

LEAGUE OF WOMEN VOTERS OF ILLINOIS
CONSTITUTIONAL CONVENTION STUDY GUIDE

January 2008

Does Illinois Need a New Constitution?

The Illinois Constitution adopted in 1970 provides that. “if the question of whether a Convention should be called is not submitted during any twenty year period, the Secretary of State shall submit such question at the general election in the twentieth year following the last submission.” Given this mandate, there will be a vote on the question of holding a constitutional convention at the November 2008 General Election.

Delegates to the LWVIL state convention in 2007, recognizing the need for the League to play an active and visible role in the coming debate, adopted “a study of the need for a state constitutional convention.” The following material has been prepared to help League members participate in that study. It includes a brief history of the Illinois Constitution, a description of the methods which may be used to change or amend the constitution, and a discussion of some of the more important constitutional issues which might be raised if a constitutional convention were convened at this time.

WHAT IS A CONSTITUTION?

A constitution is the means by which the people give government the power to govern. It divides this power among the various branches of government and among the levels of government while reserving certain powers for the people. The right to control their government is retained by the people through the process of amending the constitution.

While a constitution provides the basic framework of government, it is not self-executing. Legislation is needed to provide the details and the enforcement powers.

A state constitution divides power between the state and local units of government. It gives the state government a broad power to address any problems it identifies, subject only to the specific limitations found in the state and federal constitutions. A state constitution is typically longer than the federal constitution because it deals with more topics and includes more detail. Its specific nature invites more frequent adjustment as social, economic, and political conditions change.

ILLINOIS CONSTITUTIONAL HISTORY

Illinois has had four constitutions: those of 1818, 1848, 1870, and 1970.

The original 1818 Constitution, written by farmers for their pioneer state, was very brief. It provided for a governor with little power and barely mentioned local government. Slavery was debated and permitted temporarily in the salt mines of southern Illinois.

The 1848 Constitution, written for a more urban and industrial state, created the basic structure that we still have. Increased responsibilities were given to the executive and judicial branches, many officials became elected instead of appointed, and townships were created.

An 1862 revision, with provisions which were anti-bank, anti-corporation and pro-farmer, failed to win approval.

The 1870 Constitution showed evidence of the forces of pressure groups in its provisions for corporations, railroads, coal miners and grain storage. Cumulative voting was enacted, and, for the first time, there was a section on education.

The provisions for ratifying amendments to the 1870 Constitution were stringent. They required approval by a majority of those voting in the election, not just on the amendment. As a result of this requirement, voters who participated in the election but who failed to vote on the constitutional question were counted as voting against the amendment.

This constitution dealt inadequately with government financing and local government. Reliance on the sales and property taxes provided insufficient revenues for modern services such as education, highways, and mental health. The debt limits imposed by the state on local governments forced them to create new taxing districts to fund needed services. As a result, Illinois has over 5,800 units of local government, one of the largest numbers of any state.

A fifth constitutional convention worked between 1920 and 1922 to broaden the state's taxing authority, improve the amendment process, and eliminate some of the restrictions for the 1870 Constitution. The convention, however, was highly polarized by a partisan state reapportionment issue, and its work was ultimately rejected by the voters.

Because the 1870 constitution was difficult to amend, the Gateway Amendment was finally passed in 1950. It allowed proposals amending three separate articles – rather than just one -- to be considered at a single election, and it eased voting requirements by adding an alternative method of approval. A proposal could now be adopted by a favorable vote of two-thirds of those voting on the amendment, with or without a general

election majority. Between 1955 and 1969, it still remained difficult to amend the Illinois Constitution.

A Constitutional Study Commission was created by the General Assembly in 1965 to determine whether a new constitution was needed. The commission was chaired by Representative Majorie Pebworth, LWVIL President from 1961-63. Its recommendation to call a constitutional convention was adopted by the General Assembly and was approved by the voters in 1968 by a three-to-one margin.

The convention, chaired by Samuel Witwer and including women delegates for the first time, many of whom were LWVIL members, approved a new constitution in September 1970. In a December 1970 special election, in which only thirty-seven percent of the electorate voted, the new constitution was adopted by fifty- six percent of the voters.

