

## A Constitutional Convention for Illinois?

### ISSUE

Impact on education funding of a Constitutional Convention in Illinois.

### BACKGROUND

The current Illinois Constitution, adopted in 1970, requires voters to be asked every 20 years whether a constitutional convention should be held to revise or rewrite the constitution. In the general election this November, that question will be on the ballot.

Though many Illinois voters are unaware of the constitution referendum, it has received more attention in recent months. In part, this is because of a court ruling that the wording of the question must be changed because it is misleading and false. Both major Chicago newspapers have written editorials, the Tribune in favor and the Sun-Times against, a convention. A grassroots campaign is reaching out to gain support for the convention through websites, blogs, print media and community meetings. A coalition of business and unions came out against the convention, with plans for an expensive media push.

Should voters decide in favor of a convention, one of the issues likely to be raised is school funding. Article X of the current Constitution provides "The State has the primary responsibility for financing the system of public education." Illinois pays less than 30% of the cost of educating a student in our state. According to delegates, both financing and equity of education were subjects of long discussion at the 1970 convention. These issues have continued to be debated since. Advocates for school finance reform maintain that Article X places the responsibility for the majority of funding on the state. The legislature has not acted in accordance with that. The judiciary determined the language in Article X to be too vague to be enforced.

General arguments both for and against a constitutional convention can be roughly classified as "Other Options", "Special Interests", and "Economic Factors". All are relevant to education funding.

## OTHER OPTIONS

Opponents to a convention suggest there is nothing wrong with the current Constitution; it is a model for other states. Though acknowledging current gridlock in state government, they do not believe the constitution is the correct vehicle to address evolving policy decisions. It is the responsibility of the legislature and administration to determine and implement policy. A change in leadership, rather than a change in the Constitution, is what is needed in Illinois according to the opposition.

Those opposed also point out that if a change to the constitution becomes necessary, it can be made through amendment, without a convention. The general assembly is able to propose amendments to any part of the constitution. By petition, voters can suggest modifications to the structure and procedures for the legislature, set out in Article IV. Opponents to a 2010 convention cite the adoption of 10 out of 18 proposed amendments since the last convention as evidence that the amendment process works. (HJR 1037, Illinois General Assembly)

Those favoring a constitutional convention counter that the current Constitution encourages periodic review. Further, at this juncture in Illinois government, a convention is the only avenue left to address major issues given the dysfunction in Springfield. They argue that lawmakers have not done what the constitution requires and citizens desire, and in fact, have done little at all. Only 16 of 889 resolutions introduced to amend the 1970 Constitution made it to the voters. (Legislative Research Unit, Constitution of the State of Illinois Amendments and Conventions Proposed)\* Only one referendum proposed by initiative petitions, rather than by the general assembly, has appeared on the ballot since 1970. It can be argued that the recent failure to advance the proposed recall amendment demonstrates the inadequacy of the legislature and the amendment process. Those in favor of the convention argue that the gridlock cannot be resolved by electing new people to office because there are no provisions for recall, and because the districts have been gerrymandered.

The history of state funding of education since the adoption of the 1970 constitution is instructive. The constitutional intent for the state to be primarily responsible for financing education has not been met. The past 38 years have seen the failure of numerous

legislative initiatives, proposed amendments, and lawsuits intended to meet the goal.

Examples include:

- the 1973 Illinois Supreme Court ruling that the state's "primary responsibility" for education does not require the state to provide at least half of school funding;
- the governor's 1995 education reform package based on the recommendations of a special Commission on Education Funding never left the legislative rules committee;
- only 1 of 27 proposed education amendments made it to the ballot (Legislative Research Unit, Illinois General Assembly, File 11-077, 5/1/08), that being the 1992 proposal to make education a fundamental right which garnered 57% but not the 60% of the vote required for adoption, and;
- another Illinois Supreme Court rejection in 1996 of a lawsuit claiming that the state's public school funding system violated the Illinois constitution, the court finding no constitutional issues in the case.

