SNG-Constitutional amendments-10-20-14

Expert says "No" on amendments

By Jim Nowlan

We should always be careful about amending the Illinois Constitution because if problems arise later, the document is very difficult to change.

Voters will face two proposed amendments on the November ballot. Both sound like motherhood and apple pie provisos, yet a constitutional law expert thinks both are flawed and should be rejected.

I talked with old friend Ann Lousin, who teaches the Illinois Constitution at John Marshall Law School and has written a scholarly tome on the state charter. I also draw on an article on the topic she wrote for the Chicago Daily Law Bulletin.

One proposal would prohibit denial of the right to vote "based on race, color, ethnicity, status as a member of a language minority, national origin, religion, sex, sexual orientation or income."

Sounds good, yet Ann says it is unnecessary. "The Illinois courts have interpreted state constitutional provisions on voting very strictly and in favor of the voter."

The proposal also fails to include "political party affiliation," the one category that might be at risk, as in efforts by Republicans in other states to require voter ID at the polling station in efforts to reduce primarily Democratic voters from casting ballots.

Ann worries as well that the legislative record of intent is muddled. Some legislators said in debates they were voting for the amendment because they thought it would prohibit bills that

required voter ID; other lawmakers said they were voting for it because it would not prohibit voter ID bills.

Inside sources suggest that the amendment was proposed primarily to stimulate African-Americans, who have an understandable sensitivity to voter rights based on more than a century of discrimination at the polls, to turn out in November to vote for Democratic candidates.

The other amendment would strengthen the crime victims' bill of rights that is already in the state constitution.

The proposal provides, for example, that in addition to the right to make a statement to the court at sentencing, the victim of a crime would now have the right to be heard at any post-arraignment court proceeding in which the right of the victim is at issue.

Another addition to the list of rights would be that of having the safety of the victim and his or her family considered in matters of fixing bail and the release of the defendant.

Ann thinks the present language in the constitution is rather comprehensive and that neither prosecutors, defense attorneys, judges nor most victims of crimes have any complaints with existing language.

An earlier version of this amendment was rejected two years ago when the state's attorneys weighed in against it. This time the prosecutors were able to insert in the proposal's language that the victims and their families have no cause of action against the government and no right to counsel, which apparently limits the victims to being heard in court but no more.

But what will happen, Ann asks, if a victim objects to a plea bargain or a sentence that the victim considers too lenient? "If, as the amendment says, the victim has 'standing' to assert his or her rights although not a 'party' to proceedings, will justice truly be served?"

Ann worries that an understandably distraught, vociferous victim and his or her lawyer could actually create problems for the prosecutor by efforts to intervene as he presents the case.

According to Rich Miller's Capitol Fax political sheet, California philanthropist Henry Nicholas III has been advocating for victims' rights laws across the country ever since his sister was killed by her ex-boyfriend in the early 1980s. Nicholas has contributed $850,000 to a media buy in support of the proposal in Illinois.

The two amendments passed the two houses of the legislature by nearly unanimous votes, yet Professor Lousin thinks there are too many flaws in them. Amending state statute, which can be changed more easily later, is better than constitutional amendment.

I am going to follow Ann's counsel and vote No.