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THE ILLINOIS CONSTITUTION AND THE BANKING AMENDMENT

KENNETH C. SEARS*

AMENDING THE ILLINOIS CONSTITUTION

DURING the regular session of the 1937 Illinois General Assembly there were introduced a number of joint resolutions to provide for the amendment of several provisions in the Illinois Constitution.¹ They attracted no particular attention. This was probably due to the fact that a spirit of hopelessness has pervaded the General Assembly. The cold experience had been that no proposed amendment to the Illinois Constitution has been adopted since 1908.² The one adopted that year was a bond issue. This is a matter that is easily understood and also it may well be that a good many voters can be interested in the spending of public money when they cannot be interested in constitutional propositions that establish governmental devices, grant power, regulate or forbid action. Recently the writer has heard an interesting story that may throw more light on the bond amendment that was adopted in 1908. As the story came to the writer, a large sum of money was raised in order to bring about the adoption of this bond issue. The particular method used was to tell precinct captains that there would be a prize awarded to those who were able to show that a majority of the voters in their precincts had voted in favor of the amendment. The temptation in this method is obvious and the story also has it that some, at least, of the precinct captains offered to divide with the precinct election boards. As a result, in the late hours for counting the ballots proper marks were placed in the proper places on the ballots of many voters who had failed to vote on the bond issue. No doubt, proof of such conduct could not be secured but there is nothing improbable in the story. A constitution that can hardly be

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¹ See Final Legislative Synopsis and Digest, No. 22, 560-579 (1937). In addition to the banking proposal they sought to submit various amendments to the sections on revenue, county offices, judiciary and amendment. Most of them were proposed changes of Article IX on Revenue. Representative Woodward of Chicago also introduced a joint resolution, No. 21, to assemble a constitutional convention.

² See Sears, *Constitutional Revision in Illinois*, 33 Ill. L. Rev. 2, 6 (1938).

amended under the existing system of voting is a temptation to indulge in such tactics.

Prior to the 1908 success Illinois adopted an amendment in 1904. This was the so-called Chicago Charter Amendment, although it does not greatly deserve that title. Explanations of the methods by which this amendment was adopted are in print.³ The favorable circumstances in the campaign for the amendment were of an unusual nature. So, the conclusion seems to be well-nigh inevitable that the two exceptions to the "constitutionally" adverse vote that proposed amendments have received in Illinois since the change in the method of voting which occurred in 1891 are merely exceptions which prove the *general* rule. Unfortunately the general rule that faced the 1937 Illinois General Assembly was that for *practical* purposes the Illinois Constitution cannot be amended under the present system of voting.

What was the General Assembly to do? It might have placed the problem before the voters by following the desires of Governor Horner. If it had done so, it would have passed the so-called Mayor Bills which were introduced in the House of Representatives by Representatives Vicars, Hubbard and Knauf.⁴ It did not take any decisive action, however, and all of this has been related elsewhere.⁵ After a long period of apparent inactivity, the General Assembly on June 30, 1937, just before it adjourned decided to submit the banking amendment to the voters. Perhaps it was encouraged in doing this by the thought that even the *Chicago Tribune* would support this amendment.⁶ That paper during recent years has been consistently opposed to any fundamental revision of the Illinois Constitution; but, of course, an amendment that would aid capitalistic industry and tend to preserve the importance of the state in our political system would be the type of conservative reform that would appeal to the *Tribune*. The vote upon the amendment in the General Assembly was almost unanimous. Only two members in the House of Representatives opposed it and the resolution received a unanimous vote in the Senate.⁷

³ Constitutional Convention Bulletins, Illinois 177-9 (1920); Gardner, *The Working of the State-Wide Referendum in Illinois*, 5 Am. Pol. Sci. Rev. 394 (1908).

⁴ H.B. 206 and H.B. 207 (1937).

⁵ Note 2, *supra*.

⁶ It had endorsed the banking amendment in an editorial entitled "Double Liability in Illinois," which appeared during the latter part of May, 1937.

⁷ See H. J. Res. No. 6 of the 1938 Special Session, and the address concerning the amendment that was prepared by Secretary of State Hughes and distributed to the voters by the authority of the State of Illinois. This was not an objective consideration of the banking amendment but among other things was a statement of "Reasons Why Proposed Amendment

In the spring of 1938 Governor Horner called a special session of the General Assembly and later called a second special session, but the two special sessions proceeded from the layman's point of view as if they were just one. To this special session Governor Horner recommended the adoption of a resolution submitting to a vote the question of assembling a constitutional convention. The Illinois Constitution in Article XIV provides that "the General Assembly shall have no power to propose amendments to more than one article of this Constitution at the same session" Whether the word "same" would have prohibited the special session from submitting other amendments if authorized to do so by the Governor, does not appear to have been discussed in Illinois legal literature. If that could be done, could the second but concurrent special session have submitted still other amendments? In any event the special session of 1938 confined its attention to a constitutional convention and did not consider amendments.

Two resolutions to assemble a constitutional convention were introduced in the special session. Representatives Joseph H. Davis and F. W. Lewis, both down-state Democrats, introduced one resolution. Representative Woodward, a Chicago Republican, introduced the other. In addition Representatives Davis and Lewis introduced House Bills 11 and 12 patterned after the Mayor Bills but limited to voting upon a proposition to assemble a constitutional convention. The bills made use of the only known device that is likely to get Illinois out of its constitutional bog by making it possible to vote to assemble a convention by making a cross (X) in the party circle. The bills as introduced at the special session did not apply this principle to voting upon amendments such as the banking amendment.

By this time the bankers of the state must have had some doubts about their previous conservatism.⁸ As far as is known the Illinois bankers have never lifted their hands to help Governor Horner secure a revised

Should Be Ratified by the Voters." This appeal for a favorable consideration was submitted over the names of John Stelle, President of the Senate, and Louie E. Lewis, Speaker of the House of Representatives. Literature prepared and distributed by the Constitutional Amendment Committee also advertised the fact of the nearly unanimous vote in the General Assembly.

The Stelle-Lewis address was criticized by Mr. John J. Walt in the *Federation News*, September 24, 1938, p. 12. He also complained that the proposed amendment was "quietly slipped through the legislature." *Federation News*, October 1, 1938, p. 11.

⁸ In September, 1937, Mr. Jack O. Brown of the Department of Insurance sent to the author a newspaper clipping which stated that the Illinois bankers realized that an adoption of their amendment would require "a majority of all votes cast at the election and it is this requirement that gives bankers worry as to whether it can be adopted."

constitution for Illinois and, especially, they have not helped him to make that possible by helping to secure the passage of the Mayor Bills which have been before the Illinois General Assembly since 1935.⁹ During all this time the bankers by their silence and perhaps, if the truth were known, by their secret aid have encouraged the *Chicago Tribune* and the Illinois Manufacturers' Association and to some extent the *Chicago Daily News* and the Hearst Press in their successful efforts to defeat essential reforms in our method of voting on constitutional propositions. The bankers were too conservative to support House Bills 11 and 12 in the 1938 special session. Now that the bankers have had their pet amendment before the voters and have lost their amendment and their money, are they sorry that they have not helped make it possible for their own as well as other needed amendments to the constitution to be adopted?

