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Notes

Voter Initiatives in Illinois: Where Are We after *Chicago Bar Association v. State Board of Elections?*

I. INTRODUCTION

The voter initiative is an increasingly popular and influential form of lawmaking in the United States.¹ Initiatives provide a form of popular, direct democracy involving grass-roots campaigns in which voters place specific issues directly onto the ballot. Direct voter initiatives permit voters to propose legislation or constitutional amendments without the aid of the legislature, usually through a petitioning process.² Initiatives can be controversial, and opponents to such popular democracy argue that initiatives are subject to great abuse.³ Despite this occasional controversy, the Progressives of the early twentieth century and other reformers in the United States heralded the initiative as a way to gain control

1. Seventeen state constitutional provisions allow proposals for constitutional amendment or revision through a popular initiative procedure: ARIZ. CONST. art. XXI, § 1; ARK. CONST. amend. VII; CAL. CONST. art. II, §§ 8, 10, art. XVIII, § 3; COLO. CONST. art. V, § 1; FLA. CONST. art. XI, §§ 3, 5; ILL. CONST. art. XIV, § 3; MASS. CONST. amend. XLVIII, pts. 1-4, amend. LXXXI; MICH. CONST. art. XII, § 2; MO. CONST. art. III, §§ 49-51; MONT. CONST. art. XIV, § 9; NEB. CONST. art. III, §§ 2, 4; NEV. CONST. art. XIX, §§ 2-4; N.D. CONST. art. III, §§ 1-10; OHIO CONST. art. II, § 1; OKLA. CONST. art. V, §§ 1-3; OR. CONST. art. IV, § 1; S.D. CONST. art. XXIII, §§ 1-3.

Because revision of state constitutions in this country occurs frequently, it is possible that a majority of the states may allow for constitutional amendment or revision through the initiative process in the near future. Comment, *The Revision of American State Constitutions: Legislative Power, Popular Sovereignty, and Constitutional Change*, 75 CALIF. L. REV. 1473, 1481 (1987). See generally Collins, *Reliance on State Constitutions: Some Random Thoughts*, 54 MISS. L.J. 371, 372 (1984) (explaining that reliance on state constitutional law by attorneys and the courts recently has increased).

2. See generally Eule, *Judicial Review of Direct Democracy*, 99 YALE L.J. 1503, 1510-13 (1990) (explaining the different types of direct democracy, including voter initiatives). An indirect initiative places an issue before the legislature for its approval before the issue is placed on the ballot. *Id.* at 1511. Thus, it does not provide the straight route to the voters found through a direct initiative. Unless otherwise noted, initiatives discussed in this Note are direct initiatives.

3. See Note, *Lousy Lawmaking: Questioning the Desirability and Constitutionality of Legislating by Initiative*, 61 S. CAL. L. REV. 733, 738-58 (1988).

over governments that were running rampant with corruption.⁴

The idea of using the initiative as a "final resort . . . against unresponsive political leaders"⁵ was especially attractive in Illinois, where government scandals had received much publicity on a regular basis since the time of Al Capone.⁶ In its constitution of 1970, Illinois adopted a provision allowing the proposal of constitutional amendments by initiative.⁷ The Illinois provision is limited, however, and allows amendment proposals by initiative to affect only certain aspects of the legislative article of the Illinois Constitution.⁸

The Illinois Supreme Court recently interpreted this relatively new constitutional provision in *Chicago Bar Association v. State Board of Elections*.⁹ Specifically, the court addressed whether an initiative-proposed amendment could be used to change the legislative revenue raising process.¹⁰ The court held that such an amendment proposal exceeded the intended scope of the initiative

4. See R. HOFSTADTER, *THE AGE OF REFORM FROM BRYAN TO F.D.R.* 255, 257-59 (1955).

5. JACKSON, *THE SUFFRAGE, ELECTIONS AND CONSTITUTIONAL REVISION ARTICLES OF THE 1970 ILLINOIS CONSTITUTION* 9 (paper written for the Committee of 50 to Re-examine the Illinois Constitution, published by the Illinois Commission on Intergovernmental Cooperation, 1987).

6. See generally S. GOVE & T. KITSOS, *REVISION SUCCESS: THE SIXTH ILLINOIS CONSTITUTIONAL CONVENTION* 13 (State Constitutional Convention Studies, No. 8, 1974) (discussing Illinois' characterization as a "patronage" state and mentioning the existence and strength of the political machine run by Chicago's first Mayor Daley); D. KENNEY, J. VAN DER SLIK & S. PERNACCIARO, *ROLL CALL! PATTERNS OF VOTING IN THE SIXTH ILLINOIS CONSTITUTIONAL CONVENTION* 9-12, 16, 26 (1975) (discussing the strength of "Daley Orthodoxy," patronage in the judicial system, and the moral reform mindset of the citizenry present in Illinois).

7. ILL. CONST. art. XIV, § 3. See *infra* note 8 for text of provision. The three previous Illinois constitutions allowed for the origination of amendment proposals only in the legislature or through convention calls. See ILL. CONST. OF 1818, art. VII, § 1; ILL. CONST. OF 1848, art. XII, §§ 1, 2; ILL. CONST. OF 1870, art. XIV, §§ 1, 2. All references in this Note to the Illinois initiative provision are to Article XIV, section 3 of the Illinois Constitution of 1970.

For informative discussions of the process of constitution writing in Illinois, see J. CORNELIUS, *CONSTITUTION MAKING IN ILLINOIS, 1818-1970* (1972); S. GOVE, *CONCON: ISSUES FOR THE ILLINOIS CONSTITUTIONAL CONVENTION* (1970) and S. GOVE, *CONSTITUTIONAL DEVELOPMENTS IN ILLINOIS* (paper written for the Committee of 50 to Re-examine the Illinois Constitution, published by the Illinois Commission on Intergovernmental Cooperation, 1987).

8. Article XIV, § 3 provides in pertinent part:

Amendments to Article IV of this Constitution may be proposed by a petition signed by a number of electors equal in number to at least eight percent of the total votes cast . . . in the preceding gubernatorial election. *Amendments shall be limited to structural and procedural subjects contained in Article IV.*

ILL. CONST., art. XIV, § 3 (emphasis added) (Article IV is the legislative article).

9. 137 Ill. 2d 394, 561 N.E.2d 50 (1990).

10. *Id.* at 395-99, 561 N.E.2d at 51-53.

provision.¹¹ Unfortunately, the *Chicago Bar Association* decision created confusion about both the scope and the future availability of the initiative in Illinois.

