

Illinois Supreme Court Rules 6-Person Jury Act Unconstitutional

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In an opinion released this morning, the Illinois Supreme Court held that the right of trial by jury includes the right to demand a 12-member jury. In *Kakos v. Butler*, 2016 IL 120377, the Court held that Public Act 98-1132, which bars a litigant from exercising this right, and the statute it amended, 735 ILCS 5/2-1105(b), were “facially unconstitutional.” *Kakos*, 2016 IL 120377, ¶ 37. Because the provision regarding jury size could not be severed from the entirety of the Act, the Court invalidated the entire Act.

Public Act 98-1132 (effective June 1, 2015), which amended section 2-1105(b) of the Code of Civil Procedure, limited the size of a civil jury to six persons and increased the amount paid per juror across the state. In *Kakos*, the plaintiffs filed a complaint at law alleging multiple counts of negligence and loss of consortium against the defendants. The defendants then moved to request a 12-person jury and sought a declaration that P.A. 98-1132 was unconstitutional. The circuit court agreed with the defendants and granted the motion, finding that the Act was facially unconstitutional and violated separation of powers. The plaintiffs then appealed to the Illinois Supreme Court as a matter of right under Rule 302(a).

According to the Supreme Court, “it is clear that the drafters of the 1970 Illinois Constitution intended for the essential common-law features of a jury trial as then employed to be preserved and protected.” *Kakos*, 2016 IL 120377, ¶ 36. The Court said that Article I, section 13, of the Illinois Constitution “reveals an intent on the part of the drafters to maintain common-law characteristics of jury trials.” *Id.* Article I, section 13, provides: “The right of trial by jury as heretofore enjoyed shall remain inviolate.” *Id.* ¶ 13. According to the Court, “[t]he phrase ‘as heretofore enjoyed’ plainly indicates that the drafters intended for certain characteristics of a jury trial to be maintained.” *Id.* It further observed, “[t]his court has long interpreted the phrase ‘as heretofore enjoyed’ to mean ‘the right of a trial by jury as it existed under the common law and as enjoyed at the time of the adoption of the respective Illinois constitutions.’” *Id.* ¶ 14.

The Court said that it “has long included the 12-person size of a jury within its descriptions of the essential features of a jury trial.” *Id.* ¶ 36. The “transcripts from the convention debates,” the Court explained, “make clear that the drafters did not believe the legislature had the authority to reduce the size of a jury below 12 members and the drafters did not act to give the legislature such power.” *Id.* The Act and statutory amendment violated Article I, section 13.

The decision, authored by Justice Garman, was 5-0, with Justices Thomas and Kilbride taking no part.

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