

# Illinois Supreme Court Strikes Down Six-Person Jury Law

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Prior to Public Act 98-1132 going into effect on June 1, 2015, Illinois allowed either party to demand a 12 person jury. The Act limited the size of a civil jury to 6 persons and increased juror pay. This legislation limited the size and diversity of the jury and had defendants claiming that the decrease in jury size would limit the jury representation. In a recent case, Kakos v. Butler 2016 IL 120377, the Illinois Supreme Court unanimously held that Public Act 98-1132 infringed on the right to trial by jury. The decision restores the law to what it was prior to Public Act 98-1132 and either side may timely demand a jury of 12.

Article I, § 13 of the Bill of Rights to the 1970 Constitution of the State of Illinois, states that “[t]he right of trial by jury as heretofore enjoyed shall remain inviolate.” The Court held that a jury of twelve was what was “heretofore enjoyed” as existed at common law and under earlier constitutions and what the framers of the 1970 Illinois constitution intended should remain “inviolable.” The floor debates during the 1970 Constitutional Convention showed that the framers specifically considered and rejected a proposal that would have allowed the General Assembly to reduce the size of civil juries.

The Act violated article I, § 13 of the 1970 Constitution because it took away the right to a jury of twelve. Having determined that Public Act 98-1132 was facially unconstitutional based on the right of trial by jury, the Court did not need to consider whether Public Act 98-1132 also constituted a violation of separation of powers. Finally, the Court held that the entire Act was invalid, as the provision regarding juror pay was not severable from the provision which limited the size of juries.

Those welcoming the 5-0 decision point to the merits of 12-person juries. Larger juries include a better mix of age, race, gender and opinion and often result in a better examination of the facts.