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_Chicago Bar Association v. Illinois State Board of Elections:_ The End of the Line for the Popular Initiative in Illinois

Stuart K. Holcomb III

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Notes

Chicago Bar Association v. Illinois State Board of Elections: The End of the Line for the Popular Initiative in Illinois?

I. INTRODUCTION

In the November 1994 general election, Illinois called upon its voters to adopt or reject two proposed amendments to the 1970 Illinois Constitution.1 Illinois voters, however, never got the opportunity to vote on a third proposed amendment, a term-limit amendment. Although a proposed term-limit amendment appeared on the ballots of eight other jurisdictions,2 the term-limit amendment was conspicuously absent from the Illinois ballot—despite the efforts of two organizations that collectively obtained over 437,000 signatures in favor of proposing a term-limit amendment to the Illinois Constitution.3 Many voters probably failed to notice the absence of a proposed term-limit amendment, an absence directly attributable to an Illinois Supreme Court decision.4

On August 10, 1994, the Illinois Supreme Court, in Chicago Bar Association v. Illinois State Board of Elections,5 entered a judgment

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2. Voters in Alaska, Colorado, Idaho, Maine, Massachusetts, Nebraska, Nevada, and the District of Columbia approved ballot initiatives imposing term limits upon officeholders. Hugh Dellios, Angry Voters Have Their Say on Crime, Taxes, and More, CHI. TRIB., Nov. 10, 1994, § 1, at 10. A total of 21 states have imposed term limits upon either their federal or state legislators, or both. Id. In the 1994 election, only Utah failed to pass its term-limit measure. Id.


4. See id.

5. 641 N.E.2d 525, 526 (ILL. 1994) (per curiam) (4-3 decision) [hereinafter CBA II]. The court entered its judgment on August 10, 1994, and filed the written opinion on September 7, 1994. Id. This Note will refer to this case as CBA II in parts III-V to
preventing election officials from placing the proposed constitutional amendment regarding term limits for state legislators on the November 1994 general election ballot. In proposing the amendment to the legislative article of the Illinois Constitution, the supporting organizations employed the popular initiative procedure set forth in article XIV, section 3 of the constitution. In a four-to-three decision, the Illinois Supreme Court concluded that the proposed amendment, imposing eight-year term limits on members of the Illinois General Assembly, failed to meet the requirement in article XIV, section 3, which limits amendments to "structural and procedural subjects" contained in the legislative article.

As a result of this decision, the Illinois Supreme Court has essentially left the realization of a term-limit amendment to the discretion of the Illinois General Assembly. Because the General Assembly, more than any other branch of government, possesses a vested interest in Illinois' legislative branch, it is unlikely to propose an amendment which affects the length of time that an individual may serve in the General Assembly. As such, the Illinois Supreme Court's decision in Chicago Bar Association has effectively foreclosed the term-limit movement in Illinois.

distinguish it from an earlier case with the same name which this Note refers to as CBA I in parts II-V.

6. Id. at 529.
7. ILL. CONST. art. IV.
8. Id. art. XIV, § 3. For the text of the initiative provision, see infra note 44.
10. CBA II, 641 N.E.2d at 529.
11. See id. In addition to the article XIV, § 3 provision providing for a limited constitutional revision by initiative, the Illinois Constitution also allows for general constitutional revision by convention, ILL. CONST. art. XIV, § 1, and by proposals from the General Assembly, id. art. XIV, § 2.
12. 6 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 1399 (1970) (proposal of the Committee on Suffrage and Constitutional Amending) [hereinafter 6 PROCEEDINGS]. In proposing the initiative provision to the constitutional convention, the Committee on Suffrage and Constitutional Amending explained that "voters can better decide on the merits of proposals suggesting changes in the Legislative Article since they are not directly and personally involved . . . ." Id. at 1400; see infra notes 96-98 and accompanying text.
This Note first reviews the history of the amendment process in Illinois, specifically focusing on the origins of the initiative provision contained in article XIV, section 3 of the Illinois Constitution. This Note then examines Illinois cases which have interpreted the scope and meaning of the “structural and procedural” language within the initiative provision. Next, this Note discusses the facts and opinions of Chicago Bar Association v. Illinois State Board of Elections. Then, this Note critically analyzes the court’s interpretation of the “structural and procedural” requirement in light of both its earlier decisions and the intent of the framers of the popular initiative provision. Finally, this Note addresses the impact of the Illinois Supreme Court’s decision in Chicago Bar Association, and concludes that it will significantly limit the utility of the popular initiative provision as a method of amending the Illinois Constitution.

