signatures were reviewed). The review board decision meant that hundreds of signatures from these eligible voters were invalidated.

At the lowest ebb in the signature review week, I sat with one of the Latino leaders of the CCJ as she listened to the staff laugh at the “hard to pronounce names” of her neighbors, get confused as to whether someone was a duplicate signatory

169 ILL. CONST. art. VII § 6(a) (All towns over 25,000 are automatically home rule counties.).

170 10 ILCS § 10-9(3).

because the Latino “names were so similar,” and joke about how they had not bothered to learn Spanish in school.

After this unfair and, frankly, humiliating process, the CCJ pulled themselves back together to try to put the issue on the next ballot, in the local elections for 2015, but with the bulk of signature gathering occurring during the freezing winter months, they were unable to reach the target number of signatures.

In August 2016, the CCJ again submitted nearly four thousand signatures. They still did not know exactly how many signatures were needed because one of the two counties that Joliet sits in refused to respond to multiple letters requesting the target number. The estimate in the previous hearing was around 2,800.

The current mayor of Joliet was previously a council member and he had signed the 2014 petition to place the question on the ballot—he believed the people should get to vote on the question. Somewhat unsurprisingly, the petition was challenged (this time by the county clerk herself), and despite excellent pro bono representation from a large Chicago firm, the CCJ again lost their bid to place the question on the ballot.

In response to the outcry over the third petition being rejected, the Mayor appointed a Latina to the City Council. The person has no connection to CCJ or the communities they represent, and so it remains to be seen whether this will be a step forward or backward for minority representation in Joliet.

ii. Litigation

The demographics have changed in Joliet since 2010. In particular, many of the Latino community has turned 18 or gained citizenship, such that even in 2015, there was a large enough Latino and Black citizen voting age population that if they continued to vote together to elect candidates of their choice, three majority-minority districts could be drawn. There is no doubt that with updated census data, this figure will rise.

It is likely that the CCJ will have a viable Section 2 case if the Latina that was appointed to the Council is not elected to her position (and in particular if she is not elected with evidence of racially polarized voting), but with VRA litigation being so complex, expensive, and time intensive, it is unlikely that the VRA will provide a change for the CCJ members before the next census is taken. The CCJ will need to get the resources for political science experts, discovery, and court fees to show that if the city were divided into eight districts, three would be majority-minority (without race predominating in the drawing of the districts).

It is quite possible that by the time the next full census results are released in 2021, Joliet will be majority-minority—perhaps even using the Citizen Voting Age Population (CVAP). This could result in a bizarre reversal of incentives by the majority white council members. For white voters to be represented at close to proportional level in a majority-minority town, the city council would favor removing the at-large seats. If it came to this, at least the CCJ would have their preference for council members who live closer to their constituents realized, even if it takes nefarious reasoning to get there.

B. An Accidental Win in Blue Island

Blue Island is a small city immediately south of the border of Chicago. It has a population of just over twenty-three thousand, of which twenty-one percent are white, forty-seven percent are Latino, and thirty percent are Black.¹⁷¹ When CVAP is used, the white population grows to twenty-nine percent, the Black population grows to thirty-eight percent, while the Latino population drops to just thirty percent. Blue Island, like Chicago to its north, is still fairly segregated, particularly for the Black community.

i. Pushing for Public Hearings

In 2015, when we¹⁷² met with the Citizens in Action Serving All (CASA) group in Blue Island, there were seven two-member districts constituting their council. Of the fourteen members, two were Latino and two Black. There was no majority Latino district and only two majority Black districts.

We spent a few weekends sitting down with local community members, showing them the mapping capabilities of Maptitude for Redistricting and discussing where they would prefer the district lines to be drawn. We had to consciously remind the excited rooms that it was not likely that we would be able to get the Council to adopt the plan we wanted, but that knowing what the districts are and could be would be helpful in itself.

As we suspected, we were able to draw a plan using the most recent CVAP data, with three majority Black districts and one majority Latino district. We then needed a way to convince the council (or a court) to adopt a new plan. Blue Island does not have home rule, so it was not possible to use a ballot initiative to create change. Strangely, Blue Island had not redrawn its city council districts since 1996, and as two census counts had come and gone, the districts were in violation of the one person, one vote (OPOV) requirement of the federal Constitution.¹⁷³ We were able to use this as leverage to ask the council to hold public hearings to redraw the seven districts, and the CASA group advocated for the plan with four majority-minority districts.

After two months of Council hearings and public hearings of the Council's Redistricting Subcommittee to discuss possible district plans, the City Council surprised no one by voting to adopt its own district plan. The major difference between the CASA plan and the city council plan was that the latter protected incumbents, while the former was drawn without regard for current council members. CASA opposed the protection of incumbents at the public hearings, but the council opted to protect its self-interest in its vote.

171 *Voting Age Population by Citizenship and Race (CVAP)*, *supra* note 168. All numbers are reported for non-Hispanic white, Latino, non-Hispanic Black plus non-Hispanic Black+White. Other races and ethnicities make up the remainder of the population, but are not reported here. American Community Survey 2010–2014

https://www.census.gov/rdo/data/voting_age_population_by_citizenship_and_race_cvap.html.

172 My colleague Annabelle Harless and I worked with CASA together throughout the work in Blue Island.

173 *Avery v. Midland Cty.*, 390 U.S. 474 (1968).

By good fortune (and the not-unexpected increase in the proportion of Blue Island that is Black or Latino), the new CVAP data (the 2011–15 estimates) was released by the Census Bureau a few days before the council's final vote. CASA was able to tell the council before their vote that even though they disliked that the plan protected incumbents, they were pleased that it too had three majority Black and one majority Latino district. The next election in Blue Island will now include four of seven districts with a majority of people of color. Hopefully the communities of color can respond to this good news by electing their preferred candidates across the city.

ii. Online Public Redistricting

Another notable aspect of our work in Blue Island was that we decided to use a free trial of a service called iRedistrict,¹⁷⁴ to make map drawing available to the community online. iRedistrict's main power as a piece of software is its ability to draw random simulations of districts. We were using it for a slightly different purpose: to allow the public to make changes to the old redistricting plan, or the CASA plan, or to create their own new plan, and to see the demographic effects of such changes in real time.

In addition to using iRedistrict, we placed Keyhole Markup Language (KMZ) files and descriptions of data onto the Google Maps Engine, and thereby made the statistics (and boundaries) of current, and various proposed plans, available to anyone with a network connection (we also displayed these tools at the Redistricting Committee Public Hearings).

The community was reluctant to embrace iRedistrict, likely because the editing aspect of the software had sufficient bugs as to make the map drawing process quite frustrating for the casual user. In total, we only had seven users sign up to use the online map drawing software.

To our surprise though, the Google Maps Engine districts and statistics were viewed over one thousand times and used by local media in their reporting of the case. Each public hearing had around thirty, and at times more than fifty, people in attendance (largely thanks to letter box pamphlets distributed by Mark and Kathy Kuehner of CASA). I believe we showed that there is an interest, even in a small community considering very local issues, in using online tools to better understand local government, and it is likely that this interest can be harnessed and enlarged through online organizing tools.

Overall, Blue Island was a success to the extent that CASA and the community will now have districts that are constitutional and will have the possibility of electing candidates of choice of the minority community to a majority of the council seats. Blue Island also showed the utility of online redistricting tools in community organizing

174 See *iRedistrict®: Smart Redistricting Software for Territory Mapping with Powerful Optimization*, ZILLION INFO, <http://zillioninfo.com/product/iRedistrict> (last visited Nov. 18, 2016) (iRedistrict® is an award-winning redistricting software with powerful optimization algorithms, intuitive user controls, easy editing interface, and customizable reporting. It received two National Science Foundation (NSF) SBIR Awards in 2013 and 2014.).

around this issue. We were not able to prevent council members from focusing on their own self-interest in their vote for new districts, but very few jurisdictions are ever able to achieve such a feat.

C. Crete-Monee School Board Ten Years On

In our research into local redistricting in Illinois, we tried to find success stories—places where minority representation had increased and the community was in a better place because of it. We reviewed all the prior Section 2 cases from Illinois and thought that the Crete-Monee School District case looked particularly promising.

Crete-Monee School District had been sued in the late 1980s¹⁷⁵ over a possible Section 2 violation. By the mid-1990s, the case eventually resulted in a consent decree, and as a result the board started electing Black representatives to the school board.¹⁷⁶ As of March 2017, the school board has three Black and four white members, and the president is an African American.¹⁷⁷

We set up a meeting with Dr. Hall, the president of the school board, to find out all the ways that the diverse board was helping the community. Dr. Hall agreed that the diverse board was better able to ensure racial equity in the school policies and procedures, and the district report card suggests the district is at or just below average on most statewide metrics,¹⁷⁸ but Dr. Hall lamented that the diverse board had not resulted in better racial relations in the community. In 2015, the district successfully defended against a challenge to part of the consent decree, and not-at-all subtle racial overtones were used in local school board election campaigns (one campaign sought to “change the face” of the school board).

V. THE ROAD AHEAD

As long as there are communities willing to push for change to local redistricting practices, we practitioners must make ourselves aware of the best possible strategies and tactics we can use to help communities seek better outcomes.

A. Federal Litigation

Federal Section 2 litigation can be pursued to remedy the most egregious cases of minority vote dilution, where the minority population in question is geographically concentrated.

175 Palmer v. Bd. of Educ., 46 F.3d 682, 683 (7th Cir. 1995).

176 Consent Decree – Agreed Order 08/13/1998, CRETE-MONEE SCHOOL DISTRICT 201-U, <http://www.cm201u.org/index.aspx?nid=4146>.

177 See *Crete-Monee School District 201-U Board of Education*, CRETE-MONEE SCHOOL DISTRICT 201-U, <http://www.cm201u.org/index.aspx?NID=139> (last visited March 6, 2017).

178 See, e.g., *Crete-Monee CUSD 201 U*, ILL. REPORT CARD (2015–2016), <http://illinoisreportcard.com/District.aspx?districtId=56099201U26>.

B. Section 2 Remedies

A jurisdiction found to violate Section 2 is able to choose how it will remedy the violation¹⁷⁹ and, with the approval of the court, can then implement the new system. In many cases, jurisdictions choose to adopt SMDs, but not in every case. Recently, a defendant in Port Chester, New York, was able to implement cumulative voting to remedy a Section 2 violation, over the objection of the plaintiff.¹⁸⁰ Many jurisdictions in Alabama that were forced to change from at-large elections after the long running *Dillard* litigation chose to adopt cumulative or single voting in the 1980s and 1990s.¹⁸¹

Thus far, no jurisdiction has chosen to adopt ranked choice voting in response to a Section 2 violation. However, it was requested (and approved by the court) as a remedy to a potential Military and Overseas Voter Empowerment Act (MOVE Act) violation in Alabama in 2013,¹⁸² and it was used for overseas voters in a similar way in four additional states in 2014 (Arkansas, Louisiana, Mississippi, and South Carolina).¹⁸³

Pam Karlan has argued since 1989 that Section 2 remedies can be innovative and non-traditional.¹⁸⁴ She explains:

Once a right and a violation have been shown, the scope of a district court's equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies . . . Congress squarely stated that a court faced with a violation of Section 2 must 'exercise its traditional equitable powers so that it completely remedies the prior dilution of minority voting strength and fully provides equal opportunity for minority citizens to participate and to elect candidates of their choice.' A court faced with a violation 'cannot authorize a remedy . . . that will not with certitude completely remedy the Section 2 violation.'¹⁸⁵

Courts have rejected remedies that have been proposed by defendants and explained how options provided by the plaintiff will remedy the section violation better,¹⁸⁶ but ultimately the defendant is able to determine the remedy for a Section 2 violation. The remedies in Alabama included not only cumulative voting but also an increase in the number of commissioners from four to seven and the institution of a system whereby the commission chairmanship would rotate between commissioners,

179 Harper v. City of Chicago Heights, 223 F.3d 593, 599–600 (7th Cir. 2000).

180 United States v. Vill. of Port Chester, 704 F. Supp. 2d 411, 448–49 (S.D.N.Y. 2010).

181 Richard H. Pildes & Kristen A. Donoghue, *Cumulative Voting in the United States*, 1995 U. CHI. LEGAL F. 241, 263–66 (1995).

182 United States v. Alabama, 778 F.3d 926 (11th Cir. 2015).

183 Dania N. Korkor, *Overseas Voters from 5 States to Use Ranked Choice Voting Ballots in 2014 Congressional Election*, FAIRVOTE BLOG (Apr. 17, 2014), <http://www.fairvote.org/research-and-analysis/blog/overseas-voters-from-5-states-to-use-ranked-choice-voting-ballots-in-2014-congressional-election/>.

184 Pamela S. Karlan, *Maps and Misreadings: The Role of Geographic Compactness in Racial Vote Dilution Litigation*, 24 HARV. C.R.- C.L. L. REV. 173, 218–19 (1989).

185 *Id.* at 219.

186 See *Dillard v. Crenshaw Cty.*, 831 F.2d 246, 250–253 (11th Cir. 1987).

allowing a Black commissioner to occasionally be chairman, if one had been elected.¹⁸⁷ These provisions were implemented upon the recommendation of a “special master,” a magistrate with the federal court. The Supreme Court’s finding in *Holder v. Hall* has now limited the ability of a court to impose a remedy requiring an increase in the number of districts in an election jurisdiction in response to a Section 2 violation,¹⁸⁸ but there has been no limitation on the type of election system that can be used to remedy a Section 2 violation.

The most promising avenue to use to argue for fair representation systems comes from the myriad of cases that have dealt with the question of imposing a remedy to a statewide redistricting violation. In these cases, defendants have argued that particular proposed remedial plans do not fully remedy the constitutional or statutory error. The remedial phase of redistricting cases is within the court’s equitable jurisdiction, and since 1972 the Supreme Court has recognized that the “scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.”¹⁸⁹ Though broad, “[t]he remedial powers of an equity court . . . are not unlimited.”¹⁹⁰ It is the court’s duty to navigate between seeking a remedy to an unconstitutional redistricting plan and minimizing the disturbance of legitimate state policies.¹⁹¹

There are cases where courts have explicitly overruled the imposition of remedies by the legislature, and these cases should be used to push for fair representation remedies. In one case, the reason the Court chose to draw its own plan was because the Court found that “[i]n its record of doggedly clinging to an obviously unconstitutional plan, the Legislature has left us no basis for believing that, given yet another chance, it would produce a constitutional plan.”¹⁹² In that case, the Court explained that it could not “turn a blind eye on the record of the Legislature.”¹⁹³

In addition to the difficulties at the remedies phase, additional difficulties of federal Section 2 litigation include:¹⁹⁴

- “[v]oting rights suits are actually among the most time- and labor-intensive of all actions brought before the federal courts;”¹⁹⁵
- attorneys’ fees do not necessarily follow from a victory and the cost of litigating a Section 2 case is extremely high; and

187 Dillard v. Chilton Cty. Comm’n, 495 F.3d 1324, 1327 (11th Cir. 2007).

188 Holder v. Hall, 512 U.S. 874 (1994).

189 Sixty-Seventh Minn. State Senate v. Beens, 406 U.S. 187, 191 (1972) (citing Swann v. Charlotte-Mecklenburg Bd. of Educ., 402 U.S. 1, 15 (1971)).

190 Id. (citing Whitcomb v. Chavis, 403 U.S. 124, 199 (1971)).

191 Id. at 202.

192 Hays v. State of La., 936 F. Supp. 360, 372 (W.D. La. 1996).

193 Id.

194 See Paige Epstein, *Addressing Minority Vote Dilution Through State Voting Rights Acts* (U. Chi. Pub. Law & Legal Theory, Working Paper No. 474, 2014), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2422915; see also Nicholas O. Stephanopoulos, *The South After Shelby County*, 2013 SUP. CT. REV. 55 (2013).

195 Stephanopoulos, *supra* note 148, at 850.

- the defendant is allowed to choose how to remedy a violation and so can implement a new election system that meets a bare minimum requirement of representation of the minority population.

C. State Voting Rights Acts

Given the potential difficulties associated with federal Section 2 litigation, implementing a state voting rights act (and then suing in state courts) may be a better alternative in some states.

California has instituted a remedy to alleviate some of the problems of Section 2 litigation by enacting a California Voting Rights Act (CVRA) that makes it cheaper and easier to prove that a local government's election system impermissibly dilutes the votes of the minority community. The CVRA does not require fair representation remedies, but such systems could be imposed as a remedy in future state acts.¹⁹⁶

An additional benefit of developing a state level jurisprudence on minority vote dilution is that it can fill the gaps left in the current Section 2 jurisprudence. For example, the *Gingles* criteria for Section 2 liability are based on the assumption that SMDs are the appropriate benchmark for minority vote dilution when, in fact, the SMD requirement effectively overlooks the dilution of non-compact minority populations. As a result, a place where a crossover district can be drawn (districts where a racial minority votes as a bloc with a small amount of support from the white majority, resulting in the candidate of choice of the racial minority being elected) will not establish liability under Section 2 and so cannot be required by federal law.

State Voting Rights Acts can be tailored to local needs, but in all cases if they include provisions that explicitly allow for fair representation systems to be imposed in response to a violation, and if they make the proving of a violation less burdensome than the federal VRA, then they will be a useful tool in the fight for improved minority representation in local government.

CONCLUSION

Striving for fair representation systems in local government is an important way to promote minority representation, and thereby fulfill the promise of our democracy. I encourage all practitioners to use the ideas and arguments in this paper to improve local government across the country.

196 For example, Santa Clarita chose to adopt cumulative voting as a settlement to a CVRA lawsuit. Drew Spencer, "California City of 180,000 to Provide Cumulative Voting Rights" FairVote Press Release (March 12, 2014), [http://www.fairvote.org/newsletters-media/e-newsletters/california-city-of-180000-to-provide-cumulative-voting-rights-/](http://www.fairvote.org/newsletters-media/e-newsletters/california-city-of-180000-to-provide-cumulative-voting-rights/) (last visited March 15, 2015). Note, though, that jurisdictions found liable under Section 2 VRA can also choose to adopt cumulative voting, but they cannot be required to do so.

Partisan Gerrymandering and the Efficiency Gap

Nicholas O. Stephanopoulos[†] & Eric M. McGhee^{††}

The usual legal story about partisan gerrymandering is relentlessly pessimistic. The courts did not even recognize the cause of action until the 1980s; they have never struck down a district plan on this basis; and four sitting justices want to vacate the field altogether. The Supreme Court's most recent gerrymandering decision, however, is the most encouraging development in this area in a generation. Several justices expressed interest in the concept of partisan symmetry—the idea that a plan should treat the major parties symmetrically in terms of the conversion of votes to seats—and suggested that it could be shaped into a legal test.

In this Article, we take the justices at their word. First, we introduce a new measure of partisan symmetry: the efficiency gap. It represents the difference between the parties' respective wasted votes in an election, divided by the total number of votes cast. It captures, in a single tidy number, all of the packing and cracking decisions that go into a district plan. It also is superior to the metric of gerrymandering, partisan bias, that litigants and scholars have used until now. Partisan bias can be calculated only by shifting votes to simulate a hypothetical tied election. The efficiency gap eliminates the need for such counterfactual analysis.

Second, we compute the efficiency gap for congressional and state house plans between 1972 and 2012. Over this period as a whole, the typical plan was fairly balanced and neither party enjoyed a systematic advantage. But in recent years—and peaking in the 2012 election—plans have exhibited steadily larger and more pro-Republican gaps. In fact, the plans in effect today are the most extreme gerrymanders in modern history. And what is more, several are likely to remain extreme for the remainder of the decade, as indicated by our sensitivity testing.

Finally, we explain how the efficiency gap could be converted into doctrine. We propose setting thresholds above which plans would be presumptively unconstitutional: two seats for congressional plans and 8 percent for state house plans, but only if the plans probably will stay unbalanced for the remainder of the cycle. Plans with gaps above these thresholds would be unlawful unless states could show that the gaps either resulted from the consistent application of legitimate policies or were inevitable due to the states' political geography. This approach would

[†] Assistant Professor of Law, The University of Chicago Law School.

^{††} Research Fellow, Public Policy Institute of California.

This Article builds on our earlier legal and political science work on redistricting. It is part of a larger project aimed at grasping the consequences—and improving the law—of this important and intricate activity. For helpful comments, we are grateful to Bruce Cain, Jowei Chen, Chris Elmendorf, Andrew Gelman, Michael Gilbert, Ruth Greenwood, Bernie Grofman, Rick Hasen, Benjamin Highton, Simon Jackman, Vlad Kogan, Justin Levitt, and Rick Pildes. We are pleased as well to acknowledge the support of the Robert Helman Law and Public Policy Fund at The University of Chicago Law School.

neatly slice the Gordian knot the Court has tied for itself, explicitly replying to the Court's "unanswerable question" of "[h]ow much political . . . effect is too much."

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INTRODUCTION

Professor Cass Sunstein once quipped that the nondelegation doctrine (which purports to limit congressional delegations of legislative authority to agencies) “has had one good year, and 211 bad ones.”¹ According to the conventional wisdom, the cause of action for partisan gerrymandering² has not had even this one good year. The claim was not recognized until 1986, when the Supreme Court ruled that gerrymandering is justiciable but still upheld a pair of Indiana district plans that used every trick in the book to disadvantage the state’s Democrats.³ Since 1986, not

¹ Cass R. Sunstein, *Nondelegation Canons*, 67 U Chi L Rev 315, 322 (2000).

² We note at the outset that, consistent with the metric we introduce in this Article, whenever we refer to “gerrymandering,” we mean district plans whose electoral consequences are sufficiently asymmetric. We do *not* mean plans that were devised with partisan *intent*. Our conception of gerrymandering is strictly effects-based and (unlike other common conceptions) does not relate to plans’ motivations or objectives. As we explain in Part I.B, the Court recently has created an opening for this sort of effects-based theory, while explicitly rejecting intent-based claims.

³ See *Davis v Bandemer*, 478 US 109, 115, 118–43 (1986) (upholding legislative plans that created single-, double-, and triple-member districts resulting in, for example,

a single plaintiff has managed to persuade a court to strike down a plan on this basis.⁴ By our count, claimants' record over this generation-long period is roughly zero wins and fifty losses.⁵ And adding insult to injury, a majority of the Court rejected almost every conceivable test for gerrymandering in 2004, and a plurality would have extricated the judiciary from this domain altogether.⁶

But the gloomy conventional wisdom is not quite right. In the Court's most recent gerrymandering case, *League of United Latin American Citizens v Perry*⁷ ("LULAC"), several justices expressed surprising enthusiasm for the concept of "partisan symmetry"—the idea, that is, that a district plan should treat the major parties symmetrically with respect to the conversion of votes to seats. Justice John Paul Stevens raved that symmetry is "widely accepted by scholars as providing a measure of partisan fairness in electoral systems."⁸ Justice David Souter noted that "[i]nterest in exploring this notion is evident."⁹ And, most remarkably of all, Justice Anthony Kennedy declared that he did not "discount[] [symmetry's] utility in redistricting planning and litigation."¹⁰ These comments, overlooked by almost all scholars and litigants in the aftermath of *LULAC*,¹¹ are the most

Democrats receiving 51.9 percent of the vote but only 43 percent of the seats in Indiana's House of Representatives).

⁴ See *Vieth v Jubelirer*, 541 US 267, 279–80 (2004) (Scalia) (plurality) ("[I]n all of the cases we are aware of involving [redistricting], relief was denied."). See also Part I.C.

⁵ This count is different from the one we mention in Part III.C, because there we consider only challenges to the congressional and state house plans in our study.

⁶ See *Vieth*, 541 US at 277–306 (Scalia) (plurality).

⁷ 548 US 399 (2006).

⁸ Id at 466 (Stevens concurring in part and dissenting in part).

⁹ Id at 483 (Souter concurring in part and dissenting in part).

¹⁰ Id at 420 (Kennedy) (plurality).

¹¹ To our knowledge, only a handful of academics have seized on this language, most notably the political scientists, Professors Bernard Grofman and Gary King, who familiarized the Court with partisan symmetry in an important amicus brief in *LULAC*. See Brief of Amici Curiae Professors Gary King, Bernard Grofman, Andrew Gelman, and Jonathan N. Katz, in Support of Neither Party, *League of United Latin American Citizens v Perry*, No 05-204, *3–9 (US filed Jan 10, 2006) (available on Westlaw at 2006 WL 53994) ("King et al Brief"); Bernard Grofman and Gary King, *The Future of Partisan Symmetry as a Judicial Test for Partisan Gerrymandering after LULAC v. Perry*, 6 Election L J 1, 4 (2007) ("A majority of Justices now appear to endorse our view that the measurement of partisan symmetry can be used in . . . partisan gerrymandering claims."). See also Laughlin McDonald, *The Looming 2010 Census: A Proposed Judicially Manageable Standard and Other Reform Options for Partisan Gerrymandering*, 46 Harv J Legis 243, 265 (2009); Easha Anand, *Finding a Path through the Political Thicket: In Defense of Partisan Gerrymandering's Justiciability*, 102 Cal L Rev 917, 945–46 (2014). As we discuss

promising development in this area in decades. They provide the motivation for our effort, in this Article, to introduce a new measure of partisan symmetry and to show how it could be fashioned into a workable judicial standard.

We dub our new measure the “efficiency gap.”¹² It represents the difference between the parties’ respective wasted votes in an election—where a vote is wasted if it is cast (1) for a losing candidate, or (2) for a winning candidate but in excess of what she needed to prevail. Large numbers of votes commonly are cast for losing candidates as a result of the time-honored gerrymandering technique of “cracking.” Likewise, excessive votes often are cast for winning candidates thanks to the equally age-old mechanism of “packing.”¹³ The efficiency gap essentially aggregates all of a district plan’s cracking and packing choices into a single, tidy number.

An example should illustrate the intuitiveness of our measure. Take a state with 10 districts of 100 voters each, in which Party A wins 55 percent of the statewide vote (that is, 550 votes). Assume also that Party A wins 70 votes in districts 1–3, 54 votes in districts 4–8, and 35 votes in districts 9–10, and that the remaining votes are won by Party B. Then Party A wastes 20 votes in districts 1–3, 4 votes in districts 4–8, and 35 votes in districts 9–10. Similarly, Party B wastes 30 votes in districts 1–3, 46 votes in districts 4–8, and 15 votes in districts 9–10. In sum, Party A wastes 150 votes and Party B wastes 350 votes.¹⁴ The difference between the parties’ wasted votes is 200, which when divided by 1,000 total votes produces an efficiency gap of 20 percent. Algebraically, this means that Party A wins 20 percent (or 2) more seats than it would have had the parties wasted equal numbers of votes.

In our view, the efficiency gap is superior to the measure of partisan symmetry—*partisan bias*—that the Court considered in

below, no plaintiffs since *LULAC* have argued for the adoption of a partisan symmetry test. See Part I.C.

¹² In the political science article in which he previously discussed the efficiency gap, McGhee referred to it as “relative wasted votes.” Eric McGhee, *Measuring Partisan Bias in Single-Member District Electoral Systems*, 39 *Legis Stud Q* 55, 68–69 (2014).

¹³ For a discussion of these terms, see *Vieth*, 541 US at 286 n 7 (2004).

¹⁴ All of these wasted vote figures are per district. For the sake of simplicity, we also assume that 50 votes are needed to win a district, not 51. Using 51 votes as the threshold instead, the efficiency gap is 20.6 percent in favor of Party A. See Part II.A (going through this calculation in greater detail in Figure 1).

LULAC.¹⁵ (Partisan bias refers to the divergence in the share of seats that each party would win given the same share, typically 50 percent, of the statewide vote.¹⁶) The crucial problem with partisan bias is that it is calculated using a hypothetical election result rather than the actual election outcome. To determine how many seats a party would win if it received 50 percent of the statewide vote, the party's actual vote shares in each district are *shifted* by the difference between 50 percent and the party's actual statewide vote share. Above, for example, Party A's vote shares in each district would be reduced by 5 percent (since it won 55 percent of the statewide vote), while Party B's vote shares would be increased by 5 percent.

This shifting is troubling for several reasons. First, it relies on what is known as the "uniform swing assumption," the premise that vote switchers are present in equal numbers in each district.¹⁷ Given the clustering that characterizes modern residential patterns,¹⁸ this assumption is often inaccurate. Second, it is fanciful in many cases to consider what might happen if the parties' statewide vote shares were both 50 percent (let alone if they *flipped*, as another common formulation of partisan bias supposes).¹⁹ In states like Massachusetts or Utah, shifts of this magnitude are so improbable that they yield useless results.²⁰ And third, even in more competitive states, shifting can give rise to odd conclusions. Above, for instance, Party A would lose 7 out of 10 districts if its vote share in each district swung uniformly downward by 5 percent. This means the plan has a partisan bias of 20 percent *against* Party A—even though Party A won 8 of the 10 districts in the election that actually occurred.

Turning from the abstract to the concrete, what efficiency gaps have current and historical district plans exhibited? We

¹⁵ See *LULAC*, 548 US at 464–68 (Stevens concurring in part and dissenting in part) (discussing partisan bias).

¹⁶ See *id.* at 466 (Stevens concurring in part and dissenting in part).

¹⁷ See Part II.C.

¹⁸ See Nicholas O. Stephanopoulos, *Spatial Diversity*, 125 Harv L Rev 1903, 1915 (2012) (discussing Tobler's Law, which states that clustering is an almost universal geographic phenomenon).

¹⁹ See Grofman and King, 6 Election L J at 8 (cited in note 11) ("[I]f a party is able to muster a certain fraction of votes, then it should get the same number of seats as the other party would if that party had received the same voter support.") (emphasis omitted).

²⁰ Consider, for example, Boris Shor and Nolan McCarty, *The Ideological Mapping of American Legislatures*, 105 Am Polit Sci Rev 530, 544 (2011) (suggesting that ideologically polarized states may not be likely to have significant vote share shifts between election cycles).

computed the gaps for all states with at least eight congressional districts, and all state house plans for which results were available, for all elections from 1972 to 2012.²¹ This represents the most comprehensive dataset ever assembled to study gerrymandering in the modern era.²² We found, first, that both the congressional and the state house distributions had median efficiency gaps of close to zero and were roughly symmetric in shape. Contrary to claims that Republicans benefit from redistricting because of their more efficient spatial allocation,²³ the typical plan in recent decades has not been notably skewed in either party's favor. Second, however, we also documented an alarming rise in the efficiency gap in the 2012 election. At the congressional level, the average plan had an absolute gap of 0.94 seats in the 1970s and 1980s, 1.09 seats in the 1990s and 2000s, and 1.58 seats in 2012. At the state house level, the average plan had an absolute gap of 4.76 percent in the 1970s and 1980s, 5.10 percent in the 1990s and 2000s, and 6.07 percent in 2012.²⁴ The severity of today's gerrymandering is therefore unprecedented in modern times.

Third, we decomposed the data into a series of charts showing, for each decade, each plan's *average* efficiency gap as well as how the gap varied from election to election. (For current plans, we illustrate how the gap would change given shifts in voter sentiment derived from historical data.) These charts confirm the account of the efficiency gap centering around zero overall but rising rapidly in recent years. They also reveal that many plans' gaps vary substantially over the plans' lifetimes. In many cases, in fact, a plan whose average gap favors one party will feature a gap favoring the *other* party at some point during the decade. Lastly, the charts make it possible, for the first time, to identify gerrymanders that are both severe *and* entrenched. In

²¹ We use "state house plans" to refer to plans for all lower houses of state legislatures.

²² For noteworthy examples of works studying gerrymandering in earlier periods, see generally Gary W. Cox and Jonathan N. Katz, *Elbridge Gerry's Salamander: The Electoral Consequences of the Reapportionment Revolution* (Cambridge 2002); Andrew Gelman and Gary King, *Enhancing Democracy through Legislative Redistricting*, 88 Am Polit Sci Rev 541 (1994); Gary King and Robert X. Browning, *Democratic Representation and Partisan Bias in Congressional Elections*, 81 Am Polit Sci Rev 1251 (1987).

²³ See, for example, Jowei Chen and Jonathan Rodden, *Unintentional Gerrymandering: Political Geography and Electoral Bias in Legislatures*, 8 Q J Polit Sci 239, 241 (2013).

²⁴ These figures all are absolute values. We use raw seats for Congress and seat shares for state houses throughout the Article, for reasons detailed below. See Part III.A.

the current cycle, for example, the Florida, Ohio, Pennsylvania, and Virginia congressional plans have gaps of at least two seats that are unlikely to dissipate given plausible changes in voters' preferences. Likewise, the Idaho, Indiana, Kansas, Massachusetts, Michigan, Missouri, North Carolina, Ohio, Oklahoma, Rhode Island, Virginia, Wisconsin, and Wyoming state house plans have gaps of at least 8 percent that also are unlikely to fade away in future elections.

The efficiency gap, then, is both superior to partisan bias and easily calculable across states and over time. It also could be converted straightforwardly into doctrine. In *LULAC*, Justice Stevens suggested that the Court's approach to one person—one vote claims could serve as a template for a gerrymandering test.²⁵ This is a very auspicious analogy, in our view. First, just as in that domain there is a population deviation threshold (10 percent) above which plans are presumptively unlawful and below which they are presumptively valid,²⁶ so too could key levels be specified in the gerrymandering context. To take into account both the severity and the durability of gerrymanders, we recommend setting the bar at *two seats* for congressional plans and *8 percent* for state house plans²⁷—with the added caveat that the plans not be expected, based on sensitivity testing, ever to have an efficiency gap of zero over their lifetimes. At present, these thresholds would result in the plans named above being deemed presumptively unconstitutional.²⁸

Second, just as a state may *rebut* the presumption of unconstitutionality in a one person—one vote case,²⁹ so too should it have the chance to mount a defense in a gerrymandering dispute. In the former context, the presumption is rebutted if the state shows that its plan's population inequality resulted from the consistent application of a legitimate redistricting policy.³⁰

²⁵ See *LULAC*, 548 US at 468 & n 9 (Stevens concurring in part and dissenting in part).

²⁶ See *Brown v Thomson*, 462 US 835, 842 (1983) ("Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations.").

²⁷ See text accompanying notes 202–03.

²⁸ That is, the Florida, Ohio, Pennsylvania, and Virginia congressional plans, and the Idaho, Indiana, Kansas, Michigan, Missouri, North Carolina, Ohio, Oklahoma, Rhode Island, Tennessee, Wisconsin, and Wyoming state house plans.

²⁹ See, for example, *Brown*, 462 US at 842–43.

³⁰ See, for example, *Mahan v Howell*, 410 US 315, 328 (1973) (upholding population deviations above 10 percent in a plan because they "advance[d] the rational state policy

The same sort of showing should suffice in the gerrymandering context, as should a demonstration that no plan with a smaller efficiency gap could have been drawn due to the state's underlying political geography. At this doctrinal stage, of course, cartographic evidence would be crucial. The state would try to prove that no map with a smaller gap was possible while still accomplishing its other objectives. The plaintiff, for its part, would strive to produce a map that attained the state's goals to the same extent but that featured a smaller gap. Success by the plaintiff would result in the presumption continuing to bind.

The Article proceeds as follows. Part I describes the doctrinal opportunity created by the Court's positive comments about partisan symmetry in *LULAC*. Interestingly, this opportunity remains unexplored nine years after the decision. Part II defines our new measure of partisan symmetry, the efficiency gap, and discusses some of its useful properties. It also compares the efficiency gap to partisan bias and identifies some of the gap's limitations. Part III presents empirical evidence about the efficiency gaps of congressional and state house plans over the 1972–2012 period. It highlights as well the gaps of plans that have given rise to gerrymandering litigation. Lastly, Part IV develops one option for incorporating the efficiency gap into a doctrinal test. In the first stage of the analysis, a plan's gap would be compared to the legal threshold; in the second stage, a state could argue that a gap above the threshold was unavoidable.

One final introductory point about this Article's timeliness: Though many plans continue to be fair, the problem of gerrymandering has never been worse in modern American history. The efficiency gaps of today's most egregious plans dwarf those of their predecessors in earlier cycles. We therefore find ourselves at a historical moment not unlike that confronted by the Court in the 1960s. Just as in that era population deviations had skyrocketed thanks to urbanization and district lines left untouched for decades, so too have today's efficiency gaps reached new heights thanks to technological advances and unbridled partisan aggression. Two generations ago, the Court moved decisively to end the scourge of malapportionment. In our view, the time has come for it to do the same with gerrymandering.

of respecting the boundaries of political subdivisions"). For a discussion of the rebuttable presumption, see *Brown*, 462 US at 843.

I. THE DOCTRINAL OPPORTUNITY

Until recently, there would have been no reason for us to write this Article. Just about every potential partisan gerrymandering standard already had been proposed to—and rejected by—the Court. But in *LULAC*, for the first time in twenty years, five justices suggested they were open to adopting a gerrymandering standard. In particular, they wrote favorably about the concept of *partisan symmetry*, the idea that a district plan should treat the major parties symmetrically with respect to the conversion of votes to seats. Surprisingly, though, not a single gerrymandering plaintiff since *LULAC* has argued for the implementation of a partisan symmetry test. The doctrinal opportunity created by *LULAC* thus remains open and judicially uncharted.

In this Part, we define the contours of this opportunity. We first survey the Court's case law prior to *LULAC*, whose two highlights were the tentative embrace of a standard that no plaintiff could meet in *Davis v Bandemer*,³¹ followed by the rejection of almost every conceivable test in *Vieth v Jubelirer*.³² We next highlight the promising comments about partisan symmetry made by a majority of the Court in *LULAC*. But we also identify the concerns expressed about symmetry by Justice Kennedy—concerns we believe the standard we set forth in Part IV fully addresses. Lastly, we summarize the Sisyphean efforts of gerrymandering plaintiffs in the years since *LULAC*. We offer some speculation too as to why these plaintiffs may have failed to seize the opening presented by the Court.

A. Pre-*LULAC*

Although there were scattered hints in earlier Court decisions,³³ the 1983 case of *Karcher v Daggett*³⁴ marked the first time a justice wrote explicitly about partisan gerrymandering. A majority of the Court resolved the dispute purely on one person—one vote grounds, striking down New Jersey's congressional plan

³¹ 478 US 109 (1986).

³² 541 US 267 (2004).

³³ See, for example, *Gaffney v Cummings*, 412 US 735, 751 (1973); *Fortson v Dorsey*, 379 US 433, 439 (1965) (suggesting that a district plan might be invalid if it “would operate to minimize or cancel out the voting strength of racial or political elements of the voting population”) (emphasis added).

³⁴ 462 US 725 (1983).

because of its total population deviation of 0.7 percent.³⁵ But in a concurrence, Justice Stevens contended that the plan actually should have been invalidated because it was a pro-Democratic gerrymander.³⁶ His proposed approach for identifying unlawful gerrymanders was to examine (1) “whether the plan has a significant adverse impact on an identifiable political group,” (2) “whether the plan has objective indicia of irregularity,” and (3) “whether the State is able to produce convincing evidence that the plan nevertheless serves neutral, legitimate interests of the community as a whole.”³⁷

Just three years after *Karcher*, the full Court turned its attention to gerrymandering in *Bandemer*.³⁸ Six justices agreed that gerrymandering was not a “political question” but rather a “justiciable controversy” fully amenable to resolution by the courts.³⁹ But the majority splintered with respect to the applicable standard as well as the fate of the Indiana state legislative plans before it. A plurality held that “unconstitutional discrimination occurs only when the electoral system . . . will consistently degrade . . . a group of voters’ influence on the political process as a whole,” and concluded that the Indiana plans did not meet this demanding standard.⁴⁰ In contrast, Justice Powell argued for a totality-of-the-circumstances test similar to the one advocated by Justice Stevens in *Karcher*.⁴¹ District compactness, respect for political subdivisions, and the propriety of the redistricting process were the key factors to consider—and, in his view, they all revealed the Indiana plans’ illegality.⁴²

In the eighteen years between *Bandemer* and the justices’ next foray into this doctrinal terrain, not a single plaintiff managed to convince a court to strike down a district plan on partisan gerrymandering grounds.⁴³ The trouble for claimants was twofold. First, *Bandemer*’s requirement that a plan “consistently

³⁵ See id at 731–44.

³⁶ See id at 761–65 (Stevens concurring).

³⁷ Id at 751 (Stevens concurring).

³⁸ *Bandemer*, 478 US at 113 (White) (plurality).

³⁹ Id at 118, 125–27 (White) (plurality).

⁴⁰ Id at 132 (White) (plurality).

⁴¹ See id at 173 (Powell concurring in part and dissenting in part).

⁴² See *Bandemer*, 478 US at 173–74 (Powell concurring in part and dissenting in part).

⁴³ See *Vieth*, 541 US at 279–80 (Scalia) (plurality) (“[I]n all of the cases we are aware of involving that most common form of political gerrymandering [that is, the drawing of district lines], relief was denied.”).

degrade”⁴⁴ voters’ influence meant that challenges brought prior to the first election under a plan, or even after one or two elections, universally failed. Courts simply could not be sure that a party’s electoral disadvantage would be durable rather than transient.⁴⁵ Second, *Bandemer*’s reference to voters’ influence “on the political process *as a whole*”⁴⁶ convinced many courts that electoral disadvantage alone was not enough to call a plan into question. Losses at the polls had to be combined with efforts to prevent a party’s supporters from registering or voting—efforts that typically did not occur in this era.⁴⁷

When the Court rejoined the fray in *Vieth*, a plurality invoked plaintiffs’ dismal post-*Bandemer* record as a rationale for declaring all partisan gerrymandering to be nonjusticiable. “[*Bandemer*’s] application has almost invariably produced the same result . . . as would have obtained if the question were nonjusticiable: Judicial intervention has been refused.”⁴⁸ The plurality (joined here by Justice Kennedy)⁴⁹ also rejected every putative standard suggested by the *Bandemer* Court, the appellants, and the dissenting justices. Both the *Bandemer* plurality’s approach and that of Justice Powell were judicially unmanageable, in the *Vieth* plurality’s view.⁵⁰ So too was the appellants’ proposal of (1) predominant partisan intent, (2) systematic packing and cracking of a party’s voters, and (3) a party’s inability to translate a majority of votes into a majority of seats.⁵¹ And so too were Justice Stevens’s intent-based test,⁵² Justice Souter’s elaborate five-part framework focused on disregard for traditional

⁴⁴ *Bandemer*, 478 US at 132 (White) (plurality) (emphasis added).

⁴⁵ See, for example, *La Porte County Republican Central Committee v Board of Commissioners of the County of La Porte*, 43 F3d 1126, 1128 (7th Cir 1994) (“Plaintiffs have not offered to prove that the districts in La Porte County have frustrated the will of a majority (or even a minority) of voters, for even one election.”); *Legislative Redistricting Cases*, 629 A2d 646, 664 (Md 1993); *Pope v Blue*, 809 F Supp 392, 396 (WD NC 1992) (three-judge panel).

⁴⁶ *Bandemer*, 478 US at 132 (White) (plurality) (emphasis added).

⁴⁷ See, for example, *Martinez v Bush*, 234 F Supp 2d 1275, 1346 (SD Fla 2002) (three-judge panel); *Marylanders for Fair Representation, Inc v Schaefer*, 849 F Supp 1022, 1040 (D Md 1994) (three-judge panel); *Badham v March Fong Eu*, 694 F Supp 664, 670 (ND Cal 1988) (three-judge panel) (“[N]or are there allegations that anyone has ever interfered with Republican registration, organizing, voting, fund-raising, or campaigning.”).

⁴⁸ *Vieth*, 541 US at 279 (Scalia) (plurality).

⁴⁹ See id at 308 (Kennedy concurring in the judgment) (“The plurality demonstrates the shortcomings of the other standards that have been considered to date.”).

⁵⁰ See id at 281–84, 290–91 (Scalia) (plurality).

⁵¹ See id at 284–90 (Scalia) (plurality).

⁵² See *Vieth*, 541 US at 292–95 (Scalia) (plurality).

districting principles,⁵³ and Justice Breyer's minority entrenchment standard.⁵⁴

But *Vieth* did not close the door entirely on partisan gerrymandering claims. Justice Kennedy declined to join the plurality's justiciability holding, meaning that gerrymandering remains a viable cause of action even after the decision—albeit without any test for courts to apply. In his separate opinion, Justice Kennedy lamented that “the parties have not shown us, and I have not been able to discover . . . statements of principled, well-accepted rules of fairness that should govern districting.”⁵⁵ The unspoken predicate is that *if* such rules were brought to his attention, he would be willing to consider adopting them.⁵⁶ Justice Kennedy also speculated that the First Amendment may prove a more fertile source for gerrymandering standards than the Equal Protection Clause.⁵⁷ And most importantly for our purposes, neither the plurality nor Justice Kennedy made any critical comments about the concept of partisan symmetry. (Though it was not, of course, before them in the case.)

B. *LULAC*

Partisan symmetry *was* before the Court when it next tackled gerrymandering, in *LULAC*, thanks to an amicus brief submitted by a group of political scientists.⁵⁸ And remarkably, given the pessimism in *Vieth* that any standard could be found, a majority of the justices (including Justice Kennedy) went out of their way to express their interest in the idea. We thus agree with two of the brief's authors, Professors Bernard Grofman and Gary King, that *LULAC* “marks a potential sea change in how the Supreme Court adjudicates partisan gerrymandering claims.”⁵⁹ But we caution that Justice Kennedy also voiced a number of misgivings about symmetry. These misgivings must be addressed before symmetry can become the basis for judicial intervention in this area.

⁵³ See *id.* at 295–98 (Scalia) (plurality).

⁵⁴ See *id.* at 299–301 (Scalia) (plurality).

⁵⁵ *Id.* at 308 (Kennedy concurring in the judgment).

⁵⁶ See *Vieth*, 541 US at 312–13 (Kennedy concurring in the judgment) (“[N]ew technologies may produce new methods of analysis that make more evident the precise nature of the burdens gerrymanders impose on the representational rights of voters and parties.”).

⁵⁷ See *id.* at 314–16 (Kennedy concurring in the judgment).

⁵⁸ See King et al. Brief at *9–11 (cited in note 11).

⁵⁹ Grofman and King, 6 Election L J at 4 (cited in note 11).

Justice Stevens was by far the most avid advocate of partisan symmetry in *LULAC*.⁶⁰ He first defined the term as a “require[ment] that the electoral system treat similarly-situated parties equally.”⁶¹ This also is how we conceive of symmetry: it is satisfied when a district plan does not discriminate between the parties with respect to the conversion of votes to seats, and vice versa. Justice Stevens next observed that symmetry is “widely accepted by scholars as providing a measure of partisan fairness in electoral systems.”⁶² He then proceeded to apply one particular measure of partisan symmetry, *partisan bias*, to the Texas congressional plan at issue.⁶³ Partisan bias refers to the divergence in the share of seats that each party would win given the same share of the statewide vote.⁶⁴ Because Republicans likely would have won twenty of Texas’s thirty-two seats (62.5 percent) if they had received 50 percent of the statewide vote, leaving only twelve seats for Democrats (37.5 percent), Texas’s plan had a pro-Republican bias of 12.5 percent.⁶⁵ It “constitute[d] a significant departure from the symmetry standard” and, in Justice Stevens’s view, should have been struck down for this reason.⁶⁶

Justice Stevens also offered two suggestions for how the concept of symmetry could be converted into doctrine. First, the Court could hold that a sufficiently large deviation from symmetry (he floated 10 percent as a possibility) “create[s] a prima facie case of an unconstitutional gerrymander.”⁶⁷ The burden then would shift to the state to present a legitimate justification for its highly asymmetric plan.⁶⁸ This two-step sequence, it bears noting, is nearly identical to the Court’s framework for

⁶⁰ Of course, neither Justice Stevens nor Justice Souter, who also expressed interest in partisan symmetry in *LULAC*, is still on the Court. Their replacements’ views on the subject are not yet known. But if the usual ideological lines hold, then it is likely that Justice Kennedy remains the swing vote on this issue.

