



PLATFORM

To prevent corruption and conflicts of interest:

(1) I will work to implement a rule prohibiting justices from adjudicating their own alleged conflicts of interest. In Illinois' trial courts, when a party seeks to substitute a judge for cause, a disinterested judge determines whether the judge with the alleged issue can be impartial. But in our courts of review, justices with alleged conflicts decide for themselves whether to recuse. This is like letting pitchers call their own balls and strikes.

The combination of a system of judicial elections, permissive campaign finance rules, and deferring recusal decisions to individuals with alleged conflicts is a recipe for trouble that at best tarnishes the integrity of our courts and at worst serves as an opportunity for ne'er-do-wells to impose illicit influence on our justice system. I will work to amend the judicial code of conduct and rules of procedure to require disinterested parties to determine whether justices with alleged conflicts can be impartial and participate in cases, similar to the method we apply in our trial courts.

To address perverse financial incentives:

(2) I will work to issue an order prohibiting courts from spending funds that they obtained contingent on a conviction. Under Illinois state law, courts are entitled to extra funding if they convict. Not extra funding for finding truth; extra funding for finding guilt. That creates a perverse incentive. The Court cannot use its supervisory powers to prevent the collection of those funds, but it can use its supervisory power to prohibit the spending of those funds. The integrity of our courts should be unimpeachable. There should be no argument that our courts are profiting off convictions.

To address the ways in which plea deals can enable serial abusers:

(3) I will work to implement a rule allowing depositions by right in criminal cases. Trials are information factories. They are one of the key ways that our society uncovers corruption, fraud, and abuse. But in Illinois, more than 97% of felony convictions occur without going to trial. They end in guilty pleas. When that happens, we lose an opportunity to uncover corruption, fraud, and abuse. We can fix that by granting depositions by right in criminal cases. That will allow the parties to discover critical information without expending judicial resources, and will allow trials to run

more efficiently. We have already made this change in our civil courts and other states have made the change in their criminal courts.

To address wealth bias:

(4) I will work to implement a Rule making the conditions of pre-trial release presumptively non-monetary, and, where the condition of release is payment of monetary security, requiring a showing by the State that the accused has the ability to afford it.

(5) I will work to expand the use of court reporters or digital recording in courts throughout Illinois. As it stands, in some courts in Illinois, parties can only get transcripts of proceedings if they hire their own court reporter. Court reporters are expensive, and thus some litigants are precluded from obtaining transcripts. Those transcripts are essential if they wish to win an appeal. Therefore, lack of money effectively prevents some litigants from enjoying their constitutional right to appeal. I co-authored an article on this topic (https://www.epsteinforsupremecourt.com/files/epstein_and_thomas_wrongful_evictions_article.pdf) and we have made some progress since, but there is farther to go.

(6) I will work to implement a rule allowing courts to appoint independent expert witnesses to level the playing field. Wealthy parties are sometimes able to dominate non-wealthy parties in court by using expensive “expert” witnesses. When one side can afford expert witnesses and the other side cannot, it can sometimes lead courts farther from the truth. Federal (and some European) courts have a way of addressing this issue: they can appoint independent experts. But the Illinois Supreme Court Rules do not contain an analogous power. I will work to implement a rule similar to Federal Rule of Civil Procedure 706.

To address anti-science bias:

(7) I will work to adopt the *Daubert* expert admission standard. Illinois’ expert admission standard (Illinois Rule of Evidence 702) applies the “*Frye*” test, which has a terrible history of permitting pseudoscientists to qualify as “experts” and testify in our courts. I have seen firsthand how it has allowed charlatans to falsely inculcate people based on junk science. Most jurisdictions throughout the country, including federal courts, use a better standard known as the “*Daubert*” test, which requires experts to use *reliable* techniques and helps keep pseudoscientists out of our courts.