II. BACKGROUND

A. Constitutional Revision in Illinois: The Origin of the Article XIV, Section 3 Popular Initiative Provision

The Sixth Illinois Constitutional Convention in 1970 presented its delegates with the rare opportunity to address flaws in the amending process under the Illinois Constitution. Historical difficulties in amending the Illinois Constitution precipitated the calling of the 1970 convention, and the issue of constitutional revision became one of the first issues the delegates addressed. Presumably, the delegates recognized the importance of resolving the revision issue early on because of the impact the amending procedures would have upon the

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13. See infra part II.A.
14. See infra part II.B.
15. See infra part III.
16. See infra part IV.
17. See infra part V.
18. See infra part VI.
19. Those who attended the convention are formally referred to as “members.” Nevertheless, they are informally referred to as “delegates” and will be referred to as such in this Note. See Levine, supra note 9, at 387 n.1.
20. See id. at 387. Levine characterized the task facing the delegates at the convention as “a unique opportunity to address inadequacies in the organic law of the State of Illinois.” Id.
21. David Kenney, Making a Modern Constitution: The Illinois Experience 29 (1991). Kenney, one of the delegates at the convention in 1970, stated that “in one sense the question of constitutional change was the foremost issue before the convention.” Id.
From its inception, the Illinois Constitution limited the procedures for amending the document. Illinois' first constitution, the 1818 Constitution, provided for revision solely through a constitutional convention, and allowed the General Assembly to decide whether to present the voters with the convention call question. Even when the General Assembly recognized the need for constitutional revision, the voters often refused the invitation to hold a convention in the ensuing general election.

Although cumbersome, the convention method of revision remained in the 1848 Constitution. In 1848, however, the delegates eased the restrictions on amending the constitution by adding the "legislative method" of revision. The legislative method allowed either house of the General Assembly to propose amendments; nevertheless, the amending process remained cumbersome. For instance, the 1848 Constitution required each house to approve a proposed amendment twice before its enactment.

The nature of the amending process was certain to have a profound impact upon all other aspects of a new constitution. If changes were to be made only with great difficulty it would be wise to write one sort of a constitution; if change were more accessible quite another sort would be indicated. Thus it was desirable that the convention decide upon the amending process before it went on to other subjects.

Id. Specifically, Kenney states:

proposed amendment, the amendment appeared on the ballot at the next general election and required approval by a majority of the voters. Thus, despite the addition of the legislative method, the process of revising the Illinois Constitution remained difficult.

This difficulty continued under the 1870 Constitution because the 1870 delegates did not substantially change the legislative method. The 1870 Constitution, in addition to requiring two votes in the General Assembly, required the approval of the proposed amendment by a majority of the general election voters, regardless of whether or not they actually voted on the proposed amendment. Thus, those citizens who voted in the general election, but failed to vote on the proposed amendment, were effectively casting a "no" vote for the amendment.

Finally, in 1950, the passage of the Gateway Amendment opened "the door to piece-meal constitutional change." The Gateway Amendment simplified the revision process by allowing for ratification of a proposed amendment by approval of two-thirds of the voters who actually voted upon the proposed amendment. While the Gateway

30. GRATCH & UBK, supra note 24, at 13.
31. Id. If anything, revision under the 1870 Constitution became even more difficult. The 1870 Constitution, for example, prevented the revision of the same article more than once every four years. Id.; see also BRADEN & COHN, supra note 29, at 565-66. In addition, subsequent delegates were unsuccessful in their numerous attempts to amend the constitution. KENNEY, supra note 21, at 3. Attempts to amend the Illinois Constitution of 1870 were unsuccessful in 1920, 1934, and 1940. Id.
32. GRATCH & UBK, supra note 24, at 13.
34. The Gateway Amendment received its name because it was expected to ease the process of constitutional revision. KENNEY, supra note 21, at 3.
35. Id. The Gateway Amendment continued to authorize each house of the General Assembly to propose amendments, but allowed for the adoption of the proposed amendment if at the next general election "either a majority of the electors voting at said election or two-thirds of the electors voting on any such proposed amendment shall vote for the proposed amendment . . . ." BRADEN & COHN, supra note 29, at 565 (citing ILL. CONST. of 1870, art. XIV, § 2).
36. JACKSON, supra note 33, at 8. The requirement in the 1870 Constitution that proposed amendments be ratified by a "majority of those voting at the election" sufficed until the introduction of the Australian ballot in 1891. BRADEN & COHN, supra note 29, at 566. The Australian ballot, for the first time, allowed voters to avoid selecting a straight-party ticket, because it listed each candidate running for office. Id. As Braden and Cohn explain:

Prior [to the Australian ballot], each political party printed its own ballot and a voter who used a party ballot and marked the party circle was counted as voting for any amendment that was on the ballot. With the adoption of an
Amendment initially met with some success, the constitution remained difficult to amend. When the Sixth Illinois Constitutional Convention convened in 1970, the historical difficulty in amending the constitution convinced many of the delegates that the populace would consider the convention a success if it achieved nothing more than a revision of the amending article.

Although the delegates faced numerous complex issues going into the 1970 convention, one issue in particular influenced the new constitution’s amendment provisions. Specifically, the delegates disputed the composition of the Illinois General Assembly under the proposed Illinois Constitution of 1970. The debate centered on whether the House of Representatives should be composed of single-member or multi-member districts consisting of three representatives elected through “cumulative voting.” In an effort to resolve the dispute, the delegates inserted article XIV, section 3 into the constitution. Article XIV, section 3 provides Illinois voters with a mechanism to change the composition of the legislature through the use of the popular initiative provision. The adoption of the popular initiative provision was thus a result of compromise, and the limited official [Australian] ballot, the amendment question was separately stated and separately counted.

Id.

Thus, with the adoption of the new ballot, the majority test proved too stringent, presumably because many voters did not vote upon the amendment. See GERTZ & PISCIOTTE, supra note 25, at 176; see also Williams, supra note 9, at 1123 (describing the 1870 Constitution’s inflexible amending procedures).

37. KENNEY, supra note 21, at 4. Only one of eight proposed amendments was approved in the decade after 1956, leading one commentator to observe at the time that “if this pace continues, significant revision of the constitution through the normal amending process will take an incredibly long time.” Id.

38. GERTZ & PISCIOTTE, supra note 25, at 186; see also Williams, supra note 9, at 1123 (describing the 1870 Constitution’s inflexible amending procedures).

39. Levine, supra note 9, at 387.

40. See 4 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 2791-814 (1970) [hereinafter 4 PROCEEDINGS]. Essentially, the delegates could not agree upon the size of the General Assembly under the 1970 Constitution. See Williams, supra note 9, at 1123 n.31.

41. In Illinois, cumulative voting was a system in which a voter could cast three votes for one candidate for the General Assembly, or distribute them equally among three candidates. See Coalition for Political Honesty v. State Bd. of Elections, 415 N.E.2d 368, 370 (III. 1980).

scope of the provision reflects this intention. Although the delegates drafted the popular initiative provision to address the composition of the General Assembly, nothing within the provision specifically limits its use to that issue.44

Article XIV, section 3 imposes a number of technical requirements upon the proponents of a proposed amendment. The proponents must submit a petition containing the signatures of voters equal to at least eight percent of those who voted for governor in the preceding election. The proponents may not, however, gather the signatures more than two years before the general election in which the proponents submit the amendment. Furthermore, the petition must contain the full text of the proposed amendment, and must be filed with the Secretary of State no later than six months before the general

43. Gordon Levine, counsel for the plaintiffs in the first case to test the scope of article XIV, § 3, Coalition for Political Honesty v. State Bd. of Elections, 359 N.E.2d 138 (Ill. 1976), wrote:

To the extent that the delegates could find workable solutions to the problems presented, those solutions were embodied in the Illinois Constitution of 1970. Often, however, the delegates could not agree on an unequivocal resolution to a complex problem which would have been acceptable to the voters of the State of Illinois. Thus, in the best democratic tradition, most solutions were the result of compromise.

Levine, supra note 9, at 387. But cf. Williams, supra note 9, at 1123 n.31 (noting that "[i]t 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."). Thus, the delegates were able to sidestep resolving a difficult political question. Id.

44. Levine, supra note 9, at 388-89. Article XIV, § 3, the popular initiative provision of the 1970 Constitution provides:

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 for candidates for Governor in the preceding gubernatorial election. Amendments shall be limited to structural and procedural subjects contained in Article IV. A petition shall contain the text of the proposed amendment and the date of the general election at which the proposed amendment is to be submitted, shall have been signed by the petitioning electors not more than twenty-four months preceding that general election and shall be filed with the Secretary of State at least six months before that general election. The procedure for determining the validity and sufficiency of a petition shall be provided by law. If the petition is valid and sufficient, the proposed amendment shall be submitted to the electors at that general election and shall become effective if approved by either three-fifths of those voting on the amendment or a majority of those voting in the election.

