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March 20, 2021

To: UCCI Membership

**Re: 2021 Reapportionment**

**INTRODUCTION**

Apportionment and redistricting is the process by which a government divides the seats available for election by population. “[T]he achieving of fair and effective representation for all citizens is [] the basic aim of legislative apportionment.”<sup>1</sup> Reapportionment takes place at the federal congressional<sup>2</sup>, state legislative<sup>3</sup>, and local county level<sup>4</sup>. There has been significant discussion about this cycle of reapportionment at the various levels of government due to delays in processing the census caused by the COVID-19 pandemic. Counties should ensure that they follow only those requirements and guidance that applies to county reapportionment.

**REAPPORTIONMENT IN COUNTIES UNDER TOWNSHIP GOVERNMENT**

A county with a population of less than 3,000,000 and under township form of government must reapportion its County by July 1, 2021.<sup>5</sup> In reapportioning the county, the county board must first determine the size of the county board to be elected.<sup>6</sup> The size of the county board must be not less than 5 nor more than 25 members.<sup>7</sup> The size of the county board cannot be larger than the size of the county board in that county on October 2, 1969.<sup>8</sup> In counties with a population of less than 450,000 where the chairman is elected by the voters, the chairman shall not be counted as a

<sup>1</sup> Reynolds v. Sims, 377 U.S. 533, 565–66 (1964).

<sup>2</sup> See U.S. Const. amend. XIV, § 2 (“Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State...); See also U.S. Const. art. I, § 2, cl. 3 (“The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative...”)

<sup>3</sup> See Ill. Const. art. IV, § 3 (“In the year following each Federal decennial census year, the General Assembly by law shall redistrict the Legislative Districts and the Representative Districts”)

<sup>4</sup> 55 ILCS 5/2-3001 *et seq.* See also 55 ILCS 5/2-4006.5.

<sup>5</sup> 55 ILCS 5/2-3002(a).

<sup>6</sup> 55 ILCS 5/2-3002(a).

<sup>7</sup> 55 ILCS 5/2-3002(a).

<sup>8</sup> 55 ILCS 5/2-3002(a).

member of the county board for the purposes of the limitations on the size of the county board.<sup>9</sup> The county board also must determine whether board members are to be elected at large from the county or by county board districts.<sup>10</sup>

### **Content of Apportionment Plan**

It the county board determines that members of the board are to be elected by districts, the board shall develop an apportionment plan and specify the number of districts and number of board members to be elected from each district and whether voters will have cumulative voting rights in multi-member districts.<sup>11</sup> The statute requires each district to meet the following requirements:

- a. Shall be substantially equal in population to each other district.
- b. Shall be comprised of contiguous territory, as nearly compact as practical.
- c. May divide townships or municipalities only when necessary to conform to the substantially equal in population requirement, and
- d. Shall be created in such a manner so that no precinct shall be divided between two or more districts, insofar as is practical.

In addition, a county board of a county having a population of less than 3,000,000 inhabitants may provide within the county for single member districts outside the corporate limits and multi-member districts within the corporate limits of a municipality with a population in excess of 75,000.<sup>12</sup> However, the requirements of subsections a, b, c, and d set forth above shall apply to apportionment of both single and multi-member districts to the extent possible, except that the population of any multi-member district shall be equal to the population of any single member district, times the number of members found within that multi-member district.<sup>13</sup> If an apportionment plan is challenged, courts will analyze the plan for compliance with state law and to make sure it does not violate the constitution. For example, in the case of *Hulme v. Madison Cty.*,<sup>14</sup> a federal court held that a county reapportionment plan violated both the Equal Protection Clause and state laws relating county reapportionment plans.

Both a county board chair elected by the voters and county executive *may* develop and present to the county Board by the third Wednesday in May following the federal decennial census year an apportionment plan in accordance with the requirements of subsections a, b, c, and d set forth above.<sup>15</sup> In preparing a plan, the county board chair or county executive shall have access to the federal decennial census information available to the county board. If such a plan is timely presented, the county board must conduct at least one hearing on the presented plan and a board cannot adopt its own plan until after that hearing.<sup>16</sup>

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<sup>9</sup> 55 ILCS 5/2-3002(a).

<sup>10</sup> 55 ILCS 5/2-3002(a).

<sup>11</sup> 55 ILCS 5/2-3003(1).

<sup>12</sup> 55 ILCS 5/2-3003(2).

<sup>13</sup> 55 ILCS 5/2-3003(2).