This Note analyzes the court's decision in *Chicago Bar Association*. First, the history of the Illinois initiative provision is examined. Next, the Note discusses the decisions construing this initiative provision. The Note then describes the Illinois Supreme Court's decision in *Chicago Bar Association*. Finally, the Note examines the possible impact of this decision and concludes that, although the court undoubtedly reached the correct result, it left doubt as to the scope of permissible initiatives and provided scant practical assistance to Illinois citizens hoping to use initiatives in the future.

II. BACKGROUND

A. Voter Initiatives: Competing Philosophies

Jean-Jacques Rousseau, the French philosopher, was influenced by a seventeenth century Swiss procedure similar to the modern initiative.¹² This influence led him to espouse the merits of direct democracy.¹³ Rousseau was a champion of individual sovereignty and self-government.¹⁴ He believed individual influence over government was likely to encourage true liberty, and therefore favored the direct participation in government engendered by the initiative.¹⁵ An influential eighteenth century writer, Thomas Paine, supported Rousseau's ideas concerning direct democracy.¹⁶ Paine's writings about individual participation in government were read widely in the Colonies. Both Rousseau and Paine's ideas affected Benjamin Franklin, who convinced Pennsylvania to adopt a state constitution providing for strong individual control of government in 1776.¹⁷

Franklin did not have support from all his contemporaries on

11. *Id.* at 406, 561 N.E.2d at 56.

12. Comment, *The Current Use of the Initiative and Referendum in Ohio and Other States*, 53 U. CIN. L. REV. 541, 543 (1984) (citing E. OBERHOLTZER, *THE REFERENDUM IN AMERICA* 5-8 (1911)).

13. Rousseau urged that citizens be given absolute control of the state. J. ROUSSEAU, *THE SOCIAL CONTRACT AND DISCOURSES* 26-27, 29 (Hackett 1983). See Note, *supra* note 3, at 736.

14. J. ROUSSEAU, *supra* note 13, at 17, 42.

15. *Id.* at 46-47. See also Cranston, *Introduction* to J. ROUSSEAU, *THE SOCIAL CONTRACT* at 30 (Penguin 1968).

16. See Comment, *supra* note 12, at 543.

17. See *id.*

this position. Opponents of initiative-type government feared that factions would be able to manipulate direct democracy at the expense of other citizens. This debate was heated during the early days of the United States and was a topic of discussion during the campaign to ratify the United States Constitution.¹⁸ The initiative's majoritarian process is in several respects "antithetical to values held by [many of] the Founding Fathers."¹⁹ Initiatives can be used by majority voting groups to repress minority voting interests in contradiction of the republican form of government adopted by the drafters of the United States Constitution.

James Madison strongly opposed direct democracy. He believed that a republican form of government was the only system that would be fair to all citizens.²⁰ Madison feared that "pure democracy," as opposed to representative republican government, would prove unable to prevent the majority from stifling weaker minorities.²¹ The United States Constitution appears to follow Madison's approach, guaranteeing a republican form of government in each state.²²

B. *The History of the Illinois Limited Initiative*

Historically, Illinois voters did not have an inherent or constitutional right of special referendum or voter initiative unless that right was explicitly provided for by statute.²³ Since 1970, an explicit right of initiative has been present in the Illinois Constitution. When interpreting the 1970 provision, Illinois courts defer to the intent expressed by the constitutional convention delegates who wrote this clause.²⁴ A full understanding of the delegates' intent is

18. See Earle, *Introduction to THE FEDERALIST* vii (Random House 1938).

19. Note, *The Judiciary and Popular Democracy: Should Courts Review Ballot Measures Prior to Elections?*, 53 *FORDHAM L. REV.* 919, 927 n.35 (1985).

20. *THE FEDERALIST* No. 10, at 58-62 (J. Madison) (Wesleyan University Press 1961). Madison feared that the capable statesmen would "rarely prevail over the immediate interest which one party may find in disregarding the rights of another, or the good of the whole." *Id.* at 60.

21. *Id.* at 48. An initiative that arguably illustrates this potential was enacted by the voters of California in 1964. See *Reitman v. Mulkey*, 387 U.S. 369 (1967). "Proposition 14" provided that any person renting or selling real property had complete discretion to refuse prospective buyers and tenants at will, thus allowing racial and other discrimination in housing despite the presence of remedial civil rights ordinances. *Reitman*, 387 U.S. at 371-74. The United States Supreme Court, however, found that Proposition 14 violated the fourteenth amendment. *Id.* at 378-79.

22. See U.S. CONST. art. IV, § 4.

23. *City of Mount Olive v. Braje*, 366 Ill. 132, 135, 7 N.E.2d 851, 853 (1937).

24. See Levine, *The Constitutional Initiative and the Structure and Procedures of the General Assembly*, 11 *J. MARSHALL J. PRAC. & PROC.* 387, 402 (1978) (discussing *Coalition for Political Honesty v. State Board of Elections*, 85 Ill. 2d 453, 359 N.E.2d 138

therefore essential to an understanding of the Illinois Supreme Court's approach to interpreting the initiative provision.

The Committee on Suffrage and Constitutional Amendment ("the Suffrage Committee") was the smallest committee of the 1970 constitutional convention, Illinois' sixth constitutional convention.²⁵ This committee had the difficult task of revising the vastly unpopular amendment provisions of the 1870 constitution.²⁶ The 1870 constitution had been particularly difficult to amend,²⁷ and several commentators noted that the sixth convention would have been considered a success by many if it "did nothing more than revise [the constitutional amendment procedures]."²⁸ The Suffrage Committee explained that it sought to balance the needs for flexibility and popular control against the need for constitutional stability.²⁹ This committee and the larger convention each rejected an unrestricted right of initiative; eventually, the Legislative Committee proposed what is now the present initiative provision.³⁰ In the end, the sixth constitutional convention compromised on a limited initiative that only permits proposals regarding the structure and procedure of the legislature.³¹

While attempting to persuade the convention to adopt the pro-

(1976)). See also Note, *Public School Fees in Illinois: A Re-examination of Constitutional and Policy Questions*, 1984 U. ILL. L. REV. 99, 114 (noting that Illinois courts frequently rely on constitutional debate records when construing constitutional provisions).

25. S. GOVE & T. KITSOS, *supra* note 6, at 58.

26. See generally A. GRATCH & V. UBIK, *BALLOTS FOR CHANGE: NEW SUFFRAGE AND AMENDING ARTICLES FOR ILLINOIS 13-15 (1973)* (explaining the particular concern of scholars and the public about the amendment provisions of the 1870 Constitution that made it almost impossible for Illinois to escape from the 1870 provisions).