Most recently, ongoing proposals to revise the tax system to increase revenues for education continue to be stymied. Obstacles include the Governor's promise to veto any income tax increase as well as strong opposition by certain interest groups to changing the funding formulas. Suburban school districts dislike their dependence on real estate taxes for funding. However, they are also likely fearful of how their funding structures would change if education funding was to be determined based on per capita shares of income or sales taxes or any combination of sources that takes away local sourcing of revenue. A special session to discuss education funding, called by the governor in August, was considered a sham by most informed parties. A lawsuit filed by **The Chicago Urban League** arguing that Illinois' educational system racially discriminates, is pending. A recent boycott of Chicago Public Schools and demonstrations at large public venues were staged to protest inequities in school funding in Illinois. House Resolution 25, encouraging a "yes" vote on the convention, specifically identifies

education funding as one of the areas the legislature has failed to address. At the same time, Illinois' education funding has slipped to 49<sup>th</sup> of the 50 states.

Although illustrative of the concerns of convention proponents, this history does not necessarily make a case for a constitutional solution to the prevailing issues of adequacy and equity in education funding in Illinois. Various delegates to the 1970 convention, who did and do support education as a top priority, do not see that a constitution coming out of a 2010 convention would advance the case for education funding any better than the current constitution. "We are scarcely any closer to resolving these deep-seated philosophical issues in 2008 than the convention was in 1970," according to one delegate. (Bethany Jaeger, "Will Illinois reform school funding without another constitutional convention?", Illinois Issues, October 2008) Others agree it would be difficult for delegates to write language that would guarantee change or that would be accepted by the entire delegation or the voters.

Convention supporters, including some former delegates, disagree. Over the nearly 40 years since the last convention, they have learned where the weaknesses are in the constitution and want to take this opportunity to correct them. Specific to education, they could strengthen language in Article X or specify exactly how the state's public schools would be funded. Proponents have said the education and revenue articles of the state constitution need to be changed.

The conflicting views demonstrate how difficult it is to gain consensus even when all share a goal such as improving education. While it is hard to find anyone who would argue against support for education, some have other issues as their priority.

*\*5/1/08 this figure differs from the number of referenda (18) as it does not include the proposal for a convention in 1988 or another brought by petitioners)*

## SPECIAL INTERESTS

- “opening Pandora’s box”,
- “everything up for grabs”,
- “imperil the human and civil rights of the people in Illinois” (Con-con Revisited, Pat Guinane, Illinois Issues Online, November 2007)
- “taken over by interest groups and single-issue zealots that have wielded undue influence in the Statehouse.” (Jim Edgar, Change politicians, not the constitution, Chicago Tribune, 10/3/08)

These are some of the reactions opponents have had to the risk they see in calling a constitutional convention. They refer to the fact that if a constitutional convention is held, all, part, or none of the document may be revised. While every group has their own wish list for change, many are afraid that even if they get what they want through a constitutional convention, the price they pay in other unanticipated or unwanted changes will be too high. Business, for example, is concerned that a convention could eliminate the existing 8-5 ratio between the corporate and individual income tax. Unions want to protect pensions. School boards might worry about losing their right to negotiate contracts with teachers, having hiring rules or benefits determined for them, etc. Others worry that the convention would be dominated by current controversial issues like abortion, gun control, or the definition of marriage.

Conversely, many supporters of a convention would welcome the opportunity to look at new options. These might include provisions such as recall or term limits that could help eliminate stagnation in the legislative process. Some advocates for education reform see a chance to look at the revenue article as a possible solution for inadequate and inequitable school funding.

In either case, it is essential to be aware that any revised or wholly new constitution must be approved by the electorate. A majority vote is required for ratification. **It is an all or nothing vote though, you cannot vote for a change you prefer and against one you oppose.**

Convention opponents defer to the legislature to amend the constitution and make policy. However, they deem the same body too irresponsible to control the procedures

for a constitutional convention. Should the convention referendum pass, the legislature is charged with setting the parameters for the convention. This includes scheduling delegate elections, deciding when and where the convention will take place, and whether elections will be independent or not.

