



CRC SPECIAL REPORT

MICHIGAN CONSTITUTIONAL ISSUES



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First in a series of papers about state constitutional issues

GENERAL REVISION OF THE MICHIGAN CONSTITUTION

Proposal 2010-01 on the November 2, 2010, statewide ballot will ask Michigan voters whether a constitutional convention should be convened for the purpose of a general revision of the state Constitution. The 1963 Michigan Constitution provides in Article XII, Section 3, that in 1978 and every 16 years thereafter the question of a general revision of the constitution shall be submitted to the electors of the state.

Options for Michigan Voters

Proposal 2010-01 will ask Michigan electors to assess how well the fundamental law of the state serves as a framework for efficient, accountable government services that meets today's economic and social needs. In November, voters will choose: to convene a constitutional convention to draft a revised constitution to deal in a holistic manner with issues perceived to be problematic; or to allow the 1963 Michigan Constitution to continue in its present form.

If Proposal 2010-01 is approved, Article XII, Section 3 of the Michigan Constitution requires a special primary and a special election to be held within six months to select convention delegates. Michigan's election law provides for four elections in a calendar year, so the elections would occur in February and June of 2011. Article XII, Section 3 of the Constitution further provides that the electors of each representative district (110 districts) and the electors of each senatorial district (38 districts) shall elect one delegate to the convention.

The 1963 Constitution provides that the convention would convene in Lansing on October 4, 2011. The delegates are empowered to choose their own officers, determine the rules of proceedings and judge

the qualifications, elections and returns of its members. The delegates will be compensated for their time and to incur additional cost through the appointment of such officers, employees, and assistants as it deems necessary; printing and distribution of documents, journals, and proceeds; and explanations and information dissemination about the proposed constitution. The Constitution does not dictate the length of time that a convention can use to draft a revised constitution.

If Proposal 2010-01 is rejected by the voters, the 1963 Constitution will remain in effect. The legislature and voters may continue to adapt the 1963 Constitution to future economic and social needs by offering amendments to reform specific sections viewed as problematic. If the question is rejected, it will automatically appear on the ballot again in the year 2026.

Michigan voters decided against similar ballot questions in 1978 (640,286 Yes to 2,112,549 No) and 1994 (777,779 Yes to 2,008,070 No). The 1963 Michigan Constitution has proven to be a living document, having been amended numerous times over the 45 years since its adoption.

Wholesale Revision

A state constitutional convention elected by the people is free to fashion any kind of document it pleases, subject only to restraints imposed by the United States Constitution as the supreme law of the land and subject, of course, to having its work ratified by the state's electors. While Michigan's his-

tory with constitutional revision has tended to incrementally build on existing constitutions, nothing would bind a 2011 constitutional convention to such an approach.

Further, while a number of electors may agree upon issues in need of constitutional reform, there are no



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single, correct reforms to most of the large and important questions that would confront a convention. These are matters of opinion and judgment, and honest differences of view can readily be entertained. In the end, a convention must

submit the results of its deliberations to the state's electors for approval. To merit this approval, a proposed revision of the constitution must be a document that can be read and understood by citizens and which in meritorious

features commends itself to the people as a worthy instrument for the furtherance of effective and responsible government directed to the end of serving and promoting the common good.

The Nature and Purpose of a State Constitution

The idea of a written constitution defining the structure of government and enumerating the rights of the people as a limitation on the powers of government is deeply-rooted in Anglo-American history. The adoption of the first state constitutions preceded the drafting of the United States Constitution by the Philadelphia convention of 1787 which established the federal system under which we now operate—a system under which governmental power is divided between the federal or central government and the fifty states of the Union.

A constitution should serve the purpose of a fundamental organic document: establishing, defining and limiting the basic organs of power, stating general principles, and declaring the rights of the people.

American constitutionalism presupposes certain basic principles that find expression either expressly or impliedly in state constitutions as well as the constitution of the United States. Some

of these are so fundamental and familiar and their implications so plain that they need not be developed at length:

- That political power rests ultimately in the people;
- That the popular will is reflected in the constitution and in the institutions of representative government designed to serve the interests and welfare of the people;
- That the organs of government are subject to the limitations imposed by the people and by the rights retained by them;
- That a constitution is fundamental and supreme law; and
- That the courts in the exercise of the power of judicial review have the responsibility and the duty to uphold this fundamental law and to refuse to enforce legislative and other acts of government found to be in conflict with it.

In addition to these principles, a state constitution can be expected to achieve a number of fundamental objectives. The first fundamen-

tal objective is to establish the organs of governmental power, to define and distribute authority among them, and to state limitations on these powers. Secondly, the questions of direct participation by the electors in the legislative process by means of the referendum and initiative and the mechanics of these processes require attention. Finally, it may be suggested that since the political process is such an inherent part of government and the operation of representative government, attention may well be given in the constitution to the roles that political parties may play in Michigan's state and local government.