27. To amend the 1870 Constitution, two-thirds of the legislature and a majority of voters had to affirmatively vote for the proposed amendment. Burnam, *An Outline of Constitutional Development*, in *GOVERNING ILLINOIS UNDER THE 1970 CONSTITUTION* 3, 6 (D. Beam ed. 1970).

28. See A. GRATCH & V. UBIK, *supra* note 26, at xi; cf. S. GOVE & T. KITSOS, *supra* note 6, at 1 (noting the unworkability of the amending procedures).

29. 7 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION at 2261 (1969-70) (hereinafter PROCEEDINGS).

30. A. GRATCH & V. UBIK, *supra* note 26, at 49-50; see 4 PROCEEDINGS at 2712.

31. A. GRATCH & V. UBIK, *supra* note 26, at 48-50, 55. It has been argued that this compromise was more political than philosophical because it placed the burden of determining the politically difficult question of what size the legislature would be on the voters, and not on the convention delegates. By allowing the voters an opportunity, through the initiative provision, to determine this question themselves, the delegates escaped the need to take action of their own on this issue. Nelson, *Constitutional Revision*, in *GOVERNING ILLINOIS UNDER THE 1970 CONSTITUTION*, *supra* note 27, at 39.

The provision that is now in effect passed in the larger convention by a roll call vote of 78 for the provision, 26 against, and 5 passes. 5 PROCEEDINGS at 4549. The initiative provision was voted on separately from the rest of article XIV. See *id.* at 4547. For the text of the initiative provision adopted, see *supra* note 8.

posed initiative clause, the initiative's proponents outlined the provision's intended purpose. Delegate Perona explained that the limited initiative would allow voters to take action in "the area of government where it probably would be most needed because of the vested interest of the legislature in its own makeup."³² The limited initiative, stated Perona, also would avoid the problems encountered in some other states where initiatives are used by special interest groups to introduce "the equivalent of legislation."³³ Perona went on to explain that the initiative was intended to be limited to "the legislature itself, to its structure, makeup, and organization."³⁴ According to the delegates, amendments would be limited to subjects "of structure and procedure and not matters of substantive policy."³⁵

Delegates Tomei and Perona both stated that the courts should have a definite role in determining the appropriateness of initiative proposals.³⁶ Tomei explained that the determination of whether a proposed initiative is "covered under this language or authorized under this language would probably be a matter for the courts."³⁷ Perona stated that the courts "could iron out [interpretation] questions and protect against abuse."³⁸

C. *The Illinois Courts' Construction of the Limited Initiative*

In 1976, the Illinois Supreme Court first discussed the initiative provision in the consolidated cases of *Coalition for Political Honesty v. State Board of Elections* and *Gertz v. State Board of Elections*.³⁹ In *Coalition I*, the Coalition for Political Honesty proposed an initiative to amend the legislative article as follows: to prohibit legislators from being on the payroll of governmental entities other

32. 4 PROCEEDINGS at 2710.

33. *Id.*, see Note, *supra* note 3, at 737 (noting California's profitable initiative industry and contending that the initiative is a device used by special interest groups to further only their own desires).

34. 4 PROCEEDINGS at 2711.

35. 6 PROCEEDINGS at 1400.

36. 4 PROCEEDINGS at 2711-12.

37. *Id.* at 2712.

38. *Id.* at 2711.

39. These consolidated cases are reported at 65 Ill. 2d 453, 359 N.E.2d 138 (1976). In the interest of clarity and simplicity, they will be referred to as *Coalition I*.

The court heard another case concerning an initiative proposal in 1980. *Coalition for Political Honesty v. State Bd. of Elections*, 83 Ill. 2d 236, 415 N.E.2d 368 (1980) [hereinafter *Coalition II*]. This case, however, did not discuss the requirements for initiative proposal constitutionality and did not even mention *Coalition I*. *Coalition II* focused on the constitutionality of signature verification requirements used to check initiative supporters' signatures. *Coalition II*, 83 Ill. 2d at 240-43, 415 N.E.2d at 372-74.

than the legislature; to disqualify legislators from voting when they had a conflict of interest; and to provide that legislative salary increases would be ineffective during the term for which the legislator was elected.⁴⁰

A group of taxpayers, composed in part of delegates from the sixth constitutional convention,⁴¹ sued the State Board of Elections to enjoin the Board from placing this proposed initiative on the ballot.⁴² The plaintiff taxpayers contended that these proposals were not within the confines of the initiative provision.⁴³ Many of these former convention delegates viewed the Coalition's action as an attempt to expand the scope of the initiative provision beyond its intended borders and thus as a "threat to the integrity" of the constitution.⁴⁴

At the trial level, the circuit court determined that the initiative provision requires proposed amendments to effect both structural and procedural changes in the legislature.⁴⁵ Finding that the Coalition's proposal affected only procedural matters of voting, the circuit court granted the plaintiffs' request for an injunction.⁴⁶ The Coalition successfully applied for a direct appeal to the Illinois Supreme Court.⁴⁷

The Illinois Supreme Court agreed with both the trial court and the plaintiff taxpayers, holding that the proposed initiative amendments were unconstitutional.⁴⁸ The court relied heavily on the convention debates and on the plaintiffs' status as convention par-

40. *Coalition I*, 65 Ill. 2d at 458, 359 N.E.2d at 140.

41. This group of taxpayers included six constitutional convention delegates and was represented by the convention president. *Id.* at 456, 359 N.E.2d at 139; Levine, *supra* note 24, at 394. Levine himself was also of counsel for these *Coalition I* plaintiffs. *Coalition I*, 65 Ill. 2d at 456, 359 N.E.2d at 139; Levine, *supra* note 24, at 394 n.30.

42. *Coalition I*, 65 Ill. 2d at 456, 359 N.E.2d at 139. The suit was brought under ILL. REV. STAT. ch. 102, para. 11-18 (1975) to enjoin the allegedly illegal disbursement of \$1,750,000 of public funds. *Id.* at 456, 461, 359 N.E.2d at 139, 142. The trial court permitted the Coalition to intervene as a defendant. *Id.* at 456, 359 N.E.2d at 139.

43. *Id.* at 458-59, 359 N.E.2d at 140-41.

44. Levine, *supra* note 24, at 393.

45. *Coalition I*, 65 Ill. 2d at 459, 359 N.E.2d at 141.

46. *Id.*

47. *Id.* at 456-57, 359 N.E.2d at 139-40.