⁶¹ *LULAC*, 548 US at 466 (Stevens concurring in part and dissenting in part), quoting King et al Brief at *4–5 (cited in note 11).

⁶² *LULAC*, 548 US at 466 (Stevens concurring in part and dissenting in part).

⁶³ See id at 467–68 (Stevens concurring in part and dissenting in part).

⁶⁴ See id at 466 (Stevens concurring in part and dissenting in part).

⁶⁵ See id at 465–68 (Stevens concurring in part and dissenting in part).

⁶⁶ *LULAC*, 548 US at 467 (Stevens concurring in part and dissenting in part). See also id at 466 (Stevens concurring in part and dissenting in part) (concluding that Texas’s plan was “inconsistent with the symmetry standard, a measure social scientists use to assess partisan bias”).

⁶⁷ Id at 468 n 9 (Stevens concurring in part and dissenting in part).

⁶⁸ See id at 468 (Stevens concurring in part and dissenting in part).

one person—one vote claims at the state legislative level.⁶⁹ Second, the Court could recognize a departure from symmetry as “one relevant factor in analyzing whether, under the totality of the circumstances, a districting plan is an unconstitutional partisan gerrymander.”⁷⁰ This proposal is perhaps too close for comfort to some of the tests rejected in *Vieth*,⁷¹ but it also bears some resemblance to the Court’s methodology in vote dilution cases under the Voting Rights Act.⁷²

The other members of the Court’s left wing did not quite share Justice Stevens’s excitement, but they all made positive comments about partisan symmetry too. Justice Souter (joined by Justice Ginsburg) noted the “utility of a criterion of symmetry as a test” and remarked that “[i]nterest in exploring this notion is evident.”⁷³ He added, “Perhaps further attention could be devoted to the administrability of such a criterion at all levels of redistricting and its review.”⁷⁴ Similarly, Justice Breyer joined portions of Justice Stevens’s opinion⁷⁵ and referred favorably to the empirical evidence on symmetry that he marshaled.⁷⁶ Justice Breyer further observed, disapprovingly, that deviations from symmetry may cause a plan to “produce a majority of congressional representatives even if the favored party receives only a *minority* of popular votes.”⁷⁷

This leaves us, as we are often left, with the Court’s swing voter, Justice Kennedy.⁷⁸ To the surprise of almost every observer, he expressed in *LULAC* at least some openness to the use of

⁶⁹ See *id.* (Stevens concurring in part and dissenting in part), citing one person—one vote precedents such as *Brown v Thomson*, 462 US 835 (1983), and *Cox v Larios*, 542 US 947 (2004).

⁷⁰ *LULAC*, 548 US at 468 n 9 (Stevens concurring in part and dissenting in part).

⁷¹ Not surprisingly, it is especially similar to Justice Powell’s approach in *Bandemer*—which Justice Stevens endorsed, and which was based on Justice Stevens’s own opinion in *Karcher*. See notes 41–42.

⁷² Voting Rights Act of 1965, Pub L No 89-110, 79 Stat 437, codified as amended at 42 USC § 1971 et seq. The final stage of a vote dilution challenge is a multifactor totality-of-the-circumstances inquiry. See *Thornburg v Gingles*, 478 US 30, 79–80 (1986).

⁷³ *LULAC*, 548 US at 483 (Souter concurring in part and dissenting in part).

⁷⁴ *Id.* at 484 (Souter concurring in part and dissenting in part). In some respects, this Article can be seen as a response to Justice Souter’s call for further analysis of the administrability of partisan symmetry.

⁷⁵ See *id.* at 447 (Stevens concurring in part and dissenting in part).

⁷⁶ See *id.* at 491–92 (Breyer concurring in part and dissenting in part).

⁷⁷ *LULAC*, 548 US at 492 (Breyer concurring in part and dissenting in part).

⁷⁸ See Samuel Issacharoff, Pamela S. Karlan, and Richard H. Pildes, *The Law of Democracy: Legal Structure of the Political Process* 182 (Thomson Reuters 4th ed 2012) (“Justice Kennedy is the likely decisive vote for any future partisan gerrymandering claims.”).

partisan symmetry as a test for gerrymandering. In the key sentence of his opinion, he wrote that he did not “altogether discount[] its utility in redistricting planning and litigation.”⁷⁹ Other justices immediately seized on this language. Justice Stevens “appreciate[d] Justice Kennedy’s leaving the door open to the use of the standard in future cases.”⁸⁰ Likewise, Justice Souter cited this passage when he commented that “[i]nterest in exploring this notion is evident.”⁸¹

But Justice Kennedy also raised several serious concerns about symmetry. First, he observed that “[t]he existence or degree of asymmetry may in large part depend on conjecture about where possible vote-switchers [] reside.”⁸² In other words, to determine how symmetric a plan is, at least using the partisan bias metric, it is necessary to estimate the results of a hypothetical election in which certain voters switch their ballots from one party to the other. This estimation requires assumptions to be made about where these vote switchers are located—assumptions that are controversial and often incorrect.⁸³ Second, Justice Kennedy was wary of invalidating a plan “based on unfair results that would occur in a hypothetical state of affairs.”⁸⁴ His preference was to wait until an election actually had occurred and the asymmetry had become concrete rather than conjectural. As he wrote, “a challenge could be litigated if and when the feared inequity arose.”⁸⁵

Third, Justice Kennedy was unsure how to select an asymmetry threshold below which a plan would be upheld and above which a plan would be presumptively unlawful. Neither the parties nor the political scientists’ amicus brief provided the Court

⁷⁹ *LULAC*, 548 US at 420 (Kennedy) (plurality).

⁸⁰ *Id.* at 468 n 9 (Stevens concurring in part and dissenting in part).

⁸¹ *Id.* at 483 (Souter concurring in part and dissenting in part).

⁸² *Id.* at 420 (Kennedy) (plurality). See also *id.* (noting the existence of “different models of shifting voter preferences”).

⁸³ The specific assumption that typically is made to calculate partisan bias is “uniform partisan swing.” The assumption stipulates that parties’ district-specific vote shares change (or “swing”) by the same margin as their statewide vote shares. For example, if Democrats received 45 percent of the vote in a state, and a researcher wanted to know how many seats they would have won if they had received 50 percent, the researcher simply would add 5 percentage points to the actual Democratic vote share in each district. The assumption often generates accurate seat share estimates, but still is considered “neither theoretically nor empirically satisfying” by political scientists. Simon Jackman, *Measuring Electoral Bias: Australia, 1949–93*, 24 *Brit J Polit Sci* 319, 335 (1994). We discuss the assumption in greater detail in Part II.C.

⁸⁴ *LULAC*, 548 US at 420 (Kennedy) (plurality).

⁸⁵ *Id.* (Kennedy) (plurality).

with empirical data about the asymmetry of current or historical plans. In the absence of such data, he did not see how the Court could choose “a standard for deciding how much partisan dominance is too much.”⁸⁶ Finally, Justice Kennedy did not believe that asymmetry should constitute the *entirety* of the Court’s test for gerrymandering. Asymmetry can be produced by factors other than a desire to disadvantage one’s political opponents, including the geographic distribution of the parties’ supporters and compliance with traditional redistricting criteria such as compactness, respect for political subdivisions, and respect for communities of interest.⁸⁷ Therefore, “asymmetry *alone* is not a reliable measure of unconstitutional partisanship.”⁸⁸

C. Post-*LULAC*

In the wake of *LULAC*, one might have expected gerrymandering plaintiffs to pounce on the opportunity presented by the Court. As Grofman and King wrote shortly after the decision, “Now that members of the Supreme Court have singled out the deviation from partisan symmetry . . . we anticipate that there will be new partisan gerrymandering challenges brought.”⁸⁹ But this prediction turned out to be incorrect. Plaintiffs did file multiple gerrymandering suits in the most recent cycle of redistricting litigation, but not one of them even referred to—much less argued for the adoption of—partisan symmetry as the relevant standard. Why not? The likely explanations are inattention to the Court’s gerrymandering precedents, ignorance of quantitative political science methodology, and fatalism about the viability of this cause of action. But whatever the reason, the fact remains that, years after its creation, a sterling doctrinal opportunity is still unexplored by the courts and available for the taking.

By our count, plaintiffs in eight states brought partisan gerrymandering challenges against congressional or state legislative

⁸⁶ *Id.* (Kennedy) (plurality). But see *id.* at 468 n. 9 (Stevens concurring in part and dissenting in part) (responding that “it is this Court, not proponents of the symmetry standard, that has the judicial obligation to answer the question of how much unfairness is too much”).

⁸⁷ See *Vieth*, 541 US at 309 (Kennedy concurring in the judgment) (“[I]f we were to demand that congressional districts take a particular shape, we could not assure the parties that this criterion, neutral enough on its face, would not in fact benefit one political party over another.”).

⁸⁸ *LULAC*, 548 US at 420 (Kennedy) (plurality) (emphasis added).

⁸⁹ Grofman and King, 6 Election L J at 33 (cited in note 11).

district plans during the 2010 cycle.⁹⁰ Some of these claimants suggested tests very similar to the ones the Court rejected in *Vieth*. For example, the Alabama Legislative Black Caucus argued that “[t]raditional or neutral districting principles may not be subordinated in a dominant fashion by . . . partisan interests”—a formulation essentially identical to Justice Stevens’s.⁹¹ Other groups, most notably the Illinois League of Women Voters, tried to convert Justice Kennedy’s exposition on the First Amendment in *Vieth* into a workable standard. These efforts all failed for the simple reason that district plans “do[] not prevent any [party] member from engaging in any political speech.”⁹²

Still other plaintiffs, in particular the Illinois Republican Party, advocated oddly specific effects tests based on their states’ unique political circumstances. Not surprisingly, the courts declined to constitutionalize inquiries such as whether a plan “keeps at least 10 percent more constituents of Democratic incumbents in the same district as their representative than it does constituents of Republican incumbents,”⁹³ or whether “[m]ore than two-thirds of incumbent pairings pit minority-party incumbents against each other.”⁹⁴ A final set of claimants admitted their own befuddlement, made no proposals at all, and beseeched the courts to “treat partisan gerrymandering cases

⁹⁰ See *Perez v Perry*, 26 F Supp 3d, 612, 622–24 (WD Tex 2014) (three-judge panel); *Alabama Legislative Black Caucus v Alabama*, 988 F Supp 2d 1285, 1289 (MD Ala 2013) (three-judge panel); *Baldus v Members of Wisconsin Government Accountability Board*, 849 F Supp 2d 840, 854 (ED Wis 2012) (three-judge panel); *Committee for a Fair and Balanced Map v Illinois State Board of Elections*, 835 F Supp 2d 563, 567–79 (ND Ill 2011) (three-judge panel); *Fletcher v Lamone*, 831 F Supp 2d 887, 903–04 (D Md 2011) (three-judge panel); *Radogno v Illinois State Board of Elections*, 2011 WL 5868225, *2–4 (ND Ill) (“Radogno II”) (three-judge panel); *League of Women Voters v Quinn*, 2011 WL 5143044, *1–4 (ND Ill); *Radogno v Illinois State Board of Elections*, 2011 WL 5025251, *5–7 (ND Ill) (“Radogno I”) (three-judge panel); *Perez v Texas*, 2011 WL 9160142, *10–11 (WD Tex); *Pearson v Koster*, 359 SW3d 35, 41–42 (Mo 2012); *Gonzalez v State Apportionment Commission*, 53 A3d 1230, 1254 (NJ Super App Div 2012); *State v Tennant*, 730 SE2d 368, 390 (W Va 2012).

⁹¹ *Alabama Legislative Black Caucus*, 988 F Supp 2d at 1295 (quotation marks omitted). See also, for example, *Radogno II*, 2011 WL 5868225 at *4 (rejecting a proposed multifactor test that, like Justice Souter’s approach in *Vieth*, focused on disregard for traditional districting principles).

⁹² *League of Women Voters*, 2011 WL 5143044 at *4. See also, for example, *Radogno I*, 2011 WL 5025251 at *7 (“But what is the connection between the alleged burden imposed on Plaintiffs’ ability to elect their preferred candidate and a restriction on their freedom of political expression? There is none.”).

⁹³ *Committee for a Fair and Balanced Map*, 835 F Supp 2d at 576.

⁹⁴ *Radogno II*, 2011 WL 5868225 at *4. See also *id* (“Why the two-thirds requirement for incumbent pairings, as opposed to three-fifths or three-quarters?”).

much like obscenity cases—courts will know one when they see one.”⁹⁵ Predictably, the courts turned down this invitation.⁹⁶

Why has no plaintiff since *LULAC* argued for a partisan symmetry test? We can only speculate, but several possibilities come to mind. First, many lawyers simply may not have noticed the favorable comments about symmetry in *LULAC*. The bulk of the decision dealt not with gerrymandering but with racial vote dilution,⁹⁷ and even the gerrymandering portions were more concerned with the mid-decade timing of Texas’s redistricting than with the plan’s asymmetry.⁹⁸ Moreover, Justice Kennedy did write that “asymmetry alone is not a reliable measure of unconstitutional partisanship.”⁹⁹ We believe—consistent with Justice Stevens’s and Justice Souter’s comments¹⁰⁰—that Justice Kennedy remains open to the adoption of a symmetry test, but this subtlety easily may have escaped less attentive (or obsessive) readers.

Second, the measure of partisan asymmetry applied by Justice Stevens in *LULAC*, partisan bias, is not particularly easy to compute. In its simplest form, the measure requires data about each party’s vote share in each district in a plan, followed by use of the uniform swing assumption to determine each party’s seat share at a hypothetical vote share point.¹⁰¹ In the more sophisticated version recommended by Grofman and King, the uniform swing assumption is relaxed so that each district’s shift is drawn from a random distribution, and multiple regressions are employed to predict district outcomes from historical electoral data.¹⁰² None of this analysis is overly difficult for political scientists, but it is hardly intuitive for lawyers. Understandably,

⁹⁵ *Perez*, 2011 WL 9160142 at *11 (quotation marks and brackets omitted).

⁹⁶ See, for example, *Baldus*, 849 F Supp 2d at 854; *Fletcher*, 831 F Supp 2d at 904 (“The plaintiffs here . . . offer no reliable standard by which to adjudicate their gerrymandering claim.”); *Gonzalez*, 53 A3d at 1254 (“In sum, plaintiffs have not articulated any way in which the process or its results violated their rights under the Federal Constitution.”).

⁹⁷ See *LULAC*, 548 US at 423–47 (Kennedy) (plurality).

⁹⁸ See *id.* at 413–18, 421–23 (Kennedy) (plurality).

⁹⁹ *Id.* at 420 (Kennedy) (plurality).

¹⁰⁰ See notes 80–81 and accompanying text.

¹⁰¹ See Grofman and King, 6 Election L J at 10–11 (cited in note 11). See also, for example, Nicholas O. Stephanopoulos, *The Consequences of Consequentialist Criteria*, 3 UC Irvine L Rev 669, 684 (2013) (calculating partisan bias in this way).

¹⁰² See Grofman and King, 6 Election L J at 11–14 (cited in note 11).

plaintiffs may have shied away from quantitative metrics they did not fully understand.¹⁰³

Lastly, a cloud of defeatism hangs over the cause of action for partisan gerrymandering, perhaps prompting plaintiffs not to press such claims too vigorously. As noted earlier, not a single claimant was able to convince a court to strike down a district plan on gerrymandering grounds during the eighteen years between *Bandemer* and *Vieth*.¹⁰⁴ In the decade since *Vieth*, plaintiffs' record has been equally dismal: failure after failure with nary a single success.¹⁰⁵ Faced with such relentlessly negative precedent, aggrieved parties in the post-*LULAC* era may have *included* gerrymandering claims in their complaints, reasoning that they could do no harm, but then chosen not to *pursue* these claims with much enthusiasm. Other redistricting theories (such as unequal district population, racial vote dilution, and racial gerrymandering) have much higher success rates, and plaintiffs accordingly may have focused their energies on them.

Ultimately, the reason why plaintiffs have failed to argue for the adoption of a partisan symmetry test is immaterial for our purposes. The key facts are simply that a majority of the Court expressed interest in symmetry in *LULAC*, and that nothing has happened since *LULAC* to reduce the attractiveness of this doctrinal opportunity. In the next Part, we introduce a new measure of partisan symmetry, the *efficiency gap*, that we believe is superior to the partisan bias metric applied by Justice Stevens in *LULAC*. It addresses many of the concerns raised by Justice Kennedy, while more directly capturing the essence of the harm that is caused by gerrymandering. If and when plaintiffs recognize the opening presented to them by the Court, they should press for the efficiency gap, not partisan bias, to be used as the judicial test in this domain.

II. THE EFFICIENCY GAP

The key insight underlying the efficiency gap is that all elections in single-member districts produce large numbers of wasted votes. Some voters cast their ballots for losing candidates

¹⁰³ See generally Arden Rowell and Jessica Bregant, *Numeracy and Legal Decision Making*, 46 *Ariz St L J* 191 (2014) (presenting an original empirical study suggesting that substantive legal decision-making varies with the "numeracy," or math skill, of the lawyer).

¹⁰⁴ See note 43 and accompanying text.

¹⁰⁵ See note 90.

(and so are “cracked”). Other voters cast their ballots for winning candidates but in excess of what the candidates needed to prevail (and so are “packed”). A gerrymander is simply a district plan that results in one party wasting many more votes than its adversary. And the efficiency gap indicates the magnitude of the divergence between the parties’ respective wasted votes. It aggregates all of a plan’s cracking and packing choices into a single number.

We begin this Part by defining the efficiency gap more formally and explaining how it is calculated. In brief, the difference between the parties’ respective wasted votes is divided by the total number of votes cast, thus generating an easily interpretable percentage. Next, we explore some of the efficiency gap’s interesting properties. Under typical conditions, the only figures needed to compute the gap are a party’s vote margin and seat margin in an election. In addition, a gap of zero implies that a given increase in a party’s vote share produces a twofold increase in the party’s seat share. We then compare the efficiency gap to partisan bias. While the metrics converge in a tied election, the efficiency gap is superior in other circumstances because it does not require the results of hypothetical races to be estimated. Finally, we identify and address some of the gap’s limitations. In particular, the lopsided elections that can give rise to odd conclusions are very rare, the gap’s volatility can be taken into account through sensitivity testing, and uncontested seats can be addressed using certain reasonable assumptions.

A. Definition and Computation

Our analysis begins with the premise that the goal of a partisan gerrymander is to win as many *seats* as possible given a certain number of *votes*. To accomplish this aim, a party must ensure that its votes translate into seats more “efficiently” than do those of its opponent. In the plurality-rule, single-member-district (SMD) elections that are almost universal in American politics,¹⁰⁶ “inefficient” votes are those that do not directly

¹⁰⁶ SMD elections are ubiquitous at the congressional and state legislative levels, but not at lower levels of government. See Jeffrey A. Taylor, Paul S. Herrnson, and James M. Curry, *The Impact of Multimember Districts on Legislative Effort and Success* *1 (unpublished manuscript, Midwest Political Science Association, Apr 2014), archived at <http://perma.cc/8SUY-XNBJ> (“[T]en state legislatures, more than two-thirds of municipal governments, and a multitude of city councils . . . elect at least some members from multimember districts.”).

contribute to victory. Thus, any vote for a losing candidate is wasted by definition, but so too is any vote beyond the 50 percent threshold needed (in a two-candidate race) to win a seat. If these supporters could be moved through redistricting to a different seat, they could help the party claim that seat as well without changing the outcome in the seat from which they were moved.

As a practical matter, there are always many inefficient votes in any SMD system. (In fact, exactly half the votes in each district are wasted in a two-candidate race.)¹⁰⁷ But a gerrymandering party does not need to eliminate *all* of its inefficient votes. It only needs to end up with *fewer* wasted votes than the opposition by winning its seats by smaller margins on average. The opposition is left winning a small number of seats by large margins, and losing a large number of seats where it claims many votes but still falls short of victory. The strategies that produce these results are often called “cracking” (splitting a party’s supporters between districts so they fall shy of a majority in each one) and “packing” (stuffing remaining supporters in a small number of districts that they win handily).¹⁰⁸ Though the nuances vary, some kind of cracking and packing is how all partisan gerrymanders are constructed.¹⁰⁹

The efficiency gap, then, is simply *the difference between the parties’ respective wasted votes, divided by the total number of votes cast in the election*.¹¹⁰ Wasted votes include both “lost” votes (those cast for a losing candidate) and “surplus” votes (those cast for a winning candidate but in excess of what she needed to prevail). Each party’s wasted votes are totaled, one sum is subtracted

¹⁰⁷ This is because victory in a two-candidate race is achieved with 50 percent of the vote (plus one). All other votes are cast either for the losing candidate or for the winning candidate but in excess of what she needed to prevail. Assume, for example, that Candidate A receives 65 percent of the vote and Candidate B receives 35 percent. Then 15 percent of Candidate A’s votes and all 35 percent of Candidate B’s votes are wasted—totaling 50 percent.

¹⁰⁸ *Vieth*, 541 US at 286 n 7 (Scalia) (plurality). For an illuminating discussion of wasted votes, see Lani Guinier, *Groups, Representation, and Race-Conscious Districting: A Case of the Emperor’s Clothes*, 71 Tex L Rev 1589, 1606 (1993).

¹⁰⁹ A sizeable literature has articulated different strategies for achieving successful partisan gerrymanders, but the ultimate objective is always to claim a larger efficiency gap in a party’s favor—either on average or for a given set of expected future outcomes. See, for example, John N. Friedman and Richard T. Holden, *Optimal Gerrymandering: Sometimes Pack, but Never Crack*, 98 Am Econ Rev 113, 115 (2008); Guillermo Owen and Bernard Grofman, *Optimal Partisan Gerrymandering*, 7 Polit Geography Q 5, 6 (1988).

¹¹⁰ See McGhee, 39 Legis Stud Q at 68 (cited in note 12) (expressing this idea algebraically).

from the other, and then, for the sake of comparability across systems, this difference is divided by the total number of votes cast. Figure 1 shows how this calculation is carried out for the hypothetical district plan discussed in the Introduction.¹¹¹ The bottom line is that there are 200 fewer wasted votes for Party A than for Party B (out of 1,000 total votes), resulting in an efficiency gap of 20 percent in Party A's favor.¹¹²

FIGURE 1. CALCULATION OF THE EFFICIENCY GAP

District	Total Votes by Party		Lost Votes by Party		Surplus Votes by Party		Wasted Votes by Party	
	A	B	A	B	A	B	A	B
1	70	30	0	30	20	0	20	30
2	70	30	0	30	20	0	20	30
3	70	30	0	30	20	0	20	30
4	54	46	0	46	4	0	4	46
5	54	46	0	46	4	0	4	46
6	54	46	0	46	4	0	4	46
7	54	46	0	46	4	0	4	46
8	54	46	0	46	4	0	4	46
9	35	65	35	0	0	15	35	15
10	35	65	35	0	0	15	35	15
Total	550	450	70	320	80	30	150	350

The efficiency gap is the bedrock of both our positive and normative approaches in this Article. As a positive matter, we believe the gap is the essence of what critics have in mind when they refer to partisan gerrymandering. They typically conceive of gerrymandering as the systematic disadvantaging of a party through the cracking and packing of its supporters.¹¹³ A gerrymandering metric ought to capture this concept directly, and the efficiency gap does so. At its core, it is nothing more than a tally of all the cracking and packing decisions in a district plan.

Normatively, the efficiency gap identifies a concrete harm worthy of judicial intervention. A gap in a party's favor enables the party to claim more seats, relative to a zero-gap plan, *without claiming more votes*. After voters have decided which party they support—based on whatever criteria they choose, including the attractiveness of each party's policy agenda—the votes cast

¹¹¹ See note 14 and accompanying text.

¹¹² As in the Introduction, we assume that 50 votes, not 51, are needed to win a district. Again, the efficiency gap with a 51-vote threshold is 20.6 percent in favor of Party A. See McGhee, 39 Legis Stud Q at 68 (cited in note 12).

¹¹³ See note 133.

by supporters of the gerrymandering party translate more effectively into representation and policy than do those cast by the opposing party's supporters. The gerrymandering party enjoys a political advantage not because of its greater popularity, but rather because of the configuration of district lines. The parties do not compete on a level playing field.

B. Key Properties

Beyond its positive and normative appeal, the efficiency gap has a number of useful properties that warrant discussion. First, under circumstances that are very common in US elections, it is unnecessary to sum the wasted votes in each individual district—a process that can be somewhat cumbersome. Instead, if we assume that all districts are equal in population (which is constitutionally required), and that there are only two parties (which is typical in SMD systems), then the computation reduces through simple algebra to something quite straightforward.¹¹⁴

$$\text{Efficiency Gap} = \text{Seat Margin} - (2 \times \text{Vote Margin})$$

In this formula, “Seat Margin” is the share of all seats held by a party, minus 50 percent. “Vote Margin” is the same for votes: the share received by a party, minus 50 percent. A party has an electoral advantage when the efficiency gap is positive, and a disadvantage when it is negative.¹¹⁵ When the number is equal to zero, there is no efficiency gap and so no partisan benefit derived from redistricting.

Consider once again the example from Figure 1. Party A received 55 percent of the statewide vote (550 out of 1,000 votes), and with this support won eight of the ten seats (80 percent). The plan's efficiency gap thus is $(80\% - 50\%) - 2 \times (55\% - 50\%) = 20\%$. This is the same figure we calculated earlier by actually summing all of the lost and surplus votes in the election. How might the advantage for Party A be eliminated? There are two ways. The party either could have won six seats instead of eight for the 55 percent vote share it actually received ($[60\% - 50\%] - 2 \times [55\% - 50\%] = 0$),

¹¹⁴ See McGhee, 39 Legis Stud Q at 79–80 (cited in note 12) (deriving this equation). See also, for example, King and Browning, 81 Am Polit Sci Rev at 1252 (cited in note 22) (also assuming “that there are only two parties . . . and that the legislature is composed of a set of single-member, winner-take-all districts”).

¹¹⁵ The directionality of the measure is purely arbitrary. One might use the second party for all measures instead, in which case negative values would imply an advantage for the first party.

or it could have received 65 percent of the vote for the eight seats it claimed ($[80\% - 50\%] - 2 \times [65\% - 50\%] = 0$). As it is, Party A won two more seats than it would have if the parties had wasted equal numbers of votes.

The efficiency gap's second interesting property follows from these calculations. Simply put, it is a measure of undeserved seat share: the proportion of seats a party receives that it would *not* have received under a plan with equal wasted votes. Above, for example, the efficiency gap for Party A is 20 percent, which also happens to be Party A's extra seat share relative to what it would have received under a perfectly balanced plan ($80\% - 60\% = 20\%$). When it is sensible to do so, this percentage can be converted to raw seats as well—in this case, two extra seats out of ten. Thus, the efficiency gap is a tangible figure with real-world meaning that laypeople can easily understand.

Third, the efficiency gap identifies a specific *relationship* between vote share and seat share that corresponds to partisan fairness across a wide range of outcomes. Specifically, each additional percentage point of vote share for a party should result in an extra two percentage points of seat share. This relationship is implied by the efficiency gap formula noted above. If the gap is zero, it can remain at this level only if any shift in seat share is twice the size of any shift in vote share. Also importantly, the relationship is *not* simply proportional, with each additional percentage point of the vote netting an additional percentage point of seats. Scholars have long recognized that SMD systems such as the American one tend to provide a “winner’s bonus” of surplus seats to the majority party,¹¹⁶ and the efficiency gap is consistent with this understanding. But the gap offers what scholars to date have been unable to supply: a normative guide as to how large this bonus should be.¹¹⁷ To produce partisan fairness—in the sense of equal wasted votes for each party—the bonus should be a precisely twofold increase in seat share for a given increase in vote share.¹¹⁸

¹¹⁶ See, for example, Grofman and King, 6 Election L J at 9 (cited in note 11).

¹¹⁷ See, for example, Gelman and King, 88 Am Polit Sci Rev at 554 (cited in note 22) (describing the “normative position that healthy representative democracies have . . . high levels of electoral responsiveness” but not offering any target level for responsiveness); Grofman and King, 6 Election L J at 9 (cited in note 11) (referring to a “‘bonus’ of varying sizes”).

¹¹⁸ According to the efficiency gap equation, a purely proportional system disadvantages the majority party, and by increasingly significant amounts as the party’s vote

Fourth, the efficiency gap can be calculated for *any* district plan, including in states where one party enjoys a dominant electoral position. This feature makes it possible to evaluate plans that, to this point, have been shielded from scrutiny because one party's advantage was so great. While some have argued that only electoral systems in which redistricting could conceivably affect control of the legislature are of any practical interest,¹¹⁹ this position strikes us as overly restrictive. For instance, a large number of legislatures require a supermajority to pass key legislation.¹²⁰ Indeed, in California, the only redistricting lawsuit from the last cycle concerned supermajority control of the state senate in the context of a two-thirds vote requirement for tax increases.¹²¹ Similarly, with respect to congressional redistricting, it is not the *state* majority but the *national* one that matters. If a party can extract extra seats that it does not deserve, those seats will pay dividends in Washington, DC, whether the state is competitive or not.

Finally, the efficiency gap does not require any counterfactual analysis. It can be calculated using actual election results, without the need for any further assumptions. As we describe in further detail below, we believe *limited* counterfactual analysis can be helpful in determining the robustness of the efficiency gap in the face of shifts in voter sentiment from election to election.¹²² Such analysis is especially important if an analyst thinks there is a high likelihood that election outcomes will change substantially in the near future. But these counterfactuals are not fundamental to the efficiency gap, and their size and direction—and even the methods by which they are calculated—are left entirely to the analyst's discretion.

C. Comparison to Partisan Bias

Having defined the efficiency gap and explored its key properties, we are now in a position to compare it to the measure of partisan symmetry—partisan bias—that has dominated the

share climbs. If a party receives 60 percent of the vote and 60 percent of the seats, for example, a plan would have an efficiency gap of 10 percent *against* the party.

¹¹⁹ See, for example, Grofman and King, 6 Election L J at 19 (cited in note 11).

¹²⁰ See Jason Mercier, *Proposed Constitutional Amendments Would Require Supermajority Vote for Tax Increases* *2 (Washington Policy Center, Feb 2013), archived at <http://perma.cc/JTR4-4H4B> ("18 states . . . have some form of supermajority vote requirement for tax increases.").

¹²¹ See *Vandermost v Bowen*, 269 P3d 446, 473 n 31 (Cal 2012).

¹²² See Part III.B.

literature¹²³ and appeared on occasion in the case law.¹²⁴ (Partisan bias, again, refers to the divergence in the share of seats that each party would win given the same share, typically 50 percent, of the statewide vote. For example, if Republicans would win 52 percent of a state's seats with 50 percent of the state's vote, then a district plan would have a pro-Republican bias of 2 percent.)¹²⁵ We first demonstrate that the efficiency gap and partisan bias are different concepts, at least in elections that are not tied. We then argue that the efficiency gap is the superior metric because it more directly captures the essence of gerrymandering and does not require the estimation of hypothetical election results.

To begin with, it is important to note that the efficiency gap and partisan bias are deeply connected. In fact, the two measures are mathematically identical in the special case in which both parties receive exactly 50 percent of the vote. A party's vote margin is zero at this point, meaning that the efficiency gap is simply equal to the party's seat margin,¹²⁶ while a party's seat margin in a tied election is the usual *definition* of partisan bias.¹²⁷ More than a mathematical abstraction, this identity implies a critical substantive point: a party can win more than half the seats with half the votes only by exacerbating the efficiency gap in its favor. While winning more seats is the outcome that partisan bias assesses, the manipulation of wasted votes, gauged by the efficiency gap, is the activity that leads to this outcome.

But the efficiency gap and partisan bias are *not* identical for all other election results. This is because whenever an election does not produce a tie, the parties' actual vote shares in each district must be shifted in order to calculate partisan bias.

¹²³ See Grofman and King, 6 Election L J at 6 (cited in note 11) (describing support for partisan bias as "virtually a consensus position of the scholarly community").

¹²⁴ See, for example, *LULAC*, 548 US at 464–68 (Stevens concurring in part and dissenting in part).

¹²⁵ See Gelman and King, 88 Am Polit Sci Rev at 543 (cited in note 22) (defining partisan bias); Grofman and King, 6 Election L J at 6–13 (cited in note 11) (same). See also Janet Campagna and Bernard Grofman, *Party Control and Partisan Bias in 1980s Congressional Redistricting*, 52 J Politics 1242, 1245 (1990) (calculating bias for a tied election); Gary W. Cox and Jonathan N. Katz, *The Reapportionment Revolution and Bias in U.S. Congressional Elections*, 43 Am J Polit Sci 812, 820 (1999) (same).

¹²⁶ Specifically, if we insert a vote share of 50 percent into the efficiency gap equation, we obtain:

$$\text{Efficiency Gap} = \text{Seat Margin} - 2 \times \text{Vote Margin} = \text{Seat Margin} - 2 \times (50\% - 50\%) = \text{Seat Margin}.$$

¹²⁷ See Grofman and King, 6 Election L J at 8 (cited in note 11).

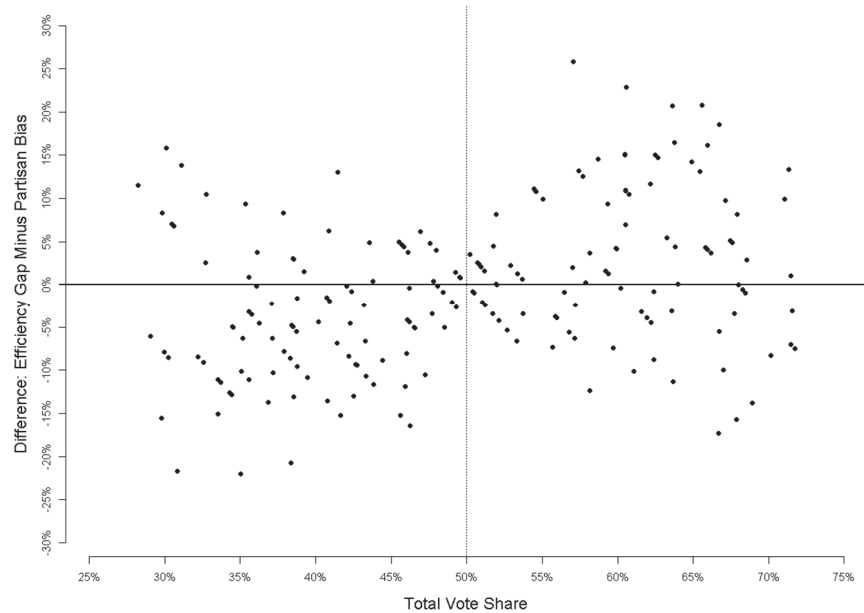
Typically these vote shares are shifted so as to mimic a tied election, though sometimes they are shifted to mimic the flipping of the parties' statewide performances.¹²⁸ Whatever the rationale for the shifting, it causes partisan bias to diverge from the efficiency gap, which is computed using the observed election results. The parties' seat shares in a *counterfactual* election are the key determinant of partisan bias, while the parties' wasted votes in the *actual* election are the crucial input for the efficiency gap.

Figure 2 uses election simulations to depict more fully the relationship between the efficiency gap and partisan bias. We simulated 201 redistricting plans of 25 seats each, with the parties' statewide vote shares ranging from 25 percent to 75 percent.¹²⁹ We then calculated both the efficiency gap and partisan bias for each simulated plan and determined the difference between them. If the measures capture the same idea, the results should cluster around the horizontal zero line for all vote shares. Instead, they are identical at the point where both parties receive 50 percent of the vote, very similar (though not identical) for a few percentage points above and below this point, and then highly divergent after that. In other words, the further an election is from being tied, the more uncorrelated the efficiency gap and partisan bias become.

¹²⁸ See id.

¹²⁹ Specifically, we started with a statewide vote share of 25 percent and moved up in increments of 0.2 percent until we reached 75 percent, for 201 total plans. For each point along the way, we sampled 25 districts from a normal distribution with that mean and a standard deviation of 15 percent. Any districts whose seat shares were shifted above 100 percent or below 0 percent were assigned to those two values, respectively. Each of these groups was symmetric in expectation, but in practice, many deviated from perfect symmetry due to random chance.

FIGURE 2. EFFICIENCY GAP AND PARTISAN BIAS FOR SIMULATED DISTRICT PLANS



In earlier work, one of us used empirical data from state legislative elections to make much the same point. In competitive elections (those closer than 55 percent–45 percent), partisan bias is an excellent predictor of a party's seat share in a model that also controls for the party's vote share (coefficient = 0.73).¹³⁰ But in *uncompetitive* elections, the predictive power of partisan bias essentially disappears (coefficient = -0.07).¹³¹ By comparison, the efficiency gap is a perfect predictor of seat share in both competitive and uncompetitive elections (coefficient = 1.0).¹³² The predictive power of partisan bias is thus a function of how closely it converges on the efficiency gap (which it does fully in a tied election).

If the efficiency gap and partisan bias are distinct concepts, why is the former preferable to the latter as a measure of gerrymandering? The most basic answer relates to the meaning of gerrymandering, while the subtler reasons involve issues with the calculation of partisan bias. Starting with the more fundamental

¹³⁰ See McGhee, 39 Legis Stud Q at 67 (cited in note 12).

¹³¹ See *id.*

¹³² See *id.* at 69.

point, when observers assert that a district plan is a gerrymander, they usually mean that it systematically benefits a party (and harms its opponent) in actual elections.¹³³ They do *not* mean that a plan would advantage a party in the hypothetical event of a tied election, or if the parties' vote shares flipped. In common parlance, a plan is a gerrymander if it enables a party to convert its votes into seats more efficiently than its adversary—even if this edge would vanish under different electoral conditions. The efficiency gap reflects this understanding, while partisan bias does not.

Turning next to the calculation of partisan bias, it is problematic, first, because it relies on the uniform swing assumption: the premise that vote switchers are present in equal numbers in each district.¹³⁴ Even the more advanced version of the metric introduced by Professors Gelman and King “requires the statistical assumption of *approximate uniform partisan swing*,”¹³⁵ that is, the supposition that “districts swing along with the statewide mean . . . but only on average (due to the random error term []).”¹³⁶ It is only by shifting district vote shares by (more or less) uniform amounts that the results of the crucial hypothetical election can be estimated.

Unfortunately, the assumption of uniformity is often inaccurate, even in its approximate version. The geographic distributions of the parties' supporters are highly heterogeneous,¹³⁷

¹³³ See *id.* at 57 (“Some version of efficiency is typically the core concept of interest in the literature on redistricting.”). See also, for example, *Bandemer*, 478 US at 141 (White) (plurality) (“The election results obviously are relevant to a showing of the effects required to prove a political gerrymandering claim under our view.”); *Karcher*, 462 US at 751 (Stevens concurring) (suggesting a test for gerrymandering that asks “whether the plan has a significant adverse impact on an identifiable political group”). Notably, even proponents of partisan bias sometimes conceive of gerrymandering as “the degree to which an electoral system unfairly favors one political party in the translation of statewide . . . votes into the partisan division of the legislature.” Gelman and King, 88 Am Polit Sci Rev at 543 (cited in note 22).

¹³⁴ See notes 82–83, 101–02, and accompanying text.

¹³⁵ Grofman and King, 6 Election L J at 12 (cited in note 11). See also *id.* at 11–12 & n 44 (collecting relevant works by Gelman and King).

¹³⁶ Andrew Gelman and Gary King, *A Unified Method of Evaluating Electoral Systems and Redistricting Plans*, 38 Am J Polit Sci 514, 521 (1994). See also Gelman and King, 88 Am Polit Sci Rev at 555 (cited in note 22) (“Our method can be seen as a generalization of uniform partisan swing.”).

¹³⁷ See Chen and Rodden, 8 Q J Polit Sci at 245–46 (cited in note 23) (finding a very high level of spatial autocorrelation for Democratic voting preferences in Florida); Stephanopoulos, 125 Harv L Rev at 1940–41 (cited in note 18) (same for an array of US Census variables throughout the country). See also Jackman, 24 British J Polit Sci at 331 (cited in note 83) (“[W]hen we estimate bias . . . we measure manipulation of the

meaning that a given shift in the statewide vote is likely to result in variable shifts at the district level. For instance, a statewide swing of 5 percent in the Republican direction might produce much larger pro-Republican swings in districts full of independent voters who voted for a charismatic Democrat in the previous election. But it might produce no pro-Republican swing at all in polarized districts made up of staunch partisans whose political views are largely set.¹³⁸ Moreover, districts' partisan swing is a partially endogenous phenomenon that can be influenced by the parties' own campaign strategies. If the parties focus their efforts in some districts but not in others (as they routinely do), then uneven shifts at the district level are even more probable.¹³⁹

The second problem with the calculation of partisan bias is that it *cannot* be computed for highly uncompetitive systems (at least not sensibly). In such systems, the vote share shifting that would have to be assumed to simulate a tied election (let alone the flipping of the parties' performances) is simply too implausible to be taken seriously. As proponents of partisan bias concede, "the methodology we propose is intended only for jurisdictions where the politics is competitive enough that it is empirically feasible to develop reliable expectations what each party would receive in seats if it won a given sized majority of the votes."¹⁴⁰ It is precisely because enormous vote share shifts

electoral system *conditional* on a spatial distribution of partisan support. As the spatial distribution changes, so too will the bias . . . of the electoral system.").

¹³⁸ In the 2006 election for the US House of Representatives, for example, there was a mean pro-Democratic swing of 4.2 percent in contested districts—with a standard deviation of 6.1 percent. The pro-Democratic swing ranged from a low of -19.2 percent to a high of 34.6 percent. See Christian R. Grose and Bruce I. Oppenheimer, *The Iraq War, Partisanship, and Candidate Attributes: Variations in Partisan Swing in the 2006 U.S. House Elections*, 32 *Legis Stud Q* 531, 533 (2007).

¹³⁹ See, for example, Jenni Newton-Farrelly, *Wrong Winner Election Outcomes in South Australia: Bias, Minor Parties and Non-uniform Swings* *5 (South Australian Parliament Research Library, Apr 1, 2010), archived at <http://perma.cc/WAZ7-JVGP> (describing how the uniform swing assumption failed when "[t]he [Australian Labor Party] ran the most successful defensive marginal seats campaign seen in South Australia," so that "[m]any of the biggest swings occurred in safe Labor seats and in fairly safe Liberal seats," while marginal Labor seats barely swung at all). See also Jackman, 24 *British J Polit Sci* at 335 (cited in note 83) (finding that the uniform swing assumption was wrong by an average of 4 percent in Australian elections in the early 1980s).

While we use some uniform swing analysis to conduct our sensitivity tests, these tests are not fundamental to the measurement of the efficiency gap. At any rate, one could easily conduct the sensitivity tests using assumptions other than uniform swing.

¹⁴⁰ Grofman and King, 6 *Election L J* at 19 (cited in note 11). See also Gelman and King, 88 *Am Polit Sci Rev* at 545 (cited in note 22) ("We therefore limit our analysis to

are unrealistic that, as we noted above, partisan bias diverges from the efficiency gap so markedly in uncompetitive elections.¹⁴¹

But even though partisan bias is inapplicable to uncompetitive systems, gerrymandering is still possible—and ought to be measurable—in these settings. A party can manipulate district lines so that its votes translate more efficiently into seats whether it receives 50 percent or 70 percent of the statewide vote. Notably, almost *half* of recent state legislative elections have been so uncompetitive that partisan bias cannot be calculated for them reliably.¹⁴² A metric that is so confined in its scope is of limited value.

One might respond that the question of majority control carries special normative weight, and so what happens in uncompetitive systems, in which majority control is not at stake, is of little interest. But as we have argued, this position is untenable when applied to US House elections, in which the relevant majority is national rather than local. It is somewhat more valid when applied to state legislative elections, at least in states without supermajority requirements. But supermajority requirements are pervasive, and so hardly irrelevant. Moreover, changing the *size* of a majority party's control is likely to have policy consequences even if majority control itself is not at issue. Even in today's polarized environment, cross-party coalitions are reasonably common at the state legislative level, suggesting that the minority party might be able to pull policy more in its direction as its numbers increase, even if it does not control the agenda entirely.¹⁴³

The final problem with the calculation of partisan bias is that it can sometimes lead to quite counterintuitive results. These oddities tend to occur when seats that actually are won by one party are assigned to the *other* party when vote shares are shifted to simulate the hypothetical election. (In earlier work, one of us has referred to this phenomenon as seats entering the “counterfactual window.”)¹⁴⁴ Take, for example, the ten-district

‘competitive electoral systems,’ which we define as states in which each political party managed to garner a majority of seats or votes in at least one election between 1968 to 1988.”).

¹⁴¹ See notes 129–32 and accompanying text.

¹⁴² See McGhee, 39 Legis Stud Q at 66 (cited in note 12) (noting that in 44 percent of these elections the majority party received more than 55 percent of the statewide vote).

¹⁴³ See Shor and McCarty, 105 Am Polit Sci Rev at 540, 546 (cited in note 20) (showing a wide range of polarization levels in state legislatures).

¹⁴⁴ See McGhee, 39 Legis Stud Q at 62 (cited in note 12).

plan we used earlier to show how the efficiency gap is computed.¹⁴⁵ Since Party A received 55 percent of the statewide vote, its district-specific vote shares need to be reduced by 5 percent (and Party B's increased by 5 percent) to determine the plan's partisan bias. As Figure 3 shows, this shifting causes five districts (districts 4–8) that in fact were won by Party A to be allocated to Party B in the hypothetical tied election. The plan therefore has a partisan bias of 20 percent *against* Party A (since Party B would win seven of the ten districts in a tied election), even though the plan has an efficiency gap of 20 percent *in favor of* Party A (since Party A actually won eight of the ten districts). This scenario sharpens the point with which we began our critique of partisan bias: because the metric assesses the results of a counterfactual election, it sometimes may be unmoored entirely from the actual election outcomes that are of primary concern.

FIGURE 3. CALCULATION OF PARTISAN BIAS

District	Actual Votes by Party		Actual Winner by Party		Shifted Votes by Party		Shifted Winner by Party	
	A	B	A	B	A	B	A	B
1	70	30	1	0	65	35	1	0
2	70	30	1	0	65	35	1	0
3	70	30	1	0	65	35	1	0
4	54	46	1	0	49	51	0	1
5	54	46	1	0	49	51	0	1
6	54	46	1	0	49	51	0	1
7	54	46	1	0	49	51	0	1
8	54	46	1	0	49	51	0	1
9	35	65	0	1	30	70	0	1
10	35	65	0	1	30	70	0	1
Total	550	450	8	2	500	500	3	7

The conclusion we draw from this analysis is that there is no good reason to use partisan bias as a measure of gerrymandering. It is conceptually flawed because it focuses on hypothetical rather than actual election results. And as a practical matter, it cannot sensibly be computed for the many electoral systems that are uncompetitive, while it converges on the efficiency gap as systems become more competitive. Partisan bias therefore is either an invalid metric (in uncompetitive elections) or a redundant one (in competitive settings).

¹⁴⁵ See Part II.A.

