

May 17, 2007

AN ILLINOIS CONSTITUTIONAL CONVENTION IN 2008?

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On November 4, 2008, the voters of Illinois will decide whether to call the Seventh Illinois Constitutional Convention. This is a summary of the constitutional, legal and, to a certain extent, political ramifications that shape any discussion of this vote.

The Illinois Constitution of 1970 provides that an “automatic” call for a constitutional convention must be placed on the ballot every twenty years since the 1968 call for the last convention. Thus the question will be before the voters in November 2008. The question was last on the ballot in November 1988. (See the constitutional provisions at Appendix A.)

In preparation for the 1988 referendum, much preparatory 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 the background papers prepared primarily by academics. (See Appendix B.)

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 *Chicago Tribune* spoke for most voters when it declared editorially:

The Tribune strongly recommends a “No” vote on the proposal for a state constitutional convention. Illinois already has a modern, workable Constitution, a model for other states. Delegates to the 1969-70 Convention that wrote it thought voters should have an opportunity at 20-year intervals to decide whether it needed an overhaul. They underestimated the excellence of their work. The Constitution they drafted is still a fine fit for Illinois, dealing only with the basics: the scope and authority of state government, the powers of local government, the mechanics of amendment and the guarantee of individual rights. It keeps its nose out of other matters, and that is one of its great strengths.

Seventy-five percent of the 3.6 million voters in 1988 agreed with the editorial and soundly defeated the call.

Other Constitutional Changes

Beyond the question of the calling a convention beyond the automatic 2008 call, the General Assembly can, and does, submit amendments to specific articles of the Constitution. Unlike several other states that seek to amend their constitutions frequently, such as California for example, amendments are submitted infrequently to Illinois voters. Since the last Con-Con vote in 1988, six proposed amendments have been submitted, of which five have been approved (see Appendix C). Of the five, only the 1994 amendment to change the legislative adjournment date is of major importance.

The 2008 Constitution Question

At this writing, no state agency has begun preparatory activity similar to the 1988 Committee of 50. Some interest groups have reviewed the issue, but there is no widespread public awareness. As November 2008 approaches, there may be more activity.

The following is a list of issues likely to be raised in discussion of a call for a convention:

➤ “Merit Selection” of judges

“Merit selection” is the name given to the process by which a Governor appoints judges from among three nominees submitted by Judicial Nominating Commissions consisting of both lawyers (elected by the members of the bar) and non-lawyers (appointed by the Governors). It is thus a sub-set of the an appointive system – other possibilities being the federal model of nomination by the chief executive with confirmation by the Senate and appointment by the state’s Supreme Court.

Such a change absolutely requires a constitutional amendment. To an extent, we have experimented with a “merit selection” system in the judicial vacancy appointment committees set up voluntarily by the Illinois Supreme Court.

The list of proponents and opponents of a “merit selection” system has changed since 1970. The opposition by minorities, who comprise at least 15% of the state’s population, is still strong. Except for the Asian-American Bar Association, all minority bar associations who have spoken about the issue have opposed it. The major bar associations still support the concept although it is not clear if the membership agrees. The business groups that have supported “merit selection” in the past currently find that they can help determine elections by making campaign contributions and may now decide not to abandon the system of electing all Supreme Court and Appellate Court judges and half of the Circuit Judges.

➤ School Financing

Changing the system of financing public high schools and elementary schools does not require a constitutional change, but many proponents of a change believe that only a constitutional amendment will actually effectuate a change.

Led by the teachers' unions and school boards, there is a broad coalition favoring reducing property taxes as the basis for school financing and favoring the equalizing of funds among school districts. None of these groups openly favors raising state taxes or instituting state control of schools. None seems to address the needs of home-schooled children or children in non-public, particularly religious, schools.

Probably many suburbanites and taxpayers' groups would oppose any major change in school financing. (According to *State Rankings 2006*, Illinois ranks 13th in per capita income among the states and 24th in state and local tax burden per capita.)

➤ Public Employee Pensions

Article XIII, Sec. 5, of the Illinois Constitution is one of a half-dozen state provisions "guaranteeing" the pension rights of state and local government employees. The issues of full funding of pensions and permissible changes to the pension systems have become a major controversy.

At present funding levels, the pension systems will probably collapse within two decades. Public employee unions favor a mandate of full funding and a guarantee of at least the status quo in the level of pensions. Taxpayers' and business organizations favor changing the systems to reduce the governmental burden, e.g., shifting from a defined benefit system to a defined contribution system.

➤ Legislative Redistricting

Every decade there is wide-spread condemnation of the tie-breaker system for deciding legislative redistricting. However, no one has created a better plan for Illinois.

The Legislative Redistricting Process Review Commission was unable to devise a better way that would be acceptable. Moreover, the increased role of federal judges in re-drawing legislative maps has meant that use of the "tie-breaker" has become simply a prelude to state and federal litigation.

The voters could initiate an amendment to Art. IV, Sec. 3, of the 1970 Constitution, which establishes the present redistricting system, but that has not happened.

➤ Gay Marriage

This would take the form of an amendment to Art. I, probably Sec. 18, saying that marriage is defined as being between one man and one woman.

➤ Death Penalty - Pardons

Opposition to the death penalty has grown. On the other hand, many would like to restrict the Governor's power to issue pardons and commutations, as is the case in Texas.

➤ Multi-Member Districts/Cumulative Voting v. Single Member Districts

While the 1980 Cutback amendment appeared to have settled this issue, the Midwest Democracy Center has been urging a return to some form of the former system.

