

# INTRODUCTION to the 1970 ILLINOIS CONSTITUTION

By  
Samuel W. Witwer

The 1970 Illinois Constitution, adopted by the Sixth Illinois Constitutional Convention on September 3, 1970, was ratified by the people on December 15, 1970. It became effective on July 1, 1971, except as provided in the Schedules. The new Constitution represents the first major comprehensive revision in Illinois' organic law in 100 years.

Although the new constitution is progressively designed to meet the needs of the 20th and 21st centuries, it is a stable and permanent instrument, deeply rooted in Illinois history.

## I. History of Illinois Constitutions.

After the land northwest of the Ohio River came within Virginia's jurisdiction as a consequence of George Rogers Clark's capture in 1778 of Kaskaskia and Cahokia, the General Assembly of Virginia conveyed the territory to the United States, with the provision that it be divided into distinct republican states of the federal union, and that those states have "the same rights of sovereignty, freedom and independence as the other states".

Congress, by the Ordinance of 1787, organized a temporary government and, in 1789, the government of the Northwest Territory was created. The Territory of Illinois was established in 1809 in a portion of the Northwest Territory.

By the Enabling Act of April 18, 1818, Congress, at the request of the territorial legislature, called a convention of representatives of the Illinois territory, to write the State's first constitution. The convention met at Kaskaskia, the old territorial capitol, for less than one month. Its product was never submitted to the people. Rather, it was accepted by Congress when Illinois was admitted to the Union on December 3, 1818, as the twenty-first state. Although based on the Northwest Ordinance, the new constitution's major provisions were borrowed from other state constitutions.

Illinois' first constitution provided for separation of powers but the executive was rather weak. A provision in the schedule vested the power to appoint non-elected state officers in the legislature. The veto power, limited to the validity of legislation, could be exercised only by the Supreme Court and the Governor, jointly. The constitution could be amended only by convention called by a majority of all citizens voting for representatives.

Thereafter, southern counties increasingly demanded a pro-slavery constitution. A convention call proposed for that purpose by the General Assembly was defeated in 1824. But the

1818 Constitution soon proved inadequate. The State expanded rapidly and demands for Jacksonian popular democracy spread. Additionally, the State was in a perilous economic position because of ill-considered financial programs. State Banks failed twice, at considerable financial loss to the State. An expensive State railroad construction program collapsed. While a convention call again failed in 1842, a third call was accepted in 1846. Although the 1842 proposal received a vote of a majority of those voting on it, it did not meet the constitutional standard of a majority of those voting for representatives.

The convention called in 1846 met and a new constitution was ratified on March 6, 1848. The 1848 Constitution included a mass of detailed restrictions on legislative powers. The Governor was given sole veto power. A strict State debt limit was imposed. No State Bank could thereafter be created. Judges were to be elected, rather than appointed by the General Assembly. The 1848 Constitution provided a difficult alternative amending process, permitting proposals by the General Assembly. So many details were included, to correct past abuses, that Illinois' second constitution soon became inadequate.

Demands for a new constitution resumed during and after the Civil War. Societal changes continued as before. Misuse by the General Assembly of special legislation powers and municipal finance abuses prompted demands for fundamental reform. A convention meeting in 1862 became embroiled in partisan controversy. The majority, accused of secessionist sympathies, infuriated the public by attempting a variety of blatantly partisan and extra-legal acts and its proposal never received widespread support although portions of its work product ultimately were adopted in the 1870 Constitution. A convention, narrowly approved in 1868, met for five months in 1869-1870 and ultimately submitted a document considerably longer than the 1848 Constitution. The 1870 Constitution enjoyed widespread support and received a nearly 80% favorable public vote on July 2, 1870.

Illinois' third constitution, to some extent, liberalized the legislative process. A multi-district House, with cumulative voting, permitted minority representation. The Governor was given full appointment powers and a stronger veto. The Supreme Court was expanded to seven members. A new public education article was added. But the amendment process became even more restrictive. While its extreme detail soon made many provisions obsolete, the 1870 Constitution effectively prohibited special laws, ended many municipal spending schemes, and otherwise responded adequately, in a non-partisan way, to other problems of the 19th century.

Illinois' fifth constitutional convention which met between 1920 and 1922 attempted to broaden the taxing authority, remedy the ineffective amending process and eliminate the detailed restrictions of the 1870 Constitution. The convention, highly polarized by a partisan State reapportionment issue, submitted a single document to the voters which was overwhelmingly rejected at a special election.

Subsequently, a 1934 convention call, while approved by a majority voting on the proposal, failed because over half the general election voters failed to vote on it.

### II. History of the Amendment Process under the 1870 Constitution.

Until substitution of the secret Australian Ballot for the “Party Ticket” in 1891, every proposed amendment to the 1870 Constitution was adopted by the voters. By voting a particular party ticket, the elector voted the party’s position on the amendment, unless he scratched it off the ballot. The Article XIV, Section 2 requirement of the 1870 Constitution that constitutional proposals be approved by a “majority of the electors voting at said election” was not insurmountable under this system.

While the Australian Ballot corrected many election abuses, it necessitated a separate “yes” vote to approve constitutional amendments. Thus, the constitutional revision process was deprived of the aid of direct party support by means of “straight” voting. The drastic effect of this election law change was shown in the first three proposed amendments thereafter submitted to the voters. All were defeated because over 75% of those voting in the general election failed to vote either way on the constitutional proposals.

A second restrictive event was a decision of the Illinois Supreme Court in *People v. Stevenson*, 281 Ill. 17, 117 N.E. 747 (1917), which construed the relevant “majority” to be a majority of the highest number of votes cast with respect to an office or a proposition in the general election. Every person voting in the general election who did not vote on the constitutional amendment, in effect, was thus counted as a “no” voter.

The consequences were disastrous for the Illinois constitutional amending process. Whereas, prior to 1891, every proposal was approved, from 1891 until approval of the Gateway Amendment, which made constitutional amending easier, in 1950, only two of fourteen proposed amendments carried. Of the twelve which failed, ten received majorities—and eight, including four of five defeated Gateway Amendment proposals, received majorities greater than 2 to 1—among those voting directly on the proposals. Those ten failed because many general election voters failed to vote on the proposals.

Illinois unintentionally was saddled with an archaic, unchangeable constitution.

In the late 1940s, a statewide committee formed to promote another constitutional convention. In 1949, Governor Adlai E. Stevenson II proposed such a convention, but his plan was defeated in the legislature. The opposition’s alternative, another Gateway Amendment proposal, which offered only marginal relief in terms of permitting amendments to the 1870 Constitution, was adopted with a substantial majority under a

new separate Blue Ballot provision. It was the first constitutional change in Illinois in 42 years.

The Blue Ballot election laws, enacted in 1949, were designed to encourage voter participation. Constitutional propositions were printed on separate blue-colored paper ballots, even in voting machine precincts. Such ballots had to be presented to the voter in a manner that engaged his attention. They had to be returned to the judges of election before voting on the main ballot.

The Gateway procedures allowed proposals to amend three articles at a single election, rather than just one. A proposal could be adopted by a favorable vote of two-thirds voting on the proposal, even without a general election majority. The majority test was retained as an alternative Article XIV, Section 2 process.

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.

The major factor continued to be the non-participating voters. While the Blue Ballot had some beneficial effect, over the years nearly an average of 30% of those voting in the general elections failed to vote on constitutional amendments. In effect, the two tests—majority of those voting at the election and two-thirds of those voting on the proposal itself—were relatively balanced in severity and difficulty.

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.