The *Chicago Tribune* renewed its fight against a constitutional convention on May 23, 1938, and directed attention to the fear of an income tax. This perhaps is the most important motive for the *Tribune's* intense opposition to constitutional reform in Illinois. There seems to be no doubt that the income of the *Chicago Tribune* and its owner, Colonel McCormick, is enormous and, therefore, they are well content to let the poor pay their sales taxes and thus avoid taxation in Illinois based on the modern principle of ability to pay.¹⁰ The other argument on this particular occasion was that the convention would be unrepresentative because the delegates would be selected from the present senatorial districts. To be sure no one could accuse the *Tribune* and Parke Brown, who wrote the article, of being so stupid as not to know that the method of selecting delegates to a constitutional convention is specified in the constitution and unless the constitution can be changed nothing can be done about that. This is only a typical example of the methods employed by the *Tribune* in misrepresenting the facts.

On June 17, 1938, the *Tribune* had an editorial entitled, "No Constitutional Convention." Its readers were informed that "Illinois has a good constitution . . . ; [it] is not an inflexible, iron-clad document. Over a period of years it will receive any amendments upon which the people of Illinois are agreed as wise to have." The final conclusion was that, "The calling of a constitutional convention . . . would be one of the worst

⁹ An editorial in the *Chicago Daily Times* for October 21, 1938, advocated the adoption of the banking amendment but stated: "Ironically, the group which now seeks the banking amendment has been among those opposing a general modernization of the state's basic law." The *Chicago Tribune* is one of the group. See its editorial for August 8, 1938, which is a mild criticism of the constitution makers of 1870 for framing such a drastic banking provision.

¹⁰ See 9 *Fortune* 101 (May, 1938).

things the legislature could do." On June 27, 1938, there was another editorial entitled, "A Scheme To Betray Illinois." There we were informed that Article XIV of the Illinois Constitution, which requires an amendment or a proposition to assemble a convention to be approved by a majority of all the voters voting at a particular election, is "a common sense provision." Stronger still it was stated that the Illinois method under the present ballot law that automatically counts non-voters as negative voters on constitutional propositions "is exactly as it should be." The bills that had been introduced at the special session by Representatives Davis and Lewis were condemned as a trick in favor of "the back room boys" who would see to it that proposals favored by them would be adopted by the party circle method. Finally assurance was given that: "The amendment of particular clauses of the constitution, if amendment is desired, can be accomplished readily enough if the people are so disposed." This editorial, as might be expected, ignored certain significant facts and, therefore, was calculated to mislead those who read it. In the first place the so-called common sense provision is not embodied in the Illinois Constitution as it was understood by those who framed it and by those who adopted it. The so-called common sense provision for automatic negative voting is simply the unforeseen consequence of the adoption of the official ballot law in this state in 1891. Several times all of this has been explained in order to combat the incurable habit the *Tribune* has of misrepresenting things it opposes.¹¹ Voting on constitutional amendments between 1870 and 1891 was much more completely controlled by political parties than would be the case if the Mayor Bills were adopted. That explains why out of five attempts to amend the Illinois Constitution before 1891 all five were successful. The propositions had the approval of enough political parties, if not all of them, and as a result they went through successfully. Furthermore it is desirable to remind voters in Illinois that the present Illinois Constitution in Section X of the "Schedule" provided the form of the ballot that was to be used in the election upon the adoption of the Constitution. It was as follows:

For all the propositions on this ticket which are not cancelled with ink or pencil, and against all propositions which are so cancelled.

For the new Constitution.

For the sections relating to railroads in the article entitled "Corporations."

For the article entitled "Counties."

For the article entitled "Warehouses."

For the three-fifths vote to remove county seats.

For the section relating to the Illinois Central Railroad.

¹¹ See Sears, *op. cit. supra* note 2 and articles cited.

For the section relating to minority representation.

For the section relating to municipal subscription to railroads or private corporations.

For the section relating to the canal.

Each of said tickets shall be counted as a vote cast for each proposition thereon not cancelled with ink or pencil, and against each proposition so cancelled, and returns thereof shall be made accordingly by the judges of election.

Thus it appears that our present constitution was adopted by voters who were compelled to use a ballot that was not a party circle ballot, but was nevertheless a trick ballot, to use the *Tribune* expression. The trick was that every voter had to be careful to give attention to every one of nine distinct propositions if he would exercise his own judgment upon the nine propositions. Unless he did this, then the constitutional convention which framed the ballot was casting a vote for him in every respect in which he did not express his own individual judgment. It requires no great familiarity with the habits of voters to know that this ballot, as framed by the constitutional convention, was highly favorable for securing an affirmative vote on the various propositions submitted. Yet in spite of all of this the constitution of 1870 is now presented to us by conservatives and reactionaries as a "good" document which is protecting us from the blight of communism.

The ballot formulated by the constitutional convention in 1870 is also eloquent in reminding us of the type of voting with which those who drafted it and voted upon it were familiar. Those who condemn the Mayor Bills would do well to reflect upon the ways of voting that were known and used in 1870 and thereafter until the law for printing ballots and holding elections was adopted in this state in 1891.¹² We are informed that the Republican leaders in the last House of Representatives of the Illinois General Assembly complained that the Mayor Bills even though limited to voting upon a constitutional convention would introduce "Hitler tactics."¹³ That seems to be a very curious term to apply to a method of voting that is less subject to the control of political parties than that used in Illinois from 1870 to 1891, to say nothing of the period prior to 1870. Furthermore no alleged Republican leader nor any other person in the State of Illinois has yet accepted the challenge uttered before the Committee of the Whole of the Illinois House of Representatives in May, 1937 and published in the May, 1938 number of the Illinois Law Review.¹⁴ That challenge still stands. The challenge is that if the Mayor Bills are confined, as they were before the special session of 1938, to voting

¹² Ill. Rev. Stat. 1937, C. 46, § 33.

¹³ Chicago Tribune, June 29, 1938.

¹⁴ Note 11, *supra*.

upon the assembling of a constitutional convention alone there is no danger in the method of voting specified in the bills that is not inherent in voting to assemble a constitutional convention under any circumstances. Therefore, those who are opposed to the restricted form of the Mayor Bills just mentioned are in reality opposed to a constitutional convention. There is no logical escape from this position and for once the *Chicago Tribune* is logical. The Colonel's paper is opposed to a constitutional convention, and all of the emotional outbursts concerning the Mayor Bills are just a smoke screen to contaminate the political atmosphere in Illinois in considering its major political problem: Shall we have a constitutional convention?

Thus, the defeat of the resolution for a constitutional convention in the last special session was the occasion for an editorial celebration of "a notable victory." There we were informed that "thanks to the opposition of the Republican members" Illinois had been saved from the designs of "those who sought to overthrow our government and make it easy to impose communism on the people of Illinois . . . if ever there was a time when the fundamental law of the state should not be subjected to wholesale tampering it is now."¹⁵

On July 2, 1938, Governor Horner answered a statement issued by the Republican leaders in the General Assembly, Senator Searcy and Representative Schnackenberg. These leaders had taken credit for the defeat of the constitutional convention resolution, stating that the Republican minority had prevented the Horner administration "from putting over" a constitutional convention "by a trick method of counting a cross in a party circle as an affirmative vote for a constitutional convention." They also stated that this method of voting "was intended to circumvent the wholesome provision in our present constitution requiring that a majority of those voting at a general election shall be necessary in order to call a convention."¹⁶ They ignored the fact that the present method of voting in Illinois on constitutional propositions is likewise a "trick method" that has no party responsibility for it. By the "trick method," that has been in use since 1891, every voter who fails to vote on a constitutional proposition is automatically counted as against it. As for their praise of the present constitutional provision requiring a majority of all voting at a general election, without regard to the number of those who vote on a constitutional proposition, it is only necessary to reply that they ignored the fact that this is the fundamental reason why Illinois is unable to be a progressive political community and is practically unable to

¹⁵ *Chicago Tribune*, June 30, 1938.

