The Court Archive:
Redistricting

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Redistricting the Illinois legislature has long been a political process that the Illinois courts repeatedly have been called upon to arbitrate. In the nineteenth century, redistricting was a relatively straightforward process, but the growing population in Cook County and Chicago resulted in pushback from downstate legislators unwilling to give up strong majorities in the Illinois House and Senate. In 1901, the legislature allotted 37 percent of the districts to Cook County, which closely reflected its 38 percent of the state's population.

The 1910 census showed Cook County had 43 percent of the state's population, but the General Assembly ignored its task to redistrict, which would result in more legislative seats to Cook County. Legislators also did not redistrict after the 1920 census. Downstate legislators opposed redistricting out of fear that proportional representation would silence downstate's voice in the legislature.

Enter John B. Fergus, a long-time Chicagoan (born in 1844), who went to the courts to force the legislature to redistrict the state to give Chicago and Cook County its proper representation in the General Assembly. Fergus brought an original suit in the Illinois Supreme Court for a writ of mandamus to compel the legislature to redistrict, *Fergus v. Marks*, 321 Ill. 510 (1926). The Court denied the writ because the judicial branch could not compel the legislative branch to do its job. Justice Oscar Heard noted that the state is "divided into three distinct departments, the legislative, executive, and judicial" and neither "of these three departments is subordinate to or may exercise any control over another . . .The duty to re-apportion the State is a specific legislative duty imposed by the constitution solely upon the legislative department of the State, and it, alone, is responsible to the people for a failure to perform that duty."

When the legislature did not entertain any reapportionment bills in 1927, Fergus tried another avenue. He sued the state treasurer Garrett Kinney to stop him from paying members of the General Assembly. The circuit court denied Fergus's petition, and he appealed to the Illinois Supreme Court in *Fergus v. Kinney*, 333 Ill. 437 (1929). The Court affirmed the lower court judgment. Chief Justice Frederic De Young used the same logic from *Fergus v. Marks* and added that a court "has no power to indirectly compel the performance of the duty by enjoining the payment of the salaries" of the legislators.

Assuming the third time was the charm, Fergus brought another lawsuit, this time a *quo warranto* proceeding against all senators and representatives to require them to show by what authority they hold their offices. After the trial court dismissed the case, Fergus took yet another appeal to the Supreme Court in *People ex rel. Fergus v. Blackwell*, 342 Ill. 223 (1930). Justice Warren Orr reasserted the earlier *Fergus* cases, noting that the "matters complained of are solely within the province of the General Assembly and the courts have no power to coerce or direct its action."

Cook County gained a majority percentage of the state's population in the 1930 census, but the legislature did not reapportion in 1930, 1940, or 1950. A constitutional amendment passed in 1955 forced reapportionment that provided Chicago and downstate a reasonable compromise with proportional representation in the House to satisfy Cook County and geographical representation in the Senate to satisfy downstate. It was the first reapportionment in the state since 1901. However, failure to reapportion again after the 1960 census resulted in an at-large election for all House seats in 1964. That same year, the U.S. Supreme Court case *Reynolds v. Sims* established the principle of "one person, one vote," which meant that non-proportional representation in the Illinois Senate was improper.

Despite a new constitution in 1970, the legislature again failed to redistrict after the 1970, 1980, 1990, and 2000 censuses, and each of those triggered a Legislative Redistricting Commission to submit a plan. In three of those four commissions, the eight members failed to agree, and the decision was left to a ninth member, randomly drawn to break the tie. After the 2010 census, the legislature approved a plan that was signed by the governor. All of these redistricting efforts during the period of the 1970 constitution resulted in lawsuits, too numerous to note here, but John B. Fergus would have been proud.