Challenges and Opportunities On the Road to Reform in Illinois

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With an Epilogue
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Introduction
By Robert F. Rich

Should we be thinking of Illinois as the land of Paul Powell, the secretary of state who stored shoeboxes full of cash in his closet; or former governors Otto Kerner and Dan Walker who both spent time in federal prison; or George Ryan who is still there? Should we think of Illinois as one of only two states ever to impeach their governor and remove him from office? Or, should we proudly call Illinois the land of Abraham Lincoln, Adlai Stevenson, Everett McKinley Dirksen, Paul Douglas, and Paul Simon – public servants who dedicated their lives to making Illinois and our nation a better place for all people?

Is the political culture of our state truly characterized by corruption, ethical illiteracy, and lack of commitment to principles of good and effective government? Or, is ours a state that continues to give the nation some of its greatest leaders, many of whom set the standard for ethical behavior?

The answer is that Illinois, like many other states, has been home to both types of leaders. It is, however, clear that our state does not have the same reputation as Minnesota or Wisconsin or other states for good and ethical government. In the last decade, we have drawn national attention because of the indictment and conviction of George Ryan and the impeachment and federal charges against Rod Blagojevich. Consequently, there are calls in the news media, the business community, the educational community, and in government for "reform."

In this context, the University of Illinois Institute of Government and Public Affairs offers this examination of the following issues: a) campaign finance and the larger role of money in politics; (b) the redistricting process specified in the Illinois Constitution; (c) the role of referendum, special initiatives, and recall of elected officials; (d) term limits for governors and legislators; and (e) the overall political culture in the state.

We believe these issues are at the core of any reform discussion. In the pages ahead, we examine the critical issues in each of these areas, what the empirical evidence demonstrates about "best practices" and experiences from other states or jurisdictions, and the strengths and weaknesses of the policy options that might be considered in Illinois.

Campaign Finance

The role of money in politics must be at the center of any discussion of reform. In the United States, spending money to influence an election or influence public policy is "protected political speech." This principle has been upheld by the United States Supreme Court. But the court has also said that contributions can be regulated through measures designed to reduce corruption and the appearance of corruption.

One of the primary reasons for these regulations is to increase public confidence in the outcome of elections. Over the last 30 years, there have been several regulatory approaches introduced at the federal and state levels of government, but Illinois remains one of the least

regulated states in the nation. We are one of only five states that have no contribution limits. We have emphasized "sunshine laws" designed to maximize disclosure, reporting, and transparency. Another approach to regulation is to limit how much can be contributed and by whom. The assumption is that sunshine will not provide sufficient self-regulation and that limits are necessary to constrain the negative impact of unlimited contributions. Another option is public financing, where tax dollars are used to offer "grants" to candidates who agree to limit their fundraising and spending. Kent Redfield's chapter closes with a discussion of the strengths and weaknesses of the various regulatory approaches

Redistricting

While money and politics are at the heart of any discussion of reform, the structure and performance of government also must be considered. A major component of structure is determined by the process used to elect our governmental officials. Jim Nowlan's chapter provides an overview of how congressional, state Senate, and state House districts are drawn in the United States and Illinois, with several options for consideration.

One of the basic principles behind the redistricting that occurs after each decennial census is that there should be substantially equal population in all districts and that all parts of a district must be contiguous and reasonably compact. Many states establish additional rules, such as requiring that districts respect the integrity of existing political or geographic entities to the extent possible. Illinois does not have any of these types of rules.

The redistricting process becomes controversial when districts are drawn to ensure the victory of one political party over another. The charge is then made that the process is not fair and that it is entirely politically motivated. Consequently, disagreement about the rules that were followed or not followed, rather than providing voters with fair choices, becomes the focus of the debate.

Nowlan's chapter provides a history of redistricting in Illinois, the approach we use, and alternative approaches employed in other states. Nowlan observes that Iowa is unique in that it has assigned the district map-drawing process to the Legislative Services Agency, the legislature's non-partisan bill drafting and research arm. He also provides an analysis of the strengths and weaknesses of the various redistricting options.

Referendum, Initiative, and Recall

Another major part of any reform discussion is the role of referendum, initiative, and recall. Christopher Mooney observes that these methods of "direct democracy," which in America date to colonial times, have advantages, but also that voters may not always be the best public policy makers.

A referendum is a public vote on legislation or a constitutional amendment that has been approved by a state or local legislature. In this chapter, Mooney outlines different types of referenda: legislative, popular, and advisory. He also discusses the "direct" and "indirect" initiative and recall of an elected official by voters, an idea that has received a lot of attention

over the past couple of years in Illinois. Eighteen states have recall, but it is rarely used at the state level.

Mooney's chapter examines the impact of these direct democracy mechanisms, provides details of how they operate across all of the United States, and discusses their costs and benefits.

Term Limits for Governors and State Legislators

Another strategy often discussed for making government more accountable is the introduction of formal term limits – legally restricting the number of years that an official can hold a particular office. Christopher Mooney provides a comprehensive review of term limits in the United States and finds that there has been very little research done on the impact of gubernatorial term limits. The focus has been on legislative term limits because of implications for seniority, innovation, and the overall public policy-making process. Fifteen states have state legislative term limits. Illinois is not one of these states.

Term limits have a clear and significant influence on a state legislature's composition. They increase turnover and limit the influence of senior members of a legislative chamber. Mooney also provides a synthesis of what the research shows on the impact of term limits on legislative behavior. Finally, Mooney concludes that adopting legislative term limits would have a major impact on politics and policy in Illinois.

Political Culture

Richard Winkel, a former state legislator, writes that corruption has run deep in Illinois' political culture for decades and will not be changed by federal prosecutors alone; citizens as well as state and local officials must join in this effort if it is to be successful. Winkel notes that perhaps the state has been over-reliant on the federal government to police corruption and should consider doing more to ensure better ethical behavior among officials.

Winkel discusses Illinois' recent past by looking into some of the criminal cases that grew out of the state's political culture. These cases – especially the prosecution of Robert Sorich and others in Chicago – provide an understanding of some of the legal theories involved in fighting public corruption. The federal mail fraud statute, with its theory that citizens should expect fair and honest service from public officials, has been used very effectively in corruption prosecutions.

Winkel also notes that there is real hope for positive change in state government after a transition of power in the governor's office and state Senate. He sees that bi-partisan collaboration with the new governor will be critical for achieving reform and he poses some options for state leaders to consider.

Epilogue

Former Governor Jim Edgar notes in a final personal word that while there may be a need for some reform legislation, people should not believe that we will just pass some well-meaning legislation and, as a result, the ethical problems in this state will go away. Edgar is not

a supporter of campaign contribution limits and does not believe that they will bring about reform. He is a supporter of a shorter primary season and of changing the primary date in Illinois.

If we want to change the political culture in Illinois, Edgar believes that we need greater political accountability for candidates, political parties, and the public. He believes that the political parties have a responsibility for whom they put forward as candidates. This is also true for incumbents. If a person has not lived up to the expectations we should have for a public official, the party should not support him for another term.

The public also has a responsibility. People should pay attention to what the news media reports about public officials and candidates. The electorate needs to be informed and act on this information. Edgar does not believe that simply passing new ethics laws will make everything OK.

Conclusion

It is our goal to provide empirical evidence about good-government efforts that have worked and not worked in other states. We have tried to identify "best practices" and to provide a snap-shot of reform efforts in the United States. In the end, it is the responsibility of everyone – government leaders, business leaders, and the public – to work together to change the political culture in Illinois. We have not arrived where we are overnight, and it will take some time to bring about changes.

We at IGPA believe that our input here can help inform current deliberations about policy that will improve the effectiveness and behavior of Illinois government.

Designing a Campaign Finance System for Illinois
By Kent D. Redfield

A crisis of corruption, confidence, and competence surrounds politics in Illinois. Citizens have no faith that public officials will do anything to clean up corruption or to fix the budget and service delivery mess in Springfield. They also view the state's current system for financing political campaigns as contributing to corruption and to the inability of state government to address the policy and budget needs of Illinois.[1] This section provides an analysis of the factors and questions that need to be addressed in designing a new campaign finance system for Illinois.

First principles

Before beginning a discussion about what could or needs to be changed about Illinois' campaign financing process, we should be aware of the following principles and decisions that could affect any proposals for change.

1) Spending money to influence an election or influence public policy is protected political speech according to rulings made by the U.S. Supreme Court. Any attempt to limit spending will be subject to strict scrutiny by the federal courts.[2]

2) Contributing money to influence an election or influence public policy is also protected political speech, but the U.S. Supreme Court has held that contributions can be regulated through reasonable measures aimed at reducing corruption and the appearance of corruption.[3]

3) Requiring the disclosure and reporting of contributions and expenditures have generally been upheld by the federal courts.[4]

4) Each state has a unique history; political culture; set of political processes and structures; and configuration of population, economic, political, and social demographics. A state's existing campaign finance system operates within that unique context. While information about practices and performance in other states is useful, the goal is to design a system that works for Illinois. Giving Illinois' laws to Wisconsin and Wisconsin's laws to Illinois would not make Illinois into Wisconsin and Wisconsin into Illinois.

5) Any changes made in the law will apply to both a candidate for governor and a candidate for trustee of a small village. Any changes made in the law will apply to contributors who donate to candidates to directly influence the outcome of an election, and those who contribute to legislative leaders and incumbent officeholders to gain access to power in order to influence public policy.

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[1] Survey conducted by Beldon, Russonello and Stuart, January 9-12, 2009, for the Illinois Campaign for Political Reform, http://www.ilcampaign.org/.

[2] Deborah Goldberg, *Writing Reform: A Guide to Drafting State & Local Campaign Finance Laws* (2008 Revised Edition), Brennan Center for Justice, NYU Law School, 2008.

[3] See footnote 2.

[4] See footnote 2.

6) Some of the policy goals that people would like to accomplish with a campaign finance system can be in direct conflict with policy goals favored by other people.

   a) A system designed to reduce the cost of competitive election contests and overall spending in elections (such as very low contributions limits) may also decrease competition and give an undue advantage to incumbents by making it very difficult to raise the money necessary to conduct a competitive campaign.

   b) A system designed to increase the number of candidates and the level of competition in legislative elections (such as a generous public financing system for both primary and general elections) may also dramatically increase the overall spending on elections.

7) The law of unintended consequences is largely inoperative in projecting the impact of changes to campaign finance systems. We know with a good deal of certainty what the impact will be from adopting a change in an existing system. The policy problem is that specific changes usually create winners and losers while making some policy goals easier to attain and making other policy goals more difficult to attain.

8) There is no perfect system that will accomplish every worthy policy goal related to the role of money in politics. The pursuit of perfection ultimately leads to the perfect being the enemy of the good. Designing a campaign finance system requires making trade-offs between competing policy goals and making trade-offs between competing interests.

9) Some policy goals are clearly beyond the limits of any campaign finance system. Increasing the level of competition in legislative elections may be a worthy goal, but there are many legislative districts in Illinois so dominated by one political party that no amount of public financing would make them competitive in the general election.

10) Because spending cannot be legally limited, any campaign finance system will produce behavior designed to frustrate the policy goals of the system as those who have money and want to influence politics search for ways to do so. Campaign finance systems must adapt over time in order to continue to achieve the policy goals of the system. Campaign finance systems are always a work in progress.

Public policy goals for a campaign finance system

Campaign finance systems are created to achieve a wide-range of public policy goals. The system created in Illinois in 1976 originally was intended to provide as little control and oversight as possible over the role of private money in politics and still qualify as a campaign finance system.[5] The explicit goal of some supporters of "clean money" systems is to eliminate as completely as possible the role of private money in public elections.[6] Most campaign finance systems are designed to regulate the role of money to achieve specific goals related to ethics,

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[5] Kent D. Redfield, *Cash Clout: Political Money in Illinois Legislative Elections*, Institute for Public Affairs, University of Illinois at Springfield, 1995.

[6] Public Campaign, http://www.publicampaign.org/

such as reducing corruption, and democratic values, such as promoting open and competitive elections.

The following is an illustrative list of explicit or implicit goals that public policy makers may try to achieve when designing campaign finance systems.

1) Minimize the interference with free speech activity in the political process;
2) Provide easy access to complete information about contributions and expenditures in as close to real-time as possible;
3) Reduce corruption and the appearance of corruption;
4) Build public confidence in the outcome of elections;
5) Build public confidence in the outcome of policy decisions;
6) Prohibit corporations and unions from contributing directly to candidates;
7) Increase the number of individuals making small contributions and the role of small contributions in relation to large contributions;
8) Increase the number of candidates in primary and general elections;
9) Increase competition in primary and general elections;
10) Increase the number of candidates and elected officials who are minorities and/or women;
11) Decrease the overall cost of campaigns or decrease the cost of competitive campaigns;
12) Reduce the advantage of those interests and individuals with money over those interests and individuals without money;
13) Redistribute power within the political system by reducing or increasing the power of one or more sets of actors (i.e. individuals, political parties, legislative leaders, special-interest groups, labor unions, or corporations);
14) Reduce or eliminate the role of "interested" private money in elections and replace it with "disinterested" public money.

Design options for a campaign finance system

Sunshine - disclosure, reporting and transparency:[7] In a state with a sunshine campaign system, there are no prohibitions or limitations on who contributes or how much is contributed. There are no prohibitions or limitations on how campaign contributions can be spent. The system depends on disclosure and reporting (sunshine) to provide self-regulation. The idea is that candidates will not accept contributions or make expenditures that could become issues that their opponents would use against them in a political campaign or that would embarrass them if they were reported in the news media. It is assumed that with sufficient transparency, citizens and the news media will become aware of what is taking place and act on that awareness, and that candidates will adjust their behavior accordingly. Illinois, with only minor limitations on contributions or expenditures, is the poster child for a sunshine campaign system.

[7] See the Center of Competitive Politics, http://www.campaignfreedom.org/ for background on this option.

Regulation - limits and prohibitions:[8] All regulation campaign finance systems begin with disclosure and reporting as their foundation and then build a regulation framework on that foundation. The role of money in the political system is constrained by prohibitions on who can contribute (such as gambling interests or those with state contracts) and limits on the amount that can be contributed. Limits are usually applied to contributions from private interests and to transfers of money from other candidate committees and party committees. Some systems allow higher contribution limits for transfers from political party organizations or legislative leader committees. Spending is also limited by prohibitions on certain types of expenditures such as personal use or using campaign contributions for non-election purposes. The assumption is that sunshine will not provide sufficient self-regulation, and that limits and prohibitions are necessary to constrain the negative impact of unlimited contributions, particularly corruption and the undue influence of big money. Regulation systems require an independent enforcement agency with sufficient resources in order to be effective. Ohio is an example of a state with a regulation system without any direct public financing. The federal system is an example of a regulation system for legislative elections (along with public financing for presidential elections).