¹⁶ *Chicago Tribune*, July 2, 1938.

amend its constitution. They ignored the fact that Illinois is one of only about six states in the United States which still require such a majority for the adoption of constitutional propositions.¹⁷ This extreme minority position in which Illinois finds itself may be even more significant if the voting methods in the other states are not the same as those in Illinois. It is perfectly clear that the identical Illinois constitutional provision meant one thing, from the point of view of results, in Illinois up to 1891 and a vastly different thing since then. So it may be that the states that have similar constitutional provisions have methods of voting on constitutional propositions that make the constitutional provision a reasonably workable one.¹⁸

Governor Horner denounced the Searcy-Schnackenberg statement as "hypocrisy." He asserted that the constitutional convention resolution was not a part of House Bills 11 and 12, the modified Mayor Bills, and that a vote for the resolution was not a commitment to a vote for House Bills 11 and 12.¹⁹ As a matter of fact Representatives Davis and Lewis agreed to abandon these bills in an effort to secure the adoption of the convention resolution.²⁰ If the Republican legislative leaders are going to permit the *Chicago Tribune* to formulate the policy of the Republican party in Illinois on this fundamental question, the voters of the state are entitled to be clearly informed of it in order that they can make their choice. In this respect it is interesting to record that the first time that the Mayor Bills were considered in the State Senate, Senator Searcy voted for them.²¹ A change of mind came, according to a well founded report, after Colonel McCormick had called him over the telephone.²² Furthermore, the Mayor Bills for which Senator Searcy voted would have used

¹⁷ See 7 State Government 264 (1934).

¹⁸ The author hopes to be able to examine this problem sometime in the future and present the result to the Illinois voters.

¹⁹ Letter to the author from Governor Horner, July 2, 1938.

²⁰ *Chicago Tribune*, June 29, 1938. The vote on the convention resolution was 86 yes to 41 no. The yes vote was 16 less than the required two-thirds majority of 102. There are 153 members of the House of Representatives elected. The resolution had to secure two-thirds of the latter figure, no matter what may be the condition of the Representatives with regard to the casualties of life and health. Among those voting yes was a small number of Republicans, including Representative Woodward, who refused to follow the Republican leaders.

²¹ See Journal of the Senate, p. 525 (1935). The vote occurred in the morning session which started at 11 A.M. and recessed at 1 P.M. Wednesday, May 8, 1935. The Senate reconvened at 4 P.M. the same day. The second item of business was a motion by Senator Searcy to reconsider the vote by which one of the Mayor Bills passed. On the next day, Senator Searcy's motion was considered and it was defeated. *Id.* p. 542.

²² See Sears, *op. cit. supra* note 2, at 7.

the party circle method of voting, both as to constitutional amendments and as to the assembling of constitutional conventions.

On July 2, 1938, the *Chicago Tribune* in another editorial again praised the House of Representatives for the defeat of the resolution for a constitutional convention. A similar praise for "the House Republicans, led by Elmer Schnackenberg" appeared in an editorial July 19, 1938, entitled, "Republicans in the Illinois House."

This challenge of the Republican members of the General Assembly led by the *Chicago Tribune* was accepted by the Democrats when they assembled in September to formulate their state platform. According to the *Daily News* of September 8, 1938, they criticized the "reactionary Republican opposition" which defeated the constitutional convention resolution and pledged the party to continue efforts "to call a convention to rewrite the state Constitution." This made a definite issue, but unfortunately it was only one of many issues and it is impossible to state here what the last election meant in respect to this issue. We do know, however, that in 1934 a proposition to call a constitutional convention, despite the rabid assaults of the *Tribune*, and despite no well organized effort on behalf of the proposition, received the following vote: For a convention 691,021; against 585,879. Thus, there was a favorable majority of 105,142. But by virtue of the trick method of voting, to use *Tribune* language, the proposition was defeated because 1,658,292 ignored the proposition.²³

THE NEW YORK CONVENTION

In 1936 there was a vote in New York upon the question, "Shall there be a convention to revise the constitution and amend the same?" This question was submitted despite the fact that since the present New York constitution was adopted in 1894 there had been sixty-five amendments to the constitution adopted. A number of amendments had also been rejected.²⁴ The question was submitted not by the New York legislature, but because of a constitutional provision requiring such a question to be submitted automatically every twenty years.²⁵ Thus one readily understands why New York was not suffering from an antiquated constitution as is the fact with Illinois. Amendments proposed in New York by the legislature are adopted by a majority of those *voting on the question*.²⁶

²³ Illinois Blue Book, 36-9 (1935-6).

²⁴ New York, Legislative Manual 191-206 (1938). In 1937 four additional amendments were adopted.

²⁵ Article XIV, § 2; see New York, Legislative Manual 188, note 24 (1938).

²⁶ Note 25, *supra*. The important wording is: "A majority of the electors voting thereon."

Those going to the polls and voting, but failing to vote upon the constitutional question, have no influence in determining the result. As far as is known there was no campaign made for the affirmative of the question submitted in 1936 of calling a constitutional convention. A moderate paper, the *New York Times*, argued that the vote should be in the negative because the amendment process in New York could be used as it had been used with great success in the past to revise such portions of the constitution as were in need of amendment. Despite the fact that the question of assembling a constitutional convention seemed to be without any organized support, the voters apparently surprised the politically wise by adopting the proposition and a convention was thus ordered to be assembled in New York. However, in stating that the voters did this, it is immediately necessary to qualify by explaining that the total number of votes recorded on the question at the November, 1936, election was 5,518,960, but of this number 2,915,081 were blank and void ballots. Those voting "yes" on the question numbered 1,413,604. Those voting "no" on the question numbered 1,190,275. Thus the question carried even though the affirmative vote was only slightly in excess of 25% of the voters voting on that day and despite the fact that the total of the yes and no votes was over 300,000 less than the blank and void votes.²⁷

Was a communistic revolution on its way in New York? The resulting New York is precisely the type of thing that the *Tribune* has warned the voters in Illinois against and has denounced as the way towards a revolutionary government. Strange as it may seem New York proceeded in an orderly manner in 1937 to elect its delegates to a constitutional convention. Despite the facts of a Democratic national administration, a tremendous expenditure of public funds, a disturbing economic condition in the country, and a "radical" mayor of New York, whom the *Chicago Tribune* does not cease to denounce, New York proceeded to elect a majority of its convention delegates from the Republican party and thus the Republican party controlled the convention. The convention met early in 1938 and proceeded in an orderly manner, although the product of the convention was a disappointment to many students of government. After much labor, nine different propositions were submitted to the voters as the work of the convention. Proposition number one was the omnibus amendment which contained within itself about fifty amend-

²⁷ New York, Legislative Manual, 1074-75; 1088-89 (1938). Observe, also, that the total vote on the same day for presidential candidates was 5,596,398. Under the Illinois constitution this larger number would be the basis, apparently, for determining whether a constitutional proposition had received a majority of those "voting at the election."

ments to the constitution.²⁸ The other eight propositions were thought to be the more controversial propositions and were submitted separately. The members of the convention believed that if all of their work were submitted as a unit, the opponents of the various items in the program of amendment would unite in a policy of opposition, and thus defeat the entire work of the convention. The leaders of the Illinois constitutional convention of 1920-22 were so confident of their own good work that they ignored similar advice and submitted a new constitution as a whole for a single vote. The overwhelming vote of disapproval in Illinois is easily understood but it was very unfortunate because Illinois still labors with its constitution growing more out of date year by year.

