



CRC SPECIAL REPORT

MICHIGAN CONSTITUTIONAL ISSUES



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Sixteenth in a series of papers about state constitutional issues

STATEWIDE ISSUES ON THE NOVEMBER GENERAL ELECTION BALLOT

PROPOSAL 2010-01

At the November 2, 2010 general election, the voters of Michigan will decide whether to call a constitutional convention to revise the 1963 Michigan Constitution. That convention would be charged with drafting a general revision of the state constitution to be submitted to the voters at a later date. The question was automatically placed on the ballot by a provision of the current state Constitution that requires the question to be asked every 16 years. Previous questions were defeated in 1978 and 1994 by sizeable majorities.

Special Elections

If voters opt to call a convention, delegates would be selected on a partisan ballot. Two more elections would be held for a special primary (February) and a special general election (May) to select delegates to the convention. Voters would select 148 convention delegates: one in each district of the Michigan House of Representatives and one in each district of the Michigan Senate.

Delegates Convene

The Constitution provides that a convention would convene in Lansing on October 4, 2011. The del-

egates would elect convention leadership from among their members, including a president, vice president(s), and committee chairs. They would hire administrative personnel and establish convention rules or bylaws. The Constitution does not stipulate a time limit or deadline by which a new constitution should be drafted.

Constitutional History

Michigan's current constitution was narrowly adopted by the voters in 1963. Since then, 80 proposed amendments have been initiated by the legislature and voter-circulated petitions. The voters have adopted 31 amendments, most frequently amending Article IV (Legislative Branch) and Article IX (Finance and Taxation). Article I (Declaration of Rights), Article V (Executive Branch), and Article VIII (Education) have been amended less frequently. In total, 35 sections have been amended or added.

If Rejected

If the question is rejected, Michigan's state and local governments will continue operating under the 1963 Constitution and this question will be slated to automatically appear on the ballot again in the year 2026.

Constitutional Issues

Why might voters decide a new constitution is desirable? Why might they decide that the current constitution is satisfactory?

From February to October of this year, the Citizens Research Council of Michigan has reviewed the provisions in each article in the current constitution.

This analysis has identified provisions that are obsolete and violate provisions of the U.S. Constitution. It found sections and articles that have withstood the test of time and seem to be working as intended. And it found provisions that have come under scrutiny over the years and likely would be the subject of debate and reform efforts at a convention.



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Inoperative and Obsolete Provisions

States have considerable discretion in drafting the fundamental laws that govern their operations and that afford rights to their citizens. State constitutions, however, are bound by the parameters of the U.S. Constitution and may not violate the provisions contained in that document. State constitutional provisions that are obsolete because they violate the provisions of the federal constitution make the language of a state constitution confusing and misleading. These provisions should be removed or revised to reflect the current status of law.

Article II (Elections) contains two original sections related to the voting age and requirements for property ownership to participate in certain elections that are obsolete. It also contains a relatively new section that provides term limits for the state's officials elected to federal offices that the U.S. Supreme Court has determined to be unconstitutional. Article IV (Legislative Branch) contains provisions relating to

legislative redistricting that are not consistent with the federal constitution. Article VII (Local Government) creates county boards of supervisors consisting of one member from each organized township and representation from cities. Because those governments tend to have unequal populations, this provision violates the federal one man-one vote requirements. Above all else, a constitutional convention would aim to clean up provisions such as these.

Highly Charged Provisions

The Constitution contains a number of provisions that sharply divide certain segments of the state's population. Depending on where one stands on these issues, Proposal 2010-01 may be seen as a threat to, or an opportunity to, alter existing policy. These provisions include: a ban on same sex marriage; a prohibition on certain affirmative action programs; authorization for stem cell research; death penalty restrictions; creation of term limits; a requirement for the election of judges; provisions for local government home rule; a

grant of autonomy to the state universities; tax and revenue limitations; dedication of tax revenues to specific purposes; and a restriction on the use of eminent domain for economic development purposes.

Policy Issues

Finally, a constitutional convention may be seen as an opportunity to reexamine state policy on a number of basic issues fundamental to the operation of state and local governments. A convention may wish to revisit: the direct democracy provisions related to recall, referendum, and voter initiation of legislation and constitutional amendments; the bicameral legislature and the size of each house; the powers of the governor to reorganize state departments; the funding of the judicial system; the types and powers of local governments; education as a right that should receive preeminence in funding; the power to tax and the limitations that should be placed on those powers; annual vs biennial budgeting; and control of the state's civil service system.

The constitutional convention process and each article of the Constitution is discussed in greater detail in CRC's series of papers (available at www.crcmich.org/PUBLICAT/2010s/2010/rpt360.html). The Citizens Research Council of Michigan takes no position on the question of calling a constitutional convention. It is hoped that examination of the matters identified in CRC's series of papers will promote discussion of vital constitutional issues and assist citizens in deliberations on the question of calling a constitutional convention.

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