48. *Id.* at 472, 359 N.E.2d at 147. The court first dealt with the issue of ripeness, and determined that the case was justiciable before the election and possible enactment of the proposed amendment. *Id.* at 461, 359 N.E.2d at 142. This element of the decision has been recognized by most commentators as correct, and will not be discussed in this Note. For further discussion of this issue, see Levine, *supra* note 24, at 397-402; Note, *Coalition for Political Honesty v. State Board of Elections—Constitutional Amendments by Popular Initiative Must Pertain to Both Structural and Procedural Subjects in the Legislative Article*, 1978 U. ILL. L. F. 122, 124-27. *But cf.* Note, *supra* note 19, at 925, nn.27-28 (criticizing the Illinois Supreme Court's treatment of the ripeness issue).

ticipants⁴⁹ to determine that the drafters intended to permit only limited initiatives.⁵⁰

First, the supreme court discussed statutory construction at length.⁵¹ The court found that, in keeping with proper constitutional construction and with the drafters' intent, the initiative provision phrase "[a]mendments shall be limited to structural and procedural subjects"⁵² meant that an amendment proposed by initiative must affect both the structure and the procedure of the legislature.⁵³

The court stated that this strict reading was necessary in part because it believed that any change to the legislative article would necessarily be either structural or procedural.⁵⁴ Thus, according to the court, the entire sentence regarding structural and procedural changes would be unnecessary unless read to require both, because any change would meet the requirement of affecting one or the other category.⁵⁵ Therefore, the court construed the word "and" in a strictly conjunctive, and not disjunctive sense. The Coalition did not argue before the Illinois Supreme Court that the proposals affected the structure of the legislature itself.⁵⁶ The court stated that, because the initiative-proposed amendments in question did not affect both structural and procedural aspects of the legislature, they were impermissible under the constitution.⁵⁷

Justice Schaefer vigorously dissented.⁵⁸ He argued for a much broader reading of "and," explaining that the word should be read in an alternative, and not a strictly conjunctive manner.⁵⁹ Further, Justice Schaefer contended that the court should adopt a standard different from the majority's "structural and procedural" test for

49. See *Coalition I*, 65 Ill. 2d at 467-72, 359 N.E.2d at 144-47; see *supra* note 24 and accompanying text.

50. See *Coalition I*, 65 Ill. 2d at 467, N.E.2d at 145.

51. *Id.* at 463-66, 359 N.E.2d at 143-44.

52. ILL. CONST., art. XIV, § 3; see *supra* note 8.

53. *Coalition I*, 65 Ill. 2d at 463-66, 359 N.E.2d at 143-44. The size of the general assembly is an example of a structural aspect of the legislature. An example of a procedural aspect of the legislature is legislators' eligibility to vote on specific issues.

54. *Id.* at 466, 359 N.E.2d at 144.

55. *Id.*

56. *Id.* at 459, 472, 359 N.E.2d at 141, 147.

57. *Id.* at 472, 359 N.E.2d at 147.

58. See *id.* at 473, 359 N.E.2d at 147 (Schaefer, J., dissenting). Before serving as an Illinois Supreme Court Justice, Walter Schaefer worked with the future president of the 1970 constitutional convention, counsel for the plaintiffs in *Coalition I*, to form and serve on the influential Chicago Bar Association Committee on Constitutional Revision. J. CORNELIUS, *supra* note 7, at 121 n.1. This committee has been described as a "young, able, ambitious and idealistic elite." *Id.* at 121.

59. *Coalition I*, 65 Ill. 2d at 473, 359 N.E.2d at 148 (Schaefer, J., dissenting).

determining the constitutionality of initiative proposals.⁶⁰ He argued that amendments proposed by initiative are constitutional if they are either structural or procedural, as long as they do not accomplish "substantive changes" in the law governing the Illinois legislature.⁶¹

Justice Schaefer based these conclusions on his reading of the legislative article of the Illinois Constitution. He explained that the legislative article contains several provisions that relate to neither structural nor procedural matters, such as the "basic grant of legislative power."⁶² Thus a requirement for either structural or procedural change would limit the initiative power to non-substantive topics, yet would allow for the type of change through initiative envisioned by the convention delegates.⁶³ Applying this standard to his belief that the Coalition's proposal regarding legislators' voting ability related to procedure and was not substantive in nature, Justice Schaefer found the section to be proper under the constitution.⁶⁴

The Illinois Appellate Court also had one occasion before *Chicago Bar Association* to construe the Illinois initiative provision. In 1982, the Illinois Appellate Court for the First District decided *Lousin v. State Board of Elections*.⁶⁵ Like *Coalition I*, *Lousin* involved a number of taxpayers suing to enjoin⁶⁶ the State Board of Elections from spending public funds to place a Coalition for Political Honesty initiative proposal on the ballot.⁶⁷ The proposed amendment at issue in *Lousin* attempted to expand the initiative by

60. *Id.* at 474-75, 359 N.E.2d at 148-49 (Schaefer, J., dissenting).

61. *Id.* (Schaefer, J., dissenting). This is essentially the position that the Attorney General advanced on behalf of the Board. See Levine, *supra* note 24, at 407.

62. *Coalition I*, 65 Ill. 2d at 474, 359 N.E.2d at 148 (Schaefer, J., dissenting).

63. *Id.* at 474-76, 359 N.E.2d at 148-49 (Schaefer, J., dissenting).

64. See *id.* at 476, 359 N.E.2d at 149 (Schaefer, J., dissenting).

65. 108 Ill. App. 3d 496, 438 N.E.2d 1241 (1982).

66. The injunction was sought under ILL. REV. STAT. ch. 102, para. 11-17 (1979) to prevent the Board from spending \$1,053,000 of public funds to process the allegedly unconstitutional initiative. *Lousin*, 108 Ill. App. 3d at 501, 438 N.E.2d at 1244-45.