Even though the work of the constitutional convention in New York was disappointing to advanced thinkers and governmental reformers, even though partisanship displayed itself in the reapportionment of legislative districts, even though reactionaries tried to stop the march of administrative justice, and even though there was a combination of Tammany Democrats and up-state organization Republicans to prevent any future use of proportional representation even in local elections, the voters went to the polls last November and showed a very fine voting discrimination. This has brought forth approval from many persons as a vote that restores confidence in the democratic process. All of the nine propositions were approved except three and the three which were disapproved were the ones just mentioned, to wit, apportionment, judiciary, and proportional representation. What was the vote, however, by which they were approved or disapproved? The answer should be obvious to those familiar with the results of voting on constitutional propositions in Illinois. Every one of the propositions approved received an affirmative vote that was less than a majority of votes recorded on the proposition, including blank and void ballots. They carried because they received a majority of the total yes and no vote. Table 1 shows the vote in greater detail.²⁹

Thus New York, at least in this particular instance, has demonstrated the nonsense of the *Tribune's* clamor that the communists are about to capture Illinois and that our state constitution should not be "tampered" with while political and economic conditions are unsettled. It is likely that Illinois voters do not know much about what New York has just accomplished or of the eighteen amendments adopted in New York since

²⁸ New York Times, Oct. 17, 1938 (statement by C.I.O.). *Id.* Oct. 22, 1938 (statement by Mayor LaGuardia).

²⁹ The figures were obtained from the office of Secretary of State, Albany, New York.

1928 and prior to 1938. At least, if they do, they have not obtained any appreciable information on the subject from the *Chicago Tribune*. What New York has done so successfully is very unfavorable from the point of view of *Tribune* propaganda and has, therefore, been very largely ignored. The only paper in Chicago, as far as the writer has observed, that has appreciated what New York has done and is in favor of doing the same in

TABLE 1
NEW YORK VOTE, 1938

Name	Total Vote on Proposition	For	Against	Blank and Void
1. Omnibus.....	{4,730,852 (%100)	1,521,036 (32.15)	1,301,797 (27.52)	1,908,019 (40.33)
2. Legislative apportionment..	{4,699,358 (%100)	848,367 (18.05)	1,425,344 (30.33)	2,425,647 (51.62)
3. R.R. grade crossings.....	{4,709,173 (%100)	1,561,846 (33.17)	895,382 (19.01)	2,251,945 (47.82)
4. Housing and state debt....	{4,707,329 (%100)	1,686,056 (35.82)	936,279 (19.89)	2,084,994 (44.29)
5. Judiciary (administrative finality).....	{4,695,233 (%100)	641,332 (13.66)	1,550,653 (33.03)	2,503,248 (53.31)
6. Labor and public work.....	{4,725,734 (%100)	1,869,883 (39.57)	940,770 (19.91)	1,915,081 (40.52)
7. Proportional representation.	{4,694,134 (%100)	627,123 (13.36)	1,554,404 (33.11)	2,512,607 (53.53)
8. Social welfare.....	{4,726,979 (%100)	1,902,075 (40.24)	943,296 (19.96)	1,881,608 (39.81)
9. Transit unification.....	{4,691,844 (%100)	1,407,056 (29.99)	935,744 (19.94)	2,349,044 (50.07)

Illinois is the *Chicago Daily Times* which, in a discerning editorial, stated the following belief:³⁰

Defeat of the innocuous banking amendment to the Illinois constitution simply because a million or so voters would not even trouble to vote on it sharply spotlights New York's action. Since the last time our constitution was amended—1908—the New York state charter has been re-written twice and amended a score of times.

It may be that New Yorkers' willingness to keep their constitution in touch with the times is what keeps their state the leading one of the nation, and New York city

³⁰ "New York Shows the Way," November 15, 1938, p. 15. Only a part of the editorial is printed here. The whole should be read and compared with the statement by Senator Searcy and Representative Schnackenberg after the adjournment of the 1938 special session of the Illinois General Assembly.

the No. 1 metropolis. Despite their hoary age, New York city and state are more alive, more vigorous and more progressive than Illinois and Chicago.

Bold daring, disregard for tradition, willingness to try anything once, the spirit of adventure, the urge to blaze new trails are what made Chicago and Illinois great. A dozen or so years ago, when government's main function was merely to police, an out-moded constitution meant little. But today the progress of the people, the progress of state and city, are inseparably allied with progress in government.

Neither Chicago nor Illinois will ever achieve their true stature as long as their government is held to a mold two generations out of date. Perhaps we cannot do what New York has done. But the least we can do is to make the amending process realistic and democratic. We should do away with the requirement that amendments must receive a majority of all votes cast at an election. Those too indifferent to vote on a proposition are not entitled to the negative vote now recorded for them. This should be the next amendment to our constitution.

The recent New York vote, as indeed the general experience with constitutional propositions in New York, demonstrates the falseness of the claim that is sometimes made in Illinois in defense of our amending process under our present system of voting. The essential defect is the requirement that the Illinois constitution cannot be amended unless the amendment receives the affirmative approval of a majority of all the voters who vote on the particular day that the amendment is submitted to the voters. It is said in defense of this requirement, which prevails in only a small number of states, that voters in Illinois now understand that if they do not vote on a constitutional proposition they are in legal effect casting negative votes; that, if this were not true, they would vote "no" on a proposition instead of refusing to vote. This explanation is exploded by the New York experience unless we assume that the voters in New York are not as intelligent or as interested as the voters in Illinois. Not infrequently, amendments have been adopted in New York where the total vote for and against an amendment was less than the blank and void ballots on the amendment, to say nothing of a majority of the total number of votes on the particular day. Many times in New York amendments have been adopted by an affirmative vote of less than a third of the total number of voters who voted. Unless we assume, therefore, that voters in New York do not understand their method of voting, frequently a majority or nearly a majority of those going to the polls at a general election simply is not sufficiently interested in constitutional propositions to vote one way or the other. Perhaps that is a reflection on democratic government, but the fact remains that a very large percentage of voters will not vote on a constitutional proposition even though, as in New York generally, it is only necessary to have an opinion and then do the

very simple thing of pulling a lever on a machine. The only conclusion that seems to be justified is that, while of course there are some voters in Illinois who do not vote on constitutional propositions with the conscious purpose of ignoring them in order to be against them, they constitute, nevertheless, such a small percentage of the total number of voters as to be of no material consequence. As long, therefore, as Illinois keeps its present constitutional provision for amending or calling a convention in combination with the present system of voting, just so long will the State of Illinois be in a position where for *practical* purposes its constitution cannot be amended. Illinois must make its choice.

Table 2 sets forth additional information as to voting upon constitutional amendments in New York.³¹

THE BANKING AMENDMENT

As to the merits of the banking amendment submitted to the Illinois voters last November, there was a fair amount of controversy although one would not have gained that impression from the discussion of it in the Chicago newspapers with large circulations. As far as observed the only paper which afforded an opportunity to the proponents and opponents to discuss the amendment was the *Chicago Daily Times*.

At the outset it seems to be admitted by all who discussed the subject that the Illinois Constitution's provision as interpreted by the Illinois Supreme Court is an exceedingly drastic one and that at the time the resolution containing the amendment passed the General Assembly there was a very heavy handicap upon the organization of a state bank in Illinois. It was stated, and apparently not denied, that since the banking moratorium in 1933 only five state banks had been organized in Illinois. Sixteen state banks had surrendered their charters for national charters; eighty-four more had decided to liquidate; and ninety new national charters had been issued.³² Said Stelle and Lewis in their official address to the voters: "Only the voters can save our state banking system."

