

### STATEWIDE BALLOT PROPOSALS -- IV

#### PROPOSAL A:-QUESTION OF CALLING A CONSTITUTIONAL CONVENTION

##### THE ISSUE IN BRIEF

At the November 8, 1994 general election, the voters of Michigan will decide whether to call a constitution convention to revise the Michigan Constitution of 1963. The question appears on the statewide ballot automatically 16 years as required by the Constitution.

Should the voters approve the ballot question, there are numerous issues that could be addressed by a constitution convention. Five provisions of the current Constitution are in conflict with the U.S. Constitution. One of these, legislative apportionment, was a major issue at the 1961 Convention and would be a major issue again. Other potential issues range from civil rights issues such as the right to life, the right to die (assisted suicide) and the death penalty to other issues including strengthening the governor, the method of selecting members of the judicial branch and several Headlee amendment issues. The issues of K-12 education funding and adding language to make education a fundamental constitutional right would certainly be debated by a convention, as would local government issues concerning the structure and powers of local units of government.

The Citizens Research Council has prepared a special Michigan Constitution Issues series of 10 publications covering specific articles of the Michigan Constitution and identifying likely issues at a convention. The series was funded in part by a grant from the Matilda R. Wilson Fund and copies are available on request.

##### The Ballot Question

The constitutional convention question will appear on the ballot as follows:

**Shall a convention of elected delegates be convened to draft a general revision of the state constitution for presentation to the state's voters for their approval or rejection?**

If a majority of the electors voting on the question approve the calling of a convention, then within six months a special primary and an election will be held for delegates. One delegate is to be elected on a partisan ballot in each of the 110 state House and 38 Senate districts.

If the question is approved, the Constitution provides that a convention would convene in Lansing on October 2, 1995, or earlier if provided by law. The length of a constitutional convention is not limited: the 1961 Convention lasted seven months. A convention would choose its own officers, adopt rules, employ staff, and disseminate information about the proposed Constitution. Delegates would receive compensation as provided by law. Constitutional conventions in Michigan are unlimited in their scope: a convention could propose a completely new Constitu-

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tion, offer specific amendments to the current Constitution or do nothing. With the approval of a majority of the constitutional convention delegates elected and serving, any proposed constitution or amendment shall be submitted to the voters at a time set by the convention not less than 90 days following adjournment of the convention.

The Constitution of 1963 provides that the question of calling a convention be placed on the ballot in 1978 and every 16 years thereafter (Article 12, Section 3). The question was defeated overwhelmingly on November 7, 1978 (649,286 in favor, 2,112,549 opposed). If the question is rejected this years it will automatically appear on the ballot again in the year 2010.

### **Michigan Constitution of 1963**

The 1963 Constitution is shorter than the previous Constitution of 1908 and is more logically organized. It incorporated a number of changes that were generally considered desirable. Overall, the 1963 Constitution reflected the need for a modern constitution for a major industrial state.

Compared to other state constitutions the Michigan Constitution of 1963 is relatively newer, has fewer than the average number of words and has been amended less frequently. Michigan has had four state constitutions; only nine states have had five or more and 11 states have had only one. Since Michigan adopted its present constitution in 1963, nine other states have adopted new constitutions. At about 20,000 words, Michigan's Constitution is shorter than the constitutions of 28 states and is slightly below the average length. Only one state constitution, Indiana, has been amended fewer times.

There have been 51 proposed amendments to the Constitution of 1963 submitted to the voters, 18 by initiative petition and 33 by the Legislature. Of the 51 proposed amendments, 18 were approved (including Proposal A in March 1994) and 33 rejected. By far the most popular subject of proposed amendments has been the interrelated issues of property taxes and school finance. Other popular topics for amendment have included removing the prohibition on graduated income taxes and the 21 year age requirements for voting, drinking or serving in the Legislature. There have been Constitutional amendments on the ballot in every general election except 1990.

### **Constitutional Issues**

A number of issues that likely would be considered by the convention.

**Conformity to the U.S. Constitution** There are five constitutional provisions that are not in conformity with the U.S. Constitution: the 21 year old voting requirement; the provision that only property taxpayers may vote on ballot issues to increase property tax rate limitations or bond issues; part of the search and seizure provision; and most of the provisions regarding state legislative reapportionment are in violation of one person-one vote principle, as are the provisions regarding representation on county boards of supervisors. These items would certainly be addressed by a constitutional convention.