I.L.L. CONST. art. XIV, § 3.

45. I.L.L. CONST. art. XIV, § 3.

46. For a discussion of the substantive requirement of article XIV, § 3 see infra part II.B.

47. I.L.L. CONST. art. XIV, § 3. See supra note 44 for the text of the article.

48. I.L.L. CONST. art. XIV, § 3.
If the Secretary of State validates the petition, the proposed amendment is included on the ballot at the general election specified in the petition. To become effective, the proposed amendment requires approval by "three-fifths of those voting on the amendment or a majority of those voting in the election."

### B. Article XIV, Section 3 of the Illinois Constitution of 1970: Judicial Interpretation Concerning its Scope

Article XIV, section 3 of the 1970 Illinois Constitution allows amendment of the legislative article of the constitution by popular initiative petition. The second sentence of article XIV, section 3 contains the key words used to describe the permissible scope of proposed amendments: "Amendments shall be limited to structural and procedural subjects contained in Article IV." Although the 1970 delegates dedicated a considerable amount of debate to discussing the meaning and purpose of this language, they nevertheless left the scope of the language open for judicial interpretation. The following Part discusses the Illinois Supreme Court's interpretation of the limiting language in article XIV, section 3.

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49. Id. The petition must also contain "the date of the general election at which the proposed amendment is to be submitted." Id.


51. ILL. CONST. art. XIV, § 3.

52. Id.

53. Id. See supra note 44 for the text of article XIV, § 3.

54. ILL. CONST. art. XIV, § 3. Seventeen states provide for the amendment of their constitutions through the use of the initiative provision. Illinois, however, is unique in limiting the scope of the popular initiative to the legislative article. Those states allowing for the use of the popular initiative are: Arizona, Arkansas, California, Colorado, Florida, Illinois, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota. See 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.

55. See, e.g., 4 PROCEEDINGS, supra note 40, at 2712. Specifically, Delegate Tomei, the chairman of the Suffrage and Amending Committee at the 1970 convention, stated: "[W]hether or not [a proposed amendment is] covered under this language or authorized under this language would probably be a matter for the courts." Id.
1. Conjunctive Versus Disjunctive Interpretation

Six years passed before the citizens of Illinois had the chance to test the scope of the popular initiative provision of the 1970 Constitution. The Illinois Supreme Court first addressed this issue in *Coalition for Political Honesty v. State Board of Elections* ("Coalition I"). This decision limited the nature of proposed amendments under article XIV, section 3 of the 1970 Constitution to proposed amendments seeking to change the structure and procedures of the General Assembly.

In *Coalition I*, the Coalition for Political Honesty (the "Coalition") filed an initiative petition requesting that the electorate have the opportunity to consider three amendments to the legislative article. The proposed amendments sought: (1) to tighten the dual-officeholding requirement in article IV, subsection 2(a) by prohibiting members of the General Assembly from receiving compensation from other governmental entities during their terms as members of the General Assembly; (2) to prohibit a legislator who had a conflict of interest from voting; and (3) to prohibit members of the General Assembly from receiving their salaries at the beginning of the term.

A group of citizens and taxpayers, consisting of former delegates to the constitutional convention, perceived the Coalition's proposed amendments as a "threat to the integrity of the 1970 Constitution." The group presented a petition for leave to file a complaint under the disbursement of public moneys statute in the Circuit Court of Cook County. In 1973, a group of citizens attempted to utilize the popular initiative to abolish the practice of cumulative voting in Illinois. William R. Hector, *Initiative and Referendum, in Understanding the Illinois Constitution* 67, 68 (Frank Kopecky & Mary S. Harris eds., 1986). The 1973 campaign failed, and it was not until 1976 that the Illinois Supreme Court ruled on the constitutionality of a proposed amendment under article XIV, § 3. *Id.*

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56. In 1973, a group of citizens attempted to utilize the popular initiative to abolish the practice of cumulative voting in Illinois. William R. Hector, *Initiative and Referendum, in Understanding the Illinois Constitution* 67, 68 (Frank Kopecky & Mary S. Harris eds., 1986). The 1973 campaign failed, and it was not until 1976 that the Illinois Supreme Court ruled on the constitutionality of a proposed amendment under article XIV, § 3. *Id.*

57. 359 N.E.2d 138 (Ill. 1976) (per curiam) [hereinafter *Coalition I*].