67. *Lousin*, 108 Ill. App. 3d at 501, 438 N.E.2d at 1244-45. The trial court permitted the Coalition to intervene as a defendant. *Id.* at 501, 438 N.E.2d at 1245; see *supra* note 42. Ann Lousin, the named plaintiff, was a plaintiff in *Coalition I* and was a member of the research staff of the constitutional convention. *Coalition I*, 65 Ill. 2d at 456, 359 N.E.2d at 139. Elmer Gertz, named plaintiff in the case consolidated with *Coalition I*, along with four other convention delegates, was also a *Lousin* plaintiff. Compare *Lousin*, 108 Ill. App. 3d at 501, 438 N.E.2d at 1244 with *Coalition I*, 65 Ill. 2d at 456, 359 N.E.2d at 139 and S. GOVE & T. KITSOS, *supra* note 6, at 162 Appendix B. Samuel Witwer, president of the convention, again was among the plaintiffs' attorneys. See *Lousin*, 108 Ill. App. 3d at 497, 438 N.E.2d at 1242; see *supra* note 41.

allowing indirect initiative legislation⁶⁸ through what the Coalition called "measures."⁶⁹ As proposed, the measure process would allow citizens to introduce bills dealing with any subject into the legislature if the bill, or measure, received a requisite number of signatures.⁷⁰ In effect, this proposal would have allowed voters to participate directly in the creation of ordinary statutes through initiative procedures.⁷¹ The trial court held for the plaintiffs, and an expedited appeal ensued.⁷²

The appellate court quoted the *Coalition I* discussion of the convention debates⁷³ and concluded that the delegates intended to provide "only a narrowly defined constitutional initiative."⁷⁴ The court noted that Illinois initiatives must relate to the legislative article and must deal with structural and procedural subjects.⁷⁵

The court applied the "structural and procedural" test of *Coalition I*.⁷⁶ It held that the proposed measure system involved legislative power to propose bills.⁷⁷ Thus, it did not involve either procedural or structural matters.⁷⁸ Since the result sought by the Coalition was not a structural or procedural change in the legislature, but was instead a diffusion of legislative power to propose bills, the court found the proposal to be unconstitutional.⁷⁹

The *Lousin* court, along with its application of the *Coalition I* majority test, focused on Justice Schaefer's dissent in *Coalition I* and treated his discussion of substantive changes as controlling.⁸⁰ However, the appellate court ignored Justice Schaefer's discussion of the proper construction of "and" in the initiative provision, stat-

68. See *supra* note 2.

69. *Lousin*, 108 Ill. App. 3d at 497-501, 438 N.E.2d at 1242-44.

70. *Id.* at 498, 438 N.E.2d at 1243. The requisite percentage of voters needed was six percent, two percent less than that required for direct initiatives. See *id.*; see also, *supra* note 8.

71. D. MILLER, 1970 ILLINOIS CONSTITUTION ANNOTATED FOR LEGISLATORS 101 (3d ed. 1987).

72. *Lousin*, 108 Ill. App. 3d at 501, 438 N.E.2d at 1245.

73. *Id.* at 502-04, 438 N.E.2d at 1245-46.

74. *Id.* at 503, 438 N.E.2d at 1246.

75. *Id.*

76. See *id.* at 503-04, 438 N.E.2d at 1246.

77. *Id.* at 503, 438 N.E.2d at 1246 (citing *Coalition I*, 65 Ill. 2d at 474-75, 359 N.E.2d at 148-49 (Schaefer, J., dissenting)).

78. See *id.* at 504, 438 N.E.2d at 1246.

79. *Id.* See D. MILLER, *supra* note 71, at 101. Note that this finding fits squarely within Justice Schaefer's rationale that a change to the legislative article could effect a change that was neither structural nor procedural. See *supra* notes 62-63 and accompanying text.

80. See *Lousin*, 108 Ill. App. 3d at 503-04, 438 N.E.2d at 1246.

ing that he had dissented only "on other issues."⁸¹ Following Justice Schaefer's dissenting opinion in *Coalition I*, the *Lousin* court implied that legislative power is neither structural nor procedural.⁸² Quoting Justice Schaefer, the court found that the power at issue in the measure proposed by the Coalition went beyond structure and procedure, and was a substantive matter.⁸³ Applying Justice Schaefer's conclusion that substantive issues can not be raised by initiatives, the appellate court held that the initiative in question was unconstitutional.⁸⁴

The 1982 *Lousin* decision was the last word from the Illinois courts concerning the initiative provision in the constitution until *Chicago Bar Association*. Since the *Lousin* court seemed to apply portions of both the *Coalition I* majority and dissenting opinions, Illinois lawyers and voters, such as the Chicago Bar Association members, were uncertain about the status of the *Coalition I* test. These voters sought guidance from the Illinois Supreme Court in the 1990 *Chicago Bar Association* case.

III. CHICAGO BAR ASSOCIATION V. STATE BOARD OF ELECTIONS⁸⁵

A. *The Facts*

The Chicago Bar Association ("CBA") sued the State Board of Elections⁸⁶ to enjoin it from placing a Tax Accountability Amendment Committee ("TAAC") initiative amendment proposal on the ballot for the November 6, 1990 general election.⁸⁷ Nearly 500,000 Illinois voters signed the Tax Accountability Amendment petition meeting the initiative provision's signature requirement.⁸⁸ The ini-

81. *Id.* at 503, 438 N.E.2d at 1246.

82. *Id.*

83. *See id.* at 504, 438 N.E.2d at 1246 (quoting *Coalition I*, 65 Ill. 2d at 474-75, 359 N.E.2d at 148-49 (Schaefer, J., dissenting)).

84. *Id.*

85. 137 Ill. 2d 394, 561 N.E.2d 50 (1990).

86. Neither plaintiffs nor defendants in this case were convention delegates. Compare *Chicago Bar Ass'n*, 137 Ill. 2d at 394-95, 561 N.E.2d at 51 (listing parties) with S. GOVE & T. KRISOS, *supra* note 6, at 61-69 Appendix B (listing convention delegates). The CBA brought this case to avoid the needless expenditure of state funds. *Chicago Bar Ass'n*, 137 Ill. 2d at 396, 561 N.E.2d at 51. Several CBA members, however, were concerned that their dues were being used to maintain this suit. *Chicago Tribune*, June 15, 1990, § 2 (DuPage), at 6, col. 1.

87. *Chicago Bar Ass'n*, 137 Ill. 2d at 396, 561 N.E.2d at 51. The injunction was sought under ILL. REV. STAT. ch. 110, para. 11-301, 11-303 (1987) to prevent the Board from disbursing public money. *Id.* The trial court permitted the TAAC to intervene as a defendant. *Id.* at 396, 561 N.E.2d at 52.

88. *Id.* at 395, 561 N.E.2d at 51; *see supra* note 8.

tiative proposed a requirement for a "super majority," a vote by three-fifths of the members of the legislature, to pass any law that would result in an increase to state revenue.⁸⁹ Further, the initiative proposed the creation of Revenue Committees that would be required to hold public hearings on potential revenue bills, and to endorse the bills by a Committee majority before presenting them to the legislature.⁹⁰

The CBA filed its original complaint in late May 1990, less than six months before the November 6, 1990 election.⁹¹ The trial court heard the case on an expedited basis.⁹² It found that the proposed amendment met the requirements of the initiative provision and granted summary judgment for the TAAC.⁹³ In the interest of resolving the matter well before the election, the Illinois Supreme Court granted the CBA's request for a direct appeal.⁹⁴

B. *The Illinois Supreme Court Decision*

Before the Illinois Supreme Court, the CBA used the *Coalition I* test to support its allegation that the proposed amendment exceeded the parameters of the initiative provision because it altered only legislative procedure and not legislative structure.⁹⁵ The CBA argued that, because committees already were used in the legislature, the addition of Revenue Committees would not change the legislative structure.⁹⁶

89. *Chicago Bar Ass'n*, 137 Ill. 2d at 397, 561 N.E.2d at 52. In pertinent part, the proposed Tax Accountability Amendment provided:

(a) A bill that would result in the increase of revenue to the State may become law only by a vote of three-fifths of the members in each house of the General Assembly.