➤ Restrictions on Municipal Home Rule

Home rule, especially for cities, is viewed as a “tax and spend” provision. The anti-tax groups would lobby for restrictions on municipal tax and spending powers.

➤ Post-KELO/SWIDA Restrictions on “Takings”

There is a widespread movement to restrict the use of eminent domain to aid in economic development projects that would principally benefit private entities and secondarily “the public.”

➤ Personal Property Replacement Tax

In order to eliminate the ad valorem personal property tax by 1979, it was necessary to institute a replacement tax on corporations. As part of any tax restructuring plan, businesses would probably demand relief from this special tax on corporations.

➤ Graduated and/or Restricted Income Tax

There is no “progressive” income tax currently allowed, but otherwise there are few significant restrictions on the income tax. Anti-tax groups would seek to impose a 5% cap and other restrictions.

➤ Initiative and Referendum for Constitutional Amendments and Legislation

Presently, the only initiative and referendum process is for certain amendments to the Legislative article; there would be an effort to expand this to cover all constitutional amendments and/or for legislation.

Almost any topic can become part of a state constitution. Indeed, one advocate of a 2008 convention says he wants a convention to have a “state-wide debate on the nature of government.”

In addition to the public policy issues raised in this memorandum, during the campaign prior to the 2008 vote, the cost of the convention undoubtedly will be raised. The last convention in 1969-70 cost \$14 million, which would be about \$78 million in 2008 dollars. There are many ways the cost of the convention can be reduced. For example, staff of the legislature could also serve as staff to the convention, rather than hire a separate staff.

The General Assembly and Governor, through the process of creating statutes, would determine the regulations concerning the election of the members of the convention, etc, pursuant to subsection 1(d). They could determine, for example, whether the election would entail a primary and general election or just an election, whether the candidates would run on a partisan or non-partisan ballot, and whether incumbent legislators and executive officers could serve as members.

The statutes would also determine the funds allotted to the convention for expenses, staffing, salaries of members, etc.

Campaign for a Convention

There are, in our opinion, two ways that the three-fifths vote needed to call a convention could be mustered.

The first is through an organized coalition waging a campaign. We estimate that this would take approximately eighteen months and \$12-14 million.

The other way cannot be orchestrated or even predicted. If a great crisis in state government occurred that aroused public ire just before November 2008, the voters might see a convention as the only way to improve Illinois government. Such a crisis might be a financial disaster, but it is more likely to be a crisis in the integrity of government, a scandal. Yet Illinoisans are used to public scandals.

APPENDIX A

Article XIV, Sec. 1, of the 1970 Illinois Constitution reads:

Section 1. CONSTITUTIONAL CONVENTION

- A. Whenever three-fifths of the members elected to each house of the General Assembly so direct, the question of whether a Constitutional Convention should be called shall be submitted to the electors at the general election next occurring at least six months after such legislative direction.
- B. 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.
- C. The vote on whether to call a Convention shall be on a separate ballot. 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.
- D. The General Assembly, at the session following approval by the electors, by law shall provide for the Convention and for the election of two delegates from each Legislative District; designate the time and place of the Convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the Convention.
- E. To be eligible to be a delegate a person must meet the same eligibility requirements as a member of the General Assembly. Vacancies shall be filled as provided by law.
- F. The Convention shall prepare such revision of or amendments to the Constitution as it deems necessary. Any proposed revision or amendments approved by a majority of the delegates elected shall be submitted to the electors in such manner as the Convention determines, at an election designated or called by the Convention occurring not less than two nor more than six months after the Convention's adjournment. Any revision or amendments proposed by the Convention shall be published with explanations, as the Convention provides, at least one month preceding the election.
- G. The vote on the proposed revision or amendments shall be on a separate ballot. Any proposed revision or amendments shall become effective, as the Convention provides, if approved by a majority of those voting on the question.

APPENDIX B

Background Papers for the Committee of 50 to Re-Examine the Illinois Constitution

Titles and authors of the 10 papers are:

- “Constitutional Developments in Illinois” by Samuel K. Gove (15 pp)
- “The Bill of Rights of the 1970 Constitution” by John M. Garvey (7 pp.)
- “The Suffrage, Elections and Constitutional Revision Articles” by John Jackson (11 pp.)
- “The Executive Article” by William Monat (14 pp.)
- “The Legislative Article” by Jack R. Van Der Slik (11 pp.)
- “The Judicial Article” by Nancy Ford (12 pp.)
- “The Local Government Article” by James M. Banovetz and Ann Elder (13 pp.)
- “The Public Finance Article” by J. Fred Giertz (9 pp.)
- “The Education Article” by Donald Sevenser (12 pp.)
- “Legislative Redistricting in Illinois: An Historical Analysis” by Paul M. Green (33 pp.)

APPENDIX C

Amendments by General Assembly since 1988

Adopted Amendments

- 1990: Amended Article 9, section 8 again, to subdivide the kinds of real property having a shorter period for redemption from taxes into two groups – one with a redemption period of 6 months, and the other with a redemption period of one year.
- 1992: Added to Article 1 a new section 8.1 on rights of crime victims.
- 1994: Two amendments were proposed and adopted:
 - (1) Amended Article 1, section 8 to remove the requirement of face-to-face confrontation in criminal trials between witnesses and defendants.
 - (2) Amended Article 4, section 10 to change the intended legislative adjournment date from June 30 to May 31
- 1998: Amended Article 6, section 15 to strengthen the process for discipline of judges charged with misconduct.

Rejected amendment proposals

- 1992: To require “equality of educational opportunity” and make the state carry the “preponderant financial responsibility for financing” public schools.