Apart from the electorate and the three branches of government, the other organs or bodies that may be vested with constitutional status are public corporations. These may be divided into two categories: (1) municipal corporations and other local governmental units including counties, townships, and metropolitan districts and (2) public corporations organized for specific purposes

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such as the state universities. With respect to both classes, the questions respecting constitutional position and authority—including, in the case of those in the first class, the important questions of home rule status—are matters of basic concern.

In addition to establishing the structure of state government, municipal corporations and other local governments, and public corporations, alteration of a state constitution has the potential to alter the basis upon which state laws and judicial decisions are based. Amending or revising the state constitution could affect broad concepts, such as home rule for local governments, the involvement of citizens through elections, initiatives, and referenda, and the state's responsibil-

ity for funding public education. It also could affect more narrow concepts, such as government finance, the death penalty, and eminent domain.

A constitution should not be an elaborate document. It should be relatively compact and economical in its general arrangement and draftsmanship. Details should be avoided and matters appropriate for legislation should not be incorporated into the organic document. Chief Justice Marshall stated this idea in classic form in the course of his famous opinion in *McCulloch v. Maryland*.

A Constitution to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execu-

tion, would partake of a prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves... . In considering this question, then, we must never forget that it is a Constitution we are expounding.

Justice Cardozo stated the matter more succinctly:

A Constitution states or ought to state not rules for the passing hour but principles for an expanding future.

The 1963 Michigan Constitution contains 12 articles, with several sections contained within each article. In brief, these articles are:

Article I – Declaration of Rights sets forth basic individual liberties which are to be secure from impairment by the actions of state government.

Article II – Elections defines the qualifications of electors and provides for the place, manner, and time of elections. Article II also discusses the board of state canvassers, recalls, the powers of initiative and referendum, and term limitation. Additional provisions for term limitation are found in Articles 4, 5 and 12.

The Michigan Constitution

Article III – General Government establishes Lansing as the seat of government and provides for a separation of the powers within the structure of state government.

Article IV – Legislative Branch establishes the constitutional framework for the conduct of legislative powers through a Senate and House of Representatives.

Article V – Executive Branch establishes the constitutional framework for the conduct of executive powers by the governor, lieutenant governor, attorney general, secretary of state, and certain boards and commissions.

Article VI – Judicial Branch establishes the constitutional framework for the general authority of the judiciary to interpret the law.

Article VII – Local Government contains many of the provisions regarding the system of local government in Michigan, which includes counties, townships, cities and villages, and authorities.

Article VIII – Education defines the role and responsibility of the state for elementary-secondary education and higher education.

Article IX – Finance and Taxation contains various limitations upon the otherwise plenary power of the legislature to raise

funds through taxation, ranging from the proportion of value at which property may be taxed, to requiring voter approval before local governments may increase certain taxes and indebtedness, to specifying how certain revenues are to be expended.

Article X – Property creates limitations on the powers of eminent domain and escheats and entrusts to the state general supervisory jurisdiction over all state owned lands.

Article XI – Public Officers and Employment provides for an oath of office for public officers,

the beginning of terms of office, a classified state civil service, a merit system for employees of local governments, and for the impeachment of civil officers.

Article XII – Amendment and Revision provides for the amendment and general revision of the Constitution.

The 1963 Constitution, Michigan's fourth, is now 46 years old. Over that time Michigan's population has grown from 8 million to more than 10 million. Transportation and communication networks have developed to connect people and population centers. The roles

of governments have expanded to support welfare programs and to more actively attract and encourage economic development. Although certain provisions of the 1963 Michigan Constitution are in violation of the United States Constitution, the framework for Michigan government is generally workable. Since adoption, 70 constitutional amendments have been proposed; 30 of which have gained approval from the electors. If a constitutional convention is convened, it will have the goal of making Michigan government work better, not to solve a constitutional crisis.

Series of Papers

Over the coming months, the Citizens Research Council of Michigan will publish a series of papers to provide information which electors may use to decide whether the convening of a constitutional convention is in the best interest of Michigan at this

time. The series will relate the age and length of the Michigan constitution relative to those of other states; provide a historical perspective of the 1963 Constitution; and consider obsolete and problematic provisions, as well as provisions that voters may wish to

change in each article to set a new direction for the state. Look for these papers to be released on roughly a bi-weekly schedule at www.crcmich.org/election and sign up for CRC's e-mail updates to have notice of their release delivered directly to your inbox.