The convention had worked out compromises to many controversial issues in committee to gain widespread support for the new constitution. But four controversial issues were voted on separately by the people:

Single member districts for House members – Rejected, but adopted by amendment in 1980

Election of Judges – Retained

Abolition of capital punishment – Rejected

Granting the vote to 18 year olds – Rejected, but changed to 18 by the U.S. Constitution's 26th amendment and subsequent amendment to the Illinois constitution

Throughout this period, the League of Women Voters of Illinois played a major role in the constitutional revision effort. The League first mounted an all-out campaign to convince the voters for the need for a convention and a new constitution. A thorough study of the major constitutional issues led to consensus positions for which the League lobbied during the convention itself. And finally, at a statewide meeting in 1970, League members endorsed the proposed new constitution and embarked on a campaign for its ratification and for approval of two of the four separate submission items, merit selection of judges and single-member districts.

The following information is adapted from the Nowlan, Lousin and Gove article listed in the Bibliography.

The 1970 Constitution includes a provision for an automatic referendum on calling a constitutional convention every 20 years. In preparation for the 1988 referendum, much preparatory work was done by a state agency, the Illinois Commission on Intergovernmental Cooperation, a Commission that no longer exists. The General

Assembly created a “Committee of 50”, its members appointed by the four legislative leaders. The Committee worked closely with the Commission’s staff.

The Committee held a series of public hearings, convened a meeting of the delegates to the last Illinois Convention in 1970, and commissioned a series of background papers prepared primarily by academics.

The Committee of 50 generated some public discussion, but not much media attention. A few interest groups took positions on the Con-Con question, but these were limited. For example, business and labor groups generally opposed a call for a new convention. The LWVIL also opposed the call.

The *Chicago Tribune* strongly recommended a “No” vote in its editorial, which declared that the 1970 Constitution was still a fine fit for Illinois. Seventy-five percent of the 3.6 million voters in 1988 agreed with the editorial and soundly defeated the call.

There was extensive study plus gubernatorial and legislative interest prior to the call for the 1968 ballot question which approved the convention that led to the 1970 Constitution. There was also some study and legislative interest prior to the call for the 1988 ballot question, which was defeated. However, there has been no commission or committee established by the legislature, or much public interest shown to date for considering the ballot question for 2008.

In the years since the adoption of the 1970 Constitution, the legislature has constantly reviewed that document. There does not, however, seem to be any major effort to overturn the work of the 1970 Convention.

Not surprisingly, there have been many decisions by state and federal courts interpreting the 1970 Constitution. It is hard to categorize them. A useful summary of the cases is found in the Legislative Research Unit’s publication, *1970 Illinois Constitution: Annotated for Legislators*, which can be found on their website at www.ilga.gov/commission/lru/ILconstitution.pdf.

CHANGING THE CONSTITUTION

The Constitution can be changed through the convention process or the amendment process.

The Convention Process

Article 14 of the 1970 Constitution provides that the Secretary of State will submit the question of calling a convention at the general election in the twentieth year following the last submission. “A Convention shall be called if approved by three-fifths of those voting on the question or a majority of those voting in the election.”

If approved, the General Assembly at the next session “shall provide for the election of two delegates from each Legislative District.” Delegates must be U.S. citizens at least twenty-one years old and must have resided in their district for two years or more. The General Assembly selects the date for the election of delegates. As an example of what this means, the General Assembly could also determine whether the election for convention delegates would entail a primary and general election or just a single election, whether the candidates would run on a partisan or nonpartisan ballot, and whether incumbent legislators and executive officers could serve as convention delegates. The General Assembly must also provide for the delegates’ compensation and for the general expenses of the convention.

The legislation calling the convention also designates the time and place of the convention’s first meeting, which must be within three months of the election of the delegates. The General Assembly may not limit the areas which may be discussed, the actions which may be taken, or the length of the convention. The convention may reject the entire 1970 Constitution and begin again. Or it may provide for only a few revisions or amendments. Article XIV simply says it will make such changes “as it deems necessary.”