Public Financing:[9] All publicly-funded campaign finance systems begin with disclosure and reporting and a regulatory framework of limits and prohibitions to constrain the role of money in the political system. Public finance systems provide an additional element of constraint by offering grants to candidates who agree to limit their fundraising and/or spending in exchange for the public money. Typically, candidates must raise a certain amount of money in small contributions to qualify for public funding. The assumption is that limits and prohibitions will not be sufficient to constrain the negative impact of private money on the political system, and therefore a mechanism that substitutes public money for private money and voluntarily constrains spending is necessary. There is a related assumption that public financing will encourage more candidates in general and minorities and women in particular and that it will reduce the advantages that incumbents have in the process. These systems will vary as to whether they apply to both primary and general elections, whether they provide partial or full public funding, and whether they provide public funding for statewide offices and/or legislative elections. For those who promote full public financing under the title of "clean money," there is an explicit assumption that private money is ultimately "dirty money" and the only way to have a clean political system is to replace the dirty private money with the clean public money.

The dynamics of a full public funding system for legislative offices are considerably more complex than those for statewide offices.[10] Public financing systems for statewide office have also been much more successful in achieving high participation rates. If a state has more than two political parties with official status under state law, then public funding has to apply to candidates of all recognized political parties. Wisconsin and Minnesota are examples of states

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[8] See the Campaign Finance Institute, http://www.cfinst.org/and the Illinois Campaign for Political Reform http://www.ilcampaign.org/ for background on this option.

[9] See Public Campaign, http://www.publicampaign.org/ for background on this option.

[10] Tom Loftus, *The Art of Legislative Politics*, National Conference of State Legislatures, 1998.

with longstanding systems of partial public financing. Arizona and Connecticut are examples of recently adopted systems of full public financing (clean money) systems.

Facilitating small donations:[11] This is an add-on mechanism rather than a stand-alone approach. The goal is to increase the amount of private money that is contributed to elections by using public policy to encourage individuals to make small donations. The assumption is that limiting the impact of large contributions and "big" money on political systems is very difficult, but it is possible for small money to balance out big money if enough individuals make small contributions. States that include this approach use tax refunds, credits, or deductions to encourage individuals to make small donations. Matching public funds for small donations can be used to encourage candidates to seek more small donations. Ohio and Minnesota are states that use state tax policy to encourage small donations.

The status quo: Money in Illinois politics

Illinois has a classic sunshine campaign finance system. There are no limits on how much can be contributed and, with one exception, there are no prohibitions on who can contribute. Corporations and unions can contribute directly as well as individuals. Money can be raised by a candidate committee or a political party committee and then transferred to another candidate committee without limit. Political committees can carry over funds from one election cycle to the next. Elected public officials can continue to spend campaign funds after they leave office. The one prohibition in the system is the recently adopted "pay to play" law, which bans contributions from those holding government contracts to the public officials who control the contract if the contract amount is more than $50,000. The only limitation on spending is a prohibition on the personal use of campaign funds by a candidate.[12]

Illinois has a reporting and disclosure system that requires candidates to form political committees and file reports of receipts and expenditures. Candidates for elected office with more than $3,000 in receipts or expenditures during the six-month reporting period must form a political committee and file reports. Committees that exceed $10,000 in receipts or expenditures during the reporting period must file reports electronically. Most reports are filed with the State Board of Elections. Some reports for candidates for local office are filed with County Clerks. Reports filed with the State Board of Elections are posted on the website of the State Board. With a few exceptions, the information from those reports can be accessed through a searchable database. Comprehensive reports, which itemize receipts and expenditures of $150 or more, must be filed every six months. In addition, participants in primary and general elections must file pre-election reports of receipts that cover the period up to 30 days before an election. Within 30 days of an election, candidates must report within two days of receiving contributions of more than $500. Illinois' electronic reporting and filing system is very highly regarded. There

[11] Michael J. Malbin, "Rethinking the Campaign Finance Agenda," *The Forum*, Volume 6, Issue 1, 2008.
[12] Illinois State Board of Elections, http://www.elections.state.il.us/.

are some issues with whether or not contributor groups are required to file reports and the content of the reports.[13]

Overall contributions to candidates for state level office (constitutional office, legislature and state Supreme Court and appellate court judges) exceeded $175 million in 2002 and 2006 when constitutional offices were on the ballot, and exceeded $100 million in 2004 and 2008 when they were not. In 2005-06, there were seven interest groups that exceeded $1 million in contributions to state level candidates. In 2007-08, there were six groups that exceeded $1 million and 13 others that contributed between $500,000 and $1 million.[14]

Illinois legislative elections are not very competitive overall. During the last four election cycles more than 98 percent of the incumbents in the general election were re-elected. During that time more than 80 percent of races for the state Senate and 90 percent of the races for the state House of Representatives were not competitive in terms of money spent. However, the legislative races that were competitive each election cycle were very expensive. In 2006, there were 12 legislative races where combined spending exceeded $1 million. In 2008, there were 10. These competitive legislative elections, or targeted races, are dominated by the four legislative leaders who transfer funds from leadership or party committees to provide a majority of the funding for incumbents and the vast majority of the funding for challengers or candidates for open seats.[15]

Statewide elections are generally not very competitive in terms of spending, but those that are competitive are very expensive. Spending by primary and general election candidates for Illinois attorney general exceeded $19 million in 2002. Spending by primary and general election candidates for governor exceeded $60 million in 2002 and 2006. Former Governor Blagojevich spent more than $51 million in his two campaigns for the office.[16]

The vast majority of large contributions ($10,000 or more) go to the legislative leaders, candidates for constitutional office, and the few candidates in targeted legislative races. Most of the large contributions to candidates in targeted legislative races are transfers from committees controlled by the legislative leaders or from state political party committees. Incumbents and challengers in non-targeted legislative races receive very few large contributions.

Only a few interest groups, corporations, or individuals make large contributions. Because of how easy it is to move large sums of money into the political system, there is a history over the past two decades of interest groups making very large increases in their

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[13] Illinois State Board of Elections, http://www.elections.state.il.us/ and Susan Novak, *Campaign Finance in Illinois*, Brennan Center for Justice, NYU Law School, 2007.

[14] Kent D. Redfield, *Show Me the Money: Cash Clout in Illinois Politics – Rev 2008*, The Sunshine Project, 2008; Kent D. Redfield, *Money Counts: How Dollars Dominate Illinois Politics and What We Can Do About It*, Institute for Public Affairs, University of Illinois at Springfield, 2001; Illinois Campaign for Political Reform, http://www.ilcampaign.org.

[15] See footnote 14 and Kent D. Redfield, "What Keeps the Four Tops on Top? Leadership Power in the Illinois General Assembly" in Jack R.Van Der Slik, ed., *Almanac of Illinois Politics - 1998*, University of Illinois at Springfield, 1998.

[16] See footnote 14.

campaign contributions over very short periods of time when their issues move onto the legislative agenda.[17]

Campaign finance systems in other states and at the federal level

State campaign finance systems in the United States fall into three categories. There are 13 sunshine states with minimal or no contribution limits. Illinois is one of those 13 and one of just five with no limits. Thirty-seven states and the District of Columbia have regulation systems with various combinations of limits and prohibitions. Within those, there are a variety of public-financing mechanisms in place, with 16 states offering partial or full public funding for candidates for statewide office and eight states offering partial or full public funding for candidates for legislative office. Only Arizona, Connecticut and Maine have systems of full public financing for both legislative and statewide offices that clearly fit the clean money model. There are also 10 states that have mechanisms in place (tax refunds, credits, or deductions) to encourage donors (usually small donations).[18]

The current federal system of campaign finance is a basic regulation system with public funding for presidential elections. Like most state regulation systems, regular (every three months) itemized reports of contributions and expenditures are required. As with most state regulation systems, corporations and unions are prohibited from making direct contributions to candidates. Only individuals and political action committees funded by contributions from individuals are permitted to contribute. As with most state regulation systems, there are limits on contributions from individuals and political action committees. The federal system represents one of a number of ways to construct a campaign finance system based on disclosure and regulation.[19]

Options: strengths, weaknesses, and impact

Sunshine Systems: Proponents of sunshine campaign finance systems regard their greatest strength as insuring an open, unrestricted political process by the absence – except for the minimal distortion from mandatory public disclosures – of any restrictions on political speech. In a pure sunshine system, such as Illinois, individuals, corporations, or unions with economic resources are free to make maximum use of those resources to achieve their political goals. Opponents of sunshine systems highlight two areas of weakness. First, the absence of contribution limits increases the advantage that those with money have over those without money. This also tends to promote greater spending in highly competitive races. Second, the effectiveness of sunshine systems to limit corruption and the appearance of corruption associated with the role of money in the political process is problematic. If disclosure and reporting are ineffective in fighting corruption, there is no other mechanism in place to restrict corruption or the appearance of corruption.

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[17] See footnote 14.

[18] National Conference of State Legislatures, http://www.ncsl.org/.

[19] Campaign Finance Institute, http://www.cfinst.org/.

Illinois is currently a sunshine system. One policy option would be to make changes within the system to increase the effectiveness of reporting and disclosure. This would have no impact on the existing patterns of power or on the conduct or outcome of elections. The critical questions are whether increased disclosure and reporting would have a significant impact on corruption and the appearance of corruption and whether the news media and Illinois citizens would regard the changes as a credible or effective response to the political corruption of the last decade. Increased disclosure and reporting requirements would be largely symbolic without giving the State Board of Elections adequate funding to administer them and increased powers to enforce them.

Regulation systems: Proponents of regulation campaign finance systems regard their greatest strength to be promoting equity and fairness in the political process by restricting the right to make contributions to individuals and limiting the use of money to influence the process. Proponents also contend that disclosure and reporting combined with prohibitions and limitations provide a more complete and effective system for reducing corruption and the appearance of corruption associated with the role of money in the political process. Proponents of sunshine systems contend that regulation systems restrict free speech and limit competition by making it more difficult for non-incumbents to raise money. They also question the effectiveness or even the relevance of contribution limits in preventing political corruption. Proponents of public financing systems contend that regulation systems are ineffective in increasing the numbers and the diversity of candidates and the competitiveness of elections.

If Illinois were to move to a regulation system with limits and prohibitions on direct contributions from corporations or unions, it would reduce corruption and the appearance of corruption. The change would be seen by citizens as a significant response to political corruption in Illinois. Given the current extremely low levels of competition in legislative elections and the extremely high re-election rates of incumbents, it is hard to argue that adopting contribution limits would make legislative elections in Illinois less competitive. The impact on statewide elections would be more significant with self-funding and party funding becoming more important than is currently the case. The impact of contribution limits on the power of the legislative leaders would depend on the regulation system design. Contribution limits would make it more difficult for them to collect money and direct it into legislative elections. They would adopt new strategies for raising and spending money. Given the leaders' current dominance of the policy process in addition to legislative elections, it is not realistic to expect that the adoption of contribution limits would immediately reverse the centralization of power within the legislature. With contribution limits, political party organizations would become more important, but more likely as mechanisms for collecting and moving money into targeted legislative races and statewide races than as independent actors in the system. Some incumbents in safe districts would play the same role. Parties and safe incumbents already function in this manner in Illinois, but contribution limits would increase this activity.

A ban on direct corporate and union contributions would dramatically shift the focus of fundraising and contributing to individuals. Interest groups, unions, and corporations would shift away from large corporate contributions and toward political action committees funded by

contributions from individuals. Interest groups that make large contributions and are actively involved with contested elections would have more trouble adapting to contribution limits than would interest groups that are not as directly involved. Out-of-state corporations with no employees or jobs in Illinois (such as big tobacco) would have the most trouble dealing with contribution limits and a ban on direct corporate or union contributions. Adopting contribution limits without prohibiting direct contributions from corporate entities would lessen the impact of the changes on power relationships and individual and interest group behavior.

Public financing systems: Proponents of public campaign financing see their greatest strength as creating an open political process that encourages more participation and campaigns that focus more on addressing public problems than collecting donations. They also see full public finance systems as effective in further reducing corruption and the appearance of corruption. In addition to criticisms of regulation systems in general, opponents of public financing see difficulties in maintaining adequate funding, the use of public money for elections instead of providing public services, and the tendency of legislative candidates in the most strongly contested races not to participate in public financing, while weak challengers and safe incumbents are the most likely to participate.

If Illinois were to move to a regulation system with full public financing the impact would be two-fold. The impact of moving to a regulation system is discussed in the previous section. Adopting a system of full public financing on top of a regulation system would create a new publicly funded program which would compete with existing public programs for state funds. The cost would be contingent upon the design of the system, but figures in the $100 million to $200 million range are reasonable. Full public funding of qualifying primary and general election candidates in legislative and statewide races would be significantly more expensive than only providing partial public funding for general election candidates for governor. A public financing system for the 2010 election would have to include the Green Party. Full public funding for primary and general elections would produce more candidates and more diversity among candidates. The impact of public financing on overall spending would depend on what portion of the public money was displacing private money and what portion of the public money was new money that would not have been spent otherwise.

There is a long history at the state level of public financing systems for the office of governor and other statewide offices. There are problems with competitive races occurring outside the public financing system. If a public financing system would have been in place in 2002, it seems likely that the candidates for governor and attorney general would have chosen not to participate, while the candidates in the very uncompetitive races for secretary of state, comptroller, and treasurer would have participated.

Designing a functioning system for legislative elections is more problematic. Full public funding would increase spending in legislative races that would otherwise not be competitive because there would be more candidates, but the new money would be public rather than private. Unless the amount of public funding for legislative races was sufficient to run a general election campaign in a targeted district (at least $400,000 for the House and $600,000 for the Senate), candidates in targeted races would chose to run without public money, while

candidates in non-targeted races (largely sure winners and sure losers) would take the public money and agree to spending limits. Similar behavior would occur in primary elections. The result would be the continuation of a two-tiered system of legislative elections in Illinois. Having an 80 percent participation rate in a public financing system is not significant if the real competition and spending that decides control of the legislature take place in the races outside the public financing system.

Redistricting in Illinois: Options to Consider
By Jim Nowlan

The Illinois Constitution declares "legislative districts shall be compact, contiguous and substantially equal in population." By law, if the General Assembly fails to approve a redistricting plan, a bipartisan commission of four Democrats and four Republicans is established. If the commission fails to approve a redistricting plan, a tie-breaking ninth member is drawn by random selection from two names not of the same political party.

The following is a brief overview of the redistricting process in Illinois and the United States, with several options offered for consideration. There is general dissatisfaction with the tie-breaker element of the process in Illinois. Indeed, the state Supreme Court invited the General Assembly to "correct this process" because "the rights of the voters should not be part of a game of chance." (*People ex rel Burris v. Ryan*, [1992]).

Since 1971, all four redistricting processes have gone to the commission (1971; 1981; 1991; 2001) and three have gone to the tie-breaker (1981; 1991; 2001).[20] All four plans have been challenged before the Illinois Supreme Court, which has original jurisdiction; the state high court required changes in the 1981 and 1991 plans. In 1981, the plan was challenged in the federal district court, which modified it, and in 2001 the tie-breaker procedure was challenged unsuccessfully in federal courts.

Three basic principles govern redistricting in the United States: there should be substantially equal population in all districts, all parts of a district must be contiguous, and districts should be reasonably compact geographically.[21] Many states establish additional rules in state statutes or constitutions, such as requiring that districts respect the integrity of existing political or geographical entities to the extent possible; Illinois does not have any such rules.

