

RESEARCH RESPONSE

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REASONS FOR 1970 CONSTITUTION'S PROVISION FOR 20-YEAR REFERENDA ON HOLDING A CONSTITUTIONAL CONVENTION

Overview The Illinois Constitution of 1970 requires that the question whether a constitutional convention should be called be put on the ballot at a general election at least every 20 years.¹ No such requirement was in the Illinois Constitution of 1870, which the 1970 Constitution replaced. This report describes the background of that requirement and its history at the 1970 constitutional convention.

Events Leading to 1970 Convention In January 1962, the Institute of Government and Public Affairs of the University of Illinois convened a group of 28 leaders in various public fields to consider problems of the Illinois Constitution of 1870. Called the Assembly on the Illinois Constitution, this group (which included Samuel W. Witwer, who would be the President of the 1970 constitutional convention) issued its Final Report making various recommendations for constitutional change. One such recommendation was as follows:

The voters should be afforded an opportunity to decide on whether the constitution needs review by means of a mandatory referendum on the holding of a constitutional convention at regular intervals, such as every twenty years, or by means of initiative.²

The Assembly also recommended that a constitutional convention under the 1870 Constitution be held "at the earliest possible date."³

A major cause of pressure for a constitutional convention was the difficulty of obtaining voter approval of amendments to the 1870 Constitution. That Constitution originally required the favorable votes of a majority of all persons voting at an election to approve a constitutional amendment proposed by the General Assembly.⁴ Such majorities were not difficult to obtain under the voting method used at that time, under which a voter taking a party ballot in the general election was automatically counted as voting for all of that party's positions unless he crossed out a candidate or proposition.⁵ Adoption of the "Australian" secret ballot in 1891 made getting the votes of a majority of all persons voting at an election much harder. Most constitutional amendment proposals sent to the voters by the General Assembly failed to get the necessary majority of all persons voting at the polls. Several attempts to get voter approval of so-called "Gateway" amendments, which would have lowered the vote required to approve all later amendments, failed before one was finally approved in 1950.⁶ That amendment allowed a proposed amendment to be approved by the favorable votes of either a majority of those voting at the election, or two-thirds of those voting on the proposed amendment.⁷

After the 1970 constitutional convention had completed its work, President Witwer described why the 1950 Gateway amendment had not satisfied proponents of constitutional change:

Of the sixteen amendments submitted between 1951 and 1970, seven carried. Only two of nine proposed—a new Judicial Article in 1962 and an individual personal property tax prohibition in 1970—carried after 1954, and both of those fulfilled the old majority vote requirement. In fact, the Judicial Article would have failed under the Gateway test alone. Only two of the seven were adopted under the Gateway test alone—both in 1952. For fifteen of the twenty years following Gateway—1955 through 1969—no constitutional proposal received the approval of two-thirds of those voting on the issue.

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While a constitution too easily amendable is not desired, Illinois remained bound to both an extremely rigid constitution and a severe and difficult amending process in a period of marked social, economic and political change.

....

The 1870 Constitution was in itself perhaps the strongest force behind voter approval of the convention in November, 1968. Nearly a century of experience provided one clear and simple conclusion—that a new constitution was needed desperately. The old one was too rigid and detailed. The state was forced increasingly to seek ways around its unworkable Constitution which became a system of evasions, circumventions and at times downright violations of clear mandates of the basic law.

Sixty per cent of all voters in the 1968 general election voted in favor of the convention. The 2.9 million favorable vote was the greatest ever given any proposition or candidate in Illinois history. It was an overwhelming mandate for comprehensive constitutional reform.⁸

**1970
Convention
Actions** The 1970 convention's Suffrage and Constitution Amending Committee proposed that the Constitution's article on Constitutional Revision contain this provision:

(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.⁹

The Committee explained its proposal as follows:

In view of the past reluctance of the legislature to ask for a constitutional convention, and the undoubted interest of the electorate in the shape and responsiveness of the constitution to the demands of the day and the practices of their government, the Committee felt that a method should be provided whereby the electorate, without action on the part of the legislature, could express its desire to convene a convention. The Committee unanimously approved the technique of the automatic, periodic submission of the question to the electorate as a desirable safeguard against the maintenance of the status quo by an unresponsive legislature.

This device is used in ten states, including Michigan, Missouri, Ohio, Oklahoma and New York, and in the judgment of the Committee provides a reasonable balance between reliance on representative government and frequent recurrence to the people as a check on governmental excesses. Because it is automatic it carries no suggestion of irreverence for established law, defect in government, or appeal to the passions of the people. Of the ten states which have adopted the method, five provide for a twenty-year interval, one for a sixteen-year interval, and four a ten-year interval. The Model State Constitution calls for a fifteen-year interval.

The Committee considered 10, 16, 20 and 24-year intervals and finally fixed 20 years as the interval for automatic submission of the convention question. One Committee member felt that an automatic convention call was unnecessary.