58. *Id.* at 144.

59. *Id.* at 139.

60. *Id.* at 140.

61. Levine, *supra* note 9, at 393. Six of the seven plaintiffs served as delegates to the 1970 constitutional convention, including Louis J. Perona, who served as the spokesperson for the Committee on the Legislature during the debates. *Coalition I*, 359 N.E.2d at 139. The seventh plaintiff, Ann M. Lousin, served on the research staff at the convention. *Id.* The plaintiffs were represented by Samuel Witwer, who had presided over the convention in 1969. *Id.* For a detailed discussion of the background of the *Coalition I* case, see Levine, *supra* note 9, at 390-97. Levine states that the plaintiffs, "felt that there had been no intention to permit article XIV, section 3 to be used to place substantive questions of public policy, meritorious or otherwise, before the voters ... ." *Id.* at 393.

62. At the time the plaintiffs filed their complaint, the disbursement of public moneys statute was codified at chapter 102, paragraphs 11 through 17 of the Illinois Revised Statutes. *ILL. REV. STAT.* ch. 102, paras. 11-17 (1975). Currently, the
County, seeking to enjoin the State Board of Elections from expending public funds to place the proposed amendment on the ballot. Consequently, the circuit court enjoined the expenditure of public funds, holding that the proposed amendments failed to meet the requirements of article XIV, section 3.

The Illinois Supreme Court affirmed the circuit court's opinion, holding that the proposed amendments were unconstitutional. Specifically, the court utilized conventional methods of statutory construction to conclude that article XIV, section 3 required all proposed amendments to involve and be limited to both structural and procedural subjects contained in the legislative article.

The court first explained that because the word "and" is normally construed in the conjunctive, the Coalition would have had to prove that it was clearly evident that the delegates intended a contrary meaning when they approved the initiative provision. The court determined, however, that the Coalition failed to meet this burden. Instead, the court explained that any change in the legislative article necessarily involves either the structure or procedures of the General Assembly. Accordingly, the court reasoned that because all changes to the legislative article are structural or procedural in character, the substitution of the word "or" would be the same as removing the phrase "structural and procedural" from article XIV, section 3. The disbursement of public moneys statute is codified at ILL. COMP. STAT. ANN. ch. 735, §§ 5/11-301 to 5/11-304 (West 1992).

63. Coalition I, 359 N.E.2d at 139. The plaintiffs sought to enjoin the expenditure of approximately $1,750,000 in public funds needed to place the proposed amendment on the ballot. Id.

64. Id. at 141. Additionally, the circuit court determined that the proposed amendments violated the Equal Protection and Due Process Clauses of both the Illinois and United States Constitutions. Id.

65. Id. at 147.

66. Id. at 143-44 (emphasis added). As examples of amendments whose subject would meet the structural and procedural requirement of article XIV, § 3, the court listed the conversion from a bicameral to a unicameral legislature and the conversion from multi-member to single-member legislative districts. Id. at 144. The Illinois Supreme Court first determined that the case was ripe for review, despite the fact that the proposed amendment had not been submitted to the voters. Id. at 142. The ripeness issue will not be addressed in this Note. For a detailed discussion of the ripeness issue, see Levine, supra note 9, at 397-402.


68. Coalition I, 359 N.E.2d at 144.

69. Id.

70. Id.
The court stated that interpreting the word "and" in the disjunctive, effectively substituting "or" for the word "and," would cause the phrase "structural and procedural" to become mere surplusage.\(^7\) Therefore, in order to give "structural and procedural" meaning, the court concluded that the phrase must be interpreted in its conjunctive form.\(^7\)

The Coalition I court then examined the convention debates for further assistance in determining the meaning of the "structural and procedural" provision in article XIV, section 3.\(^7\) The court noted that the Committee on Suffrage and Constitutional Amendments rejected a general initiative provision which would have allowed an amendment to any part of the constitution.\(^7\) Instead, the court explained that the delegates intended the initiative to involve only the "basic qualities of the legislative branch—namely structure, size, organization, procedures, etc."\(^7\) Accordingly, the court concluded that its conjunctive reading of the "structural and procedural" language was necessary to further the intent behind the initiative provision.\(^7\)

Finally, the court noted that the Coalition had not argued that the proposed amendments met the "dual requirements" of article XIV, section 3.\(^7\) The Coalition I court implied that each of the proposed amendments may have involved procedural subjects in the legislative article, yet none of the amendments involved the structure of the General Assembly.\(^7\) Thus, the court held that the proposed amendments were unconstitutional under article XIV, section 3.\(^7\)

\(^{71}\) Id.

