

*We, the People of  
the State of Illinois –*

*...ful to Almighty God for the civil, political and religious liberty which He has  
...tted us to enjoy and seeking His blessing upon our endeavors - in order  
...for the health, safety and welfare of the people; maintain a represent  
...ly government; eliminate poverty and inequality; assure legal, so  
...ic justice; provide opportunity for the fullest development of  
...nsure domestic tranquility and order for the comfort and defer  
...blessings of freedom and counsel to ourselves and posterity  
...n and establish this as a permanent and stable foundation for the State of*

## Is there a Con-Con in Illinois' Future?

A Constitutional Convention will be on the 2008 ballot.  
Should the meeting happen?

# Is There a Con-Con in Illinois' Future?

By James D. Nowlan, Samuel K. Gove and Richard J. Winkel

*Editor's Note: In this final chapter, we depart slightly from our normal format to analyze a looming question: "Should Illinois conduct a Constitutional Convention?" We feel this question, which will be on the 2008 ballot, is one for which voters and policymakers alike should be particularly well-informed and deserves analysis from some uniquely qualified men. Sam Gove was intimately involved in the planning and conducting of the 1970 Constitutional Convention. Jim Nowlan was a state legislator at the time and served on the House Constitutional Implementation Committee after the convention. They and Rick Winkel have been intimately involved with the legislative process in Illinois for many years and bring exceptional knowledge and historical perspective to this very important question.*

Voters will have the opportunity to decide in the November 2008 general election if they favor calling a convention to re-do the Illinois Constitution. Proponents will plead that a Constitutional Convention is the only way to enact popular changes such as citizen initiative and recall. Opponents will retort that the 1970 constitution works just fine, perhaps fearing that a convention might not only be very expensive but could end up changing the constitution for the worse.

This chapter provides a brief history of constitution-making in Illinois, identifies the key issues in the impending debate, and evaluates whether the state should call a new convention.

State constitutions provide the dimensions for the arena of politics. The charters provide the structure of government, the powers of elected and appointed officers, and the authority and limitations of the legislative,

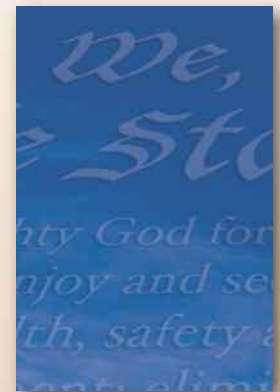
executive, and judicial power as well as of the state's local governments. Academic experts believe a "model" state constitution sticks to basic grants of authority, avoids limitations on future actions by elected officials, and is amendable as needed.<sup>1</sup>

Unlike our national government, which has had just one Constitution since the Articles of Confederation, Illinois has enacted four charters since its admission to the Union in 1818.<sup>2</sup> Required as a condition of statehood, the first constitution restrained the powers of the governor – he would have only one four-year term, no exclusive veto power, and limited powers of appointment. Slavery was a big issue in 1818 and the final version of that first constitution omitted a provision that would expressly prohibit the introduction of slavery. Instead, it included language that allowed the "renting" of slaves from Tennessee and Kentucky to perform back-breaking work in the state's salt mines.

The 1848 constitution reduced the legislature's ability to control judicial appointments and eliminated voice voting in elections in favor of the paper ballot. Voters strongly approved a side issue that prohibited immigration of free blacks in the state.

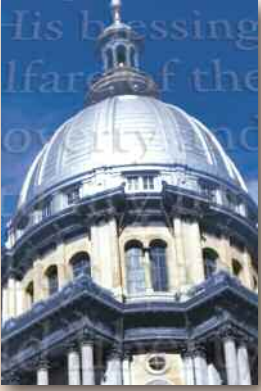
The 1870 constitution, which lasted 100 years, adopted an unusual system of "cumulative voting" for the Illinois House of Representatives; a voter could cumulate his three votes for Illinois House on behalf of a single candidate, which almost always resulted in the minority party electing one of the three House members in each district.

The 1870 document was voluminous in detail and in time would be criticized as a straitjacket on progress. For example, the charter limited local government debt to 5 percent of assessed valuation. This limitation might be what caused the proliferation of



<sup>1</sup> See the *Model State Constitution* developed by the National Municipal League, now called the National Civic League.