After the convention adjourns, the revisions it proposes are submitted to the voters for ratification. A simple majority of those voting on the question is sufficient to ratify and adopt the action of the constitutional convention. Drafters of the 1970 constitution felt that the multi-step process of a convention would guard against hasty action by voters on the question of constitutional change.

The expenses for the 1970 convention and its 116 delegates totaled some fourteen million dollars, or \$78 million in current dollars.

The Amendment Process

Article XIV of the constitution provides two methods of proposing amendments, one of which is restricted to the Legislative Article. The primary method of changing the constitution begins with approval of a proposed amendment by a three-fifths vote of both houses of the General Assembly. The amendment is then submitted to the voters at the next general election occurring at least six months after the legislature has approved the amendment. No more than three articles of the constitution may be amended at any one election.

The second method applies only to amendments to “the structural and procedural subjects contained” in the Legislative Article. Since it was assumed that legislators might be reluctant to initiate changes affecting their procedures, the constitution permits amendments to this article to be submitted to the voter by citizen initiative. Amendments to Article IV of the Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast for candidates for Governor in the preceding gubernatorial election.

Approving Changes

In order for the Constitution to be amended by either method, three-fifths of those voting on the amendment or a majority of those voting in the election must approve the proposed amendment.

Since 1970 seventeen proposed amendments have been submitted to the voters. Ten have been approved. The Cutback Amendment, which reduced the size of the House of Representatives and eliminated cumulative voting by creating single member districts, was placed on the ballot by initiative and passed. Two amendments that dealt with collecting delinquent taxes and redeeming tax delinquent properties and two that dealt with bail and habeas corpus issues were also approved. An amendment to lower the voting age to 18 (in line with the US Constitution) was approved. Two amendments relating to rights of crime victims were approved. One amendment to shorten the length of the General Assembly session was approved, and an amendment to strengthen the process for discipline of judges was approved. Seven amendments have been defeated including three that sought to exempt property owned by veterans' organizations from property tax, and one that sought to make the state carry the "preponderant financial responsibility for financing" public schools.

CONSTITUTIONAL ISSUES

Various issues pertaining to the following articles of the constitution could be raised at a constitutional convention. Any part of the present constitution may be revised, deleted or kept intact at a convention.

Article I – Bill of Rights

The Bill of Rights contains numerous protections for individuals from actions by the state or its subdivisions. Among the major accomplishments of the 1970 Constitution was the addition to the Bill of Rights of several sections prohibiting various types of discrimination. They are:

- Section 17. Prohibits discrimination based upon "race, color, creed, national ancestry and sex" in employment or in property sale and rental
- Section 18. Prohibits sex discrimination by the state, any local government, or school district
- Section 19. Extends the prohibition of discrimination in property sales or rental to persons with a physical or mental handicap and forbids "discrimination unrelated to ability" in employment practices.

LWVIL position. The League is opposed to any dilution of the rights now guaranteed Illinois residents.

Several other sections of the Bill of Rights deal with issues which could be raised at a new convention. They include:

Section 3. Religious Freedom. There may also be a challenge to separation of church and state as a principle.

LWVIL position. The League would oppose any changes in this section.

Section 11. Limitation of penalties after conviction. The first sentence says “all penalties shall be determined both according to the seriousness of the offense and with the objective of restoring an offender to useful citizenship.” Both those who want a mandatory death penalty and those who want to abolish the death penalty might want to change this.

LWVIL position. The League supports the abolition of the death penalty.

Section 22. Right to Arms. “Subject to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.” As interpreted by the Illinois Supreme Court, this section does not guarantee any right to sell or possess handguns. (see Kalodimos vs. Morton Grove, 1984).

LWVIL position. The League supports legislative controls to stop the proliferation of the private ownership of handguns.

Other issues that might surface under the Bill of Rights could include privacy rights, abortion (pro or con), same-sex marriage, civil unions, prayer in the public schools, sex education in the schools, the rights of the fetus, surrogate motherhood, sperm donations, gene manipulation, stem cell research or any other aspect of new medical technology, or changing the wording from “persons” to U.S. citizens.