To address race, gender, and anti-LGBTQ bias:

(8) I will work to pilot procedures aimed at preventing illegally discriminatory jury selection. It is illegal for lawyers to remove people from a jury based on certain criteria—for example, race. But some lawyers do it and get away with it because the tool that exists to protect against illegal jury selection—Batson challenges—has major vulnerabilities. Unfortunately, people seem to have given up trying to create an alternative to Batson, but I have a unique proposal.

Typically, in jury selection, the parties are allowed to get certain information about potential jurors, including their names and addresses. However, in mafia trials, some courts use something called “innominate juries,” which—for the protection of the jurors—do not allow parties to know the identities of the jurors. We can do the same thing, but instead of shielding the name and address of jurors, we can shield the physical appearance of the jurors. Parties would still be able to execute voir dire just like normal, except that they would not be able to use the appearance of the venire to determine exclusions. That could help prevent illegal jury selection.

Jury selection is very delicate and so this kind of proposal will need to be piloted incrementally in cases with consenting parties. But the problem of illegally biased jury selection is so troubling that it is worth experimenting with solutions. The federal courts pilot procedural innovations and I will advocate for the Illinois Supreme Court to do the same.

(9) I will work to establish sentencing guidelines to promote consistency and reduce the influence of bias in sentencing. In Illinois, two people who are the same in every relevant way and who are convicted of the same crime could get very different sentences. That allows things like racial bias to infect the sentencing process and enables coercive plea bargaining. Federal courts have adopted sentencing guidelines that effectively narrow the statutory sentencing range except where departures are justified and explained. In that spirit, I will advocate for the creation of a commission to create sentencing guidelines that the Court could adopt and implement to improve the predictability of sentencing and reduce bias and coercion.

(10) I will work to ensure that Illinois’ courts implement inclusive design practices. The Illinois Supreme Court determines minimum design standards for courthouses in Illinois. I will work to ensure that those standards apply best practices in inclusive design so that our trans neighbors have equal access to courts.

To address incentives to withhold evidence:

(11) I will work to implement an “open-file” framework throughout Illinois to promote transparency, to ensure that parties have access to the evidence against them, and to reduce the number of Brady appeals. In civil cases (when money is typically at stake) parties have extensive rights to obtain evidence to help them prepare for trial. But in criminal cases (when liberty is on the line) defendants do not get those rights (e.g., rights to depositions). Instead, they enjoy rights under the Brady Rule, which says that prosecutors have to give defendants any evidence they have that is “material” (in other words, significant) and “exculpatory” (in other words, tending to help the defendant). But it is the prosecutor who gets to decide what is material and what is exculpatory. In other words, the prosecutor is responsible for doing something that hurts their chances of winning. They also get to decide when they turn over evidence. And as a result, defendants sometimes get mountains of critical evidence on the eve of trial, making it impossible to fully prepare. This is not a good way to find truth. Some jurisdictions have addressed this problem by adopting a system known as “open-file.”

Open-file systems give defendants access to the same information that prosecutors have. It lets defendants prepare properly for trial and it reduces prosecutors' workload, because they no longer have to make challenging (and risky) decisions about what to disclose. It might also save taxpayers money by reducing the large number of appeals filed on the basis that prosecutors withheld evidence. For these reasons, I will work to amend the rules regarding mandatory disclosures to create an open-file framework.

To expand the use of restorative justice practices:

(12) I will work to revisit the proposal to make privileged certain proceedings in restorative justice courts. Restorative justice courts respond to crime using innovative techniques that rely on community engagement. They require defendants to take accountability for their actions and then work out an agreement with the person harmed and members of the community that focuses on restitution, community service, and letters of apology. They also prevent crime by reintegrating offenders back into the community and connecting them with services, including mental health counseling, substance abuse treatment, education, job training, and parenting classes. Importantly, the process relied on participants being able to speak openly and without fear that something they say may be used against them. That is why a coalition of organizations throughout Illinois teamed up to design and submit a proposed rule change that would have made those conversations privileged. The Illinois Supreme Court rejected that proposal. I will work to revisit it.