Opponents also warn against legislators as delegates to a constitutional convention. The concern is that the same partisan and “pay to play” politics rampant in the legislature would tarnish a convention. Further, they indicate even non-partisan delegates would be influenced by special interest groups and lobbyists. Citing the high costs of campaigning, some claim delegates would need special interest money to get elected and would then be open to influence by those groups. Additionally, “special interests and single-issue groups themselves would fight hard to get their people sent to the convention to advance their own narrow agendas”.

Proponents of a convention would prefer non-partisan delegate elections to discourage legislators from running. In the current political environment in Springfield, if the referendum for a convention passes, it could be viewed as a vote of no confidence on the legislature. This could help limit lawmakers’ involvement. They would be under intense scrutiny as they determine steps for the constitutional convention, so more inclined to act responsibly. Some lawmakers have said they would run as delegates. Others have indicated their desire for taking the discussions out of the politically charged atmosphere of the legislature. (Jaeger) As for special interest influence on delegates, this is possible, but the rest of the delegation, and then ultimately the voters, would have a check on this.

Given that the Illinois legislature is known as one of the most corrupt in the U.S., some see a convention of citizen delegates as preferable to more of the same from the legislature. It comes down, again, to the capability of the current legislature vs. potential risk. And, of course, one other very important factor, being the cost of holding the convention vs. the cost of continuing inaction.

## ECONOMIC FACTORS

Direct costs of a constitutional convention would include, among others, election of delegates, housing and food allowances, facilities and equipment, delegate compensation, staffing and materials. The Legislative Research Unit of the General Assembly estimates the cost of a 2010 Constitutional Convention could range from \$14 million to \$23 million depending on the timeline determined by legislators. An informational pamphlet distributed to voters by the state estimates a cost of \$58 to \$78 million.

Opponents of a convention estimate costs closer to \$100 million. They contend that the ongoing fiscal problems in the state, exacerbated by the global financial crisis, preclude a convention at this time. Limited state funds should be directed toward services, not an unnecessary convention, they argue. Further, they claim a convention that might address issues such as the tax structure could foment an unstable business climate, costs of which are inestimable.

Proponents of a convention disagree. While acknowledging there will be cost outlays, they think the changes the convention could bring are worth the investment. They argue that a more efficient and effective state government could provide the stable economy that attracts and retains business. The current corruption and lack of accountability in the state capital destabilize the economy and interfere with policy making. They argue that Illinois' current public education program cannot guarantee the well educated workforce that favors economic growth, nor can it promise to meet standards required to receive federal funds for education.

Savings from more effective government could also include the costs of the numerous legislative special sessions and lengthier regular sessions required by the current dysfunctional system. Northwestern University's Medill School of Journalism details some of these costs. It indicates that in 2007, the governor called 18 special sessions for a total of 40 days at a cost of \$40,000 per day. In addition, costs incurred that year include legal expenses of the governor suing the speaker of the house over the calling of the sessions.

Assuming a convention is held, it's certain that revenue will be part of any discussion of education funding. Current education reform initiatives propose various funding options.

These include reducing or eliminating property taxes, raising income taxes, or adopting a graduated income tax.

Various unions and their members assert that pensions of public employees, including teachers, are threatened by a constitutional convention despite the fact that these pensions are protected by federal law. This is not to say there are no problems with the pension system, and those could be addressed at a convention. For example, the legislature has chosen, frequently in recent years, to forego properly funding the state's pension obligation to teachers. The issue has not been raised by education advocates supporting the constitutional convention.

## SUMMARY

A simplified version of the analysis above can be summarized as follows:

### Arguments Against a Constitutional Convention

1. The current constitution is a model for other states.
2. The constitution can be amended without a convention. It's too risky to open up the entire document to scrutiny.
3. A constitutional convention would be too costly.