<sup>14</sup> *Hulme v. Madison Cty.*, 188 F. Supp. 2d 1041 (S.D. Ill. 2001),

<sup>15</sup> 55 ILCS 5/2-3003(3) & (4).

<sup>16</sup> 55 ILCS 5/2-3003(3) & (4).

### **Filing of Reapportionment Plan**

The reapportionment plan must be filed by July 1, 2021 in the Office of the County Clerk. The County Clerk is required to forward copies of the Plan to the Chairman of the County Board and shall keep other copies of the Plan available for distribution (free of charge) to any registered voter of the County requesting a copy.<sup>17</sup>

### **Failure to Complete Reapportionment**

If the County Board does not complete reapportionment of its County by July 1, 2021, the County Clerk shall convene the County Reapportionment Commission. The County Reapportionment Commission consists of the County Clerk, the State's Attorney, the Attorney General or its designated representative and the Chairman of the County Central Committee of the first leading political party and the second leading political party.<sup>18</sup> The Election Code defines the first leading political party as that which has received the highest number of votes for the Office of Governor and the second leading political party as that which has received the second highest number of votes for the Office of Governor. Three members of the Commission shall constitute a quorum, but a majority of the members must vote to approve the Plan. The Commission must adopt rules for its procedure. The Commission has until October 1, 2021 to complete and file a reapportionment plan.<sup>19</sup> If the county board has failed to determine the size of the county board to be elected, then the number of districts and the number of members to be elected shall be the largest number to which the county is entitled under Section 2-3002 of the Counties Code.<sup>20</sup>

### **Failure to File a Reapportionment Plan**

If no apportionment plan is filed with the county clerk as required by Division 2-3 of the Counties Code, the members of the county board shall be elected at large in the county. If the county board has determined the number of members for the board, that number shall be elected; otherwise, the number of members to be elected shall be the largest number to which the county is entitled under Sections 2-3002 and 2-3002.5 of the Counties Code.<sup>21</sup>

### **Chairman of County Board; Election and Term**

When reapportioning its county, the county board may provide that the chairman shall be elected by the voters of the county instead of by member of the county board.<sup>22</sup> In counties over 3,000,000 population, no person may be elected to serve as such chairman who has not been elected as a county board member to serve during the same period as the term of office as chairman of the county board to which he seeks election.<sup>23</sup> In counties over 300,000 but less than 3,000,000 in population, the chairman shall be elected as chairman without having been first elected to the

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<sup>17</sup> See 55 ILCS 5/2-3005 and 2-3004. .

<sup>18</sup> 55 ILCS 5/2-3001(b)

<sup>19</sup> 55 ILCS 5/2-3004

<sup>20</sup> 55 ILCS 5/2-3004

<sup>21</sup> 55 ILCS 5/2-3006.

<sup>22</sup> 55 ILCS 5/2-3007.

<sup>23</sup> 55 ILCS 5/2-3007.

county board.<sup>24</sup> In all other counties the chairman may either be elected as a county board member or elected as the chairman without having been first elected to the board.<sup>25</sup>

Except in counties where the chairman of the county board is elected by the voters of the county and is not required to be a county board member, whether the chairman of the county board is elected by the voters of the county or by the members of the board, he or she shall be elected to a 2-year term. In counties where the chairman of the county board is elected by the voters of the county and is not required to be a county board member, the chairman shall be elected to a 4-year term. In all cases: (i) the term of the chairman of the county board shall commence on the first Monday of the month following the month in which members of the county board are elected, and (ii) no person may simultaneously serve as a member of a county board and the chairman of the same board if the office of chairman is elected by the voters of the county rather than by the members of the board.<sup>26</sup>

### **Determination of Method of Compensation of Member of County Board**

At the time the county board reapportions its county, the board shall determine whether the salary to be paid to its member shall be computed on a per diem basis, an annual basis, or a combined per diem and annual basis, and shall fix the amount of that salary.<sup>27</sup> If the county board desires before the next reapportionment to change the basis of payment or amount of compensation after fixing those items, it may do so by ordinance or by resolution.<sup>28</sup> Those changes shall not however, take effect during the term for which an incumbent county board member has been elected. In addition, the county board shall determine the amount of any additional compensation for the chairman of the county board.<sup>29</sup> The county board may adjust that additional compensation at any time adjustments in the salary of board members may be made. Those adjustments shall not however, take effect during the term for which the incumbent chairman of the county board has been elected.<sup>30</sup>

### **Terms of Board Members**

All county board member terms commence on the first Monday of the month following the month of election.<sup>31</sup> By September 1 of the year following reapportionment, the county board must divide the county board districts publicly by lot, as equally as possible, into 2 groups, and each group will have differently staggered terms.<sup>32</sup>

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<sup>24</sup> 55 ILCS 5/2-3007.

