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January 8, 1999

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Secretary of State George H. Ryan
213 State House
Springfield, IL 62756

Dear Mr. Secretary:

On March 3, 1992 you appointed twenty-nine people to sit on the Redistricting Process Review Commission which was charged with finding a better process of redistricting our legislature following each decennial census. The members of the Commission were most diligent in attending hearings and meetings and contributing to the effort to identify a process that would break any legislative impasse in a non-partisan and objective manner. Not once in the course of the Commission's deliberations were the discussions partisan or parochial.

It is therefore my privilege to forward to you the report and recommendations of the Redistricting Process Review Commission for your consideration. Given the tremendous press of responsibilities you are assuming as the 39th Governor of Illinois, we do not assume that you will have had time to review this Report in detail, or approve its recommendations, prior to the Report's transmittal to the General Assembly. And while the recommendations of this Report were approved by all members who attended the final meeting of the Commission on December 30, 1998, several members were not able to participate, so their approval should not necessarily be assumed.

On behalf of all Commission members, I would like to say it was a privilege to have been selected to serve on the Commission. We fervently hope that our efforts will lead to major improvements in the process.

Sincerely,



Jeffrey R. Ladd,
Chairman

JRL:rav
Enclosure

REPORT

of

THE REDISTRICTING PROCESS REVIEW COMMISSION

January 8, 1999

**REPORT OF
REDISTRICTING PROCESS REVIEW COMMISSION**

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I. Executive Summary

The state legislative redistricting provision of the Illinois Constitution of 1970 has not worked as intended. Delegates to the Constitutional Convention believed the threat of random selection of a partisan, tie-breaking member for a redistricting Commission would induce members of the General Assembly to agree on a redistricting map. But in both 1981 and 1991, the process failed to work as intended. The Secretary of State was required to draw (from a hat in 1981 and, in 1991, a crystal bowl) one of two names provided by the state Supreme Court to serve as a partisan tie breaker, to the widespread derision of the media and public, which depicted the process as "democracy by lottery." In addition, the failure of the process has led to lengthy court proceedings, the expenditure of millions of dollars on attorneys and redistricting consultants, and on both occasions has led to a last minute certification of election ballots.

In 1992, Secretary of State George H. Ryan created a Redistricting Process Review Commission, to which he appointed a bipartisan panel of former legislative leaders, academics and civic leaders. The Secretary directed the Commission to report its recommendations prior to the end of his term of office, in January, 1999, so the Report could be considered and acted upon in advance of the redistricting process that follows the decennial census of the Year 2000. Jeffrey R. Ladd, a lawyer and delegate to the Constitutional Convention of 1970, chaired the Commission.

The Commission held hearings throughout the state and developed principles to guide its work. These included the principle that the redistricting process should give the General Assembly the first opportunity to redistrict itself in a timely fashion. If the legislature is unable to adopt redistricting maps, then the subsequent process should be as non-partisan as possible. In addition, the criteria for redistricting for each district should achieve contiguity, substantial

equality of population, and compactness. In addition, redistricting should reflect appropriate concern for minority representation, and minimize the number of underlying governmental units that are divided among state legislative districts.

After twenty-five meetings of the Commission, which included testimony by leading national experts on redistricting, the Commission has recommended to the Secretary of State a proposal to replace the present procedures with a new section for the Illinois Constitution that would fulfill these principles and criteria, as follow.

Each legislative chamber would be allowed to redistrict itself by resolution adopted in that chamber by not less than a three-fifths vote. Should one or both chambers fail, then the responsibility for redistricting is transferred to the Illinois State Board of Elections. That board shall select specifications for a computer program that would redistrict the state's population according to prescribed criteria. The General Assembly shall have authority, by resolution of three-fifths of its members, to replace those computer specifications with its own, which would also have to meet the criteria stated in the Constitution. Otherwise, the specifications of the State Board would be applied to a computer program, which would draw separate redistricting plans – one for the House of Representatives and one for the Senate - to be certified by the State Board.

This proposal eliminates “democracy by lottery.” The proposal also provides the General Assembly the opportunity to redistrict itself, removes the executive branch from involvement in the process, and provides a fail-safe mechanism that is scrupulously fair to all the citizens of our state. The Commission encourages members of the General Assembly to give this proposal their full consideration, in hopes that the proposed amendments to the Illinois Constitution will be presented to the voters in the fall election of 2000 for ratification of this new procedure that would enhance public confidence in our democratic process.

II. Introduction

Redistricting is the process by which legislative boundaries are redrawn every ten years (following the release of the decennial census data) to reflect shifts in the population. The process is supposed to provide for equal representation in the state legislature commensurate with population changes.

Like many states, Illinois has had a long and frustrating experience with redistricting. In 1964 the General Assembly was unable to agree on a redistricting map. The result of the political impasse was that legislators were elected at-large in Illinois. The ballot used in that election became known as the "bed sheet ballot" because of its length.

In the wake of the wide spread public and political dissatisfaction with this process, the Sixth Illinois Constitutional Convention convened. Its members were dedicated to avoiding any further legislative elections on a state-wide basis.

The Legislative Committee of the Convention, and most of the Convention delegates believed that the legislature should have the opportunity to redistrict itself and that this belief was central to the separation of powers doctrine. However, the issue was how to avoid an impasse and, if one occurred, how to resolve it.

Generally, the delegates felt that if the General Assembly could not agree on a redistricting map, the appointment of four non-legislators to a legislative redistricting commission would bring some objectivity to the process and facilitate communication and agreement. However, there would still be a need for a tie breaker in the event the commission phase still resulted in impasse. Hence the large majority of delegates felt that a winner take all tie-breaker process would not only ensure some finality to the process, but also would sufficiently incentivize the General Assembly to reach a consensus to avoid the winner take-all

effects of the tie-breaker. The Constitution of the State of Illinois was adopted by popular vote at the 1970 general election.

The first redistricting under the new constitution was in 1971. The 1971 General Assembly was almost equally divided between the two major parties. The House had a slight Republican majority, and the Senate was evenly divided between the parties. The General Assembly could not agree to a redistricting map, and the task was turned over to the Legislative Redistricting Commission, appointed by the legislative leaders. With bipartisan cooperation, the Commission managed to draw new districts that provided for legislative representation for the next ten years.