³¹ It would be tiresome to consider the vote on every proposed amendment to the present New York constitution since the first one was submitted in 1896. Those selected are believed to be a fair sample under modern conditions. The information was secured from the New York Legislative Manual for various years.

³² Chicago Tribune, May 1, 1938. The information was apparently furnished by Judge Floyd E. Thompson, chairman of the constitutional amendment committee. The same information as a quotation from Judge Thompson appeared in the Chicago Daily News, April 29, 1938. The Address to the Voters signed by John Stelle, President of the Senate, and Louie E. Lewis, Speaker of the House, stated that prior to the passage of the resolution containing the banking amendment, only three state banks had been organized since March, 1933. During the same time sixteen state banks had been converted into national banks and eighty-six new national banking charters had been issued in Illinois.

TABLE 2

Year, Number and Subject	Total Vote on Proposition	For	Against	Blank and Void
1929:				
1. Civil Service preference to veterans	3,063,452 (%100)	1,071,517 (34.98)	404,454 (13.20)	1,587,481 (51.82)
4. State contract debts to suppress forest fires.....	3,046,522 (%100)	959,454 (31.49)	313,512 (10.29)	1,773,556 (58.22)
1931:				
1. Federal census rather than state census as basis for legislative districts.....	3,277,082 (%100)	924,228 (28.2)	335,206 (10.23)	2,017,648 (61.57)
2. Legislators may accept civil appointments during term.....	3,269,686 (%100)	424,522 (12.98)	700,177 (21.42)	2,144,987 (65.6)
1932:				
1. Use of Forest Preserve for recreation purposes.....	4,669,743 (%100)	693,542 (14.85)	1,326,599 (28.41)	2,649,602 (56.74)
1933:				
1. Method of ascertaining compensation for private property taken for public use.....	4,318,101 (%100)	1,113,371 (25.78)	443,326 (10.27)	2,761,404 (63.95)
2. Preference for disabled veterans in civil service...	4,319,690 (%100)	755,675 (17.49)	939,036 (21.74)	2,624,979 (60.77)
3. Use of Forest Preserve for highway purposes.....	4,315,752 (%100)	1,099,399 (25.47)	492,424 (11.41)	2,723,929 (63.12)
1935:				
1. Organization, government and officers of counties...	4,051,848 (%100)	1,288,297 (31.80)	499,332 (12.32)	2,264,219 (55.88)
2. Non-unanimous jury ver- dicts in civil cases.....	4,048,575 (%100)	1,150,687 (24.82)	480,340 (11.86)	2,417,548 (59.71)
3. Liability of stockholders of banks.....	4,050,181 (%100)	1,086,701 (26.83)	538,442 (13.29)	2,425,038 (59.87)
1937:				
1. Increasing term of Gover- nor and Lieutenant-Gov- ernor.....	4,306,452 (%100)	842,980 (19.57)	503,656 (11.70)	2,959,816 (68.73)
2. Member of Assembly 2 year term.....	4,300,652 (%100)	856,818 (19.92)	463,074 (10.77)	2,980,760 (69.31)
3. Defendants waive jury trial except where punish- able by death.....	4,313,148 (%100)	721,540 (16.73)	550,297 (12.76)	3,041,311 (70.51)
4. May sheriffs succeed themselves.....	4,318,882 (%100)	697,007 (16.14)	610,515 (14.14)—	3,011,360 (69.73)—
5. Prescribing the jurisdic- tion and powers of the N.Y. City Court.....	4,303,835 (%100)	551,569 (12.82)	636,938 (14.80)	3,115,328 (72.38)

However, is there any evidence that a loss of our state banking system would be undesirable? It is the belief of the author that the United States would be better regulated if all commercial banking, at least, was confined to the national banking system and if all commercial state banks were gradually liquidated. Commercial banking is a very significant factor in the maintenance of a strong national currency system. In any event those who believe in only one system of banking were justified in voting against the banking amendment except for one difficulty. Even though the ideal may be an exclusive national system of banking, still that is not going to be accomplished in any material way by simply preventing Illinois from having an adequate state banking system as long as the rest of the states in the Union have their own banking systems. Nevertheless, the belief that the national government has adequately provided for banking may have caused either opposition or indifference to the amendment.

One objection that was raised in the campaign to adopt the amendment had the support, for a time at least, of a group of bankers in Chicago calling themselves the independent bankers. On their behalf, Carl Kuehnle, president of the Central National Bank, appeared before the City Club of Chicago in October, 1938. At that time, he was considerably aroused over a fear that the banking amendment, by eliminating the referendum provision in the present constitution, was a scheme for bringing in chain banking. The independent bankers were not heard from after this debate before the City Club. It is possible that they became reconciled to the amendment. It is impossible to understand why there should have been a reasonable fear that the elimination of the referendum device would lead to chain banking. Perhaps it was the same old story that whenever a constitutional provision is presented somebody can produce at least one bogey and, of course, it is impossible to say that there is absolutely no danger in any respect with any constitutional proposal. The sky is the limit when political action is involved. Nevertheless, there seems to be no reasonable basis for assuming that the General Assembly of Illinois would vote in favor of a scheme of chain banking by two-thirds vote of each house when such a scheme would be one opposed to the wishes of the voters in Illinois.³³

The banking amendment was opposed by the Chicago Federation of

³³ Observe that section 5 of Article XI of the Illinois Constitution provides that: "No Act of the General Assembly authorizing or creating corporations . . . with banking powers . . . nor amendments thereto, shall go into effect . . . , unless the same shall be submitted to a vote of the people at the general election next succeeding the passage of the same, and be approved by a majority of all votes cast at such election *for or against such law*" (italics added). This provision does not require an affirmative vote of a majority of all the voters who vote in a general election as is required in Article XIV of the Illinois Constitution. If such had been required, can anyone imagine what would be the condition of our state banking system today?

Labor. It unanimously adopted a resolution that recommended a negative vote on the amendment. It is believed that the chief reason for this opposition was a feeling of antagonism between organized labor and the banking fraternity.³⁴

One of the main points made in the *Federation News* was that the abolition of the present referendum provision in the Illinois Constitution on banking legislation would be wrong because it represented retrogression from the ideal of democratic government. It is rather odd in Illinois to hear of the great value of a referendum provision in the Illinois Constitution. It contains no general referendum and no initiative provision. The Illinois constitutional convention of 1920-22 defeated a proposal of initiative and referendum. So it would not have been entirely consistent with our present state policy for the banking amendment to have been opposed in Illinois because it abolished a referendum on only banking legislation when no other legislation is subject to that process. This disparity in political policies was no sufficient reason against offering this argument for defeat of the banking amendment. But why should banking legislation be singled out for an *automatic* referendum? There is the rub. Banking legislation is oftentimes complicated and is not the type of legislation that normally can be understood by the average voter faced with a very long ballot and expected to elect a large number of officials. It is not believed that an automatic type of referendum on any category of legislation can be justified. Referendums should be confined to legislation of an unusual character in the sense that it arouses a significant belief that it is bad policy. This can be tested to some extent by requiring that a law in order to be referred must be brought to the attention, and the referendum secure the approval, of a certain percentage of the electors. To take an automatic referendum on banking legislation out of the Illinois Constitution may not, it seems, be denounced as a reactionary manifestation or as a defeat, as far as it goes, of the democratic process.³⁵

It is not a matter of surprise that Labor's Non-Partisan League opposed the banking amendment for a reason that differs sharply from the one just considered. The league objected to the provision in the banking amendment that required a two-thirds vote of both houses of the General Assembly before banking legislation could be passed. The objection was that this gave a minority the power to block future banking legislation.