<sup>25</sup> 55 ILCS 5/2-3007.

<sup>26</sup> 55 ILCS 5/2-3007

<sup>27</sup> 55 ILCS 5/2-3008.

<sup>28</sup> 55 ILCS 5/2-3008.

<sup>29</sup> 55 ILCS 5/2-3008.

<sup>30</sup> 55 ILCS 5/2-3008.

<sup>31</sup> 55 ILCS 5/2-3009.

<sup>32</sup> 55 ILCS 5/2-3009 (“Board members or their successors from one group shall be elected for successive terms of 2 years, 4 years and 4 years; and members or their successors from the second group shall be elected for successive terms of 4 years, 4 years, and 2 years.”)

## **REAPPORTIONMENT IN COUNTIES UNDER COMMISSION GOVERNMENT**

If the county is not under township organization, the Board of County Commissioners shall reapportion the County Commission Districts to be compact, contiguous and substantially equal in population on or before May 31, 2021.<sup>33</sup> In counties electing five commissioners from single member districts, the commissioners shall, in the year following the decennial census, publicly by lot, divide the districts into 2 groups with staggered terms - One group shall serve terms of 4 years, 4 years, and 2 years and one group shall serve terms of 2 years, 4 years, and 4 years.<sup>34</sup>

## **MISCELLANEOUS**

### **Commencement of the Reapportionment Process**

In reapportioning the county, each district “[s]hall be substantially equal in population to each other district.” For the purposes of county reapportionment, population is defined as “the number of inhabitants **as determined by the last preceding federal decennial census.**”<sup>35</sup> Thus, the population must be based upon the last proceeding Federal decennial census. The County has the authority to obtain the services of a consultants, professionals or advisors to assist it in meeting the statutory requirements for establishing a reapportionment plan.

### **Establishment of a Committee**

The County Board may establish a Committee of the Board and have the Committee report and recommend to the Board for the purpose of presenting a proposed reapportionment plan. The Committee, of course, must follow the Open Meetings Act.

### **Equal in Population**

The term “Equal in Population” has been interpreted to mean substantially or practically equal as possible; however, the Federal Court in *Hulme vs. Madison County* permitted minimal deviation. The Courts have indicated that a deviation is permitted to accommodate political subdivision lines. “The Supreme Court has come to recognize a general benchmark for determining whether an apportionment plan’s population deviation is *de minimis*. In *Brown v. Thomson* [], the Supreme Court stated that “[o]ur decisions have established, *as a general matter*, that an apportionment plan with a maximum population deviation under 10% falls within [the] category of minor deviations. A plan with larger disparities in population, however, creates a prima facie case of discrimination and therefore must be justified by the State.”<sup>36</sup>

The Courts have held that between population, compactness, and recognition of political subdivision lines, meeting the population requirement was essential.

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<sup>33</sup> See 55 ILCS 5/2-4006.5(b) (“On or before May 31 of the year following each federal decennial census thereafter, the board of county commissioners shall reapportion the county commission districts to be compact, contiguous, and substantially equal in population.”)

<sup>34</sup> 55 ILCS 5/2-4006.5(d)

<sup>35</sup> 55 ILCS 5/2-3001(emphasis added).

<sup>36</sup> *Hulme v. Madison County*, 188 F. Supp. 2d 1041, 1047 (S.D. Ill. 2001) (internal citations omitted)

### **Discrimination**

Courts have consistently addressed the discrimination issue, namely that districts cannot be drawn where minority rights may be adversely impacted, often referred to as “fragmenting” or “diluting” voting strength. The Voting Rights Act (42 U.S.C.A. 1973) may be applicable. Voter dilution is defined by the Courts as fragmenting large concentration of minority population into separate districts or concentrating minorities into districts in which they would amount to excessive majorities (Motive is a relevant factor in reaching a conclusion on discrimination).

### **Power of the Judiciary**

The Courts have consistently held that if a map or plan for reapportionment is unacceptable because of a population deviation, compactness or it is discriminatory, the Court retains the right to redraw the Plan.