D. Limitations

Up to this point, we have introduced the efficiency gap and emphasized its advantages over partisan bias. Next we consider the measure's possible limitations. There are three in particular: (1) the unexpected results that begin to emerge when one party receives an extraordinarily high vote share; (2) the metric's instability over time; and (3) the measure's sensitivity to the treatment of uncontested seats. But none of these limitations is crippling. Sufficiently high vote shares are very rare; the gap's volatility can be addressed through sensitivity testing; and sensible assumptions for uncontested seats tend to dampen rather than exaggerate the gap.

As we have noted, the efficiency gap is useful for evaluating fairness across a range of plans, even ones in which one party significantly outperforms the other.¹⁴⁶ But for any system in which one party *truly* dominates its opponent—specifically, when one party receives more than 75 percent of the statewide vote—the efficiency gap can produce results that at first glance seem strange. When one party receives 75 percent of the vote, a plan with a gap of zero will give that party 100 percent of the seats.¹⁴⁷ And once a party holds all the seats, any additional vote share above 75 percent will suggest a growing gap in favor of the *opposing* party. This outcome is technically correct: when a party already holds all the seats, additional votes are wasted since they cannot contribute to more victories. Nonetheless, it fails to capture the idea of fairness at stake in redistricting, since the majority party in this situation could hardly be said to suffer a disadvantage.

That said, this scenario is easily identified in any redistricting analysis. All an analyst must do is flag elections in which a party received at least 75 percent of the statewide vote and 100 percent of the seats. More to the point, results this lopsided are extremely rare. No party has received more than 75 percent of the aggregate vote in state legislative elections since 1982, and there are only 18 such cases out of 800 in congressional elections (all of them either in the South or in states with fewer than four House districts).¹⁴⁸ And even in *these* cases, the majority party

¹⁴⁶ See text accompanying notes 140–42.

¹⁴⁷ Per the formula introduced in Part I.B, $(100\% - 50\%) - 2 \times (75\% - 50\%) = 0$.

¹⁴⁸ For this congressional calculation, we excluded all uncontested seats, since they are especially likely to bias the outcome compared to the larger number of seats at stake in legislatures. The specific cases are: Alaska (2000, 2002, 2004), Hawaii (1984, 1992,

did not always win every single seat, meaning that the actual universe of potentially odd outcomes is smaller still. Accordingly, this is not a problem that is especially relevant to real-world redistricting.

The efficiency gap's potentially more important limitation is instability. While in theory the efficiency gap *could* be constant over time—it remains fixed so long as seat shares and vote shares move together in the two-to-one ratio specified by the formula—as a practical matter it tends to fluctuate. In fact, in the original exposition of the measure, one of us showed that most redistricting plans are volatile enough that their precise consequences cannot be forecast with great accuracy. Specifically, a plan's efficiency gap in one election is a relatively weak predictor of its gap in the next election (coefficient = 0.23) in a model that also includes a variety of other factors.¹⁴⁹ Many partisan gerrymanders therefore are not solid enough to avoid coming undone in the face of changing political winds.

However, this instability is not so much a weakness of the measure as it is a property of the elections themselves. The parties' vote shares vary much more over the life of a district plan than is commonly realized: by up to 5.5 percent in either direction for most state house plans over a typical decade, and by up to 7.5 percent for most congressional plans.¹⁵⁰ It is relatively unsurprising that seat shares do not change in tandem pursuant to the two-to-one ratio, and that the efficiency gap thus swings from election to election. By comparison, partisan bias is fairly stable.¹⁵¹ But this relative stability is an artifact of the measure itself, stemming from the fact that it shifts all actual election results to the point of the hypothetical election. This shifting negates all uniform swings that may have occurred, and even negates any *non*-uniform swings that fail to move any districts into or out of the counterfactual window.¹⁵²

Moreover, to say that many gerrymanders come undone is not to say that they *all* evaporate. As we illustrate in the next Part, some district plans in previous cycles indeed featured large

2008), Louisiana (2000), Mississippi (1990), North Dakota (1984, 1986), South Dakota (1998), Vermont (1982, 1984, 1990, 1992, 1996), West Virginia (1998), and Wyoming (1984).

¹⁴⁹ See McGhee, 39 Legis Stud Q at 72–74 (cited in note 12). By comparison, the equivalent coefficient for partisan bias is 0.68. See *id.*

¹⁵⁰ See Part III.B.

¹⁵¹ See McGhee, 39 Legis Stud Q at 56 (cited in note 12).

¹⁵² See *id.* at 59.

and durable efficiency gaps over multiple elections. They persisted in benefiting a particular party, year in and year out.¹⁵³ As for the plans currently in effect, sensitivity testing can determine their stability in the face of a wide range of future electoral shifts. So long as certain plans would remain unbalanced over an array of potential outcomes—as several indeed would, per the next Part’s calculations—the case for judicial intervention is unaffected. In fact, it is strengthened, because then courts can be more confident that the plans’ distortion is a lasting rather than an ephemeral phenomenon.

Finally, the efficiency gap can be sensitive to the treatment of uncontested seats. These seats pose a tricky problem for any measure of gerrymandering (including partisan bias).¹⁵⁴ Since gerrymanders redistribute voters in order to pack and crack the opposition, determining the degree of packing and cracking requires knowing how many people in each district support each party. This support need not be unconditional: it can change over time in response to the candidates, the parties’ platforms, the parties’ relative performances in office, and so forth. Indeed, this variation is the essence of the sensitivity testing we describe in greater detail below.¹⁵⁵ But the notion of support hinges on freedom of choice: voters must be able, in principle, to select more than one option. Absent such a choice, we simply do not obtain any information about voters’ preferences.

Uncontested races by definition offer no choice at all: they require voters to support one party, and deny them the opportunity to reveal their true sympathies. Indeed, the one thing we can say with virtual certainty about an uncontested race is that its outcome would have been different had it been contested. The *winner* might have been the same, but the *share of the vote* for the winner almost certainly would have been lower. For example, in 95 percent of state legislative districts with uncontested Democrats, Republicans managed at least 12 percent of the vote when the same district was contested in other elections. Likewise, in 95 percent of cases with uncontested Republicans, Democrats garnered at least 21 percent of the vote when they ran a

¹⁵³ See Part III.B.

¹⁵⁴ See Campagna and Grofman, 52 J Politics at 1247 n 7 (1990) (cited in note 125) (“One key issue is how to handle uncontested seats. [One needs] to avoid using 100% as the vote share for a party in an uncontested seat (which, for Congress, tends to bloat . . . vote share).”); Gelman and King, 38 Am J Polit Sci at 524 (cited in note 136) (“[U]ncontested elections do not fit any linear model unless explicitly controlled for.”).

¹⁵⁵ See Part III.A.

candidate for the seat. In most of these cases, the minority party's average vote share was even higher than these numbers would suggest.

For this reason, scholars often try to assign vote shares to uncontested races that reflect how voters *might* have cast their ballots *if* they had been given a choice.¹⁵⁶ There are several ways this assignment can be done. The most defensible is to use variables that have been shown in the past to predict vote share, and then to impute values for uncontested races based on these variables. One might also examine how uncontested districts have turned out in previous years when those same seats were contested. Or one might simply assume that the opposing party would have received a certain vote share (for example, 25 percent) had it run a candidate in an uncontested district. Clearly, these imputation approaches can be more or less sophisticated, and can bring varying amounts of information to bear on the problem.

For our analysis here, we followed two different imputation strategies. For congressional races, we obtained presidential vote share data at the district level, and then ran regressions of vote choice in contested seats on incumbency status and district presidential vote separately for each election year. From this information, we imputed values for uncontested seats. For uncontested Democrats, this procedure resulted in a mean Democratic vote share of 70 percent, with 90 percent of values falling between 56 percent and 87 percent. For uncontested Republicans, it produced a mean Democratic vote share of 32 percent, with 90 percent of values falling between 22 percent and 43 percent.

Unfortunately, we did not have presidential vote share data by state house district for all the years in our analysis, so we were forced to take a different imputation approach for these chambers. For all contested state house races, we ran a multi-level model with a fixed effect for incumbency and random effects for years, states, and districts. For uncontested districts that had been contested at some point in their lifespan, this equation assigned a single value by effectively borrowing information from other districts in the same state and election year, as well as from the same district at other points in time. For uncontested districts that were never contested, we took a random

¹⁵⁶ See McGhee, 39 Legis Stud Q at 66 n 5 (cited in note 12) (using a "default setting for uncontested races, which assigns uncontested Republicans a vote share of 0.25 and uncontested Democrats a vote share of 0.75").

draw from the distribution of district random effects and used it for prediction. Despite the differences in chamber and methodology, the results were remarkably similar to those for the House. For uncontested Democrats, we calculated a mean Democratic vote share of 66 percent, with 90 percent of values falling between 52 percent and 83 percent. For uncontested Republicans, we calculated a mean Democratic vote share of 36 percent, with 90 percent of values falling between 25 percent and 48 percent.

Going forward, we encourage other scholars to explore a range of imputation techniques to ensure that the direction of a gerrymander (if not its size) is robust to any particular strategy. But this catholic philosophy has its limits. We strongly discourage analysts from either dropping uncontested races from the computation or treating them as if they produced unanimous support for a party. The former approach eliminates important information about a plan, while the latter assumes that coerced votes accurately reflect political support. Neither correctly represents how the gerrymandering party itself would view its plan.

III. GERRYMANDERING OVER TIME AND SPACE

Now that we have introduced the efficiency gap, we turn to what for many readers will be the most important question addressed by this Article: What gaps have district plans actually exhibited over the years and across the states? We begin this Part by presenting some summary statistics about the gaps of congressional and state house plans from 1972 to 2012. The gaps' distributions over this period both had medians close to zero and were roughly symmetric in shape. Thus, as a historical matter, neither party enjoyed a systematic advantage over its opponent. In recent years, however, there has been a startling rise in the level of the efficiency gap. In the 2012 election, in particular, the average absolute gap of both congressional and state house plans spiked to unprecedented heights.

We next report our findings about all of the *individual* district plans in our database. For each prior plan, we show both its average gap over its existence and the gap's full range of values during this period. For each current plan, we show its gap in the 2012 election as well as the spectrum of values the gap could take given plausible shifts in voter sentiment. One important conclusion is that most plans are reasonably fair and reasonably likely to favor different parties at different points during their lifespans. But another key point is that multiple current plans

are exceptions to this general rule. More of today's plans feature large efficiency gaps that are unlikely to dissipate than ever before in modern history.

Lastly, we single out the plans, both past and present, that have given rise to partisan gerrymandering litigation. Interestingly, the plans that plaintiffs have targeted have not featured especially large efficiency gaps. This poor record suggests that plaintiffs often have lacked accurate estimates of plans' partisan effects.¹⁵⁷ It also hints that courts may have acted prudently in rejecting many gerrymandering challenges. But this past prudence does not mean that courts should continue to rebuff gerrymandering suits. The efficiency gap provides exactly what litigants and courts have long been missing: a reliable assessment of plans' partisan implications.

A. Summary Statistics

We used congressional and state house election results from 1972 to 2012 to carry out our efficiency gap calculations.¹⁵⁸ We considered congressional plans only for states that had at least eight districts at some point during this period, because redistricting in smaller states has only a minor influence on the national balance of power. We also considered only single-member state house districts, because the efficiency gap is more difficult to compute for multimember districts.¹⁵⁹ Furthermore, we report

¹⁵⁷ See Part III.C.

¹⁵⁸ For congressional election results, see *Election Information: Election Statistics* (Office of the Clerk of the US House of Representatives), archived at <http://perma.cc/7UNC-HQS5>. The same information is available in a more usable format in a database maintained by Professor Gary Jacobson. For state house election results, we relied on a database assembled by Professor Carl Klarner for data through 2010, and we compiled the 2012 results ourselves. See Carl Klarner, et al, *State Legislative Election Returns Data, 1967–2010* (IQSS Dataverse Network), archived at <https://perma.cc/P3WP-XJ5Q>.

The efficiency gap also can be calculated using *presidential* election results aggregated by district. These results have the advantage of being (mostly) unaffected by district-level candidate characteristics. For congressional plans, our findings using presidential data are similar to those we report in the Article (especially for more recent years). For state house plans, unfortunately, presidential data is unavailable for most of the period we examine, meaning we cannot use it as a robustness check.

¹⁵⁹ For a few state houses in particular periods, we lacked so much data (either because it was not collected or because the state had too few single-member districts) that it seemed sensible to drop the body entirely. The omitted cases are: Alaska (1972–1980), Arkansas (all years), Hawaii (all years), Louisiana (all years), Maryland (all years), Mississippi (1972–1982), New Hampshire (all years), North Carolina (1972–1990), Virginia (1972–1982), and Wyoming (1972–1990). See note 106 and accompanying text.

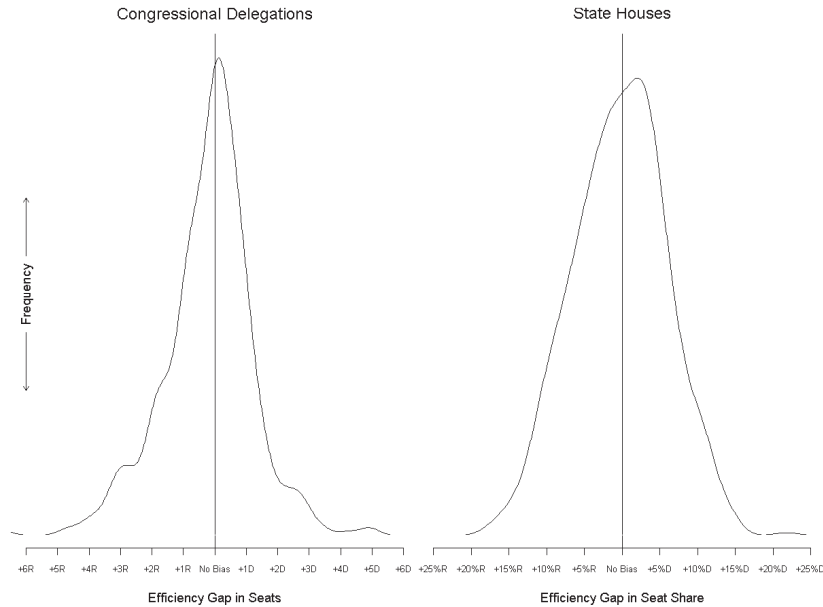
the efficiency gap in *seats* for congressional plans and in *seat shares* for state house plans. What matters in congressional plans is their impact on the total number of seats held by each party at the national level.¹⁶⁰ Conversely, state houses are self-contained bodies of varying sizes, for which seat shares reveal the scale of parties' advantages and enable temporal and spatial comparability.

Figure 4 shows the distributions of the efficiency gap for congressional and state house plans from the 1970s—the first full cycle of the modern one person—one vote era—to the present. Each plan in each election year is represented in the distributions; we do not average each cycle's plans here. The most obvious point about the curves is that their medians both are close to zero and their shapes both are approximately symmetric.¹⁶¹ Both curves are tilted *slightly* in a pro-Republican direction, as reflected in their longer Republican tails and their average efficiency gaps of -0.20 seats for Congress and -0.32 percent for state houses (where negative values are pro-Republican). But this imbalance is relatively trivial. For the most part, the efficiency gap hovers around zero, and there are plans that clearly favor both parties.

¹⁶⁰ See Adam B. Cox, *Partisan Gerrymandering and Disaggregated Redistricting*, 2004 S Ct Rev 409, 411 (arguing that the harms in gerrymandering of congressional plans “stem from the manipulation of the composition of Congress as a whole”).

¹⁶¹ For a similar finding with respect to the distribution of partisan bias at the congressional level, see King and Browning, 81 Am Polit Sci Rev at 1261–62 (cited in note 22) (“[T]he mean is almost exactly 0, and there is an approximately symmetric normal distribution around this point.”).

FIGURE 4. EFFICIENCY GAP DISTRIBUTIONS, 1972–2012



Our results diverge from recent findings by other scholars that most district plans are biased in a pro-Republican direction.¹⁶² We attribute the divergence to several factors. First, the other scholars used partisan bias as their measure of gerrymandering, not the efficiency gap.¹⁶³ As we explained earlier, partisan bias scores become increasingly uncorrelated with efficiency gap scores as elections grow less competitive.¹⁶⁴ Second, the other scholars calculated partisan bias using presidential election results rather than legislative election results.¹⁶⁵ If certain voters consistently support Republicans at the presidential level and Democrats at the legislative level, then presidential data may produce more pro-Republican estimates than legislative data.¹⁶⁶ And third, the other scholars studied elections only in

¹⁶² See Chen and Rodden, 8 Q J Polit Sci at 260–63 (cited in note 23).

¹⁶³ See id at 248.

¹⁶⁴ See Part II.C.

¹⁶⁵ See Chen and Rodden, 8 Q J Polit Sci at 248, 260–61 (cited in note 23).

¹⁶⁶ The relationship between presidential and legislative estimates also may vary over time. Our preliminary hypothesis is that both approaches produce similar results for modern elections, in which voters are well sorted by ideology, and more divergent

the early 2000s, a period in which we also find a pro-Republican skew.¹⁶⁷ Our conclusion that plans over the entire modern era have been reasonably balanced is consistent with the work of political scientists who have examined longer timespans.¹⁶⁸

Next, Figures 5 and 6 chart the average *net* efficiency gap and the average *absolute* efficiency gap over time.¹⁶⁹ The average net gap is the mean of all plans' actual gaps in a given year, while the average absolute gap is the mean of the absolute values of all plans' gaps. The average net gap indicates the overall partisan *direction* of gerrymandering, while the average absolute gap reveals its overall *magnitude*. The average net gap plots confirm the account, hinted at above, of plans increasingly favoring Republicans over time. At the congressional level, plans in the 1970s were roughly balanced in aggregate (0.10 seats), plans in the 1980s slightly benefited Democrats (0.27 seats), plans in the 1990s slightly benefited Republicans (-0.27 seats), plans in the 2000s substantially benefited Republicans (-0.72 seats), and plans in 2012 even more dramatically benefited Republicans (-1.21 seats).¹⁷⁰ At the state house level, similarly, the trend has been from a modest edge for Democrats in the 1970s (1.52 percent) and

results for past elections, in which the parties were not as ideologically coherent. We hope that future research will test this hypothesis.

¹⁶⁷ See Chen and Rodden, 8 Q J Polit Sci at 261, 264 (cited in note 23). See also Figures 5, 6 (showing a change in the efficiency gap over time).

¹⁶⁸ See, for example, Cox and Katz, *Elbridge Gerry's Salamander* at 59 (cited in note 22) (showing a pro-Republican bias in the 1950s at the congressional level followed by close to zero bias in the 1960s); Gelman and King, 38 Am J Polit Sci at 540 (cited in note 136) (same, and also showing a pro-Democratic bias in the 1970s and 1980s); Gelman and King, 88 Am Polit Sci Rev at 546 (cited in note 22) (showing a wide range of bias values for state legislative plans in the 1970s and 1980s); King and Browning, 81 Am Polit Sci Rev at 1261–62 (cited in note 22).

¹⁶⁹ Since we do not have exactly the same states for every year in our database of state legislative elections, we wanted to make sure that the trends we observe are not a product of this data issue. We therefore ran an ordinary least squares (OLS) regression with fixed effects for years and states. The year fixed effects represent the change over time, independent of constant state characteristics. We averaged the actual efficiency gaps for 1972 and then added the year fixed effects to that value to generate the remainder of the time series. This process produces results very similar to simple averaging.

¹⁷⁰ This is quite similar to the pattern that one of us found in a historical analysis of partisan bias. See John Sides and Eric McGhee, *Redistricting Didn't Win Republicans the House* (Wash Post Wonkblog, Feb 17, 2013), archived at <http://perma.cc/KBW5-24V4> (showing that Democrats benefited from gerrymandering at the congressional level in the 1970s and 1980s, Republicans benefited slightly in the 1990s, and Republicans benefited significantly in the 2000s and 2012). See also Tony L. Hill, *Electoral Bias and the Partisan Impact of Independent Redistricting Bodies: An Analysis Incorporating the Brookes Method* *19 (unpublished manuscript presented at the Annual Conference of the Midwest Political Science Association, Apr 2008) (on file with authors) (same).

1980s (1.52 percent), to ever larger advantages for Republicans in the 1990s (-1.04 percent), 2000s (-2.11 percent), and 2012 (-3.67 percent).¹⁷¹

The story for the average absolute gap is somewhat different. At both the congressional and state house levels, it remained roughly constant between 1972 and 2010 (though with perhaps a slight upward tilt, especially from the 1980s onward). But it then spiked in the 2012 election to the highest peaks recorded in the modern era—1.58 seats at the congressional level, compared to an average of 1.02 seats in the four previous cycles, and 6.07 percent at the state house level, compared to an average of 4.94 percent in the four prior decades. The increase in the *magnitude* of gerrymandering thus is a very recent phenomenon, while the movement in the Republican *direction* dates back somewhat further.

These findings indicate that the growing Republican advantage in the 1990s and 2000s was due not to more severe gerrymandering but rather to some other factor: perhaps control over redistricting in more states, larger numbers of Republican incumbents eking out narrow wins, or favorable trends in voters' residential patterns. If plans in this period had been gerrymandered more aggressively than their predecessors, then their average absolute gap would have increased, not held steady. The findings also suggest that the striking outcomes of the 2012 election *are* due, at least in part, to more extreme gerrymandering. In 2012, unlike in previous years, the average absolute gap spiked just as the average net gap surged in a pro-Republican direction.¹⁷²

¹⁷¹ The pro-Democratic spike in the average net gap in 2010 is also notable. It is likely explained by a number of Democratic incumbents barely hanging on to their seats in a very pro-Republican year.

¹⁷² For a similar argument, see Anthony J. McGann, Charles Anthony Smith, and James Alexander Keena, *Revenge of the Anti-federalists: Constitutional Implications of Redistricting* *28–29, 42–50 (unpublished manuscript, 2014) (on file with authors) (attributing the rise in pro-Republican partisan bias in 2012 to more severe gerrymandering in the wake of *Vieth*).

FIGURE 5. AVERAGE NET AND ABSOLUTE EFFICIENCY GAPS FOR CONGRESSIONAL PLANS, 1972–2012

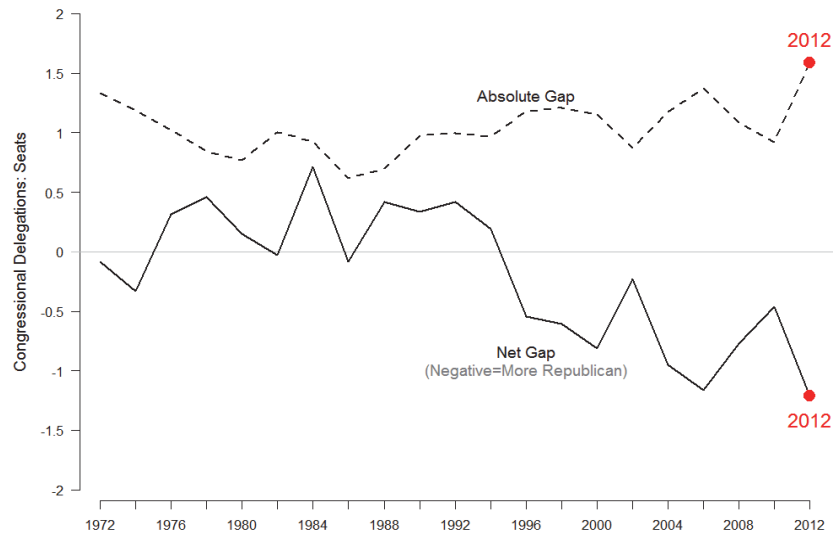
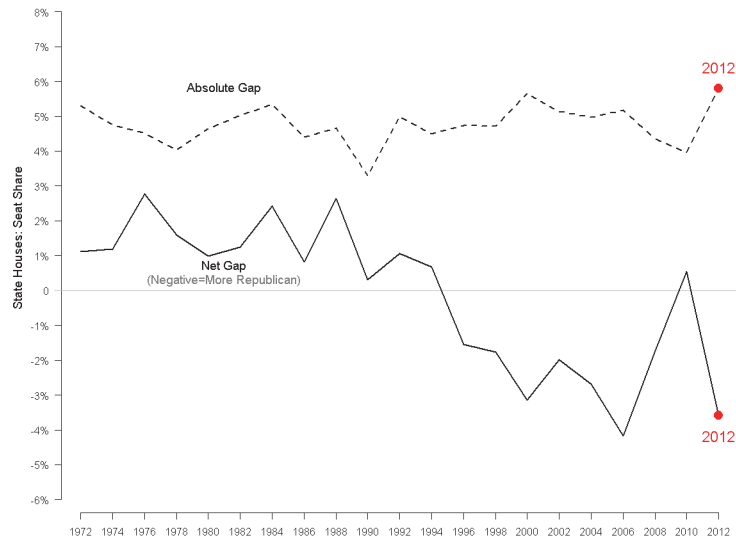


FIGURE 6. AVERAGE NET AND ABSOLUTE EFFICIENCY GAPS FOR STATE HOUSE PLANS, 1972–2012



B. Individual Plans

We turn next from summary statistics about the efficiency gap to individual district plans. This plan-level information, of course, is precisely what litigants and courts would need to assess maps' partisan fairness. Figures 7 and 8, then, display the gaps of congressional and state house plans used in the five cycles of the modern redistricting era. As before, we present the gaps in terms of seats for Congress and seat shares for state houses. When multiple plans were employed by a state in a given cycle, we depict each of them separately.¹⁷³ Furthermore, we are interested in capturing the extent to which each plan's gap changed (or would change) over its lifetime in order to gauge the robustness of the plan's partisan skew. Gerrymanders, we reiterate, can often come undone in shifting political circumstances.

To this end, for each plan in earlier cycles, we show its average efficiency gap as well as the full range of values taken by the gap over the plan's existence. This information reveals the plan's partisan implications as they in fact unfolded. For each plan *currently* in effect, the gap's range cannot be calculated directly—the necessary elections simply have not occurred. Instead, to explore the spectrum of possible outcomes, we shift the observed 2012 vote share up and down by a uniform amount, and then record how the gap changes as a result. When choosing the scale and direction of this shifting, we wanted to remain as agnostic as possible about the future electoral path of each state. We thus used the variation that actually occurred in past elections to anchor our simulation, and selected a level of shifting that covered four out of every five prior outcomes.¹⁷⁴ Since each plan typically spans five elections, this approach ensures that any plan that does *not* cross the zero axis in the simulation is unlikely to do so in a given cycle. The shifts we derived from the historical data also are quite large: 7.5 percent in either direction for Congress and 5.5 percent in either direction for state houses. Accordingly, we are confident that we have devised a

¹⁷³ See, for example, Figure 7 (depicting two plans for Texas in the 2000s).

¹⁷⁴ Specifically, we started with the aggregate vote share in each state in the first year each plan was used (usually 1972, 1982, 1992, or 2002). We then calculated the deviations from that year's outcome that occurred throughout the remainder of the redistricting cycle. These deviations gave us a sense of the range of outcomes that may ultimately transpire for the plans currently in effect. We then chose vote share shifts that covered the tenth through the ninetieth percentiles of each variable's distribution.

stringent test of gerrymanders' robustness to varying electoral conditions.

Our efficiency gap computations, combined with our sensitivity testing, lead to several important conclusions. First, many plans either are balanced to begin with or can unravel in changing political circumstances. Out of the 120 congressional plans we examined, 80 had mean efficiency gaps of less than one seat, and 59 crossed the zero axis at some point during their lifespans. Likewise, of the 167 state house plans in our study, 85 had mean gaps of below 4 percent, and 78 favored different parties at different points in the cycle.¹⁷⁵ It thus is only the occasional plan that has a large or durable efficiency gap. Severe and persistent gerrymandering is the historical exception rather than the rule.

Second, while a Republican advantage is more common, there are numerous examples of plans that strongly favor Democrats as well. Political scientists often argue that America's underlying political geography benefits Republicans, because Democratic supporters are concentrated in urban centers where they are likely to waste their votes in overwhelmingly safe districts.¹⁷⁶ As we discuss below, the spatial allocation of voters may be legally relevant as a justification for plans whose efficiency gaps exceed the key thresholds.¹⁷⁷ Nevertheless, there are multiple cases of plans that are biased robustly in favor of Democrats, including the Texas congressional plans in the 1970s, 1980s, and 1990s; the first California congressional plan in the 1980s;¹⁷⁸ the current Massachusetts and Rhode Island state house plans; and several southern state house plans in the 1970s, 1980s, and 1990s. Pronounced Republican edges may be more prevalent, but they do not exhaust the universe of unbalanced plans.

¹⁷⁵ We use these levels here because they are *half* of the thresholds that we later recommend in our discussion of presumptively valid and invalid plans. See Part IV.A. In addition, a substantial portion of the plans that do not cross the zero axis were in effect for only one or two elections. Had they been used for the entire decade, they may well have crossed the zero axis too.

¹⁷⁶ See, for example, Chen and Rodden, 8 Q J Polit Sci at 241 (cited in note 23); Gary C. Jacobson, *Terror, Terrain, and Turnout: Explaining the 2002 Midterm Elections*, 118 Polit Sci Q 1, 19 (2003) (describing how Democratic votes are more likely to be "wasted" due to less efficient spatial distribution).

¹⁷⁷ See Part IV.B.

¹⁷⁸ California's infamous "Burton gerrymander" actually exhibits the largest efficiency gap of any congressional plan in our database. For an in-depth discussion of this plan, see Andrew J. Taylor, *Elephant's Edge: The Republicans as a Ruling Party* 40 (Praeger 2005).

Third, plans' efficiency gaps have become both larger and more pro-Republican over time. This point already was made by the time series charts we presented earlier, but it is confirmed by the plan-level data. At the congressional level, there were two plans in the 1970s with average gaps of more than two seats (one pro-Democratic and one pro-Republican), four plans in the 1980s (three pro-Democratic), four plans in the 1990s (two pro-Republican), four plans in the 2000s (three pro-Republican), and *seven* plans in 2012 (*all* pro-Republican). Similarly, at the state house level, there were six plans in the 1970s with an average gap of greater than 8 percent (four pro-Democratic), six plans in the 1980s (four pro-Democratic), five plans in the 1990s (four pro-Republican), three plans in the 2000s (two pro-Republican), and *fourteen* plans in 2012 (*twelve* pro-Republican).¹⁷⁹ Whether one considers aggregated or disaggregated data, it thus is clear that the scale and skew of today's gerrymandering are unprecedented in modern history.

C. Gerrymandering Litigation

The final piece of information conveyed by Figures 7 and 8 is whether a plan gave rise to partisan gerrymandering litigation. If it did, it is presented in italics and with a dotted line in the charts. Because the courts did not recognize this cause of action until the 1980s, we do not count gerrymandering-like claims that were brought in the 1970s.¹⁸⁰ By our count, four of the plans in our study were challenged on this basis in the 1980s, eight in the 1990s, eleven in the 2000s, and eight in the 2010s (so far).¹⁸¹ Interestingly, the Court's decisions in *Vieth* and *LULAC* seem to have had only a minor dampening effect on plaintiffs' willingness to file gerrymandering suits. Plaintiffs may not have noticed the Court's signals about the sorts of theories they should

¹⁷⁹ These are the same thresholds we use later in our discussion of the appropriate legal test for partisan gerrymandering. See Part IV.A.

¹⁸⁰ See, for example, *Gaffney v Cummings*, 412 US 735, 735–36 (1973) (dealing with a Connecticut reapportionment plan).

¹⁸¹ In the interest of brevity, we do not cite all of these cases here. The citations are available from the authors. See, for example, *Radogno v Illinois State Board of Elections*, 2011 WL 5868225, *5 (ND Ill) (three-judge panel); *Martinez v Bush*, 234 F Supp 2d 1275, 1340 (SD Fla 2002) (three-judge panel); *Pope v Blue*, 809 F Supp 392, 399 (WD NC 1992) (three-judge panel); *Badham v March Fong Eu*, 694 F Supp 664, 670 (ND Cal 1988) (three-judge panel).

assert,¹⁸² but they have capitalized on the Court's refusal to rule out gerrymandering claims entirely.

The most important point about the litigated plans is that they are *not* the ones that have exhibited the largest or most durable efficiency gaps. In the current cycle, for instance, none of the eight challenged plans satisfies the definition we set forth below of a presumptive gerrymander (that is, a gap of more than two seats for Congress, or 8 percent for state houses, that is expected to endure for the entire cycle).¹⁸³ Of the sixteen plans that do satisfy our definition, none was contested in court on this basis. The story is the same in earlier cycles. Of the twenty-three prior plans that were alleged to be unlawful gerrymanders, only five would have met our standard: Florida's congressional and state house plans in the 2000s, Texas's congressional plans in the 1990s and 2000s, and California's congressional plan in the 1980s. The numerous other plans that would have met our standard escaped any judicial scrutiny of their partisan implications.

To be fair, the litigated plans have not been *entirely* random, at least at the congressional level. The average litigated House plan has had a mean absolute efficiency gap of 1.47 seats, compared to 0.98 for unlitigated plans. Moreover, many of the plans that were not challenged on gerrymandering grounds *were* challenged on other bases, often with partisanship as the unspoken impetus for the litigation. For example, of the sixteen current plans that satisfy our definition of a presumptive gerrymander, eleven were attacked on one person—one vote, Voting Rights Act, racial gerrymandering, or state law grounds.¹⁸⁴

Putting aside these caveats, why have plaintiffs been so inaccurate in the plans they have targeted? One likely answer is that they have lacked reliable information about the magnitude and durability of gerrymandering. The most common existing measure of gerrymandering, partisan bias, very rarely has been cited in litigation.¹⁸⁵ And, to our knowledge, there has not been

¹⁸² See Part I.C.

¹⁸³ See Part IV.A.

¹⁸⁴ See *Litigation in the 2010 Cycle*, archived at <http://perma.cc/RL9S-56ZH>. See also Samuel Issacharoff, *Gerrymandering and Political Cartels*, 116 Harv L Rev 593, 630–31 (2002) (noting that, in “the absence of any real constitutional vigilance over partisan gerrymandering, . . . litigants must squeeze all claims of improper manipulation of redistricting into [other categories]”).

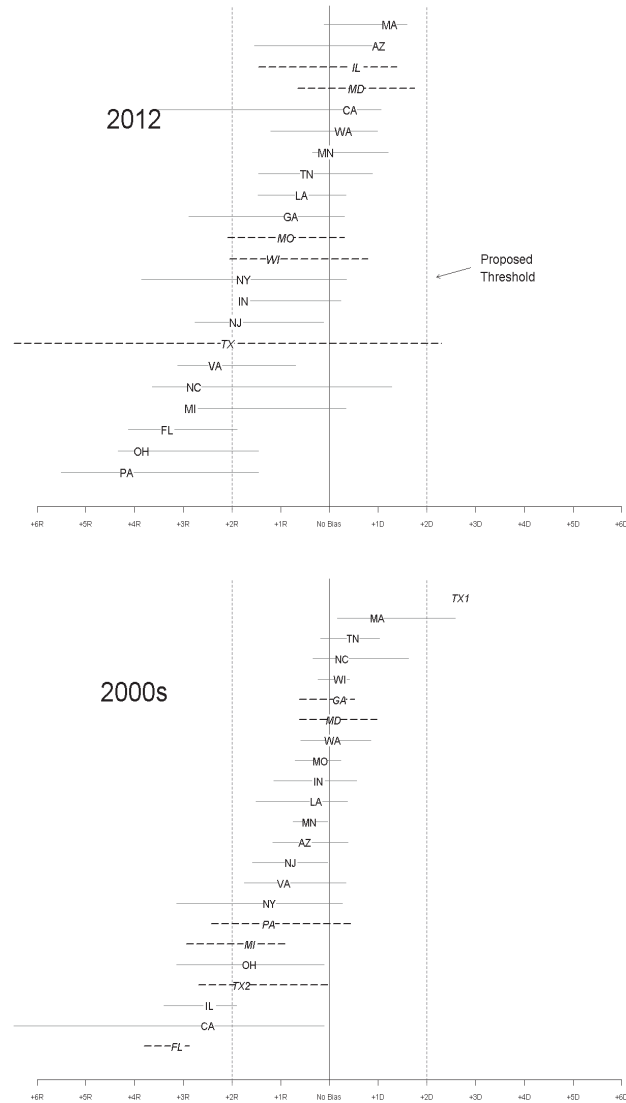
¹⁸⁵ A Westlaw search turns up only four gerrymandering decisions that have referred to partisan bias. See *LULAC*, 548 US at 419–20 (Kennedy) (plurality); *Good v Austin*, 800 F Supp 551, 555 (E & WD Mich 1992) (three-judge panel); *Quilter v*

any previous effort to determine the stability of gerrymandering through sensitivity testing. Plaintiffs thus have not had the necessary tools to identify especially egregious plans. Another potential answer is that, given the extremely low odds of prevailing on a gerrymandering claim, there simply may be no rhyme or reason to when one is included in a suit. The decision to assert such a claim may be essentially arbitrary, in which case one would not expect litigated plans to exhibit unusually large efficiency gaps.

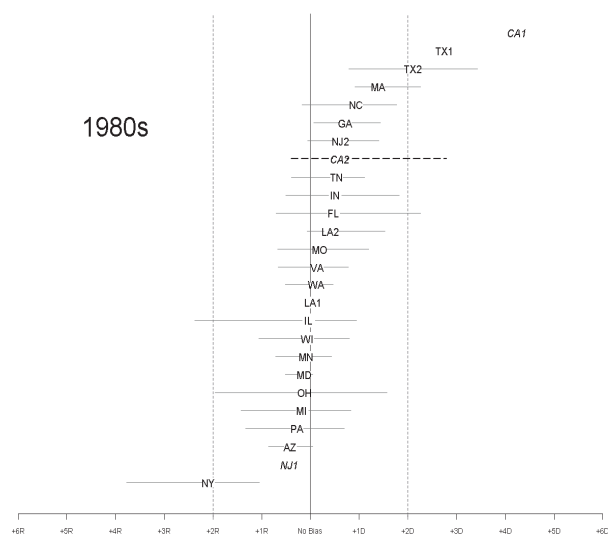
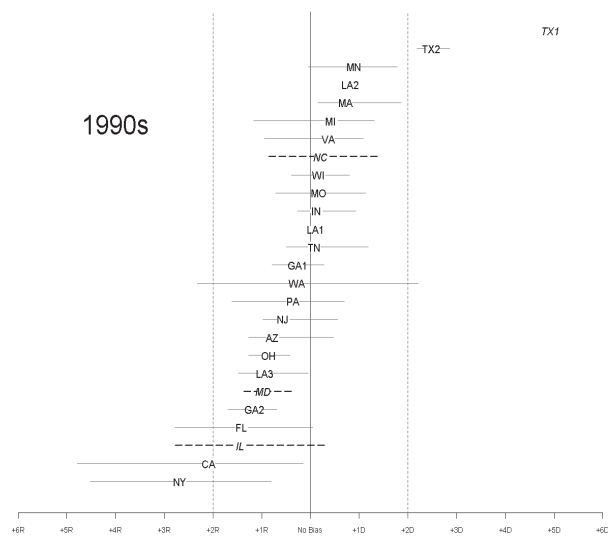
Whatever the reason may be for plaintiffs' past inaccuracy, we think it actually has positive implications for judicial intervention in the future. If past plaintiffs challenged plans almost at random, then courts acted wisely in rejecting these suits. But if future plaintiffs begin attacking only the *worst* gerrymanders—the ones with the largest and most durable efficiency gaps—then courts' prior passivity would be no justification for continued inaction. Then plaintiffs would be coming to courts not with unsubstantiated allegations but rather with hard data about plans' gaps relative to those of other states. The resulting cases would bear little resemblance to their antecedents in earlier cycles.

Voinovich, 794 F Supp 695, 733–34 (ND Ohio 1992) (three-judge panel), revd, 507 US 146 (1993); *Maestas v Hall*, 274 P3d 66, 79–80 (NM 2012).

FIGURE 7. EFFICIENCY GAPS FOR CONGRESSIONAL PLANS BY STATE, 1972–2012¹⁸⁶



¹⁸⁶ This chart includes all states that had at least eight congressional districts at any point in the relevant period.



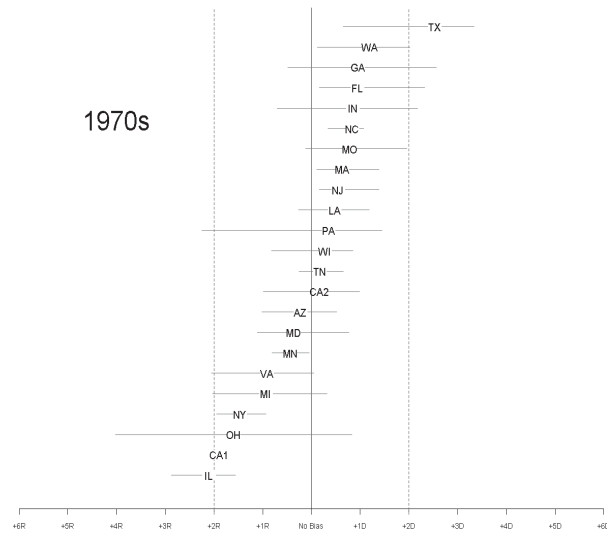
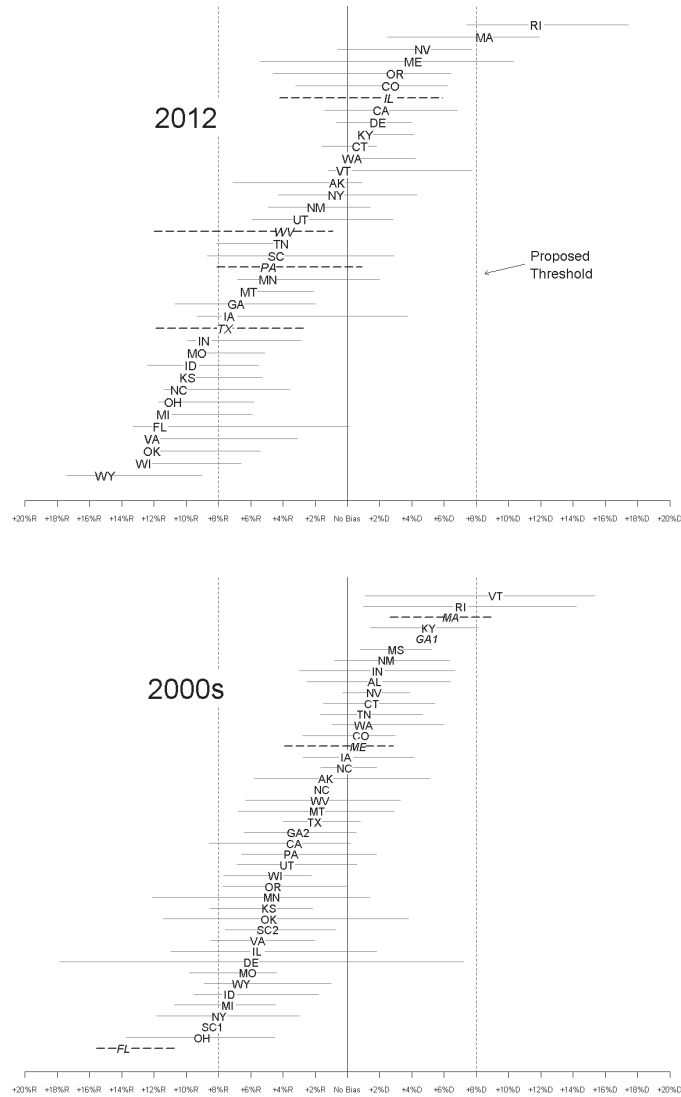
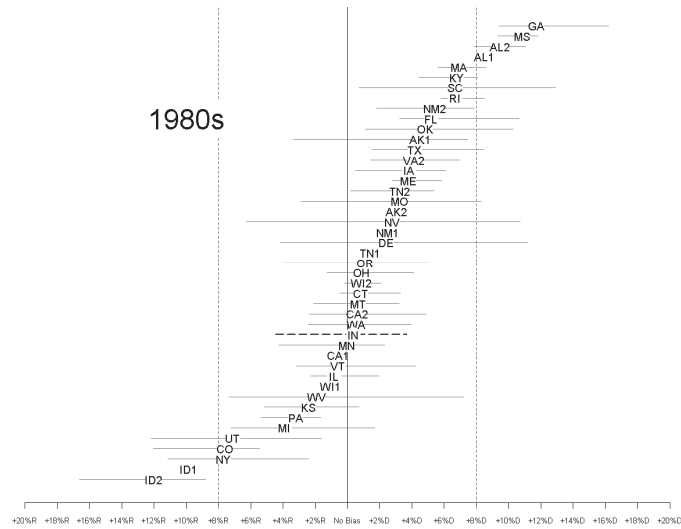
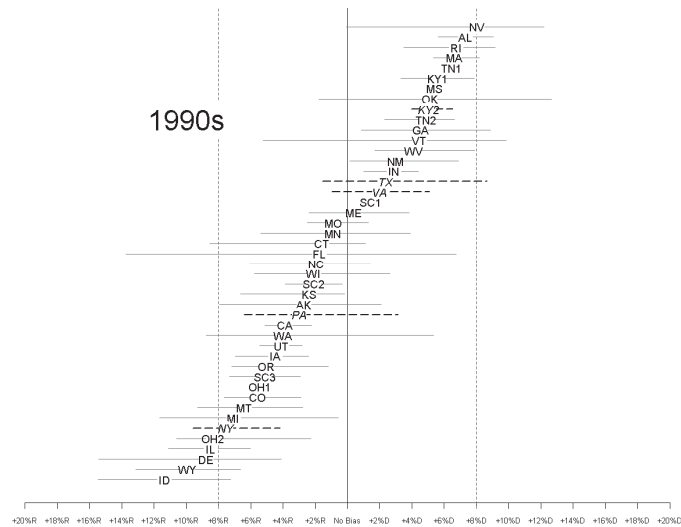
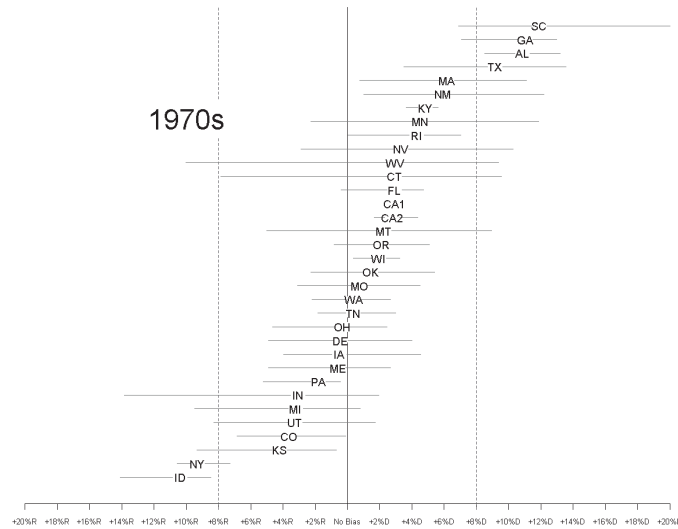


FIGURE 8. EFFICIENCY GAPS FOR STATE HOUSE PLANS BY STATE, 1972–2012







IV. A POTENTIAL TEST

The goal of this Article is not only to introduce the efficiency gap to a legal audience and to summarize its levels over time and space. It is also to show how the efficiency gap could be made the centerpiece of a doctrinal test for partisan gerrymandering. It is to show, in other words, how an approach based on the efficiency gap could exploit the opportunity created by the Court in *LULAC* while addressing the concerns raised about symmetry by Justice Kennedy.¹⁸⁷

In this Part, then, we explain how we envision that the efficiency gap would operate as doctrine. First, courts would need to choose an efficiency gap threshold above which district plans would be presumptively unlawful and below which they would be presumptively valid. Our suggestion is that the bar be set at *two seats* for congressional plans and *8 percent* for state house plans—with the additional caveat that the plans not be expected, based on sensitivity testing, ever to have an efficiency gap of zero over their lifetimes.¹⁸⁸ Second, states whose plans have efficiency gaps above these thresholds would have the chance to show that the gaps either resulted from the consistent application of legitimate policies, or were inevitable due to the states' underlying political geography. If it is actually the case

¹⁸⁷ See Part I.B.