\(^{72}\) Id. In so concluding, the court recalled the "fundamental rule" of statutory and constitutional construction that "each word, clause or sentence must, if possible, be given some reasonable meaning." \(\text{id.}\)

\(^{73}\) Id. at 142. Although the court noted the role that the delegates intended the courts to play in determining whether a proposed amendment passes the constitutional requirements, \(\text{id.}\), the court nevertheless referred extensively to the convention debates in its opinion, \(\text{id.}\) at 144-47.

\(^{74}\) Id. at 145.

\(^{75}\) Id. (citing 6 PROCEEDINGS, supra note 12, at 1400-01).

\(^{76}\) Id. at 147. Nevertheless, the court acknowledged that the Committee on Style, Drafting and Submission's report on the proposed initiative provision was ambiguous, and noted that the provision could be interpreted to require a disjunctive reading of the phrase "structural and procedural." \(\text{id.}\) at 146-47 (citing 6 PROCEEDINGS, supra note 12, at 1561). Furthermore, the court noted that Delegate Whalen's comments regarding the provision expressed the intention that the provision be read in the disjunctive. \(\text{id.}\) at 147 (citing 5 RECORD OF PROCEEDINGS, SIXTH ILLINOIS CONSTITUTIONAL CONVENTION 4523, 4547 (1970) [hereinafter 5 PROCEEDINGS]).

\(^{77}\) Id.

\(^{78}\) Id. at 146-47.

\(^{79}\) Id. at 147.
Justice Schaefer dissented from the court's opinion in *Coalition I*, finding nothing in the proceedings of the constitutional convention which suggested that initiatives under article XIV, section 3 were limited to both structural and procedural subjects of the legislative article.\(^{80}\) Instead, Justice Schaefer argued for what he considered a more natural disjunctive reading of the phrase "structural and procedural."\(^{81}\)

Justice Schaefer maintained that the popular initiative provision allows amendment of either structural or procedural subjects as long as the proposed amendment does not attempt to make substantive changes to the legislative article.\(^{82}\) He disagreed with the court's contention that any amendment of the legislative article would necessarily involve either a structural or procedural subject.\(^{83}\) Rather, Justice Schaefer noted that several provisions within the legislative article were neither "structural" nor "procedural."\(^{84}\) Thus, he concluded that article XIV, section 3 precludes proposed amendments not involving *either a structural or procedural change*—those amendments involving substantive changes to the legislative article.\(^{85}\)

Under Justice Schaefer's disjunctive analysis, therefore, the Coalition's first and third proposals remained unconstitutional because they failed to involve either structural or procedural subjects.\(^{86}\) The second proposal, however, regarding the voting ability of legislators with conflicts of interest, did affect the procedures of the General Assembly and was, according to dissenting Justice Schaefer, constitutional.\(^{87}\)

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80. *Id.* at 148 (Schaefer, J., dissenting).
81. *Id.* (Schaefer, J., dissenting). As examples of the disjunctive use of the word "and," Justice Schaefer offered the following:

First year students are limited to mathematics and foreign language courses.
The menus will be limited to beef and chicken dishes.

It seems plain that the first illustration does not mean that both mathematics and a foreign language must be taught in a single course, and that the second illustration does not mean that every dish must contain both beef and chicken.

*Id.* (Schaefer, J., dissenting).
82. *Id.* (Schaefer, J., dissenting).
83. *Id.* (Schaefer, J., dissenting).
84. *Id.* (Schaefer, J., dissenting). As an example, Justice Schaefer listed the grant of legislative immunity in article IV, § 12. *Id.* (Schaefer, J., dissenting).
85. *Id.* at 148-49 (Schaefer, J., dissenting).
86. *Id.* at 149 (Schaefer, J., dissenting); see *supra* note 60 and accompanying text (discussing the Coalition's proposals).
87. *Coalition I*, 359 N.E.2d at 149 (Schaefer, J., dissenting); see *supra* note 60 and accompanying text (discussing the Coalition's proposals).
2. The Initiative Provision as a Self-Interest Check
   Upon the Legislature