### Arguments For a Constitutional Convention

1. A periodic review of the constitution is suggested by the 1970 Constitution.
2. The dysfunction in Springfield warrants this opportunity for citizens to address necessary change through a convention. The governor and legislature leave no other choice.
3. A check on legislators and special interests is inherent in the process. Any changes



must be approved by the convention and then by a majority of voters.

Highly informal polling reveals that many voters are still unaware of the constitutional convention referendum. The court case regarding the wording of the question has been resolved with a directive to post notice at polling places and attach the new question to the ballot though the original version remains. This might draw attention to the issue favorably or unfavorably, result in the original intended bias against a convention, or simply cause confusion. Nevertheless, it has been an excellent civics lesson and ultimately may result in changes to education policy and funding in Illinois.

**It may be of interest to review who supports and who opposes the proposed constitutional convention.**

### **Supporters of a constitutional convention**

Notable individuals or groups who support a "yes" vote on the question of whether to hold a constitutional convention include:

- **Illinois Association of School Boards**
- Lieutenant Governor Pat Quinn
- Cook County Assessor James Houlihan will urge voters to support a convention, and may possibly supply funding for the pro-con-con coalition. Mr. Houlihan said he'll urge a "yes" vote on con-con because of the failure of lawmakers to deal with what he considers to be a flawed taxation and school-funding system.
- Con-Con Yes, a group headed by state Rep. Jack Franks, hired Democrat political consultant Michael Noonan to assist in their effort.
- Illinois Citizens' Coalition, an organization founded in 2008 by Bruno Behrend and John Bamabenek [Yes for Illinois website](#)
- Ned Mitchell, mayor of Sesser
- Rich Miller, political journalist
- Scott Reeder, political journalist
- [ConConIllinois.com](#)
- [IllinoisConstitution.org](#)
- Chicago Tribune
- Judy Baar Topinka, former state treasurer
- Mike Boland, state representative
- Jack Franks, state representative
- Sam Cahnman, Alderman, City of Springfield

### **Opponents of a constitutional convention**

A group called the **Alliance to Protect the Illinois Constitution** (APIC) is the main opponent of a "yes" vote. Members of the coalition include most of the state's influential lobbying organizations:

American Insurance Association, Associated Fire Fighters of Illinois, Center for Tax and Budget Accountability, Chicago Urban League, Chicagoland Chamber of Commerce, Citizen Action/Illinois, Illinois Association of Convenience Stores, **Illinois Association of School Administrators**, Illinois Business RoundTable, Illinois Civil Justice League, Illinois Education Association, Illinois Farm Bureau, Illinois Federation of Teachers, Illinois Hispanic Chamber of Commerce, Illinois Manufacturers Association, Illinois Petroleum Marketers Association, Illinois Retail Merchants Association, Illinois Retired Teachers Association, Illinois State [AFL-CIO](#), Illinois State Chamber of Commerce, Illinois State Black Chamber of Commerce, Illinois Trial Lawyers Association, League of Women Voters of Illinois, Lincoln Park Chamber of Commerce, National Federation of Independent Businesses/Illinois, Peoria Area Chamber of Commerce, Police

Benevolent and Protective Association of Illinois, SEIU Illinois, State University Annuitants Association, Taxpayers' Federation of Illinois, Tooling and Manufacturing Association, Union League Club of Chicago)

Other opponents include:

- Illinois Rifle Association
- House Speaker Michael Madigan (D) believes the current constitution is basically sound and the state would be better off not spending millions of dollars electing delegates, meeting in convention and then voting again.
- Jim Edgar, former governor
- Dawn Clark Netsch
- Joe Cook, mayor of Channahon
- Nanci Vanderweel, Elk Grove Township supervisor
- Chuck Sweeny, political journalist
- Chicago Sun-Times
- Carol Marin, political reporter, Chicago Sun-Times
- Jil Tracy, State Representative
- Daily Herald

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