¹⁸⁸ Since we have not gathered data on state *senate* plans, we do not attempt to set a threshold for them here.

that plans with gaps below the thresholds could not be drawn while still achieving the states' policies, or could not be drawn at all, then there would be no constitutional violation.

Finally, we revisit the criticisms leveled at partisan symmetry by Justice Kennedy in *LULAC*, and argue that they are unfounded with respect to the efficiency gap. The efficiency gap does not require any assumptions about where potential vote switchers might live, nor does it involve speculation about the results of specific hypothetical elections. Moreover, the empirical data we have presented enables reasonable thresholds to be selected, which then would be used not alone, but rather along with states' redistricting policies and political geography, to answer the ultimate constitutional question.

A. Setting the Threshold

The issue that most bedeviled the *Vieth* Court was how to distinguish between *some* partisan unfairness, which presumably is lawful, and *too much* unfairness, which is not. The Court stressed that “[t]he central problem is determining when political gerrymandering has gone too far,” adding that the “unanswerable question” is “[h]ow much political motivation and effect is too much.”¹⁸⁹ In the Court’s view, none of the verbal formulations offered by the parties or the dissenting justices in the case could resolve this concern. Valid plans could not be told apart from invalid ones based on qualitative standards such as “predominant intent,” “extremity of unfairness,” or “unjustified entrenchment.”¹⁹⁰

The *Vieth* Court may well be right that, in the exceedingly complex area of redistricting, no qualitative test can distinguish between lawful and unlawful plans with sufficient consistency. But a qualitative test is not the only option. Another possibility is a *quantitative* approach that relies on a calculable metric of gerrymandering. Notably, a quantitative approach is how the Court answered Justice John Marshall Harlan’s charge in *Reynolds v Sims*¹⁹¹ that “cases of this type”—that is, cases involving claims of unequal district population—“are not amenable to the development of judicial standards.”¹⁹² Over a series of decisions,

¹⁸⁹ *Vieth*, 541 US at 296–97 (Scalia) (plurality).

¹⁹⁰ See id at 284, 295, 299 (Scalia) (plurality).

¹⁹¹ 377 US 533 (1964).

¹⁹² Id at 621 (Harlan dissenting). See also *Baker v Carr*, 369 US 186, 268 (1962) (Frankfurter dissenting) (claiming that there are no “legal standards or criteria or even reliable analogies to draw upon for making judicial judgments” in reapportionment cases).

the Court decided that *any* deviations from perfect population equality in congressional plans must be justified by legitimate policies that necessitate the inequality.¹⁹³ The Court also concluded that population deviations above 10 percent in state legislative plans must be justified in the same manner.¹⁹⁴ But deviations *below* 10 percent in state plans are presumptively valid unless they result from efforts to disadvantage a political or racial group.¹⁹⁵

The efficiency gap makes possible the same doctrinal move in the gerrymandering context that population deviation enabled in the reapportionment context. Just as the Court was able to avoid hazy verbal formulations by adopting precise deviation thresholds, so too could it reply to *Vieth's* “unanswerable question”¹⁹⁶ by specifying an efficiency gap level above which plans would be presumptively unlawful and below which they would be presumptively legitimate. This approach would neatly slice *Vieth's* Gordian knot, informing lower courts and political actors, in clear quantitative terms, exactly “[h]ow much political . . . effect is too much.”¹⁹⁷

How much political effect, then, *is* too much? One option is to follow the Court's lead in the congressional reapportionment cases and to set an efficiency gap of zero as the threshold. In this case, any district plan that did not treat the parties *identically* in terms of wasted votes would be presumptively invalid. Any such plan would be upheld only if its efficiency gap either was the necessary result of a legitimate state policy, or was unavoidable given the geographic distribution of the parties' supporters. The overarching judicial goal, as in the congressional reapportionment

¹⁹³ See, for example, *Karcher*, 462 US at 730–31 (“First, the court must consider whether the population differences among districts could have been reduced or eliminated altogether [Next,] the State must bear the burden of proving that each significant variance between districts was necessary to achieve some legitimate goal.”); *Kirkpatrick v Preisler*, 394 US 526, 537 (1969) (Fortas concurring).

¹⁹⁴ See, for example, *Voinovich v Quilter*, 507 US 146, 161–62 (1993); *Brown v Thomson*, 462 US 835, 842–43 (1983) (“Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations. A plan with larger disparities in population, however, creates a prima facie case of discrimination and therefore must be justified by the State.”) (citations omitted); *Connor v Finch*, 431 US 407, 418 (1977).

¹⁹⁵ See *Cox v Larios*, 542 US 947, 949 (2004).

¹⁹⁶ *Vieth*, 541 US at 296 (Scalia) (plurality).

¹⁹⁷ *Id.* at 297 (Scalia) (plurality).

cases, would be to make the efficiency gap “as nearly as is practicable” equal to zero.¹⁹⁸

For several reasons, we do not recommend a zero threshold. First, it would be incompatible with the Court’s repeated statements in *Vieth* that *some* partisan unfairness indeed is permissible. The Court emphasized in its opinion that “segregat[ing voters] by political affiliation is (so long as one doesn’t go too far) lawful and hence ordinary.”¹⁹⁹ Right or wrong, this sentiment cannot be reconciled with a mandate that plans’ efficiency gaps be reduced to zero. Second, a zero threshold would mean that almost every current plan is presumptively unconstitutional—and that almost every plan ever enacted also likely should have been struck down. Even the most zealous reformer should hesitate before advocating standards with such disruptive consequences.²⁰⁰ Lastly, as we illustrated above with empirical evidence, plans’ efficiency gaps vary markedly from election to election.²⁰¹ It thus is futile to insist on a gap of zero at any particular moment, because in all likelihood the gap will have assumed a non-zero value by the time of the next election.

Instead of a zero threshold, we recommend setting the bar at two seats for congressional plans and 8 percent for state house plans, with the further proviso that sensitivity testing show that the efficiency gaps are unlikely to hit zero over the plans’ lifetimes.²⁰² Our rationale for using different metrics for congressional and for state house plans (seats and seat shares, respectively) is identical to why we presented the data differently

¹⁹⁸ *Karcher*, 462 US at 730, quoting *Kirkpatrick*, 394 US at 530. See also Grofman and King, 6 Election L J at 21 (cited in note 11) (suggesting minimization of partisan bias as a potential test for gerrymandering).

¹⁹⁹ *Vieth*, 541 US at 293 (Scalia) (plurality). See also *Bandemer*, 478 US at 133 (White) (plurality) (rejecting a standard based on “minor departures from some supposed norm”).

²⁰⁰ See *Bandemer*, 478 US at 133 (White) (plurality) (commenting that an overly “low threshold for legal action would invite attack on all or almost all reapportionment statutes”).

²⁰¹ See Part III.B.

²⁰² See Grofman and King, 6 Election L J at 22 (cited in note 11) (offering as another judicial option a test employing a partisan bias threshold). These thresholds are based on the assumption that plaintiffs generally would challenge plans after they have been used for a *single* election. The thresholds should be reduced somewhat if plaintiffs were to attack plans already used in *multiple* elections. Due to reversion to the mean, the efficiency gap distributions for plans used in multiple elections are narrower than the plan-year distributions presented in Part III.A—which implies that the thresholds should be lower as well.

in the previous Part.²⁰³ States' congressional delegations combine to form a single legislative body, the US House of Representatives, in which the parties seek to win as many seats as possible. Since aggregate House seats are the parties' main objective, it follows that the efficiency gap should be measured in seats rather than in percentage points. An eight-point gap in California simply is not commensurate, legally or politically, to an eight-point gap in Connecticut. But this logic flips for state house plans. Each state house is a self-contained entity, elected entirely by the state's own voters. State houses also vary dramatically in size, from as few as 40 members (in Alaska) to as many as 400 (in New Hampshire).²⁰⁴ For discrete bodies of such divergent sizes, seat shares, not raw seats, are the appropriate unit of measurement.

We selected the two-seat threshold for congressional plans by examining their actual efficiency gaps over the last five redistricting cycles (that is, the entire period following the reapportionment revolution of the 1960s).²⁰⁵ A gap of two or more seats placed a plan in the worst 14 percent of all plans in this era, roughly 1.5 standard deviations from the mean. In each of the decades we analyzed, only a handful of plans had average gaps of this magnitude. Illinois and Texas did so in the 1970s; California (the first plan), New York, and Texas (both plans) in the 1980s; California, New York, and Texas (both plans) in the 1990s; and California, Florida, Illinois, and Texas (the first plan) in the 2000s.²⁰⁶ (It is too soon, of course, to compute average gaps for the 2010s.) A two-seat gap therefore indicates that a district plan is gerrymandered to an unusual extent and that the gerrymandering has an unusually large impact on the makeup of the House as a whole. Such a gap does not quite make a plan an *outlier* in the overall distribution, but it does show that the plan is far from the historical norm.

Analogously, we chose the eight-point threshold for state house plans on the basis of their efficiency gaps over the last five decades. A gap of at least eight points placed a plan in the worst 12 percent of all plans in this period, also about 1.5 standard

²⁰³ See *id.* at 21–22 (noting the possibility of setting a partisan bias threshold in terms of seats rather than percentage points). See also Part III.A.

²⁰⁴ See Alaska Const Art 2, § 1; NH Const Art 9.

²⁰⁵ See Cox and Katz, *Elbridge Gerry's Salamander* at 12–13 (cited in note 22) (describing redistricting in historical perspective).

²⁰⁶ See Figure 7.

deviations from the mean. Again, only a small minority of plans had average gaps of this size in each decade we studied. Alabama, Georgia, Idaho, New York, South Carolina, and Texas did so in the 1970s; Alabama (both plans), Georgia, Idaho (both plans), and Mississippi in the 1980s; Idaho, Illinois, Nevada, Ohio (second plan), and Wyoming in the 1990s; and Florida, Ohio, and Vermont in the 2000s. An eight-point gap for a state house plan, like a two-seat gap for a congressional plan, thus is indicative of uncommonly severe gerrymandering.²⁰⁷

A word is in order too about the sensitivity testing we suggest incorporating into the thresholds. We recommend the testing because, as we have stressed, a plan's efficiency gap may change substantially from one election to the next. It makes little sense to say that a plan is a presumptively unlawful gerrymander in one election, if in the next its efficiency gap could switch to favor the opposing party. To take into account this volatility, we propose treating a plan as presumptively invalid only if its gap exceeds the threshold we have identified *and* the gap is unlikely to hit zero over the plan's lifetime. To determine the odds of the gap hitting zero, we suggest shifting the actual election results by percentages derived from historical data—up to 7.5 percent in each direction for congressional plans and up to 5.5 percent for state house plans—and then calculating the gap for each vote share shift.²⁰⁸ Only if the gap remains on the same

²⁰⁷ We also considered, but ultimately decided against, recommending a *ten*-point threshold for state house plans. The rationale for a ten-point threshold is that it would mirror the ten-point population deviation that the Court presumptively permits in the reapportionment context. See *LULAC*, 548 US at 468 n 9 (2006) (Stevens concurring in part and dissenting in part) ("It would, of course, be an eminently manageable standard for the Court to conclude that deviations of over 10% from symmetry create a *prima facie* case of an unconstitutional gerrymander, just as population deviations among districts of more than 10% create such a *prima facie* case."). But, in our view, this coincidental convergence is not a good enough reason to make the state house threshold substantially laxer than the congressional threshold. An efficiency gap of at least ten points, notably, placed a state house plan in the worst 5 percent of prior plans, roughly 1.9 standard deviations from the mean.

Another option is to choose a threshold based on the likelihood (derived from historical data) that a plan with a certain efficiency gap in the first election after redistricting will favor the opposing party at some point during the remainder of the cycle. Using a probability of switching signs of 10 percent, this approach gives rise to approximately the same thresholds we arrived at by examining plans' overall efficiency gap distributions. In other words, plans with efficiency gaps right at our recommended thresholds in the first election after redistricting have roughly a 10 percent chance of favoring the opposing party in one of the cycle's four remaining elections.

²⁰⁸ See Part III.B (discussing our sensitivity testing in more detail).

side of the zero axis in all of these calculations should the presumption of unconstitutionality apply.

What would this approach mean for the plans currently in force across the country?²⁰⁹ At the congressional level, Florida, Michigan, North Carolina, Ohio, Pennsylvania, Texas, and Virginia had efficiency gaps of at least two seats in the 2012 election (all in the Republicans' favor). But the sensitivity testing shows that plausible shifts in voter sentiment could result in the Michigan, North Carolina, and Texas plans advantaging Democrats instead. Thus only the Florida, Ohio, Pennsylvania, and Virginia plans would be presumptively unlawful. At the state house level, Florida, Idaho, Indiana, Kansas, Massachusetts, Michigan, Missouri, North Carolina, Ohio, Oklahoma, Rhode Island, Virginia, Wisconsin, and Wyoming had efficiency gaps of at least eight points in the 2012 election (most but not all in the Republicans' favor). Of these plans, all but Florida's are unlikely to cross the zero axis during the rest of the decade, and so would be presumptively invalid under our proposed test.²¹⁰

A final point about these thresholds is that they need not be adopted by courts at quite this level of specificity, at least not at once. Lacking experience with the efficiency gap, courts may be reluctant in early cases to set particular levels above which plans are presumptively unlawful and below which they are presumptively legitimate. Instead, courts may prefer to strike down plans with extremely high efficiency gaps and to uphold plans with very low gaps, while leaving it ambiguous where exactly the transition from presumptive validity to invalidity occurs. This, notably, is the path the Court took in the domain of state legislative reapportionment. In a line of cases between 1967 and 1975, the Court invalidated plans with total population deviations of 20 percent,²¹¹ 26 percent,²¹² and 34 percent,²¹³ while

²⁰⁹ The plans' efficiency gaps are depicted in Figures 7 and 8.

²¹⁰ A variant of this approach might be applied historically as well, examining (1) whether a plan had an average efficiency gap of more than two seats or eight points over its lifespan; and (2) whether a plan's efficiency gap ever crossed the zero axis during the decade. In the 2000s, for example, the California, Florida, Illinois, and first Texas congressional plans would have failed this test, along with the Florida, Ohio, and Vermont state house plans. See Figure 8.

²¹¹ See *Chapman v Meier*, 420 US 1, 22 (1975) (involving a North Dakota reapportionment plan).

²¹² See *Kilgarlin v Hill*, 386 US 120, 122 (1967) (involving a Texas reapportionment plan).

²¹³ See *Swann v Adams*, 385 US 440, 442 (1967) (involving a Florida reapportionment plan).

sustaining plans with deviations of 8 percent²¹⁴ and 10 percent.²¹⁵ It was only after this doctrinal sequence had unfolded that the Court announced that “[w]e have come to establish a rough threshold of 10% maximum deviation from equality.”²¹⁶ In the gerrymandering context, likewise, the efficiency gap thresholds could emerge organically over a series of decisions. They need not be specified at the outset.

B. Presumptive Validity and Invalidity

Throughout our discussion to this point, we have spoken of *presumptive* rather than *irrebuttable* validity and invalidity. We now unpack how we think these presumptions should operate. In our view, a state whose plan’s efficiency gap exceeds the relevant threshold should have the chance to argue that the gap either was the necessary result of a legitimate and consistently applied state policy, or was inevitable given the state’s underlying political geography. The plaintiff then could respond by showing that a plan with a smaller gap could have been drawn while still attaining the state’s goals (or notwithstanding the state’s political geography). If a state successfully meets its burden, and the plaintiff fails to refute the state’s position, then the presumption of unconstitutionality would be rebutted.

But before elaborating on litigants’ potential claims and ripostes under this framework, it is worth asking why plans with efficiency gaps above the thresholds should not be *automatically* invalid. One answer is that justices have suggested in multiple gerrymandering cases that the pursuit of proper redistricting goals may save plans that fail to treat the parties equally. For instance, Justice Stevens commented in *Karcher* that, “[a]lthough a scheme in fact worsens the voting position of a particular group . . . it will nevertheless be constitutionally valid if the State can demonstrate that the plan as a whole embodies acceptable, neutral objectives.”²¹⁷ Similarly, Justice Souter argued in *Vieth* that if a plaintiff satisfies a five-part *prima facie*

²¹⁴ See *Gaffney v Cummings*, 412 US 735, 750 (1973) (involving a Connecticut reapportionment plan).

²¹⁵ See *White v Regester*, 412 US 755, 763 (1973) (involving a Texas reapportionment plan).

²¹⁶ *Brown*, 462 US at 852 (Brennan dissenting). See also *Connor*, 431 US at 418 (declaring that “‘under-10%’ deviations . . . [are] of *prima facie* constitutional validity”).

²¹⁷ *Karcher*, 462 US at 759–60 (Stevens concurring). See also *id.* at 760 (“The same kinds of justification that the Court accepts as legitimate in the context of population disparities would also be available.”).

test, then the burden should shift to the state “to justify [its] decision by reference to objectives other than naked partisan advantage.”²¹⁸

Another doctrinal answer comes from the state reapportionment cases, in which the Court repeatedly has upheld plans with population deviations *above* 10 percent that resulted from policies of respecting town and county boundaries.²¹⁹ By analogy, plans with efficiency gaps above two seats or eight points should be sustained too, as long as the gaps were the product of comparable state policies. On the merits as well, we believe that a rule of automatic invalidity for plans with excessive gaps would assign too high a premium to partisan fairness. Partisan fairness is indeed a redistricting value of paramount importance. But it is not the only important value implicated by redistricting, and we do not see why it should be given doctrinal pride of place over compactness, respect for political subdivisions, respect for communities of interest, competitiveness, minority representation, and the like.²²⁰

These other values capture precisely the sorts of interests that states might assert as justifications for plans with efficiency gaps above the thresholds. States might argue that plans with smaller gaps simply could not have been drawn while complying with the Voting Rights Act or keeping districts sufficiently compact, competitive, or congruent with subdivisions or communities. In making such claims, states presumably would rely heavily on cartographic evidence, since only actual district maps can reveal the extent of the trade-off between partisan fairness and other redistricting goals. States also could point to academic studies indicating, among other things, that compactness is negatively correlated with partisan fairness,²²¹ and that the

²¹⁸ *Vieth*, 541 US at 351 (Souter dissenting). See also *id.* (listing “the need to avoid racial vote dilution,” “one person, one vote,” and “proportional representation” as legitimate state objectives).

²¹⁹ See, for example, *Brown*, 462 US at 843–44 (upholding a district with a population 60 percent below the mean because it was perfectly congruent with the county); *Mahan v Howell*, 410 US 315, 329 (1973) (upholding a Virginia plan with a total population deviation of 16 percent that was attributable to a “policy of maintaining the integrity of political subdivision lines”); *Abate v Mundt*, 403 US 182, 187 (1971) (upholding a county plan with a total population deviation of 12 percent caused by “preserving an exact correspondence between each town and one of the county legislative districts”).

²²⁰ See *Miller v Johnson*, 515 US 900, 916 (1995) (noting these principles as important in redistricting).

²²¹ See, for example, Chen and Rodden, 8 Q J Polit Sci at 264 (cited in note 23) (finding that simulated district plans based on “traditional districting principles of contiguity

creation of majority-minority districts may lead to partisan distortion too.²²²

Of course, a mere *assertion* that a large efficiency gap followed inexorably from the application of a legitimate state policy would fail to rebut the presumption of unconstitutionality. A state would have to present concrete proof that its objectives could not have been realized to the same extent had it devised a plan with a smaller gap. And even if the state presented such proof, the plaintiff would get its bite at the apple as well. The plaintiff could submit sample maps showing that the state's goals could have been advanced equally well by a more symmetric plan. To the extent academic evidence is probative, the plaintiff also could highlight findings that congruence with subdivisions and with communities is associated with *greater* partisan fairness,²²³ and that if they are drawn correctly, majority-minority districts need not have any partisan implications.²²⁴ It then would be the court's responsibility to determine whether the state's legitimate policy choices in fact necessitated an efficiency gap above the threshold.²²⁵

and compactness will generate substantial electoral bias in favor of the Republican Party"); Stephanopoulos, 3 UC Irvine L Rev at 711 (cited in note 101) (presenting a regression model finding that the use of a compactness criterion reduces partisan fairness in state legislative elections). But see Roland G. Fryer Jr and Richard Holden, *Measuring the Compactness of Political Districting Plans*, 54 J L & Econ 493, 515 (2011) (finding that maximally compact plans would result in partisan biases of nearly zero in California, New York, Pennsylvania, and Texas).

²²² See, for example, David Epstein, et al, *Estimating the Effect of Redistricting on Minority Substantive Representation*, 23 J L, Econ & Org 499, 506 (2007); Kevin A. Hill, *Does the Creation of Majority Black Districts Aid Republicans? An Analysis of the 1992 Congressional Elections in Eight Southern States*, 57 J Politics 384, 399 (1995); David Lublin and D. Stephen Voss, *Racial Redistricting and Realignment in Southern State Legislatures*, 44 Am J Polit Sci 792, 793 (2000).

²²³ See, for example, Jonathan Winburn, *The Realities of Redistricting: Following the Rules and Limiting Gerrymandering in State Legislative Redistricting* 9, 200–01 (Lexington 2008) (finding that the criterion of respect for political subdivisions curbed gerrymandering in multiple states); Todd Makse, *Defining Communities of Interest in Redistricting through Initiative Voting*, 11 Election L J 503, 510–12 (2012); Stephanopoulos, 125 Harv L Rev at 1941–48 (cited in note 18) (finding that plans whose districts are especially noncongruent with communities of interest—that is, plans with high average levels of spatial diversity—tend to have high levels of partisan bias too).

²²⁴ See Adam B. Cox and Richard T. Holden, *Reconsidering Racial and Partisan Gerrymandering*, 78 U Chi L Rev 553, 572–79 (2011) (explaining that the creation of majority-minority districts is never a first-best Republican strategy, and actually can be an optimal Democratic strategy if African American majorities are slim).

²²⁵ A further issue is whether there should be an upper limit to the size of the efficiency gap that can be justified by a legitimate state policy. See, for example, *Brown*, 462 US at 849 (O'Connor concurring) (“[E]ven the consistent and nondiscriminatory application of a legitimate state policy cannot justify substantial population deviations . . . where the effect

The second kind of argument a state could make is that no smaller efficiency gap was possible because of the state's underlying political geography.²²⁶ The state may have *wanted* to enact a plan with a gap below the threshold, the claim would go, but this goal was unattainable due to the spatial distribution of the parties' supporters. Cartographic evidence again would be crucial in making this case, preferably in the form of maps showing that a smaller gap simply could not have been produced. A state also could cite recent work by political scientists showing that "in many urbanized states, Democrats are highly clustered in dense central city areas, while Republicans are scattered more evenly through the suburban, exurban, and rural periphery."²²⁷ These residential patterns mean that "pro-Republican bias can be quite pronounced even in the absence of intentional gerrymandering."²²⁸

For its part, a plaintiff would aim to draw a sample map illustrating that a smaller efficiency gap in fact was possible (despite the state's political geography). The map would not only need to feature a smaller gap, but also to comply with all federal and state legal requirements. But if it could be crafted, then the state's inevitability argument would collapse. Notably, the same political scientists that have documented the edge Republicans enjoy because of their superior spatial distribution also have given advice to Democrats about how to compensate for their weaker position. "[A] clever Democratic cartographer might generate radial districts emanating from the city centers so as to break up the major agglomerations Such a . . . districting arrangement would possibly neutralize the inherent Republican

would be to eviscerate the one-person, one-vote principle."); *Mahan*, 410 US at 329 (commenting that a 16 percent total deviation "may well approach tolerable limits" despite being justified by a policy of respecting town and county boundaries). Just as the Court has raised but not resolved this issue in the state reapportionment context, so too do we flag it without offering a solution.

²²⁶ And a third kind of argument a state could make—at the congressional level only—is that its large efficiency gap in one party's favor is offset by plans in other states biased in the *opposite* party's direction. One wrong could be seen as canceling out another. However, we do not explore this defense further because our motivation is to reduce the efficiency gaps of *all* district plans. We do not seek merely to have one gerrymander balanced by another.

²²⁷ Chen and Rodden, 8 Q J Polit Sci at 241 (cited in note 23). See also Jonathan Rodden, *The Geographic Distribution of Political Preferences*, 13 Ann Rev Polit Sci 321, 324 (2010) (finding that in a range of countries "[l]eftists were highly concentrated in industrialized urban districts and mining regions," leading "the parties of the left to suffer in the transformation of votes to seats").

²²⁸ Chen and Rodden, 8 Q J Polit Sci at 265 (cited in note 23).

advantages in geographic districting.”²²⁹ As long as this sort of map actually could be produced, the presumption of unconstitutionality would not be rebutted.

This doctrinal framework, with its quantitative thresholds and rebuttable presumptions, may seem overly complex. But it is more or less identical to—and, indeed, inspired by—the Court’s approach to one person—one vote cases at the state legislative level. That approach has been used for decades without prompting any claims that it is judicially unmanageable.²³⁰ And we see no reason why it would prove less workable in the gerrymandering context. The substantive issue would be different, but the logic of the cause of action would remain the same.

C. Concerns and Responses

We noted earlier that Justice Kennedy voiced a series of concerns about partisan symmetry in *LULAC*.²³¹ Does the efficiency gap test that we have set forth respond adequately to these concerns? As we explain below, we believe that it does. We also believe that it addresses the worry, expressed by the Court in both *Bandemer* and *Vieth*, that shifting voter preferences might erode the durability of any gerrymander.

Justice Kennedy’s first misgiving about partisan symmetry was that it “may in large part depend on conjecture about where possible vote-switchers [] reside.”²³² This critique, however, applies only to the particular measure of partisan symmetry—partisan bias—that was cited in *LULAC* by Justice Stevens and by the political scientist amici. It does not apply to *all* partisan symmetry metrics, and in particular it does not apply to the efficiency gap. As we described earlier, to calculate a plan’s partisan bias, it is necessary to estimate the results of a hypothetical election in which the parties’ vote shares flip (or are both equal to fifty percent).²³³ The only way to estimate these hypothetical results is by assuming that the parties’ vote shares shift by the

²²⁹ Id at 256. See also Cox and Holden, 78 U Chi L Rev at 572–79 (cited in note 224) (explaining how Democrats might use a “matching slices” redistricting strategy to their advantage). The efficiency gap distributions in Part III.A further indicate that political geography is not as unfavorable to Democrats as Chen and Rodden contend. Both distributions have medians very close to zero, around which they are spread symmetrically.

²³⁰ See notes 194–95, 211–16, and accompanying text.

²³¹ See notes 82–88 and accompanying text.

²³² *LULAC*, 548 US at 420 (Kennedy) (plurality).

²³³ See Part II.C.

same amount in each district.²³⁴ But, as Justice Kennedy correctly observed, this assumption is problematic. Vote switchers are unlikely to reside in each district in the same proportions, meaning that the partisan swing from district to district is unlikely to be uniform.²³⁵

The efficiency gap avoids the need to estimate hypothetical election results (and, with it, the need to speculate about vote switchers' locations). The parties' respective wasted votes are calculated using actual election outcomes. No vote shares are shifted in any direction.²³⁶ It is true that the sensitivity testing we recommend relies on a methodology similar to that of partisan bias.²³⁷ But the testing is not used to generate our point estimates of the efficiency gap, nor is it used in our historical analysis of district plans. Moreover, even for contemporary plans, the vote share shifts we employ are smaller than those typically needed to compute partisan bias.²³⁸ And there is no reason why a litigant could not use an assumption other than uniform swing to conduct sensitivity testing, so long as the alternative premise was justified with an argument about the political realities on the ground. In short, while uniform swing is an *option* for the efficiency gap, it is a *prerequisite* for partisan bias.

Second, Justice Kennedy was hesitant about striking down a district plan *before* an election had taken place and demonstrated the plan's partisan unfairness. "[W]e are wary of adopting a constitutional standard that invalidates a map based on unfair results that would occur in a hypothetical state of affairs. Presumably such a challenge could be litigated if and when the feared inequity arose."²³⁹ This objection also does not apply to the doctrinal framework we have laid out. We have used only past election outcomes—not predicted future ones—to calculate the efficiency gap. If courts were to refer to our data in

²³⁴ See *LULAC*, 548 US at 420 (Kennedy) (plurality).

²³⁵ See notes 134–39 and accompanying text.

²³⁶ See McGhee, 39 Legis Stud Q at 68 (cited in note 12) (noting that the efficiency gap “avoids many of the problems of symmetry and responsiveness and does not require any counterfactual at all”).

²³⁷ See Part III.B.

²³⁸ As noted above, we use vote share shifts of up to 7.5 percent in each direction for congressional plans and up to 5.5 percent in each direction for state house plans. See Part III.B. By comparison, an election in which one party receives 60 percent of the statewide vote and the other party receives 40 percent—a common enough scenario—requires a vote share shift of 20 percent for partisan bias to be calculated.

²³⁹ *LULAC*, 548 US at 420 (Kennedy) (plurality).

gerrymandering cases, they would be relying on “unfair results” derived not from “a hypothetical state of affairs” but rather from actual historical experience.²⁴⁰

Of course, since election outcomes *can* be forecast with reasonable accuracy, it would be reckless for political actors to enact plans with expected efficiency gaps above the thresholds. Even if these plans were immune from scrutiny prior to the first election held under them, they would be highly susceptible to invalidation immediately thereafter. And if the plans were discarded at this juncture, then so too might be many of the actors’ redistricting aims. Not only would the plans’ partisan skew disappear, but communities might be destabilized, competitiveness might surge, and incumbents might be imperiled (especially if the remedy took the form of a court-drawn map). To avoid such scenarios, we think political actors would be quite likely to design plans with subthreshold efficiency gaps from the outset. Even if the threat of litigation was an election cycle away, it still would be proximate enough to produce compliance in most cases.²⁴¹

Third, Justice Kennedy did not see how, in the absence of empirical evidence, “a standard for deciding how much partisan dominance is too much” could be chosen.²⁴² But providing extensive data about the efficiency gap, and then showing how it could be used to select a legal threshold, are perhaps the two most important contributions of this Article. In the Article’s empirical portion, we calculated the efficiency gap for congressional and state house plans over the entire modern redistricting era.²⁴³ And earlier in this Part, we explained how the current plans’ efficiency gap distributions, in combination with historical analysis, sensitivity testing, and analogies to the Court’s reapportionment doctrine, could be deployed to set the crucial levels.²⁴⁴ Scholars and judges may quibble about our two-seat threshold for congressional plans and our eight-point threshold for state house

²⁴⁰ *Id.* (Kennedy) (plurality).

²⁴¹ See Grofman and King, 6 Election L. J. at 14 (cited in note 11) (“[I]f the Court required partisan symmetry . . . only after the first election, redistricters would surely anticipate this in drawing the districts in the first place, especially since it is so easy to assess the plan before the election.”).

²⁴² *LULAC*, 548 U.S. at 420 (Kennedy) (plurality).

²⁴³ See Part III.A.

²⁴⁴ See Part IV.A.

plans, but it seems hard to deny that they are reasonable measures of “how much partisan dominance is too much.”²⁴⁵

Justice Kennedy’s fourth objection was that “asymmetry *alone* is not a reliable measure of unconstitutional partisanship.”²⁴⁶ In other words, the standard for unlawful gerrymandering should incorporate *both* asymmetry *and* other relevant considerations. The test we have proposed, of course, does exactly that. In the first stage of the analysis, only asymmetry (in the form of the efficiency gap) would be at issue. The key question would be whether the plan’s gap is above or below the relevant threshold. But in the second stage, all sorts of other factors—redistricting criteria such as compactness, respect for political subdivisions, and respect for communities of interest, democratic values such as competitiveness and minority representation, the state’s underlying political geography, and so on—would come into play. Here the dispositive issue would be whether these other factors necessitated a gap above the threshold. Under this two-step sequence, partisan fairness would not be prioritized above every competing consideration. Rather, it would be balanced against them, and could be compromised in order to achieve other pressing objectives.²⁴⁷

Finally, we address the concern, voiced by the Court in both *Bandemer* and *Vieth*, that voters’ preferences may be highly volatile, in which case partisan unfairness in one election might not translate into unfairness in the next. As the Court remarked in *Bandemer*, “[A] finding of unconstitutionality must be supported by evidence of *continued* frustration of the will of a majority of the voters.”²⁴⁸ Or as the Court put it in *Vieth*, “Political affiliation is not an immutable characteristic.”²⁴⁹ Unlike all other standards proposed to date,²⁵⁰ our test explicitly takes into

²⁴⁵ *LULAC*, 548 US at 420 (Kennedy) (plurality). Ultimately, though, “it is this Court, not proponents of the symmetry standard, that has the judicial obligation to answer the question of how much unfairness is too much.” *Id.* at 468 n 9 (Stevens concurring in part and dissenting in part).

²⁴⁶ *Id.* at 420 (Kennedy) (plurality) (emphasis added).

²⁴⁷ The same sort of balancing, of course, occurs in the reapportionment context. Deviations from population equality are permitted in order to accomplish other goals. See notes 193–95 and accompanying text.

²⁴⁸ *Bandemer*, 478 US at 133 (White) (plurality) (emphasis added).

²⁴⁹ *Vieth*, 541 US at 287 (Scalia) (plurality).

²⁵⁰ Grofman and King, for instance, do not incorporate sensitivity testing into any of their suggested partisan bias tests. They would calculate bias only for a tied election or at the actual vote share point. See Grofman and King, 6 Election L J at 21–25 (cited in note 11).

account the possibility that voters' attitudes may change over time. Thanks to the sensitivity testing we recommend, a plan would be presumptively unlawful only if its efficiency gap exceeded the threshold *and* the gap was unlikely to hit zero over the plan's lifetime. Moreover, the odds of the gap hitting zero are determined not by speculation but rather on the basis of historical evidence about the shifts in voter sentiment that can be expected to occur over the course of a decade. These aspects of our test distinguish it from all of the approaches the Court previously has considered and rejected, and they render it uniquely responsive to the Court's anxiety about fickle voter preferences.

CONCLUSION

The cause of action for partisan gerrymandering has lain dormant for essentially its entire existence. In *LULAC*, however, the Court hinted for the first time in a generation that the claim could yet arise from its slumber. In particular, a majority of the justices expressed genuine interest in the concept of partisan symmetry. In this Article, we have taken the Court at its word. We have introduced a new measure of partisan symmetry, the efficiency gap, that captures the essence of gerrymandering and is superior to earlier symmetry metrics. We also have calculated the efficiency gap for a vast array of congressional and state house plans over the past five redistricting cycles. And, perhaps most helpfully for the judiciary, we have developed one option for converting the efficiency gap into usable doctrine. Notably, our proposal gives a concrete reply to *Vieth's* "unanswerable question" of "[h]ow much political . . . effect is too much"²⁵¹—a gap of two seats for congressional plans and a gap of 8 percent for state house plans, but only if the gaps are likely to be durable.²⁵²

What are the odds, then, that the courts will finally put some teeth into gerrymandering claims? Certainly the *need* for a more potent doctrine has never been greater. As we have stressed, today's plans feature the largest efficiency gaps recorded in modern history. At the Supreme Court level, however, we doubt that the currently sitting justices are eager to launch another redistricting revolution. We would be surprised by an explicit *rejection* of the efficiency gap, given the justices' positive comments in *LULAC*, but we would be equally surprised if today's

²⁵¹ *Vieth*, 541 US at 296–97 (Scalia) (plurality).

²⁵² See Part IV.A.

conservative Court began striking down the largely pro-Republican gerrymanders that exist across the country. The Court's more likely course is to let sleeping dogs lie.

But we are substantially more optimistic at the lower court level. In the years since *LULAC*, plaintiffs have lost their gerrymandering suits because they have ignored the Court's discussion of partisan symmetry and sought in vain to revive the standards rebuffed in *Vieth*. It would not take much—just a single resourceful plaintiff and a single creative court—for a test based on the efficiency gap to win a doctrinal foothold. And from this foothold it also would not be too implausible for the test to spread to other jurisdictions. Doctrinal experimentation and diffusion are common in election law,²⁵³ and we see no reason why they could not occur in the gerrymandering context too. And if they *did* occur, and if they were perceived as positive developments, and if the Supreme Court's membership shifted in a favorable direction (all admittedly big ifs), then partisan symmetry might eventually be adopted as the law of the land. Then the promise of *LULAC*, the promise that motivated us to write this Article, might be fulfilled.

²⁵³ See, for example, *Obama for America v Husted*, 697 F3d 423, 428 (6th Cir 2012) (extending the logic of *Bush v Gore*, 531 US 98 (2000), to unequal treatment of early voters); *Texas v Holder*, 888 F Supp 2d 113, 143–44 (DDC 2012) (three-judge panel), vacd and remd, 133 S Ct 2886 (2013) (applying § 5 of the Voting Rights Act to prevent a photo identification requirement from taking effect); *United States v Village of Port Chester*, 704 F Supp 2d 411, 448–53 (SDNY 2010) (invoking § 2 of the Voting Rights Act to require cumulative voting as a remedy for vote dilution).

Appendix 4 – Additional Resources Provided to the Commission

The following were provided to the Commission during fact-finding, but are not included in this report.

Documents

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24. Smith, George Bundy; "The Multimember District: A Study of the Multimember District and the Voting Rights Act of 1965," *Albany Law Review*, 2002.
25. Task Force on Local Government Consolidation and Unfunded Mandates, *Delivering Efficient, Effective, and Streamlined Government to Illinois Taxpayers*, December 15, 2015.
26. Zeemering, Eric and Delabbio, Daryl, *A County Managers Guide to Shared Services in Local Government*, IBM Center for the Business of Government, 2013

Video

1. Institute of Politics, U Chicago; *How to Draw the Maps: Redistricting Reform in American Politics*; video of the Cook Political Report's David Wasserman, U Chicago's Nicholas Stephanopoulos, the University of Michigan's Jowei Chen, and Change Illinois' Ryan Blitstein discussing the issue of redistricting reform.
2. Reform Commission Interview with Board Chair, Dan Cronin; Will County Executive Lawrence (Larry) Walsh, Board Chair Jack Franks, McHenry County interviewed by Chair Lawlor September 13, 2017.

Attachment A – List of Recommendations

Recommendation 1. Apply redistricting principles adopted by the Illinois Redistricting Collaborative to any process for reapportionment following the 2020 census and advocate for these principles.

Recommendation 2. Use County data and technology to support the drafting of a redistricting map that complies with federal and state voting rights and other legal requirements of redistricting.

Recommendation 3. Develop a process for establishing an Independent Advisory Redistricting Commission, a transparent public awareness and engagement process, and public education efforts based on approved redistricting principles.

Recommendation 4. Monitor the Supreme Court case (*Gill v. Whitford*) along with other legal actions and decisions related to redistricting.

Recommendation 5. Maintain a peer-elected County Board chair.

Recommendation 6. Should a referendum on an at-large elected chair be required by citizen initiative, County Board action, or legislation, conduct a voter awareness campaign to share information gathered by the Lake County Government Reform and Accountability Commission.

Recommendation 7. Clarify the Chair's duties and responsibilities in rules of order and operational procedures prior to next election of County Board Chair in 2018.

Recommendation 8. Conduct an analysis of districts and services in advance of the redistricting process to determine if there would be a more effective distribution of representation with attention to differences in workload in unincorporated and incorporated areas.

Recommendation 9. Research the potential to improve opportunities for minority party representation through the use of multi-member districts before making any changes.

Recommendation 10. Review all countywide elected official positions subject to the County's authority (recorder, coroner) to understand their function, policy authority, costs and opportunities for increased effectiveness and cost efficiency to determine areas for consolidation or collaboration.

Recommendation 11. Establish a commission to actively explore potential collaboration, consolidation, or service-sharing opportunities, based on data that includes the impact on taxing bodies and potential cost savings.

Recommendation 12. Research alternative voting options other than simple majority (e.g. ranked, cumulative, and open list ballots), using the information gathered by the Lake County Government Reform and Accountability Commission.

Attachment B – Meeting Agendas and Minutes

This section includes the agendas and minutes for Commission meetings through November 2017 in chronological order.

1. Agenda for May 31, 2017
2. Minutes for May 31, 2017
3. Agenda for June 21, 2017
4. Minutes for June 21, 2017
5. Agenda for July 19, 2017
6. Minutes for July 19, 2017
7. Agenda for August 23, 2017
8. Minutes for August 23, 2017
9. Agenda for September 13, 2017
10. Minutes for September 13, 2017
11. Agenda for October 4, 2017
12. Minutes for October 4, 2017
13. Agenda for November 15, 2017
14. Minutes for November 15, 2017
15. Agenda for December 20, 2017
16. Minutes for December 20, 2017

Lake County Illinois

*Central Permit Facility
500 Winchester Road
Libertyville, Illinois 60048*



Agenda Report - Final

Wednesday, May 31, 2017

3:00 PM

Central Permit Facility, 2nd Floor

Lake County Commission on Government Reform and Accountability

1. **Call to Order**
2. **Approval Of Minutes**
3. **Chair's Remarks**
4. **Public Comments (items not on the agenda)**
5. **Old Business**
6. **New Business**
 - 6.1 [17-0591](#)
Introductions and Welcome.
 - 6.2 [17-0592](#)
Presentation by County Board Chairman Aaron Lawlor on Commission purpose, charge and responsibilities (enumerated in County Board resolution).
 - 6.3 [17-0593](#)
Presentation on County government structure and decision-making process.
 - 6.4 [17-0594](#)
Overview of Open Meetings Act, Freedom of Information Act, Lake County Ethics Ordinance and Standards of Conduct.
 - 6.5 [17-0595](#)
Discussion on Commission governance and meeting schedule.
 - 6.6 [17-0596](#)
Members Comments and Questions.
7. **Adjournment**

Lake County Illinois

*Central Permit Facility
500 Winchester Road
Libertyville, Illinois 60048*



Meeting Minutes - Final

Wednesday, May 31, 2017

3:00 PM

Central Permit Facility, 2nd Floor

Lake County Commission on Government Reform and Accountability

1. Call to Order

Chair Foreman called the meeting to order at 3:00 p.m.

Present 12 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member O'Connor, Member Osmond, Member Roberson, Member Lamphere, Member Shaw, Member Magalis, Member Kim, Member Darch and Member Schaafsma

Absent 3 - Member Link, Member Msall and Member Bensinger

Designees:

Annie McGowan representing Member Msall

Others present:

Barry Burton, County Administrator

Aaron Lawlor, County Board Chairman

Amy McEwan, Deputy County Administrator

Jennie Vana, Communications Manager

Ben Gilbertson, County Administrator's Office

Paul Frank, Lake County Board

2. Approval Of Minutes

There were no minutes to approve.

3. Chair's Remarks

Chair Foreman welcomed the group.

4. Public Comments (items not on the agenda)

There were no public comments.

5. Old Business

There was no old business to conduct.

6. New Business

6.1 [17-0591](#)

Introductions

All members introduced themselves and gave a brief overview of their biographies.

6.2 [17-0592](#)

Presentation by County Board Chairman Aaron Lawlor on Commission purpose, charge and responsibilities (enumerated in County Board resolution).

Chairman Lawlor presented on the Commission purpose and gave an overview of the chairman's roles/responsibilities, and also differences between other chairman positions in the region.

6.3 [17-0593](#)

Presentation on County government structure and decision-making process.

Barry Burton provided an overview of Lake County government structure, departments,

and the Board rules.

6.4 [17-0594](#)

Overview of Open Meetings Act, Freedom of Information Act, Lake County Ethics Ordinance and Standards of Conduct.

Jennie Vana gave an overview of FOIA, OMA and other standards and laws.

6.5 [17-0595](#)

Discussion on Commission governance and meeting schedule.

6.6 [17-0596](#)

Members Comments and Questions.

Commission members discussed the management track of the commission's work and that there will need to be further discussion on how to sequence the work. The consultant Management Partners will offer their advice on this and assist the Commission in developing a plan. The group agreed to work as a committee of the whole rather than breaking into committees.

7. Adjournment

The meeting adjourned at 4:15 p.m.

Minutes prepared by Jennie Vana.

Respectfully submitted,

Chairman

Vice-Chairman

*Lake County Commission on Government
Reform and Accountability*

Lake County Illinois

*Central Permit Facility
500 Winchester Road
Libertyville, Illinois 60048*



Agenda Report - Final

Wednesday, June 21, 2017

8:30 AM

Central Permit Facility

Lake County Commission on Government Reform and Accountability

1. Call to Order

2. Approval Of Minutes

2.1 [17-0684](#)

Minutes from May 31, 2017.

Attachments: [Gov Reform Final Minutes 5 31 17](#)

3. Chair's Remarks

4. Public Comments (items not on the agenda)

5. Old Business

6. New Business

6.1 [17-0591](#)

Introductions

6.2 [17-0697](#)

Commission Ground Rules

6.3 [17-0698](#)

Discussion of Committee Charge Issues: Identify questions, topics to pursue, or ideas and/or issues from Commissioners about each component of the Commission's Charge:

- a. Independent Redistricting: Analyze state and county governments; evaluate their governance structure, methodology, implementation and outcomes
- b. Countywide Elected Chairman: Study similar counties; identify key issues, challenges, opportunities and decisions; identify best practices and policies to balance authority between the County Board, Chairman and County Administrator; ensure strong accountability, professional standards and high ethical standards and safeguards
- c. Reduce the size of the board: Examine, assess and report on similar counties' efforts; identify positive and negative impacts on efficiency, constituent services, policy decisions, and compliance with the federal Voting Rights Act
- d. Other Reform Proposals: Share ideas on additional reforms that could be studied in the future

6.4 [17-0699](#)

Discussion of overall Commission schedule of topics.

7. Adjournment

Lake County Illinois

*Central Permit Facility
500 Winchester Road
Libertyville, Illinois 60048*



Meeting Minutes - Final

Wednesday, June 21, 2017

8:30 AM

Central Permit Facility

Lake County Commission on Government Reform and Accountability

1. Call to Order

Chair Foreman called the meeting to order at 8:30 a.m.

Present 9 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member O'Connor, Member Shaw, Member Msall, Member Magalis, Member Kim and Member Darch

Absent 6 - Member Osmond, Member Roberson, Member Lamphere, Member Link, Member Bensinger and Member Schaafsma

Others Present:

Barry Burton, County Administrator

Amy McEwan, Deputy County Administrator

Paul Fetherston, Assistant County Administrator

Dakisha Wesley, Assistant County Administrator

Amy McGowan, Civic Federation of Chicago

Ann Maine, County Board

Sonia Hernandez, County Administrator's Office

Jerry Newfarmer, Management Partners

Kevin Knutson, Management Partners

Susan Hoyt, Management Partners

2. Approval Of Minutes

2.1 [17-0684](#)

Minutes from May 31, 2017.

A motion was made by Member Ryg, seconded by Member Darch, that the minutes be approved. The motion passed unanimously.

Aye: 9 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member O'Connor, Member Shaw, Member Msall, Member Magalis, Member Kim and Member Darch

Absent: 6 - Member Osmond, Member Roberson, Member Lamphere, Member Link, Member Bensinger and Member Schaafsma

3. Chair's Remarks

Chair Foreman welcomed members to the second meeting of the Lake County Commission on Government Reform and Accountability.

