

## **Direct Democracy Part 4: Establishing Direct Democracy in Illinois**

The first three parts of this series described a number of barriers to direct democracy in Illinois, including restraints on the existing initiative and referendum opportunities in state law. While the General Assembly could overcome many of these barriers through legislation, some provisions of the current constitution may hinder a broad right to direct democracy. Therefore, direct democracy in Illinois must begin with a constitutional amendment.

### **Illinois should amend the constitution to enshrine a right to direct democracy at the state and local levels**

Amending the Illinois Constitution to include a right to initiative and referendum for Illinois residents would shelter the process from future attempts to limit it. It would also overcome several potential hurdles inherent in creating the right solely through changes to statutory law. The process for a constitutional amendment is straightforward: three-fifths of each house of the General Assembly must approve the amendment, then voters at the next general election must approve passage by either three-fifths of those voting on the question or a majority of voters participating in the election.<sup>1</sup>

The Illinois Constitution currently contains provisions that could hinder an effort to legislate a right to direct democracy. “The legislative power is vested in [the] General Assembly,”<sup>2</sup> which means a statewide initiative and referendum process could be challenged by a later General Assembly as an infringement on the body’s constitutional authority.

Furthermore, it remains unclear if the General Assembly could broadly grant an initiative and referendum process to non-home rule units. The constitution grants home rule units immense control.<sup>3</sup> In fact, home rule unit ordinances trump state statutes unless the General Assembly has specifically restricted the home rule power over the area in question.<sup>4</sup>

However, just the opposite is true of non-home rule units: with limited exceptions, non-home rule units “have only powers granted to them by law.”<sup>5</sup> When the General Assembly does grant them power, it is specific and by subject matter; a grant of a broad process like initiative and referendum could face a challenge, and it is impossible to gauge how the courts would handle such a novel case.

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<sup>1</sup> Ill. Const. Art. XIV § 2.

<sup>2</sup> Ill. Const. Art. IV, § 1.

<sup>3</sup> Ill. Const. Art. VII., §6.

<sup>4</sup> See *Palm v. 2800 Lake Shore Drive Condo Ass'n*, 2013 IL 110505 (2013).

<sup>5</sup> Ill. Const. Art. VII. §7.

Lawmakers can avoid concerns about the legislative power and limits on non-home rule entities by amending the state constitution to specifically provide a right to both state and local direct democracy.

Additionally, if Illinois passed the right to initiative and referendum only by statute, a later General Assembly could repeal the law by majority vote with the governor's signature. Future lawmakers could also negate the right by passing impossible standards for petition gathering. By enshrining the right as an amendment, the General Assembly can set standards that will remain attainable.

### **Standards for Initiative and Referendum**

A constitutional amendment and statutes may simultaneously define the rules governing the form of petitions and questions, time for gathering and submitting signatures, and thresholds for access to the ballot. Any constitutional provision could only be changed through further amendment, requiring three-fifths vote of each chamber of the General Assembly and statewide voter approval. Changes to state law would require only a majority of each house and the governor's approval.

Thus, by setting minimum protections in the constitutional amendment, the General Assembly can provide baseline protection for direct democracy.

### ***The constitutional amendment should set limits to protect the right to direct democracy but allow future a General Assembly to ease requirements***

Illinois law provides a wide range of signature and timing requirements for various initiative and referendum opportunities. For advisory questions of public policy, the Illinois Election Code requires "at least 8% of the total votes cast for candidates for Governor in the preceding gubernatorial election" in the political unit.<sup>6</sup> As discussed in Part 3 of this series, Idaho requires twenty percent of the votes cast in the last election.

Illinois lawmakers should aim for an achievable standard that also requires a showing of significant public support to place a measure on the ballot. This balance may take some trial and error, and the criteria may need to shift depending on residents' ability to meet standards. New processes elsewhere in the law, such as electronic signature gathering, could further impact the advocates' ability to reach the ballot.

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<sup>6</sup> 10 ILCS 5/28-6.



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Illinois can balance the competing concerns of ballot access and ballot crowding by setting a maximum percentage of signatures via constitutional amendment while allowing the General Assembly to ease the requirement through legislation.

### ***The General Assembly should include standards for clarity and understanding of referendum questions***

To ensure public understanding and limit concerns about potential confusion, lawmakers should preserve standards for clarity in referendum questions. Part 2 of this series explored the standards set by the Illinois Supreme Court in *Hoogasian v. Regional Transportation Authority*,<sup>7</sup> *Leck v. Michaelson*,<sup>8</sup> and *Lipinski v. Chicago Board of Election Commissioners*.<sup>9</sup> The court later summarized the standard: “whether the referendum could stand on its own terms and was self-executing or left gaps to be filled by either the legislature or municipal body, creating uncertainty about what voters approved.”<sup>10</sup>

As this remains the standard in Illinois, it would presumably apply to a newly created right to initiative and referendum; however, confirming this standard through legislation would help ensure continuity and clarity in the process.

The law could also require election authorities to send out ballot pamphlets with explanations of proposals, including simple arguments both for and against, similar in structure to what applies to proposed constitutional amendments now.<sup>11</sup>

### **Illinois must pass a Direct Democracy Amendment to empower residents now and in the future**

Illinois is changing. The General Assembly has begun to respond to voters’ concerns about accountability, transparency, and ethics in ways that advocates could barely dream about a few short years ago. It is time for Illinois to join over two dozen states that give residents a stake in the lawmaking process. By enshrining the right in the constitution, Illinois can give current and future generations the ability to adapt law to community and state needs.

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<sup>7</sup> 58 Ill 2d 117 (1974).

<sup>8</sup> 111 Ill. 2d 523 (1986).

<sup>9</sup> 114 Ill. 2d 95 (1986).

<sup>10</sup> *Johnson v. Ames*, 2016 IL 121563 at ¶14 (internal quotation marks omitted).

<sup>11</sup> 5 ILCS 20/2 ; Other states have also adopted this approach to ease voter understanding. *See, e.g.*, Code of the Laws of South Carolina Annotated, § 7-13-2110.