(b) Each house of the General Assembly shall have a revenue committee. It shall be the sole and the exclusive responsibility of the revenue committees to consider all bills which would result in an increase or decrease of revenue to the State. . . .

(d) The revenue committees may not vote upon a bill until a public hearing on the bill has been held.

Id. at 397-98, 561 N.E.2d at 52.

90. *Id.*

91. *Id.* at 396, 561 N.E.2d at 51.

92. *Id.* at 396-97, 561 N.E.2d at 52. The Illinois Supreme Court declined to hear the case as an original action, finding that it had no jurisdiction. *Id.* at 396, 561 N.E.2d at 52. It did, however, direct the trial court to enter a ruling by July 2, 1990. *Id.* The trial court heard the arguments approximately one month after the original complaint was filed and ruled by July 2. *Id.* at 396-97, 561 N.E.2d at 52.

93. *Id.* at 397, 561 N.E.2d at 52.

94. *See id.* This appeal was granted pursuant to Illinois Supreme Court Rule 302(b).

95. *Chicago Bar Ass'n*, 137 Ill. 2d at 400, 561 N.E.2d at 53-54.

96. *Id.*

The TAAC countered these arguments by stating that the proposed amendment would alter the structure of the legislature by adding a new legislative committee and by outlining the membership of that committee.⁹⁷ Further, the TAAC contended that the requirements of a public hearing and a Revenue Committee majority for bill submission to the legislature would alter the procedure used to introduce bills.⁹⁸ Thus, the TAAC argued that the proposal would alter both procedural and structural aspects of the legislature, in accordance with the Illinois Supreme Court's holding in *Coalition I*.⁹⁹

The court began its analysis with a brief discussion of *Coalition I* and *Lousin*.¹⁰⁰ The court explained that the *Coalition I* court did not define the substantive limits on initiative proposals that were at issue in *Chicago Bar Association*.¹⁰¹ After noting the *Lousin* court's reliance on Justice Schaefer's dissent in *Coalition I*, the Illinois Supreme Court quoted the *Lousin* holding that the initiative process cannot be used to create a substantive change such as reallocation of legislative power.¹⁰²

Consistent with its usual practice when interpreting the constitution, the court continued its discussion with a detailed review of the 1970 constitutional convention debates.¹⁰³ The Illinois Supreme Court concluded that "only a very limited form of constitutional initiative was acceptable" to the convention delegates.¹⁰⁴ Further, the court explained what it labeled as a significant conclu-

97. *Id.* at 400, 561 N.E.2d at 53.

98. *Id.*

99. *Id.* Alternatively, the TAAC argued that *Coalition I* should be reversed. Brief for TAAC at 34. The TAAC asserted that the *Coalition I* court's conjunctive reading of the structural and procedural requirement was too restrictive. *Id.* In part, the TAAC based this argument on the convention's "Address to the People" regarding the constitution drafted by the delegates. *Id.* at 35. This Address contained a clearly-labeled "explanation" of the proposed constitution. 7 PROCEEDINGS 2667. That explanation was written by the delegates and stated that "[a]mendments . . . of a structural or procedural nature" may be proposed through the initiative process. *Id.* at 2677. Thus, the TAAC reasoned, the initiative provision was intended to be read in a disjunctive manner. Brief for TAAC at 35-36. The *Chicago Bar Association* court did not address this compelling argument, and instead based its determination of drafter intent on the text of the convention debates.

100. *Chicago Bar Ass'n*, 137 Ill. 2d at 399, 561 N.E.2d at 53 (citing *Coalition for Political Honesty v. State Bd. of Elections*, 65 Ill. 2d 453, 359 N.E.2d 138 (1976) and *Lousin v. State Bd. of Elections*, 108 Ill. App. 3d 496, 438 N.E.2d 1241 (1982)). Justice Ryan wrote the opinion for a unanimous court.

101. *Id.* at 399, 561 N.E.2d at 53.

102. *Id.* (citing *Lousin*, 108 Ill. App. 3d at 503, 438 N.E.2d at 1246).

103. *Id.* at 401-03, 561 N.E.2d at 54-55, *see supra* note 24 and accompanying text.

104. *Chicago Bar Ass'n*, 137 Ill. 2d at 401, 561 N.E.2d at 64.

sion: the convention delegates did not intend the limited initiative provided in the constitution to be used to accomplish substantive constitutional changes.¹⁰⁵ To emphasize this point, the court cited Justice Schaefer's dissent in *Coalition I*, explaining that the intent of the convention delegates was to ensure that "substantive changes" not be made through voter initiatives.¹⁰⁶

The supreme court next explained that the reliance by both parties on the "structural and procedural" test of *Coalition I* was misplaced.¹⁰⁷ The court recognized that the proposed amendment, briefs, and arguments of the TAAC were "crafted to accommodate the holding of *Coalition I*."¹⁰⁸ Stating that "we need not focus on [the structural and procedural] issue here," the court explained that the important constitutional language for *Chicago Bar Association* was not "structural and procedural" but was instead "limited to . . . subjects contained in Article IV."¹⁰⁹

Examining the TAAC proposal in this light, the court found that many substantive topics could be introduced in initiative proposals worded similarly to the Tax Accountability Amendment.¹¹⁰ The court recognized that a substantive issue, taxation, was included in this proposed amendment.¹¹¹ The court noted that to allow a proposal such as the one advanced by the TAAC to be placed on the ballot would "violate the intent so clearly expressed in the convention."¹¹² Therefore, the court held that the inclusion of the substantive tax issue in the proposed amendment expanded it beyond structural and procedural matters and made it impermissible under the constitution.¹¹³

C. The "Dissent"

Although *Chicago Bar Association* was a unanimous decision by the Illinois Supreme Court, there was a vocal dissent from the Illinois media and political community. Before the decision, the TAAC had claimed that summary judgment for the CBA would

105. *Id.* at 403, 561 N.E.2d at 55 (citing 6 PROCEEDINGS 1401).