4. Public Comments (items not on the agenda)

There were no public comments.

5. Old Business

There was no old business to conduct.

6. New Business

6.1 [17-0591](#)

Introductions

Chair Foreman asked for public introduction and introduced Jerry Newfarmer, Management Partners consultant, to the meeting. Jerry Newfarmer briefly introduced his two colleagues Kevin Knutson and Susan Hoyt who will also serve as staff to the Commission. Mr. Newfarmer thanked the Commission for the opportunity to work on the County's Government Reform and Accountability initiative. He described the role of Management Partners in assisting local units of government on a variety of areas for the past 23 years. All Management Partners staff have had local government experience.

6.2 [17-0697](#)

Commission Ground Rules

The Commission discussed and agreed upon draft ground rules for conducting the Commission's business. Kevin Knutson stressed to Commission that attending every meeting is very important. Commission was also reminded that Jennie Vana will be the point of contact for answer any media questions. Members also agreed that the public adhere to the same 3-minute rule as followed at County Board meetings. Also noted, that decisions on recommendations are not final until the Commission report is approved for submission to the County Board and that Commission discussions are open to the public. Chair Foreman asked members to read all materials provided and be ready to discuss at meetings. Discussion regarding redistricting took place.

6.3 [17-0698](#)

Discussion of Committee Charge Issues: Identify questions, topics to pursue, or ideas and/or issues from Commissioners about each component of the Commission's Charge:

- a. Independent Redistricting: Analyze state and county governments; evaluate their governance structure, methodology, implementation and outcomes
- b. Countywide Elected Chairman: Study similar counties; identify key issues, challenges, opportunities and decisions; identify best practices and policies to balance authority between the County Board, Chairman and County Administrator; ensure strong accountability, professional standards and high ethical standards and safeguards
- c. Reduce the size of the board: Examine, assess and report on similar counties' efforts; identify positive and negative impacts on efficiency, constituent services, policy decisions, and compliance with the federal Voting Rights Act
- d. Other Reform Proposals: Share ideas on additional reforms that could be studied in the future

Commissioners discussed an interest in receiving information on how redistricting is done in Lake County and to hear presentations from outside experts on the Federal Voting Rights Act, Illinois laws on redistricting, on the pending Supreme Court Case related to the State of Wisconsin's redistricting and independent proposals for redistricting being discussed in Illinois.

Commissioners discussed and requested information on the options available for electing a County Board Chair under Illinois law including the pros and cons of the three options: elected by the Board, elected at large, and an at large elected county executive. It was recommended that a cheat sheet be provided with the powers of each option and are these the only 3 options. Discussion ensued.

Commissioners discussed the relationship between redistricting and the reduction in the number of Lake County Board members. The Commission is interested in how board size impacts board effectiveness, costs and representation. What would be achieved if the size is reduced? Discussion ensued.

Commissioners discussed exploring potential opportunities for consolidation of local governmental units within the County.

6.4 [17-0699](#)

Discussion of overall Commission schedule of topics.

Commissioners reviewed the timeline for its work and put a priority on receiving information from legal, academic and other experts at the July and August meetings. Next meeting will take place on July 19, 2017.

7. Adjournment

Chair Foreman adjourned the meeting at 10:30 a.m.

Minutes prepared by Susan Hoyt & Sonia Hernandez.

Respectfully submitted,

Chairman

Vice-Chairman

*Lake County Commission on Government
Reform and Accountability*

Lake County Illinois

*Central Permit Facility
500 Winchester Road
Libertyville, Illinois 60048*



Agenda Report - Final

Wednesday, July 19, 2017

8:30 AM

Central Permit Facility

Lake County Commission on Government Reform and Accountability

1. Call to Order

2. Approval of Minutes

2.1 [17-0771](#)

Minutes from June 21, 2017.

Attachments: [LCCGR Final Minutes 6 21 17](#)

3. Chair's Remarks

4. Public Comments (items not on the agenda)

5. Old Business

6. New Business

6.1 [17-0772](#)

Update on Commission activities since the June 21st meeting.

6.2 [17-0773](#)

Presentation by Ruth Greenwood, Senior Legal Counsel for Voting Rights and Redistricting at the Campaign Legal Center.

6.3 [17-0774](#)

Presentation by George Tzanetopoulos, Partner at BakerHostetler.

6.4 [17-0775](#)

Discussion of Commission research agenda.

7. Adjournment

Lake County Illinois

*Lake County Health Department
3010 Grand Avenue, 3rd Floor
Waukegan, Illinois 60085*



Meeting Minutes - Final

Wednesday, July 19, 2017

8:30 AM

Central Permit Facility

Lake County Commission on Government Reform and Accountability

1. Call to Order

Chair Foremen called the meeting to order at 8:30 a.m.

Present 11 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member Osmond, Member Roberson, Member Lamphere, Member Link, Member Shaw, Member Msall, Member Kim and Member Darch

Excused 4 - Member O'Connor, Member Bensinger, Member Magalis and Member Schaafsma

Others Present:

Barry Burton, County Administrator

Paul Fetherston, Assistant County Administrator

Dakisha Wesley, Assistant County Administrator

Jennie Vana, County Administrator's Office

Sonia Hernandez, County Administrator's Office

Aaron Lawlor, County Board Chair

Jeff Werfel, Board Member

Kevin Knutson, Management Partners

Ruth Greenwood, Senior Legal Counsel Voting Rights & Redistricting

Annabelle Harless, Senior Legal Counsel Voting Rights & Redistricting

Annie McGowan, Civic Federation

George Tzanetopoulos, Partner at BakerHosteller

2. Approval of Minutes

2.1 [17-0771](#)

Minutes from June 21, 2017.

Commissioner Msall entered the meeting at 8:58 a.m.

A motion was made by Member Darch, seconded by Member Shaw that the minutes be approved. The motion carried by the following vote:

Aye: 11 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member Osmond, Member Roberson, Member Lamphere, Member Link, Member Shaw, Member Msall, Member Kim and Member Darch

3. Chair's Remarks

Chair Foreman welcomed members to the third meeting of the Lake County Commission on Government Reform and Accountability. He thanked all of the County representatives in the room for their efforts during the recent flood. Barry Burton gave update on the flooding issues in the area.

4. Public Comments (items not on the agenda)

There were no public comments. Chair Foreman asked for public introduction.

5. Old Business

There was no old business.

6. New Business

6.1 [17-0772](#)

Update on Commission activities since the June 21st meeting.

Chair Foreman introduced Kevin Knutson from Management Partners, who gave an overview of the Lake County Commission on Government Reform and Accountability Background and Research Materials document that was circulated to members prior to the meeting. The document contains a listing of relevant research, background materials, and organizations that will assist members in understanding the issues before the Commission. Each has a link to a website or to a document located in a Dropbox directory established for the Commission. The document will be updated monthly and will indicate additions by inserting "[NEW]" after each added entry.

6.2 [17-0773](#)

Presentation by Ruth Greenwood, Senior Legal Counsel for Voting Rights and Redistricting at the Campaign Legal Center.

The Commission heard a presentation on "Redistricting Reform Options for Lake County." Ms. Greenwood discussed considerations in the modification of redistricting practices, including: Goals of county board representation; Choosing an electoral system; and Choosing a redistricting process.

Ms. Greenwood described county demographics and offered several observations about them, including that there is a good distribution of race and ethnicity across the county; that more than half of recent elections were among multiple candidates, although many remained uncontested; that the margin of victory showed many races were not competitive; and that the county had fairly high voter turnout.

For the electoral system, Ms. Greenwood made a case for using ranked choice voting instead of the current single vote system. This approach allows voters to select more than one candidate, in a ranked order, to reduce the potential for "split votes." It has been used successfully in a number of jurisdictions across the country and she provided examples.

Ms. Greenwood recommended and described the use of an independent redistricting commission to assist county officials in future redistricting efforts. Her comments focused on the elements of determining the commission membership; strategies for assuring public participation and transparency; and the mechanics of the map approval process. She recommended members view the film Gerrymandering, produced by Kathay Feng, Executive Director, California Common Cause and National Redistricting Director, Common Cause.

Members asked questions about how the county could improve racial and ethnic candidacy, how ranked choice voting works in practice, and how gerrymandering impacts competitiveness of elections. Ms. Greenwood was also asked to comment on the Supreme Court's Gill v. Whitford case she is involved in.

6.3 [17-0774](#)

Presentation by George Tzanetopoulos, Partner at BakerHostetler.

The Commission heard a presentation on “Redistricting: Selected Legal Issues.” Mr. Tzanetopoulos provided an overview of potential legal challenges inherent in the redistricting process and recommended that the county seek legal representation in the development of their approach and process to ensure defensibility.

He discussed the principles behind districting, including compactness, contiguity, preservation of political subdivisions, preservation of communities of interest, and compliance with the Voting Rights Act, among others. A key to successfully responding to dilution claims is consistent application of the principles.

Mr. Tzanetopoulos provided background on the Voting Rights Act and the 14th Amendment of the US Constitution, the “equal protection” clause. He also defined some of the common gerrymandering techniques used in single-member districts, called “packing” and “cracking.”

He outlined the issues in partisan gerrymandering and explained why it has been difficult to adjudicate claims associated with the practice. Lastly, he described the efficiency gap calculations used by academics to estimate the partisan fairness of districts.

Members asked questions about whether disaffected voters were ever considered in efficiency gap calculations, how “independent” boards can be created, and how has incumbency affected redistricting in Illinois.

6.4 [17-0775](#)

Discussion of Commission research agenda.

Members reviewed the research topics for the Commission’s work and requested additional information on the potential for local government consolidation efforts at the State legislature, as well as historical information on consolidation efforts of the Recorder and County Clerk functions, and the Sheriff and Coroner functions.

Commissioner JoAnn Osmond left meeting early.

7. Adjournment

Chair Foreman adjourned the meeting at 10:36 a.m. Motion was made by Member Kim, seconded by Member Darch.

*Lake County Commission on Government
Reform and Accountability*

Lake County Illinois

*Lake County Health Department
3010 Grand Avenue, 3rd Floor
Waukegan, Illinois 60085*



Agenda Report - Final

Wednesday, August 23, 2017

8:30 AM

Lake County Health Department, 3010 Grand Ave, 3rd Floor

Lake County Commission on Government Reform and Accountability

1. Call to Order

2. Approval Of Minutes

2.1 [17-0813](#)

Minutes from July 19, 2017.

Attachments: [LCCGR Final 7 19 17 Minutes](#)

3. Chair's Remarks

4. Public Comments (items not on the agenda)

5. Old Business

6. New Business

6.1 [17-0878](#)

Update on Commission activities since the July 19th meeting.

6.2 [17-0879](#)

Presentation by Cynthia Canary, Executive Director, Independent Map Amendment.

6.3 [17-0880](#)

Presentation by Jim LaBelle, Former Lake County Chair, 1984-1987, 1998-2000.

6.4 [17-0881](#)

Presentation by Dr. Norman Walzer, Senior Research Scholar, Center for Governmental Studies, Northern Illinois University.

6.5 [17-0882](#)

Discussion of Commission research agenda.

7. Adjournment

Lake County Illinois

*Lake County Health Department
3010 Grand Avenue, 3rd Floor
Waukegan, Illinois 60085*



Meeting Minutes - Final

Wednesday, August 23, 2017

8:30 AM

Lake County Health Department, 3010 Grand Ave, 3rd Floor

Lake County Commission on Government Reform and Accountability

1. Call to Order

Chair Foreman called the meeting to order at 8:37 a.m.

Present 11 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member O'Connor, Member Osmond, Member Lamphere, Member Link, Member Shaw, Member Msall, Member Magalis and Member Kim

Absent 1 - Member Roberson

Excused 3 - Member Bensinger, Member Darch and Member Schaafsma

Others present:

Judy Martini, Board Member

Linda Pedersen, Board Member

Jeff Werfel, Board Member

Barry Burton, County Administrator

Jennie Vana, County Administrator's Office

Dakisha Wesley, County Administrator's Office

Amy McEwan, County Administrator's Office

Cynthia Canary, Executive Director, Independent Map Amendment

Dr. Norman Walzer, Senior Research Scholar, Northern Illinois University

Jim LaBelle, Former Lake County Chair

Susan Hoyt, Management Partners

Kevin Knutson, Management Partners

Mary Mathews, Public

Sonia Hernandez, County Administrator's Office

2. Approval Of Minutes

2.1 [17-0813](#)

Minutes from July 19, 2017.

A motion was made by Member Osmond, seconded by Member Link that the minutes be approved. The motion carried by the following vote:

Aye: 10 - Member Foreman, Member Ryg, Member O'Connor, Member Osmond, Member Roberson, Member Lamphere, Member Link, Member Shaw, Member Magalis and Member Kim

Not Present: 2 - Ex-Officio Member Rummel and Member Msall

3. Chair's Remarks

Chair Foreman welcomed everyone to the meeting. He recounted the positive experience he recently had talking with eastern Europeans about their perception of the United States while he was traveling.

Vice Chair Ryg thanked Commissioners for their participation and engagement at the July 19, 2107 Commission meeting.

4. Public Comments (items not on the agenda)

There were no public comments. Chair Foreman asked for the public in attendance to introduce themselves.

5. Old Business

There was no old business to conduct.

6. New Business

6.1 [17-0878](#)

Update on Commission activities since the July 19th meeting.

Chair Foreman introduced Susan Hoyt from Management Partners, who gave an overview of the Lake County Commission on Government Reform and Accountability Background and Research Materials document that was circulated to members prior to the meeting. The document contains a list of relevant research, background materials, and organizations that will assist members in understanding the issues before the Commission. The document is updated monthly. The August update included reports on the 1977 and 1990 Lake County Governmental Study Commission Reports, the Lake County Prior Referenda on Elected Officials, the Lake County Board Chair Role, and Illinois County Board Sizes and Structures.

6.2 [17-0879](#)

Presentation by Cynthia Canary, Executive Director, Independent Map Amendment.

Ms. Canary gave a presentation on "Redistricting Principles" to the Commission. She explained the importance of establishing principles to guide redistricting decisions because clearly stated principles help officials determine 'what to advance and protect' and 'what to change' in making decisions. Stated principles also provide more transparency to the public and lead to more informed public engagement, which is a critical element in redistricting discussions.

Ms. Canary described the eight principles being considered by the CHANGE Illinois in its work around redistricting and an Independent Review Board. These principles are:

- Be in accordance with the requirements of the U. S. Constitution*
- Emphasize representation and be fully compliant with both the federal Voting Rights Act (VRA) and all state voting rights laws including the Illinois Voting Rights Act.*
- Be independent of partisan political considerations.*
- Result in maximum voter choice, encouraging electoral candidacy, and enhancing electoral competitiveness.*
- Consider true communities of interest.*
- Accurately represent the permanent residents of Illinoisans.*
- Be transparent and accountable.*
- Allow for meaningful public participation and have the confidence of the public.*

Ms. Canary concluded her presentation by advising the Commission that regardless of the institution that is responsible for redistricting decisions, be it an independent review board or elected officials, the public must be fully engaged in the process because it is about representation of the people.

Commissioners asked the speaker questions and discussed the complexities and challenges of redistricting.

Member Rummel entered the meeting at 8:55 a.m. Member Msall entered the meeting at 9:12 a.m.

6.3 [17-0880](#)

Presentation by Jim LaBelle, Former Lake County Chair, 1984-1987, 1998-2000.

Mr. LaBelle described his role as Lake County Board Chair from 1984-1987 and from 1998-2000. His responsibilities included being a policy leader and managing the agenda, including finding ways to lead the Board to agreement and action as well as coordinating and negotiating with independent elected officials. In addition, as Chair, he addressed regional and intergovernmental issues and represented the County on regional, state and national issues. He also represented his own district and served as a forest commissioner.

Mr. LaBelle was initially elected to the County Board when there were multi-member districts (5 districts of 5 members each) with a majority and a minority designation in each district. Later, the County moved to single district representation. He preferred the multi-district representation because one learned more about Lake County issues from the larger geography covered by the multi-member district. It also provided more opportunity for candidates with fewer resources to compete, since you didn't have to be the top vote getter to get a seat on the County Board.

Mr. LaBelle reflected on the difference between being elected by the County Board or elected at-large. He concluded that both models work. The job of leading the County and knitting the Board together exists under either option. Overall, he believed that being elected at-large would have the benefit of getting public countywide support for the Chair as the County's policy leader. It would provide more independence for the Chair and more continuity with a four-year rather than a two-year term. However, the Chair's election would be more expensive and, therefore, potentially more limiting as to who could serve in this role.

Mr. LaBelle believed that being elected by the County Board resulted in spending less money to become County Board Chair, but the majority support from colleagues may be tenuous. It also results in divided accountability between the countywide role as Chair and

constituents in the Chair's district. In addition, a two-year term limits the Chair's visibility and leadership potential.

Commissioners asked the speaker questions and discussed the pros and cons of electing the Chair under the current model, elected by County Board peers, and the at-large option. They also shared experiences with the multi-member districts and raised questions about it as an option for the future. Mr. LaBelle stated his support for the opportunity the Commission's work offers to put forth new ideas that could serve as the laboratory for innovation and reform for the state.

6.4 [17-0881](#)

Presentation by Dr. Norman Walzer, Senior Research Scholar, Center for Governmental Studies, Northern Illinois University.

Dr. Walzer described his work as Project Director with the Lieutenant Governor's Commission on Local Government Consolidation and Unfunded Mandates in the Report Delivering Efficient, Effective and Streamlined Government to Illinois Taxpayers, December 31, 2015. The purpose of the bi-partisan Task Force was to explore ways to reduce duplication of services in local governmental units and property taxes. The Task Force identified several possible solutions to reduce costs and maintain services resulting in Senate Bill 003 and House Bill 607. (Public Acts 100-106 & 107)

Dr. Walzer provided data on the rising costs of public services in Illinois, the effective property tax rates in the U.S. of which Illinois is 2nd highest, and the number of units of government in Lake County (192). Dr. Walzer said the actual number of local governmental units is not really known, since many units go unreported in surveys of local government entities.

Dr. Walzer reported that the Task Force identified several obstacles contributing to higher property tax costs in Illinois. These included changing technologies impact on how services are delivered, the existence of over 7,000 local governmental units with some duplication of services, the relative ease of creating new governments to deal with specific problems, the statutory obstacles to removing existing governments, and the lack of an organized approach to reviewing governments.

Dr. Walzer concluded his remarks by explaining that today's environment allows people to discuss the option of collaboration, consolidation and shared services.

Commissioners discussed the challenge of reducing the number of local governmental units to reduce costs.

6.5 [17-0882](#)

Discussion of Commission research agenda.

Due to time, there was no additional information on the Commission research agenda.

*Lake County Commission on Government
Reform and Accountability*

Lake County Illinois

*Lake County Health Department
3010 Grand Avenue, 3rd Floor
Waukegan, Illinois 60085*



Agenda Report - Final

Wednesday, September 13, 2017

8:30 AM

Lake County Health Department, 3010 Grand Ave, 3rd Floor

Lake County Commission on Government Reform and Accountability

1. **Call to Order**

2. **Approval Of Minutes**

[17-0965](#)

Minutes from August 23, 2017.

Attachments: [LCCGR Final 8 23 17 Minutes](#)

3. **Chair's Remarks**

4. **Public Comments (items not on the agenda)**

5. **Old Business**

6. **New Business**

6.1 [17-0966](#)

Update on Commission activities since the August 23rd meeting.

6.2 [17-0967](#)

Welcome to Legislators and Legislative Comments (Optional).

6.3 [17-0968](#)

Presentation by Dr. Eric Zeemering, Department of Public Administration, School of Public and Global Affairs, Northern Illinois University.

6.4 [17-0969](#)

Video interview with Chair Dan Cronin, DuPage County Board Chair, 2010 to present.

6.5 [17-0970](#)

Video interview with Chair Jack Franks, McHenry County Board Chair, 2016 to present.

6.6 [17-0971](#)

Video interview with County Executive Lawrence (Larry) Walsh, Will County Executive, 2004 to present.

6.7 [17-0972](#)

Presentation by Senator Karen McConnaughay, Former County Board Chair, Kane County, 2004-2012.

6.8 [17-0973](#)

Purpose of Commission meeting on October 4, 2017 from 8:30 a.m. to Noon.

6.9 [17-0974](#)

Discussion of Commission Research Agenda.

7. **Adjournment**

Lake County Illinois

*Lake County Health Department
3010 Grand Avenue, 3rd Floor
Waukegan, Illinois 60085*



Meeting Minutes - Final

Wednesday, September 13, 2017

8:30 AM

Lake County Health Department, 3010 Grand Ave, 3rd Floor

Lake County Commission on Government Reform and Accountability

1. Call to Order

Chair Foremen called the meeting to order at 8:35 a.m.

Present 12 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member O'Connor, Member Osmond, Member Lamphere, Member Shaw, Member Msall, Member Magalis, Member Kim, Member Darch and Member Schaafsma

Absent 2 - Member Roberson and Member Link

Excused 1 - Member Bensinger

Others present:

Jeff Werfel, Lake County Board Member

Judy Martini, Lake County Board Member

Steve Carlson, Lake County Board Member

Linda Pedersen, Lake County Board Member

Dianne Hewitt, Lake County Board Member

Carol Calabresa, Lake County Board Member

Sanda Hart, Lake County Board Member

Barry Burton, County Administrators' Office

Dakisha Wesley, County Administrators' Office

Paul Fetherston, County Administrators' Office

DonnaJo Maki, County Administrators' Office

Jennie Vana, County Administrators' Office

Nickalus Vana, Public

Susan Hoyt, Management Partners

Kevin Knutson, Management Partners

State Representative Rita Mayfield

State Senator Melinda Bush

State Representative Sam Yingling

Michael Dobrow, Aid to Representative Yingling

Dr. Eric Zeemering, Northern Illinois University

Annie McGowan, Civic Federation

Jo-An Sabonjian, Chief of Staff for State Senator Julie Morrison

Mary Mathews, Public

Nikki Kelly-Schmeisser, League of Women's Voters

2. Approval Of Minutes

[17-0965](#)

Minutes from August 23, 2017.

A motion was made by Member Osmond, seconded by Member Shaw that the minutes be approved.

Aye: 10 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member O'Connor, Member Osmond, Member Lamphere, Member Shaw, Member Msall, Member Magalis and Member Kim

Abstain: 1 - Member Darch

Absent: 2 - Member Roberson and Member Link

Not Present: 1 - Member Schaafsma

3. Chair's Remarks

Chair Foreman welcomed commissioners to the meeting, thanked everyone for their participation and asked for public introductions.

4. Public Comments (items not on the agenda)

There were no public comments.

5. Old Business

There was no old business to conduct.

6. New Business

6.1 Update on Commission activities since the August 23rd meeting.

Chair Foreman introduced Susan Hoyt from Management Partners, who gave an overview of the Lake County Commission on Government Reform and Accountability Background and Research Materials document that was circulated to members prior to the meeting. The document contains a list of relevant research, background materials and organizations that will assist members in understanding the issues before the Commission. The document is updated monthly. The September document included reports on Multi-Member Districts, a Comparison of Lake, DuPage, Kane, McHenry and Will Counties Board Chairs and an Amicus brief provided by Howell Shuster and Goldberg LLP for the Supreme Court Case Gill vs. Whitford.

6.2 Welcome to Legislators and Legislative Comments (Optional).

Member Schaafsma entered the meeting at 9:00 a.m.

Chair Foreman welcomed Representative Mayfield, Senator Bush and Representative Yingling. He asked them to provide their perspective on the four questions the Commission is considering: how to elect a board chairman, the size of the board, redistricting and other reform topics.

Representative Mayfield stated that representation is the key issue in considering reform. She believed a countywide elected chairman would provide the best representation of the county since the current method, board elected, required the board chairman to represent both his/her district and the entire county. She supports holding the election in a regular election cycle, not in an off year. She supports fewer than the 21 board members, but

cautions that any change in number must be sensitive to minority representation on the board.

Senator Bush, a former Lake County Board Member, believes a countywide elected chair provides voters an important opportunity to vote for the chairman. It is also the best representation for the whole county because it eliminates the potential conflict between the chairman representing both his/her own district and the entire county. Senator Bush has no specific changes in county board size in mind. However, she said it is the right time to consider reducing the size of the board without negatively impacting representation because the Lake County population is flattening and many townships (unincorporated) have been annexed into municipalities. Senator Bush said she is introducing legislation that requires all local government entities to participate in discussions to develop supportable options to reduce the layers of government and duplication of services.

Representative Yingling, a former Avon Township Supervisor, said the major issue for him is consolidating entities and reducing duplicative services, in particular the road districts and township highway commissions. He cited current state legislation (Senate Bill 3 and House Bill 607) that provide opportunities to combine some non-elected units of government. He suggested studying some east coast county centered governments, where the county provides many services.

Representative Mayfield, Senator Bush and Representative Yingling responded to questions from the Commission with additional comments.

All three legislators stated their support for the fair maps movement. Each clarified that it needs to begin at the federal level then move to the state and the county.

When asked about making some elected county officials appointed officials, Representative Yingling and Senator Bush said the expertise required for the coroner's position made it a candidate for being appointed rather than elected. Senator Bush supports appointing the assessor as a county position. Representative Mayfield did not see the necessity of appointing rather than electing any county officials because the elected officials interact well with the community.

Senator Bush said there is merit in exploring the use of multi-member districts as a way to expose county board members to a more diverse constituency than a single member district does. Representative Mayfield supports continuing with single member districts. She believes that minority candidates living in a single district are the best representatives of these communities. Representative Yingling said multi-member districts were worth considering if there was guaranteed minority party representation as in the past.

All legislators acknowledged the importance of having a voter elected chairman work

closely with his/her colleagues on the board on county issues, especially fiscal and tax issues.

Representative Mayfield, Senator Bush and Representative Yingling thanked the Commission for their work on these important Lake County government reform issues.

Chair Foreman thanked Representative Mayfield, Senator Bush and Representative Yingling for sharing their time and perspectives with the Commission.

6.3 [17-0968](#)

Presentation by Dr. Eric Zeemering, Department of Public Administration, School of Public and Global Affairs, Northern Illinois University.

Dr. Eric Zeemering began his remarks by acknowledging the importance of the Commission's reform and accountability work. He noted the importance of engaging the public in these discussions as they evolved.

Dr. Zeemering addressed three questions. He cited academic studies to answer these questions throughout his presentation.

Question 1: What evidence do we have about county government reforms? Dr. Zeemering reviewed the history of government reform movements in the twentieth century. These reforms focused mostly on municipal, not county, reform. He said county reforms tended to address financial reforms and negotiating counties' legal authority with their states rather than political reforms. The major finding concluded that a professional manager overseeing day-to-day operations has positive consequences for local government performance. The question of an at-large elected chairman versus a board elected chairman has not been singled out for study. It is documented that local governments often replicate their neighboring communities' governance models, labeled 'institutional isomorphism', when they consider reform measures.

Question 2: What advice have experts in local government provided regarding the work of governing boards? Dr. Zeemering explained that research on the effectiveness of governing bodies more frequently studies the dysfunctional behaviors of boards rather than the effectiveness of their organizational structure. These studies found that the more interpersonal, not political, disagreements there were among board members, the more unlikely the boards were to be innovative. Positive results emerged from the chairman and board's use of 'facilitative leadership', which recognizes the synergy of bringing the different strengths of individuals together to develop consensus. Research also demonstrated that county leaders frequently relied upon personal and informal resources for performing their work rather than high visibility in the public because this space frequently focused on local mayors and not county leaders.

Question 3: By discussing board structure are we enhancing the accountability of county government? Dr. Zeemering said that government reform today is prompted by a demand for better government accountability and representation. He explained that there is value in asking what is the best mechanism for greater accountability, but there is no clear evidence on what model is best. It is also important to ask what problem is being solved in this work. One study described a cycle of reform that begins with increased neutral competence to improve efficiency, then moves to more citizen based representative structures, then returns to neutral competence for improved efficiency. He stressed the importance of asking the public about their preferences when engaged in public policy decision making.

Dr. Zeemering described recent work being done on the stress created for elected officials because there are so many ways for constituents to directly interact them. He believes providing more tools to elected officials, including strategic planning, foresight exercises and ongoing performance data, will help these representatives better manage the challenge of serving.

Dr. Zeemering addressed the topic of consolidation by explaining that he avoids the term consolidation because it generates strong reactions and impedes positive discussion around change. He focuses on collaborative efficiencies and intergovernmental sharing services. These approaches increase efficiency in service delivery without requiring statutory changes and/or formally eliminating entities.

Dr. Zeemering responded to questions from the Commission with these additional comments.

He reiterated that there are no research studies that demonstrate that changing the way the county board chairman is elected or that one particular county board structure is more effective than another.

He explained that inter-governmental service sharing arrangements are efficient because they utilize the excess of service delivery capacity of some governments. However more work needs to be done on the financing of these shared services to assure there is equity in who is paying for the service.

He briefly described his experience with county centered government in Maryland and California, where some counties provide almost all local government services. He volunteered to provide an example of a county centered government to the staff.

Dr. Zeemering concluded by thanking the Commission for the opportunity to speak with them and for their commitment to studying reform measures for Lake County.

Chair Foreman thanked Dr. Zeemering for sharing his time and expertise with the Commission.

6.4 Video interview with Chair Dan Cronin, DuPage County Board Chair, 2010 to present.

Lake County Board Chairman Aaron Lawlor interviewed DuPage County Chairman Dan Cronin about his role as a countywide elected chairman. Chairman Cronin explained that the countywide elected chairman was adopted in DuPage County in 1972 to improve accountability for the chairman to voters. In his role Chairman Cronin focuses on the agenda, the budget, making appointments, maintaining internal and external relationships and countywide initiatives. He sees the value in single member districts for board representation, but finds that the six districts with three members per district in DuPage are working well. Chairman Cronin is leading on consolidating local entities through the ACT (Accountability/Consolidation/Transparency) initiative. DuPage recently got state authority to allow for closer management of the many appointed taxing districts. He said this won't save the county lots of money because the entities are not big-ticket items, but it will increase accountability. Chairman Cronin thanked Chairman Lawlor for his leadership. Chairman Lawlor thanked Chairman Cronin for sharing his time and experience with the Commission.

6.5 [17-0970](#)

Video interview with Chair Jack Franks, McHenry County Board Chair, 2016 to present.

Lake County Board Chairman Aaron Lawlor interviewed McHenry County Chairman Jack Franks about his recent transition to county board chairman. Chairman Franks said that, as a state legislator, he sponsored legislation to hold a referendum on an elected county board chair because he believes that all voters should have a voice in choosing the chairman of a major taxing authority (county). The referendum passed overwhelmingly. Chairman Franks believed the board size needs to be reduced from the current 24 members in six districts. He shared how McHenry County has improved government transparency in its decision-making through streamlining meetings on the web and electronic voting. Chairman Franks thanked Chairman Lawlor for his leadership. Chairman Lawlor thanked Chairman Franks for sharing his time and experience with the Commission.

6.6 [17-0971](#)

Video interview with County Executive Lawrence (Larry) Walsh, Will County Executive, 2004 to present.

Lake County Board Chairman Aaron Lawlor interviewed Will County Executive Larry Walsh about his role as a county executive. County Executive Walsh explained that Will County voted to have the county executive form of government in a 1988 referendum because residents believed this would be a more responsive form of government. He said that in 2012 Will County dropped from 27 to 26 seats and increased the number of districts to thirteen districts with two representatives per district. County Executive Walsh explained

the distinction between his role as overseer of twenty-six county departments and day to day operations and the county board speaker's role as manager of the agenda and appointing committees. County Executive Walsh thanked Chairman Lawlor for his interest in Will County's governance. Chairman Lawlor thanked County Executive Walsh for sharing his time and experience with the Commission.

At Chair Foreman's request Lake County Board Members in attendance introduced themselves: Linda Pedersen, Diane Hewitt, Judy Martini, Steve Carlson, Carol Calabresa and Jeff Werfel.

6.7 Presentation by Senator Karen McConnaughay, Former County Board Chair, Kane County, 2004-2012.

Senator Karen McConnaughay addressed the Commission via the web. She reflected on her role as the third countywide elected Kane County Chairman. The countywide elected chairman position resulted from a 1990 citizen initiated referendum. She also served in the role of county administrator because Kane County has no administrator. In hindsight, she believes it was a mistake not hiring a county administrator especially when dealing with other county elected officers. Kane County reduced the size of the county board from 28 to 26 members during her tenure as chairman.

Senator McConnaughay said she is a proponent of a countywide elected chairman because it is more accountable to voters. It is extremely important for the county board to define the responsibilities and authority of the chairman at the beginning of the chairman's term. She gave the example of two lawsuits that emerged during her chairmanship partly due to a lack of clarity in the chairman's authority.

Senator McConnaughay said that the county is the government best suited to provide leadership in the consolidation effort because counties are so involved with all the local entities including making many of the appointments to their governing bodies.

Senator McConnaughay responded to questions from the Commission with additional comments.

Her experience as a county board member for twelve years was useful background for the chairmanship because it prepared her for the administrative duties associated with the job. She found that being elected as a countywide chairman was significantly different than representing a district. The elected chairman role gave her more credibility working with other county elected officers. She restated that it was critical that the chairman and the board be very clear about the chairman's responsibilities to avoid misunderstandings. It was also important that the board allow the chairman some flexibility in his/her position.

Senator McConnaughay thanked the Commission for their important work on Lake County government reform issues.

Chair Foreman thanked Senator McConnaughay for sharing her time and perspective with the Commission.

6.8 [17-0973](#)

Purpose of Commission meeting on October 4, 2017 from 8:30 a.m. to Noon.

At Chair Foreman's request Susan Hoyt, Management Partners, updated the Commission on the October 4, 2017 meeting. It is an opportunity for the Commission to discuss the topics that it has been studying for the past five months. The extended meeting time from 8:30 a.m. to 12:00 p.m. will provide additional time for the discussion.

6.9 [17-0974](#)

Discussion of Commission Research Agenda.

Two additional research requests were raised. These include a review of the county board structure for other AAA rated counties in Illinois and contacting the National Association of Counties (NACo) about studies specifically focused on the question of board size and election of the chairman.

7. Adjournment

Chair Foreman adjourned the meeting at 10:55 a.m. The motion carried unanimously.

Minutes prepared by Susan Hoyt and Sonia Hernandez.

Respectfully submitted,

Chairman

Vice-Chairman

*Lake County Commission on Government
Reform and Accountability*

Lake County Illinois

*Lake County Health Department
3010 Grand Avenue, 3rd Floor
Waukegan, Illinois 60085*



Agenda Report - Final

Wednesday, October 4, 2017

8:30 AM

Lake County Health Department, 3010 Grand Avenue, 3rd Floor

Lake County Commission on Government Reform and Accountability

1. **Call to Order**

2. **Approval Of Minutes**

2.1 [17-1043](#)

Minutes from September 13, 2017.

Attachments: [LCCGR 9 13 17 Final Minutes](#)

3. **Chair's Remarks**

4. **Public Comments (items not on the agenda)**

5. **Old Business**

6. **New Business**

6.1 [17-1047](#)

Update on the Commission's activities since the September 13, 2017 meeting.

6.2 [17-1049](#)

Introduction to today's meeting.

6.3 [17-1051](#)

The method of election of the County Board Chairman.

6.4 [17-1052](#)

The size of the County Board.

6.5 [17-1053](#)

Redistricting

6.6 [17-1054](#)

Other Reform Topics

6.7 [17-1055](#)

Meeting Wrap Up

6.8 [17-1056](#)

Discussion on the Commission's Research agenda.

6.9 [17-1057](#)

Purpose of Commission meeting on November 15, 2017 from 11:30-1:30 at Division of Transportation.

7. **Adjournment**

Lake County Illinois

*Lake County Division of Transportation
600 W. Winchester Road
Libertyville IL 60048*



Meeting Minutes - Final

Wednesday, November 15, 2017

11:30 AM

Division of Transportation

**Lake County Commission on Government Reform
and Accountability**

1. Call to Order

Chair Foreman called the meeting to order at 11:30 a.m.

Present 13 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member O'Connor, Member Osmond, Member Roberson, Member Lamphere, Member Link, Member Shaw, Member Msall, Member Magalis, Member Kim and Member Darch

Excused 2 - Member Bensinger and Member Schaafsma

OTHERS PRESENT:

Jeff Werfel, Board Member

Linda Pedersen, Board Member

Aaron Lawlor, Board Member

Carol Calabresa, Board Member

Steve Carlson, Board Member

Mary Cunningham, Board Member

Judy Martini, Board Member

Sandy Hart, Board Member

Chuck Bartels, Board Member (participated via telephone)

Roger Zellner, Public

Farrah Watson, Circuit Clerk

Mary Mathews, Public

Nikki Kelly-Sehmeisger, Public

Jeanne Kearly, Public

Amy Knutson Strack, Public

Trisha Steele, Public

Barry Burton, County Administrator's Office

Amy McEwan, County Administrator's Office

Jennie Vana, County Administrator's Office

Dakisha Wesley, County Administrator's Office

Paul Fetherston, County Administrator's Office

Susan Hoyt, Management Partners

Kevin Knutson, Management Partners

Mike Casey, Management Partners

Sonia Hernandez, County Administrator's Office

2. Approval Of Minutes

2.1 [17-1212](#)

Minutes from October 4, 2017.

A motion was made by Member Msall, seconded by Member Darch, that the minutes be approved. The motion carried by the following vote:

Aye: 12 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member O'Connor, Member Osmond, Member Roberson, Member Lamphere, Member Link, Member Shaw, Member Msall, Member Magalis and Member Darch

Not Present: 1 - Member Kim

3. Chair's Remarks

Chair Foreman thanked everyone for being at the meeting and being prepared for the discussion.

Vice Chair Ryg thanked everyone for being so engaged throughout the process and for participating in a great opportunity to demonstrate leadership in Lake County. This included gathering information, studying best practices, and providing actionable direction to the county to keep Lake County as a leader in local government.

Chair Foreman asked for public introduction.

4. Public Comments (items not on the agenda)

Ms. Trisha Steele, of Round Lake, addressed the Commission on the Independent Redistricting recommendation. She explained that the county board should be limited to one of two options when it considers action on a redistricting plan proposed by an Independent Redistricting Commission. The options would be to accept the plan or to reject the plan. There would be no option to modify the plan. If the proposed plan was rejected by the county board, it would go back to the Independent Redistricting Commission for revisions.

5. Old Business

There was no old business to conduct.

6. New Business

6.1 [17-1282](#)

Review Draft Lake County Commission on Government Reform and Accountability Report

Kevin Knutson, Management Partners, explained that the June through September Commission meetings focused on fact finding. The October 4 meeting was a discussion of recommendations which provided the basis for the discussion today.

Member Kim entered the meeting at 12:40 p.m.

6.2 [17-1283](#)

General Comments

Member Mike Rummel, an ex officio member representing county board members, reported on comments that Chair Lawlor and he received about the Commission's work from their county board colleagues. Member Rummel explained that the Chair Lawlor had requested written responses to four questions. He also noted that Chair Lawlor was

committed to maintaining a high level of autonomy for the Commission throughout the process and that this had been accomplished.

Five county board members, Chuck Bartel, Steve Carlson, Judy Martini, Jeff Werfel, and Vance Wyatt responded to the request for input. A summary of their comments follows.

They were comfortable with how authority is currently shared among the board, chairman and county administrator in helping them accomplish their goals.

Three respondents said that they were proud of the county's record of fiscal management, outreach and partnership efforts, strategic planning and ability to serve as a model for other counties to follow such as the Smoke Free Lake County and Tobacco 21 initiatives.

One respondent supported the concept of an at large elected board chair, but only if the board chair was designated as a non-partisan position. Others opposed the concept of an at large elected chair because it might create a partisan divide in the county, might increase the cost of campaigns, and might increase county costs by adding staff for the chair. It was also noted that an at large elected chair is not a predictor of the county's overall success.

One respondent expressed an interest in understanding why the county board changed its election process from multi-member districts to single member districts.

No respondents supported a change in the size of the board. Some respondents expressed concern that a decrease in the board size might lead to an increase in the cost of campaigns and the dilution in a majority – minority district making it more challenging for a member of a majority minority community to get elected.

6.3 [17-1284](#)

Redistricting Options

Vice Chair Ryg updated the Commission on the Illinois Redistricting Collaborative's recent adoption of redistricting principles. The Commission agreed to recommend these principles since they were consistent with those already considered by the Commission. It also recommended that the county advocate for these redistricting principles.

Recommendations:

Apply redistricting principles to any process for reapportionment following the 2020 census.

- 1. Comply with the U. S. Constitution*
- 2. Comply with federal and state voting rights act*
- 3. Comprise and uphold a non-partisanship process*

4. *Maximize voter choice, electoral, candidacy and competitiveness*
5. *Recognize and preserve communities of interest*
6. *Accurately include permanent residence of all Illinoisans*
7. *Comprise and uphold a transparent and accountable process*
8. *Provide for open, full, and meaningful public participation*

Use county data and technology to support the drafting of a redistricting map that complies with federal and state voting rights and other legal requirements of redistricting.

Develop a process for establishing an Independent Advisory Redistricting Commission, a transparent public awareness and engagement process, and public education efforts based on approved redistricting principles.

Monitor the Supreme Court case (Gill v. Whitford) along with other legal actions and decisions related to redistricting.

6.4 [17-1285](#)

The Size of the County Board

The Commission expressed support for the current 21 districts in the county while they recognized that circumstances may change. Any changes can be addressed during the redistricting process. The Commission acknowledged that unincorporated areas may generate a larger workload for a county commissioner than incorporated areas because, so many decisions rise to the county level when there is no municipal government. Commissioners also expressed an interest in exploring how multi-member districts with majority and minority representation might be used in lieu of single member districts in the future.

Recommendations:

There is no evidence to suggest that a change in county board size from 21 members is needed or would be beneficial.

Conduct an analysis of districts and services in advance of the redistricting process to determine if there would be a more effective distribution of representation with attention to differences in workload in unincorporated and incorporated areas.

Research the potential to improve opportunities for minority party representation through the use of multi-member districts before making any changes.

Continue the practice of appointing some minority party representatives on the board as committee chairs in the rules of order and operating procedures.

6.5 [17-1286](#)

The Method of Electing the Chair

The Commission had a rich discussion on the at-large elected chair. The Commission acknowledged the testimony of state legislators, Representative Mayfield, Representative Yingling and Senator Bush, that supported an at-large elected chair as well as other collar county at large elected chairs, Chairman Franks and Cronin and County Executive Larry Walsh. These elected officials testified that an at large elected chair provided an opportunity for voters to select an identifiable leader for the county and allowed the chair to focus on countywide, regional and state issues without dealing with possible conflicts from representing a district too. Former Kane County Chair McConnaughay stressed the importance of having the county board clarify the chair's roles and responsibilities when there is an at large elected chair. Commission member (Senator) Link expressed his support for the at large elected position because of greater visibility and voter selection. After careful consideration, the Commission supported the peer elected board chair because of the collaborative nature of the position and the current success the county has experienced under a peer elected chair's leadership. The peer elected chair also maintains the entire county board's accountability for decisions, especially budgeting and taxing rather than tying these decisions exclusively to the at large chair. The Commission recognized that the county's needs may change over time. If the county finds that an at large elected chair may serve it better, it can be addressed during the redistricting process. The Commission agreed that the report would include a footnote reflecting the perspective of Senator Link and the testimony of the legislators on the at large elected chair.

Recommendations:

There is no evidence to suggest that a change from a peer-elected county board chair is needed or would be beneficial.

Should a referendum on an at large elected chair be required by citizen initiative, county board action, or legislation; conduct a voter awareness campaign to share information gathered by the Lake County Government Reform and Accountability Commission.

Clarify the chair's duties and responsibilities in the rules of order and operational procedures prior to the next election of the county board chair in 2018.

6.6 [17-1287](#)

Other Reform Proposals: Review of Elected Positions, Intergovernmental Collaboration, Multi-Member Districts, Alternative Voting Methods

The Commission discussed the recommendations on other reform issues that emerged during its deliberations.

Recommendations:

Review all countywide elected official positions subject to the county's authority (recorder, coroner) to understand their function, policy authority, costs and opportunities for

increased effectiveness and cost efficiency to determine areas for consolidation or collaboration.

The report will footnote that the clerk of circuit court position was raised during the Commission's deliberations.

Engage local governmental agencies in a discussion about potential collaboration or service-sharing that is based on data that includes the impact on taxing bodies and cost effectiveness from these initiatives.

Research alternative voting options other than simple majority (e.g. ranked, cumulative, and open list ballots) as ways to increase minority representation using the information gathered by the Lake County Government Reform and Accountability Commission.

6.7 [17-1288](#)

Additional Comments

There were no additional comments.

6.8 [17-1289](#)

Next Steps and Purpose of December 20, 2017 Commission meeting at 8:30 a.m. at the Lake County Health Department, Waukegan

Chair Foreman reported that the next Commission meeting was scheduled for December 20, 2017 at 8:30 a.m. at the Lake County Health Department to consider the final report.

7. Adjournment

Chair Foreman adjourned the meeting at 1:13 p.m.

Minutes prepared by Susan Hoyt, Kevin Knutson and Sonia Hernandez.

Respectfully submitted,

Chairman

Vice-Chairman

*Lake County Commission on Government
Reform and Accountability*

Lake County Illinois

*Lake County Health Department
3010 Grand Avenue, 3rd Floor
Waukegan IL 60085*



Meeting Minutes - Final

Wednesday, December 20, 2017

8:30 AM

Lake County Health Department, 3010 Grand Avenue, 3rd floor,
Waukegan

Lake County Commission on Government Reform and Accountability

1. Call to Order

Chair Foreman called the meeting to order at 8:35 a.m.

Present 11 - Ex-Officio Member Rummel, Member Foreman, Member Ryg, Member O'Connor, Member Lamphere, Member Link, Member Shaw, Member Msall, Member Kim, Member Darch and Member Schaafsma

Absent 1 - Member Roberson

Excused 3 - Member Osmond, Member Bensinger and Member Magalis

Others Present:

Linda Pederson, Board Member

Steve Carlson, Board Member

Mary Ross Cunningham, Board Member

Annie Gonwa, Civic Leaders Federation

Judy Martini, Board Member

Jeff Werfel, Board Member

Chief Judge Ortiz, Court Administration

Barry Burton, County Administrator's Office

Farrah Watson, Circuit Clerk

Ann Maine, Board Member

Aaron Lawlor, Board Member

Jennie Vana, County Administrator's Office

Lisa Hancock, Communications

Erin Cartwright Weinstein, Circuit Clerk

Marty Mathews, Public

Kevin Knutson, Management Partners

Sonia Hernandez, County Administrator's Office

2. Approval Of Minutes

2.1 [17-1313](#)

Minutes from November 15, 2017.

Minutes approved by voice vote, the motion carried.

3. Chair's Remarks

Chair Foreman explained that the Commission meeting on November 15, 2017 was a review of the draft report. The purpose of the meeting today was to review and, if possible, approve the final report for presentation to the County Board at its January 12, 2018 Committee of the Whole meeting. Chair Foreman thanked Commissioners for their participation and input into the Commission's work.

Vice Chair Ryg expressed her appreciation for the Commissioners' engagement throughout the process and for the information provided in the report. It includes some

good direction and will be a stand- alone document for years to come.

Chair Foreman asked for public introductions.

4. Public Comments (items not on the agenda)

There were no public comments.

5. Old Business

There was no old business to conduct.