The General Assembly next faced the redistricting task in 1981, following the 1980 census. Complicating the task was adoption of the "cut back" constitutional amendment in 1980. This amendment reduced the size of the House by one third, and provided for single member districts, which eliminated the unique Illinois method of electing representatives by cumulative voting.

Leadership in the 1981 General Assembly was divided, with the Democrats having a majority in the Senate, and the Republicans a majority in the House. Not unexpectedly, the legislature did not agree on a new map, and the legislative leaders appointed a Legislative Redistricting Commission as provided in the 1970 Constitution. Because the bipartisan Commission could not agree on a new map, the "tie breaker" provision of the new constitution was utilized for the first time.

As provided by the Constitution, the Supreme Court submitted the name of former Governor Richard Ogilvie, a Republican, and former Governor Samuel Shapiro, a Democrat. In

a public ceremony, Secretary of State Jim Edgar, a Republican, using an Abraham Lincoln hat, drew the name of Democrat Shapiro as the ninth member of the Commission.

With a Democratic majority, the Democrats drew a map favorable to themselves. The map was challenged in federal and state courts. The Illinois Supreme Court upheld the map with one modification. Blacks, Hispanics and Republicans challenged the map in federal court, and that court ordered changes made in some minority districts. The 1981 map was the law of the state until 1991.

Democrats controlled both houses of the General Assembly in 1991. The legislature approved a redistricting map and sent it to the Governor. Republican Jim Edgar vetoed the map, and the legislature was unable to override the veto. Again, a bipartisan Redistricting Commission was appointed by the legislative leaders. The Commission became deadlocked, and the "tie breaker" provision was activated again.

Before selecting the name, Secretary Ryan made it clear he found the process distasteful. "The people of Illinois deserve better, and they deserve representation that is not a lottery. The whole point of the legislative process is to achieve compromise. The legislature cannot just flip a coin or draw a name every time they are forced to make a tough decision."

The Supreme Court selected the two potential "tie breakers," Albert Jourdan, chairman of the State Republican Party, and former Democratic Supreme Court Justice Daniel Ward. Secretary of State George Ryan selected the name of Jourdan out of a crystal bowl. With a Republican majority, the Redistricting Commission adopted a Republican map.

The map was challenged in the State Supreme Court. On a 4-3 party line vote, the Court issued an order that invalidated the map and remanded it to the Redistricting Commission. That Commission made some slight changes in its map and resubmitted it to the Court. This time,

however, one of the judges switched sides and voted with the minority to uphold the map. The partisan nature of the switch was spelled out in a dissent filed when the final approval was appealed. With this partisan action of the court, the 1991 redistricting was concluded.

As indicated by this very brief history of redistricting in Illinois, redistricting is one of the most partisan actions that the legislature is asked to undertake. Legislators empowered to make the decisions are intent upon producing districts that will make it easiest for them to be re-elected, for their party to gain the maximum advantage, and for incumbents in both parties to remain in office. Subject to occasional other considerations, that is usually the order of priority. Redistricting has been a collective demonstration of unvarnished self-interest in action.

It was in this context that Secretary of State George H. Ryan announced on March 3, 1992 the appointment of 29 people to a bipartisan Redistricting Process Review Commission to consider reforms in Illinois' procedures for re-mapping legislative districts every ten years. He thereby fulfilled the commitment he had made the previous September, minutes before selecting the tie-breaking ninth member of the Legislative Redistricting Commission, when he said he would create a group of experts and interested parties to examine alternatives for breaking future deadlocks on the redistricting panel.

He initially appointed:

Joseph Berrios	James Nowlan
Ertharin Cousin	Sen. James "Pate" Philip
John Dailey	Sylvia Puente
Rep. Lee Daniels	David Reed
Samuel Gove	Dennis Rendleman
Paul Green	Eleanor Revelle
John Jackson	Sen. Philip Rock
John Kornacki	Howard Ryan
Jeffrey R. Ladd	Gerald Shea
Michael Lavelle	Zack Stamp
Tracy Litsey	Joseph Tecson

Ann Lousin
Rep. Michael Madigan
Pam McDonough
Donald Zeglis
Jack Van Der Slik
Daniel Ward
W. Edward Webb

Later in the process, due to death, relocation, change in employment, or resignation, John Kornacki, Tracey Litsey, John Dailey, Sylvia Puente, David Reed, Eleanor Revelle, Daniel Ward and Don Zeglis ceased to participate on the Commission. Secretary Ryan then proceeded to appoint Sen. Emil Jones, as the minority leader of the Illinois Senate, Robert W. Blair, former speaker of the House of Representatives, and Jan Flapan, president of the League of Women Voters, as replacements

The Commission initially attempted to obtain funding from several foundations headquartered in Chicago. None felt that this effort was within their mission or consistent with their goals and objectives. As a result the budget for this effort was drastically reduced, and the limited funding required was supplied by the Secretary of State's Office.

The Commission held a series of public meetings in Chicago, Springfield, Edwardsville, Moline, Bloomington, Carbondale and Glen Ellyn. The meetings were held to solicit public input regarding the process and the potential for change. Members of the Commission were also provided with what some regarded as an overwhelming volume of information regarding redistricting in Illinois and other states. In addition, the Commission received testimony from several nationally recognized experts on redistricting. (See, "Papers of the Redistricting Process Review Commission," on file in the Office of the Secretary of State, Springfield.)

Early in its deliberations, the Commission formulated a set of criteria against which any proposal could be measured. Each proposal was evaluated on whether it:

1. Engendered Public Trust.

2. Finalized district boundaries in a timely fashion.
3. Provided for meaningful public participation.
4. Minimized partisan domination of the process.
5. Minimized the partisan windfall effect.
6. Avoided obstructing the business of the Legislature.

However, in trying to construct a solution that would meet the criteria and which would be workable, the Commission spent a great deal of time attempting to identify as a tie-breaker an individual(s) or institution(s) that was not only perceived to be independent, non-partisan and objective, but indeed embodied those characteristics. It became painstakingly clear that no such person, active or retired, or institution was so perceived. In no small part the perception stems from the fact that Illinois is very evenly divided – Republican and Democrat. It is a very partisan state. In fact it is considered a bell-weather state in national elections. Its bruising and sophisticated political system has produced a disproportionate share of Congressional leaders, including the current Speaker of the U.S. House of Representatives. Names like Dirksen, Cannon and Rainey are numbered among historic Illinois powerhouses on the Congressional scene because of the finely honed political skills they acquired in this prairie state.