The U.S. Supreme Court has ruled that congressional districts must be almost equal in population.[22] For example, in *Karcher v. Daggett* (1983), the U.S. high court ruled unconstitutional a New Jersey congressional plan that had an overall range percentage variation of less than 1 percent. The court found that the overall range percentage variance could have been reduced or eliminated by a good faith effort. Nevertheless, the court specifically rejected establishing a minimum standard and held that consistently applied policies such as compactness and respect for governmental boundaries might justify some variance. Population equality and minority opportunity to elect one of their own are the two standards the U.S. Supreme Court eyes most closely.

The U.S. Supreme Court has allowed much greater overall range variance for state legislative districts, holding that 10 percent variance generally does not violate the equal

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[20] For detail on this discussion and court citations, see *1970 Illinois Constitution Annotated for Legislators*, 4th Edition, Legislative Research Unit, Illinois General Assembly, Springfield, 2005.

[21] The discussion of approaches to redistricting is taken largely from Michael P. McDonald. "A Comparative Analysis of Redistricting Institutions in the United States, 2001-02, " *State Politics and Policy Quarterly*, Vol. 4, No. 4 (Winter 2004): pp. 371-395.

[22] This discussion of standards is taken from Ed Cook, *Legislative Guide to Redistricting in Iowa*, Iowa Legislative Services Agency, Iowa General Assembly, Des Moines, Iowa, December 2007.

protection standard and need not be justified by some state policy (*Brown v. Thompson*, 1983). Of course, states may have stricter population equality standards and have their own state high courts to rule on state constitutionality of plans.

Contiguity (touching or connected throughout) is easily determined while compactness is a subjective standard.

Commissions in the redistricting process

States use basically three methods to redistrict: the ordinary legislative process, a specially appointed commission, or a mixture of the two. Twenty states use a commission at some stage of congressional or state legislative redistricting (*see Appendix Table 1)*. The variations are about as numerous as the number of states with commissions. For example, the Ohio model gives sole redistricting authority to a commission that comprises the governor, state auditor, and secretary of state. The Texas model uses a commission to serve as a back-up if the legislative process fails, as in Illinois. When the legislature fails to approve a plan, Texas concentrates control of redistricting into the hands of a few partisan commissioners, often party leaders or their appointees.

Among the various approaches, a commission will have: 1) an odd number of members and adopt a plan by a majority vote; 2) an even number of members and, in the absence of a majority, select a tie-breaker; 3) an even number of members and a tie-breaker is selected at the outset by majority vote of the commission's members, and adopt plan by a majority vote, or 4) an even number of members and adopt a plan by a supermajority vote (*see Appendix, Table 2*).

Iowa has state agency draw maps

Iowa has a unique process that is often referred to because people think a computer draws the districts, which is not really the case.[23] Instead, the computer is a tool that helps the mapmakers develop a map (congressional, state Senate, and state House maps are submitted as one). The mapmakers are likely to come up with several computer-aided and hand-drawn maps.

Unique to Iowa is the assignment of map-drawing responsibility to the Legislative Services Agency, the legislature's non-partisan bill-drafting and research arm. In 2001, for example, an attorney and two geographers in the Legislative Services Agency used available legislative redistricting software to assist them in drawing lines according to three criteria:

- population equality,
- compactness, and
- respect for political subdivisions (the Iowa constitution says counties must remain intact for congressional districts, but not for legislative districts).

[23] Interview with Ed Cook, legal counsel in Legislative Services Agency; on February 27, 2009. Cook is author of *Legislative Guide to Redistricting in Iowa*, December 2007.

Criteria of incumbency and partisan profiles of census units are specifically not considered.

The Legislative Service Agency staff members developed several maps for districting congressional, state Senate and House seats. They submitted to their agency director the one map which they believed met the criteria most closely. The agency director presented this map to the Iowa General Assembly. From that point:

- A commission holds public hearings on the map.
- The map goes to the legislature as Plan 1.
- The legislature can reject or the governor can veto because it is treated like a bill, but the legislature cannot amend.
- If rejected, legislature provides its reasons for so doing and sends the map back to Legislative Service Agency (LSA).
- LSA submits Plan 2, which legislature can also reject, with reasons; again, the legislature cannot amend.
- LSA submits Plan 3, which the legislature can accept or reject OR amend. In 1981, Iowa went to the Plan 3, which the legislature accepted.
- If the legislature does not accept Plan 3, it has the opportunity to draw its own map.
- If the legislature's work is not finished by a statutorily set deadline, then responsibility goes to the Iowa Supreme Court.

The Iowa process has never gone beyond Plan 3, apparently because legislators fear that to do so would invite the perception that politics had contaminated the process. In 2001, 64 of 150 state legislators found themselves in a district with another incumbent.

The Ryan redistricting process review commission

As Illinois secretary of state, George Ryan created a commission in 1991 to review the Illinois process and recommend alternatives. The bi-partisan, 20-plus member commission held hearings on and off throughout the 1990s and issued a report in 1999.[24] Initially, the commission tried and failed to identify an individual or institution as an independent, non-partisan and objective tie-breaker. The group did consider several proposals for change in the tie-breaker system in Illinois, summarized as follows:

- Rather than add a tie-breaking member, this proposal would remove one of the members of the eight-member Illinois Redistricting Commission by random selection. The party with the resulting majority would choose to draw the map for one of the legislative chambers, and the party in the minority would draw the map for the other chamber.
- Each of the two names submitted by the state Supreme Court would participate in the redistricting process. The first person whose name was drawn by the secretary of state would in turn draw out the name of a chamber. That person

[24] Report of the Redistricting Process Review Commission, January 8, 1999. Copy available at Institute of Government and Public Affairs, University of Illinois, Urbana.

would serve as the ninth member for redistricting that chamber. The other person whose name was submitted would serve as the ninth member for drawing the map for the other chamber.

- Another proposal would transfer the responsibility for redistricting to a body independent of the General Assembly, such as the Legislative Reference Bureau, as in Iowa.
- The proposal recommended by the commission is as follows: A new 119th House District would be created so districts would not have to be "nested" within each of the 59 senate districts, as at present. The governor would not play any role, whereas currently the governor can veto a redistricting plan. Each chamber would have until June 15 to pass a map for its own chamber by a three-fifths majority. If a chamber failed to redistrict itself by a date certain, the responsibility would be turned over to the State Board of Elections to draw a map for that chamber. The State Board would be responsible for using a computer to draw lines that meet a decision-tree of criteria, beginning with contiguity, substantially equal population, compactness, minimization of the number of districts that cross county or municipal boundaries, and a fair reflection of minority voting strength.

The commission proposed a constitutional amendment to implement this new approach. No action was taken on the commission's proposal. In 2008, the Illinois House passed, by a vote of 98-10, House Joint Resolution Constitutional Amendment 44 to change the way Illinois redistricts the legislature. The resolution died without action in the Rules Committee of the state Senate. New Senate President John Cullerton was a co-sponsor of the resolution in the Senate.

The proposal would have each chamber of the Illinois General Assembly redistrict itself by a three-fifths vote of its membership. If a chamber fails to adopt a redistricting plan, a commission is created to redistrict that chamber. If the commission or commissions fail to approve a plan or plans, the chief justice of the Illinois Supreme Court and another judge of the court appoint a special master to redistrict.

The same proposal has been re-introduced as House Joint Resolution Constitutional Amendment 16 in the present session of the legislature by Rep. James D. Brosnahan, who was also the sponsor of the resolution that passed the House in 2008. HJRCA16 was in the House Rules Committee as of March 23, 2009.

Pros and cons of various redistricting plans

From this writer's perspective, the ideal redistricting process is one that avoids the gerrymander, that is, the drawing of districts to give special advantage to one party or group, such as incumbents. To this end, nonpartisan agencies and bipartisan commissions comprised of non-legislators appear to hold the greatest promise for avoiding the gerrymander.

On the other hand, legislators collectively have intimate knowledge of their state and its people. This knowledge could prove valuable, for example, in keeping communities of interest together within districts.

Illinois has an intensely partisan political system. It is unrealistic to think that legislators, many of whom are careerists, would easily give up the authority to try to reach agreement on redistricting.

The constitutional amendment proposal before the legislature this year would require that three-fifths of the members of each legislative chamber, respectively, would have to approve a new redistricting map for their chamber. This would normally require bipartisan support for adoption, which suggests a minimum of partisan gerrymandering, though it could increase the likelihood of gerrymandering on behalf of incumbents. Failing adoption of redistricting maps at the legislative and then commission stages, the responsibility would shift to a special master appointed by the chief justice of the state Supreme Court and one other judge of the court. If the state high court is above partisan politics, and some would argue it is not, the appointed special master would also be expected to be above the politics of the gerrymander.

Each proposal should be evaluated on the extent to which it would likely avoid the gerrymander.

Direct Democracy Mechanisms
Recall, Initiative, and Referendum
By Christopher Z. Mooney

Direct democracy refers to extraordinary political mechanisms by which a vote of the people can have a direct effect on public policy or, in the case of the recall, expel an elected politician from office. In America, these institutions have their roots in the town hall meetings of early New England, where citizens were few enough in number that they could meet face to face to set public policy. But for units of government with more than several hundred citizens, this sort of active, direct participation is usually impractical. Thus, as democracy became widespread in the 18th and 19th century, it took the form of representative democracy, wherein citizens elected policymakers who then set and carry out public policy and who are held responsible for their choices in the next regularly scheduled election.

The late 19th century and early 20th century Populist and Progressive Era reformers promoted three general ideas of direct democracy – the recall, the initiative, and the referendum. At that time, campaign contributions were largely unregulated, and bribery and graft were common in state legislatures. State and local elected officials were paid poorly and, with few laws regulating political corruption, they were subject to influence by firms seeking favorable treatment from government. One observer described the 1880s Oregon legislature as "briefless lawyers, farmless farmers, business failures, bar-room loafers, Fourth-of-July orators [and] political thugs."[25] Many of these elected officials had little enthusiasm for the social, economic, and political reforms that may have had widespread support among the general public.

Perhaps because of this attitude, Populist and Progressive reformers sought greater public influence over policy and the behavior of elected officials. They argued that giving people the ability to write their own laws and veto unpopular laws passed by legislators would create public policy more representative of public opinion. As a result of this movement a century ago,[26] many states adopted these reforms. The referendum, initiative, and recall are governmental institutions, typically found in a state's constitution and/or a local government's charter, that allow a direct democracy election under certain conditions for a specific piece of legislation, constitutional amendment, or official.

Referendum

A *referendum* is a public vote on a piece of legislation or constitutional amendment that previously has been approved by a state or local legislature. A *legislative referendum* is a referendum where the approval of the question by a majority of those voting on it[27] means that

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[25] David Schuman, "The Origin of State Constitutional Direct Democracy: William Simon Uren and the Oregon System," *Temple Law Review* 67 (1994):947–963, p.949.

[26] The vast majority of these mechanisms were adopted by states between 1900 and 1920, although some states, like Illinois, have adopted some since the late 1960s.

[27] In some jurisdictions, another voting requirement is used, such a three-fifths of those voting or a majority of those voting in the election.

it becomes law. An *advisory referendum* is a non-binding vote of a measure referred to the electorate, but where the legislature retains the final say on the issue. The vote is a simple yes or no, and it is typically done in a general election. Some state constitutions and local government charters require the placement of certain items on ballots, such as bond issues, tax hikes, or constitutional amendments. In 1898, South Dakota became the first to adopt the referendum (along with the initiative).

The legislative referendum is the most widely used instrument of direct democracy in American states and localities, and it is widely used at the national level in advanced democracies outside the United States. Twenty-three states have some provision for the legislative referendum of statutes, and every state except Delaware requires voter approval of constitutional amendments.

Optional legislative referenda are often used by lawmakers for controversial issues, whether to avoid taking responsibility or to gauge public opinion. Advisory referenda are even more flexibly used by lawmakers to take the temperature of public opinion on issues.

The *popular referendum* is very different from the legislative referendum, more like a combination of a direct initiative and the recall. It allows a voter or group to file a petition requiring a public vote on a bill that the legislature has already approved. As such, the popular referendum is effectively a voter veto. The petition usually has similar signature requirements as the direct initiative (see below), and a majority "no" vote usually repeals the law. Twenty-four states have the popular referendum, mainly those states that also have the direct initiative.

The Illinois Constitution has provisions for both legislative and advisory referenda. Legislative referenda are mandated for two types of changes: amending the state constitution and certain institutional changes to local government. Article 28 of the Illinois Election Code (10 ILCS 5/28, "Submitting Public Questions") discusses these measures generally, with Section 5 (10 ILCS 5/28-5) setting out the petition requirements.

Any constitutional amendment proposed by the General Assembly must be approved by a legislative referendum before taking effect (Article XIV [Constitutional Revision], Section 2). After passing each chamber of the General Assembly with at least a three-fifths majority of those elected, such a proposal is placed on the next general election ballot at least six months hence. The amendment will then be adopted if it receives "either three-fifths of those voting on the question or a majority of those voting in the election." The General Assembly has sent 16 proposed constitutional amendments to the voters in this way, of which nine were passed by referendum.[28] Furthermore, the state constitution requires a statewide referendum every 20 years (the next one being in 2028) on the question of whether another constitutional convention should be called to rewrite some or all of the state charter. Passage of this measure also requires "three-fifths of those voting on the question or a majority of those voting in the election." It failed to pass the two times it has been put to the voters, in 1988 and 2008.

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[28] David R. Miller, *1970 Illinois Constitution: Annotated for Legislators*, 4th ed. (Springfield, IL: Legislative Research Unit, 2005), p.104-105.

Referenda are also required for certain issues regarding local governments, including their establishment, boundaries, governmental structure, officers, and home rule powers (Illinois Constitution Article VII [Local Government], Sections 2-7 and 11). These referenda are also discussed at hundreds of points in the Compiled Statutes (e.g., 35 ILCS 200, the Property Tax Code, and 45 ILCS 5, the Illinois Pension Code). All such elections will occur in a general election (unless otherwise provided for by law) within the relevant jurisdiction, and pass by a majority of those voting on the question.

Illinois also has an institution for local ordinances that is related to the popular referendum, the *back door referendum*. The back door referendum is, as defined in 10 ILCS 5/28-2(f), "the submission of a public question to the voters of a political subdivision, initiated by a petition of voters or residents of such political subdivision, to determine whether an action by the governing body of such subdivision shall be adopted or rejected." That is, a local ordinance is publicly posted and if no petition is filed, it goes into effect automatically after a specified length of time. For example, a local government issuing a bond that does not require a new rate or rate increase can approve it through a back door referendum. The Tax Cap Act (35 ILCS 200/18-190[a]) limits such back door referenda by requiring that any new rates or rate increases be submitted to a direct referendum.

Initiative

There are two types of initiative process in the U.S. – direct and indirect. The *direct initiative* is a process by which a voter or group can instigate a special election that can result in the passage of an entirely new law or constitutional provision. This is direct democracy at its purest. First, a group[29] files with a state or local government office, such as the secretary of state or the county clerk, the specific language of a proposed bill and its intent to circulate a petition to get it on the ballot. The group then collects voters' signatures on a petition to put it on the ballot of the relevant jurisdiction. States vary in the number of signatures required to get a measure on the ballot (ranging from 3 percent to 15 percent of those last voting in that jurisdiction for a specific statewide officer, usually the governor, in the last general election), the geographical distribution of the signatures, deadlines, and the length of the petition-circulating period. If the petition gets the proper number of certified signatures, the initiative qualifies for the ballot in the next general election. In that election, voters can vote yes or no on the measure, with a majority of those voting (typically) winning. If voters approve the measure, it becomes law upon certification of the relevant election officer.