³⁴ See statement by Mr. John J. Walt, in *Chicago Times*, October 23, 1938, p. 12 and an article by the same author entitled, *Banks Fought Building Trades*, in *Federation News*, October 1, 1938, p. 11.

³⁵ See *Proceedings of the Illinois Constitutional Convention, 1920-22*, pp. 239-342, 2522; *Should the New Constitution Be Adopted and Why?* statement of Edward F. Dunne, *Chicago*, 17 *Ill. L. Rev.* 306, 307 (1922).

No objection to the removal of the automatic referendum was stated.³⁶ The point seems well taken. Perhaps, if the two-thirds provision had not been placed in the proposed amendment, the Chicago Federation of Labor would have objected even more strongly to the amendment on account of the elimination of the referendum. There seems to be no satisfactory reason why banking legislation should not be subject to the ordinary rule of the constitutional majority that prevails in legislative matters. It is no more important than other types of legislation. The citizens of Illinois must take their chances with their General Assembly and there seems to be no reason why banking legislation is in a peculiar position. It would be interesting to know whether any state in the Union has any requirement that banking legislation must secure a two-thirds majority. One may guess that the Illinois bankers in the future will not deny the validity of this objection, at least in theory. The excuse for placing the two-thirds provision in the amendment was to neutralize objections to the abolition of the referendum provision.³⁷

The banking amendment was known as the amendment that would remove "double liability" from the stockholders of state banks where the banks were liquidated and there was insolvency. Apparently this was the chief motivating force in the effort to secure the amendment. Congress in 1933 abolished double liability as far as national banks were concerned.³⁸ New York did likewise in 1935³⁹ and the general tendency of states which had double liability requirements has been to abolish them.⁴⁰ As far as is known no state except Illinois has defeated an amendment to remove double liability. In Illinois double liability has been fastened upon the stockholders of state banks in a rigorous form by the Illinois Supreme Court.⁴¹

At the time the banking amendment was submitted to the voters by the Illinois General Assembly it appeared that generally at least only

³⁶ Mimeographed letter dated October 21, 1938. Some comment of the same sort appeared also in the Federation News previously cited.

³⁷ A campaign document of the Constitutional Amendment Committee stated, "Where the concurrence of two-thirds of the total number of representatives elected by the people is required before change is made in the laws, it is not likely that changes inimical to the interests of the people will be made."

³⁸ This was stated in the campaign literature and is generally believed. But from a copy of a letter written by Leo T. Crowley, chairman of the Federal Deposit Insurance Corporation printed in The Federation News, September 24, 1938, the following is quoted with italics added: "Double liability of stockholders in *most* national banks has been eliminated."

³⁹ New York Legislative Manual 206 (1938).

⁴⁰ The Constitutional Amendment Committee asserted with no apparent denial that after Congress acted in 1933 twenty-nine states repealed their double liability requirements and that ten other states had had no similar provision for many years.

⁴¹ Sanders *et al.* v. Merchants' State Bank of Centralia *et al.*, 349 Ill. 547, 182 N.E. 897 (1932).

foolish or ignorant persons would care to be stockholders in new Illinois State banks. Furthermore, it seems to be agreed that despite the rigors of the double liability system in this state the amount recovered through this provision for the benefit of the depositors was of no appreciable consequence in the paying of the claims of the depositors.⁴²

The liability of stockholders of state banks in states with a double liability requirement was greatly altered in the spring of 1938 when Congress passed an amendment to the act creating the Federal Deposit Insurance Corporation. By this amendment the stockholders in Illinois State banks which insured their deposits with the Federal Deposit Insurance Corporation will be relieved from stockholders' individual liability, except for the amount that was unpaid upon the stock, to that corporation in case a bank becomes insolvent and ceases to conduct its business.⁴³ And in the latter event, the Federal Deposit Insurance Corporation pays the depositors dollar for dollar up to a maximum of \$5000. Thus it appears that an insured state bank will have all of its depositors with \$5000 or less on deposit paid by the Federal Deposit Insurance Corporation. Once paid there seems to be no basis upon which the depositors could make any claim against the stockholders of the bank. So, by this provision, despite the Illinois constitutional provision, stockholders in Illinois state banks are relieved from double liability provided that they insure with the Federal Deposit Insurance Corporation. This does not apply as to that part of a deposit in excess of \$5000 but probably such deposits are not common except in cities where other banks are available. It was stated and not denied during the campaign that all but fifteen or sixteen Illinois state banks were insured with the Federal Deposit Insurance Corporation and that 98% of the deposits in *insured* banks were covered by the insurance.⁴⁴ Why was there any further interest by the bankers in the adoption of the proposed amendment after Congress passed the amendment to the Federal Deposit Insurance Corporation act? No entirely satisfactory answer can be made to this question.

⁴² The Constitutional Amendment Committee stated in a campaign document: "In the recent banking disaster about 16% of stockholders' liabilities was collected in Illinois. This furnished only a small part of the fund from which depositors were paid; in fact, less than two cents on the dollar. The comptroller of the currency reports that the amount resulting from stockholders' liability in all national bank failures, in good times and bad, has yielded less than nine per cent of the total finally available for distribution and expenses of liquidation."

⁴³ H.R. 7187, and statement by Mr. Frank C. Rathje, in Chicago Daily News, May 6, 1938.

⁴⁴ Before the City Club and in the Federation News, Mr. John J. Walt objected to the following statement by the Constitutional Amendment Committee: "This gives full insurance to more than 98% of all depositors in all banks in Illinois." He complained that this was a distortion of the statement by Leo T. Crowley of the Federal Deposit Insurance Corporation that "more than 98 per cent of the depositors in insured banks are fully insured" . . . Federation News, Sept. 24, 1938, p. 12. City Club Bulletin, Vol. 5, No. 29, October 17, 1938.

It is, of course, true that another Congress may repeal the amendment just discussed and thus leave Illinois state bank stockholders subject to double liability. But this is not at all likely and it would seem to be time enough to act when the occasion arises, except for the fact that it takes time to secure the adoption of a resolution for a constitutional amendment and to present it to the voters. This may explain why the Illinois state bankers would be interested in having the proposed amendment adopted, but does it explain why they were so extremely anxious to have it adopted? Their anxiety was evidenced by the fact that they raised a large sum of money and made strenuous efforts to obtain a ratification of the amendment.⁴⁵

There is another possibility but from the standpoint of human psychology it approaches the ridiculous. Apparently depositors in an Illinois state bank which has closed its doors could refuse to take money available through the Federal Deposit Insurance Corporation and insist upon suing stockholders on the double liability provision.

There was some suggestion that the banker's intense interest in the proposed amendment was motivated by the following possibility. If the banking amendment had become a part of the Illinois Constitution and thus the stockholders in state banks had been relieved of double liability, what would there have been to have prevented state banks, not members of the Federal Reserve System, from withdrawing from the Federal Deposit Insurance Corporation and thus saving the very considerable expense of carrying the deposit insurance?