Nevertheless, as time consuming and as difficult as it was, the members of the Commission now believe they have fashioned a process that breaks deadlocks in a non-partisan, fair and timely manner and which will avoid the expenditure of large sums of money for attorney fees and redistricting consultants. The solution will also serve to avoid the late certification of ballots, which must await final approval of legislative boundaries.

III. Alternative Proposals Considered by the Commission

In response to the charge given the Commission by the Secretary of State, eight proposals, and variants thereto, were proposed by and considered by members of the Commission. These proposals are summarized briefly here, so the reader can appreciate the wide range of possibilities considered.

1. Rather than add a tie-breaking member to the Redistricting Commission, as required by the Illinois Constitution of 1970, this proposal would remove one of the members of the by random selection. The party with the majority on the would then choose to draw the map for one of the legislative chambers, while the party in the minority would draw the map for the other chamber.

2. This proposal would advance the deadlines for the General Assembly action on redistricting by several months to accommodate election officials. The current procedure of selecting a ninth member of the Redistricting Commission would be continued; however, each of the two names submitted by the Supreme Court would participate in the redistricting process. The first person whose name was drawn by the Secretary of State would then in turn draw out the name of one of the two chambers, and that person would serve as the ninth member of the Redistricting Commission for purposes of redistricting that chamber. The other person submitted by the Supreme Court would then serve as the ninth member of the Redistricting Commission for purposes of redistricting the other chamber.

3. Membership on the Redistricting Commission would be expanded from the present eight to sixteen. The proposal prohibits membership by members of the General Assembly or persons who would be candidates for the legislature in the first election following adoption of the redistricting.

4. The tie breaking ninth member of the Redistricting Commission would be elected at the general election preceding redistricting. This would put legislators on notice as to which party would control the redistricting process, should the General Assembly fail to redistrict itself.

5. This proposal comprises a number of general recommendations for overhauling the existing procedure. The most dramatic of these suggestions would transfer responsibility for redistricting to a body independent of the General Assembly, such as the Legislative Reference Bureau or the State Board of Elections, and that redistricting would be accomplished by computer, based upon objective, nonpartisan criteria.

6. This proposal would incorporate some form of the tie-breaking provisions found in Hawaii, New Jersey and Pennsylvania, where a majority of the redistricting commission itself selects the tie-breaking member.

7. In this proposal, the four legislative leaders (President of the Senate and Minority Leader; Speaker of the House and Minority Leader) would constitute the Commission on Redistricting and be responsible in the first instance for redistricting. If the Commission fails to submit a final redistricting map to the Secretary of State by July 1st signed by at least three of the four members, then one of the members, chosen by lot, shall be removed from the Redistricting Commission. The three remaining members would have until August 1st to agree on redistricting maps, signed by at least two members of the Redistricting Commission.

8. The eighth and final proposal is the one ultimately recommended by this Commission, and it is discussed and supported in detail in the section that follows. The proposal incorporates and refines several of the general recommendations made in proposal Number 5 above, to wit: If the General Assembly proves unable to redistrict itself, then the responsibility is delegated to the Illinois State Board of Elections. The State Board of Election shall have responsibility for

selecting specifications for a computer program that shall draw redistricting maps consistent with State and Federal law.

This proposal was selected by the Commission in large part because of the public aversion to any form of lottery selection of a tie-breaking commission member. Further, the bipartisan membership of the Commission believes that -- even in a political system as highly partisan as that in Illinois -- it is possible, indeed incumbent upon elected policymakers, to design a procedure that is neutral and fair to all its citizens.

IV. Issues and Recommendations

The Commission's approach was to identify any issues of concern¹ in Article IV of the Constitution and, wherever a problem was identified, search for solutions and, where possible, advance a recommendation. This was done in each instance but one. That exception involves judicial review by the Illinois Supreme Court. Under the existing Constitution, the Supreme Court has exclusive and original jurisdiction over conflicts involving a redistricting plan. Nevertheless, some problems are created by judicial review. Therefore, limiting or eliminating court jurisdiction was considered. However, there was no consensus on the Commission to change the role of the Supreme Court.

The recommendations are based upon certain factual and legal premises which follow. The Republican and Democratic parties are equally competitive on a statewide basis.² With a fair map, control of either chamber of the General Assembly is dependent upon superiority in

¹ Where the Commission members of this report observe a consensus opinion on any point, it is intended only to reflect the plurality of those opining. Minority opinions are not reflected.

² In statewide elections (i.e. state constitutional officers and United States Senators) since 1968, Republicans have won thirty-three offices and Democrats thirty.

traditional components of political success. In most elections, less than 20% of the seats in either chamber are seriously contested. Thus, while agreement between the parties could be reached in 80% of the districts, the parties have been unable in the past two redistricting cycles to reach overall agreement. Thus, the last two plans were drawn by the Redistricting Commission after utilizing the tie-breaker provision. These plans were later scrutinized by the courts.³

The systemic failure of existing redistricting concepts embodied in Article IV are twofold: (a) obstacles to success at the legislative level; and (b) displeasure with the safety net.

The obstacles to implementation of a General Assembly passed map are also multiple in category. At present, a map must not only be approved in both chambers, it must satisfy the complex political equation resulting from "nesting." This requires satisfying not only both parties within that chamber, but the concurrence of members of both parties of the opposite chamber. The Governor must then sign the submittal. Failure to get approval from the other chamber and the Governor of a "nested" map were viewed by the Commission as significant obstacles in passing and implementing a redistricting map. Any plan (whether created by the legislature or the Commission) is then the object of scrutiny by the Attorney General and the Illinois Supreme Court.