An *indirect initiative* works as an official petition to the legislature to consider a specific piece of legislation. Such a measure begins with a petition drive, like the direct initiative, but upon getting the required number of certified signatures, it is referred to the legislature. Lawmakers can then pass or reject the bill. If the legislature fails to pass it, the measure is then placed on the ballot. In some states, if a legislature rejects an indirect initiative, it may submit its own alternative proposal to voters along with the original voter-initiated measure.

[29] In recent years, initiatives are usually instigated by groups rather than individual voters.

Illinois has the direct initiative, but it is the most constrained in the country – limited to only the state constitution's legislative article, Article IV. Furthermore, such initiatives "shall be limited to structural and procedural subjects contained in Article IV" (Article XIV, Section 3). To qualify for the ballot, such measures must be supported by a petition with certified signatures of "electors equal in number to at least eight percent of the total votes cast for candidates for governor in the preceding gubernatorial election" gathered between 24 months and six months before the general election in which the vote is to be taken. The amendment will pass if approved by "either three-fifths of those voting on the amendment or a majority of those voting in the election." In 1976, the Illinois Supreme Court interpreted this language to mean that to be certified for the ballot, a measure must deal with both structural and procedural subjects.[30]

The criteria for an initiative under the Illinois Constitution are so restrictive that only one such measure has ever been decided. This was the successful 1980 Cutback Amendment that eliminated cumulative voting from the Illinois House of Representatives and reduced the size of that body from 177 members to its current 118 members. Other petitions have been circulated for initiatives under this constitutional provision, but they have failed to qualify for the ballot either because of a lack of signatures or because the Illinois Supreme Court ruled that the content did not meet the constitutional requirements. Indeed, the Illinois Supreme Court has made several rulings demonstrating its opinion that the state constitution meant for the initiative not to be used for substantive amendments.[31]

Recall

Recall allows for a public vote to remove an elected official before the expiration of that official's term. The petition procedure mirrors that of the initiative except that the number or percentage of signatures is usually much higher, typically 25 percent of the votes cast in the last election for that officer.[32] Some states even require that proponents establish compelling grounds for a recall. These more strenuous requirements are imposed because of the seriousness of the recall procedure. In 1903, Los Angeles was the first jurisdiction to adopt the recall for its officials. Since then 18 states have done so, along with many other localities. Twenty-nine states allow their local governments to pass recall ordinances.

Despite the high profile 2003 recall of California Governor Gray Davis and his replacement by Arnold Schwarzenegger, the process is rarely used at the state level. Only two governors have been recalled: Lynn Frazier of North Dakota in 1921 and Davis in 2003. Two recent governors in Arizona came close to being recalled, but left office before the process was completed. Governor Fife Symington was forced to resign in 1997 after being convicted of bank fraud, and Governor Evan Mecham was impeached in 1988 for obstruction of justice and misuse of government funds. However, there have been numerous successful recall efforts of state legislators and local elected officials.[33]

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[30] Miller, op. cit. p.105-106.

[31] Ibid.

[32] See the National Conference of State Legislatures' website for signature requirements, officers that can be recalled, petition circulation time, and other details: http://www.ncsl.org/programs/legismgt/elect/recallprovision.htm.

[33] Shaun Bowler and Bruce Cain, eds., *Clicker Politics: Essays on the California Recall* (Englewood Cliffs, N.J.: Prentice Hall, 2005).

The impact of direct democracy

On the face of it, it is hard for Americans – especially politicians – to argue against direct democracy. These institutions allow citizens a direct voice in many of the weighty questions facing their state or local government. But over the years, some commentators have suggested a variety of potential drawbacks of direct democracy. And since the 1990s, many scholars have studied some of these claims closely and demonstrated that at least the initiative can have important effects on politics and policy. Of course, whether these effects are good or bad is open to debate.

Recent scholarship on the initiative process has led to some consensus on several important questions regarding its effects. The main argument of initiative advocates in the Progressive Era was that the institution would align public policy better with public opinion, reducing the bias caused by nefarious interest groups and power brokers. Recent studies give mixed, but hopeful, support for this hypothesis.

On the negative side, successful initiative petition drives are usually instigated, not by independent voters with a good idea, but by well-funded interest groups pushing a narrow, often economic, policy agenda.[34] Recent decades have probably seen a greater imbalance in this regard than before, but even in the Progressive Era economic groups like the liquor industry and chiropractor associations used the initiative to pursue legislation they could not pass through the regular process. This is in large part due to the high cost of running a major statewide petition drive in a limited period of time. In fact, a flourishing industry specializing in passing petitions and qualifying measures for the ballot has developed since the 1970s. Some states regulate or ban the use of paid petition gatherers, reducing the advantage of well-funded groups.

While narrow economic interest groups are more successful than non-profit citizens groups in qualifying initiative measures for the ballot, they are far less successful than citizen groups at actually *passing* those measures at the ballot box.[35] Statewide initiative campaigns can be expensive (especially in large states like Illinois, California, Ohio, Michigan, and Florida), so economic groups still have an advantage. Of course, whether their resources give them a greater advantage than they have in the normal legislative process is an open question. But clearly, the initiative gives any advocate a "second bite at the apple," a place to turn when they fail in the legislature. Given that passing legislation in the statehouse can be cheaper and quicker than the ballot box, advocates usually try the former first.

Another concern about the potential bias of the initiative is that it may disadvantage the interests of minorities – racial, social, economic, regional, or any other kind – even more than

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[34] Todd Donovan, Shaun Bowler, David McCuan, and Ken Fernandez, "California's Political Warriors: Campaign Professionals and the Initiative Process," in *Citizens as Legislators: Direct Democracy in the United States*, eds. Bowler, Todd Donovan, Shaun and Caroline J. Tolbert (Columbus, OH: The Ohio State University, 1998).

[35] Elisabeth Gerber, *Interest Group Influence in the California Initiative Process* (Public Policy Institute of California, 1998).

the regular legislative process.[36] However, recent studies have shown that this concern is overstated.[37] In principle, majorities could oppress minorities with the initiative, but in practice this happens no more often than in the legislature.

Despite these opportunities for bias, studies have shown that, just as the Progressive Era advocates predicted, public policy in states with the initiative is somewhat more representative of public opinion than in those without it.[38] This is especially the case on issues that the general public pays close attention to, such as capital punishment and abortion. No doubt this is in part due to initiatives being judged directly by voters. But even in states like California, Colorado, and Oregon, where ballot-item overload is seen as a problem, initiatives still count for only a tiny fraction of the overall legislation decided upon each year. Rather, the principal way in which the initiative seems to help bring policy in line with public opinion is its effect as a threat to lawmakers. That is, the initiative acts as a "gun behind the door,"[39] with groups and legislators knowing that if the public's will (or the will of any significant sub-group) is thwarted too aggressively, someone may resort to the initiative process. And an initiative may not only embarrass lawmakers and negate their work, but it can be seen as an explicit knock against incumbents and a threat to their re-election.

The initiative also seems to hold down overall public spending,[40] although there is some debate on this point.[41] Of course, all else being equal, voters want more programs and benefits from their government but they also want to pay as little as possible in taxes. One of the main jobs of the legislature is to resolve this tension between spending and taxing by balancing the budget. The initiative process does not require this sort of discipline of voters, so spending might be expected to be higher in states that use it. But this apparently is not the case. Why? Because among the most common class of initiatives is tax and expenditure limitations, or TEL. The most well known TEL was California's Proposition 13 in 1978, which limited local governments' ability to tax property. The revenue limits that such TELs impose appear to more than offset the voters' tendency to vote for more programs, resulting in somewhat less in public spending in initiative states.

A final class of policy impact is more difficult to quantify – initiative's effect on the quality of public policy. Lawmakers and the chief executive have the ability and the duty to take the broad view of the public needs and may be better able to make the trade-offs and

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[36] Bruce Cain, "Voting Rights and Democratic Theory: Toward a Color-Blind Society," in *Controversies in Minority Voting*, eds. Bernard Grofman and C. Davidson (Washington, DC: Brookings Institution, 1992).

[37] Todd Donovan and Shaun Bowler, *Reforming the Republic: Democratic Institutions for the New America* (Upper Saddle River, NJ: Prentice-Hall, 2004).

[38] Elisabeth R. Gerber, "Legislative Response to the Threat of Popular Initiative," *American Journal of Political Science* 40(1996):99-128; Elizabeth R. Gerber, *Populist Paradox: Interest Group Influence and the Promise of Direct Democracy Legislation* (Princeton, NJ: Princeton University Press, 1999); John Matsusaka, "Fiscal Effects of the Voter Initiative: Evidence from the Last 30 Years," *Journal of Political Economy* 103(1995):587-623; but see Edward L. Lasher, Jr., Michael Hagen, and Steven Rochlin, "Gun behind the Door? Ballot Initiatives, State Politics, and Public Opinion," *Journal of Politics* 58(1996):760-755.

[39] Lasher, Hagen, and Roshlin, op. cit.

[40] John Matsusaka, *For the Many or the Few: The Initiative, Public Policy, and American Democracy* (Chicago: University of Chicago Press, 2004).

[41] Melissa J. Marschall and Anirudh V.S. Ruhil, "Fiscal Effects of the Voter Initiative Reconsidered: Addressing Endogeneity," *State Politics and Policy Quarterly* 5(2005):327-355; John G. Matsusaka, "The Endogeneity of the Initiative: A Comment on Marschall and Ruhil," *State Politics and Policy Quarterly* 5(2005):356-363.

compromises that best reflect the needs and desires of the citizens. Individual voters do not have this perspective, and so vote to set policy in isolation, leading to less thoughtful policy. As such, the initiative may yield law that is less well defined and overly simplistic. Furthermore, from a practical perspective, initiative law may be less well written and frequently confusing, leading to more judicial nullification and bureaucratic discretion.[42] The conflict between voters' desire to spend and their aversion to taxation can also affect policy quality aversely. When an initiative requires a government to spend money but TELs keep revenues from rising to meet that desire, lawmakers must cut spending elsewhere to balance the budget.[43] This can result in an unintended distortion of budget priorities.

Finally, Progressive Era reformers also predicted that the initiative would have the salutary effect of educating and inspiring citizens, improving democracy and the social fabric as a whole.[44] By giving voters a very direct voice in policymaking, they would be motivated to learn more about government and public policy and hence increase their sense of connection with their government. And indeed, recent research has shown that the initiative increases voter turnout, enhances voters' feeling of political efficacy, and generally encourages civic engagement.[45] These effects are not dramatic, but they are real and show a consistent pattern that, whatever impact the initiative has on public policy, it tends to have a beneficial effect on citizenship.

The effects of the referendum are harder to isolate than those of the initiative. Since almost all American state and local governments make some use of this institution, we lack the comparisons among governments that make the initiative's impact easier to identify. But it is undoubtedly true that the referendum makes it harder to pass those measures – like constitutional amendments, bond issues, and tax increases – that are typically referred to the people. While referenda often pass, this is not always the case. But scholars generally have found that taxation referenda result in policy that reflects the values of the average voter.[46]

Recall must be considered separately because it involves a special election for a specific official rather than making a policy judgment. It is difficult to make valid generalizations about the recall's effects because it is very rarely used. This may be due to the fact that American elections are frequent enough and do such a good job selecting public officials that ousting an official is rarely urgent. This may be the reason that historically the most frequently recalled officials have been judges, whose long terms and usual relative obscurity make any public misconduct grounds for unscheduled removal. The higher petition threshold that a recall typically requires also limits its use, as it is designed to do. Finally, the fact that an official rarely

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[42] Anonymous, "Judicial Approaches to Direct Democracy," *Harvard Law Review* 118(2005): 2748-2769.

[43] Bruce E. Cain and Roger G. Noll, eds., *Constitutional Reform in California: Making Government More Effective and Responsible* (Berkeley, CA: Institute of Government Studies Press, 1995).

[44] William B. Munro, ed., *The Initiative, Referendum, and Recall* (New York: Appleton, 1912).

[45] Daniel A. Smith and Caroline J. Tolbert, *Educated by Initiative: The Effects of Direct Democracy on Citizenship and Political Organizations in the American States* (Ann Arbor, MI: University of Michigan Press, 2004); but for an alternate view, see: Daniel Schlozman and Ian Yohai, "How Initiatives Don't Always Make Citizens: Ballot Initiatives in the American States, 1978-2004," *Political Behavior* 30(2008):469-489.

[46] Randall G. Holcombe and Lawrence W. Kenny, "Does Redistricting Choice in Referenda Enable Governments to Spend More?" *Public Choice* 136(2008):87-101.

has a person so motivated by self-interest to instigate and pursue the petition drive and recall election campaign (as opposed to an opposition candidate in a regular election) probably also explains its lack of use.[47]

Historically, the recall has been used primarily for expelling officeholders accused of malfeasance in office or criminality. For example, Arizona's Symington and Mecham and North Dakota's Frazier were all accused of criminal activities unrelated to their gubernatorial duties, and in the 1970s and 1980s, a pair of Wisconsin judges were recalled after being accused of sexual harassment. But in recent years, a handful of state legislators have been recalled for policy reasons, typically at the instigation of an interest group. For example, attempts to recall five state legislators (one each in California, Oregon, and Wisconsin, and two in Michigan) in the 1980s and 1990s began after they voted for taxes that certain conservative groups did not like. This was seen as a political strategy by these groups to demonstrate their political muscle as much as to expel these specific lawmakers. What seemed like a potential trend in political recalls 15 years ago did not materialize, probably due to the large cost of a recall campaign, their lack of success at both the petition and ballot stages, and backlash from local governments that bore the financial brunt of these special elections.

[47] The 2003 California gubernatorial recall election is a counter-example here, which may explain its occurrence. First, a political entrepreneur, Congressman Darrell Issa, bank-rolled the recall petition drive, some say because he wished to run for the seat himself. And second, California's two-tiered system of a vote to recall the official and a separate vote for a replacement (as opposed to leaving the office vacant until the next election or following a constitutional line of succession) probably gave potential opponents more personal incentive to push for Davis's removal.

Term Limits for Governors and State Legislators
By Christopher Z. Mooney

Term limits simply means legally restricting the number of terms an elected official can hold. The idea is an old one, having been debated and used for various offices since the ancient Greek democracies.[48] The authors of the U.S. Constitution debated term limits for federal officers and explicitly rejected them. But term limits continue to appeal to a part of American political culture with its roots in the thinking of Thomas Jefferson, the idea that professional government is a threat to people's liberties and that the average citizen is perfectly competent to serve in government. Many of the earliest state constitutions set strict limits on the length and number of terms their officers could serve, especially executive officers. And service in state legislatures and Congress was traditionally a limited and part-time activity throughout the country as late as the early 20th century. But with the increase in government size and complexity since then, especially with the two World Wars and the Great Depression, it has become routine for elected officials to serve many years in office, developing expertise and the ability to work on an equal footing with professionals in the increasingly large bureaucracy.

