Established in 1879 to uphold the sacred obligations of citizenship, promote honesty and efficiency in government, and support cultural institutions and the beautification of the city, the Club has been a contributing partner in the growth and development of Chicago. Through the efforts of its dynamic membership, the Club has been a catalyst for action in nonpartisan political, economic and social arenas – focusing its leadership and resources on important social issues.

The Union League Club is the only private club in the United States that carries out a systematic program of civic involvement. The Club’s Public Affairs Committee addresses major public policy and community issues and maps out strategies for implementation of its positions, including coalition building, informational campaigns, sponsorship of debates and forums, and testimony before legislative committees.

The Civic Federation is a non-partisan government research organization working to maximize the quality and cost-effectiveness of government services in the Chicago region. The Federation’s membership includes business and professional leaders from a wide range of Chicago-area companies and institutions.

The Civic Federation provides objective, non-partisan information and advocates for improvements in government efficiency and tax policy through research, information and action. In addition to long-term research projects, the organization continually monitors the finances of local governments and communicates important information and viewpoints to the community through publications, media statements and its website.

Should Illinois Citizens Call a Constitutional Convention?

March-April-May 2008

Union League Club of Chicago
65 W. Jackson Boulevard
Chicago, IL 60604
Background & Purpose of the Constitutional Convention Forums

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, on November 4, 2008, the voters of Illinois will decide whether to call the Seventh Illinois Constitutional Convention (or "Con-Con," as it is popularly known). If approved by three-fifths of those voting on the question, a Con-Con will be convened. This question was defeated when it was on the ballot in November 1988. In March, April, and May 2008, the Union League Club of Chicago (ULC) and the Civic Federation are jointly sponsoring this series of forums to provide citizens with information on the constitutional, legal and political aspects of this matter so that they may make an informed judgment on whether or not to support the call for a Con-Con.

The Union League Club of Chicago and Civic Federation gratefully acknowledge the Illinois League of Women Voters (LWVIL) for use of materials in this booklet excerpted from the LWVIL's Constitution Convention Study Guide. This document, which includes contributions from members of the ULC's Public Affairs Committee who were involved in the 1970 Con-Con, is available for download at the LWVIL website, www.lwvil.org

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 characterized as anti-bank, anti-corporation and pro-farmer, failed to win approval.

The 1870 Constitution showed evidence of the influences of different interest 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.

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.

The following material has been prepared to help citizens cast an informed vote on this question. 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.
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 of 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 during 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. Nonetheless, 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 Union League Club of Chicago member Samuel Witwer, 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 in addition to the overall constitution, four controversial issues were voted on separately by the people:

1) Single member districts for House members — Rejected (but subsequently adopted by amendment in 1980)

2) Election of Judges — Approved

3) Abolition of capital punishment — Rejected

4) 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)

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,” whose members were 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 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, as of today there has been no commission or committee established by the legislature in advance of the November 2008 ballot question.

In the years since the adoption of the 1970 Constitution, the legislature has constantly reviewed that document. Not surprisingly, there also have been many decisions by state and federal courts interpreting the 1970 Constitution. 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 its website at http://www.ilga.gov/commission/lru/ILconstitution.pdf

**Changing the Constitution**

The Constitution can be changed through the convention process or by the amendment process.
The relevant sections of Article 14 (XIV) of the 1970 Illinois Constitution read as follows:

**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.

**Section 2. Amendments by General Assembly**

(a) Amendments to this Constitution may be initiated in either house of the General Assembly. Amendments shall be read in full on three different days in each house and reproduced before the vote is taken on final passage. Amendments approved by the vote of three-fifths of the members elected to each house shall be submitted to the electors at the general election next occurring at least six months after such legislative approval, unless withdrawn by a vote of a majority of the members elected to each house.

(b) Amendments proposed by the General Assembly shall be published with explanations, as provided by law, at least one month preceding the vote thereon by the electors. The vote on the proposed amendment or amendments shall be on a separate ballot. A proposed amendment shall become effective as the amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election.

(c) The General Assembly shall not submit proposed amendments to more than three Articles of the Constitution at any one election. No amendment shall be proposed or submitted under this Section from the time a Convention is called until after the electors have voted on the revision or amendments, if any, proposed by such Convention.

**Key Points/Summary**

Delegates to a Con-Con 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 $14 million, or $78 million in current dollars.

**The Amendment Process**

Article XIV 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.

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.

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 constitutional principle.
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 proponents and opponents of the death penalty might want to change this.

Section 22. Right to Bear Arms. “Subject to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.”

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, surrogate motherhood, sperm donations, gene manipulation, stem cell research or any other aspects of new medical technology.

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 established by Article VII of the 1970 Constitution.

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

- An increase in the number of legislative districts from 58 to 59 and the requirement that each district be divided into two single member representative districts.
- Requiring all senators to stand for election in the year after the decennial redistricting (e.g. 1982, 1992) and providing that one third of the senatorial districts be assigned a different sequence of one two-year and two four-year terms during the ten year period.
- Setting 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.
- Requiring each house to keep a journal of its proceedings and a transcript of its debates, all of which is to be available to the public.
- Expanding significantly the power of the governor to veto bills by adding a reduction veto (for appropriation bills) and an amending veto (to change parts of non-appropriation bills) while retaining the governor’s power of total veto and the line-item veto.
- Requiring a three-fifths vote of the members elected to each house to override the governor’s veto, amending 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?

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. 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
in court. A broad discussion and possible rewrite of this article would be likely at a new convention.

**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 cannot 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?

**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 col-
lege 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 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.

Bibliography / Study Resources