³ In 1981, the redistricting plan was passed only after the "tie-breaker" was utilized. Illinois Supreme Court later held one of the Representative Districts unconstitutional due to a population deviation. *Schrage v. State Bd. of Elections*, 88 Ill.2d 87, 430 N.E.2d 483, 491-92 (1981). Again in 1991, the "tie breaker" had to be utilized. This map was also challenged. Only after two Illinois Supreme Court decisions and over two million dollars spent was a map finally approved. *People ex rel. Burris v. Ryan*, 147 Ill.2d 770, 558 N.E.2d 1033, 1035-36 (1992), cert. denied, 504 U.S. 973 (1992). Interestingly, from 1901 to the present, "the Illinois General Assembly has approved only one legislative redistricting map under which an election has been held. *Grivetti v. Illinois State Electoral Bd.*, 335 F.Supp. 779, 790 (N.D. Ill. 1971).

V. Legislative Passed Maps

The Commission members felt further strain upon the process was placed by requiring that the Governor and both chambers must approve any legislative plan. Unless both chambers and the governorship are controlled by the same party, the Commission members felt the risk of failing to pass a redistricting map was great. It was felt that bipartisan support of any plan was both desirable and essential to withstand public claims (and judicial inquiry) as to political gerrymandering. However, given other obstacles, bipartisan support under the present system is unlikely. Without the constraints imposed by having the other chamber's approval and the Governor's acquiescence, well-informed views were expressed that each chamber had a good possibility of achieving a 3/5 agreement on a map governing only that chamber. Such a majority would require bipartisan support. However, it would not require approval of the other chamber or the governor.

The Commission members felt a super-majority was essential to achieve the desired goal of bipartisanship. Two super-majority requirements were considered: 3/5 and 2/3. Only once since the 1970 Constitution was adopted has a party achieved a 3/5 majority in either chamber - - and then not in a year in which redistricting was required.⁴ A 3/5 margin would require a Senate vote of 36 and a House approval of 72. A 2/3 majority would ensure greater participation of the minority party requiring a Senate vote of 40 and a House vote of 79. However, a 2/3 requirement was viewed by the Commission members as unattainable and otherwise would allow a 1/3 minority to hold a fair plan hostage.

⁴ In the eighty-seventh General Assembly, the Democrats held a majority in the House of slightly more than three-fifths.

These recommendations are not only an attempt to minimize oversight by co-equal branches but also to minimize internecine fighting between House and Senate map drawers of the respective parties. While nesting provisions requiring that each Senate District have boundaries co-terminus with two enclosed House districts do promote some efficiency for the County Clerks, it was felt such gains were outweighed by the possibilities for disorder created by superimposing the maps of each Chamber upon each other as a condition of approval. The Commission members felt that elimination of this provision would greatly increase the possibility of passage of a bipartisan map - - even with the requirement of a three-fifths majority vote.

VI. Redistricting Commission Maps

The Redistricting Commission is by law initially constituted in political equality, with equal representation from each party. For that reason alone, it faces great obstacles to breaking any legislative stalemate. Without either party possessing a majority, the Redistricting Commission is called upon to do what the General Assembly⁵ (whose members it represents) could not accomplish. If unable to act in the eight person configuration, the Redistricting Commission then goes into the "tie-breaking" phase where, by random selection of an additional member, one party gets the upper hand and draws the redistricting plan.⁶ The winner of this

⁵ "The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly." ILL. CONST. art. IV, § 3(b).

⁶ "If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1." ILL. CONST. art IV, § 3(b) "No later than September 5, the Secretary

lottery obtains political advantage which is, however, still subject to agreement between the chambers on the “nested” boundaries, scrutiny by the Attorney General and subject to the jurisdiction of the Supreme Court.⁷

The perceived unlikelihood of a Redistricting Commission drawing an acceptable map and the further inevitability that it would be drawn only after the tie-breaking spectacle unique to Illinois, were the primary bases of the Commission’s recommendation for reform. This tie-breaking provision has been the object of much media attack,⁸ and its constitutionality has even been placed in question by the Supreme Court.⁹ The Commission members recognized that any solution to the elimination of the tie-breaking provision involved eliminating the Redistricting Commission which needs the tie-breaker to act. The Redistricting Commission concept, while

of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.” ILL. CONST. art IV, § 3(b).

⁷ ILL. CONST. art III, § 3(b). “After all of the deliberations and expense to the taxpayers, over \$2 million, we do not find that a lottery or a flip of a coin is in the best interest of anyone except the part which has won the toss.” *People ex rel Burriss v. Ryan*, 147 ILL.2d 270, 588 N.E.2d 1033, 1038-39 (1992), *cert. denied*, 504 U.S. 973 (1992). “It appears to the Court that involvement in the apportionment of districts at the behest of one political party (and obviously to the detriment of another political party) would undoubtedly involve the Court’s involvement in future requests to examine district lines by a second, a third, or perhaps numerous political parties. It is not for the Court to decide which political party should be in power during any given election year.” *Smith v. Boyle*, 959 F.Supp. 982, 989 (C.D. Ill. 1997), *aff’d as modified*, 144 F.3d 1060 (7th Cir. 1998).

⁸ Quirk, *Avoiding government by lottery*, CHI. TRIB., March 19, 1992; Pearson, *Ryan looks for better way to redistrict state*, CHI. TRIB., March 3, 1992; *New rules for Illinois’ Mapmakers*, CHI. TRIB., March 3, 1992; Grady, *Must remaps be just a matter of simple luck?*, CHI. TRIB., January 19, 1999.

⁹ *People ex rel. Burriss v. Ryan*, 147 Ill.2d 270, 588 N.E.2d 1033, 1043-44 (1992), *cert. denied*, 504 U.S. 973 (1992), (Justice Bilandic dissenting) (“the tie-breaking procedure set forth in article IV, section 3(b), of the Illinois constitution of 1970 violates the due process clause of the fourteenth amendment to the United States Constitution. Any redistricting plan produced as result of the tie-breaking procedure is therefore unconstitutional and invalid.”)

well-intentioned, has not broken legislative impasse, and the political dynamics seem to indicate that, absent constitutional change, history will indeed repeat itself with future maps again drawn by winners of a lottery.