The appeal of citizen government remains strong in American political culture. Historically, the first major indication of a resurgence of this attitude was the ratification in 1951 of the 22nd Amendment, which limited presidents to two terms. This was a reaction to the four terms to which Franklin D. Roosevelt was elected. Today, term limits are common in executive offices at all levels of American government. The current discussion of legislative term limits had its origins in the late 1980s amid public dissatisfaction with high congressional re-election rates,[49] unease with long-serving state legislative leaders in Ohio, California, and Maine, policy entrepreneurs in Oklahoma and Maine with an interest in the reform, the increased use of the direct initiative, and the good timing of a political entrepreneur named Paul Jacob.[50]

Since 1990, various states passed a wide variety of term-limiting laws, primarily through the initiative process, affecting state legislators, governors, judges, and other statewide and local officials.[51] And these measures were popular with the voters. Of the 52 statewide initiatives decided between 1990 and 2006, term limits advocates won 85 percent of the time.[52] Various attempts have been made to repeal or loosen term limits, but despite the 2008 repeal in New York City that allowed Michael Bloomberg to continue serving as mayor, most of these attempts

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[48] Mark Petracca, "Rotation in Office: The History of an Idea," in *Limiting Legislative Terms*, eds. Gerald Benjamin and Michael Malbin (Washington, DC: CQ Press, 1992).

[49] This dissatisfaction was especially high among Republicans, who blamed their party's inability to gain a congressional majority on incumbents' electoral advantages. This lead to severe congressional term being a centerpiece of the famous "Contract with America," the platform on which, in 1994, the GOP gained a majority in the U.S. for first time in over 40 years. However, term limits was one of the few parts of the Contract with America that the congressional Republicans failed to enact.

[50] John David Rausch, Jr., "Understanding the Term Limits Movement," in *The Test of Time: Coping with Legislative Term Limits*, eds. Rick Farmer, John David Rausch, Jr., and John C. Green (Lanham, MD: Lexington Books, 2003).

[51] In 1995, the U.S. Supreme Court voided state laws limiting congressional service (*U.S. Term Limits v Thornton* 514 U.S. 779), but it also held that the U.S. Constitution does not prevent states from limiting the terms of their own officials.

[52] National Conference of State Legislatures. 2006. "Statewide Votes on Term Limits." Typescript. Denver, CO.

were unsuccessful.[53] Term limits' popularity with voters is indicative of Americans' deep distrust of professional politicians.

Illinois has no limits on the length of service of any state elected officials, although a few local government units have them for their officials. The regular state constitutional amendment process in Illinois requires a supermajority in each chamber of the General Assembly, so few people expect state legislative term limits to be adopted anytime soon. A direct initiative could be used to bypass the legislature on this reform, but that is an extraordinary process that is unlikely to be successful. On the other hand, the amendment of the state constitution to adopt gubernatorial term limits, while difficult, would be more politically feasible.

Gubernatorial term limits

Delaware's 1787 constitution set a maximum of two terms per governor and historically governors are the most common state officer to be limited in the number of times they can seek re-election. Sixteen states have imposed limits on governors since 1956. Today, 37 states limit the number of times their governors can seek re-election (*see Appendix, Table 5*). Virginia has the most severe limit, allowing only a single consecutive term for its governor, while Utah allows up to three. The most common limit is a lifetime maximum of two four-year terms (32 states), like the 22nd Amendment's limit for the president. Indiana and Nebraska each have a two-consecutive-term limit, but they allow a person to run again after sitting out for a period. Similarly, Montana's governors are limited to serving eight years out of any 16 years. New Hampshire and Vermont governors have no term limits, but they serve only two-year terms.

Illinois is one of the remaining 11 states where there is no legal limit on the number of four-year terms a governor may serve. But even in these states, it is unusual for governors to serve more than two terms. Recent exceptions include Illinois' Governor James R. Thompson, Wisconsin's Governor Tommy Thompson, and New York's Governors Mario Cuomo and George Pataki.

The impact of gubernatorial term limits

Very little research has been done on the impact of gubernatorial term limits, largely because the change from a non-term-limited governorship to one that is term limited is, in practice, very minor. Whether a person serves one or two four-year terms as governor is much less significant than whether state legislators are allowed to accumulate decades of continuous service in their chambers. Even without limits, very few governors ever serve longer than eight years, while it is common for dozens of state legislators in a single chamber to gain that sort of seniority. In short, legal gubernatorial term limits simply codify standard practice, more or less.

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[53] Carol S. Weissert and Karen Halperin, "The Paradox of Term Limit Support: To Know Them Is NOT to Love Them," *Political Research Quarterly* 60(2007):516-530; David W. Chen and Michel Barbaro, "Across Country, New Challenges to Term Limits," *The New York Times*, September 10, 2008, on-line edition.

The only line of research here consists of a few articles exploring the impact of gubernatorial term limits on state fiscal policy; these studies have yielded conflicting evidence.[54]

State legislative term limits

As opposed to the quiet changes and negligible impact of gubernatorial term limits, the state legislative term limits movement of the 1990s stands as among the most important in American states in recent history. Limiting the number of terms a legislator can serve is a sweeping novelty, directly affecting many of the central characteristics of legislatures as we know them – the importance of apprenticeship and seniority, long-term relationships with interest groups and agencies, and ultimately, the re-election motivation that explains so much legislative behavior. And the term limits movement was successful and swift, with 21 states adopting the reform in the course of a single decade.[55]

Independent movements in Oklahoma, Colorado, and California each passed the first state legislative term limits initiatives in 1990. In response, Libertarian Party activist Paul Jacob organized U.S. Term Limits in 1992, a major not-for-profit group whose goal was to push petition drives in other direct democracy states. Advocates found that term limits were an easy sell to voters, passing the reform by initiative in 20 of the 22 states that have that lawmaking option.[56] Louisiana and Utah passed it through their regular legislative process, although they did so under imminent threat of more restrictive term limits.[57] Between 1997 and 2004, four state's Supreme Courts found their legislative term limits to be unconstitutional[58] and two legislatures repealed their state's limits. As a result, today 15 states have legislative term limits. These vary in their details, including on their length, lifetime-ban or consecutive-terms status, their statutory or constitutional basis, and the year in which they were adopted (*see Appendix, Table 6*).

The impact of state legislative term limits

In the ballot campaigns of the 1990s, debate over state legislative term limits was not informed by solid research about the potential impact, and claims and counterclaims about the reform's effects flew fast and loose. Now, 13 years after the first legislators were banned from seeking re-election, we have a better understanding of some of the major consequences of the reform.[59]

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[54] Timothy Besley and Anne Case, "Does Electoral Accountability Affect Economic Policy Choices? Evidence from Gubernatorial Term Limits," *Quarterly Journal of Economics* 110(1995):769-798; James Alt, Ethan Bueno de Mesquita, and Shanna Rose, "Accountability, Selection, and Term Limits: Theory and Evidence from U.S. State Elections." Presented at the 2007 Annual Meetings of the American Political Science Association, Chicago.

[55] Only 15 states have effective term limits, because six repealed them or had them nullified by the courts (see Table 2).

[56] Legislative term limits initiatives failed only in North Dakota and Mississippi.

[57] Louisiana's term limits provision was a constitutional amendment, and as such, it was submitted to the voters as a referendum, which passed overwhelmingly.

[58] In 1995, the U.S. Supreme Court held in *U.S. Term Limits v. Thornton* that congressional term limits passed by a state were unconstitutional because they limited conditions for federal officeholding.

[59] For an extended review of the research on state legislative term limits, see: Christopher Z. Mooney, "Term Limits as a Boon to State Legislative Scholarship: A Review," *State Politics and Policy Quarterly* 9(2009)204-228.

Elections: One of legislative term limit advocates' main arguments was that the reform would increase competition in legislative elections by eliminating seemingly invincible incumbents from many races.[60] But studies have shown that this has not happened.[61] Term limits may even decrease competition because incumbents run unopposed more often under the reform. The typical pattern is that potential candidates wait for their legislator to be termed out, at which time there is a free-for-all for the open seat. On the other hand, term limits do seem to stir the broader political pot, as termed-out legislators run more frequently for seats in the other chamber, local offices, and Congress, while local officials run more frequently for open seats when state legislators are forced out.[62] This rotation of officeholders may help reduce political stagnation in term limits states.

Legislative Composition: Term limit advocates also hoped that the reform would change the composition of state legislatures, in particular predicting the election of more members of under-represented groups. But there has been no significant increase in women or minorities in term-limited state legislatures.[63] Another expectation was that term limits would attract more "citizen-legislators," those who would interrupt their private-sector careers for brief spells of public service. But again, studies suggest that reformers' hopes to reduce the number of professional politicians in state legislatures have been dashed. Most term-limited legislators regard politics as their profession, even though they serve for shorter periods than they would without the limits.

Term limits do have two clear and significant influences on a state legislature's composition. First, they increase turnover, especially in professionalized legislatures, such as the Illinois General Assembly. Turnover in term-limited legislatures is related to the length of the limits: three-term limits yield something over 33 percent turnover each election, four-year limits average something over 25 percent turnover, and so forth. Over the past two decades, election-to-election turnover in the Illinois House of Representatives[64] averaged only 18.5 percent, the seventh lowest rate in the nation.[65] Hence, even limiting Illinois representatives to six terms would likely increase turnover.

Second, and probably more important for Illinois, term limits purge legislative chambers of their senior members. Given the tradition of Illinois' legislative leaders learning the ropes through many years of apprenticeship, the General Assembly would be radically altered by this

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[60]George F. Will, Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy (New York: Free Press, 1992).

[61] Bruce Cain, John Hanley, and Thad Kousser, "Term Limits: A Recipe for More Competition?" in *The Marketplace of Democracy: Electoral Competition and American Politics*, eds. Michael P. McDonald and John Samples (Washington, DC: Brookings Institution, 2006).

[62] Christopher Z. Mooney, "Truncated Careers in Professionalized State Legislatures," in *Legislating Without Experience: Case Studies in State Legislative Terms*, Rick Farmer, Christopher Z. Mooney, Richard J. Powell, and John C. Green, eds. (Lanham, MD: Lexington Books, 2007).

[63] John M. Carey, Richard G. Niemi, Lynda W. Powell, and Gary F. Moncrief, "The Effects of Term Limits on State Legislatures: A New Survey of the 50 States," *Legislative Studies Quarterly* 31(2006):105-134.

[64] The Illinois Senate had even lower turnover during this period (15 percent), but its irregular terms make comparisons harder.

[65] Gary F. Moncrief, Richard G. Niemi, and Lynda W. Powell, "Time, Term Limits, and Turnover: Trends in Membership Stability in U.S. State Legislatures," *Legislative Studies Quarterly* 29(2004):357-381.

"chopping down of the tall timber."[66] The breadth of the effects of such actions, especially initially, would be to completely change the face of Illinois government in many unpredictable ways.

Legislative Behavior: There is some evidence that term-limited legislators are less exclusively focused on their own districts, more concerned with statewide issues, and more willing to vote their own beliefs on legislation.[67] They also spend less time campaigning and raising money. These are effects that reformers applaud. On the other hand, term-limited legislators do not appear to spend more time studying and developing legislation than legislators without term limits. So just what are they doing? According to one political scientist, "The first two years they're learning. The next two years they're legislating. The final two years they're looking for a job."[68] Thus, the fewer terms a legislator is permitted, the greater the proportion of his or her career is spent simply gearing up and winding down.

Term limits also disrupt relationships among legislators, reduce their understanding of and appreciation for the legislature as an institution, and force them to rush their policy agendas.[69] All this makes the legislative process more chaotic, partisan, confrontational, and unpredictable. While many consider these to be negative side-effects of the reform, some term limits supporters are so deeply suspicious of government that they actually welcome this sort of legislative gridlock, as a way of restricting government.[70]

Institutional Relationships: Standing committees are less influential in term-limited legislatures because their role as policy information storehouse and gatekeeper is reduced.[71] Several studies also show that the reform significantly weakens legislative leaders, something desired by term limits' proponents and feared by its opponents.[72] These leaders are weakened by their lack of experience and the constant struggle for their successors, since leaders are lame ducks immediately upon gaining their positions.

This weakening of legislative leaders and committees is largely responsible for term limits' most significant institutional effect – the legislature's overall loss of power in state policymaking.[73] Many studies have shown that term limits reduce the influence of a legislature

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[66] Dave H. Everson, "The Impact of Term Limitations on the States: Cutting the Underbrush or Chopping Down the Tall Timber?" in *Limiting Legislative Terms*, Gerald Benjamin and Michael J. Malbin, eds. (Washington, DC: CQ Press, 1992).

[67] Carey et al., op. cit.

[68] Steve Law, "Lawmaking Talent Lost through Revolving Door," *Statesman Journal Online*, 13 February 2000, p. 9.

[69] Marjorie Sarbaugh-Thompson, Lyke Thompson, Charles D. Elder, John Strate, and Richard C. Elling, *Political and Institutional Effects of Term Limits* (New York: Palgrave Macmillan, 2004).

[70] Will, op. cit.

[71] Bruce Cain and Gerald Wright, "Committees," in *Institutional Change in American Politics: The Case of Term Limits*, Karl T. Kurtz, Bruce Cain, and Richard G. Niemi, eds. (Ann Arbor, MI: University of Michigan Press, 2007).

[72] Thomas H. Little and Rick Farmer, "Legislative Leadership," in *Institutional Change in American Politics: The Case of Term Limits*, Karl T. Kurtz, Bruce Cain, and Richard G. Niemi, eds. (Ann Arbor, MI: University of Michigan Press, 2007). On the other hand, a study of Michigan has suggested the opposite, that term limits increase legislative leaders' control of their caucuses and chambers because, in a chaotic term-limited legislature, they are the only clear source of decision-making power and policy information; see Sarbaugh-Thompson et al., op. cit.

[73] Carey et al., op. cit.; John M. Carey, Richard G. Niemi, and Lynda W. Powell, *Term Limits in the State Legislatures* (Ann Arbor, MI: University of Michigan Press, 2000); Gary Moncrief and Joel A. Thompson, "On the Outside Looking In: Lobbyists' Perceptions of the Effects of State Legislative Term Limits," *State Politics and Policy Quarterly* 1(2001):394-411.

relative to the governor, executive agencies, and sometimes even legislative staff, just as the reform's critics had feared. This power shift is especially noticeable in technical and ongoing areas of policy, like the budget, where a deep understanding of policy history and state government is vital.[74] Finally, while interest groups are not necessarily stronger or weaker in term-limited legislatures, lobbyists tend to work harder and their influence is more evenly distributed than in the absence of limits. Term-limited legislators' lack of experience may even allow more deception by lobbyists.[75]

Potential effects of term limits in Illinois

As noted, little research has been done on the effects of gubernatorial term limits, and no published research has ever been done on term limits for other statewide elected executives. However, given that only one Illinois governor[76] has ever served more than two four-year terms, it seems likely that making Illinois the 38th state to adopt such a legal limit would have only minor practical impact on policy and politics in the state. Such a limit might weaken governors politically in their second term, as they would be known at that time to be lame ducks and the jockeying for the next gubernatorial election could detract from their ability to push a policy agenda in the legislature. However, this effect would likely be small because Illinois' governors have strong institutional powers.[77] Furthermore, given these powers, a governor's ability to control the bureaucracy would be even less likely to be reduced by term limits.