Article IV – The Legislative Article

The state legislature has all legislative powers that are not denied by the state or federal constitution, which means that the General Assembly has direct authority over all subordinate units of government, such as counties, townships, municipalities and school districts. The only limitations on this complete power over units of local government are 1) such control must be exercised by general law, applicable to any unit that falls within a reasonable population or other classification; and 2) laws cannot violate the home-rule and similar powers of those units as given by Article VII of the 1970 Constitution.

Important changes incorporated into the 1970 Constitution’s Legislative Article include:

Increases the number of legislative districts from 58 to 59 and requires each district to be divided into two single member representative districts.

Provides for all senators to stand for election in the year after the decennial redistricting (e.g. 1982, 1992) and then provides that each third of the legislative districts be assigned a different sequence of one two-year and two four-year during the ten year period.

Sets forth a procedure for the appointment and operation of an eight member commission, with a provision for the addition of a tie-breaker member, to redistrict legislative and representative districts if the General Assembly fails to produce a plan by June 30 in the year following the federal decennial census.

Legislative districts have been changed four times since 1970. The General Assembly failed to pass a redistricting bill three times; in 1971, 1981, and 2001. In 1991, the governor vetoed the bill. A redistricting commission was appointed four times and a tie-breaker was used three times. The courts have expressed dissatisfaction with the procedure.

Requires each house to keep a journal of its proceedings and a transcript of its debates, all of which information is to be available to the public.

Expands significantly the power of the governor to veto bills by adding a reduction veto (for appropriation bills) and an amendatory veto (to change unacceptable parts of non-appropriation bills) while retaining the governor's power of total veto and the item veto.

Requires a three-fifths vote of the members elected to each house to override the governor's veto, amendatory veto or item veto. Restoration of an amount reduced by the governor in an appropriations bill or acceptance of specific recommendations for change in a non-appropriations bill requires a majority of the members elected to each house.

Questions affecting the Legislative Article that could be addressed by a constitutional convention include:

- Should the length of term of representatives and senators be increased to four and six years respectively?
- Should the procedure for redistricting legislative and representative districts be changed?
- Should the governor's veto power be curtailed?
- Should we return to the system of multi-member House districts and cumulative voting?

LWVIL position. The LWV does not support a return to cumulative voting, but does support the "Show Us" amendment.

Article VI- The Judiciary Article

A new judicial article was approved by the voters in 1962, and retained in the 1970 Constitution. It provided for a simplified judicial structure with all trial courts absorbed

into a single circuit court and gave the Supreme Court the power to administer the entire judicial system. These changes were needed but court reformers who were also working for merit selection of judges felt that they had settled for “half a loaf.” The 1970 Constitution added a new judicial disciplinary system by creating the judicial Inquiry Board and the Illinois Courts Commission. The board is composed of both lawyers and non-lawyers and has the power to investigate complaints and initiate investigations on its own. The board may prosecute judges before the Illinois Courts Commission, whose members are all judges.

At present, circuit, appellate and Supreme Court judges are elected at general elections after being nominated in primary elections. The judicial candidates are slated by the political parties and run under party labels. Associate judges are appointed by the sitting circuit court judges. At the end of their term, circuit, appellate and Supreme Court judges are required to run in a retention election if they choose to continue in office. Retention elections provide that the judge run on his or her record- Shall judge Jane Doe be retained – and political labels do not appear on the ballot. Many judicial elections are uncontested so that party slating is all that is necessary to win the seat on the bench. Filing dates for judges seeking retention set out in the Constitution of 1970 differ from filing dates in a law passed by the General Assembly. The Illinois Supreme Court ruled in 2006 that the law is unconstitutional.

Selection of judges was one of the major issues that faced our last constitutional convention. The delegates were sharply divided between those favoring merit selection and those wanting to continue political election. Because of the deep division, judicial selection was submitted as a separate proposal to the voters. Proposition 2A continued the election of judges, and Proposition 2B provided for merit selection. Although 2B passed in Cook County and the counties surrounding Cook, it failed downstate and 2A was adopted.