VII. Recommendations – Overview

It was the Commission's initial objective to create an environment which would encourage passage of a plan by each chamber for that chamber only. In the event either chamber is unable to pass a legislative plan, it was the consensus that a neutral computer-governed format should be substituted for the Redistricting Commission. This would take advantage of technical computer capacities not available to the framers of the 1970 Constitution. The format advanced by this Commission would give incentive to the General Assembly to act and eliminate the foremost obstacles to success. While the basic computer tools have been utilized, no State has gone as far as does this recommendation.¹⁰

Upon the recommendation, each chamber of the General Assembly would have until June 15 to pass a map for its own chamber. Such vote would be by a 3/5 vote, as opposed to the simple majority, now required. This would require bipartisan support. On the other hand,

¹⁰ See Iowa Code §42.1 *et seq* (1998). On 1/21/97 Nebraska State Senator Curt Bromm introduced Legislative Bill 607, which provides specific, scientific standards and guidelines for a designated, disinterested third party and committee to use when drawing legislative and congressional district boundaries. L.B. 607, 95th Leg., 1st Reg. Sess. (Neb. 1997). On May 18, 1998 the 1998 Regular Session adjourned without carrying over L.B. 607. L.B. 607, 95th Leg., 2d Reg. Sess. (Neb. 1997).

On May 14, 1997 Texas State Senator Wentworth introduced S.J. Res. 41 and S.B. 1564 which proposed a constitutional amendment to create the Texas Redistricting Commission to establish legislative and congressional districts and to review the constitutional redistricting provisions. S. J. Res. 41 and S.B. 1564, 1st Reg. Sess. (Tex. 1997). The Regular Session adjourned on August 6, 1997 with no carryover.

approval of the other chamber, satisfaction of nesting provisions and approval by the Governor (viewed as non-legislative involvement) would be eliminated.

Under the present system, failure of the General Assembly to pass a redistricting plan places the matter before the Redistricting Commission. Under the format envisioned by the Commission members, the Redistricting Commission's function as a safety net would be filled by the State Board of Elections. However, its functions would be ministerial only. The only function of the State Board would be to approve neutral criteria for a computer program prior to April 15th. If either chamber of the General Assembly is unable to approve a plan with a 3/5 vote, then the State Board would run the program generating the legislative map which would be applicable to the chamber(s) unable to agree on a map. Thus, each chamber has to engage in bipartisan creation of a map for itself or become subject to a map created by an impartial computer program. However, because the computer program has a randomly selected point of beginning, the map it would generate would be unknown. Thus, the General Assembly gets to choose between the map it knows and the map it doesn't know. The members of the Commission believe this may constitute a "tie breaker" which will prove to be a real incentive for bipartisan agreement.

To develop such computer software would require some pioneering, but it was the consensus of the Commission that a computer-driven decision tree can be developed. That decisional tree (reflected in lines 164-175) would provide a protocol for the computer to randomly begin and then draw what will be a large number of (a) contiguous districts; (b) containing equal population; (c) subject to compactness criteria; (d) minimizing City/County splits; (e) ensuring a fair reflection of minority voting strength; and (f) mathematical tie-breaking criteria. so as to select a single plan.

VIII. Recommended Computer Criteria

The Commission members felt that if the Redistricting Commission is replaced by computer randomness, that it must reflect Illinois traditional criteria, yet be sufficiently flexible to accommodate changes in interpretive law. This decisional tree follows that format. The principal tiers of that decisional tree follow:

***"CONTIGUITY"¹¹ This is the sine qua non of legislative representation of a geographic area. It merely requires that all territory touch some property within that same district. It is required in a legislative map whether generated by man or machine.

***"SUBSTANTIAL EQUALITY OF POPULATION"¹² It is envisioned that any computer-generated map would be programmed to start randomly at a location and move randomly to assimilate contiguous geography until one district (whether House or Senate) with ideal population is drawn. At this level of the decision tree, the computer would be able to generate a large number of plans having equally populated districts.

***"COMPACTNESS"¹³ The decision tree would then require that any overall map not having compactness criteria within certain limits be excluded. Compactness is highly rated by the Illinois Supreme Court in analyzing plans. In *Schrage*, compactness formed the prime element in

¹¹ Legislative and Representative Districts shall be contiguous. ILL. CONST. art IV, § 3(a).

¹² Legislative and Representative Districts shall be substantially equal in population. ILL. CONST. ART. iv, § 3(A). Variances from a pure population standard in state redistricting may be "justified by such state policy considerations as the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundaries. *Reynolds v. Sims*, 377 U.S. 533, 579 (1964). See also *People ex rel. Burriss v. Ryan*, 147 Ill.1d 270, 588 N.E. 2d 1033, 1035 (1992), *cert. denied*, 504 U.S. 973 (1992) (1991 redistricting plan viewed by Illinois Supreme Court in light of whether it met requirement of "substantially equal population").

¹³ Legislative and Representative Districts shall be compact. ILL. CONST. art. IV, § 3(a); *People ex rel. Burriss v. Ryan*, 147 Ill.2d 270, 588 N.E. 2d 033, 1035-36 (1992), *cert. denied*, 504 U.S. 973 (1992) (majority opinion) (maps must satisfy compactness requirements); *Id.* at 1038, (Justice Heiple concurrence states 1991 map met compactness standard even though drawn with unusual shapes); *but see Id.* at 1040-41, (Justice Clark's dissent stating that 1991 map does not meet compactness standard). *Schrage v. State Bd. of Elections*, 88 Ill. 2d 87, 430 N.E. 2d 483, 485-89 (1981).

the Court's decision. In the compactness of the Redistricting Commission map, *Burriss* was viewed by the Court members with scrutiny. There is no single measure of compactness. Indeed, some 20 are reported in the literature. Three have emerged as the most often utilized. There is software for all three, and the Supreme Court analyzed data generated by those very three in judicially evaluating the last map.

**"MINIMIZATION OF THE NUMBER OF DISTRICTS THAT CROSS COUNTRY OR MUNICIPAL BOUNDARIES"¹⁴ - - in its most recent pronouncements on legislative redistricting, the United States Supreme Court approved the concept of joining conventional communities of interest. It was the sense of the Commission members that because communities of interest are defined solely by geography, that this "wild card" element in the map drawing hand is best defined by quantifying county and municipality splits. Once accomplished, there could be a narrowing process of maps of contiguous geography, equality of population and within a range of acceptable compactness criteria by only selecting a preordained range of maps involving minimal county/municipality splits.