The effect of term limiting Illinois' five other statewide elected officials might also be similarly small, but two considerations exist that are different than for the governor, one having to do with policy and the other with politics. On policy, consider that these offices (with the possible exception of the lieutenant governor) deal with the bureaucratic implementation of specialized technical policy to a much greater degree than does the governor's office. Thus, the benefit of extended service by these executives might be greater. This would especially be the case if new elected statewide officials routinely replaced managers with an eye toward political, rather than technical, knowledge, skills, and abilities. High turnover of middle-level managers in agencies with strong professional ethos can reduce morale and degrade performance. The potential political effect might be that forcing incumbents from these positions, which are often seen as stepping stones to higher office, could stir up the political system in the state, as these experienced and successful statewide officials turn elsewhere to quench their political ambition. Whether this is a good or bad thing is a matter of values and perspective.

On the other hand, it is clear that adopting state legislative term limits in Illinois would have a major impact on politics and policy. The most distinctive and important characteristic of

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[74] Thad Kousser and John Straayer, "Budgets and the Policy Process," in *Institutional Change in American Politics: The Case of Term Limits*, Karl T. Kurtz, Bruce Cain, and Richard G. Niemi, eds. (Ann Arbor, MI: University of Michigan Press, 2007).

[75] Christopher Z. Mooney, "Lobbyists and Interest Groups," in *Institutional Change in American Politics: The Case of Term Limits*, Karl T. Kurtz, Bruce Cain, and Richard G. Niemi, eds. (Ann Arbor, MI: University of Michigan Press, 2007).

[76] Governor James R. Thompson served four terms, one two-year term and three four-year terms (1977-1991).

[77] Illinois has one of the strongest governorships in the nation; see: Thad Beyle and Margaret Ferguson, "Governors and the Executive Branch," *Politics in the American States: A Comparative Analysis*, Virginia Gray and Russell L. Hanson, eds. 9th ed. (Washington, DC: CQ Press, 2008).

recent legislatures is the centralization of power in the hands of long-serving party caucus leaders. By ousting these and other senior legislators, term limits would almost certainly lead to a complete reconfiguration of the state's political power structure. At the same time, considerable policy and procedural knowledge would also be lost, leading to weaker standing committees, inefficiency in the legislative process, and a shift in power to those entities with such knowledge – legislative staff, executive officials, and possibly interest groups. Perhaps most importantly, given the institutional strength of the state's governorship, legislative term limits would likely shift radically more policymaking power to the executive branch, even if gubernatorial terms were also limited. Furthermore, considering the central place of legislative leaders in the state's political power structure today, major and unpredictable political changes would occur statewide.

Prospects for adopting term limits in Illinois

Due to the likelihood of only minor substantive effects, the small constituency in opposition, and the recent scandals involving its incumbents, gubernatorial term limits are likely to be the easiest such reform to pass in the current political climate. This would need to be done through a constitutional amendment, a process by which the legislature passes a proposal and then submits it for a vote of the people.[78] Thus, a sitting governor would have no official input into the process, further limiting the constituency for the opposition. The legislature, as an institution, has an interest in reducing the power of the governor, and voters, as we have seen throughout the country, support term limits of almost any kind. And the animosity that recent scandals have caused toward the governorship make a positive vote on such a referendum a good bet. Given the potential negative impact of term limits and the greater constituency for opposition (e.g., more people currently serving in these positions), term limiting other statewide officers likely will gain less support in the General Assembly and among voters, but there may be sufficient support for them. Placing separate proposals before the General Assembly and voters for gubernatorial term limits and term limits for other executives would likely increase the chances of at least the former passing.

On the other hand, Illinois will almost certainly not adopt state legislative term limits in the foreseeable future for one important reason – the state does not have a tradition of using the direct initiative. Without an initiative, term limits would be enacted through a statute or constitutional provision initiated in the General Assembly. It is almost certain that the General Assembly would not pass a bill limiting its own members' ability to seek re-election. Even assuming that legislative term limits is good public policy – and this is a debatable point as discussed above – lawmakers have almost never voted to throw themselves out of office anywhere else in the country, and there is no reason to believe that Illinois lawmakers would be any different.

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[78] A three-fifths majority of those elected in each legislative chamber and a general election vote of three-fifths of those voting on the question or a majority of those voting in the election are needed to amend the state constitution; see Illinois State Constitution, Article XIV, Section 2.

But there is one caveat to this prognosis for state legislative term limits in Illinois. Article XIV, Section 3 of the Illinois Constitution allows for direct initiatives in one specific instance: to amend Article IV, the legislative article, on "structural and procedural subjects." The only initiative ever to be qualified for the ballot and voted on under this provision was the 1980 Cutback Amendment, which successfully reduced the number of seats in the Illinois House from 177 to 118. For a term limits initiative to come to a vote, a petition with signatures totaling 8 percent of the number of votes cast in the last gubernatorial election[79] would first need to be gathered and certified. Moreover, the Illinois Supreme Court then would then need to rule that such an initiative met the criteria laid out in Article XIV, Section 3. In 1994, the Supreme Court rejected on these grounds exactly such an initiative, one designed to limit state legislators to eight years in office.[80] But the vote in that case was 4-to-3, so the current court might rule differently.

[79] Using the 2006 gubernatorial election's vote totals, a term limits petition would need 279,040 valid signatures.

[80] Chicago Bar Association v. Illinois State Board of Elections, 161 Ill. 2d 502, 641 N.E.2d 525 (1994).

Federal Prosecution: Can It Alone Change Political Culture in Illinois?
By Richard J. Winkel Jr.[81]

Illinois is certainly no stranger to political corruption. The state's history is filled with examples – Mayor Big Bill Thompson's ties to Al Capone and Bugsy Moran in Chicago, Secretary of State Paul Powell's shoeboxes full of cash, Governor Dan Walker's bank fraud and perjury convictions after leaving office, to name a few. Code names for criminal investigations involving government have become lexicon – Operation Greylord, Operation Silver Shovel, and Operation Haunted Hall, among them.

The federal government conducted these corruption investigations and others that have resulted in the convictions of more than 400 people since 1996. Indeed, the state has relied on federal prosecutors to police public corruption. Would it not benefit Illinois to enact new state laws that will result in lasting changes in the attitudes and expectations of our citizens toward officeholders in Illinois government?

The conviction of former Governor George Ryan and the impeachment and removal of former Governor Rod Blagojevich should provide all the proof necessary of the urgent need to change the political culture of Illinois. Our two most recent governors have ignited anger and disgust among our citizens and kindled their demand that state officeholders reform Illinois government.

Two recent mail fraud cases decided by the Seventh Circuit Court of Appeals, (which includes Illinois, Wisconsin, and Indiana) have affected the law in public corruption cases, and they have revealed the line that separates political conduct from a federal crime. We examine those cases here. By redefining what is or is not acceptable official conduct, these federal cases have affected the attitudes and expectations of our citizens toward officeholders in Illinois –we need to change the state's political culture.

Finally, this section points out that, while we have historically depended on federal prosecutors to take the lead in major corruption cases in Illinois, federal prosecutors alone cannot permanently change our political culture. Rather, state and local officials and our citizens must join in this effort. While our current governor and legislators seem to have responded to the call for reform, the question remains whether they have the political will to enact lasting, meaningful, and positive reforms that deliver on the promise of honest and efficient government.

The power of impeachment: The state legislature reacts

There are states in the Union where people see politics as a clear path to moral and social improvement, where government provides a civic mechanism for those who want to make things better. Minnesota is by reputation one of them, and Wisconsin another. Illinois has

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[81] This section is based in part on Chapter 5 of the manuscript of James D. Nowlan, Samuel K. Gove and Richard J. Winkel Jr., rewriting Gove and Nowlan's 1996 book entitled *Illinois Politics and Government*, to be published under a new title by University of Illinois Press in 2009.

yet to earn that reputation.

Some have even referred to New Jersey, Illinois, and Louisiana as an "unholy trinity of politically corrupt states."[82] From 1996 through 2005, federal prosecutors have convicted more than 1,000 public officials in these three states on corruption charges.

Table: "Unholy Trinity" corruption convictions

U.S. Attorney's Office	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Totals
Illinois, Northern	71	55	55	53	49	24	19	54	22	51	453
Louisiana, Eastern	30	24	17	19	18	20	19	17	29	26	219
New Jersey	41	21	58	43	28	28	28	41	44	39	371
Totals	**142**	**100**	**130**	**115**	**95**	**72**	**66**	**112**	**95**	**116**	**1,043**

(Source: Public Integrity Section, Criminal Division, United States Department of Justice, Federal Public Corruption Convictions by District over the Past Decade) [83]

While some federal prosecutors are vigorously waging battle to restore the rule of law in Illinois government by convicting certain high profile "bad apples," such blunt-force trauma to the political system cannot build good and ethical government in the long term. Citizens, as well as state and local officials, must work to achieve lasting reform.

While Illinois citizens have tolerated a great deal of corruption at every level of state and local government, they experienced a national first when federal prosecutors indicted former Governor George Ryan's campaign committee on racketeering charges in 2002 and froze his campaign assets. Attorneys for the committee argued that in Illinois the practices complained of were "politics as usual" and, therefore, legally acceptable. In March 2003, a jury rejected that defense and three years later, in April 2006, a federal jury convicted Ryan on charges that included racketeering, mail fraud, filing false tax returns, and lying to investigators. He is serving a 6½-year sentence in federal prison.

In November 2008, after being elected as the 44th president of the United States, U.S. Senator Barack Obama of Illinois resigned that office. The federal constitution and Illinois state statutes gave sole discretion for filling that vacancy to Governor Rod Blagojevich.

Blagojevich was arrested three weeks later by FBI agents acting on a complaint that accused the governor of conspiring to sell the Senate appointment to the highest bidder. The governor and his chief of staff also were accused of trying to get a newspaper editor fired and shaking down a children's hospital for a campaign contribution.[84] The arrest came weeks before

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[82] James L. Merriner, "Illinois really is more corrupt," *Chicago Sun-Times*, March 11, 2007.

[83] Public Integrity Section, Criminal Division, United States Department of Justice, *Report to Congress on the Activities of the Public Integrity Section for 2005*. In the aftermath of September 11, 2001, the number of convictions dropped during 2001 and 2002 and picked up again by 2003. Other districts with high convictions numbers include: California, Central (429); District of Columbia (402); Florida, Southern (576); New York, Southern (374); Ohio, Northern (356); Texas, Southern (235); and Virginia, Eastern (178).

[84] Complaint filed December 9, 2008 in United States District Court, Northern District of Illinois, Eastern Division. (http://www.usdoj.gov/usao/iln/pr/chicago/2008/pr1209_01a.pdf)

new ethics legislation that specifically banned pay-to-play politics became law on January 1, 2009.[85]

Within a week of the arrest, the state House of Representatives began impeachment proceedings against Governor Blagojevich. On January 8, 2009, a special investigative committee of the state House of Representatives approved an article of impeachment, convinced that there was in fact a link between campaign contributions and Blagojevich's official actions and that he had abused the power of his office.

The next day, the House of Representatives impeached the governor for abuse of power. Twenty days later, the senate convicted Governor Blagojevich, immediately removed him from office, and banned him from ever seeking office again. He still faced federal prosecution, and if convicted, a lengthy prison term.

In this context, we examine how corruption is battled in Illinois.

Federal prosecution: Waging battle to restore the rule of law

The Illinois attorney general lacks statutory authority to convene a grand jury to investigate public corruption cases. However, the attorney general may collaborate with federal prosecutors and state's attorneys because they have the power to convene a grand jury. Moreover, the attorney general can play a role whenever a state's attorney requests assistance or has a conflict of interest.

Nevertheless, federal prosecutors generally take the lead in larger corruption cases because they have greater access to investigative resources and tools, including agents of the Federal Bureau of Investigation and the Internal Revenue Service. Moreover, the federal mail fraud statutes[86] give prosecutors considerable discretion in going after public corruption and reviewing courts have given federal prosecutors wide latitude in how they can exercise their discretion. Thus, while critics may attack the statute for being unconstitutionally vague, that it violates due process, or that prosecutors abuse their discretion, these arguments have not "persuaded courts that the statute is invalid, nor have courts been very willing to dismiss prosecutions for an abuse of discretion."[87]

One recent federal trial illustrates very well how prosecutors used the legal theory that citizens are entitled to fair and honest service from their elected officials to apply the federal mail fraud statute and win a conviction that was upheld on appeal. We examine that case below.

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[85] Editorial, "Ethics: An Illinois Story," *Chicago Tribune, December 21, 2008.*

[86] 18 U.S.C. § 1341 (2000), and 18 U.S.C. 1346 ("For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services.").

[87] Matthew N. Brown, *Prosecutorial Discretion and Federal Mail Fraud Prosecutions for Honest Services Fraud*, 21 Geo. J. Legal Ethics 667, 668 (Summer 2008), citing Gregory Howard Williams, *Good Government by Prosecutorial Decree: The Use and Abuse of Mail Fraud*, 32 Ariz. L. Rev. 137, 137 n. 4 (1990).

United States v. Sorich[88]

In 2008, the Seventh Circuit Court of Appeals decided the public corruption case of *United States v. Sorich* and it is the leading case on the honest services mail fraud and traditional mail fraud statutes. The case involved the "Shakman decrees," which were entered by federal courts in the 1970s and 1980s to prohibit the use of politics in hiring by the City of Chicago.

Federal prosecutors charged that the four defendants in *Sorich* were key players in the "...mayor's Office of Intergovernmental Affairs, that doled out thousands of city civil service jobs based on political patronage and nepotism."[89] A jury found three defendants guilty of mail fraud, and the fourth of making materially false statements to federal investigators. On appeal, the *Sorich* defendants argued that their behavior was not criminal and challenged the honest services mail fraud statute as being unconstitutionally vague. In addition, the defendants argued that they had not deprived the City of Chicago or its citizens of any money or property, i.e., the jobs they gave away were not property.

The Seventh Circuit Court of Appeals rejected all of their arguments. In addition to affirming their convictions for honest services mail fraud,[90] the *Sorich* Court held that the jobs the defendants had given away were "property" under the traditional mail fraud statute;[91] therefore, the court affirmed the convictions under that legal theory as well.[92]

The ABCs of private gain: Separating politics from crime

Under the honest services fraud statute, "the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services." The prosecution's theory in *Sorich* was that the defendants had committed honest services mail fraud because they had misused their offices for private gain. This was the line defendants had crossed that turned their political conduct into a criminal scheme to defraud.

The chief argument of the *Sorich* defendants was that there was no "private gain," because they received no money or property themselves. The *Sorich* Court examined previous decisions in which it had used the phrase "personal gain" in honest services mail fraud cases: "The semantic difference between 'private' and 'personal' gain may be insignificant, but to the extent that 'personal' connotes gain only by the defendant, it is misleading. By 'private gain' we simply mean illegitimate gain, which usually will go to the defendant, *but need not*" (emphasis added).[93]

To illustrate what the court meant by the phrase "private gain," the court posed the following scenarios:

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[88] 523 F.3d 702 (7th Cir. 2008).

[89] *United States v. Sorich*, 523 F.3d 702, 705 (7th Cir. 2008).