<sup>2</sup> The brief history is taken primarily from James D. Nowlan, Samuel K. Gove and Richard J. Winkel, *Illinois Politics and Government*, forthcoming in 2008 from the University of Illinois Press.



<sup>3</sup> Pat Guinane, "Con-Con Revisited," *Illinois Issues*, November 2007.

special districts for parks, libraries, hospitals, recreation and other purposes, as each new district could also extend debt to the constitutional limit, even though it overlaid municipalities and the county.

The 1870 document also forced local governments to go to Springfield for authority to do anything, even for Chicago to change the color of lights on its police squad cars.<sup>3</sup> The constitution also locked in a system of representation that failed to take account of the rapid growth of Chicago.

The voters approved a constitutional convention in 1918. Dominated by Republicans, the convention meandered for three years through lengthy recesses and high rates of absenteeism. The final document failed to provide Chicago with full powers of home rule and was one of several reasons that Cook County voters rejected the document 20-1, which translated into a 5-1 statewide defeat.

After World War II, a coalition that included the League of Women Voters and the Chicago Bar Association pushed for a new convention but initial support for the idea was tepid at best. In 1949, Gov. Adlai Stevenson proposed a con-con resolution, which was defeated. As an alternative, Republicans proposed a "gateway" amendment, which made it easier to amend the 1870 constitution. This provided that an amendment could be adopted by a favorable vote of two-thirds of those voting on the issue as well as by the prior requirement of a majority of all those voting in the election. The gateway amendment was adopted in 1950, and redistricting (1954) and judicial reform (1962) amendments were subsequently ratified by the voters.

Rather than a piecemeal approach, however, the reformers still wanted a convention to review the complete 1870 constitution and in 1968, voters ratified a call for a constitutional convention. The General Assembly provided for non-partisan election of delegates to the convention, which resulted in the election of a

mix of civic leaders and future rising stars in politics, including present Chicago Mayor Richard M. Daley and House Speaker Michael Madigan. A court decision held that elected legislators could also serve as delegates to the convention but they could not receive pay for the latter position, so only a handful of lawmakers also sat in the convention. Convention President Samuel Witwer negotiated hard to create 12 balanced committees that would not break down on partisan lines or be overwhelmed by a single controversial issue. For the most part, he succeeded.

The final document provided for strong home rule authority and intergovernmental cooperation among the state's 6,000 local governments; a revenue article that limited the flat-rate income tax to a ratio of 8-5; corporate over individual income tax rates; strong veto powers for the governor; and elimination of the personal property tax. Delegates considered only briefly the citizen initiative, referendum and recall before they rejected them, with the sole exception that the legislative article could be amended by citizen initiative.

Four controversial issues were offered as side issues, outside the main document, on the premise that they might sink the document if included. On these issues, voters retained the cumulative voting system, election of judges and the death penalty while rejecting the vote for 18-year-olds.

Endorsed by both the Republican and Democratic parties, the main document was ratified in a special election by a vote of 1,122,425 to 838,168, a 56-44 percent margin.

The document has generally held up well. Local governments are pleased with the home-rule provisions and there have been no initiatives to discard the document for a new one.

As required by the constitution, the question of calling a new convention goes on the ballot every 20 years. In 1988, the General Assembly created what became known as

the “Committee of 50,” a group of prominent Illinoisans who evaluated the 1970 constitution and provided materials for voters. The debate started with 58 percent support for a new convention.<sup>4</sup> But a coalition of interest groups, including the state Chamber of Commerce, the AFL-CIO and the League of Women Voters opposed the call for varying reasons. Some felt the 1970 constitution had served the state well; others questioned the cost of another convention (the 1970 gathering cost about \$14 million). Others feared that new controversial issues, such as abortion rights, would be brought up in a convention. Most major newspapers in the state also opposed the call and voters rejected it by a 3-1 margin.