**"A FAIR REFLECTION OF MINORITY VOTING STRENGTH"¹⁵ - - in the last redistricting cycle, compliance with the Voters Rights Act

¹⁴ While not constitutionally mandated, this state redistricting principle has often been recognized as a legitimate interest by the United States and Illinois Supreme Courts. *Miller v. Johnson*, 515 U.S. 900, 901 (1995); *Swann v. Adams*, 440, 444 (1967); *Schrage v. State Bd. of Elections*, 88 Ill.2d 87, 430 N.E.2d 483, 488-89 (1981).

¹⁵ In *Shaw v. Reno*, 509 U.S. 630, 657-58 (1993), the Supreme Court allowed a challenge to a redistricting plan intended to benefit a racial minority. In holding the plan unconstitutional, the Court stated that:

Racial classifications of any sort pose the risk of lasting harm to our society. They reinforce the belief, held by too many for too much of our history, that individuals should be judged by the color of their skin.

Id. at 657.

Later, the Supreme Court, while recognizing that reapportionment is primarily a state function, again applied a strict scrutiny analysis to a racial gerrymander intended to benefit a racial minority. *Miller v. Johnson*, 515 U.S. 900 (1995). In order to show an impermissible racial gerrymander, a plaintiff must show "that race was the predominant factor motivating the legislature's decision to place a significant number of votes within or without a particular district. To make this showing, a plaintiff must prove that the legislature subordinated traditional race neutral districting

resulted in an attempt to generate a maximum number of majority minority districts, possessing minority super-majorities of between 50-65% .

A professor at the University of Baltimore has conducted research to generate the maximum number of such majority/minority districts with any given population data. This work, has as its object drawing the maximum number of districts - - many of which would not satisfy the compactness, equal population and municipality split limitations of the envisioned format. A known quantitative objective greatly eases satisfaction of the Voting Rights Act and concomitant map drawing problems associated with attempts at maximizing the number of minority districts. As can be seen, this proposal anticipates multiple computer-driven steps to achieve a finite number of plans, all of which would achieve the aforementioned criteria. Selection of the plan actually implemented could be done by having the computer draw further tie-breaking criteria.

This recommendation contemplates the possibility that one chamber of the General Assembly might be unable to obtain the necessary 3/5 vote but desires to modify the computer program generated by the Election Commission. It is expected that such changes would be technical, nonpolitical and involve adjusting relationships between the various criteria. For instance, relaxing population deviations to increase compactness ratios or minority districts. Such substituted programs would retain prohibitions against political intervention.

principles, including but not limited to compactness, contiguity, respect for political subdivisions or communities defined by actual shared interests, to racial considerations." *Id.* at 916. Where race-related classifications are the basis for a particular map, and are not subordinated to race, a claim of impermissible racial gerrymandering can be defeated. *Id.* at 916. Even compliance with federal antidiscrimination laws cannot immunize racial gerrymandering.

Because any computer drafted map would be free from political influence and because intent to politically discriminate is essential to maintain a cause of action, it is expected that any computer-assisted plan would not only be politically fair, it would be free of judicial review possibilities.¹⁶

The Commission agreed that two other changes should be recommended for incorporation in any constitutional amendment. First the size of the House of Representatives should be increased by one member to avoid the possibility of an evenly divided legislative body unable to organize itself.

Secondly, the Commission members believed that while original and exclusive jurisdiction should remain in the Supreme Court, it should not be limited to application by the Attorney General. It is therefore recommended that that provision be deleted.

IX. Proposed Constitutional Amendment

¹⁶ Under *Davis v. Bandemer*, 478 U.S. 109, 126, fn 11 (1986), a showing of discriminatory intent is a prerequisite to a political gerrymandering claim. See also *Smith v. Boyle*, 144 F.3d 1060, 1065-66 (7th Cir. 1998).

91ST GENERAL ASSEMBLY

State of Illinois

1999 and 2000

HOUSE JOINT RESOLUTION
CONSTITUTIONAL AMENDMENT

INTRODUCED _____ BY

SYNOPSIS AS INTRODUCED:

ILCON Art. IV, Sec. 1
ILCON Art. IV, Sec. 2
ILCON Art. IV, Sec. 3
ILCON Art. XIV, Sec. 1

Proposes to amend the Legislature Article of the Illinois Constitution. Provides that a Representative District (for election of a member of the House of Representatives) need not be entirely within a single Senatorial District (for election of a member of the Senate, now referred to as a Legislative District). Provides that (i) the Senate redistricts Senatorial Districts by resolution adopted by a record vote of three-fifths of the members elected and (ii) the House of Representatives redistricts Representative Districts by resolution adopted by a record vote of three-fifths of the members elected (now, redistricting is by law). Eliminates the Legislative Redistricting Commission. Provides instead that if a Senatorial or Representative redistricting plan is not adopted by June 15 of the year following a federal decennial census year, then the State Board of Elections shall produce a redistricting plan using a computer program. Requires the State Board of Elections to designate its computer program by April 15. The computer program designated by the State Board of Elections must disregard specified data and must consider certain prioritized factors; the computer program shall otherwise produce districts in a random manner. Authorizes the House and Senate to designate different computer programs for their respective chambers; doing so requires adoption of a resolution by a three-fifths vote on or before June 15. Removes the requirement that actions concerning redistricting the House or Senate may be initiated only by the Attorney General. Increases the number of Representatives from 118 to 119. Proposes to amend the Constitutional Revision Article to make a change to conform nomenclature. Effective beginning with redistricting in 2001 and applies to members elected in 2002 and thereafter.