[90] 18 U.S.C. 1346 ("For the purposes of this chapter, the term 'scheme or artifice to defraud' includes a scheme or artifice to deprive another of the intangible right of honest services.").

[91] 18 U.S.C. § 1341 (2000).

[92] *United States v. Sorich*, 523 F.3d 702, 705-713 (7th Cir. 2008).

[93] *United States v. Sorich*, 523 F.3d 702, 708-709 (7th Cir. 2008) (emphasis added).

A. "[A] mayor surreptitiously channels city contracts to his cronies in the business community; they get a windfall whereas he has merely helped his friends and takes no money."
B. "[A]n attorney bribes a court in order to obtain favorable results for his clients in their lawsuits."
C. "[A] union boss sells union property to a senator even though the senator did not offer the highest price, and in exchange receives the senator's vote on a matter that concerns the union."

The *Sorich* Court noted that "the public has been defrauded of the honest services of its public servants: the mayor, the court, and the senator. Moreover, in all three scenarios the defendant – the mayor, the attorney, and the union boss – was not the one who stood to gain financially." Rather in all three scenarios, even though none of them gained financially, each defendant got *something*:

A. "[T]he mayor received the gratitude of his friends."
B. "[T]he attorney could boast to future clients of a high success rate, which is good for business."
C. "[T]he union boss curried valuable favor with the senator."[94]

The court then revealed that all three scenarios were actual mail fraud cases that resulted in convictions:

A. *United States v. Fernandez;*[95] *United States v. Silvano.*[96]
B. *Ginsburg v. United States.*[97]
C. *Lombardo v. United States.*[98]

The *Sorich* Court concluded the evidence showed the defendants were guilty of mail fraud, and that the statute was constitutional "as applied to the facts of this case."[99] Nevertheless, the defendants argued that the court should reverse their convictions by relying on *United States v. Thompson.*[100]

In *Thompson,* (which the Seventh Circuit had decided a year before its decision in *Sorich*), Georgia Thompson was a state procurement supervisor in Wisconsin. She selected the bidder preferred by her supervisor for a state travel contract, even though others in the evaluation process chose a lower bidder. Thompson then, pursuant to state law, invoked a second bidding process on a "best-and-final basis." As a result, two of the bidders had the same rating and, as the supervisor, Thompson broke the tie and chose her superior's favorite company for the contract. Three months later, her superior increased her annual salary by $1,000.

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[94] *United States v. Sorich,* 523 F.3d 702, 709 (7th Cir. 2008) (emphasis in original).
[95] 282 F.3d 500, 503-05 (7th Cir. 2002).
[96] 812 F.2d 754, 759-60 (1st Cir. 1987).
[97] 909 F.2d 982 (7th Cir. 1990).
[98] 865 F.2d 155, 159-60 (7th Cir. 1989).
[99] *United States v. Sorich,* 523 F.3d 702, 711-712 (7th Cir. 2008).
[100] *United States v. Thompson,* 484 F.3d 877 (7th Cir. 2007).

The federal prosecutor charged Thompson with federal mail fraud and bribery, alleging she awarded the contract for her personal benefit and political motivations. The jury convicted her and the federal district court sentenced her to begin immediately serving 18 months in prison. On appeal, the Seventh Circuit reversed and, on the very same day it heard oral arguments, entered an order that immediately released Thompson from prison.

The *Sorich* Court noted that, while Thompson got "a small raise through normal channels," it was "not the sort of 'private gain' that was necessary to sustain a conviction for mail fraud."[101] What further distinguished *Thompson* from the *Sorich* case was "the absence of a scheme to defraud."[102]

Conversely, the *Sorich* court concluded that the defendants in that case had indeed engaged in "a massive scheme to defraud, complete with specific intent and material misrepresentations. The defendants created an illegitimate, shadow hiring scheme based on patronage and cronyism by filling out sham interview forms, falsely certifying that politics had not entered into their hiring, and covering up their malfeasance. These are the hallmarks of a fraud. ...*Thompson* is miles away."[103]

Sources of an officeholder's "fiduciary duty" to the public

The *Sorich* defendants also attacked the indictment and jury instructions. They argued that the Shakman decrees could not be a source that created "a fiduciary duty between the defendants and the citizenry."[104] Federal courts had entered one of the consent decrees in 1972 and another in 1983; together "the decrees forbid the city from basing its hiring decisions for civil servants on political factors."[105]

The *Sorich* Court refused to overturn the verdict, holding instead that sources other than state law could "supply a fiduciary duty between public official and public or between employee and employer in honest services cases. ...Indeed ...the case law of the vast majority of circuits shows that other sources can create a fiduciary obligation. *It may well be that merely by virtue of being public officials the defendants inherently owed the public a fiduciary duty to discharge their offices in the public's best interest*" (emphasis added).[106]

In summary, the *Sorich* majority opinion affirmed all the convictions and sentences and, as tempered by the *Thompson* case, is the law of the Seventh Circuit on honest services mail fraud and traditional mail fraud. Federal prosecutors have continued to exercise their discretion aggressively to prosecute criminal fraud cases.[107] *See United States v. Vrdolyak,*[108] *United States v.*

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[101] *United States v. Sorich*, 523 F.3d 702, 710 (7th Cir. 2008), citing *United States v. Thompson*, 484 F.3d 877, 884 (7th Cir. 2007).
[102] *United States v. Sorich*, 523 F.3d 702, 710 (7th Cir. 2008).
[103] *United States v. Sorich*, 523 F.3d 702, 711 (7th Cir. 2008).
[104] *United States v. Sorich*, 523 F.3d 702, 711-712 (7th Cir. 2008).
[105] *United States v. Sorich*, 523 F.3d 702, 712 (7th Cir. 2008).
[106] *United States v. Sorich*, 523 F.3d 702, 712 (7th Cir. 2008) (citations omitted; emphasis added). The *Sorich* Court rejected defendants' argument to adopt "the minority "state law limiting principle" shared by the Third and Fifth Circuits..." Id.
[107] *See* website of the United States Attorney's Office, Northern District of Illinois, Eastern Division. (http://www.usdoj.gov/usao/iln/)
[108] 536 F. Supp. 2d 899 (E.D. Ill., 2008).

Rezko,[109] and the pending criminal complaint in *United States v. Rod Blagojevich.*[110]

State officials call for reform in Illinois

In Illinois, there may be a ray of hope for positive change in state government, and the legislature in particular, partly because of the change of leadership in the 96th General Assembly (2009-1010). Both new Senate leaders have expressed their desire to be bipartisan and make the process more inclusive for regular legislators, avoid power struggles, personality clashes, and the resulting government dysfunction.[111]

Another sign of positive change is new Governor Pat Quinn's appointment in January 2009 of a 12-member Illinois Reform Commission chaired by a former federal prosecutor.[112] In his budget address to a joint session of the General Assembly on March 18, 2009, Governor Quinn called for ethics reform:

> "As we prepare for a better future, we must also make tough choices about cleaning up government right now. Ethics reform is of paramount importance to me and the people of Illinois. In the wake of past political scandals, the people are demanding honest and open government. They are going to get it. My first act was signing an executive order establishing the Illinois Reform Commission. This independent advisory board is investigating government practices from top to bottom."

Meanwhile, in early 2009, legislative leadership formed a bi-partisan, bi-cameral Joint Committee on Government Reform "to work with Governor Quinn, reform advocates, and the citizens of Illinois to restore integrity to State government." The Senate President and House Speaker were the co-chairs of the committee.[113]

Over the years, the land of Abraham Lincoln and Stephen Douglas has had ethical and courageous leaders, including Paul Simon, Paul Douglas, Everett Dirksen, Bob Michel, Abner Mikva, Adlai Stephenson, Henry Horner, John Peter Altgeld, Richard Ogilvie, and many others.

Today's Illinois leaders must have the vision and courage to establish a new and sustainable way of doing business that delivers honest and efficient government. That vision should include:

- Codes of conduct for state and local officials that adequately define the fiduciary duty between officials and the citizenry to provide honest services and accurately reflect the public's expectations of officeholders, and the line that separates political and criminal conduct.
- Non-computer based means of delivering ethics education to state and local officials that are innovative and effective, similar to the ways that education and

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[109] 2008 U.S. Dist. LEXIS 91576 (N.D. Ill, November 12, 2008).
[110] Complaint filed December 9, 2008 in United States District Court, Northern District of Illinois, Eastern Division. (http://www.usdoj.gov/usao/iln/pr/chicago/2008/pr1209_01a.pdf)
[111] See Rich Miller, "Cullerton ushers in a new era for Illinois Senate," *Southtown Star,* January 20, 2009.
[112] Executive Order No. 1. (http://reformillinoisnow.org/press%20releases/Executive%20Order.pdf)
[113] Senate Joint Resolution 1 (96th General Assembly).

deterrence were used in the culture change that resulted from the "war" on drunk driving.

- A process in the Illinois criminal justice system to collect and share sentencing data, including public corruption cases, among the courts and law enforcement authorities.

Illinois has historically relied on the federal government to prosecute public corruption. The question naturally arises to what extent are the Illinois attorney general and state's attorneys involved in public corruption cases, and should we expect them to do more? In attempting to gather data to answer this question, it became apparent that no process exists in the Illinois criminal justice system to collect and share sentencing data, including public corruption cases, among the courts and law enforcement authorities.

The Criminal Law Edit, Alignment and Reform Initiative, or "CLEAR Commission,"[114] is a quasi-governmental commission that reviews and proposes reform of the Illinois Criminal Code and Code of Corrections. It has proposed legislation to create a Sentencing Policy Advisory Council (SPAC), which would draw on criminal justice information collected by other agencies. The council would use that information to explore sentencing issues and how these practices affect the criminal justice system as a whole. The object is to enable Illinois policymakers to better understand the information about Illinois' sentencing system – including (1) who goes to prison; (2) for what crimes; (3) for how long; (4) what the underlying costs are; and (5) how these issues impact public safety.

This sentencing data in Illinois is needed to provide policy makers with information about how well state law enforcement officials are working to rid Illinois of public corruption.

[114] For details, see the CLEAR Commission website: http://www.clearinitiative.org/index.php.

Epilogue: Ethics Reform, A Perspective[115]
By Jim Edgar
Illinois Governor (1991-1999)

(Editor's Note: In this section, former Governor Jim Edgar, a distinguished fellow at the University of Illinois Institute of Government and Public Affairs, discusses the primary election date and urges that campaign limits legislation might not be enough to change the culture of corruption in Illinois. Rather candidates, political parties, and the public have crucial roles to play if we are going to change our attitudes and expectations regarding Illinois officeholders.)

There will be much talk about passing a wide range of ethics and reform legislation. My initial concern is that there will be much talk about ethics and not nearly enough talk about the budget and personnel issues that more directly affect the well-being of our state and that must be dealt with immediately. There is no doubt, however, that this state has suffered a very bad image when it comes to ethics. The natural tendency of politicians and interest groups will be to encourage the passage of laws that are well intended, but may have little practical effect. In fact, over the past decade we have passed numerous laws concerning ethics and campaign finance reform. A fair analysis would show that these laws have not had a major impact. In fact, it can be argued that things were better off 10 years ago than they have been the last 10 years, despite the whole host of ethics bills passed during that time. While there may be a need for some reform legislation, people should not believe that we will just pass some well-meaning legislation and as a result, our ethical problems in this state will go away.

Limits don't work

I do have some suggestions if our governmental leaders wish to pass some legislation. First, I am not a supporter of campaign contribution limits. The legislature passed some legislation last summer and I read newspaper reports of the measures that were passed. Now, I admit that I can be naïve at times, but I even figured out five loopholes right away. So again, limits have never seemed to me to be a solution. The federal government has limits, and I think that if you talk to anyone in Congress you will find that the main topic of conversation is about raising money for the next election. I'm not sure that sounds like reform. However, if you want to talk about campaign finance reform, consider prohibiting one campaign committee from transferring funds to another campaign committee. I believe timely disclosure is a good tool, but there is no true disclosure if all you see on the campaign report is one committee transferring funds to another committee. This type of donation does not really disclose the true source of the donation. While there will be a lot of resistance to this type of contribution prohibition, I think that such a prohibition would have an impact for the good and lead to more complete disclosure.

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[115] Governor Edgar based this on his presentation at IGPA on February 11, 2009. Governor Edgar discussed Illinois' future as a part of the Institute of Government and Public Affair's Edgar Lecture Series. *See* http://www.news-gazette.com/video/special_reports/edgar_lecture_seriesthe_states_future/.

Primary date

I like Governor Quinn's suggestion about having a shorter primary season. It shortens the entire electoral cycle, and that will save a little money and a hopefully a little wear and tear on candidates, their families and the voters. While it has been argued that a shorter primary season will help incumbents, I would argue that if that were the case, we would already have a shorter primary season. In fact, the result of a shorter primary season is just the opposite. The reason we have an early primary in Illinois is to help the incumbents. Just think, you have to file for office before Christmas. Most people, who are not incumbents, are not thinking about politics at Christmas.

Except for incumbents and political junkies, most people do not pay a lot of attention to politics even in the month of March. In March, people are worried about things like basketball. Priorities are a lot different for the general public than for incumbent politicians and, as a result, you generally get a low voter turnout and a low voter turnout almost always helps the incumbent. I think a later primary is a very important measure that could be passed because it shortens the process and people in public office can at least have a few months to govern before beginning the re-election campaign.

Creating political accountability: Candidates, parties, and the public

There are other factors that are critical if we are going to turn around the culture of our politics in Illinois and none of these factors can be legislated. First, anyone who is contemplating entering public life has to be extremely careful in what they do and what they say. I do not think most people who have gotten into trouble in politics started out saying, "I'm going to do something illegal." Instead, it becomes a gradual process. You begin to believe your own press releases. You begin to think you are infallible. What Governor Quinn needs and what anyone needs who serves in public office are people around you who have the courage to say in a very nice way: *"Governor, you're nuts. You can't do that."*

Fortunately, I had people, who in a very nice way would tell me that on a regular basis. I always had that at home with Brenda, but I had that in the office as well. If you are going to go into public office in the state of Illinois after what we have just been through you have to attempt to be purer than the driven snow. That does not mean you have to be perfect, but you need to make every effort. If you think something is going to be perceived in the wrong way, even if that is not the truth, do not do it. It is much easier not to do it, than try and explain why you did it or to say 'I am sorry.' If you make a mistake, you must apologize, but it is better to not take the action in the first place.

Second, a great deal of responsibility lies with the political parties. They have a responsibility for whom they put forth as candidates. The Republican Party paid a huge price in this state for supporting George Ryan. The Democrats should expect to pay a price for Rod Blagojevich. Rod Blagojevich was re-elected and everyone in this state who followed politics knew there were problems. The media, to their credit (and I am not one who usually says the media does a great job of covering campaigns), did a very good job of putting forward the

ethical shortcomings of Rod Blagojevich. But the Democrats re-nominated him, and many endorsed him who are now trying to distance themselves from him.

I believe parties have a responsibility even if the incumbent is of that party. If that person has not lived up to the expectations that we should have for a public official, they should not support him. In the last election for governor, Rod Blagojevich had a primary opponent, but you did not see a large group of party regulars standing in line to endorse the opponent.