Apparently the best answer that can be made to the last stated objection is that national banks and state banks which are members of the Federal Reserve System must carry Federal Deposit Insurance Corporation insurance. Such banks are widely scattered and perhaps in most counties in Illinois these banking facilities would constitute competition that would force other state banks to carry Federal Deposit Insurance Corporation insurance. Probably this would not have worked out as perfectly adequate assurance, but it seems that when considering the

⁴⁵ It was stated during the campaign by Judge Thompson that the organization of state banks in sixty-one Illinois towns depended upon the adoption of the amendment. Mr. Oscar G. Mayer, president of the Chicago Association of Commerce, in appealing for a favorable vote, stated that the smaller capital requirements for a state bank "and other equally vital circumstances" make a state bank "the natural banking unit to serve the smaller community." Chicago Tribune, Nov. 6, 1938. *Sed Quaere*. In its own literature the Committee for the amendment stated that in a place with 6,000 or less, \$50,000 was the minimum capital for either a state, or a national bank. The difference is in places with over 6,000 and less than 10,000 inhabitants. In such places the Committee stated that a state bank need have only \$50,000 capital but a national bank must have \$100,000 capital. There is reason to doubt that a community of more than 6,000 but less than 10,000 cannot raise the required capital for one national bank, to say nothing of a state bank, which by insuring with the Federal Deposit Insurance Corporation, will free its stockholders of double liability.

question as a whole, the proposed amendment did not give a significant opportunity for state banks to relieve themselves from double liability and deposit insurance at the same time.⁴⁶

THE CAMPAIGN

The campaign for the amendment was well organized and carried on vigorously. The sad fact that confronts the citizens of Illinois who are interested in an efficient state government is that despite the well organized campaign, the amendment was overwhelmingly defeated from the point of view of the constitutional majority that is required to adopt an amendment. In view of this it becomes more clear than ever

TABLE 3*

Year and Amendment	Total Vote Cast at Election	Necessary Majority	For	Against	Not Voting
1938: Banking.....	{3,274,814 % (100)	1,637,408 (50+)	922,237 (28.1)	352,428 (10.8)	2,000,149 (61.9)

* The figures were secured from the office of the Illinois Secretary of State.

that Illinois faces governmental stagnation because of its antiquated and *practically* unamendable constitution. This should be a question of great concern for all who have a vision for the future. Illinois cannot proceed under its present constitution with the present method of voting without paying increasing penalties. For a long time it has been paying a heavy penalty. The condition will grow worse until there is a thorough revision of the Illinois Constitution or, at least, of Article XIV so that changes in the Constitution can be secured.

On the day before the election last November the author wrote to Judge Floyd E. Thompson, chairman of the Constitutional Convention Committee, and announced a plan to write an article on the banking amendment whether it won or lost. The question was whether there could be secured from the committee the facts concerning the committee's activities. Among other things inquiry was made whether the committee would be willing to state the amount of money that was expended in the campaign and how it was spent. The inquiry was prompted by no idle curiosity, but by the thought that it is of great public importance for the people of Illinois to know just what has been done to secure the adoption of an amendment, even though the effort was a dismal failure.

⁴⁶ See the report of Judge Thompson's speech in the Chicago Daily News, October 17, 1938. He thought it "reasonably certain" that if the amendment carried, the General Assembly would pass an act to continue double liability on stockholders in banks which refuse to carry deposit insurance.

Judge Thompson replied courteously that the committee would be glad to cooperate except as to the amount contributed and by whom and for what spent. Accordingly, there can be no statement here of all of the facts as to expenditures. The facts which were known as well as those disclosed here account for a great deal of the expenditure. However, it was stated and not denied during the campaign and it may be regarded as a reasonably accurate political fact that the committee's goal was \$100,000. This was stated in the debate before the City Club in October. A representative of the Constitutional Amendment Committee was present and he stated that at that particular time about \$80,000 had already been raised. There is no disposition to deny what Judge Thompson had stated that the sum spent was not too large in view of the task of informing the voters of the merits of the amendment. More important was the necessity of arousing enthusiasm in order to persuade the ignorant and indifferent to vote favorably.

Some discussion arose during the campaign about the expenditure of funds. Not much was made of it. So far as observed the metropolitan press was favorable to the amendment and aside from the *Chicago Times* it was inclined to suppress criticism of the amendment. However, there appeared in one paper a letter that questioned the right to make the large expenditures. In responding thereto, Judge Thompson replied as follows:

BANK AMENDMENT

We are glad to tell A.S.T. and all others who are interested that the fund being used to finance the campaign of education concerning the proposed constitutional amendment has been contributed principally by stockholders in our state banks throughout Illinois. There are several thousand of these and the individual contributions have been small. The total fund amounts to much less than 2 cents for each voter in Illinois, and all of it is being spent for publicity. No poll workers are being hired and no money is being spent improperly to influence the result. More than a thousand men and women representing every county in the State of Illinois and every group of our citizens are members of our committee. The private and public lives of these citizens are well known and should be sufficient proof that they would not lend themselves to sponsoring a measure which they did not sincerely believe to be for the public interest.

FLOYD E. THOMPSON, *Chairman*
*Constitutional Amendment Committee*⁴⁷

⁴⁷ Chicago Daily News, November 2, 1938. A similar letter from the same author appeared in the Chicago Tribune. How many voters are there in Illinois? The total vote cast at the election was 3,274,814. If the total number of "voters" in the state is assumed to be 4,000,000 the "fund" would appear to have been "much less" than \$80,000. This is the amount that Colonel Edens, a representative of the Committee, stated in the first part of October at the City Club as already subscribed. However, he stated that the goal was \$100,000. At the same meeting, Mr. Kuehnle stated that the First National Bank of Chicago had donated \$10,000. Why? Presumably to please Illinois state banks which were its customers.

The United Depositors' Association of Illinois, Harold N. May, chairman, 185 N. Wabash

A question arises, however, whether Judge Thompson's assurance is entirely in accord with what is now an apparently accepted political fact as to one particular expenditure. Late in the campaign the author received a communication from a friend who was traveling over the state making political speeches and talking with persons active in political affairs. The information was that he had seen a check in favor of the Democratic organization of a certain county down state. The amount for which the check was drawn represented \$1.00 for each election precinct in that county. He also informed the author that it was his information that the policy was to send a check to both the Republican and the Democratic organizations in the down state counties. What was expected from these political organizations is not clear. The best guess is that the money was to be used by the chairmen of the organizations, as they saw fit, to advance favorable action on the amendment.

The author has been informed by a person high in political circles that in Chicago a check was sent to each ward committeeman on the basis of one dollar for each precinct to pay for the distribution of sample ballots marked favorably to the amendment. Previous to this action of making cash contributions, the committee had sought to obtain the indorsement of the banking amendment by the Democratic party in its state platform. This was refused by the Democratic party and the author was informed that it was largely due to the opposition of Governor Horner to such an indorsement. Later an attempt was made to obtain an indorsement of the Democratic county central committee for Cook County and it was again refused. Thus, as the author was informed, the Democratic sample ballots which were distributed in Chicago did not have a cross favorable to the amendment, but the proposition was printed without a cross opposite the word "yes" or the word "no." However, the information available is that the committee obtained the indorsement of the amendment in the Republican state platform and also obtained the indorsement of the Republican county central committee for Cook County and that the Republican sample ballots in Cook County were marked with a cross opposite the word "yes" on the banking amendment. The sample ballots seen by the author in the neighborhood of his residence were of

Ave., Chicago, Ill., carried advertisements in the large Chicago newspapers in favor of the banking amendment. The Better Government Association of Illinois endorsed the amendment and marked its sample ballot accordingly. These activities cost money. In addition it has been reported to the writer that a fund was raised in Adams County (Quincy) and that \$300 was donated to one major political organization and \$250 to another. No information concerning other local funds has been received.