LRB9100621REpkE

1	SENATE JOINT RESOLUTION	59
2	CONSTITUTIONAL AMENDMENT	61
3	RESOLVED, BY THE SENATE OF THE NINETY-FIRST GENERAL	65
4	ASSEMBLY OF THE STATE OF ILLINOIS, THE HOUSE OF	66
5	REPRESENTATIVES CONCURRING HEREIN, that there shall be	67
6	submitted to the electors of the State for adoption or	68
7	rejection at the general election next occurring at least 6	70
8	months after the adoption of this resolution a proposition to	71
9	amend Sections 1, 2, and 3 of Article IV and Section 1 of	72
10	Article XIV of the Illinois Constitution as follows:	73
11	ARTICLE IV	76
12	THE LEGISLATURE	78
13	(ILCON Art. IV, Sec. 1)	81
14	SECTION 1. LEGISLATURE - POWER AND STRUCTURE	83
15	The legislative power is vested in a General Assembly	85
16	consisting of a Senate and a House of Representatives,	86
17	elected by the electors from 59 <u>Senatorial</u> Legislative	87
18	Districts and <u>119</u> 118 Representative Districts.	88
19	(Source: Amendment adopted at general election November 4,	90
20	1980.)	
21	(ILCON Art. IV, Sec. 2)	93
22	SECTION 2. LEGISLATIVE COMPOSITION	95
23	(a) One Senator shall be elected from each <u>Senatorial</u>	97
24	Legislative District. Immediately following each decennial	99
25	redistricting, the General Assembly by law shall divide the	100
26	<u>Senatorial</u> Legislative Districts as equally as possible into	102
27	three groups. Senators from one group shall be elected for	
28	terms of four years, four years and two years; Senators from	103
29	the second group, for terms of four years, two years and four	104
30	years; and Senators from the third group, for terms of two	105
31	years, four years and four years. The <u>Senatorial</u> Legislative	106

1 Districts in each group shall be distributed substantially 107
2 equally over the State. 108

3 ~~(b) Each Legislative District shall be divided into two~~ 110
4 ~~Representative Districts, in 1982 and every two years~~ 111
5 thereafter One Representative shall be elected from each 112
6 Representative District for a term of two years.

7 (c) To be eligible to serve as a member of the General 114
8 Assembly, a person must be a United States citizen, at least 115
9 21 years old, and for the two years preceding his election or 116
10 appointment a resident of the district which he is to 117
11 represent. In the general election following a redistricting, 118
12 a candidate for the General Assembly may be elected from any 119
13 district which contains a part of the district in which he
14 resided at the time of the redistricting and reelected if a 120
15 resident of the new district he represents for 18 months 121
16 prior to reelection.

17 (d) Within thirty days after a vacancy occurs, it shall 123
18 be filled by appointment as provided by law. If the vacancy 124
19 is in a Senatorial office with more than twenty-eight months 125
20 remaining in the term, the appointed Senator shall serve 126
21 until the next general election, at which time a Senator 127
22 shall be elected to serve for the remainder of the term. If
23 the vacancy is in a Representative office or in any other 128
24 Senatorial office, the appointment shall be for the remainder 129
25 of the term. An appointee to fill a vacancy shall be a member 130
26 of the same political party as the person he succeeds. 131

27 (e) No member of the General Assembly shall receive 133
28 compensation as a public officer or employee from any other 134
29 governmental entity for time during which he is in attendance 135
30 as a member of the General Assembly.

31 No member of the General Assembly during the term for 137
32 which he was elected or appointed shall be appointed to a 138
33 public office which shall have been created or the 139
34 compensation for which shall have been increased by the 140

1 General Assembly during that term.
 2 (Source: Amendment adopted at general election November 4, 142
 3 1980.)

4 (ILCON Art. IV, Sec. 3) 145

5 SECTION 3. LEGISLATIVE REDISTRICTING 147

6 (a) Senatorial Legislative Districts shall be compact, 149
 7 contiguous and substantially equal in population. 150
 8 Representative Districts shall be compact, contiguous, and 151
 9 substantially equal in population. A Representative District 152
 10 need not be entirely within a single Senatorial District. 153

11 (b) By April 15 of the year following each Federal 155
 12 decennial census year, the State Board of Elections, by a 156
 13 record vote of a majority of the total number of members 157
 14 authorized by law as provided in Section 5 of Article III,
 15 shall designate a computer program for redistricting the 158
 16 Senate and House of Representatives that meets the 159
 17 requirements of this Section. The designation shall include 160
 18 detailed specifications of the computer program.

19 Any computer program designated by the State Board of 162
 20 Elections under this Section shall embody the following 163
 21 standards and criteria, as defined by Common Law, in this 164
 22 order of priority:

23 (1) contiguity; 166

24 (2) substantial equality of population; 168

25 (3) compactness; 170

26 (4) minimization of the number of districts that 172
 27 cross county or municipal boundaries; and 173

28 (5) a fair reflection of minority voting strength. 175

29 Any computer program designated by the State Board of 177
 30 Elections under this Section shall not consider the following 178
 31 data:

32 (1) residency of incumbent legislators; 180

33 (2) political affiliations of registered voters; 182

1 with the Secretary of State. 216

2 ~~If no redistricting plan becomes effective by June 30 of~~ 218

3 ~~that year, a Legislative Redistricting Commission shall be~~ 219

4 ~~constituted not later than July 10. The Commission shall~~ 220

5 ~~consist of eight members, no more than four of whom shall be~~ 221

6 ~~members of the same political party. The Speaker and Minority~~ 222

7 ~~Leader of the House of Representatives shall each appoint to~~ 223

8 ~~the Commission one Representative and one person who is not a~~ 224

9 ~~member of the General Assembly. The President and Minority~~

10 ~~Leader of the Senate shall each appoint to the Commission one~~ 225

11 ~~Senator and one person who is not a member of the General~~ 226

12 ~~Assembly. The members shall be certified to the Secretary of~~ 227

13 ~~State by the appointing authorities. A vacancy on the~~ 228

14 ~~Commission shall be filled within five days by the authority~~ 229

15 ~~that made the original appointment. A Chairman and Vice~~ 230

16 ~~Chairman shall be chosen by a majority of all members of the~~ 231

17 ~~Commission. Not later than August 10, the Commission shall~~ 232

18 ~~file with the Secretary of State a redistricting plan~~ 233

19 ~~approved by at least five members.~~

20 ~~If the Commission fails to file an approved redistricting~~ 235

21 ~~plan, the Supreme Court shall submit the names of two~~ 236

22 ~~persons, not of the same political party, to the Secretary of~~ 237

23 ~~State not later than September 1.~~

24 ~~Not later than September 5, the Secretary of State~~ 239

25 ~~publicly shall draw by random selection the name of one of~~ 240

26 ~~the two persons to serve as the ninth member of the~~ 241

27 ~~Commission.~~

28 ~~Not later than October 5, the Commission shall file with~~ 243

29 ~~the Secretary of State a redistricting plan approved by at~~ 244

30 ~~least five members.~~ 245

31 (e) A An approved redistricting plan, adopted by 247

32 redistricting resolution or produced by the State Board of 248

33 Elections, that is filed with the Secretary of State shall be 249

34 presumed valid, shall have the same force and effect as a of 250

1 law, and shall be published promptly by the Secretary of 251
2 State.