Finally, we as voters also have a responsibility and unfortunately, we let ourselves down. The public should have paid attention to what the media was reporting. Rod Blagojevich did nothing different in his second term than he did in his first term. Most voters are not going to talk to many people serving in state government, but given the television and newspaper reports of Governor Blagojevich's administration, it was very obvious that there were serious problems. Unfortunately, the public as a whole did not pay close enough attention. People cannot expect that by merely passing ethics laws that everything is going to work. It takes an informed electorate. It takes a responsible political process. So everyone fell down in this one. The only way to prevent this from happening in the future is for the public officials, the parties, and the public to pay a lot more attention and hold everyone serving in public office more accountable.

APPENDIX

Resources

Brennan Center for Justice, New York University Law School
http://www.brennancenter.org/
Campaign Finance Institute
Key contact: Michael Malbin
Website: http://www.cfinst.org/
Center for Competitive Politics
Key contact: Bradley Smith
Website: http://www.campaignfreedom.org/
Center for Responsive Politics
http://www.opensecrets.org/
Council of State Government
http://www.csg.org/
Illinois Campaign for Political Reform
Key contact: Cindi Canary
Website: http://www.ilcampaign.org/
Illinois State Board of Elections
http://www.elections.state.il.us/
Midwest Democracy Network
http://www.midwestdemocracynetwork.org/
National Institute on Money in State Politics
http://www.followthemoney.org/
National Conference of State Legislatures
http://www.ncsl.org/
Public Campaign
Key contact: Nick Nyhart
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Table 1. Survey of Legislative Redistricting Processes Used in the United States, 2001–02

Type of Process	States
Legislative Process	
Congress (38)	AL, AK, AR, CA, CO, DE, FL, GA, IL, KS, KY, LA, MA, MI, MN, MS, MO, NE, NV, NH, NM, NY, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WV, WI, WY
State Legislature (26)	AL, CA, DE, GA, IN, KY, LA, MA, MI, MN, NE, NV, NH, NM, NY, ND, RI, SC, SD, TN, UT, VT, VA, WV, WI, WY
Legislative Process/Commission	
Congress (2)	CT[a], IN
State Legislature (7)	CT[a], IL, MS[b], OH, OK, OR[c], TX
Commission	
Congress (7)	AZ, HI, ID, ME[d], MT, NJ, WA
State Legislature (12)	AK, AZ, AR, CO, HI, ID, ME[d], MO[e], MT, NJ, PA, WA
Other	
Congressional (3)	IA[f], MD[g], NC[b]
State Legislative (5)	FL[h], IA[f], KS[h], MD[g], NC[b]
No Congressional Redistricting[i] *(7)*	AK, DE, MT, ND, SD, VT, WY

Notes: Full citations and hyperlinks to the relevant state constitutions and statutes are available at http://elections.gmu.edu/redistricting.htm.

a-In Connecticut, the legislature must adopt a districting plan with a two-thirds vote. If this vote cannot be achieved, a commission convenes to propose districts to the legislature that can be adopted with only a majority vote. If the commission fails to produce a plan that wins a majority vote, the state Supreme Court draws the districts.

b-In Mississippi and North Carolina, the governor does not have a veto over the redistricting plan.

c-In Oregon, the commission is composed solely of the Secretary of State. The state Supreme Court must approve any redistricting plan.

d-In Maine, a commission proposes a districting plan to the legislature, where it must be approved by a two-thirds vote, followed by the governor's approval. If this fails, the state Supreme Court draws the districts.

e-Missouri uses two separate commissions for its Senate and House state legislative redistricting. The House commission has 20 members and the Senate has 10, with equal numbers being selected by each party. Plans are adopted by a seven-tenths vote of the commission. If a commission fails to adopt a plan, the state Supreme Court forms a commission to draw a plan of its own.

f-In Iowa, nonpartisan staff in the Legislative Service Bureau propose districting plans to the legislature. The legislature is offered three plans in succession, any of which may be adopted by a majority vote of the legislature, thus ending the process. If each of these plans fails to receive majority support, the regular legislative process is used.

g-In Maryland, the governor proposes a districting plan to the legislature, who can approve it with a majority vote. The legislature may adopt a different plan with a two-thirds vote. If the legislature fails to act, the governor's plan becomes law.

h-In Florida and Kansas, the legislature adopts a plan that it then proposes to the state Supreme Court. The court may reject the legislature's map and draw its own plan.

i-For the seven states with no congressional redistricting, the process that would be used if the state had more than one district is listed in the table.

Table 2. Redistricting Commissions in the United States, 2001–02

State	Process (Number of Members/Decision Rule)	Year Adopted: Congress	Year Adopted: State Legislature
Alaska	Odd/Majority vote	—	1998
Arizona	Even/Majority selects tiebreaker	2000	2000
Arkansas	Odd/Majority vote	—	1936
Colorado	Odd/Majority vote	—	1974
Connecticut	Even/Majority selects tiebreaker	1980	1976
Hawaii	Even/Majority selects tiebreaker	1968	1968
Idaho	Even/Supermajority vote/Supreme Court review	1994	1994
Illinois	Even/Random tiebreaker	—	1970
Indiana	Odd/Majority vote	1969	—
Maine	Odd/Unanimous vote	1964	1964
Mississippi	Odd/Majority vote	—	1977
Missouri	Even/Supermajority vote	—	1945 (Senate) 1966 (House)
Montana	Even/Majority or Supreme Court selects tiebreaker	1972	1972
New Jersey	Even/ Majority selects tiebreaker (Congress), Supreme Court selects tiebreaker (state legislature)	1966	1966
Ohio	Odd/Majority vote	—	1851
Oklahoma	Odd/Majority vote	—	1964
Oregon	Odd (1 person, Secretary of State)	—	1952
Pennsylvania	Even/Supreme Court selects tiebreaker	—	1968
Texas	Odd/Majority vote	—	1948
Washington	Even/Supermajority vote	1983	1983

Notes: — denotes that the regular legislative process is used. Full citations and hyperlinks to the relevant state constitutions and statutes are available at http://elections.gmu.edu/redistricting.htm.

(Source for Tables 1 and 2: Michael P. McDonald. "A Comparative Analysis of Redistricting Institutions in the United States, 2001-02," *State Politics and Policy Quarterly*, Vol. 4, No. 4 (Winter 2004): pp. 371-395.)

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Tim Storey, National Conference of State Legislatures, Tim.Storey@ncsl.org.

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ncsl.org/programs/legismgt/redistrict.com. alter.htm. This is the link to a site on redistricting of the National Conference of State Legislatures (NCSL). NCSL also has a draft of redistricting laws in the 50 states available. Contact Tim Storey at NCSL for more information. See his email address above.

Direct Democracy Mechanisms: Recall, Initiative, and Referendum

Table 3: States with Direct Democracy Mechanisms: This table shows that there are a variety of direct democracy mechanisms, and that the states have a variety of mixes of them.

State	Legislative Referendum-Statues[1]	Popular Referendum	Direct Initiative-Statutes	Direct Initiative-Constitution	Indirect Initiative-Statutes	Indirect Initiative-Constitution	Recall-State Officials	Recall-Local Officials
AL								X
AK		X			X		X	X
AZ	X	X	X	X			X	X
AR	X	X	X	X				X
CA	X	X	X	X			X	X
CO		X	X	X			X	X
CT								
DE	X							
FL				X				X
GA							X	X
HI								
ID	X	X	X				X	X
IL	X	[2]		X				
IN								
IA								
KS							X	X
KY	X	X						
LA							X	X
ME	X	X			X			
MD	X	X						
MA	X	X				X		
MI	X	X		X			X	X
MN							X	X
MS						X		
MO	X	X	X	X				X
MT	X	X	X	X			X	X
NE	X	X	X	X				X
NV	X	X		X	X		X	X
NH								X
NJ							X	X
NM	X	X						X
NY								
NC								
ND	X	X	X	X			X	X
OH	X	X		X	X			X
OK	X	X	X	X				
OR	X	X	X	X			X	X
PA								
RI							X	
SC								
SD	X	X	X	X				X
TN								X
TX								
UT	X	X	X		X			
VT								
VA								
WA	X	X	X		X		X	X
WV								X
WI							X	X
WY		X			X			X
Total	23	24	14	16	7	2	18	29

[1]-Every state except Delaware requires a referendum for constitutional amendment.

[2]-Illinois' back door referendum for certain local ordinances is similar to the popular referendum.

Table 4: Direct Democracy Mechanisms

Mechanism	How initiated	Effect of positive vote	In Illinois
Legislative referendum	Measure referred to voters by legislature	Legislation or constitutional provision is enacted	Required on: • state constitutional amendments, and • certain institutional changes for local government See: Illinois Constitution Article XIV (Constitutional Revision), section 2; Article VII (Local Government), sections 2-7 and 11; 10 ILCS 5/28[1]
Advisory referendum	Measure referred to voters by legislature	No mandatory effect	Allowed See: 10 ILCS 5/28
Popular referendum	Citizen petition	Legislation is repealed	The "back door referendum" for some bond issues See: 10 ILCS 5/28-2(f)
Direct initiative	Citizen petition	Legislation or constitutional provision is enacted	Allowed only for amendments to the state constitution's Legislative Article (Article IV), regarding "structural and procedural subjects" of the legislature See: Illinois Constitution Article XIV, section 3
Indirect initiative	Citizen petition	Measure goes to the legislature; if not passed there, it goes to a citizen vote	Not allowed
Recall	Citizen petition	Official is expelled from office	Not allowed

[1]An Illinois institution that is related to both the popular and the legislative referendum is the "back door referendum." As defined in 10 ILCS 5/28-2(f), a back door referendum "is the submission of a public question to the voters of a political subdivision, initiated by a petition of voters or residents of such political subdivision, to determine whether an action by the governing body of such subdivision shall be adopted or rejected."

Resources

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Term Limits for Governors and State Legislators

Table 5: U.S. Governors' Terms and Term Limits. This table shows that gubernatorial term limits are common in the US. Most states (32) limit their governors to two four-term terms, while 13 states have no limits on the number of terms a person may serve as governor.

State	Term Length (Years)	No Limits	Lifetime Limit of Two Terms	Lifetime Limit of Three Terms	Two Consecutive Terms[a]	One Consecutive Term[a]
AL	4		X			
AK	4		X			
AZ	4		X			
AR	4		X			
CA	4		X			
CO	4		X			
CT	4	X				
DE	4		X			
FL	4		X			
GA	4		X			
HI	4		X			
ID	4	X				
IL	4	X				
IN	4				X	
IA	4	X				
KS	4		X			
KY	4		X			
LA	4		X			
ME	4		X			
MD	4		X			
MA	4	X				
MI	4		X			
MN	4	X				
MS	4		X			
MO	4		X			
MT	4				X[b]	
NE	4				X	
NV	4		X			
NH	2	X				
NJ	4		X			
NM	4		X			
NY	4	X				
NC	4		X			
ND	4	X				
OH	4		X			
OK	4		X			
OR	4		X			
PA	4		X			
RI	4		X			
SC	4		X			
SD	4		X			
TN	4		X			
TX	4	X				
UT	4			X		
VT	2	X				
VA	4					X
WA	4	X				
WV	4		X			
WI	4	X				
WY	4		X			
Total		13	32	1	3	1

Source: National Governors Association website, "Governors Roster 2009: Governors' Political Affiliations & Terms of Office" (http://www.nga.org/Files/pdf/GOVLIST.PDF)

Notes:

[a]-Governors in these states may run for re-election after sitting out at least one term after serving the consecutive-terms maximum.

[b]-Montana's governors are limited to serving eight years out of every 16 years.

Table 6. U.S. State Legislative Term Limits. This table lays out the details on state legislative terms legislation in the 21 states that have adopted them, including when they were adopted, when they went into effect, the number of terms allowed, and when and how they were repealed (in those states that have done so).

State	Year Enacted	%Vote Approval[a]	Year of Repeal	Repealed by	House		Senate		Lifetime or Consecutive Term Ban?	Constitution (C) or Statute (S)[b]
					Limit (years)	Year of First Impact	Limit (years)	Year of First Impact		
CA	1990	52.2	NA	NA	6	1996	8	1996	Life.	C
CO	1990	71.0	NA	NA	8	1998	8	1998	Con.	C
OK	1990	67.3	NA	NA	12	2004	12	2004	Life.	C
AZ	1992	74.2	NA	NA	8	2000	8	2000	Con.	C
AR	1992	59.9	NA	NA	6	1998	8	2000	Life.	C
FL	1992	76.8	NA	NA	8	2000	8	2000	Con.	C
MI	1992	58.8	NA	NA	6	1998	8	2002	Life.	C
MO	1992	75.0	NA	NA	8	2002	8	2002	Life.	C
MT	1992	67.0	NA	NA	8	2000	8	2000	Con.	C
OH	1992	68.4	NA	NA	8	2000	8	2000	Con.	C
OR	1992	69.5	2002	State supreme court	NA	NA	NA	NA	NA	NA (C)
SD	1992	63.5	NA	NA	8	2000	8	2000	Con.	C
WA	1992	52.0	1998	State supreme court	NA	NA	NA	NA	NA	NA (S)
WY	1992	77.2	2004	State supreme court	NA	NA	NA	NA	NA	NA (S)
ME	1993	67.6	NA	NA	8	1996	8	1996	Con.	S
ID	1994	59.0	2002	State legislature	NA	NA	NA	NA	NA	NA (S)
MA	1994	52.0	1997	State supreme court	NA	NA	NA	NA	NA	NA (S)
UT	1994	[c]	2003	State legislature	NA	NA	NA	NA	NA	NA (S)
LA	1995	76.0[d]	NA	NA	12	2007	12	2007	Con.	C
NV	1996	54.3	NA	NA	12	2010	12	2010	Life.	C
NE	2000	56.0	NA	NA	NA	NA	8	2006	Con.	C

Notes:

[a] In 1999, Mississippi voters rejected state legislative term limits by a vote of 45 percent to 55 percent; in 1996, North Dakota voters rejected state legislative term limits by a vote of 47 percent to 53 percent.

[b] Note that of the six overturned term limits provisions, five were statutory and only one was constitutional.

[c] Utah's state legislature adopted its term limits in 1994 (and then repealed them in 2003).

[d] Louisiana's vote was on a referendum, which was referred to the voters by its passage through the regular legislative process.

Resources

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OYEZ.com website on *U.S. Term Limits v Thornton (1995)* (http://www.oyez.org/cases/1990-1999/1994/1994_93_1456/): This is the key U.S. Supreme Court decision that both denied states the ability to limit the terms of federal officers (like members of Congress) and gave them the ability to limit the terms of their own state or local officers. OYEZ.com provides the details of the decision and analysis of it.

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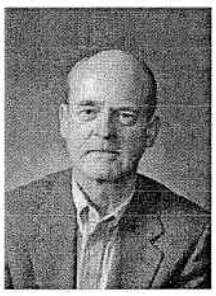

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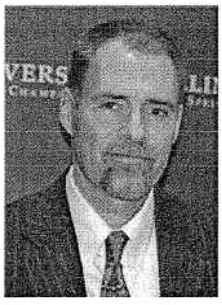

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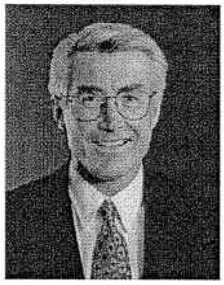

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