**Civil Rights** In the area of civil rights there are a number of issues that might be addressed by a constitutional convention. The current constitution does not address discrimination based on age, sex or sexual orientation. In addition, the issues of right to life, right to die (assisted suicide) and the death penalty likely would be issues addressed by the convention.

**Elections** As indicated above, two provisions found in the "Elections" Article of the present Constitution are in conflict with the U.S. Constitution. In 1992, voters added provisions to the Constitution to limit the number of terms of office that could be served by U.S. congressional representatives and senators, members of the state Legislature and elected officials of the executive branch of state government. Provisions in other states that limit terms of U.S. congressional representatives have come under judicial review. Term limitations would be a constitutional convention issue.

**Legislative Branch** As noted above, all of the present apportionment provisions are unconstitutional. Even before the Constitution took effect in 1964, the U.S. Supreme Court established the one person-one vote principle (in *Reynolds v Sims*) which invalidated the Michigan apportionment standards. Michigan has neither valid apportionment standards nor any valid mechanism for reapportionment. The Legislature has failed to meet its responsibility to reapportion itself and the courts have had to reapportion legislative seats following the 1970, 1980 and 1990 censuses.

**Executive Branch** One of the accomplishments of the 1961 Convention was to strengthen the executive branch of government. The current Governor has made extensive use of the executive-reorganization powers of the current Constitution and it is likely that a constitutional convention would revisit this issue. Other potential constitutional convention issues might include: whether to elect or appoint the attorney general, secretary of state and the superintendent of public instruction; the constitutional status of the Transportation Commission; and the constitutional timetable for the governor calling special elections to fill vacancies in the House and Senate.

**Judicial Branch** The election of Supreme Court Justices and Court of Appeals Judges has been a continuing issue. Particularly controversial has been the partisan nomination of Supreme Court Justices at political party conventions for election on a nonpartisan ballot. In addition, the question of whether judges should be elected or appointed and the method of funding trial courts in Michigan might be convention topics.

**Local Government** A convention might consider whether the present organizational structure of local governments (counties, townships, cities, villages and special districts) with overlapping geographical boundaries, as well as overlapping powers and service responsibilities, meets the current and future needs of the citizens. A convention might also address whether the powers of local units of government are sufficiently broad and flexible to permit them to respond to the needs of their citizens and to be held accountable.

**Education** Despite the approval of Proposal A in 1994, funding of K-12 education continues to be an issue and likely would be an issue at a constitutional convention. There has been discussion of amending the Constitution by adding the language that would make education a fundamental right so that courts could intervene to address the school funding disparities. The current constitutional prohibition against aid to nonpublic schools has been an issue and the new charter school legislation has recently highlighted that issue.

**Finance and Taxation** Provisions such as the uniformity rule for property taxes have been affected by passage of Proposal A with its limits on annual increases on individual parcels and re-assessment on sale. The 15 and 50 mill property tax limits would also be an issue. The Constitution prohibits a graduated income tax and three previous amendment attempts have failed. Various provisions of the Headlee amendment would likely be issues including: the state revenue limit; the requirement that 41.6% of total state revenue be shared with local units of government; state mandates; and the requirement for voter approval of local taxes.

### **Question to the Voters**

**Arguments in Favor** Arguments in favor of a constitutional convention include that there have been many changes in Michigan over the past 30 years and that the Constitution should be revised to reflect the changes. There are five provisions in the current Constitution that are in conflict with the U.S. Constitution, including all of the state legislative reapportionment provisions. Finally, a constitutional convention provides a unique exercise in self-government and only by a constitutional convention can the Constitution be considered in its entirety.

**Arguments Opposed** Arguments against a constitutional convention include that the current Constitution is not old and continues to meet the needs of the people. Other methods of changing the constitution exist and that the amendment process has worked in the best interests of Michigan citizens since the Constitution took effect in 1963. Finally, since the scope of a convention is unlimited, there is concern that special interest groups advocating positions on single, controversial issues would dominate a convention.

The question of calling a constitutional convention offers the citizens of the state an opportunity to assess how well the current Constitution is working and whether revisions are necessary. In doing so, the voters must keep in mind that they are dealing with the state constitution, the fundamental law, and not the whims of today or tomorrow or statutory law. The essential issue on the question of calling a constitutional convention is whether the current Constitution meets the needs of today and will be adequate to meet future needs as we enter the 21st Century.