106. *Id.* at 404-05, 561 N.E.2d at 56 (citing *Coalition I*, 65 Ill. 2d at 474-75, 359 N.E.2d at 148 (Schaefer, J., dissenting)). See *supra* note 61 and accompanying text.

107. *Chicago Bar Ass'n*, 137 Ill. 2d at 403, 561 N.E.2d at 55.

108. *Id.* at 400, 561 N.E.2d at 53.

109. *Id.* at 403, 561 N.E.2d at 55 (quoting ILL. CONST. art. XIV, § 3); see *supra* note 8.

110. *Chicago Bar Ass'n*, 137 Ill. 2d at 405-06, 561 N.E.2d at 56; see *supra* note 89 for the text of the proposed amendment.

111. *Chicago Bar Ass'n*, 137 Ill. 2d at 404, 561 N.E.2d at 55.

112. *Id.* at 406, 561 N.E.2d at 56.

113. *Id.*

sound the death knell for Illinois voter initiatives and would "be the end of the citizen initiative in Illinois."¹¹⁴ Two days after the court's August 22, 1990 ruling in favor of the CBA, the TAAC nevertheless vowed that it would continue to press for the proposed amendment, though it admitted that it could not afford the expense of an appeal to the United States Supreme Court.¹¹⁵ The group hopes to raise the issue in the May, 1991 legislative session.¹¹⁶

The TAAC was not alone in its vocal opposition to the Illinois Supreme Court's decision. Both the Republican and the Democratic gubernatorial candidates condemned the court's decision.¹¹⁷ Jim Edgar, the successful candidate in the gubernatorial race, called the decision "a dark day for the democratic process in Illinois."¹¹⁸ Representatives of both parties promised to abide by the spirit of the amendment and to "keep faith" with the principles behind the proposal.¹¹⁹ The media criticized the timing of the August, 22, 1990 ruling that provided the TAAC with only nine days to seek a reversal of the decision before the August 31, 1990 ballot certification deadline.¹²⁰

IV. ANALYSIS

A. *The Court Correctly Limited the Illinois Initiative to Non-Substantive Matters*

Illinois never has permitted broad direct democracy. The delegates to the sixth constitutional convention made it clear that they intended the initiative provided for in Article XIV, section 3 to be quite limited.¹²¹ The record of the convention debates and the fact that convention delegates sued twice to protect the integrity of the provision demonstrate their desire for a narrow, abuse-free initia-

114. Chicago Tribune, Aug. 10, 1990, § 2 (Chicagoland), at 3 col. 3.

115. Bond Buyer, Aug. 24, 1990, at 2. An attorney for the TAAC explained that the group planned to pursue political avenues in hopes of getting the amendment on the next election ballot. *Id.*

116. *Id.*

117. *Id.* These candidates were then-Illinois Attorney General Neil Hartigan and then-Illinois Secretary of State Jim Edgar.

118. Remarks of Jim Edgar on the radio program *Illinois 1990* (WCKG FM 105.9 radio broadcast, Dec. 12, 1990) (transcript available from the Illinois Bureau of Information Services).

119. Bond Buyer, Aug. 24, 1990, at 2. These representatives included both gubernatorial candidates and Jim Burns, a candidate for Lieutenant Governor. *Id.*

120. Bond Buyer, Aug. 23, 1990, at 2.

121. See *supra* notes 32-35 and accompanying text.

tive provision.¹²² Attempts by several Illinois groups to expand the initiative to a broader, more general provision certainly were at odds with the intent of the drafters.

By stressing the plain intent of the constitutional convention to provide for only the most limited initiatives, the court did an excellent job of explaining why the substantive changes attempted by the TAAC provision were unconstitutional. The court made it clear that amendments proposed by initiative cannot create substantive changes. In this respect, the court provided solid guidance to voter groups and lower courts concerning the substantive scope of permissible initiative proposals. The Illinois Supreme Court acted wisely in *Chicago Bar Association* by refusing to extend direct democracy in Illinois beyond its intended scope.¹²³

B. *The Court Left Doubt as to the Continued Vitality of the Coalition I Test*

The court's well-reasoned position on substantive issues and initiative proposals has evolved in a disjointed manner. *Chicago Bar Association* poorly incorporates the test established in *Coalition I*, and does not explain its reliance on the *Coalition I* dissenting opinion.

In *Coalition I*, the supreme court attempted to establish a test for the constitutionality of initiative proposals.¹²⁴ Though the *Lousin* court purported to apply this test, in fact it adopted the position of the *Coalition I* dissent.¹²⁵ The *Lousin* court quoted and followed Justice Schaefer's dissent when it stated that amendments cannot be substantive and therefore must include only structural and procedural matters.¹²⁶ Further, the *Lousin* court accepted Justice Schaefer's contention that some changes to the legislative article, such as changes in power, extend beyond structural and procedural matters.¹²⁷ However, Justice Schaefer's arguments were rejected explicitly by the majority of the *Coalition I* court.¹²⁸

In *Chicago Bar Association*, the Illinois Supreme Court implic-

122. See *supra* notes 41, 67, and accompanying text.

123. At least one commentator agreed with the outcome of the *Coalition I* decision because it similarly confined the Illinois initiative to its intended narrow scope. See Levine, *supra* note 24, at 408.

124. See *supra* note 57 and accompanying text.

125. See *Lousin v. State Bd. of Elections*, 108 Ill. App. 3d 496, 503-04, 438 N.E.2d 1241, 1246 (1982); see *supra* notes 80-84 and accompanying text.

126. *Lousin*, 108 Ill. App. 3d at 503-04, 438 N.E.2d at 1246.

127. See *supra* notes 62, 83 and accompanying text.

128. *Coalition for Political Honesty v. State Bd. of Elections*, 65 Ill. 2d 453, 466, 359 N.E.2d 138, 144 (1976).

itly sanctioned this adoption of the *Coalition I* dissent when it relied on the part of the *Lousin* decision that followed Justice Schaefer.¹²⁹ The Illinois Supreme Court then explicitly established Justice Schaefer's "no substantive changes" test without noting his rejection of the requirement that an initiative proposal affect both structural and procedural aspects of the legislature.¹³⁰ Thus, the current test for initiative proposal constitutionality in Illinois appears to approximate the test proposed by Justice Schaefer in *Coalition I*, which was applied by the Illinois Appellate Court in *Lousin*. If *Coalition I* were before the supreme court today, the court's analysis would be likely to focus on the substantive aspects of the proposed initiative. Under this standard, the legislator voting section of the Coalition's proposal probably would be constitutional.