In 1980, Illinois citizens, frustrated by legislative salary increases, successfully utilized the initiative provision for the first time, ending cumulative voting and multi-member districts in the process.\(^8\) In *Coalition for Political Honesty v. State Board of Elections*,\(^9\) ("Coalition II"), the court retreated slightly from its strict conjunctive reading of article XIV, section 3.\(^0\)

In *Coalition II*, the Coalition for Political Honesty filed a petition with the State Board of Elections seeking to utilize the initiative process to place a proposed amendment to article IV on the ballot.\(^1\) As proposed, the amendment would institute single-member districts and abolish cumulative voting for representatives.\(^2\) Two individuals, believing that the limiting "structural and procedural" language of the popular initiative provision prohibited the proposed amendment, filed an objectors' petition with the State Board of Elections.\(^3\) Thereafter, the Coalition sought a writ of mandamus directing the State Board of Elections to certify the proposed constitutional amendment for submission to the electorate.\(^4\)

In discussing the origins of article XIV, section 3, the Illinois Supreme Court noted, as it did in *Coalition I*, that the delegates to the 1970 constitutional convention rejected a more general proposal than the current popular initiative provision, thus limiting the scope of the initiative.\(^5\) The court continued, however, by highlighting that a majority of the delegates at the convention realized the unique pro-

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\(^8\) Hector, *supra* note 56, at 68-69.

\(^9\) 415 N.E.2d 368 (Ill. 1980) [hereinafter *Coalition II*].

\(^0\) *Id.* Although *Coalition II* mainly involved the constitutionality of the initiative provision's technical requirements, it also shed some light on the court's interpretation of the scope of the provision. *Id.* at 372-74. *But see* Williams, *supra* note 9, at 1124 n.39.

\(^1\) *Coalition II*, 415 N.E.2d at 370.

\(^2\) *Id.* The change from multi-member to single-member districts had the effect of reducing the number of seats in the Illinois House of Representatives from 177 to 118. *Id.* at 371. For an explanation of cumulative voting, see *supra* note 41.

\(^3\) *Coalition II*, 415 N.E.2d at 369.

\(^4\) *Id.*

\(^5\) *Id.* at 374 (citing 2 RECORD OF PROCEEDINGS, SIXTH CONSTITUTIONAL CONVENTION 587 (1970)). The court noted the validity of consulting the convention debates, stating that "the practice of consulting the debates of the members of the convention which framed the constitution has long been indulged in by courts in determining the meaning of provisions which are thought to be doubtful." *Id.* at 375 (quoting *Coalition I*, 359 N.E.2d at 145).
blems involved in legislative reform. Noting that the delegates adopted the popular initiative provision as a check on legislators’ self-interest, the court stated that the provision should not be construed in a way that would “inhibit the rights which article XIV confers.” The court then explained that it would not construe article XIV, section 3 in a way that would eliminate the check on legislators’ self-interest that the provision’s drafters intended. Thus, the court held that the proposed amendment was within the intended scope of the initiative provision because it related “directly to the ultimate purpose of structural and procedural change in the House of Representatives.”

3. The Rise of the Substantive Changes Analysis

After Coalition II, subsequent attempts to amend the Illinois Constitution through the initiative process were unsuccessful. Even though the Illinois Supreme Court and one Illinois appellate court recognized the conjunctive “structural and procedural” test set forth in Coalition I, courts nevertheless began to apply a “substantive changes analysis” based upon Justice Schaefer’s dissenting opinion in Coalition I.

96. Id. at 374. Delegate Perona summarized the unique problems of legislative reform discussed by the court:

“This provision has been structured to apply only to the legislative article and to be limited to the area of government which it is most likely will not be changed in the constitution by amendment. The legislature, being composed of human beings, will be reluctant to change the provisions of the constitution that govern its structure and makeup, the number of its members, and those sort of provisions.

* * * * *

In other areas of the constitution I think it has been demonstrated that the General Assembly has and will submit changes without the concern of their vested interest in the situation.”

Id. (alteration in original) (quoting 4 PROCEEDINGS, supra note 40, at 2911).

97. Id. at 375. The court first noted that “‘[n]o right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live.’” Id. at 376 (quoting Wesberry v. Sanders, 376 U.S. 1, 17 (1964)). Then, the court asserted that “the rights of those who seek to exercise their constitutional privilege to initiate an amendment to that constitution are intertwined with the rights of those who vote thereon.” Id.