Since its 1970 adoption, 17 amendments have been proposed to the constitution and 10 adopted.<sup>5</sup> In 1980, an amendment initiated and advocated skillfully by now Lt. Gov. Pat Quinn reduced the size of the Illinois House from 177 to 118 members and eliminated cumulative voting. In 1994, voters ratified a proposal that encourages earlier passage of bills by the General Assembly; the amendment moved up from June 30 to May 31 the deadline for passage of bills by a simple majority of members elected, after which a three-fifths majority is required if bills are to be effective immediately.

Another successful amendment that year affected the provision that the accused have the right “to meet witnesses face to face;” children who have been sexually abused may now testify from a separate room, via closed-circuit television.

### Should there be a new convention?

Should there be a new state constitutional convention? If a person or group has a passion to change or add to the present charter and believes that the legislature cannot be persuaded to initiate such change or addition, then the answer is “Yes.” For example, two issues are unlikely to emanate from the legislature: the initiative, referendum and

recall, and the appointment rather than election of judges. Another area where legislative inaction has frustrated key groups for at least two decades is that of school funding and related tax reform; that is, an increase in the income tax coupled with property tax relief and new state dollars for education.

But if one believes that the present document has served well and that a convention might do harm rather than good, the answer is “No.” What are the issues that worry some and motivate others?

Ann Lousin, professor of law at John Marshall Law School, has developed a list of likely hot-button issues, in addition to the three noted just above:<sup>6</sup>

- Legislative redistricting. Every decade there is widespread condemnation of the tie-breaker system for deciding legislative redistricting.
- Public employee pensions. Article XIII, Section 5 of the present constitution guarantees the pension rights of state and local government employees. Public employees understandably want to protect that provision whereas taxpayer groups might favor pension limitations.
- Gay marriage. This would take the form of an amendment to Article I, Section 18, saying that marriage is defined as being between one man and one woman.
- Death penalty and 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.
- Cumulative voting. The Midwest Democracy Center has been urging a return to something like the multi-member, proportional representation system called “cumulative voting.”
- Restrictions on home rule. Anti-tax groups tend to see home rule for cities as a “tax and spend” provision.
- Restrictions on “takings.” Some favor restrictions on the use of eminent domain (condemnation) to aid in economic



<sup>4</sup> Steve Huntley, “Some in Illinois want a new constitutional convention,” *Chicago Sun-Times*, June 22, 2007.

<sup>5</sup> Frank Kopecky and Mary Sherman Harris, *Understanding the Illinois Constitution*, 2001 edition, Illinois Learn Program, Springfield, Illinois, 2000.

<sup>6</sup> James D. Nowlan, Ann M. Lousin and Samuel K. Gove, “Report to the Union League Club of Chicago on Con-Con,” Union League of Chicago, May 17, 2007.



development projects that might principally benefit private entities.

- Personal property replacement tax. In order to eliminate the personal property tax, a replacement tax on corporations was enacted. In a convention, business would probably demand relief from this special tax.
- Income tax change. Some groups favor changing the constitution's requirement of a flat-rate income tax to allow graduated rates of taxation. On the other hand, anti-tax groups would probably seek caps on taxes and spending in a new constitution.

On June 7, 2007, the state House of Representatives adopted a resolution introduced by Rep. John Fritchey for a new constitutional convention so that it might "address the key issues that impact the daily lives of all Illinoisans."<sup>7</sup> Since passage of the resolution, Representative Fritchey would now include among the key issues the clarification of the role of the Joint Commission on Administrative Rules (JCAR).<sup>8</sup> This is in response to Gov. Rod Blagojevich's Nov. 19, 2007, executive order that called into question the constitutionality of JCAR by unilaterally expanding state-subsidized health care after JCAR had rejected the proposal.<sup>9</sup>

Also, there are proposed constitutional amendments filed in the General Assembly at present that require a two-thirds majority of the legislature to increase revenue. These, on the one hand, authorize a graduated income tax and, on the other, would limit taxes on real estate to 2 percent of fair cash value. Other proposals would require a three-fifths vote to approve appropriations and limit increases in annual appropriations to the greater of 4 percent or the sum of the rate of inflation and population growth. Other pending proposals address most of the hot-button issues identified above.