6. New Business

Chair Foreman introduced the Honorable Chief Justice Jorge Ortiz, Nineteenth Judicial Circuit Court Judge and asked him to provide a legal perspective on the clerk of circuit court position to clear up any misunderstanding that may have surfaced during the Commission's prior discussions of this position.

Judge Ortiz explained that there are 102 clerks of circuit court in Illinois, one for every county. There have been four state constitutions and each of them have addressed the clerk of circuit court. The clerk of circuit court is a non-judicial officer in the judicial branch of state government. Article 6 in the 1970 Illinois State Constitutions contains a provision which invests the legislature with the authority to determine how the clerk of circuit court is selected through election or appointment. The clerk of circuit court cannot be consolidated into another county position because this position is a member of the judicial branch, not the administrative nor legislative branch. Any change in this would require a constitutional amendment.

Judge Ortiz explained that each circuit court is required to have at least one resident circuit judge. Each county has its own clerk of circuit court, its own filings, and its own business to conduct. In circuits a judge may travel two to three hundred miles from one county to another county to hear circuit court cases. Reducing the number of clerks of circuit court to less than one per county would burden citizens, especially those in more rural counties, who are required to file in a circuit court. Some circuit court judges work with 8 to 10 clerks of circuit court because they work in multiple county circuits. Consolidating these operations would be a logistical nightmare and challenge citizens' access to justice.

When asked if the Supreme Court might appoint clerks of circuit court upon the recommendation of the circuit court judges, Judge Ortiz explained that the appellate court clerks are appointed by the appellate court judges and the Supreme Court clerk is appointed by the Supreme Court judges. However, having the clerk of circuit court appointed by the Supreme Court presents at least two issues. First, the legislature would need to change the current method from election to appointment of the clerk of circuit court, which the legislature has the power to do under the Constitution. Second, having the clerk of circuit court appointed by the Supreme Court may not provide the best fit for the

work since the circuit court judges are in the best position to know what is needed locally.

6.1 [17-1371](#)

Research Update

Kevin Knutson from Management Partners referenced the research memo that was provided to Commissioners via email on December 6, 2017 regarding other county fair maps initiatives throughout the country. These included the three counties of San Diego County, California (San Diego); Dane County, Wisconsin (Madison), Tompkins County, New York (Ithaca).

6.2 [17-1372](#)

Review the Final Lake County Commission on Government Reform and Accountability Report

Kevin Knutson summarized four changes made in the report based on the discussion at the November 15, 2017 meeting.

- Recommendation 1 uses the Illinois Redistricting Initiatives' principles as the recommendation for the Commission's redistricting principle.*
- Included a correction and background on Senate Bill 669.*
- Recommendation 8 includes language noting that the Commission found no evidence that a change in board size was needed.*
- Recommendation 5 includes language noting that the Commission found no evidence that supported the need to change from a peer elected to an at-large elected chair and recommends maintaining the peer elected chair.*

Commissioners reviewed Recommendation 11 "engaging local governments in a discussion about potential collaboration or service sharing that is based on data that includes the impact on taxing bodies and cost effectiveness from these initiatives."

The Commission acknowledged that it received information on this topic, but did not have time to explore it in depth. Commissioners discussed that it was important that the Report stress the necessity that the County Board take the leadership around collaboration, service sharing, and consolidation by assigning the work to a commission. The discussion is both timely and critical given the need for improved local government efficiency, modernization, and understanding the impact on property taxes, especially with the change in the federal tax law.

County Board Chairman Aaron Lawlor explained that the County recently adopted a Consolidation Action Plan to study and address some specific consolidation efforts. He will also be seeking legislation to strengthen the authority of counties undertaking this work.

The Commission recommended that Recommendation 11 be revised to read:

"Establish a commission to actively explore opportunities for potential collaboration,

consolidation, or service-sharing that is based on data that includes impacts on taxing bodies and potential cost savings."

The Commission recommended that the narrative preceding Recommendation 11 in the report:

- Include a statement of support for current collaboration and consolidation efforts.*
- Acknowledge the increased importance of this work with the new federal tax law and the growing pressure on property taxes.*
- Recommend that the newly constituted Commission should include local government representatives, taxpayers, businesses along with other leaders. The outcomes of the Commission's work would include assessing current conditions, identifying best practices, finding and reviewing opportunities for consolidation, articulating potential savings or service improvements, and recognizing pre-conditions necessary for or barriers to implementation.*

The Commission agreed that the draft language related to Resolution 11 should be reviewed by the Chair and Vice Chair for consistency with the Commission's direction and for their approval, if found consistent. If the Chair and Vice Chair deemed it necessary, they would circulate the language to the entire Commission for its final comments in time to get the report to the County Board on or before December 31, 2017.

6.3 [17-1373](#)

Adopt the Final Lake County Commission on Government Reform and Accountability Report

A motion to accept the Lake County Commission on Government Reform and Accountability Report as revised was made by Commissioner O'Connor, seconded by Commissioner Lamphere. The motion was approved by voice vote.

6.4 [17-1374](#)

Comments from Chairman Lawlor

County Board Chairman Aaron Lawlor thanked the Commission for its work. He explained that government reform can be a negative concept, but the Commission's work has been very positive and added a lot of value for now and the foreseeable future in the lives of Lake County residents. He said the redistricting recommendation recommended by the Commission, if followed, will make Lake County as leader in local government reform. He shared his belief that leadership is not 'being in charge' but is 'caring for those in our charge'.

6.5 [17-1375](#)

Next Steps

- Transmit the Report to the County Board before December 31, 2017
- Presentation of the Report to the County Board at its January 12, 2018 Committee of the Whole meeting at 8:30 a.m. at the Central Permit Facility, 500 West Winchester Road, Libertyville

-
- Future opportunities to evaluate the process of the Commission's work

Chair Foreman announced the Report would be presented to the County Board at its January 12, 2018 Committee of the Whole meeting, 8:30 AM, Central Permit Facility, 500 West Winchester Road, Libertyville.

6.6 [17-1376](#)

Closing Remarks

Chair Foreman and Vice Chair Ryg thanked the Commissioners for their good work.

7. Adjournment

Chair Foreman adjourned the meeting at 9:43 a.m.

Minutes prepared by Susan Hoyt, Kevin Knutson and Sonia Hernandez.

Respectfully submitted,

Chairman

Vice-Chairman

*Lake County Commission on Government
Reform and Accountability*

Attachment C – Research Memoranda Prepared for the Commission

The following memos were developed at the Commission's request during fact-finding and are included in this attachment in chronological order.

1. *Statutes Governing Lake County Board Chair and County Executive Options*, July 11, 2017
2. *Lake County Board Chair Role and Responsibilities*, August 17, 2017. Appendix 1: "Lake County Rules of Order and Operational Procedures," December 12, 2017
3. *State of Illinois Board Sizes and Structures*, August 17, 2017
4. *Lake County Prior Referenda on Elected Officers*, August 17, 2017
5. *Prior Lake County Governmental Study Commission Reports (Revised)*, October 1, 2017. Appendix 1: "Lake County Governmental Study Commission First Year Report," April 12, 1977. Appendix 2: "Lake County Governmental Study Commission II Report, July 1, 1990."
6. *Multi-Member District Options*, September 13, 2017
7. *Comparison of County Board Chair Duties*, September 7, 2017
8. *County Independent Redistricting Commissions*, December 1, 2017
9. *Collar County Comparison*, December 20, 2017



To: Hon. Fred Foreman, Chair, Lake County Government Reform and Accountability Commission
Hon. Kathy Ryg, Vice Chair, Lake County Government Reform and Accountability Commission

From: Kevin Knutson, Regional Vice President, Management Partners
Sam Lieberman, Senior Management Advisor, Management Partners

Subject: Statutes Governing the Options for County Chair in Illinois

Date: July 11, 2017

After the June 21, 2017 Lake County Government Reform and Accountability Commission meeting, you requested background information on the options available for election of the County's board chair. This memorandum details the three options afforded Lake County by the Constitution of the State of Illinois and Illinois Compiled Statutes (ILCS) for electing a county board chair or county executive. The three options are 1) a chair elected by the county board members from among the county board members, 2) a chair directly elected by the voters of the county, or 3) a county executive directly elected by the voters of the county.

The statutes governing these options (see Appendix) are limited by the county's form of government (township, commission, or county executive), the county's population (less than or greater than 3,000,000), and whether it is Cook County or not. Lake County is currently a township form of government with a population less than 3,000,000. The Lake County Board Chair is currently elected by the board members from among themselves.

Board Chair Elected by County Board Members

Article VII, §3 of the Illinois State Constitution establishes the creation of county boards to be elected by the voters of each county (subsection (a)) and tasks the Illinois General Assembly with the creation of laws for electing those board members (subsection (b)). As is currently the case in Lake County, ILCS Chapter 55, Division 2-1, Section 2-1003 (55 ILCS §5/2-1003) allows for the county chair and vice-chair to be elected by the county board members from among the board members for two-year terms. Unless subsequently changed, this structure is the default for counties with a township form of government.

The duties and powers of the county board chair are established by the orders, resolutions, and regulations set by the county board members. Generally, the day-to-day activities of the county are managed by a county administrator in both board-elected and voter-elected county board chair options.

Board Chair Directly Elected by County Voters

55 ILCS §5/2-3002 tasks each county with developing a reapportionment plan every ten years to ensure that each member of the county board represents the same number of inhabitants. The reapportionment plan decides on the number of county board members, whether those board members are elected in single-member districts, multi-member districts, or at-large districts, and whether voters get cumulative voting rights. Similarly, a citizen-led advisory referendum that tackles these issues may be placed on the ballot if it receives the signatures of at least 8% of the number of voters who voted in the most recent gubernatorial election.

While crafting the reapportionment plan, county board members may modify the election of the board chair from being elected by the board members from among themselves to having the voters directly elect a board chair, as allowed by 55 ILCS §5/2-3007. In this instance, the board chair would serve a four-year term and may not simultaneously be a board member. The duties and powers of the directly elected county board chair are established by the orders, resolutions, and regulations set by the county board members.

County Executive Form of Government

Article VII, §4 of the Illinois State Constitution allows that counties may directly elect a chief executive officer (subsection (a)) who would serve a four-year term (subsection (c)). The ILCS (55 ILCS §5/2-5004) establishes the rules for creating a county executive form of government. A county may only establish a county executive form of government through a referendum approved by voters. Such a referendum may be initiated by the county board members or by a citizen-led petition that receives the signatures of the lesser of 2% of registered voters or 500 registered voters (55 ILCS §5/2-5005). In 55 ILCS §5/2-5015, the county executive form of government supersedes the board chair form of government. The duties and powers of the county executive are established by 55 ILCS §5/2-5009, including the responsibility to “coordinate and direct by executive order or otherwise all administrative and management functions of the county government except the offices of elected county officers.”



Appendix: Relevant Illinois Constitution Sections and Illinois Compiled Statutes

Illinois Constitution

Article VII Local Government

SECTION 2. COUNTY TERRITORY, BOUNDARIES AND SEATS

- a) The General Assembly shall provide by law for the formation, consolidation, merger, division, and dissolution of counties, and for the transfer of territory between counties.
- b) County boundaries shall not be changed unless approved by referendum in each county affected.
- c) County seats shall not be changed unless approved by three-fifths of those voting on the question in a county-wide referendum.

SECTION 3. COUNTY BOARDS

- a) A county board shall be elected in each county. The number of members of the county board shall be fixed by ordinance in each county within limitations provided by law.
- b) The General Assembly by law shall provide methods available to all counties for the election of county board members. No county, other than Cook County, may change its method of electing board members except as approved by county-wide referendum.
- c) Members of the Cook County Board shall be elected from two districts, Chicago and that part of Cook County outside Chicago, unless (1) a different method of election is approved by a majority of votes cast in each of the two districts in a county-wide referendum or (2) the Cook County Board by ordinance divides the county into single member districts from which members of the County Board resident in each district are elected. If a different method of election is adopted pursuant to option (1) the method of election may thereafter be altered only pursuant to option (2) or by county-wide referendum. A different method of election may be adopted pursuant to option (2) only once and the method of election may thereafter be altered only by county-wide referendum.

SECTION 4. COUNTY OFFICERS

- a) Any county may elect a chief executive officer as provided by law. He shall have those duties and powers provided by law and those provided by county ordinance.
- b) The President of the Cook County Board shall be elected from the County at large and shall be the chief executive officer of the County. If authorized by county ordinance, a person seeking election as President of the Cook County Board may also seek election as a member of the Board.
- c) Each county shall elect a sheriff, county clerk and treasurer and may elect or appoint a coroner, recorder, assessor, auditor and such other officers as provided by law or by county ordinance. Except as changed pursuant to this Section, elected county officers



shall be elected for terms of four years at general elections as provided by law. Any office may be created or eliminated and the terms of office and manner of selection changed by county-wide referendum. Offices other than sheriff, county clerk and treasurer may be eliminated and the terms of office and manner of selection changed by law. Offices other than sheriff, county clerk, treasurer, coroner, recorder, assessor and auditor may be eliminated and the terms of office and manner of selection changed by county ordinance.

- d) County officers shall have those duties, powers and functions provided by law and those provided by county ordinance. County officers shall have the duties, powers or functions derived from common law or historical precedent unless altered by law or county ordinance.
- e) The county treasurer or the person designated to perform his functions may act as treasurer of any unit of local government and any school district in his county when requested by any such unit or school district and shall so act when required to do so by law.



Illinois Compiled Statutes (ILCS) Chapter 55 Counties

Division 2-1. Counties under Township Organization

(55 ILCS 5/2-1003)

Sec. 2-1003. Chairman and vice-chairman of county board.

The county board shall, unless the chairman is elected by the voters of the county, at its first meeting in the month following the month in which county board members are elected, choose one of its members as chairman for a term of 2 years and at the same meeting, choose one of its members as vice-chairman for a term of 2 years. The vice-chairman shall serve in the place of the chairman at any meeting of the county board in which the chairman is not present. In case of the absence of the chairman and the vice-chairman at any meeting, the members present shall choose one of their number as temporary chairman.

(Source: P.A. 86-962.)

Division 2-3. Reapportionment of County for Election of County Board

(55 ILCS 5/2-3001)

Sec. 2-3001. Definitions.

As used in this Division, unless the context otherwise requires:

- a. "District" means a county board district established as provided in this Division.
- b. "County apportionment commission" or "commission" means the county clerk, the State's Attorney, the Attorney General or his designated representative and the chairmen of the county central committees of the first leading political party and the second leading political party as defined in Section 1-3 of The Election Code.
- c. "Population" means the number of inhabitants as determined by the last preceding federal decennial census.
- d. "Member" or "board member" means a person elected to serve on the county board.

(Source: P.A. 86-962.)



(55 ILCS 5/2-3002)

Sec. 2-3002. Counties with population of less than 3,000,000 and with township form of government.

- a) Reapportionment required. By July 1, 1971, and each 10 years thereafter, the county board of each county having a population of less than 3,000,000 inhabitants and the township form of government shall reapportion its county so that each member of the county board represents the same number of inhabitants. In reapportioning its county, the county board shall first determine the size of the county board to be elected, which may consist of not less than 5 nor more than 29 members and may not exceed the size of the county board in that county on October 2, 1969. The county board shall also determine whether board members shall be elected at large from the county or by county board districts.
- b) If the chairman of the county board is to be elected by the voters in a county of less than 450,000 population as provided in Section 2-3007, such chairman shall not be counted as a member of the county board for the purpose of the limitations on the size of a county board provided in this Section.
- c) Advisory referenda. The voters of a county may advise the county board, through an advisory referendum, on questions concerning (i) the number of members of the county board to be elected, (ii) whether the board members should be elected from single-member districts, multi-member districts, or at-large, (iii) whether voters will have cumulative voting rights in the election of county board members, or (iv) any combination of the preceding 3 questions. The advisory referendum may be initiated either by petition or by ordinance of the county board. A written petition for an advisory referendum authorized by this Section must contain the signatures of at least 8% of the votes cast for candidates for Governor in the preceding gubernatorial election by the registered voters of the county and must be filed with the appropriate election authority. An ordinance initiating an advisory referendum authorized by this Section must be approved by a majority of the members of the county board and must be filed with the appropriate election authority. An advisory referendum initiated under this Section shall be placed on the ballot at the general election designated in the petition or ordinance.



(Source: P.A. 93-308, eff. 7-23-03.)

(55 ILCS 5/2-3003)

Sec. 2-3003. Apportionment plan.

- 1) If the county board determines that members shall be elected by districts, it shall develop an apportionment plan and specify the number of districts and the number of county board members to be elected from each district and whether voters will have cumulative voting rights in multi-member districts. Each such district:
 - a. Shall be substantially equal in population to each other district;
 - b. Shall be comprised of contiguous territory, as nearly compact as practicable; and
 - c. May divide townships or municipalities only when necessary to conform to the population requirement of paragraph a. of this Section.
 - d. Shall be created in such a manner so that no precinct shall be divided between 2 or more districts, insofar as is practicable.
- 2) The county board of each county having a population of less than 3,000,000 inhabitants may, if it should so decide, provide within that county for single member districts outside the corporate limits and multi-member districts within the corporate limits of any municipality with a population in excess of 75,000. Paragraphs a, b, c and d of subsection (1) of this Section shall apply to the apportionment of both single and multi-member districts within a county to the extent that compliance with paragraphs a, b, c and d still permit the establishment of such districts, except that the population of any multi-member district shall be equal to the population of any single member district, times the number of members found within that multi-member district.
- 3) In a county where the Chairman of the County Board is elected by the voters of the county as provided in Section 2-3007, the Chairman of the County Board may develop and present to the Board by the third Wednesday in May in the year after a federal decennial census year an apportionment plan in accordance with the provisions of subsection (1) of this



Section. If the Chairman presents a plan to the Board by the third Wednesday in May, the Board shall conduct at least one public hearing to receive comments and to discuss the apportionment plan, the hearing shall be held at least 6 days but not more than 21 days after the Chairman's plan was presented to the Board, and the public shall be given notice of the hearing at least 6 days in advance. If the Chairman presents a plan by the third Wednesday in May, the Board is prohibited from enacting an apportionment plan until after a hearing on the plan presented by the Chairman. The Chairman shall have access to the federal decennial census available to the Board.

- 4) In a county where a County Executive is elected by the voters of the county as provided in Section 2-5007 of the Counties Code, the County Executive may develop and present to the Board by the third Wednesday in May in the year after a federal decennial census year an apportionment plan in accordance with the provisions of subsection (1) of this Section. If the Executive presents a plan to the Board by the third Wednesday in May, the Board shall conduct at least one public hearing to receive comments and to discuss the apportionment plan, the hearing shall be held at least 6 days but not more than 21 days after the Executive's plan was presented to the Board, and the public shall be given notice of the hearing at least 6 days in advance. If the Executive presents a plan by the third Wednesday in May, the Board is prohibited from enacting an apportionment plan until after a hearing on the plan presented by the Executive. The Executive shall have access to the federal decennial census available to the Board.

(Source: P.A. 96-1540, eff. 3-7-11; 97-986, eff. 8-17-12.)

(55 ILCS 5/2-3004)

Sec. 2-3004. Failure to complete reapportionment.

If any county board fails to complete the reapportionment of its county by July 1 in 2011 or any 10 years thereafter or by the day after the county board's regularly scheduled July meeting in 2011 or any 10 years thereafter, whichever is later, the county clerk of that county shall convene the county apportionment commission. Three members of the commission shall constitute a quorum, but



a majority of all the members must vote affirmatively on any determination made by the commission. The commission shall adopt rules for its procedure.

The commission shall develop an apportionment plan for the county in the manner provided by Section 2-3003, dividing the county into the same number of districts as determined by the county board. If the county board has failed to determine the size of the county board to be elected, then the number of districts and the number of members to be elected shall be the largest number to which the county is entitled under Section 2-3002.

The commission shall submit its apportionment plan by October 1 in the year that it is convened, except that the circuit court, for good cause shown, may grant an extension of time, not exceeding a total of 60 days, within which such a plan may be submitted.

(Source: P.A. 96-1540, eff. 3-7-11.)

(55 ILCS 5/2-3005)

Sec. 2-3005. Filing of apportionment plan.

The apportionment plan developed by the county board or the county apportionment commission, as the case may be, must be filed in the office of the county clerk by the time required by this Division. The county clerk shall promptly forward copies of that plan to the chairman of the county board and shall keep other copies of the plan available for distribution free of charge to any registered voter of the county requesting a copy.

(Source: P.A. 86-962.)

(55 ILCS 5/2-3006)

Sec. 2-3006. Failure to file apportionment plan; election of board members at large.

If no apportionment plan is filed with the county clerk as required by this Division, the members of the county board shall be elected at large in the county. If the county board has determined the number of members for the board, that number shall be elected; otherwise, the number of members to be elected shall be the largest number to which the county is entitled under Sections 2-3002 and 2-3002.5.

(Source: P.A. 91-933, eff. 12-30-00.)

(55 ILCS 5/2-3007)

Sec. 2-3007. Chairman of county board; election and term.

Any county board when providing for the reapportionment of its county under this Division may provide that the chairman of the county board shall be elected by the voters of the county rather



than by the members of the board. In that event, provision shall be made for the election throughout the county of the chairman of the county board, but in counties over 3,000,000 population no person may be elected to serve as such chairman who has not been elected as a county board member to serve during the same period as the term of office as chairman of the county board to which he seeks election. In counties over 300,000 population and under 3,000,000 population, the chairman shall be elected as chairman without having been first elected to the county board. Such chairman shall not vote on any question except to break a tie vote. In all other counties the chairman may either be elected as a county board member or elected as the chairman without having been first elected to the board. Except in counties where the chairman of the county board is elected by the voters of the county and is not required to be a county board member, whether the chairman of the county board is elected by the voters of the county or by the members of the board, he shall be elected to a 2 year term. In counties where the chairman of the county board is elected by the voters of the county and is not required to be a county board member, the chairman shall be elected to a 4 year term. In all cases: (i) the term of the chairman of the county board shall commence on the first Monday of the month following the month in which members of the county board are elected, and (ii) no person may simultaneously serve as a member of a county board and the chairman of the same board if the office of chairman is elected by the voters of the county rather than by the members of the board.

(Source: P.A. 99-924, eff. 1-20-17.)



Division 2-5. County Executive Form of Government

(55 ILCS 5/2-5001)

Sec. 2-5001. Subtitle.

This Division shall be subtitled the "County Executive Law".

(Source: P.A. 86-962.)

(55 ILCS 5/2-5002)

Sec. 2-5002. Legislative determination.

It is declared as a matter of legislative determination that in order to promote the health, safety, morals and welfare of the public it is necessary in the public interest to provide for an elected county executive form of county government in accordance with Sections 4(a) and 6(a) of Article VII of the 1970 Illinois Constitution, and to permit counties which become home rule units by adopting an elected form of county executive government to simultaneously, pursuant to Section 6(b) of Article VII of the 1970 Illinois Constitution, elect not to be home rule units by referendum.

(Source: P.A. 86-962.)

(55 ILCS 5/2-5003)

Sec. 2-5003. Definitions.

As used in this Division, unless the context requires otherwise:

- a) "County board" or "board" means the governing body of any county other than Cook County which has adopted the county executive form of government under this Division.
- b) "County executive" means the county official elected by the voters of any county other than Cook County to be the chief executive officer to administer the county executive form of government under this Division.
- c) "County executive form of government" means that form of government in which the departments of county government are administered by a single county official called the county executive elected at large by the qualified voters of the county. The board shall act as the legislative body of the county under this form of county government.

(Source: P.A. 86-926.)

(55 ILCS 5/2-5004)

Sec. 2-5004. Establishment of county executive form of government.



Any county other than Cook County may establish the county executive form of government for that county by submission to and approval by the electors of the county of the proposition at a referendum as provided in Section 2-5005. A referendum to adopt the county executive form of government may be called by a resolution adopted by the county board of the county or by the filing of a petition as provided in Section 2-5005.

(Source: P.A. 86-962.)

(55 ILCS 5/2-5005)

Sec. 2-5005. Referendum on resolution of county board.

- a) If the county board adopts a resolution calling for a referendum on the proposal to adopt the county executive form of government and home rule for the county, within the time provided in the general election law, the county clerk and the county board shall provide for the submission of such proposition to the electors of the county in accordance with this Section at the next general election held in an even-numbered year.

Upon filing of a petition with the clerk of the circuit court of the county within the time provided in the general election law signed by at least 2% of the registered voters in the county or 500 individuals, whichever is less, requesting that the county executive form of government be established in the county, the clerk of the circuit court shall transmit the petition to the chief judge of the circuit court who shall determine the sufficiency of the petition or shall assign the determination of the sufficiency of the petition to a circuit judge who shall make the determination. If the judge determines that the petition is sufficient, he shall certify the sufficiency of the petition and shall issue an order directing the county clerk and the county board to provide for the submission of such proposition to the electors of the county at the next general election held in an even-numbered year.

The referendum shall be conducted in such a manner as is prescribed in the general election law.

The proposition shall be in substantially the following form:

Shall the County of become a Home Rule County and establish the county executive form of government?



YES
NO

- b) If the county board adopts a resolution calling for a referendum on the proposal to adopt the county executive form of government and elect not to be a home rule unit within the time provided in the general election law, the county clerk and the county board shall provide for the submission of such proposition to the electors of the county in accordance with this Section at the next general election held in an even-numbered year.

Upon filing of a petition with the clerk of the circuit court of the county within the time provided in the general election law signed by at least 2% of the registered voters in the county or 500 individuals, whichever is less, requesting that the county executive form of government be established in the county and that the county elect not to be a home rule unit, the clerk of the circuit court shall transmit the petition to the chief judge of the circuit court who shall determine the sufficiency of the petition or shall assign the determination of the sufficiency of the petition to a circuit judge who shall make the determination. If the judge determines that the petition is sufficient, he shall certify the sufficiency of the petition and shall issue an order directing the county clerk and the county board to provide for the submission of such proposition to the electors of the county at the next general election held in an even-numbered year.

The referendum shall be conducted in such a manner as is prescribed in the general election law.

The proposition shall be in substantially the following form:

Shall the County of..... adopt the county executive form of government and elect not to become a home rule unit?

YES
NO

- c) If a majority of the voters voting on the proposition described in subsection (a) or (b) vote in favor of it, the board shall proceed to establish the county executive form of government in accordance with this Division. A referendum under this Section may be held in a county only once within any 23-month period.



(Source: P.A. 86-962; 86-1028.)

(55 ILCS 5/2-5006)

Sec. 2-5006. Election of chief executive officer.

The electors of a county which has adopted the county executive form of government under this Division shall, at the next general election, and at the general election every 4 years subsequent, elect a chief executive officer. Nominations for the office of chief executive officer shall be made in the manner provided for other county officers in the general election law. The election of the chief executive officer shall be governed by the provisions of the general election law applicable to the election of county officers.

(Source: P.A. 86-962.)

(55 ILCS 5/2-5007)

Sec. 2-5007. Term of county executive.

The county executive shall serve a term of 4 years, commencing on the first Monday in the month following the month of his election and until his successor is elected and qualified.

(Source: P.A. 86-962.)

(55 ILCS 5/2-5008)

Sec. 2-5008. Qualifications of county executive.

The qualifications for the office of county executive are the same as those for membership on the board. However, the county executive shall not be an elected member of the county board.

(Source: P.A. 86-962.)

(55 ILCS 5/2-5009)

Sec. 2-5009. Duties and powers of county executive.

Any county executive elected under this Division shall:

- a) see that all of the orders, resolutions and regulations of the board are faithfully executed;
- b) coordinate and direct by executive order or otherwise all administrative and management functions of the county government except the offices of elected county officers;
- c) prepare and submit to the board for its approval the annual budget for the county required by Division 6-1 of this Code;
- d) appoint, with the advice and consent of the board, persons to serve on the various boards and commissions to which



- appointments are provided by law to be made by the board;
- e) appoint, with the advice and consent of the board, persons to serve on various special districts within the county except where appointment to serve on such districts is otherwise provided by law;
 - f) make an annual report to the board on the affairs of the county, on such date and at such time as the board shall designate, and keep the board fully advised as to the financial condition of the county and its future financial needs;
- (f-5) for a county executive of a county that has adopted the executive form of government on or before the effective date of this amendatory Act of the 96th General Assembly, appoint, with the advice and consent of the board, all department heads for any county departments;
- g) appoint, with the advice and consent of the board, such subordinate deputies, employees and appointees for the general administration of county affairs as considered necessary, except those deputies, employees and appointees in the office of an elected county officer; however, the advice and consent requirement set forth in this paragraph shall not apply to persons employed as a member of the immediate personal staff of a county executive of a county that has adopted the executive form of government on or before the effective date of this amendatory Act of the 96th General Assembly;
 - h) remove or suspend in his discretion, after due notice and hearing, anyone whom he has the power to appoint;
 - i) require reports and examine accounts, records and operations of all county administrative units;
 - j) supervise the care and custody of all county property including institutions and agencies;
 - k) approve or veto ordinances or resolutions pursuant to Section 2-5010;
 - l) preside over board meetings; however, the county executive is not entitled to vote except to break a tie vote;
- (l-5) for a county executive of a county that has adopted the executive form of government on or before the effective date of this amendatory Act of the 96th General Assembly,



- if the County Executive is temporarily not available to preside over a board meeting, the County Executive shall designate a board member to preside over the board meeting;
- m) call a special meeting of the county board, by a written executive order signed by him and upon 24 hours notice by delivery of a copy of such order to the residence of each board member;
 - n) with the advice and consent of the county board, enter into intergovernmental agreements with other governmental units;
 - o) with the advice and consent of the county board, negotiate on behalf of the county with governmental units and the private sector for the purpose of promoting economic growth and development;
 - p) at his discretion, appoint a person to serve as legal counsel at an annual salary established by the county board at an amount no greater than the annual salary of the state's attorney of the county;
 - q) perform such other duties as shall be required of him by the board.

(Source: P.A. 96-1540, eff. 3-7-11.)

(55 ILCS 5/2-5010)

Sec. 2-5010. Approval of ordinances.

Any ordinance passed, adopted or otherwise enacted by the board shall before it becomes effective be presented to the county executive. If the county executive approves such ordinance, resolution or motion, he shall sign it; if not, he shall return it to the board with his objections, which shall be entered and spread upon the journal, and the board shall proceed to reconsider the matter. If after such reconsideration $\frac{3}{5}$ of the members of the board pass such ordinance, it shall become effective on the date prescribed but not earlier than the date of passage following reconsideration. In all such cases the votes of the members of the board shall be determined by ayes and nays and the names of the members voting for or against such ordinance objected to by the county executive shall be entered and spread upon the journal. If any ordinance is not returned by the county executive to the board at its first meeting occurring not less than 6 days, Sundays excepted, after it has been presented to him, it shall become



effective unless the board has recessed or adjourned for a period in excess of 60 days, in which case it shall not become effective without his approval. Items of appropriation may be approved or vetoed by the county executive. Any item approved by the county executive and all items not vetoed shall become law, and any item vetoed shall be returned to and reconsidered by the board in the same manner as provided in this Section for other ordinances returned to the board without approval.

(Source: P.A. 86-962.)

(55 ILCS 5/2-5011)

Sec. 2-5011. Death, resignation or inability of county executive.

In case of the death, resignation or other inability of the county executive to act, the board shall select a person qualified under Section 2-5008 and Section 25-11 of the Election Code to serve as the interim county executive until the next general election.

(Source: P.A. 96-1540, eff. 3-7-11.)

(55 ILCS 5/2-5012)

Sec. 2-5012. Salary of county executive.

The salary of the county executive shall be fixed by the board and shall be not less than 1 1/2 times the amount of the compensation to which a member of the board is entitled.

(Source: P.A. 86-962.)

(55 ILCS 5/2-5013)

Sec. 2-5013. Discontinuance of county executive form of government.

Any county which has adopted the county executive form of government may discontinue that form of government only as provided in this Section. The board upon receipt of a petition, not less than 78 days before a general election, calling for discontinuance of the county executive form of government and signed by a number of registered voters of the county equal to or greater than 5% of the number who voted in the last regular election held in the county at which county officers were elected shall provide by resolution for submission of the proposition for discontinuance to the electors of the county at the next general election. The board shall certify the resolution and the proposition to the proper election officials who shall submit the proposition at the next general election in accordance with the general election law. The proposition shall be in substantially the following form:



Shall the County of discontinue the county executive form of government and (if a home rule county) become a nonhome rule county?

YES

NO

If a majority of the voters voting on the proposition vote in favor of discontinuance of the county executive form of government, the office of county executive shall be abolished as of the first Monday in December following the holding of the election and the board elected in the county shall meet, organize and resume the conduct of the affairs of the county wholly as the county board. A referendum under this Section may be held in any county only once within any 47-month period.

(Source: P.A. 86-962.)

(55 ILCS 5/2-5015)

Sec. 2-5015. Superseding plan for election of county board chairman.

The adoption of the county executive form of government by any county pursuant to this Division shall supersede any plan adopted by the county board of that county pursuant to Section 2-3007, as now or hereafter amended, for the election of the chairman of the county board by the voters of the county.

(Source: P.A. 86-962.)

(55 ILCS 5/2-5016)

Sec. 2-5016. Policy concerning exercise of powers by counties.

It is the policy of this State that any county with a chief executive officer elected by the electors of the county may (1) exercise any power and perform any function pertaining to its government and affairs, or (2) exercise those powers within traditional areas of county activity, except as limited by the Illinois Constitution or a proper limiting statute, notwithstanding effects on competition. It is the intention of the General Assembly that the "State action exemption" to the application of federal antitrust statutes be fully available to counties to the extent their activities are authorized by law as stated herein.

(Source: P.A. 86-962.)



Division 4-1. Classification of Counties

(55 ILCS 5/4-1001)

Sec. 4-1001. Counties classified.

For the purpose of fixing the fees and compensation of county and township officers in this State, the several counties therein are hereby divided into 3 classes, according to population as ascertained by the most recent Federal Census, which classes shall be known as the first, second and third, as follows:

Counties containing a population of not exceeding 25,000 inhabitants shall be known as counties of the first class.

Counties containing a population over 25,000 and not exceeding 1,000,000 shall be known as counties of the second class.

Counties containing a population exceeding 1,000,000 shall be known as counties of the third class.

The fees and compensation of the several officers hereinafter named, shall be as provided by law in the respective classes of the counties to which they belong.

(Source: P.A. 86-962.)

All ILCS Chapter 55 articles:

<http://www.ilga.gov/legislation/ilcs/ilcs3.asp?ChapterID=12&ActID=750>



Management Partners



To: Hon. Fred Foreman, Chair, Lake County Government Reform and Accountability Commission
Hon. Kathy Ryg, Vice Chair, Lake County Government Reform and Accountability Commission

From: Kevin Knutson, Regional Vice President, Management Partners
Susan Hoyt, Special Advisor, Management Partners

Subject: Lake County Board Chair Role and Responsibilities

Date: August 17, 2017

After the July 19, 2017 Lake County Government Reform and Accountability Commission, you requested background information on the Lake County Board Chair's role and responsibility. This memorandum summarizes the Chair's roles and responsibilities.

The Chair of the Board is elected by peers on the County Board for a two-year term.

The Illinois Constitution Article VII Section 4 (d) states that the duties of the County Board Chair are defined through local orders, resolutions and regulations. In Lake County the Chair of the Board's roles and responsibilities are identified in the Lake County Rules of Order and Operational Procedures (included as Appendix 1). These are reviewed and adopted every two years, simultaneously with electing a new County Board Chair and Strategic Plan. No significant changes have been made to these rules in the past fifteen years.

The Chair's responsibilities under the County Rules of Order and Operational Procedures are as follows:

- Is an ex-officio of all committees and may participate in the discussion and deliberations of the committees, but may only vote in the case of a tie or to make a quorum (III A; XVII C5).
- Presides over all County Board meetings (III B).
- Serves as the Liquor Control Commissioner for unincorporated areas (III D).
- Adds committee items deemed time sensitive with the concurrence of the Committee Chair (X C).
- Authorizes the addition of recognition and/or items of extraordinary significance to the Agenda (X D).
- Executes contracts (XI F).

- May authorize requests for a legal opinion from the state's attorney (XV A)
- Established ad hoc and special committees subject to majority approval by the Board (XVI A)
- Establishes standing committees and appoints the Chair, Vice-Chair and members subject to majority approval by the Board (XVII A1)
- May deem the appointment of a Member of the minority political party(ies) to a standing committee impractical (XVII A3).
- May appoint additional members to a standing committee subject to the majority approval of the Board (XVII 5).
- Authorizes changes in standing committee assignments (XVII A4).
- Is an ex-officio member of all standing committees and may participate in the discussion, deliberations, but vote to break ties or to constitute a quorum (XVII C5).
- Presents appointments to all other boards, commissions, districts and other authorities (over 300 appointees to 70+ units of government). (XVIII A).
- Determines extra hours for selected departments (XIX A).
- Appoints an interim County Administrator in the event of a vacancy in the County Administrator subject to approval by the majority of the Board (XXI G).

Additional responsibilities include:

- Serves on the Lake County Partners Board of Directors; leads and provides oversight and economic development strategies.
- Serves on regional groups (CMAP)

Collar County Comparison of Chair Responsibilities

As Table 1 shows, three of the four collar counties have the voters directly elect the Chair of the Board for four years (length of term is statutory). Lake County is the only county that has the Board elect its Chair.

Table 1. Collar County Comparison of Chair Responsibilities

Lake County	DuPage	McHenry	Will
County Board Elected Chair	Countywide Elected Chair	Countywide elected Chair	Countywide elected Executive (only 1 in Illinois; 1988)
Every 2 years	Every 4 years	Every 4 years	Every 4 years
Duties set by County Board through orders, resolutions, and regulations (Article VII Section 4 (d) 1970 Constitution)	Duties set by County Board through orders, resolutions, and regulations (Article VII Section 4 (d) Illinois Constitution)	Duties set by County Board through orders, resolutions and regulations. (Article VII Section 4 (d) Illinois Constitution)	Coordinate and direct by executive order or otherwise all administrative and management functions of the county except of elected officers. (55ILCS 5/2-5009)



Lake County	DuPage	McHenry	Will
Presides over meetings, appoints committee members and ad hoc and special committees subject to board approval, ex officio member on all standing committees	Serves as chief executive officer; schedules meetings, presides over board meetings, prepares proposed budget, appoints committee and chair assignments	Presides over meetings; sets agenda, sets Committee agendas in coordination with County Administrator	Responsible for day to day operations including oversight of 26 departments; preparing proposed budget and annual report
County Administrator oversees day to day operations	County Administrator is Chief Operating Officer Department heads report to CEO through County Administrator	County Administrator oversees operations and prepares proposed budget	Elected County Executive serves administrative functions



Appendix 1 – Lake County Rules of Order and Operational Procedures





Board Rules of Order and Operational Procedures

Public Comment

The County Board Parliamentarian shall manage the public comment section of the agenda and review speaker requests; call upon speakers at the appropriate time, and enforce the rules governing public comment.

Items that are on the agenda	Items that are not on the agenda
Complete yellow “Public Comment Card” and provide it to parliamentarian seated at the left side of the dais. Be sure to indicate agenda item number or provide a description of the topic. The Board Chair will recognize the individual printed on card and direct the speaker to approach the podium. Individual comment is limited to three (3) minutes. The parliamentarian will notify the speaker when the three minutes have expired and speakers can view the timing device at the podium. The parliamentarian may limit or preclude comment which is repetitive, redundant, cumulative, or irrelevant to County Board business, or promotes or supports a candidate for public office, or is political in nature.	Complete yellow “Public Comment Card” and provide to parliamentarian seated at the left side of the dais. Be sure to provide a description of the topic. If the parliamentarian deems the topic is germane to County Board business and <u>not</u> redundant, or political, he/she will recognize the individual printed on card and direct the speaker to approach the podium. Individual comment is limited to three (3) minutes. The parliamentarian will notify the speaker when the three minutes have expired and speakers can view the timing device at the podium. The parliamentarian may limit or preclude comment which is repetitive, redundant, cumulative, or irrelevant to County Board business, or promotes or supports a candidate for public office, or is political in nature.

General Information

- When appropriate, matters raised by public comment shall be referred to the appropriate Standing Committee.
- Persons addressing the Board shall refrain from commenting about the private activities, lifestyles, or beliefs of others, including County employees and elected officials, that are unrelated to the business of the County Board or County government. Also, speakers should refrain from comments or conduct that is uncivil, rude, vulgar, profane or otherwise disruptive. Any person engaging in such conduct shall be requested to leave the meeting. The Parliamentarian may also prohibit the individual from addressing the Board at future meetings.
- Candidates for public office wishing to address the Board under Public Comment must refrain from making comments that are political in nature or that promote or

support a candidate. This includes refraining from identifying oneself as a candidate for public office.



To: Hon. Fred Foreman, Chair, Lake County Commission on Government Reform and Accountability
Hon. Kathy Ryg, Vice Chair, Lake County Commission on Government Reform and Accountability

From: Kevin Knutson, Regional Vice President, Management Partners
Sam Lieberman, Senior Management Advisor, Management Partners

Subject: State of Illinois Board Sizes and Structure

Date: August 17, 2017

Management Partners researched the 22 most populous counties in Illinois to understand their forms of government, whether the board chair is elected or appointed, whether there is an elected county executive, and what is the size of the board.

As Table 1 shows, each of the 22 most populous counties operates under the township form of government except Cook County, which is a home rule county. Half of the researched counties have a board chair that is elected by the board while nine counties have a directly elected board chair. Two of the researched counties, Will and Champaign, have a directly elected county executive. The board sizes range from 10 to the state-allowed maximum of 29 and the average is 23 members.

Table 1. Illinois County Form of Government, Board Chair, and Board Size

County	County seat	Population ¹	Form of Government	Board Chair	Board Size
Cook County	Chicago	5,194,675	Home Rule	Elected by Voters	17
DuPage County	Wheaton	916,924	Township	Elected by Voters	17
Lake County	Waukegan	703,462	Township	Elected by Board	21
Will County	Joliet	677,560	Township	County Executive	26
Kane County	Geneva	515,269	Township	Elected by Voters	24
McHenry County	Woodstock	308,760	Township	Elected by Voters	24
Winnebago County	Rockford	295,266	Township	Elected by Voters	20
St. Clair County	Belleville	270,056	Township	Elected by Voters	29
Madison County	Edwardsville	269,282	Township	Elected by Voters	29
Champaign County	Urbana	201,081	Township	County Executive	22

County	County seat	Population ¹	Form of Government	Board Chair	Board Size
Sangamon County	Springfield	197,465	Township	Elected by Board	29
Peoria County	Peoria	186,494	Township	Elected by Board	18
McLean County	Bloomington	169,572	Township	Elected by Board	20
Rock Island County	Rock Island	147,546	Township	Elected by Board	25
Tazewell County	Pekin	135,394	Township	Elected by Voters	21
Kendall County	Yorkville	114,736	Township	Elected by Board	10
LaSalle County	Ottawa	113,924	Township	Elected by Voters	29
Kankakee County	Kankakee	113,449	Township	Elected by Board	28
Macon County	Decatur	110,768	Township	Elected by Board	21
DeKalb County	Sycamore	105,160	Township	Elected by Board	24
Vermilion County	Danville	81,625	Township	Elected by Board	27
Adams County	Quincy	67,103	Township	Elected by Board	21

¹ 2010 Population from the US Census Bureau





To: Hon. Fred Foreman, Chair, Lake County Commission on Government Reform and Accountability
Hon. Kathy Ryg, Vice Chair, Lake County Commission on Government Reform and Accountability

From: Kevin Knutson, Regional Vice President, Management Partners
Sam Lieberman, Senior Management Advisor, Management Partners

Subject: Lake County Prior Referenda on Elected Officers

Date: August 17, 2017

To provide some background about the history of attempted changes to Lake County's government structure Management Partners researched *Chicago Tribune* articles to understand the context for why the changes were suggested and why they were accepted or rejected by voters. This research was limited to reporting conducted by *Chicago Tribune* journalists and opinion writers. Lake County voters in 1978 abolished the elected auditor position in favor of an appointed finance director, voted down a referendum in 1988 to transition to a county executive form of government, and similarly voted down two measures in 1990 that would have abolished the elected coroner and recorder positions in favor of appointed professionals.

Elimination of the Elected County Auditor

In 1978 a group of citizens who organized under the name "Concerned Citizens for Low Cost County Government" initiated a referendum to eliminate the county auditor's position in favor of an appointed official to assume those duties. The purported reasoning for the referendum was to lower the cost of county government and to fill the auditor role with a professional finance director rather than an elected politician.

The election of November 8, 1978 saw William H. Smith, Republican candidate for county auditor win the position over his opponent by 21,000 votes. However, on the same ballot, voters in Lake County abolished the elected county auditor position in favor of an appointed finance director by a margin of over 23,000 votes.

Failed County Executive Referendum

In 1988 the Republican Party led a petition drive to allow voters to decide whether to change the Lake County form of government to directly elect a county executive. This would have made Lake County the first to have a county executive in the State of Illinois.

The proposal was met with opposition from various groups including the Democratic Party, which feared they would have less power than they already did in a heavily Republican county at the time. Other Republican board members feared that having a county executive would limit their power on the board. Ultimately the League of Women Voters, after forming a task force to study the issue, recommended that voters not approve the change because they worried state law at the time placed too much power in an executive and there wouldn't be enough checks and balances from the legislative branch of county government.

The opposition by such disparate groups was too much to overcome and the measure was ultimately defeated by a two-to-one margin.

Attempted Elimination of the Elected County Coroner and Recorder

In 1990 the Lake County Study Commission, which was tasked with making recommendations to the board about elected offices and the structure of Lake County government, recommended that the county coroner and county recorder become appointed, professional positions rather than elected office holders. The Lake County Board at the time, while not taking a position on the specific recommendations, believed they should put forward the recommendations of the Lake County Study Commission to the voters and the question of whether to abolish the coroner and recorder as elected positions was put on the ballot.

Similar to the 1978 measure to abolish the county auditor position, proponents of eliminating the coroner and recorder as elected officials believed the jobs could be better performed by professionals appointed to those positions. Opponents of the measure, which included the elected coroner and recorder, argued that appointees by the board would be just as political as elected officials. The measure was soundly defeated by two-to-one margins largely because of the opposition from the popularly elected coroner and recorder.





To: Hon. Fred Foreman, Chair, Lake County Commission on Government Reform and Accountability
Hon. Kathy Ryg, Vice Chair, Lake County Commission on Government Reform and Accountability

From: Kevin Knutson, Regional Vice President, Management Partners
Susan Hoyt, Special Advisor, Management Partners

Subject: Prior Lake County Governmental Study Commission Reports (Revised)

Date: October 1, 2017

Lake County has a history of studying the efficiency and accountability of its governance. Under the leadership of County Board Chair Norman Geary, the Board established the first Lake County Governmental Study Commission in 1976 (provided as Appendix 1) and a second one in 1989 (provided as Appendix 2). The work of both Lake County Study Commissions is relevant to today's governance and operations. However, it is the second Commission's (Commission II) work that closely parallels the charge given to today's Commission on Government Reform and Accountability and it will be the primary focus of this report.

The First Lake County Governmental Study Commission

The 1977 Lake County Study Commission's report recommendations focused on moving to professional management (the first Illinois County to do so). The recommendations included consolidating departments, establishing a Board of Elections, contracting for election services, and expanding the Board focus to policy and future planning. Now these recommendations are largely in place, with the exception that Lake County provides election services to other local governments rather than contracting these services for its own elections.

The Lake County Governmental Study Commission II

The 1990 Lake County Study Commission II's report made recommendations in five areas: the size of the Board, Board elections by district, County chair election, whether to appoint the recorder and coroner, and whether to have a county executive. Table 1 below shows the Commission's recommendations and the outcomes.