3 (f) The Supreme Court shall have original and exclusive 253
4 jurisdiction over actions concerning redistricting the House 254
5 and Senate, ~~which shall be initiated in the name of the~~ 255
6 ~~People of the State by the Attorney General.~~

7 (Source: Amendment adopted at general election November 4, 257
8 1980.)

9 ARTICLE XIV 260

10 CONSTITUTIONAL REVISION 261

11 (ILCON Art. XIV, Sec. 1) 264

12 SECTION 1. CONSTITUTIONAL CONVENTION 266

13 (a) Whenever three-fifths of the members elected to each 268
14 house of the General Assembly so direct, the question of 269
15 whether a Constitutional Convention should be called shall be 270
16 submitted to the electors at the general election next 271
17 occurring at least six months after such legislative 272
18 direction.

19 (b) If the question of whether a Convention should be 274
20 called is not submitted during any twenty-year period, the 275
21 Secretary of State shall submit such question at the general 276
22 election in the twentieth year following the last submission. 277

23 (c) The vote on whether to call a Convention shall be on 279
24 a separate ballot. A Convention shall be called if approved 280
25 by three-fifths of those voting on the question or a majority 281
26 of those voting in the election. 282

27 (d) The General Assembly, at the session following 284
28 approval by the electors, by law shall provide for the 285
29 Convention and for the election of two delegates from each 286
30 Senatorial ~~Legislative~~ District; designate the time and place 288
31 of the Convention's first meeting which shall be within three
32 months after the election of delegates; fix and provide for 289

1 the pay of delegates and officers; and provide for expenses 290
2 necessarily incurred by the Convention. 291

3 (e) To be eligible to be a delegate a person must meet 293
4 the same eligibility requirements as a member of the General 294
5 Assembly. Vacancies shall be filled as provided by law. 295

6 (f) The Convention shall prepare such revision of or 297
7 amendments to the Constitution as it deems necessary. Any 298
8 proposed revision or amendments approved by a majority of the 299
9 delegates elected shall be submitted to the electors in such 300
10 manner as the Convention determines, at an election 301
11 designated or called by the Convention occurring not less
12 than two nor more than six months after the Convention's 302
13 adjournment. Any revision or amendments proposed by the 303
14 Convention shall be published with explanations, as the 304
15 Convention provides, at least one month preceding the 305
16 election.

17 (g) The vote on the proposed revision or amendments 307
18 shall be on a separate ballot. Any proposed revision or 308
19 amendments shall become effective, as the Convention 309
20 provides, if approved by a majority of those voting on the 310
21 question.

22 (Source: Illinois Constitution.) 312

23 SCHEDULE 315

24 This Constitutional Amendment takes effect beginning with 317
25 redistricting in 2001 and applies to the election of members 318
26 of the General Assembly in 2002 and thereafter. 319

Illinois Redistricting Process Review Commission

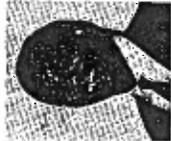
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Illinois Redistricting Process Review Commission



Sen. James "Pate" Philip is the Illinois Senate president and has served as a state senator since 1975. Prior to becoming a senator, he served as a state representative for eight years.

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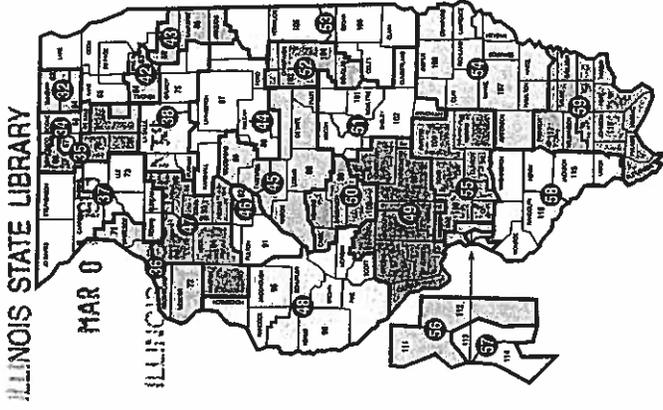
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George H. Ryan
Secretary of State



Illinois Redistricting Process Review Commission



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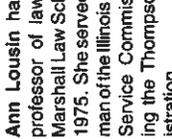
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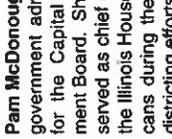
Tracy Litsey is executive director of Illinois Common Cause and board member of the Chicago Metro Ethics Coalition. She served as director of governmental affairs for the Illinois Citizens Utility Board.



Ann Lousin has been a professor of law at John Marshall Law School since 1975. She served as chairman of the Illinois State Civil Service Commission during the Thompson administration.



Rep. Michael Madigan has been a state representative since 1971. He has been both House minority and majority leader and has served as Speaker of the House for the past five General Assemblies.



Pam McDonough is state government administrator for the Capital Development Board. She recently served as chief of staff for the Illinois House Republicans during the 1991 redistricting efforts.



James Nowlan is president of the Taxpayers' Federation of Illinois, which researches taxation and local government issues. He also is author of several books about government and politics.

When I drew the name of the ninth member of the Illinois Redistricting Commission on Sept. 5, 1991, I said the process needed to be changed and that I would appoint a commission to review it.

Since that time, I have selected 29 individuals who will bring a diverse expertise to the Redistricting Process Review Commission. This bipartisan commission represents the geographic, racial, ethnic and gender balances that make Illinois such a great state in which to work and live.

During the past year we have witnessed public dismay over the redistricting process. We are, therefore, compelled to respond to the citizenry by reviewing the process set forth by the 1970 Illinois State Constitution.

I enter this endeavor with no preconceived notions about how the process can be changed, but rather with a resolve that we change it for the better.

I encourage all Illinois residents to take an active role in reviewing the process. It is through your participation that we can ensure fair and impartial decisions and preserve democracy the way it was meant to be.

Thank you for your interest in the commission's endeavors and to each member of this commission.

Sincerely,

GEORGE H. RYAN
Secretary of State