### Political climate different now than in 1970

The 1970 Constitutional Convention was called after 25 years of study and debate con-

cluded almost unanimously among a wide array of groups that a new constitution was needed. To the credit of the legislature, lawmakers provided for non-partisan election of delegates, which helped draw a number of delegates who were independent of partisan influence. The convention proceeded in a spirit of enacting a document that voters would ratify; that is why the controversial issues were presented "on the side."

The present political climate is sour rather than positive. Political observer Rich Miller has said the combination of an unpopular governor and dissatisfaction with the political system in general could lead voters to view next year's con-con vote "as a referendum on our seemingly broken government."<sup>10</sup>

Lt. Gov. Pat Quinn is also expected to launch a vigorous campaign for a new convention, for purposes of enacting the initiative, referendum and recall, which 65 percent of Illinois voters favor as of this writing.<sup>11</sup>

On the other side, prominent Chicago lawyer and 1970 delegate Wayne Whalen and former state representative Nancy Kaszak have been organizing a coalition of business, public employee and other groups to oppose the call for a convention.

If a convention is called, the legislature is responsible for making the arrangements, setting the compensation, and providing the money to conduct the convention. The convention cannot be limited in any way. Once the delegates convene, they proceed without limitation. They can propose a completely new constitution or a list of individual amendments to the present constitution or, as in 1970, a new main document with side issues decided separately.

The three writers of this chapter are somewhat conservative about changing the 1970 document. We fear that a convention elected during a period of anger toward the present political climate could result in a document

<sup>7</sup> House Resolution 25, 95<sup>th</sup> General Assembly, <http://www.ilga.gov/legislation/95/HR/PDF/09500HR0025lv.pdf>; see, John Fritchey, *In My View: Time is right to hold a 'Con-Con'* (The State Journal-Register, November 10, 2007) <http://www.sj-r.com/Opinion/stories/19797.asp>

<sup>8</sup> Interview with State Rep. John Fritchey, *Government Insight*, November 27, 2007, Audio: <http://www.igpa.uiillinois.edu/lib/data/ram/GovernmentInsight112707.mp3>

<sup>9</sup> Aaron Chambers, *Rockford Register Star*, November 16, 2007, <http://www.rrstar.com/news/columnists/x481187379/?printview=true>

<sup>10</sup> Rich Miller, "Are Illinoisans ready for change?" [capitolfax@aol.com](mailto:capitolfax@aol.com), Nov. 9, 2007.

<sup>11</sup> The 65 percent figure is taken from Rich Miller, "Are Illinoisans ready for change?"

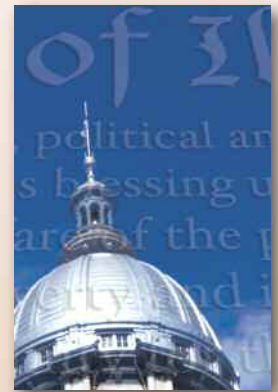
filled with popular items, such as the initiative and recall, and numerous limitations, such as on taxes and utility rates. While supported by the passions of the moment, such provisions probably would not serve the state well as it moves into a rapidly evolving future.

On the other hand, Lieutenant Governor Quinn says he “has confidence in the everyday people of Illinois” to select delegates who live up to the wisdom of Thomas Jefferson and that “it’s healthy for every generation to review its organic document.”<sup>12</sup>

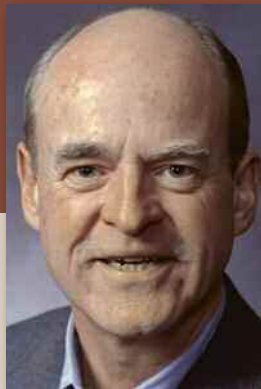
At present, the public is almost wholly unaware that the issue will be on the ballot

in 2008. We doubt either opponents or proponents will raise significant money to advertise their positions extensively on television. As a result, “earned” (free) media coverage will be the primary mode of communication.

The skill of each side in framing the issues in such a way as to gain resonance with voters will probably determine whether a convention will be called. Proponents will focus on the right of citizens to change a “broken” system; opponents will emphasize the multi-million dollar cost of a convention and play upon the fear of what a “rogue” convention might propose.



<sup>12</sup> Steve Huntley, “Some in Illinois want a new constitutional convention.”



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