Table 1. Lake County Governmental Study Commission II Recommendations and Outcomes

Recommendation	Outcome and 2017 Status
County Board have 15 members; (was 24 at the time)	Never went to 15 members; has varied with redistricting; was as low as 19 members in 1991 and is currently 21 members
Elect Board members by single district	In place now; was implemented through redistricting
Chairman be elected at large with duties in local ordinance	Chairman remains elected by the Board every two years; duties are in local ordinance
Appoint Recorder	Failed in 1990 Referendum YES: 34,454 - NO: 74,370; currently elected
Appoint Coroner	Failed in 1990 Referendum YES: 36,866 - NO: 73,359; currently elected
Appoint District Clerk of Courts	Not pursued by County Board
NOT adopt a County Executive form of government (without home rule charter)	Retained County Administrator Adopting the County Executive form of government lost in a 1988 referendum; YES: 22,999 - NO: 48,037

Parallels between the Lake County Governmental Study Commission II and the 2017 Lake County Commission on Government Reform and Accountability

Both the Lake County Governmental Study Commission II and the 2017 Lake County Commission on Government Reform and Accountability were asked to study the size of the county board and how the county board chair is elected. The 1990 Commission was asked to review if commissioners should be elected from multimember districts, which were in place at the time, or single member districts. The 2017 Commission was also asked to review the redistricting process.

The Lake County Governmental Study Commission II report includes the rationale for its recommendations about the size of the county board and the method of electing the board chair. Understanding this rationale may help inform the current Commission's work. The principles for the rationale included greater visibility, economy, efficiency, accountability, accessibility to constituents and continuity of leadership. The actual rationale statements follow.



Rationale to reduce the size of the County Board from 24 members to 15 members

(Excerpted from page 33 of the 1990 Lake County Study Commission II Report)

- Fewer Board Members offer greater representative visibility to the electorate;
- One person, one vote is maintained with a smaller board;
- Greater efficiency can be achieved in terms of legislative policy making; and
- Increased political accountability will be fostered.

Rationale to elect the Chairman of the County Board At-Large

(Excerpted from page 33-34 of the 1990 Lake County Study Commission II Report)

- The Chairman elected at-large is more visible and has a broader perspective as the leader of the county government because he/she is elected county-wide;
- The powers and duties of a Chairman elected at-large will be succinctly enumerated in an ordinance to be passed by the County Board; and
- The term of four years promotes greater elected leadership continuity for the county government structure.

Rationale to elect the County Board by Districts

(Excerpted from page 33 of the 1990 Lake County Study Commission II Report)

- Election by districts is legally in concert with the one person, one vote doctrine of the U. S. Supreme Court;
- Election by districts more accurately reflects the variable character of Lake County
- Single member districts will promote involvement in county government by a broad and divergent spectrum of interests
- Single member districts will allow for optimum citizen input; provide for maximum accountability; and promote creative new solutions to increasingly complex public policy problems;
- Single member districts provide the best avenue to elect minority groups to the County Board; and
- Single member districts promote greater independence of the individual board member.



Appendix 1 – 1976 Lake County Governmental Study Commission





LAKE COUNTY
GOVERNMENTAL STUDY COMMISSION
FIRST YEAR REPORT

APRIL 12, 1977



LAKE COUNTY GOVERNMENTAL STUDY COMMISSION
FIRST YEAR REPORT
OF
FINDINGS AND RECOMMENDATIONS

Submitted To:
The Lake County Board
April 12, 1977

LAKE COUNTY GOVERNMENTAL STUDY COMMISSION (312) 689-6655



Mr. Sidney Danoff, Chairman
c/o Midland Division
The Dexter Corporation
East Water Street
Waukegan, Illinois 60085

Mrs. Madeleine Fuqua, Vice-Chairman
1936 Ash Street
Waukegan, Illinois 60085

Mr. George R. Bell
Mrs. Millicent Berliant
Sister Margaret Burke
Mr. John Fornell
Mr. William Thompson
Mr. Edward Zelesnik
Mrs. Preston Heigren
Mr. Dwight A. Magalia
Mr. William Mertlicher
Mr. Ulysses S. Range, Jr.
Rev. Roland Showalter
Mrs. Grace Mary Stern

April 12, 1977

TO: Mr. Norman C. Geary, Chairman
Lake County Board

FROM: Mr. Sidney Danoff, Chairman
Lake County Governmental Study Commission

RE: Transmittal of Study Commission's First
Year Report

Mr. Chairman and Members of the County Board:

The Lake County Governmental Study Commission has completed its first year of study relative to the operation of Lake County government. Our findings and recommendations are described in the Report which follows. The Report is organized in three sections; an introduction, a description of the county's organizational needs; and specific recommendations aimed at fulfilling those needs.

We were most pleased to have conducted this analysis. We found many positive aspects relative to the operation of Lake County Government; we also found areas that need improvement. Specifically we have recommended:

1. The appointment of a full-time, professional Administrator for Lake County;
2. The formalization of Staff Advisory Groups;

3. The possible consolidation of taxation departments;
4. The investigation of the feasibility of establishing a Lake County Board of Election Commissioners and contracting for the county-wide conduct of elections;
5. The relocation of the Public Works Department to Libertyville and the possible consolidation of the Public Works and Highway Departments;
6. The consolidation of health services departments;
7. The implementation of concepts presented in the Financial Management System Proposal of March, 1976;
8. The expansion of the County Board's capacity for planning, innovation and leadership; and
9. The reorientation of the Standing Committees toward providing more emphasis on planning and policy-making.

The detailed recommendations follow, including the rationale therefor.

Implementation of these changes will be a major undertaking. The Commission is prepared to assist the Board in this regard in whatever manner you may direct.

It has been a pleasure working with you, the Board, and members of the many departments. We appreciate the thoughtful cooperation extended to us at every level. We wish to extend a special thanks to Mr. Bill Barron who has given invaluable assistance as the Commission's resource person.

We stand ready to assist you and the Board in implementing these recommendations and shall begin our second year's work immediately.

Respectfully yours,



Sidney Danoff, Chairman
Lake County Governmental
Study Commission

I

INTRODUCTION

On February 10, 1976, the Lake County Board created the Lake County Governmental Study Commission. The Commission was established as a result of the Lake County Management Improvement Training Program held in July of 1975. At that seminar, Lake County officials recognized Lake County as a rapidly growing, urban county experiencing pressure from local, state and federal levels of government to expand and modernize services. While Lake County has been recognized as a leader among counties for management, it was felt by those present that there was a noticeable absence of a county-wide planning and programming process which impedes the county from keeping pace with an ever increasing demand for services.

Thus, the Board established the Study Commission and charged it with the two year task of analyzing the functions and roles of the County Board and its related departments. The following report represents the results of one year's work by the Commission. Specifically, it addresses the first year topics as charged by the County Board and makes recommendations regarding:

1. The possibility of consolidating and/or re-organizing Lake County Governmental Departments;
2. The desirability of a Lake County Administrator;

3. The possibility of restructuring and/or altering jurisdictional responsibilities of the Lake County Board Committee system; and
4. The scope of the Lake County Board's functions.

The Study Commission has worked diligently over the past year. The members have spent many hundreds of man hours in meetings, in information gathering, and in the formulation of proposal recommendations. The Commission has proven to be a hard-working, dedicated, cohesive group. This gives positive testimony to the wisdom of the County Board's selections.

The recommendations that follow are presented in an effort to provide for a unified policy direction for Lake County Government. The Commission feels that given the capability for county-wide administrative planning and functional coordination, Lake County will be in a much better position to manage and set priorities with regard to service needs within an environment of inflationary fiscal resources.

The essence of what the Commission has sought to provide the Board is the practical means to improve county government within the limits of what is realistic and probable. The recommendations are, moreover, aimed at starting to come to grips with the growing problems of local interdependence; accepting a greater political and

and administrative responsibility while at the same time relying on the inherent strength of local government; and attempting to achieve an acceptable level of structural adjustment necessary to provide Lake County constituents with desired service results.

The Commission presents to you our recommendations in the spirit that we feel the Board desires: that change aimed at improving local government must occur for the better as the result of a cooperative and thoughtful effort on the part of both local officials and the public.

II

SUMMARY OF FINDINGS

The Lake County governmental structure is presently supported by employees who are adequately serving the needs of Lake County residents. With the growth of the county, however, these needs are becoming increasingly complex. The County now finds itself involved in issues related to health care, transportation planning, sewer and solid waste disposal, law enforcement, open space development, and many other fields, all of which have major impact on the future character of the county and each of which has enormous financial implications.

To deal effectively with all of these issues the County Board must be freed from some of its present involvement in operational details and given increased time and staff support for long-range planning and innovative program implementation and evaluation. Presently, the County Board functions both as a Legislative and Executive Body. It is responsible for all governmental functions that are normally divided between an executive and a legislative body in typical democratic organizational forms. Such functions include the the creation and adoption of laws, ordinances and regulations; the establishment of policy; the enforcement of policy, laws, ordinances and regulations; and administration of county

operations (often to the most minute clerical details).

The Chairman of the Board has limited executive/administrative powers. This environment is not conducive to program continuity, and does not provide for the latitude or level of authority required for effective leadership. Moreover, there is no centralized mechanism between monthly Board meetings to carry out consistently the Board's decisions and policies. The coordination, direction, and control of the Standing Committees and the operating departments is performed, of necessity, by the Board as a group. A 25 member body is less than well-suited to such a massive administrative role. Further, follow-up and implementation of the Board's action are, in many cases, fragmented and unclear, and thus the time for making decisions is prolonged.

The present County Board Standing Committee structure is adequate, but organizational procedural changes are needed for maximum effectiveness. Those members who do not sit on the Financial and Administrative Committee have little access to the overall operational profile of the County. They are often channeled into a narrow view of the overall functions of County government because standing committees, for the most part, function independently of each other despite areas of common concern. In addition to absenteeism, few organizational and procedural devices exist to

assist the Board committees with their duties which are currently characterized by inconsistent recordkeeping procedures and an excessive amount of routine paperwork.

There exists a minimal level of on-going communications between the Standing Committees, county departments and other governmental units. It is unclear throughout the County structure who sets goals and priorities for the overall operation of the government or even if such goals and priorities exist. Programs and program objectives are for the most part non-existent, especially as they relate to long-range financial planning and budgeting.

The present budget process places excessive demands on the Financial and Administrative Committee. The budget document is essentially a one-year document which is prepared in a three to four month period. As Lake County's service levels and programs become more sophisticated and involve larger dollar outlays, more professional budget planning and administration will be required.

Throughout the County structure, optimum use is not being made of existing administrative and technical competence. This has arisen from the lack of coordinating common problems and a lack of interdepartmental communication (especially within functional areas of County Government). The common characteristics of the present departmental environment at Lake County could include:

1. Decentralized control and accountability;
2. Decentralized coordination in terms of an overall administrative direction;
3. Duplication of effort;
4. Independent operating enclaves;
5. Inefficient utilization of resources; and
6. Varying management responsibilities and procedures (especially between elected and non-elected department heads).

In summary, the Commission feels that Lake County government is indeed fortunate to have the benefit of many dedicated and energetic personnel at all levels of the structure. In many respects the Commission believes that Lake County is far ahead of other Illinois counties. Yet there remains sufficient room for organizational and procedural improvement.

There needs to be increased attention given to innovation and planning at the County Board level. The government structure needs a head; full-time, day-to-day administrative management should be a reality at Lake County. The Standing Committee system must begin to function more effectively. Specifically, more emphasis should be placed on policy-making and long-range planning and less committee activity dedicated to routine operational matters.

Greater communication within the structure at all levels is required if a unified direction to the government is to be achieved. Departments must be given broader latitude to participate in the overall direction of the government and not be bound to their own enclaves without accountability and without prospects for coordination and assistance from within.

Recommendations aimed at effecting positive changes for the improvement of Lake County Government are described in the section which follows.

III.

RECOMMENDATIONS

This section will propose specific recommendations for the improvement of Lake County government. They are based on the Commission's findings cited in the previous section of this document as well as the four areas of investigation assigned by the County Board. In some instances the Commission has chosen to make specific comments regarding the urgency of proposed actions. In other instances we have recommended further research be forthcoming prior to a definite decision by the Board.

The Commission is aware that the Board may have already treated some of these recommendations. They are offered once again in a context that may lend greater credence and emphasis to their merit at this time.

Recommendations regarding:

COUNTY ADMINISTRATOR

1. In order to give continuity and on-going transition support to the elected County government and to allow the County Board the opportunity to play its proper and more significant policy and legislative role, the Commission recommends that a full-time professional Administrator for Lake County be appointed by the County Board.

Rationale:

- a. Presently the County Board Chairman's duties, powers and authority are limited by law.
- b. The establishment of a central administrative mechanism will provide the proper means for policy recommendations to flow smoothly through the system for coordinated legislative decision-making at the full County Board level.
- c. Present resources and staff can be effectively utilized to support an Administrator. It is anticipated that the only additional direct expense of this recommendation would be the salary and fringe benefits for the Administrator.
- d. The County Administrator position, by its accessibility and capacity for liaison activity, could afford greater citizen satisfaction; avert future costs, and significantly enhance the County's management effectiveness; and
- e. Illinois Revised Statutes authorize County Boards to employ, appoint, or contract for services of such clerical, stenographic and pro-

professional personnel for the members of the County Board, the committees of the board and the chairman of the board as the board finds necessary or desirable to conduct the business of the county, and to fix the compensation of and pay for the services of such personnel.

- 2.** It is further recommended that the Department of Management Services, the Office of the States Attorney and the Director of Personnel be charged by the County Board to draft an ordinance and job description to establish said position of Lake County Administrator. (A sample, not necessarily a recommended sample, of a job description for such a position is offered in Appendix I.)

Rationale:

- a.** Such an ordinance would provide for the clear definition of the Administrator's responsibilities which might include:
- (i) Supervisory responsibility over all departments under the jurisdiction of the County Board; and
 - (ii) Budget preparation and recommendations relative to financial planning and capital improvements.
- b.** In so establishing the above assignments, the Administrator will have a clear mandate to assist the County Board Chairman and serve as liaison between the County Board Chairman, Elected Officials, County Board Committees and other governmental bodies. He should have broad discretionary authority in administrative areas and bring continuity to the County Government.

Recommendations regarding:

CONSOLIDATING OR REORGANIZING COUNTY DEPARTMENTS

- 3.** It is recommended that the County Board, by resolution or ordinance, formalize staff Advisory Groups for each functional area of Lake County Government, including Financial, Public Service, Law & Judicial, Health, and Taxation.

Rationale:

Such formalized organization for the county's department heads will provide for better utilization of the administrative and technical competence within the county structure; upgrading of the coordination of common departmental problems for timely solution; and maximization of interdepartmental communication.

- 4.** It is also recommended that the County Board mandate each Advisory Group to operate under uniform operating procedures to be set by the Board. It is also recommended that an existing county employee from a department represented on each Advisory Group be appointed by the Board to act as a coordinator of the group's activities.

Rationale:

In this manner each department's concerns, problems and responsibilities can be coordinated with all departments within the respective functional area of government and to the applicable Standing Committee, the County Board or

a possible County Administrator. A coordinated system of Advisory Groups so established and manned would afford the reality of overall planning and monitoring of each governmental area with coordination and reporting to top management.

5.

It is recommended that the County Board seek legal advice to assure the propriety of consolidating the Map Department, the Tax Extension Department and the Supervisor of Assessments into a centralized tax administration department. If such a reorganization is possible the Commission recommends its accomplishment under a single coordinator and that a clerical pool for tax processing activities for such a consolidated department be established by the County Board.

Rationale:

- a. The present management of the 186,000 parcel real property system is the responsibility of six separate departments and costs \$1 million annually. The present environment is characterized by decentralized control and accountability that is not conducive to overall system coordination nor timeliness. Many of these departments accomplish similar activities, often requiring the same information at different times during the tax cycle.
- b. The present system is in need of improvement to upgrade coordination, increase communications, eliminate duplication, and level out sporadic work cycles.

6. It is recommended that the County Board initiate further study in order to determine the feasibility of establishing a Lake County Board of Election Commissioners for the conduct of elections and the administration of voters registration (as authorized by Illinois Revised Statutes).

Rationale:

- a. Present administration for the conduct of elections and voters registration is vested in a single party; a single elected official. Such a mechanism as a Board of Election Commissioners may allow for greater objectivity and more comprehensive coverage of elections county-wide.
 - b. The County Board is authorized by law to establish, by ordinance, a County Board of Election Commissioners to assume all voters system responsibility presently the charge of the County Clerk.
 - c. Detailed study is needed to establish the cost effectiveness of such a proposal; the degree of increased efficiency, if any; and the methodology for accomplishing such a Board.
7. It is recommended that the County Board determine if there is a need for legislation that would allow Illinois Counties to enter into intergovernmental agreements with other taxing entities for the purpose of conducting their elections.

Rationale:

The prospect of county-wide consolidation of elections would provide for increased efficiency, reduced costs, and more effective utilization of existing tax supported election resources throughout Lake County.

- 8.** It is recommended that the Public Works Department be physically relocated to Libertyville with the Highway Department. Moreover, it is felt that detailed analysis must be accomplished by the County Board to establish the feasibility of consolidating the administration of these departments to improve the utilization of resources and enhance long-range program planning. (The Commission is unsure of the methodology in consolidating two departments operating under separate revenue structures.)

Rationale:

- a.** The services provided by the Public Works and Highway Departments benefit, in most cases, the same users residing in the unincorporated areas of the County. Presently they operate independently and there would seem to be a need for purposeful interaction and overall planning;
- b.** There is a significant potential for these two departments to share existing resources such as manpower, equipment and facilities; and
- c.** Location in Libertyville offers central proximity to the serviced areas. This allows for more timely delivery of services and greater accessibility to the system users.

9. It is recommended that greater emphasis be placed by the County Board in offering the services of the Highway Department; the Public Works Department; the Department of Planning, Zoning and Environmental Quality; and the Building and Zoning Department through intergovernmental service agreements. Further, it may be feasible to establish special service areas for selected operations of the combined Highway-Public Works function.

Rationale:

Self-explanatory.

10. It is recommended that the Health Clinics and Winchester House be placed under the management and jurisdiction of the Lake County Health Department and Health Board. It is further recommended that the County Board submit a referendum to the voters to eliminate the Tuberculosis Sanitorium levy. If successful, this will place the management of the Tuberculosis Clinic under the jurisdiction of the Health Board.

Rationale:

- a. Presently the County Board provides appropriations in excess of \$8 Million annually for health services. These services are provided through four separate agencies and under the jurisdiction of three separate boards;

- b. Consolidation of these agencies would provide for continuity of management, improved service delivery, more efficient utilization of health resources, reduced costs, and a coordinated structure whereby health care programs could be evaluated and priorities determined on a county-wide basis.

11. The Commission feels that the existing Financial Management System Proposal authored by the Management Services Department and presented to the Financial and Administrative Committee on March 31, 1976 has presented the basic research designed to better the county's financial environment. This study has adequately addressed the problems of the present system and has outlined concepts designed to upgrade it. We therefore recommend the implementation of the concepts presented in this study specifically as they relate to upgrading the present financial system.

Rationale:

So noted in the Financial Management System Proposal.

Recommendations regarding:

THE COUNTY BOARD; THE SCOPE OF ITS FUNCTIONS AND THE
COMMITTEE SYSTEM

- 12.** It is recommended that the Lake County Board expand its capacity for planning, innovation and leadership.

Rationale:

The present Lake County structure demands the preoccupation of the Board with operating matters, thus limiting the time available for anticipating the planning for future needs. The Board must be freed from some of its operating and administrative responsibilities while retaining essential control and expanding its capacity for more innovative planning and county leadership.

- 13.** It is recommended that the standing committees place more emphasis on the planning and policy-making role and less emphasis on operational matters.

Rationale:

The present standing committee structure is adequate, but organizational and procedural changes are needed to maximize effectiveness. An organizational entity is needed to coordinate Committee activities at a level just below the full Board (i.e., County Administrator). Individual committees need to apportion and schedule more time for planning instead of directing supervising operations. Means must be provided for coordinating the planning activities of committees working in related fields.

Foreseen are the Standing Committees initiating studies, through appropriate staff or by public hearings, to develop factual bases for policy

decisions. In this manner, the expertise of knowledgeable professionals and the viewpoints of concerned citizens and groups could be brought to the service of the Board. Moreover, public hearings, could be held by the various Committees to discover the needs and interests of their constituency as they relate to the development of long-range plans in the specific areas of Committee jurisdiction. It would seem advantageous for the County Board to meet as a Committee-of-the Whole at regular intervals for the sole purpose of long range planning. This would provide an excellent forum for each committee to present the fruits of its hearings, deliberations and evaluations.

APPENDIX I

EXAMPLE JOB DESCRIPTION

COUNTY ADMINISTRATOR

POSITION CODE:

SPECIFICATION NO.

DISTINGUISHING FEATURES OF WORK

This single position class performs responsible work of considerable difficulty and complexity at the highest level. Position functions as the Chief Administrative Officer for the County. Work involves the performance of all administrative duties vested in or assigned to the Lake County Board by law or by intergovernmental agreement. Supervision is directly given to administrative officers performing support services. Administrative direction is given to all operating departments and agencies under the direct jurisdiction of the County Board. Work is performed in accordance with the authorizing Board Resolution and according to policy guidance and directives from the Lake County Board and its respective committees. Work performance is evaluated by the County Board on the basis of results achieved.

ILLUSTRATIVE EXAMPLES OF WORK:

1. Provide for the execution of all ordinances and resolutions of the County Board and all laws of the State subject to enforcement by him or by officers who are under his direction and supervision.
2. Prepare and submit to the County Board for approval an administrative code incorporating the details of administrative procedure for the operation of the County and review such code and suggest revisions periodically or as requested by the County Board.
3. Furnish the County Board with information concerning the operations of County departments, boards, or commissions necessary for the Board to exercise its powers.
4. Prepare and submit to the County Board an annual budget and long-range expenditure program, along with a financial plan for raising revenue, and administer the provisions of the budget adopted by the County Board.

5. Keep the County Board fully advised as to the financial condition and needs of the County and make such other reports from time to time as required by the County Board or as the incumbent deems necessary.

6. Attend meetings of the County Board, take part in discussions, and recommend measures for adoption.

7. Appoint qualified administrative personnel to assist in the performance of his duties, and suspend and remove such personnel.

8. Act as principal liaison between the County Board and all other departments, boards, and commissions.

9. Coordinate the administration of departments and agencies under the direct jurisdiction of the Board.

10. Represent the County in the transaction of its business and work with elected and appointed officials in the financing and operation of the County government.

11. Serve as representative of the Board in communications with autonomous County officers and boards and with other Federal, State, and local government agencies.

12. Regularly inform the Board concerning Federal and State legislation, including grants and other forms of revenue affecting County government.

13. Assist the Board Chairman in the preparation of the County Board meeting agendas, attend or be represented at County Board committee meetings and furnish requested information as required.

14. Research and recommend the establishment and modification of County policies.

15. Perform investigations, studies and surveys ordered by the Board or deemed necessary by the Administrator.

16. Evaluate job performance of appointed department heads and report findings and recommendations to appropriate Board Committees, screen applicants and recommend candidates for an appointed department head position to the appropriate Board committees.

17. Carry into execution such other powers and duties as may be prescribed from time to time by the Board.

REQUIRED SKILLS, KNOWLEDGE AND ABILITIES

1. Requires skills, knowledge, abilities, and mental development equivalent to completion of a master's degree in public or business administration from a university of recognized standing, and five years of responsible administrative experience, or any equivalent extensive progressive professional administrative experience which provides the required skills, knowledge, and abilities.
2. Requires comprehensive knowledge of the principles and practices of public administration as they relate to Illinois' Counties.
3. Requires extensive knowledge of the principles and practices of public personnel administration, purchasing, financial management, and the applications of data processing as an effective tool of management.
4. Requires extensive knowledge of local, State and Federal legislation affecting County government.
5. Requires extensive knowledge of the social, economic, and political facets of County government operation.
6. Requires demonstrated ability in effectively planning, promoting, and administering the operations of a large and complex organization.
7. Requires the ability to plan and supervise the activities of professional, technical, and clerical support staff.
8. Requires the ability to prepare and review the preparation of complex management and financial reports.
9. Requires the ability to present information clearly and in an interesting manner to elected officials and the general public.
10. Requires the ability to establish and maintain satisfactory working relationships with staff personnel, community and board officials, other elected officials, and State and Federal representatives.
11. Requires the ability to deal calmly and fairly with conflict and questions.
12. Requires good judgment and good physical condition.

MEMBERS OF

THE LAKE COUNTY GOVERNMENTAL STUDY COMMISSION

Sidney Danoff, Chairman
Vice President, Operations
Midland Division, Dexter Corporation
Waukegan

Madeleine M. Fuqua, Vice Chairman
President of the Lake County League of Women Voters
Waukegan

Roland L. Showalter, D.D.
Pastor, First Presbyterian
Church
Libertyville

Sister Margaret Burke
Barat College Development
Coordinator
Lake Forest

George R. Bell
Lake County Board Member
Mundelein

Roger Slood
Lake County Personnel Director
Mundelein

Helen Helgren
Gurnee

John M. Fornell
Wildwood

Grace Mary Stern
Lake County Clerk
Highland Park

Stanley Pekol
Lake County Board Member
Waukegan

Dwight A. Magalis, Director
Lake County Department of
Management Services
Waukegan

William L. Thompson
Lake County Regional
Superintendent of Schools
Libertyville

William Merzlicker, President
American Federation of
Teachers, Unit District 60
Waukegan

Millicent Berlant of Deerfield
Former member of Lake County Board
Served with Commission through
December, 1976.

Appendix 2 – 1989 Lake County Governmental Study Commission II



7/10/90

611030

Agenda Item # 4

**FINAL REPORT
OF
THE
LAKE COUNTY GOVERNMENTAL STUDY COMMISSION II**



JULY 1, 1990

611031

**FINAL REPORT
OF
THE
LAKE COUNTY GOVERNMENTAL STUDY COMMISSION II**



JULY 1, 1990

611032



July 1, 1990

The Honorable Norman C. Geary
Chairman Lake County Board
18 N. County Street
Waukegan, IL 60085

Dear Chairman Geary:

The Lake County Governmental Study Commission II has completed its work. On behalf of all the Commission Members, I am pleased to transmit to you and Members of the County Board our final report. Our findings and recommendation are detailed in this report. The document is simply organized in three chapters: a brief introduction; followed by a comprehensive summary of the Commission's findings; and finally the Commission's detailed recommendations with corresponding rationale.

We are pleased to have conducted this analysis. The Commission has addressed all of the areas that the Board requested be investigated in the February 14, 1989 Commission enabling Resolution. Specifically, the Commission has recommended:

1. That the size of the County Board be reduced from twenty-four to fifteen Members;
2. That the County Board be elected from single member districts;
3. That the Chairman of the Board be elected at-large by the voters with specific duties to be outlined by local ordinance;
4. That the elected Offices of Recorder of Deeds, Coroner, and Circuit Court Clerk be made appointed. In this regard, the Commission has also recommended that the County Board place all three of these questions on the 1990 General Election Ballot; and
5. That the County Executive form of government (without home rule) not be adopted by Lake County.

The Commission is very aware of the sensitivity of these recommendations. The Commission is also aware that their implementation will depend in large measure on the thoughtful cooperation of both the elected and appointed County officials and the citizens of Lake County.

611033

I.

INTRODUCTION

On February 14, 1989, the Lake County Board created the Lake County Governmental Study Commission II. The Commission was established as a result of Lake County Board Committee work that pointed to the necessity and the appropriateness of the Board beginning preparations for its upcoming reapportionment.

There are critical issues facing Lake County during the decade of the 1990's. The Board established the Commission and charged it with the year long task of compiling, analyzing and assimilating relevant information regarding the following topics:

1. Illinois County Reapportionment law;
2. Election of the County Board - by districts or at-large;
3. Chairmanship of the County Board;
4. Size of the County Board;
5. Appropriateness/desirability of reducing selected elected County officials; and
6. Appropriateness/desirability of the County Executive form of government (without home rule).

It is intended that the information compiled by the Commission will provide the Board with an excellent starting point to begin its reapportionment process.

The Commission has taken a broad based approach to gathering information for its analysis. At its August, 1989 meeting the Commission directed Lake County staff to provide them with relevant, diversified, and objective input on the topics assigned for their review. The work program undertaken by the Commission has been enthusiastic and comprehensive.

Members of the Commission have been given presentations, learned readings and, as available, current treatment of all their assigned topics. The information has been provided from three planned perspectives: national, state and local. In each instance discussions and presentations regarding Commission

issues were held with "experts" in county government. The presenters included elected county officials, appointed county officials, practitioners, and academicians from various parts of the nation; from the State of Illinois; and from within Lake County. All presentations and resultant discussions were thought provoking and stimulating and provided the Members of the Commission with valuable information with which to formulate their positions and render their recommendations.

In addition to providing for their own required information needs, the Commission, under the auspices of the County Board, helped promote, organize, and ultimately co-sponsor (along with Governor's State University), a major state-wide conference on County Government Modernization in Northeast Illinois. This is believed to be the first conference of its kind to be held in over a decade in the Chicago metropolitan area.

As with the first Lake County Governmental Study Commission (1977-78), the Lake County Governmental Study Commission II has worked diligently during the past year. The Members have spent many hours in meetings, listening to learned presentations, studying appropriate readings, and in debating and formulating their proposed recommendations. The Commission has proven to be a diligent, hard working, and cohesive group.

The recommendations that follow are intended to provide the County Board with guidance to improve the structure and thereby the performance of county government. The Commission is cognizant of the sensitivity of some of these issues. The Commission is equally cognizant of the changes that are taking place in Lake County and the need to optimize the ability of county government to respond appropriately to these changes.

It is the position of the Commission that the time is particularly auspicious for the County Board to respond by shaping a more effective county

government structure.

We make these recommendations within the same context as that of the first Study Commission in 1978: that Lake County government, more than ever before, must seek greater local self-determination as envisioned by the Local Government Article of the 1970 Illinois Constitution.

The Study Commission's recommendations attempt to present possible directions that Lake County might take toward implementation of greater local government flexibility as foreseen by implementation of the 1970 Constitution. We view these recommendations as a means of practical improvement. Their implementation will require considerable cooperation among County officials. However, the Commission feels strongly that we are building upon the existing strengths and available resources of the current political and structural framework of Lake County government.

Having appointed the Commission, and enabled us accordingly, the impetus for positive change is possible. Thus, we present to you our recommendations in the spirit that we feel the County Board has anticipated: that changes aimed at improving local government must occur for the better as a result of cooperation and thoughtful interaction on the part of both local elected officials and the public.

II.

SUMMARY OF FINDINGS

The Lake County Governmental Study Commission II feels that its recommendations will be vital to reshaping Lake County government. We have brought our collective knowledge, background, and experience to bear on this important task. We have assumed that there are no pre-conceived, "right" answers and that there is no "built-in bias" relative to our assignment. Finally, we have assumed that there are high expectations on the part of the County Board regarding our work and that serious consideration for the positive change contained in our recommendations will be forthcoming.

The County Board placed before the Commission issues for study and recommendation that will greatly impact the upcoming reapportionment process and thereby the essential structure of Lake County government for the next decade and beyond.

We feel that our recommendations will provide the Board with sound direction for modernizing county government for the future. The responsibilities and demands on Lake County government will continue to increase. This county is much more than a residual body of government providing those services not provided by other local units. Indeed, Lake County is an active governmental force in the community providing for the health, safety, and general welfare of a burgeoning citizenry.

Increasingly, the county finds itself in the position where it is the central planning, organizing and/or coordinating body for area-wide, intergovernmental service delivery efforts.

The Commission has heard from some who claim that in its present structural mode, counties may not be able to appropriately meet these

challenges. It is said, that a government to deal with critical contemporary future issues must be organized for the task. Such reorganization involves changes in the governmental structure the Commission feels are embodied in those issues which we have examined.

Certainly the breadth and depth of our research into each issue will not have pointed to all of the viable directions that can be taken to achieve the goal of a better Lake County government. Yet we feel that we will have posed important options for the County Board to act upon.

Notwithstanding the many modern administrative innovations that have been made by the Lake County Board since the adoption of the 1970 Illinois Constitution, the Commission feels that the general fragmented system of local governments in Illinois still poses a major potential obstacle to democratic government in the urban areas. The need for local jurisdictions capable of dealing with area-wide problems; guiding the development of land and use of natural and human resources; and assuring the delivery of adequate public services is still very real. It is our county government, modernized in structure and strengthened in authority, that offers the greatest hope of fulfilling this need.

In the remainder of this chapter we will present the issues which have led to our recommendations presented in Chapter III.

REORGANIZATION AND REAPPORTIONMENT

For Lake County in 1990 prospects for major structural reorganization are inexorably intertwined with the 1990 census and the upcoming reapportionment process.

It therefore becomes important to provide a brief overview of the topic of reapportionment generally, and the topic of reapportioning Illinois county government specifically.

The general legal principles of reapportionment and redistricting that apply uniformly throughout the United States are grounded in the U.S. Constitution. Both Article I, Section 2 and the Fourteenth Amendment state that members of the House of Representatives shall be apportioned among the states by population based on the decennial census. In addition, the Fourteenth Amendment's guarantee of equal protection of the laws has been invoked by the U.S. Supreme Court in carrying reapportionment to the State and local governmental levels.

One of the central issues of reapportionment has been the application of the equal population principle (one person-one vote) to all levels of government. For local government, the U.S. Supreme Court has held that local governing bodies exercising general governmental powers or certain special limited powers must be elected in conformity with the equal population rule.

One person-one vote implies that representative districts must be apportioned with substantially equal population, therefore granting equal representation on the legislative body.

The Illinois Legislature has established this population equality requirement for county board districts with the passage of the 1969 County Board Reapportionment Act (Il. Rev. Stat., Chapter 34, Sections 831-840). It is this statute that necessitates our redistricting following the availability of decennial census information in late 1990 or early 1991.

Other than population equality, the Illinois law has established two other criteria relating to the composition of the reapportioned districts: that the districts be comprised of contiguous territory (as nearly as compact

as practicable) and that the districts divide townships and municipalities only when necessary to conform to the equal population requirement.

These limitations, however, comprise only one dimension of reapportioning the county board. The Reapportionment Act also mandates that the county board determine:

1. The size of the County Board (from no less than 5 to a maximum of 29 members);
2. The type and number of county board districts (single member or multi-member) if election by districts is the chosen method;
3. The method of election of the Chairman of the Board (by the voters or by the members of the board); and
4. The type and amount of compensation for the members of the Board and the Chairman.

These issues are the central focus of the county board related matters that the Commission is charged to examine.

It is clear to the Commission that the process of County Board reapportionment offers an appropriate opportunity for reorganizing the overall structure of the Lake County government. In our analysis we have found that the size of the board, its method of representation, and the leadership selection process may indeed have a significant impact on the efficiency and effectiveness of the governmental structure. And, while electing versus appointing certain county officials and the elected county executive (without home rule) are issues not directly part and parcel of the reapportionment process, the Commission feels that their consideration during this time is critical if comprehensive structural reorganization is desired.

COUNTY STRUCTURE AND GOVERNMENTAL CHANGE

American counties have sought to alter their form and structure for a number of reasons. The specific causes of, or preconditions for, county reorganization are usually complex and often difficult to pinpoint. However, studies have shown that there are certain common factors that tend to facilitate county reorganizations. Among the most important are state law, population, politics and so-called "catalytic events."

Obviously state law must be flexible enough to allow restructuring to take place. County reorganizations, either locally initiated or mandated by the state, may only be accomplished in accordance with the state constitution and/or legislative enactments.

Counties that attempt and/or succeed at structural reorganization tend to be densely populated, urbanized, and more than likely affluent, with high revenues and expenditures per capita. Many counties attempting reorganization have experienced substantial population growth resulting in unmet urban service needs.

The traditional political climate found in a given state has certainly influenced the type and level of county reorganization activity. For example, a strong home rule tradition means that more local county reorganization efforts may be likely to take place, more often. In other states, the state may have to mandate restructuring before it becomes a reality.

Except where state mandated reorganization exists, more than likely there will be a perceived need for change on the part of county officials or the local citizenry. Sometimes support for change may only be developed over an extended period of time. However, a political event, a local problem, or a crisis may serve as a catalyst to precipitate county reorganization.

One of the most perplexing issues running throughout the phenomenon of county restructuring in America is the question of the relationship between governmental structure and governmental effectiveness; does changing the structural form of government necessarily lead to increased governmental effectiveness? Researchers have concluded that structural changes have, more often than not, affected the pattern of influence of various groups on local policy making. In other words, the specific structure adopted by a government helps to establish behavior patterns and attitudes toward authority and the exercise of authority, thus affecting the overall governmental decision-making process.

Counties in America have evolved from simple territorial divisions to revitalized local governmental entities delivering area-wide urban services. This evolution has taken many shapes and forms. The Commission has concluded that the restructuring and reorganization of county government does not fit into neat, exact patterns. County reorganization is a dynamic political process. However, reorganization usually reflects a growing recognition of the importance of strengthened and revitalized county government. This was the case in 1976 when the Lake County Board established the first Governmental Study Commission. It is the case today in Lake County albeit in a different context.

THE EMERGING ILLINOIS URBAN COUNTY

Although major legal reforms foreseen for Illinois counties by the 1970 Constitutional Convention have remained largely unrealized, significant changes have been taking place nevertheless. County boards in the 1970's in many areas of the State have made significant improvements in the administration of county government within their existing legal frameworks.

For the most part, these improvements have centered around creating administrative assistance to the boards while providing for central administrative services under its supervision. This movement has been most active in the more urbanized counties of Illinois.

The departure from the traditional county commissioner (county board) form in Illinois has been prototypical of both the board-administrator and board-elected executive forms. The latter is limited to strengthening the county board chairman's standing by election at-large and the former involves formal delegation of administrative authority to professional staff in various forms and degrees.

The Illinois adaptation of the board-administrator form has taken many forms with variously titled positions. Today some twelve counties have someone like a county administrator serving as a central administrative mechanism for the board. Usually established by ordinance or resolution, this position is intended to provide an internal means for public policy recommendations to flow smoothly through the system of coordinated legislative decision-making at the full county board level. Functional responsibility for purchasing; personnel administration; accounting control and financial reporting; legislative analysis; intergovernmental relations; special program administration (Job Training Partnership Act (JTPA), Community Development, Revenue Sharing); ordinance and policy enforcement; budget preparation; property management; supervision of appointed officials; and general policy and program analysis are common responsibilities inherent to this position in Illinois.

Variation in the authority of this position lies both in the extent to which the individual boards have delegated their administrative executive powers and the operational latitude which has been granted.

Whatever the resulting patterns or titles, the underlying assumptions have been that the county board position as a legislative policy maker, and to a lesser extent as a supervisor of administration, should be strengthened; that the efficiency and effectiveness of county government requires it; and that the board must have full-time, professional staff to achieve it.

The Lake County Governmental Study Commission put it this way in its 1977 report to the Board:

In order to give continuity and on-going transition support to the elected County government and to allow the County Board the opportunity to play its proper and more significant policy and legislative role, the Commission recommends that a full-time professional Administrator for Lake County be appointed by the County Board.¹

The Commission, in recommending that a Lake County Administrator should be established by County Board ordinance, went on to state:

In so establishing. . . the Administrator, (the position) will have a clear mandate to assist the County Board Chairman and serve as liaison between the County Board Chairman, Elected Officials, County Board Committees and other governmental bodies. He should have broad discretionary authority in administrative areas and bring continuity to County Government.²

DuPage and St. Clair Counties operate under a modified board-administrator form. They have chosen to modify the means by which their county board chairmen are elected. In both counties the chairman of the board is elected at-large by the voters as authorized by Illinois law.

Elected for a four year term, the at-large chairman presides at the county board meetings and votes only to break ties.

¹ Lake County Governmental Study Commission, First Year Report of Findings and Recommendations, April 12, 1977, Waukegan, Illinois, p. 10.

² Ibid., p. 11.

Further, the at-large chairman has the authority in law to call special meetings of the Board (without 1/3 of the board requesting such a meeting). Extraordinary authority may be granted to the chairman by the board either by ordinance or by locally adopted rules. In both the DuPage and the St. Clair County experiences, the at-large chairman is the "leader" of the board and spokesperson for the county government.

In the DuPage and St. Clair examples, the strengthening of the chairmanship has been accomplished as a structural means for improved central administration. Regardless of the varied patterns, these county boards have been embellished as legislative policy-makers and supervisors of county administration; the efficiency and effectiveness of the county governments have been improved; and a full-time professional administrative capability has been put in place to help achieve day-to-day management continuity.

These changes in the make-up of Illinois county government have taken place within the structural framework of the existing systems. These changes reflect the reality faced by these urban counties in the 1970's. Inflation and the dramatic increases in costs to provide government services; "taxpayers revolts;" and expanded authorities and responsibilities granted by both the General Assembly and Congress have fostered growth and have changed the face of Illinois counties. Urban counties have become experienced and strengthened in their abilities to govern without achieving "home rule" status. These counties, and especially Lake County, have made sustained progress with strengthened board chairmen and/or appointed administrative officers in fulfilling their urban government roles.

The Commission feels that Lake County government has achieved a high level of administrative effectiveness given the level of internal

reorganization that has taken place since 1977. It remains for the County Board to now consider the level of effectiveness that we feel can be accomplished through structural reorganization during the upcoming reapportionment process.

SIZE OF THE COUNTY BOARD

Article VII, Section 3(a) of the 1970 Illinois Constitution establishes the framework in which counties can have some flexibility in setting the size of their county board. This section allows the kinds of options that have been available for many years to municipal governing boards under permissive Illinois statutes. It permits each county more opportunity to choose a form of county board suitable to its local needs, subject to limitations provided by the state legislature.

Section 3(a) reflects a basic premise of representative democracy; that legislative bodies should consist of officials elected by the people. This has not always been the case, as applied to counties, but becomes more important as county boards assume a more distinct legislative role and play an increasingly important role in making policy decisions affecting area-wide local affairs. This section further provides for joint responsibilities at the state and local levels, with the state legislature charged with fixing the outside limits on the number of county board members and the county board charged with choosing the exact number within these limits.

As noted above, chapter 34, sections 831 through 840 of the Illinois Revised Statutes provides for the reapportionment of county boards in conformance with the one-person, one-vote principle established by the U.S. Supreme Court in Baker vs. Carr. The statute provides for the election of County Board

members from single or multi-members districts or at large; delineates the high (29) and the low (5) range of board size; specifies that the size of the board may not exceed the size of the board prior to October 2, 1969; and states that the board must have reapportioned itself by July 1, 1971 and that it will reapportion itself every 10 years thereafter.

It is worthy of note that the reapportionment law, as well as the case that brought about one-person, one-vote, both hinge on the concept of representing an equal number of people, not on the number of representatives. It would seem logical to conclude therefore, that whether a group of people was represented by five county board members or by one, it makes little difference. The difference lies in the relevant degree of visibility and opportunity for accessibility on the part of the constituents that would be prevalent with a reduced number of board members. Stated differently, as the size of a governing body increases, the ability of the voters to recognize and evaluate individual representatives is reduced. Moreover, the potential may exist for loss of voter control because of diffused political accountability. The smaller the board, the more visible and more accessible are the board members.

Nationally, all but six states have counties with boards averaging under 10 members. In most states the average size is from three to five members. Further, in states where centralized county administration is vested in someone other than the board, the size of the board is much lower than in those states where such centralized administrative authority is retained by the board or diffused among numerous department heads.

Our analysis indicates that a smaller board offers greater economy and efficiency. Just by the measure of sheer numbers, a smaller board could cost less to support given the fact that adequate in-house staff resources exist. This would not be the case, however, if staff for individual board members was

required. But the Commission feels that there is a middle ground between the large board we now have and a small board. This middle ground would require increases in neither member salaries nor staff. Because most governmental bodies often work by consensus, it can be argued that the smaller board would have a higher propensity for consistently reaching required decisions more effectively, especially if the board begins to deal with long range planning and policy making issues (actions of a purely legislative nature).

The precise number of board members is a more difficult issue. The Commission feels that the number of board members must be enough to provide for the representation of the diverse elements of Lake County. Yet the Board must maintain adequate numbers conducive to an efficient committee structure that provides balanced legislative input to the larger body. It is clear to the Commission that there is less need now, with the existence of a centralized administrative mechanism, for the Board to maintain the broad scope of its administrative role.

The Commission feels that the size of the Lake County Board should be reduced to fifteen members. The recommendations that follow in Chapter III will address the appropriateness of this size and our rationale. The reader will also note in Chapter III a minority position regarding the size of the county board.

ELECTION OF THE COUNTY BOARD BY DISTRICTS OR AT-LARGE

During the course of our examination the Commission has been admonished many times to have a "vision" of the future for county government. The make up of the County Board, we feel, has important implications in this regard.

It is our position that the County Board cannot have "literal" representation for all enclaves in the county. There is no one "ideal" type of County Board. The future seems to mandate a county legislative body that is a problem solver and a policy maker for regional, sub-regional, and intergovernmental issues. The state will be doing less for the local government as public policy issues become more and more complex and "solvable" locally.

In striving to make recommendations regarding the restructuring of county board districts, we have set three criteria for our analysis: (1) allow for optimum citizen input; (2) provide for maximum accountability; and (3) allow for creative new solutions to increasingly complex public policy problems.

We have discussed above the legal parameters within which the county board must reapportion. One of the first distinctions that must be made is whether the board members shall be elected at-large or by districts and, if by districts, whether they shall be single or multi-member in composition.

It is generally held that at-large election reflects homogeneity and representation of constituencies from higher income brackets, higher educational levels, and a higher social status. Moreover, at-large reapportionment of local government legislative bodies has not been favorably viewed in recent U.S. Supreme Court decisions because of the propensity to under represent racial minorities.

A county board elected by districts is viewed by the Commission as more equitable and the most legally appropriate methodology for Lake County.

In evaluating whether the county board districts are to be single member or multi-member, we have found that the criticism and praise for both are essentially the same.

The equal population principle as formulated by the U.S. Supreme Court, does not address itself to the question of whether representatives may be chosen from single member constituencies or from multi-member districts. However, the Court has addressed this question on an individual case basis. The generally accepted feeling of the Court can be summarized as follows:

The Supreme Court which had suggested in the majority opinion in Reynolds that multi-member districts might be used as a deterrent to gerrymandering, upheld multi-member districting (in two cases), however, the court indicated multi-member districts may be held unconstitutional if shown to minimize or cancel out the voting strength of a racial or political element of the voting population.

Robert Dixon, in his book Democratic Representation: Reapportionment in Law and Politics,⁴ stresses that multi-member district systems may run the risk of providing the dominant party with sweeping all of the seats. Moreover, he claims that this type of district composition may "avoid" the representation of minority groups, (partisan, economic, or ethnic). It is the avoidance of minority groups that is the strongest criticism of multi-member districts.

The major advantage cited for multi-member districts is that the voter's influence on the governmental body is enhanced. It is argued that because the voter has more representatives on the body he/she may be represented on more committees of the legislative body and, therefore, will be better informed and involved in a wider range of public policy issues.

The Commission prefers single member districts. It is our contention that it is far easier for the average citizen to judge the qualities and performance of a limited number of candidates for several offices.

³ "Representatives and Apportionment;" page 25, (Washington, D.C., Congressional Quarterly Service, 1966).

