

State's Attorney Tom Haine Set To Argue Oral Appeal Against Subcircuit Law

June 6 2022 4:42 PM



EDWARDSVILLE - Madison County State's Attorney Tom Haine is set to argue against the new subcircuit law in the 4th Appellate District on June 22, 2022, on behalf of Madison County. Joining the County as Plaintiffs against the new law are Judges Chris Threlkeld and Amy Sholar (Represented by Attorney James Craney), Senate

Minority Leader Dan McConchie (Represented by Phillip A. Luetkehans), and pro-se Plaintiff Chrissy Wiley. Supporting the law are Defendants Governor Pritzker, the Illinois State Board of Elections, Illinois Senate President Don Harmon, and Speaker of the Illinois House Chris Welch.



In the new subcircuit law, the General Assembly suddenly created three new gerrymandered judicial subcircuits in Madison County without any public hearings or input. In response, a bi-partisan and overwhelming majority of the Madison County Board passed a resolution condemning this new gerrymandered judiciary scheme and calling for legal action to oppose it. After initially granting a Temporary Restraining Order halting implementation of the law, the Circuit Court of Sangamon County ruled against the County's claims. Plaintiffs appealed that ruling.

On appeal, Haine argues that the law is unconstitutional and violates over 100 years of history in Madison County. If allowed to stand, the law would remove the right of Madison County voters to vote together on Judges, and would inject partisan politics into the heart of the judicial system.

“I don’t know many people who think gerrymandering our local judicial elections is a good way to go,” said State’s Attorney Haine. “I am glad the County Board and the other co-plaintiffs chose to stand up and challenge this unconstitutional law in court and now on appeal. Fairness in our judiciary and the equal right for voters to have a voice in judicial elections are fundamental values we all need to protect.”

The following are a few excerpts from Madison County’s Appellate briefs in this case:

Statement of Facts:

On January 5, 2022, House Bill 3138 passed the Illinois Senate 41-16, and that night passed

the House 66-34. (C 16). On January 7, 2022, House Bill 3138 was sent to Governor J. B. Pritzker and signed the same day. (C 17). Though the effective date is January 7, 2022, the first practical implementation of this law was Jan. 22, 2022, when petitions began circulating. 10 ILCS 5/2A-1.1b(b). Petitions then had to be filed between March 7, 2022 and March 14, 2022. The Act makes various changes to judicial boundaries and elections throughout the State. But, the Act created subcircuits in the following Circuits: Cook Circuit, 3rd Circuit, 6th Circuit, 16th Circuit, 17th Circuit, 18th Circuit, and 19th Circuit. Of those Circuits, only the newly created subcircuits in the 19th Circuit and the 3rd Circuit (containing Madison County) and Lake County take immediate effect in 2022. (C 70). The rest will take effect in 2024. No explanation is given for this differential treatment throughout the State. (C 70).

Under the Act, “he 3rd judicial circuit is divided into 4 subcircuits as drawn by the General Assembly.” 705 ILCS 35/2f-13(a). The first three subcircuits are divided among parts of

Madison County while the fourth judicial subcircuit consists solely of Bond County. The Act then specifically assigns to the 1st subcircuit the first three (3) judicial vacancies, “including the vacancies to be filled by election at the 2022 general election”. 705 ILCS 35/2f-13(b). Madison

County had two previously certified judicial vacancies set for at-large election in November 2022. (C 146) (To compare, the Act states that Rock Island’s conversion of at-large judgeships to resident judgeships “shall not apply to a vacancy existing on the effective date of this to be filled at the 2022 general election.” 705 ILCS 35/2f-17(a)).

Madison County is the only county where, upon enactment of the Act, the County is required to immediately implement subcircuits where subcircuits have not previously existed (Lake County received changed subcircuits boundaries but had preexisting subcircuits, and other counties will not be divided into subcircuits until December 2, 2024). (C 147).

One of Madison County’s key arguments is that the subcircuit law unconstitutionally eliminates all “at-large” Circuit judges from a Circuit:

The Act eliminates all at-large judgeships from the 3rd Judicial Circuit, converting all nine to resident judgeships within the four newly-designed subcircuits. 705 ILCS 35/2f-13(b). While Defendants claim the Illinois Constitution permits this dramatic action by the General Assembly, the language of Article VI, Section 7, and the absurd results that would follow from Defendants’ interpretation of it, confirm the Defendants’ reading is wrong. See Ill. Const. 1970, art. VI, § 7.

Defendants are correct that courts apply the same general principles to construe statutory and constitutional provisions. Pritzker Br. at 24 (quoting Hooker v. Ill. State Bd. of Elections, 2016 IL 121077, ¶ 35). Thus, “where a plain or literal reading of a statute produces absurd results, the literal reading should yield: It is a familiar rule, that a thing may be within the letter of the statute, and yet, not within the statute, because not within its spirit, nor within the intention of its makers.” People v. Hanna, 207 Ill.2d 486, 498 (2003). If a “literal construction of the words of a statute absurd, the act must be so construed as to avoid the absurdity.” Id.

Such is the case with the Defendants’ reading of Section 7(a). In his response brief, Defendant Pritzker argues that under Article VI, Section 7(a), the General Assembly may provide for the division of a circuit into subcircuits, or may provide for at-large elections, “ut it has no obligation to do both things in every circuit.” Pritzker Br. at 23. At oral argument, Defendants’ stated that the General Assembly could also “tomorrow pass a bill that says we’re going to have one Circuit Judge in each judicial circuit.” R 19. Combining these two ideas, nothing would prevent the General Assembly from designing a circuit with only one circuit judge, but where that judge’s election is confined to only a smaller “division” of the circuit (perhaps a particular city or neighborhood). Similarly, nothing would stop the General Assembly from in the future simply assigning all nine circuit judges in the 3rd Judicial Circuit to the first subcircuit,

leaving the rest with none. These nine judges would preside over cases throughout the entire 3rd Circuit despite being elected by a small subset of the circuit's population. In short, Defendants argue that the Illinois Constitution authorizes the General Assembly to draw judicial subcircuits for political gain, or any other reason, without limitation, despite the fact that such a principle would allow the wholesale disenfranchisement of some or even most voters in a judicial circuit.

And the County also argues that the subcircuit law unconstitutionally limits retention elections to the subcircuit, instead of the County at-large:

Defendants' arguments with respect to the Act's retention language are belied by the wording of the Act. The Act intentionally removed the right of an elected subcircuit judge to run for retention at-large in clear violation of the Illinois Constitution: "Once a resident judgeship is assigned to a subcircuit, it shall continue to be assigned to that subcircuit for all purposes." 705 ILCS 35/2f-13(b). As written, the Act eliminates at-large retention elections in the 3rd Judicial Circuit, even though the Illinois Constitution provides that "retention elections shall be conducted at general elections ... in the circuit for Circuit Judges." Ill. Const. 1970, art. VI, § 12(d).

Realizing the problems with the Act, and after Madison County filed this appeal, Defendant Harmon, filed HB0350 in the Senate, which provides that "a resident judge elected from a subcircuit seeking retention shall run for retention at large in the circuit in accordance with Article VI, Section 12(d) of the Illinois Constitution." The General Assembly has not yet passed that amendment. As it stands, the Act violates the express language of the Illinois Constitution.