Observe that Judge Thompson stated in his letter that "no poll workers are being hired." . . . That raises a question. Assuming that the committee made contributions to political organizations, what was the *quid pro quo*?

this sort, to wit: the Democratic sample ballot unmarked and the Republican sample ballot marked in favor of the amendment.

Such is the danger of money in political campaigns. No one can prove, as far as is known, that the Republican party was influenced in favor of the amendment by the donations that apparently were made, or by any promises that they would be made. But what can be said of a constitution that is so difficult to amend that resort is had to the expenditure of funds in this way as a method of normally securing a constitutional amendment? The answer seems to be that it is an exceedingly undemocratic process. The expenditure of a large amount of money in this campaign for the banking amendment, and particularly expenditure of money by sending it to party representatives, would have left an impression, if the amendment had carried, that the Illinois Constitution can be amended in favor of those who can afford to pay the bill and cannot be amended for those who do not have the necessary funds.

In addition to the money spent by sending it to political persons, it is of significance to present the favorable auspices under which the banking amendment was submitted to a vote. Apparently an advertising expert was hired and many advertisements appeared. They were presented very attractively and various advertising mediums were used. There was practically no organized opposition to the amendment and what little there was received very little public notice. The favorable circumstances under which the campaign was conducted are shown also by the answers in the following questionnaire, which was submitted to Judge Thompson as chairman of the Constitutional Amendment Committee:

- Q. In how many newspapers were advertisements favorable to the amendment placed?
A. About 750.
- Q. In how many newspapers were more than one advertisement placed?
A. About 750.
- Q. In how many counties were local committees formed?
A. 70.
- Q. How many speakers were engaged who made at least one speech favorable to the amendment?
A. We hired one professional speaker who filled about 50 engagements before women's clubs, civic clubs, etc. Judge Thompson made about a dozen major speeches before important organizations. We have no record of addresses arranged locally.
- Q. How much radio time was consumed in talks favorable to the amendment?
A. Seven addresses on large stations and 40 on small local stations—15 minutes each.
- Q. Were there any radio talks unfavorable to the amendment?
A. Not that we know of.
- Q. How many newspapers opposed the amendment?
A. Only four, that we know of.
- Q. How many newspapers favored the amendment?

A. Practically all of them, but not all took strong editorial stands, and we have no record of those that did. We have about 100 clippings of favorable editorials.

Q. How many bill boards were used to advertise the amendment?

A. About 100.

Q. How many organizations adopted resolutions favoring the amendment?

A. About 24 important ones—many local ones not reported to us.

Q. How many organizations opposed it?

A. Two that we know of.

Q. How many thousand pieces of literature were printed favorable to the amendment?

A. About 5 million.

What more could a committee do to secure the attention of the voters so that they would at least express themselves one way or the other on the ballot? Despite all of this effort and despite the large expenditure of money, the amendment failed by an overwhelming "constitutional" majority. This seems to mean just one thing, to-wit: Illinois cannot reasonably hope under the present method of voting to reform its Constitution within any predictable future time.

To the credit of the committee in charge of the banking amendment it should be said that there is no evidence available that it offered any prizes to the precinct captains as is reported to have been offered in 1908 to obtain a favorable vote of a majority of all votes cast in that general election. That certainly is a vicious scheme that can only be condemned. No wonder that Judge Thompson was discouraged by the result.⁴⁸ Not long after the amendment was defeated, it was reported that Judge Thompson was contemplating a suit based on the proposition that the banking amendment had been adopted as a part of the Illinois Constitution because it received a large majority of those voting on the proposition, and that it could not be considered as having been defeated because of the failure of more than half of the voters who cast ballots at the election to vote on the proposition.⁴⁹ The *Chicago Daily Times*⁵⁰ was much pleased to learn of the proposed suit. It is a matter of regret that at the time of this writing no such suit has materialized.

By reason of a previous decision in the Supreme Court of Illinois, there

⁴⁸ The Chicago Tribune on Nov. 11, 1938, following the election, stated in an editorial: "Judge Thompson and those who were associated with him in the campaign for the amendments have no reason for discouragement. . . . The question can be put before the voters again four years from now, and if the campaign is continued there is every reason to expect that the amendments will be approved when next presented." . . . Is the Tribune "kidding" the public or itself?

⁴⁹ Chicago Tribune, November 20, 1938.

⁵⁰ Editorial, December 6, 1938. After an approval of a statement of the Indiana Supreme Court that "progress in popular government should not be at the mercy of those who have no interest in the problems of government" the editorial continued: "Much more is at stake in Judge Thompson's possible suit than only the banking amendment. . . . We hope that he will go through with it. The Illinois Supreme Court ought to have another opportunity to review the matter."²

was no reason to think that Judge Thompson had much of a chance to secure favorable action from that court.⁵¹ Indeed it seems that he would be "playing" a very long shot. However, courts do render occasionally very unexpected decisions, and there is always a chance, at least, that the Supreme Court itself will cut the Illinois Gordian Knot by changing its point of view. Not long after Judge Thompson's idea was published, the *Chicago Tribune*, realizing, perhaps, the danger of an income tax, gave to Judge Thompson editorial advice that he had better be a good boy and cease to rock the boat:

MINORITY AMENDMENT

Former Justice Floyd Thompson would do well, we think, to ponder thoroughly—before action—his intention to urge the state Supreme Court to hold that the banking amendment received the required number of votes at the late election. The amendment received a majority of the votes cast on the amendment but this number was not a majority of all votes cast at the election. The Supreme Court held twenty years ago that the proposed amendment must receive such a majority, not merely a majority of votes cast on the proposition.

The reasoning of the established rule seems to us wise and in accord with public policy. It considers that the fundamental law of the state should not be changed by minorities and that if a majority of voters who are interested enough to vote at an election are not willing to express their opinion on a proposed amendment the amendment had better at least be postponed for further consideration.

There always are impatient minorities seeking to make constitutions more easily amendable. Some proposals to this end have seemed plausible to many, but to make the Constitution amendable by a bare majority of votes cast upon a proposal would deprive it of its character as fundamental law, which, if we are to have any stability at all, ought not to be put at the mercy of organized minorities however reputable and conscientious. The Tribune favored the adoption of the banking amendment but it does not think it is worth the price proposed.⁵²

In conclusion, a few questions are presented. Have about forty-two of our states lost their fundamental law? Are they at the mercy of "organized minorities"? Or is "The World's Greatest Newspaper" suffering from selfishness or a fear psychology or both? Must the voters in Illinois admit the truth of a statement by a political scientist: "The state would probably be better off than at present if it simply repealed its Constitution and operated with none at all"?⁵³

⁵¹ *People v. Stevenson*, 281 Ill. 17, 117 N.E. 747 (1917): "We conclude that section 2 of Article XIV requires for the adoption of a proposed amendment to the Constitution a majority of the votes of all the electors voting at an election at which members of the General Assembly are elected, and not, as contended by appellants, a majority of the votes cast for members of the General Assembly." Carter, C. J., and Cartwright, J., dissented.

⁵² November 26, 1938. The *Federation News*, December 3, 1938, had an editorial entitled: "Thompson Better Leave Well Enough Alone." But this editorial is poorly written and its reasoning is not clear.

⁵³ DeLong, *States Rights and the State Executive*, 33 Ill. L. Rev. 42, 44 (1938).