Judicial selection would be again hotly debated if a new Constitutional Convention takes place. The high cost of running campaigns for judgeships has become an issue.

LWVIL position. The League supports merit selection of judges, and recall of elected judges.

Article VII - Local Government

Issues related to local government that may come up at a convention include eminent domain powers and tax increment financing (TIF) districts.

Section 6 - Home Rule

The most important innovation in the 1970 Constitution is home rule, granted by this section to municipalities with a population of over 25,000 and to any county that elects a chief executive officer (presently only Cook County). Home rule may be adopted by

smaller municipalities by referendum and may also be abolished by any municipality by referendum.

Under home rule, taxing powers were broadened to include property taxes levied without referendum or statutory authorization; municipal sales taxes; and, with enabling legislation by the General Assembly, taxes measured by income or upon occupations. Home rule provides powers to regulate for protection of public health, safety, morals and welfare, and includes expansions of environmental and zoning powers.

Certain powers are constitutionally restricted or denied to home rule units. In other cases, the General Assembly can provide by majority vote for the exclusive exercise by the state of what would otherwise be home rule power. The General Assembly, by a three-fifths vote, may also prohibit home rule action on a given subject even if the state does not exercise the authority.

The grant of home rule authority was intentionally made broad and imprecise to allow local governments the freedom to attempt to solve their own problems without enabling statutes. Even the most disinterested citizen has strong opinions on the proper powers that should be granted to local governing officials. For this reason, many of the provisions in this article have been challenged in court. A broad discussion and possible total rewrite of this article would be likely at a new convention.

LWVIL position. The League supports the concept of home rule.

Article IX - The Revenue Article

The 1970 Revenue Article greatly expanded the ability of the state to fund programs typically provided by present day state governments. It gives the General Assembly a broad power to raise revenue through taxation in any manner not specifically prohibited by the state or federal constitution. Restrictions on non-property taxes include: 1) the reasonable classification of the subject or objects of such taxes and the uniform taxation of those within each class; 2) reasonable exemptions, deductions, credits and other allowances from such taxes.

A flat rate state income tax on individuals and corporations is authorized, with the restriction that the corporate income tax rate not exceed the individual rate by more than an 8 to 5 ratio. Property taxes must be levied uniformly by valuation as provided by the General Assembly, except that counties with a population of more than 200,000 may classify real property as long as the classification is reasonable, assessments are uniform within each class, and the level of assessment of the highest class of property does not exceed two and one-half times the level of assessment of the lowest class in that county. This article permits the state to incur long-term debt for specific purposes if it is approved by a three-fifths majority of each house or by a majority of those citizens voting on a referendum authorizing the debt.

Revenue questions that might be raised at a constitutional convention include:

- Should a graduated income tax be permitted?
- Should the provision limiting the ratio of the corporate income tax to the individual rate be changed or removed?
- Should the constitution contain a percentage limit on income tax rates?
- Should the classification of property tax be prohibited?
- Should increases in property tax levies of local governments and school districts be limited?
- Should provisions for incurring state debt be eased or made more restrictive?

LWVIL Position- The League supports a diversified revenue system which principally relies on a combination of broad-based taxes and user fees, is equitable, progressive, stable, responsive, and simple.

Article X - The Education Article

The 1970 Education Article strengthened the State's commitment to a free education through high school but remained silent on the question of college and university education. It clearly states that the state has the primary responsibility for financing the system of public education. However, the Illinois Supreme Court in 1973 held that the state's "primary responsibility" for education does not require the state to provide at least half of school funding. The Illinois Supreme Court in 1996 also rejected a more broadly based challenge to the Illinois public school financing system.

The Education Article creates a State Board of Education which appoints a chief state educational officer, replacing the previously elected Superintendent of the Public Instruction. The constitution leaves to the General Assembly all decisions regarding the selection of board members, number, terms of office, qualifications, and so on. The 1870 Constitution's unusually strong prohibition on the use of public funds for sectarian purposes has been retained.