⁴ Dixon, Democratic Representation: Reapportionment in Law and Politics; (New York, Oxford University Press, 1968).

Indeed, as the National Municipal League cautioned in 1963, "voters should not...be called upon to pass judgement on more than three or four legislative positions (national, state, and local)."⁵

Moreover, single member district legislative bodies encompass a broader spectrum of constituent interests and bring a greater divergence of voices and opinions to the government. Single member districts, particularly if they are small and well-apportioned, can offer improved representation to concentrations of political, ethnic, or economic populations.

The Commission has found that representative bodies composed of single member districts reflect greater accountability on the part of the individual board members. Indeed, in the opinion of two speakers appearing before the Commission, the major changes experienced in the shift to single member districts in the Illinois State House of Representatives was the reduction in the number of "mavericks" and an increase in the nature of Member accountability.

It is clear that equal representation is the legalistic mandate of reapportionment. The Commission feels that for the Lake County Board election by single member districts fulfills the structural portion of this mandate. Further, this structural methodology is best fitted to the citizens in terms of accessibility and accountability. Specific recommendations and related rationale will follow in Chapter III. The reader will also note in Chapter III a minority position relative to single member districts.

⁵ National Municipal League, Model State Constitution, page 49, (6th ed., 1963).

CHAIRMANSHIP OF THE COUNTY BOARD

The method of choosing the Chairman of the county board will be a key element of the reapportionment process for 1991.

Under Illinois law the Chairman may be elected by the members of the county board or by standing at-large for county-wide election. Currently the Chairman of the Lake County Board is elected by the Members of the County Board for a two year term. By law, the peer elected Chairman presides at County Board meetings (where he/she may vote) and is the Liquor Commissioner in the unincorporated areas of the county. In Lake County, the Chairman serves as "leader" of the Board generally supervising the implementation of County programs and policies. The current "Lake County Board Rules of Order and Operational Procedure" (in addition to statutory mandates) authorize the Lake County Board Chairman to: establish special committees with the advice and consent of the Board; make standing and special committee appointments (including Chairmanships) with the advice and consent of the Board; make appointments to all other boards, districts, commissions, and authorities with the advice and consent of the Board; make presentations of department heads to the Board for appointment or removal; and serve as an ex-officio and voting member of all County Board standing committees and may be used to constitute a quorum thereof.

The Chairman elected-at-large is elected county-wide by the voters for a four-year term. In addition to those statutory powers cited above for the peer elected chairman, the at-large chairman may, by law, vote only to break ties and may call special meetings of the board. If granted by local rules, the at-large chairman may also have veto power over ordinances only and may be overridden by a simple majority vote of the board.

As we have noted above, DuPage and St. Clair Counties are the only two Illinois counties that elect their board chairmen at-large. In both instances, the county board chairman position has become a visible "leader of the county." The position has become a "point of contact" for the county government with the public and private interest groups and units of government as well.

Historically and statutorily, the office of county board chairman has not carried significantly greater authority over county government than that of any other elected county board member. In Lake County, with the peer elected chairman, the Chairman can be viewed as "first among equals" sharing administrative and legislative powers with all other Members. Also, the chairman still serves as one of the board representatives having been elected from his/her district. The chairman at-large need not be elected from a district and is definitely more "visible" in the county organizational scheme.

The Commission feels that there must be a more visible elected leader of the county board. The future course of county government in Illinois demands this. It becomes critical, therefore, to discern whether such visible leadership is achieved by the method of selecting of the chairman.

We have concluded that the chairman-at-large offers greater visibility, and will provide greater focus on county-wide issues and promote less county board infighting. Further, the Commission has concluded that the enhancement of the board chairmanship may well be necessary in order to foster the desired legislative/administrative environment for county government of the 1990's.

The Commission recommends that the Chairmanship of the Lake County Board be elected at-large and that the specific duties of the Chairman be enumerated by County Board ordinance. The details of our recommendation and related rationale will follow in Chapter III. The reader will also note in Chapter III a minority position relative to election of the county board Chairman.

ELECTED VS. APPOINTED OFFICIALS

Article VII, Section 4(c) of the 1970 Illinois Constitution provides for alternatives to the election of certain county officers. Specifically, the offices of Sheriff, County Clerk and Treasurer can be eliminated by county-wide referendum. The offices of Coroner, Recorder and Auditor can be eliminated or the manner of their selection changed by state law or by county-wide referendum. The Clerk of the Circuit Court, the States Attorney and the Superintendent of the Educational Service Region are treated in other constitutional articles.

The intent of Article VII, Section 4 is to permit greater flexibility in counties by allowing reduction by action of the state legislature of the number of officers who must be elected and the local creation and/or elimination of county office by local referendum.

The changing of elected officials to an appointed status is a most sensitive and, often emotional issue. The debate, in this regard, has taken on a new focus and urgency as county government in Illinois takes on new importance. As we have discussed previously, evidence of the new vigor in Illinois county government can be seen in a number of areas including revision of internal county operating structures; modernization of administrative management processes; expanded county service delivery; new trends in government finance; and new county decision-making autonomy.

The Commission has found that the issue of election versus appointment of certain county officials centers on the question of accountability versus administrative professionalism. Those who favor election point out that this method provides for direct accountability to the voters. Those who favor appointment argue that some elected offices involve administrative rather than

policy-making functions and that these officials should be professionals appointed for their expertise and experience. So stated, these positions represent over-simplifications. There are elected officials who are professional managers and who have great expertise in their fields. And, though appointed department heads may not respond directly to the electorate, the elected officials who appoint them are sensitive to their own accountability to the electorate.

In each of the fifty states the new developments in county government and the question of elected versus appointed county officials come face to face with an administrative anomaly: the plural executive system. On the one hand, county boards throughout America are becoming more effective legislative and policy planning bodies, especially in those counties that have adopted able professional administrators to implement board decisions and provide for a coordinated supervision of county departments. On the other hand, elected officials, each with statutory executive authority, operate independently of county boards and depend on them only for passage of their operational budgets. The Commission is cognizant of this situation (i.e., the plural executive) and feels that it applies directly to Lake County.

The Commission has also evaluated whether the mandate of the voters has anything to do with the administration and execution of the statutes by the elected official. We have concluded that the mandate of the voters has little to do with the official functioning of the office-holder. The pro-election arguments of the elected officials who have come before the Commission focused not on their official duties, but on activities that are related to the politics of re-election.

Certainly the trend nation-wide indicates a move away from more elected officials and the long ballot in county government. This is particularly true

in urban counties adopting forms of county-wide administrative management. And, if we believe that it is important to have professionals administering for the citizenry, then it might be argued that election, without requirement of professional qualifications, is not the only usable method of acquiring professionals for jobs that are technical and/or clerical in nature. Moreover, if it is important to have a unified policy direction within county government, then the constraints of differing administrative policy setting authorities within a single governmental unit must be addressed.

The Commission is aware of some reform efforts that have been attempted or that have occurred in this regard. In the late 1970s there was a state-wide movement to make the Superintendents of all Educational Service Regions appointed. Purported to take place by actions of both the Illinois Legislature and the State Board of Education prior to the 1982 General Election, it has yet to transpire. Also in the early 1980's there was activity in various parts of the state to make the Circuit Court Clerk an appointed position. No statewide policy has yet been promulgated in this regard. Finally, the elected Lake County Auditor was abolished by county-wide referendum in November, 1980.

The Commission has concluded the offices of Recorder of Deeds, Coroner, and Circuit Court Clerk should be changed from elected status to appointive status. Our specific recommendations and rationale will follow in Chapter III.

THE COUNTY EXECUTIVE WITHOUT HOME RULE

Beyond the urban county phenomenon, the most recent opportunity for structured reform in Illinois county government has emerged from the 1985 amendments to the Illinois County Executive Act. Not only does this recently

amended statute provide for major structural change, it appears to be the "newest" statutorily enabled option available to urban counties in Illinois to modify their structure, (other than county executive with home rule powers). Thus, it is important for us to objectively analyze the non-home rule county executive and attempt to discern the prospects for its use in changing the structure of urban counties in Illinois generally, and Lake County specifically.

This "new" option for adopting the county executive form of government is at once quite typical and at the same time atypical. It is typical in the sense that the Illinois statute contains many of the common powers and duties afforded county executives throughout America. It is atypical because of the many questions that the statute seems to pose for the implementing county and the very real differences that are apparent when comparisons are made to other state laws enabling the county executive form of county government.

The original Illinois County Executive Act was approved and became effective December 3, 1971. The original Act enabled (by referendum) the essence of what the framers had envisioned at the 1970 Constitution Convention: a strong executive, elected at-large with the authority necessary to wield vast home rule powers. Home rule and the county executive form of government were inseparable.

The County Executive Act was modified slightly in 1980 to effect the revision of laws governing the election of local public officials in conformance to the statutory consolidation of elections.

Major changes were made to the Act in August, 1985. The Winnebago County-inspired amendments modified the very essence of the original legislative and constitutional linkages of the county executive form of government and home rule. The Act was amended to permit counties to adopt an elected form of

county executive government and to simultaneously elect not to be home rule units by referendum. Thus, the inseparable status of home rule and the county executive, as envisioned by the framers of the Illinois Constitution, was inexorably altered.

Additionally, the 1985 amendments modified and expanded the authorized duties of the county executive position. The single modification that most broadened the executive's position seems to be in the area of legislative affairs. The presiding officer of the county board, i.e., the county executive, was granted the additional authority to vote at county board meetings in the event of a tie. The expanded duties provided in the 1985 amendments included:

1. Entering into intergovernmental agreements with other governmental units with the advice and consent of the Board;
2. Negotiating with other governmental units and the private sector for the purpose of promoting economic growth and development with the advice and consent of the board; and
3. Appointing his/her own legal counsel at a salary set by the Board (which can be no greater than that of the States Attorney).

The Illinois County Executive Act provides for a typically strong county executive form. Many of the enumerated duties and powers and the method of selection for the position are representative of the strong elected executive forms of government functioning elsewhere in the nation. Pursuant to a successful referendum to adopt the form, the county executive is elected at-large in the county for a four year term to head the new executive branch of government. The powers and duties (in addition to those already cited above) include:

1. Execute the board's orders, resolutions, and regulations;
2. Direct the administrative and management functions of the county government (except the elected officials including the Sheriff; the States Attorney; the Recorder of Deeds; the Circuit Court Clerk; the County Clerk; the Regional Superintendent of Schools; the Treasurer; and the Coroner);
3. Prepare and submit the annual budget;

4. Appoint to boards and commissions with the advice and consent of the board;
5. Appoint to various special districts within the county with the advice and consent of the board;
6. Make an annual report to the board on the affairs of the county and keep the board fully advised of the financial condition of the county;
7. Appoint with the advice and consent of the board, such subordinates as considered necessary for the administration of county affairs
8. Remove or suspend, at his/her discretion, after due notice, anyone whom he/she has the power to appoint;
9. Call special meetings of the board with 24 hour notice;
10. Require reports and examine accounts, record and operations of all county administrative units;
11. Supervise the care and custody of all county property (including institutions and agencies);
12. Approve or veto ordinances and resolutions pursuant to the Act (including the line-item veto); and
13. Perform such other duties as shall be required of the executive by the board.

The Act provides for the adoption of a new form of county government; a form of government in which the non-elected departments of county government are administered by the newly elected county executive.

The county executive, pursuant to the Act, must have the same qualifications as a member of the board, but the executive is not an elected member of the board. The County executive's salary is set by the board and cannot be less than $1\frac{1}{2}$ times the amount of compensation to which a member of the board is entitled.

The Act allows for the county executive form of government (once adopted) to be discontinued by a petition of the voters to the county board asking for such discontinuance to be put on the general election ballot.

The Illinois County Executive Act, in many respects, reflects a typical enabling statute for the strong county executive-board form of government. It is streamlined and brief in its presentation. However, there are tenets of the Act that might be viewed as atypical, even unusual, when compared to the county executive-board form of government as practiced elsewhere in America and when

the Act is viewed as part of an overall strategy to reform the structure of Illinois county government pursuant to the 1970 Constitution.

The authority of the county executive to preside at board meetings and vote to break ties are atypical county executive powers. Indeed, one of the most salient elements of reform that the county executive-board form purports is the separation of powers. These enumerated powers, as authorized under the Illinois County Executive Act, have posed some questions about the adequacy of the separation of powers offered therein. It is noteworthy that the Task Force on the Structure of DuPage County Government has conditioned their recommendation for adopting the county executive upon the deletion of these provisions from the current law. This concern has also been voiced by the Lake County League of Women Voters in their 1988 study of the County Executive Act.

It is not typical to have the county executive established and empowered without a charter and/or mandatory charter process. The 1970 Illinois Constitutional Convention specifically chose not to encumber counties with the charter process. However, the Constitutional Convention did envision the inseparable nature of county executive form of government and home rule authority which now may be quite different under the current law.

The authority to appoint administrative personnel is generally cited in the County Executive Act. It is interesting to note that in Cook County key administrative personnel are mandated to be appointed by the Cook County Board President. Moreover their required professional qualifications are enumerated in various enabling state statutes.

In many other states the enablement of the county executive has been paramount to a reduction in the size of the county board. This can only be done in Illinois during reapportionment. Additionally, the elected Illinois county executive exerts no extraordinary authority over the independently

elected officials, thus, potentially reducing the impact that the County Executive Act may have on the espoused problems foreseen with the plural executive in Illinois.

To date, Winnebago and Champaign Counties have placed this proposition on the ballot (1986). The referenda failed in both instances. In March, 1988 a referendum to adopt county executive without home rule was placed on the ballot in Lake, Will and Champaign Counties. And, while the referendum failed in Lake and Champaign counties, it was successful in Will County.

The Commission's discussion with the newly elected Will County Executive, Charles Adelman was very enlightening. The Commission feels that there are pertinent elements, stemming from the successful Will County referendum and Mr. Adelman's election, that are worthy of note for this analysis:

1. The dual success of both the referendum and the candidacy of Mr. Adelman seem to have had less to do with a conscious need for structural reform. Rather, it was a latent desire for a change in county political leadership. As Mr. Adelman stated, the reason Will County opted for the county executive form was because of the "unique political situation" in Will County characterized by the "dictatorial and corrupt nature" of prior county board leadership.
2. The partisan political nature of the county executive experiment in Will County should be of particular note to all who would attempt to study it.
3. The retention of a professional county administrator under the county executive form is viewed as important.
4. Separation of powers is achieved and this is viewed as the most important structural change that results from the county executive form of government.
5. The Will county experience is still in an "experimental" period.
6. Voluntary agreements were consummated between the Will County Executive and the Will County Board so that the Board could function.

The Illinois County Executive Act is at once typical and atypical. It can be viewed either as a simple statement of effective reform or a blueprint for major structural change that currently raises many critical unanswered questions. The county executive-board form (without home rule) is the only

statutorily enabled structural reform option for county government that has been forthcoming in the 1980's. The County Executive Act goes too far toward structural reform and is in need of legislative clarification. It will remain for the "appropriate" decision-makers and the "appropriate" electorate to decide whether this model provides the "necessary" curative measures as individually perceived by each local county jurisdiction.

The Commission feels that for Lake County, at this point in its governmental evolution, the county executive form of government (without home rule) should not be favorably considered. Our specific recommendations and rationale will follow in Chapter III.

SUMMARY

In this chapter the Commission has attempted to summarize one year's worth of research relative to the topics assigned by the County Board. We hope that we have satisfied the Board's charge to explore and edify these important topics. Moreover, we hope that we will have imparted to the Board the reality that the label of a county government's structural form may not be as important as whether that form promotes and inculcates into the county government the common values for which most forms of American government strive: leadership effectiveness; responsiveness and accountability to the public; administrative effectiveness and efficiency; and equity.

The goal of any change in the structural form of counties should make possible and encourage all levels of the government to perform consistently in achieving satisfactory, visible public results. It should also promote public participation and understanding of governmental operations and accessibility to all levels of the structure. Moreover, the change must also promote

administrative effectiveness and efficiency through effective resource allocation, efficient organizational procedures, and professionally trained and led personnel. Finally, equal access to services, equal provision of services, and due process and openness in policy-making and administrative procedures are important elements to be promoted by the alteration of the structural form.

Thus, while the experience of structural change in American county government generally, and in Illinois specifically, has not necessarily guaranteed a particular type of government as desired by a particular group, significant progress has been made in Lake County during the seventies and eighties in creating a county government structure founded upon a fuller appreciation and recognition of these basic values of American government and politics. We hope that the recommendations that follow will enhance this progress during the 1990's and beyond.

III.

RECOMMENDATIONS

This chapter will propose specific recommendations regarding each of the County Board assigned topics.

It is the Commission's hope that these recommendations will assist the County Board in its upcoming reapportionment process. It is the Commission's intent that these recommendations will thoughtfully guide the Board to improve the structure and thereby the performance of Lake County government.

The recommendations that follow are aligned by topical area. In each instance, a brief explanatory paragraph will be presented, to be followed by a specific statement of the Commission's rationale for making the particular recommendations. Where there is a minority position, a written summation of the position follows in Appendix 1 of this report.

The Commission is very pleased to make these recommendations to the County Board. We feel that we have provided the Board with the impetus for positive change that will improve county government. All of the recommendations have resulted from a cooperative, thoughtful, and interactive process. We look forward to the Board's active response to our recommendations. It is our hope that their judicious application will have positive impact on the people of Lake County for at least the next decade and beyond.

SIZE OF THE COUNTY BOARD

In order to bring greater visibility, greater opportunity for constituent accessibility, and greater economy and efficiency to the legislative

process of Lake County government, it is recommended that the size of the County Board be reduced from its current size of twenty-four Members.

While reducing the size of the Board is rather a straight forward issue, the precise number becomes less clear. The Commission feels that the Board should be small enough to provide representation for diverse constituencies and yet maintain adequate numbers conducive to an efficient committee system that provides balanced legislative input to the Board. It is recommended that the size of the Lake County Board be reduced from twenty-four to fifteen Members.

RATIONALE:

- a. Fewer Board Members offer greater representative visibility to the electorate;
- b. One person, one vote is maintained with a smaller board;
- c. Greater efficiency can be achieved in terms of legislative policy making; and
- d. Increased political accountability will be fostered.

ELECTION OF THE COUNTY BOARD BY DISTRICTS

There is no perfect reapportionment plan. The structure that the Board adopts should withstand the test of time in an environment of complex urban problems.

A Lake County Board elected from districts is recommended by the Commission. In choosing whether the districts will be single member or multi-member (as they are currently), the Commission has carefully weighed the various arguments promoting each position. It is our recommendation that the County Board representation best fitted to citizen accessibility, accountability, and problem solving is the single member district.

RATIONALE:

- a. Election by districts is legally in concert with the one person, one vote doctrine of the U.S. Supreme Court;
- b. Election by districts more accurately reflects the variable character of Lake County;
- c. Single member districts will promote involvement in county government by a broad and divergent spectrum of interests;
- d. Single member districts will allow for optimum citizen input; provide for maximum accountability; and promote creative new solutions to increasingly complex public policy problems;
- e. Single member districts provide the best avenue to elect minority groups to the County Board; and
- f. Single member districts promote greater independence of the individual board member.

CHAIRMANSHIP OF THE COUNTY BOARD

Choosing the Chairman of the County Board is a key element within the Lake County governmental structure. In order to provide for a more visible elected leader of the County Board that can provide greater focus on county-wide issues, the Commission recommends that the Chairman of the Lake County Board should be elected at-large with specific duties outlined by local ordinance.

RATIONALE:

- a. The Chairman elected at-large is more visible and has a broader perspective as the leader of the county government because he/she is elected county-wide;
- b. The powers and duties of a Chairman elected at-large will be succinctly enumerated in an ordinance to be passed by the County Board; and
- c. The term of four years promotes greater elected leadership continuity for the county government structure.

ELECTED VS. APPOINTED OFFICIALS

The Commission has closely examined the provisions of Article VII, Section 4 (c) of the 1970 Illinois Constitution relative to the alternative election of certain county offices.

The Commission finds that the large number of independently elected county officials (the plural executive system) has become an administrative anomaly as Lake County has adopted more modern administrative management techniques. Indeed, if a unified policy direction within county government is viewed as desirable, certainly the constraints of differing administrative policy setting authorities within a single government unit must be addressed.

The Commission recommends that the elective status of three elected county officials be changed to appointive. The Commission recommends that the elected offices of the Recorder of Deeds, the Coroner, and the Circuit Court Clerk become appointed offices.

RATIONALE:

- a. The duties of all these offices are administrative and/or clerical rather than policy making in nature;
- b. Within a single governmental unit, the existence of numerous administrative authorities can be counter productive to the efficient promulgation of effective public policy;
- c. The mandated duties of the Recorder of Deeds, the Coroner, and the Circuit Court Clerk can be accomplished under the auspices of qualified appointed administrators; and
- d. These positions require specific skills which the election process may not insure. A carefully prepared description of the necessary professional qualifications and experience should be prepared and used as a benchmark for the screening and subsequent appointment of the administrators for these respective departments. Where possible, functions should be consolidated with existing County departments.

The Commission has assumed that in accordance with Illinois law, the initial action to bring these questions to the voters is a County Board resolution placing them on the ballot as individual referenda. We, therefore recommend that the Lake County Board place all three of these questions on the November, 1990 General Election ballot.

The Commission wishes to make it quite clear that this recommendation is not intended to reflect adversely on the abilities or the outstanding records of the incumbent Recorder of Deeds, the incumbent Coroner, and the incumbent Circuit Court Clerk.

COUNTY EXECUTIVE WITHOUT HOME RULE

The Commission voted unanimously that the county executive form of government (without home rule) should not be adopted by Lake County.

RATIONALE:

- a. The Illinois County Executive Act as codified has major flaws and goes too far in accomplishing structural reform;
- b. The Illinois County Executive Act originally intended to be implemented under the auspices of home rule, can now be implemented in non-home rule environment. A proper balance must be struck between appropriate authority and professional administration;
- c. Adding another elected position to the plural executive problem in Illinois county government is not desirable; and
- d. At this point in the development of Lake County government, it is felt that the retention of a professional administrator, with a re-focused and re-defined Board Chairmanship is the appropriate structural form that will promote consistent performance in achieving satisfactory, visible public results.

It is the hope of the Commission that the Lake County Board will use all of these recommendations during the forthcoming legislative deliberations leading to its 1991 reapportionment.

611068

APPENDIX 1

LAKE COUNTY GOVERNMENTAL STUDY COMMISSION II

MINORITY REPORTS

SIZE OF THE LAKE COUNTY BOARD

On the Issue of the appropriate size of the Lake County Board, the minority opinion held that twenty-one (21) members would be representative of the diverse needs, interests and socio-economic levels of the population. While the current size of the board (24) is regarded as somewhat cumbersome, efficiency is believed to be less important than free and fair debate of all issues that may come before the body. Thus, in keeping with the Jeffersonian model of representative democracy while determining that same reduction in size would be desirable, the minority position held that twenty-one members would be a logical compromise. The odd number is viewed as a safeguard against the deadlock which makes the current board seem all the more unmanageable.

Several speakers who appeared before the Lake County Governmental Study Commission II testified on national trends regarding the size of county boards. It was generally noted that smaller boards needed more staff (i.e. a board of seven or nine, with each board member having two aides). It is not uncommon for members of these smaller boards to be paid close to fifty thousand dollars per annum. For example, board members in Hillsborough County, Florida, make forty-eight (48) thousand dollars per year, and each of seven members employs two aides.

The size of the Lake County Board is not unusually large for Northeastern Illinois. Indeed, Lake County has one of the smaller boards. Will County has twenty-seven (27) members, Kane County has twenty-six (26), DuPage County has twenty-four (24) plus a chairman elected-at-large and McHenry County has the same number of members as Lake County, twenty-four (24). All five counties share some border with Cook County, all have board members who serve in a dual capacity on the County Board and the County Forest Preserve Commission (in McHenry County there is a Conservation District rather than a Forest Preserve

District), and all are experiencing the unique problems of growing suburban counties.

All aspects of the question considered, the minority opinion believed twenty-one (21) members to be the most responsible, representative choice. The population continues to grow rapidly in Lake County, Illinois, and that population should be able to take some comfort in knowing that special interests will not dominate a too-small board. Safety in numbers is a time-worn cliché, yet it can be held to be a concept of merit.

Members of the Study Commission holding this position are Bruce Hansen, Debra Halas, Dan La Vista, Eugene Rawhoof, Oliver Washington, and Brad West.

MULTI-MEMBER DISTRICTS

Regarding the issue of multi-member versus single-member districts, the minority opinion preferred seven districts with three members to a district. This opinion increased the number of districts to resolve the accountability question and reduced the number of members per district to that same end.

County board elections take place every two years, at which time one-half of the current board must run. With twenty-one (21) members, this would be accomplished by having two members in some districts run for election while having only one member in the remaining districts run for election, and this process would be reversed in each district for the following election. Thus, ten members would be up for election at one time and eleven members would be up for election two years later. Each district would have the benefits of multi-member elections, with their resultant diversity, and single-member elections, with their increased accountability. Each district would have the opportunity to change its representation every two years, as is currently the case.

One irrefutable aspect of the single-member districts is that a given constituency may be burdened with poor representation for an entire four-year term. Although the offending member may very well be booted from office at a successive election, that official's constituency could be disenfranchised by a poor attendance record or a refusal to take the public's needs and interests into account.

Another benefit to multi-member districts, aside from the possibility of poor representation in a single-member district, is the assurance of some diversity in opinion and background. An ethnic or racial minority may be a very close second in terms of numbers in a given district, but may be totally excluded in districts where only the top vote-getter is elected. This could have been the case in current board districts when black candidates came in second in General Elections of the past. In a multi-member district, anyone who comes in second can still be elected.

One other consideration made by the Commission was a comparison between the composition and size of the Illinois House of Representatives and the size and composition of the Lake County Board. The Illinois House has not been a more efficient nor economical body since it was cut in size by one-third, with members elected from single-member districts. Although the cumulative voting process cannot be directly compared to a non-cumulative voting process, the results can be compared. Multi-member districts have resulted in diverse opinion different ethnic and racial backgrounds, political party alliances from both major parties and gender balance. Illinois House districts of three members resulted in much the same consequences, including the undeniable guarantee of minority political party representation.

Ultimately, seven districts of three members apiece was the minority choice for achieving fair representation and accountability.

Multi-member districts have served Lake County well for many years and may be expected to continue to do so.

Members of the Study Commission holding this position are Bruce Hansen, Debra Halas, Dan La Vista, Eugene Rawhoof, George Bell, and Oliver Washington.

CHAIRMAN ELECTED BY PEERS

The minority opinion of the members of the Lake County Governmental Study Commission II on the issue of the Chairman's Election stated that the Chairman should be elected by his or her peers. This opinion came about after careful deliberation of the testimony given at commission meetings.

Coalitions are a positive force for good government, and the first step in the reorganization of a peer-elected Chairman's Board is that peer election. In actively seeking support from fellow board members, a candidate must demonstrate leadership abilities and capabilities. It is unlikely that members of a board, many of whom have years of experience, will elect a chairman who is not up to the rigors and duties of the chairmanship. It is also in the members' best interests to elect someone they feel they can work with for the betterment of the entire citizenry of their county.

Experience is another key factor. Not only are abilities taken into account when members elect their chairman, but experience and the leader's overall understanding of county government are considered. Major for-profit and not-for-profit corporations usually have a board of directors with a chairman elected by the other board members, and this practice is generally regarded to be a sound one.

A chairman elected at-large would have powers very similar to a chairman who is peer-elected, and the position would not add an executive branch to

county government. Therefore, a change seems unnecessary. The county board would remain an administrative as well as a legislative body with the County Administrator serving to coordinate those functions. The appointed County Administrator position has served Lake County well.

Finally, the minority position of the Lake County Governmental Study Commission II concluded that a peer-elected chairman would be more effective in passing needed ordinances due to coalitions formed and experience with the process. Although the electorate may choose the best candidate, there is always the possibility that they might elect a chairman with no county experience or one who is all flash and no substance. There is also the possibility of special interest financing electing a chairman through a big bucks campaign.

These factors weighed heavily in the minority opinion on this issue. As long as the Lake County Board remains an administrative as well as a legislative body, a board chairman elected by the members from among their own numbers seems to be the best choice for the future.

Members of the Study commission holding this position are Bruce Hansen, Debra Halas, Eugene Rawhoof, Oliver Washington, George Bell, and Bill Krueger.

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APPENDIX 2

LAKE COUNTY GOVERNMENTAL STUDY COMMISSION II

STATEMENT OF COMMISSION MEMBER MARK F. LEOPOLD

611075

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Had I been able to be present for the May 17, 1990 Commission meeting, I would have voted in the majority on each issue, except that I would have voted in favor of five multi-member districts of three (3) representatives each.

Mark F. Leopold

611076

MEMBERS

LAKE COUNTY GOVERNMENTAL STUDY COMMISSION II

Sid Danoff, Chairman
Waukegan Businessman and Civic Leader

Don Owen, Vice Chairman
Zion Banker and Businessman

George Bell
Mundelein Businessman

Debra Halas
Waukegan, Lake County Board Member

Bruce Hansen
Lake Zurich, Lake County Board Member

Bill Krueger, Director
Employee Relations and Lake County Personnel, Abbott Laboratories

Dr. Daniel J. LaVista
President, College of Lake County

Mark Leopold
Highland Park Attorney

Janet Morrison
Waukegan Civic Leader

Joyce O'Keefe
Highland Park City Councilperson

Eugene Rawhoof
Zion Union Leader

Janet Swartz
Highland Park, Lake County League of Women Voters

Oliver Washington
North Chicago, City Personnel Director

Brad West
Waukegan Businessman

NOTE: Maurice Dunne, Lake Forest Academician, resigned from the
Commission on November 16, 1989.



To: Hon. Fred Foreman, Chair, Lake County Government Reform and Accountability Commission
Hon. Kathy Ryg, Vice Chair, Lake County Government Reform and Accountability Commission

From: Kevin Knutson, Regional Vice President, Management Partners
Sam Lieberman, Senior Management Advisor, Management Partners

Subject: Multi-Member District Options

Date: September 13, 2017

After the August 23, 2017 Lake County Government Reform and Accountability Commission meeting, information about the Board's ability to create multi-member districts was requested. This memorandum summarizes the options available to the Board during redistricting.

Illinois State Law

Division 2-3 of chapter 55 in the Illinois compiled statutes details the options available to counties when undertaking the redistricting process. Specifically, 55 ILCS 5/2-3002 allows for the election of board members by district or at large while 55 ILCS 5/2-3003 allows for multi-member districts. The number of board members elected per district is not specified, as long as the districts meet the following criteria:

- a) Shall be substantially equal in population to each other district;
- b) Shall be comprised of contiguous territory, as nearly compact as practicable; and
- c) May divide townships or municipalities only when necessary to conform to the population requirement of paragraph a. of this Section.
- d) Shall be created in such a manner so that no precinct shall be divided between two or more districts, insofar as is practicable.

Additionally, counties are allowed per Illinois state statute to have both single and multi-member districts as long as, "the population of any multi-member district shall be equal to the population of any single member district, times the number of members found within that multi-member district." The full text of the relevant statutes is shown in Appendix 1.

Relevant Scholarly Articles

Included in the background research materials provided to you via Dropbox are two relevant scholarly articles discussing the impact of multimember districts on minority representation. The articles are “At Large Elections and Minority Group Representation: A Re-examination of Historical and Contemporary Evidence,” *The Journal of Politics*, 1981, by Chandler Davidson and George Korbel, and “The Multimember District: A Study of the Multimember District and the Voting Rights Act of 1965,” *Albany Law Review*, 2002, by George Bundy Smith.

While these two articles look at the history of minority representation in multi-member congressional and judicial districts some comparison can be drawn to countywide elected offices as well. The conclusion of these two scholarly articles is that “empirical evidence supports the conclusion that multimember districts hinder minority voters from electing the candidate of their choice.”



Appendix 1: Relevant Illinois Constitution Sections and Illinois Compiled Statutes

Division 2-3. Reapportionment of County for Election of County Board

(55 ILCS 5/2-3001)

Sec. 2-3001. Definitions.

As used in this Division, unless the context otherwise requires:

- a. "District" means a county board district established as provided in this Division.
- b. "County apportionment commission" or "commission" means the county clerk, the State's Attorney, the Attorney General or his designated representative and the chairmen of the county central committees of the first leading political party and the second leading political party as defined in Section 1-3 of The Election Code.
- c. "Population" means the number of inhabitants as determined by the last preceding federal decennial census.
- d. "Member" or "board member" means a person elected to serve on the county board.

(Source: P.A. 86-962.)

(55 ILCS 5/2-3002)

Sec. 2-3002. Counties with population of less than 3,000,000 and with township form of government.

- a) Reapportionment required. By July 1, 1971, and each 10 years thereafter, the county board of each county having a population of less than 3,000,000 inhabitants and the township form of government shall reapportion its county so that each member of the county board represents the same number of inhabitants. In reapportioning its county, the county board shall first determine the size of the county board to be elected, which may consist of not less than 5 nor more than 29 members and may not exceed the size of the county board in that county on October 2, 1969. The county board shall also determine whether board members shall be elected at large from the county or by county board districts.
- b) If the chairman of the county board is to be elected by the voters in a county of less than 450,000 population as provided in Section 2-3007, such chairman shall not be counted as a



member of the county board for the purpose of the limitations on the size of a county board provided in this Section.

- c) Advisory referenda. The voters of a county may advise the county board, through an advisory referendum, on questions concerning (i) the number of members of the county board to be elected, (ii) whether the board members should be elected from single-member districts, multi-member districts, or at-large, (iii) whether voters will have cumulative voting rights in the election of county board members, or (iv) any combination of the preceding 3 questions. The advisory referendum may be initiated either by petition or by ordinance of the county board. A written petition for an advisory referendum authorized by this Section must contain the signatures of at least 8% of the votes cast for candidates for Governor in the preceding gubernatorial election by the registered voters of the county and must be filed with the appropriate election authority. An ordinance initiating an advisory referendum authorized by this Section must be approved by a majority of the members of the county board and must be filed with the appropriate election authority. An advisory referendum initiated under this Section shall be placed on the ballot at the general election designated in the petition or ordinance.

(Source: P.A. 93-308, eff. 7-23-03.)

(55 ILCS 5/2-3003)

Sec. 2-3003. Apportionment plan.

- 1) If the county board determines that members shall be elected by districts, it shall develop an apportionment plan and specify the number of districts and the number of county board members to be elected from each district and whether voters will have cumulative voting rights in multi-member districts. Each such district:
 - a. Shall be substantially equal in population to each other district;
 - b. Shall be comprised of contiguous territory, as nearly compact as practicable; and
 - c. May divide townships or municipalities only when necessary to conform to the population requirement of paragraph a. of this Section.



- d. Shall be created in such a manner so that no precinct shall be divided between 2 or more districts, insofar as is practicable.
- 2) The county board of each county having a population of less than 3,000,000 inhabitants may, if it should so decide, provide within that county for single member districts outside the corporate limits and multi-member districts within the corporate limits of any municipality with a population in excess of 75,000. Paragraphs a, b, c and d of subsection (1) of this Section shall apply to the apportionment of both single and multi-member districts within a county to the extent that compliance with paragraphs a, b, c and d still permit the establishment of such districts, except that the population of any multi-member district shall be equal to the population of any single member district, times the number of members found within that multi-member district.
- 3) In a county where the Chairman of the County Board is elected by the voters of the county as provided in Section 2-3007, the Chairman of the County Board may develop and present to the Board by the third Wednesday in May in the year after a federal decennial census year an apportionment plan in accordance with the provisions of subsection (1) of this Section. If the Chairman presents a plan to the Board by the third Wednesday in May, the Board shall conduct at least one public hearing to receive comments and to discuss the apportionment plan, the hearing shall be held at least 6 days but not more than 21 days after the Chairman's plan was presented to the Board, and the public shall be given notice of the hearing at least 6 days in advance. If the Chairman presents a plan by the third Wednesday in May, the Board is prohibited from enacting an apportionment plan until after a hearing on the plan presented by the Chairman. The Chairman shall have access to the federal decennial census available to the Board.
- 4) In a county where a County Executive is elected by the voters of the county as provided in Section 2-5007 of the Counties Code, the County Executive may develop and present to the Board by the third Wednesday in May in the year after a federal decennial census year an apportionment plan in accordance with the provisions of subsection (1) of this



Section. If the Executive presents a plan to the Board by the third Wednesday in May, the Board shall conduct at least one public hearing to receive comments and to discuss the apportionment plan, the hearing shall be held at least 6 days but not more than 21 days after the Executive's plan was presented to the Board, and the public shall be given notice of the hearing at least 6 days in advance. If the Executive presents a plan by the third Wednesday in May, the Board is prohibited from enacting an apportionment plan until after a hearing on the plan presented by the Executive. The Executive shall have access to the federal decennial census available to the Board.

(Source: P.A. 96-1540, eff. 3-7-11; 97-986, eff. 8-17-12.)





To: Hon. Fred Foreman, Chair, Lake County Commission on Government Reform and Accountability
Hon. Kathy Ryg, Vice Chair, Lake County Commission on Government Reform and Accountability

From: Kevin Knutson, Regional Vice President, Management Partners
Susan Hoyt, Special Advisor, Management Partners

Subject: Comparison of County Board Chair Duties in Lake, DuPage, McHenry, Kane and Will County

Date: September 7, 2017

A comparison of the roles of the County board chairs in the five collar counties of Lake, DuPage, McHenry, Kane and Will, is shown in Table 1 as background information for the deliberation regarding the format of the board chair election. The names of each current board chair will link to their websites for further information.

Table 1. County Board Chair Roles in Illinois Collar Counties

Comparison	Lake County	DuPage	Kane	McHenry	Will
Title	Board Chair	Board Chair	Board Chair	Board Chair	County Executive
Current Officeholder	Aaron Lawlor	Dan Cronin	Chris Lauzen	Jack Franks	Larry Walsh
Method of Election	Board elected Chair	Countywide elected Chair	Countywide elected Chair	Countywide elected Chair	Countywide elected Executive (only one in Illinois)
Term (Statutory)	Every two years	Every four years	Every four years	Every four years	Every four years
Representation	District	Countywide	Countywide	Countywide	Countywide

Comparison	Lake County	DuPage	Kane	McHenry	Will
Authority for Duties	Duties set by County Board through ordinances, orders, resolutions, and regulations (Article VII Section 4(d) 1970 Constitution)	Duties set by County Board through ordinances, orders, resolutions, and regulations (Article VII Section 4(d) 1970 Constitution)	Duties set by County Board through ordinances, orders, resolutions, and regulations (Article VII Section 4(d) 1970 Constitution)	Duties set by County Board through ordinances, orders, resolutions and regulations (Article VII Section 4(d) 1970 Constitution)	Coordinate and direct by executive order all administrative and management functions of the county (55ILCS 5/2-5009)
Additional Duties	Liquor Commissioner for unincorporated areas (Article IV Section 4-2 Liquor Control Act 1934)	Liquor Commissioner for unincorporated areas (Article IV Section 4-2 Liquor Control Act 1934)	Liquor Commissioner for unincorporated areas (Article IV Section 4-2 Liquor Control Act 1934)	Liquor Commissioner for unincorporated areas (Article IV Section 4-2 Liquor Control Act 1934)	Liquor Commissioner for unincorporated areas (Article IV Section 4-2 Liquor Control Act 1934)
Board Chair Major Responsibilities	Presides over board meetings, appoints committee members to ad hoc and special committees subject to Board approval, serves as ex-officio member of all committees	Presides over board meetings, prepares proposed budget, appoints committee members and makes chair assignments	Presides over board meetings; appoints committee members	Presides over board meetings; sets committee agendas in coordination with County Administrator	Responsible for day-to-day operations including oversight of 26 departments; preparing proposed budget and annual report
County Administrator	Yes	Yes	No	Yes	No
County Administrator Major Responsibilities	County Administrator oversees day-to-day operations and prepares proposed budget	Administers and provides general oversight of all policies, ordinances and resolutions adopted by the County Board Oversees and directs senior staff on operational issues as directed by County Board Chair and provides line supervision	n/a	County Administrator oversees day-to-day operations and prepares proposed budget	n/a



Comparison	Lake County	DuPage	Kane	McHenry	Will
		for all senior staff			
Administrator is ICMA Member*	Yes	No	n/a	Yes	n/a

** ICMA (International City/County Management Association) members adhere to a code of ethics that requires them to “refrain from all political activities.”*





To: Hon. Fred Foreman, Chair, Lake County Government Reform and Accountability Commission
Hon. Kathy Ryg, Vice Chair, Lake County Government Reform and Accountability Commission

From: Kevin Knutson, Regional Vice President, Management Partners
Sam Lieberman, Senior Management Advisor, Management Partners

Subject: County Independent Redistricting Commissions

Date: December 1, 2017

This memorandum provides information about three counties with independent redistricting commissions. It will answer, where available, the following questions posed by the Commission on Government Reform and Accountability:

- When were the respective commissions created, and by whom (court order, state or other mandate, County Board Ordinance)?
- What is the structure of the independent commission? Number of members, who appoints them, etc.?
- What authorities and duties do they have?
- Do they have a published set of criteria, value judgements, hierarchy of priorities or other information that describes how they go about drawing their map?
- What body has final approval power?
- Any litigation resulting from the creation of an independent commission and any notable news coverage following their respective implementations?
- What form of government does each county have?
- How many county board members does each county have and how are they elected?
- What is the racial breakdown of each county? County board?
- Do any of them have majority-minority districts? If so, how many?

The counties we identified that have an independent redistricting commission are San Diego County, California (the county seat is San Diego), Tompkins County, New York (the county seat is Ithaca), and Dane County, Wisconsin (the county seat is Madison). Each is discussed below.

San Diego County, CA

- The commission was technically created by the California State Legislature, but that followed a request by the County Board of Supervisors to have the legislature allow the Board to create an independent redistricting commission in 2012. Voters then approved

this change in June 2016. The redistricting commission will first be in use after the 2020 census.

- The Board of Supervisors randomly selects five members and two alternates to the commission. Interested applicants must be former or retired state or federal judges who are residents and registered voters in San Diego County.
- The commission is required to hold seven public hearings, at least one in each of the five supervisorial districts, and their final map would be subject to referendum.
- We found no published set of criteria, value judgements or other information describing how they will develop maps.
- County voters have final approval over any map that is created.
- The county board consists of five members elected by district. The board consists of three white men and two white women. The administration is run by an appointed chief administrative officer.
- San Diego County is 64% white, 11% Asian, 5% African American. About 34% are of Hispanic descent. The 2016 population was 3,317,749.

Tompkins County, NY

- The Tompkins County legislature (county board) created the independent redistricting commission in 2011.
- The commission consists of nine members appointed by the Tompkins County legislature. Members of the commission must be county residents, registered voters, and knowledgeable about Tompkins County and its municipalities, and about government and electoral processes. Commission members cannot be currently elected officials.
- The commission submits its plan (and any alternatives) to the Government Operations Committee, which then forwards it to the full legislature in the form of a proposed local law or laws. Following a public hearing, the legislature may adopt a local law, or may refer the plan (and/or alternatives) back to the commission with written comments. That can only be done one time. Upon receipt, the commission considers the legislature's comments and may revise the plan and return it to the Government Operations Committee for re-transmittal to the legislature, or the commission may decline to make changes and so advise the legislature in writing with its reasons. In that event, the legislature shall proceed to adopt a plan for redistricting.
- The "charge" of the commission can be found here:
<http://www.tompkinscountyny.gov/files2/redistricting/Memo%20and%20Charge.pdf>
- There are 14 members of the Tompkins County legislature, elected by district:
 - o One black woman
 - o Five white women
 - o Eight white men

The administration is run by an appointed chief administrative officer.

- Tompkins County is 77% white, 10% Asian, 4% African American. Less than 5% are of Hispanic descent. Tompkins is about 43% rural, with a 2016 population of 104,871.



Dane County, WI

- Dane County voters in 2014 overwhelmingly approved an advisory referendum to establish impartial, nonpartisan redistricting. The County Board then established a subcommittee to make recommendations for how to conduct the next mapping process.
 - The Dane County Board approved a new Citizen Redistricting Commission to redraw maps following the release of the 2020 Census.
 - The Citizen Redistricting Commission will include from nine to eleven members who are not affiliated with any political party, lobbying group, labor union or other entities with a vested interest in drawing voting boundaries.
 - Once the 2020 Census figures are released, Dane County will begin putting together its Redistricting Commission. The County Board chair and Dane County clerk will make appointments to the commission, with the final selection to be approved by the full County Board. The Dane County Towns Association, the Dane County Cities and Villages Association and the City of Madison will have input into the appointments.
 - The Redistricting Commission will then submit one to three maps to the County Board for a vote. If none of the maps have enough votes for adoption, the maps would be re-referred to the Redistricting Commission, which then can amend the maps and resubmit them to the Board for final approval.
 - We found no published set of criteria, value judgements or other information describing how they will develop maps.
 - Dane County Board of Supervisors has 37 members elected by district.
 - o One black woman
 - o 13 white women
 - o 23 white men
- Dane County has an elected county executive.
- Dane County is 85% white, 5% Asian, 5% African American. A little over 6% identify as Hispanic. The 2016 population was 531,273.





Collar County Comparison of County Board Size and Method of Electing the Chair

Comparison	Lake County	DuPage	Kane	Kendall	McHenry	Will
Title	Board Chair	Board Chair	Board Chair	Board Chair	Board Chair	County Executive
2010 Population (Source: CMAP)	682,753	904,784	508,482	114,528	307,113	669,013
Method of Election	Board Elected Chair	Countywide Elected Chair	Countywide Elected Chair	Board Elected Chair	Countywide Elected Chair	Countywide Elected Executive (only one in Illinois)
Term (Statutory)	Every two years	Every four years	Every four years	Every two years	Every four years	Every four years
Representation by Chair	District	Countywide	Countywide	District	Countywide	Countywide
Members per District	1 member per District	3 members per district	1 member per district	5 members per district	4 members per district	2 members per district
Number of County Board Members	21 members including chair	18 + Chair	24 + Chair	10 members including chair	24 + Chair	26 + Co Executive
Major Duties	Presides over county board meetings, appoints committee members and ad hoc and special committees subject to Board approval	Schedules, prepares the agenda and presides over county board meetings, prepares the proposed budget.	Presides over County Board meetings; makes appointments subject to Board Approval	Presides over County Board meetings	Chair presides over meetings; sets agenda, sets committee agendas in coordination with County Administrator	Responsible for day-to-day operations including oversight of 26 departments; preparing proposed budget and annual report
County Administrator Staff	Yes	Yes	No	Yes	Yes	No



LAKE COUNTY GOVERNMENT REFORM IMPLEMENTATION COMMITTEE

APPOINTMENT OF MEMBERS TO AD HOC COMMITTEE

Reform Implementation Committee Chair - Aaron Lawlor
Chairman, Lake County Board

Reform Implementation Committee Vice-Chair - Vance Wyatt
Member, Diversity & Inclusion Committee

Carol Calabresa, Chair, Rules Committee

Steve Carlson, Chair, Health & Community Services Committee

Mary Ross Cunningham, Chair, Law & Judicial Committee; Chair, Diversity & Inclusion Committee

Diane Hewitt, Co-Chair, Legislative Committee

Ann Maine, Chair, Public Works & Transportation Committee

Sidney Mathias, Co-Chair, Legislative Committee

Linda Pedersen, Chair, Ethics & Oversight Committee

Mike Rummel, Chair, Lake County Finance & Administrative Committee

Tom Weber, Chair, Planning, Building and Zoning Committee