To address status quo bias:

(13) I will work to implement a rule requiring judges to explain their sentences. Illinois judges can sentence people to decades behind bars without ever explaining the reasoning behind their sentences. That is a problem because it is easy to make mistakes in sentencing and people cannot effectively appeal mistaken sentences if the judge does not explain their reasoning. The legislature passed a law to fix this problem, but the Illinois Supreme Court invalidated it on grounds that it intruded into the Court's exclusive zone of authority and breached the separation of powers. In other words, the Court said that only the Court itself could fix the issue. But it has not fixed the issue. I will work to implement an Illinois Supreme Court Rule requiring judges to explain the reasoning behind their sentences.

(14) For cases remanded due to a judge's error, I will work to implement a rule presumptively sending the case to different judge than the one who made the error. In Illinois, if a federal trial court makes an error and on appeal a federal appellate court orders a retrial, the case goes to a different judge than the one who made the error. That is a good rule for a variety of reasons, including that judges may disfavor a party who embarrassed them by having their ruling reversed, or that the judge may have made the initial error due to an underlying bias that will still be there when the appellant returns. But Illinois state courts do not have that rule, so parties go right back to the judge who made the initial error. I will advocate for a rule that presumptively sends remanded cases to a different judge than the one who made the error.

To remove barriers to access and protect our undocumented neighbors:

(15) I will work to pave access to our courts by allowing virtual appearances. Physical access to courts is a privilege that not everyone enjoys. For some, courts are too far away. For others, courts' hours are too limited. Many caretakers simply are not able to leave alone the people they care for in order to travel to court. And, in a time when federal ICE agents are arresting people in state courthouses, physical presence in courthouses can be dangerous. This is a serious problem, because it effectively protects people who prey on those who cannot access the court system (e.g., wage thieves who know their undocumented victims cannot sue them without risking deportation by going to court). We can address this problem by allowing parties to make virtual court appearances using the cameras on their computers or phones. That technology is already in place in some courts and the Illinois Supreme Court—which has authority over the Administrative Office of Illinois Courts—can help implement it statewide. I will work to do just that.

To promote diversity in the bar and on the bench:

(16) I will work to expand the pipeline of attorneys by changing the timing of the character & fitness evaluation to reduce the risk of pursuing a career in law for people with less means and disciplinary records. After law students incur hundreds of thousands of dollars in debt, but before they get to become a lawyer in Illinois, they have to receive the approval of a Character and Fitness Committee. The Committee considers past convictions, instances of misconduct, or disciplinary actions. If you have one of those, it is very difficult to predict whether you will be allowed to be an attorney in Illinois, and that may deter people who smartly do not want to risk incurring mountains of debt in hopes that they will be allowed to become an attorney. This has a disproportionate impact on people of color. We can fix that by simply giving people the option to get a preliminary decision from the Character and Fitness Committee before they decide whether to attend law school (and incur debt). Then a follow up evaluation can be done with regard to the years between the preliminary evaluation and application to the bar. I will work to implement such a mechanism.

(17) I will use rotating clerks to increase the number of attorneys who are likely to be considered qualified to serve on the bench. Unlike the majority of judges at the federal level, our Supreme Court justices use career clerks. That may be more convenient or efficient for the justices, but it sacrifices an opportunity to train young lawyers and develop the pipeline of minority and woman attorneys. I would employ rotating clerks to develop that pipeline and ultimately to help make our bench and bar more representative of our community.

To level the path to partnership for women, and promote mental health and sustainability in the legal profession:

(18) I will work to pilot mandatory gender-neutral parental leave policies. Women in law firms are promoted to partner at lower rates than their male counterparts. There is growing concern that the disparity may be driven in part by the unavailability of gender-neutral parental leave policies, or male attorneys' unwillingness to use their full parental leave. This is an important issue

that we should explore by encouraging pilot programs that make full use of parental leave mandatory for attorneys regardless of gender. We should also explore whether such policies promote mental health and sustainability in the legal profession. If the pilot programs are successful, I will work to engrain mandatory gender-neutral parental leave policies in our code of ethics (with a careful eye toward how such policies may have different impacts on smaller firms).