Education issues debated at a new constitutional convention might include:

- Should the constitution define the state's financial responsibility for education, for example, by citing a specific percentage for the state's share of funding?
- Who should appoint the State Board of Education and the State Superintendent of Instruction?
- What are the state's responsibilities to vocational students, special education students, gifted students, and higher education students?
- Additional issues that could be debated include prayer in the public schools, creationist education, use of sectarian and religious textbooks in public schools,

transportation for private school students, and tuition tax credits for parents of private school students.

LWVIL position.

The League supports a public school system that is equitable both in quality for the student and financing for the taxpayer. The League supports having the state assume the major responsibility for funding public schools and guaranteeing an adequate level of financial support.

The League also supports an appointed State Board of Education with the authority to select a State Superintendent.

Article XIV- Constitutional Revision

Provisions of this article are discussed earlier in this study guide. Questions affecting this article which might be raised at a new convention include:

- Should the percentage of voter approval required for ratification of amendments be raised or lowered?
- Should amendments affecting articles of the constitution other than the Legislative Article be subject to citizen initiative?

LWVIL position. The League supports constitutional initiative for the Legislative Article. In addition, the League supports the indirect statutory and constitutional initiative.

Other issues that may arise:

- Recall of elected officials
- Judicial evaluation
- Term limits
- Direct referendum initiative
- Campaign finance reform
- Restructuring of the Governor's amendatory veto power or power to call special sessions
- Immigration issues such as English as the official language or requiring citizenship to access government services
- Beginning and end of life issues
- The type/cost/entitlement to pensions for public employees

CONCLUSION

A convention cannot be limited to what issues it discusses or what constitutional changes it proposes. Therefore, any and all issues can come up at a convention.

In the final analysis, support or opposition to the call for a constitutional convention should reflect a careful examination of the extent of the need to 1) improve the Illinois Constitution after forty years, 2) the urgency for instituting such reforms simultaneously, and 3) the likelihood of achieving piecemeal change through the current amendment procedure. Such a review must also balance the anticipated benefits from rewriting specific articles by a convention against the potential risks involved in exposing the entire constitution to revision. Illinois voters need to focus on the purpose of a constitution versus the appropriate roles of the three branches of state government. Writing a constitution is not like writing a law; it provides guidelines that enable people to write laws. Reasonable people may assign various degrees of importance to each factor and arrive at different conclusions.

Whether the call for a convention is approved or rejected, the intellectual exercise required of those formulating a thoughtful decision is an appropriate response to Thomas Jefferson's suggestion that every generation should think through the foundations of government.

BIBLIOGRAPHY/STUDY RESOURCES

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APPENDIX

SOME STATEMENTS IN SUPPORT OF A CONSTITUTIONAL CONVENTION

1. A constitutional convention provides an opportunity for more thoughtful integration of new proposals into the constitution than is possible with the amendment process.
2. A constitutional convention would increase public awareness of, and interest in, the constitution and provide a better understanding of how state government operates.
3. Those who fear the actions of a convention may be underestimating the voters who will elect delegates as committed to upholding democratic principle as are the members of the General Assembly.
4. Fear of single issue groups is unwarranted as they would be unable to gain sufficient votes to control the convention. In any event, the final product of the convention must be ratified by the voters.
5. A new convention could deal with issues not addressed by the General Assembly.

SOME STATEMENTS IN OPPOSITION TO A CONSTITUTIONAL CONVENTION

1. The Illinois Constitution was substantially rewritten just 40 years ago. Conditions have not changed sufficiently in that period to warrant a complete overhaul.
2. The 1970 document significantly eased the process for amending the constitution, making it possible to achieve change through amendment.
3. Calling a constitutional convention would be very expensive. The 1970 convention cost \$14 million (\$78 million in current dollars), and estimates for a new convention run much higher.
4. The process of considering the call for a constitutional convention will stimulate interest in reexamining the constitution and will encourage revision by amendment.
5. A convention would expose the entire constitution to revision. Important gains achieved in the 1970 constitution could be lost if extremist views prevail.