Yet it is not clear that *Coalition I* would be analyzed in such a manner today because the *Chicago Bar Association* court did not discuss its previous insistence on a conjunctive reading of the provision that an amendment proposal affect both legislative structure and procedure.¹³¹ The *Chicago Bar Association* court neglected precedent by not answering the question raised by the parties concerning the effect that the TAAC proposal had on the structure of the legislature.¹³² Both sides raised valid arguments concerning the possible structural and procedural effects of the Tax Accountability Amendment that the court should have resolved if the strict "and" requirement of the *Coalition I* analysis retains validity. By simply stating that structural and procedural issues were not of concern in *Chicago Bar Association*, the court appeared to dismiss the *Coalition I* test.¹³³

If the *Coalition I* test had been applied in *Chicago Bar Association*, the TAAC proposal might have passed constitutional muster. Both sides agreed that the voting requirements of the proposal changed the procedure of the legislature.¹³⁴ The TAAC's contention that the addition of committees with mandatory membership changed the structure of the legislature is a persuasive argument. It is also consistent with the delegates' belief, expressed during the convention debates, that a change in the number of legislative

129. See *Chicago Bar Ass'n v. State Bd. of Elections*, 137 Ill. 2d 394, 399, 561 N.E.2d at 50, 53 (1990).

130. *Id.* at 403-05, 561 N.E.2d at 55-56; see *supra* note 63 and accompanying text.

131. See *supra* notes 51-55 and accompanying text.

132. See *supra* notes 95-98 and accompanying text.

133. See *Chicago Bar Ass'n*, 137 Ill. 2d at 403, 561 N.E.2d at 55.

134. See *id.* at 400, 561 N.E.2d at 53.

houses would change legislative structure.¹³⁵

On the other hand, it is possible that the Tax Accountability Amendment may be unconstitutional under the *Coalition I* test. The CBA presented a compelling argument that the addition of Revenue Committees would not create any structural change in a legislature already operating with many committees.¹³⁶ In addition, the CBA argument is consistent with the delegates' intent to allow initiatives only in limited situations. This confusion illustrates the fact that the Illinois Supreme Court did a disservice to future initiative proposal drafters by not explaining the status and correct application of the *Coalition I* test.

Although the court stated that the *Coalition I* standard was not applicable only "so far as this case is concerned,"¹³⁷ it is not clear from the court's opinion whether it will still insist that proposals affect both structural and procedural matters.¹³⁸ Justice Schaefer explicitly rejected a strict conjunctive reading of the initiative provision.¹³⁹ The *Chicago Bar Association* court should have explained the status of the *Coalition I* test and corresponding interpretation of the Illinois initiative provision in light of its adoption of at least part of Justice Schaefer's dissent.¹⁴⁰

V. IMPACT

Illinois has now adopted, judicially as well as legislatively, a direct initiative theory that parallels the theories of James Madison. The voter initiative abuses foreseen by Madison and present in other states¹⁴¹ will be avoided in Illinois as long as the court remains as vigilant in upholding the intent of the convention delegates as it was in *Chicago Bar Association*. Blatant attempts to abuse the initiative will be thwarted by this decision. Madison's fears of majoritarian rule were echoed by the Illinois 1970 constitutional convention delegates, and it appears that Illinois courts will continue to guard against the problems of "pure democracy" in a

135. 4 PROCEEDINGS at 2712.

136. *Chicago Bar Ass'n*, 137 Ill. 2d at 400, 561 N.E.2d at 53-54.

137. *Id.* at 403, 561 N.E.2d at 55.

138. The court never explicitly eliminated the test, and twice referred to the fact that the proposed amendment should have been confined to structural and procedural matters. In so doing, however, the court did not state whether both elements are still required. *Id.* at 403-06, 561 N.E.2d at 55-56.

139. *Coalition I*, 65 Ill. 2d at 473, 359 N.E.2d at 147-48 (Schaefer, J., dissenting).

140. Justice Schaefer's complete position is that amendments can be structural or procedural, as long as they do not effect substantive changes. *Id.* at 473-76, 359 N.E.2d at 148-49 (Schaefer, J., dissenting); see *supra* note 61 and accompanying text.

141. See *supra* note 33.

manner that was envisioned by the drafters of the initiative provision.¹⁴²

Adopting Madison's position, however, does foreclose most voter initiative opportunities in Illinois. The TAAC's recognition that the political arena is the environment in which a proposal like the Tax Accountability Amendment is most likely to flourish is certainly correct.¹⁴³ Unfortunately, it is doubtful that the legislature will voluntarily implement many of the changes proposed by the initiative movements, as these changes are often against the legislators' self-interest.¹⁴⁴ Therefore, unless lobbying such as that proposed by the TAAC is effective, Illinois voters unquestionably will pursue further initiative amendments.

The *Chicago Bar Association* court gave scant practical assistance to these voter groups planning to draft non-substantive initiative proposals under the initiative provision. After *Chicago Bar Association*, it is not clear exactly what standard or test, if any, a non-substantive amendment proposed by initiative must meet. The Illinois Supreme Court adopted the position of the *Coalition I* dissent for initiatives involving substantive issues. However, the status of the *Coalition I* majority test for non-substantive proposals is unclear. Thus far, the court determinations have been based largely on the specific facts of each case, and more litigation probably will occur before the Illinois Supreme Court enunciates a comprehensive standard. Explicit adoption of the standard proposed by Justice Schaefer would give Illinois guidance regarding the initiative proposal, provide necessary flexibility, and protect against abuse of initiatives in attempts to change substantive areas of the law.

VI. CONCLUSION

In *Chicago Bar Association v. State Board of Elections* the Illinois Supreme Court properly protected the voter initiative in Illinois against possible abuse. In so doing, however, the court failed to clarify the current vitality of previous decisions. This sets a dangerous example for lower courts that are expected to apply existing

142. See *supra* notes 32-35 and accompanying text.

143. See *supra* notes 115-116 and accompanying text.

144. See 4 PROCEEDINGS at 2710. One commentator predicts that the members of the legislature and their supporters will attempt to eliminate the initiative provision, if given the chance, as it has been used successfully against their own self-interest. J. JACKSON, *supra* note 5, at 10. See also R. POSEY, THE CONSTITUTION OF ILLINOIS/1970: SIMPLIFIED AND EXPLAINED 79 (4th ed. 1971) (positing that the idea behind the initiative provision is a fear that the legislature will not tend to problems within itself).

case law in an understandable fashion. In the end, Illinois is left with a voter initiative provision that has been interpreted well and applied correctly in certain circumstances. Illinois, however, also is left without strong guidance on how to apply the provision in the future.

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