The Committee decided that the automatic question should be presented at a general election. The Committee imposed ministerial responsibility to put the question on the ballot on a single administrative officer of the State, the Secretary of State rather than the legislature. By this device, the courts will have the power to direct placement of the question on the ballot should the responsible official refuse to act.¹⁰

(Including Illinois, 14 states now have constitutional provisions for periodic questions to the voters on calling constitutional conventions.¹¹)

When the delegates, sitting as a Committee of the Whole, considered this proposal on First Reading, they extensively debated the wisdom of an automatic ballot question on calling a convention. Delegate Mary Pappas proposed an amendment to delete that provision. Her amendment was heavily debated.¹² A roll-call vote was demanded, and her proposed amendment lost by 46-62.¹³ Delegate Paul Elward then proposed an amendment to change the Committee proposal slightly by calling for a vote on holding a convention in 1990 and every 20 years thereafter unless there had been a "similar" submission of the issue to a vote in the last 20 years.¹⁴ After further debate, his amendment was adopted by 50-41.¹⁵ Delegate Dwight Friedrich proposed an amendment to

increase the interval between required referenda on calling a convention from 20 years to 30 years. It was debated and lost on a voice vote.¹⁶

The Committee on Style, Drafting and Submission then revised the subsection, numbered 1(b), to say:

(b) The Secretary of State shall submit the question of whether to call a Convention to the electors at the general election in each decennial census year unless such question shall have been submitted in the preceding nineteen years.¹⁷

The Committee's explanation said it was necessary to set the maximum interval between such referenda at 19 years, because in many cases the election at which the last such referendum went to the voters would have been a few days less than 20 years before. The explanation added that its wording would ensure that such a question would go to the voters at least every 29 years—but, apparently contradictorily, that there would be an “automatic call” no less often than every 20 years.¹⁸ (The Committee may have meant that a call would not occur *more* often than every 20 years.) On the floor on Second Reading, Suffrage and Constitution Amending Committee Chairman Peter Tomei praised the Style, Drafting and Submission Committee's work, but argued that its revision would confuse readers. He moved to restore his committee's original wording; or in the alternative, to change the word “nineteen” in the revision to “fifteen.” After the alternative was rejected, and with little discussion, the proposed amendment to restore the original wording was adopted 43-29.¹⁹

Delegate Charles Coleman then proposed an amendment identical to Delegate Pappas' unsuccessful amendment months earlier, to delete subsection 1(b) completely. After a heated debate and a roll call, it was rejected 34-70.²⁰

The Style, Drafting and Submission Committee's final proposal for Third Reading made no change to subsection 1(b).²¹ The only mention of it on Third Reading was a comment by Delegate Ray Garrison—explaining his vote of “pass”—that he had “some reservations” about subsection 1(b).²² The delegates almost unanimously adopted sections 1, 2, and 4 on Third Reading.²³ Thus, although temporarily changed by the Style, Drafting and Submission Committee, the version of Article 14, subsection 1(b) that became part of the 1970 Constitution is identical to the Suffrage and Constitution Amending Committee's original proposal.

Notes

1. Ill. Const. 1970, Article 14, subsection 1(b).
2. Assembly on the Illinois Constitution, Final Report, printed in “The Illinois Constitution: Final Report and Background Papers” (Lois Pelekoudas, ed.), *University of Illinois Bulletin*, vol. 59, no. 77, April 1962, p. 9.
3. Assembly on the Illinois Constitution, Final Report at p. 9.
4. Ill. Const. 1870, art. 14, sec. 2 (original version). The interpretation that the vote needed was a majority of *all* persons voting at the election—rather than only a majority of the number who had voted for state representatives as the 1848 Constitution, Article 12, section 2 had

- required—was confirmed by the Illinois Supreme Court in *People v. Stevenson*, 281 Ill. 17, 117 N.E. 747 (1917).
5. Samuel W. Witwer, "Introduction to the 1970 Illinois Constitution," printed in Record of Proceedings, Sixth Illinois Constitutional Convention, vol. I, pp. vii at viii.
 6. See George D. Braden and Rubin G. Cohn, *The Illinois Constitution: An Annotated and Comparative Analysis* (1969), pp. 565-66.
 7. Ill. Const. 1870, art. 14, sec. 2 as amended in 1950.
 8. "Introduction to the 1970 Illinois Constitution" at viii-ix.
 9. Suffrage and Constitution Amending Committee Proposal 1, subsection 1(b), printed in Record of Proceedings, vol. VII, p. 2259 at 2263.
 10. Explanation of Suffrage and Constitution Amending Committee Proposal 1, pp. 12-13, printed in Record of Proceedings, vol. VII, pp. 2259 at 2278-79.
 11. See Legislative Research Unit, "State Constitutional Revision in Recent Decades" (File 11-071, April 17, 2008).
 12. Record of Proceedings, vol. II, pp. 477-78 and 483-491.
 13. Record of Proceedings, vol. II, p. 491.
 14. Record of Proceedings, vol. II, p. 491.
 15. Record of Proceedings, vol. II, p. 494.
 16. Record of Proceedings, vol. II, pp. 494-96.
 17. Style, Drafting and Submission Committee Proposal 2, subsection 1(b) (endnote omitted), printed in Record of Proceedings, vol. VII, p. 2408.
 18. Record of Proceedings, vol. VII, pp. 2410-2412.
 19. Record of Proceedings, vol. IV, pp. 3598-99.
 20. Record of Proceedings, vol. IV, pp. 3599-3604.
 21. Record of Proceedings, vol. VII, p. 2427 at 2498.
 22. Record of Proceedings, vol. IV, p. 4547.
 23. Record of Proceedings, vol. V, pp. 4547-48.