98. Id. at 375.

99. Id. at 382.


101. See CBA I, 561 N.E.2d at 56; Lousin, 438 N.E.2d at 1246.
In *Lousin v. State Board of Elections*, the Coalition for Political Honesty filed a popular initiative petition proposing an amendment to the legislative article to allow voters to introduce bills to the General Assembly by initiative. A group of citizens filed a complaint to enjoin the proponents of the amendment from expending public funds to prepare for an election on the proposed amendments.

Before addressing the specific proposed amendment, the appellate court recalled much of the *Coalition I* discussion regarding the convention debates, and emphasized that the convention declined to propose a general initiative that would have allowed amendments by initiative to any part of the constitution. Instead of allowing a general initiative, the court explained that the convention liberalized the other methods of constitutional revision. Additionally, the appellate court noted that the delegates were concerned that special interest groups could abuse a general initiative by seeking to write ordinary legislation into the constitution.

In addressing the Coalition's proposed amendment in *Lousin*, the appellate court purported to apply the conjunctive "structural and procedural" test set forth in *Coalition I*. The appellate court concluded that the proposed amendment was a substantive change affecting the legislative power enumerated in article IV, rather than any of the structural and procedural subjects contained in the legislative article. Because the amendment was to shift legislative power from the General Assembly to the voters, the court held that the proposed amendment was beyond the intended scope of the initiative provision. In so holding, the appellate court adopted the reasoning of Justice Schaefer's *Coalition I* dissent, which asserted that initiatives...
could not propose substantive changes to the legislative article. The appellate court, however, failed to address Justice Schaefer's disjunctive reading of the "structural and procedural" language in the initiative provision.

After the Lousin decision, the next opportunity for an Illinois court to consider the initiative provision came in Chicago Bar Association v. State Board of Elections ("CBA I"). The Illinois Supreme Court's decision in CBA I, however, failed to resolve the issue. In CBA I, the Tax Accountability Amendment Committee (the "TAAC") filed a petition with the Secretary of State proposing the Tax Accountability Amendment. The proposed amendment would require that three-fifths of the members in each house of the General Assembly approve any bill increasing the revenue of the state. The Chicago Bar Association (the "CBA") objected, and filed a complaint seeking to enjoin the spending of public funds to place the proposed amendment on the ballot. After the circuit court entered summary judgment for the TAAC, the CBA appealed directly to the Illinois Supreme Court.

The TAAC argued that the proposed amendment affected the structure of the legislature because the amendment required the General Assembly to maintain a revenue committee. Furthermore, the TAAC argued that the amendment's provision affected the procedures of the General Assembly. Nevertheless, the supreme court refused to address the conjunctive "structural and procedural" test set forth in Coalition I, stating that even if the TAAC was correct in asserting that the amendment affected both the structural and procedural subjects contained in the legislative article, it was not limited to those sub-

111. Id. (citing Coalition I, 359 N.E.2d at 148-49 (Schaefer, J., dissenting)). The appellate court quoted Justice Schaefer, who maintained that the "initiative process could not be used to alter or change the power of the legislature." Id. (citing Coalition I, 359 N.E.2d at 148-49 (Schaefer, J., dissenting)). Additionally, the appellate court recognized that the legislative article contains subjects that are neither structural nor procedural in nature. Id.

112. Id. See also Williams, supra note 9, at 1128-29 (discussing the Lousin court's interpretation of Coalition I, and noting that the appellate court treated Justice Schaefer's substantive changes analysis in his Coalition I dissent "as controlling").

113. 561 N.E.2d 50 (Ill. 1990). For an in-depth discussion of this case, see Williams, supra note 9, at 1129.

114. CBA I, 561 N.E.2d at 51.

115. Id. at 52.

116. Id. at 51.

117. Id. at 52.

118. Id. at 53.

119. Id. This argument centered on the provision in the amendment that the revenue committee may not vote upon a bill until after a public hearing. Id.
Instead, the court concluded that the proposed amendment contained substantive matters outside the legislative article. Thus, the supreme court held that the proposed amendment failed to meet the requirements of article XIV, section 3. By failing to apply the Coalition I court’s conjunctive “structural and procedural” test, and by opting instead for the substantive changes reasoning in Justice Schaefer’s Coalition I dissent, the CBA I court failed to clarify the standard that future non-substantive initiative proposals must meet in order to pass constitutional muster.

III. DISCUSSION

Prior to its decision in Chicago Bar Association v. Illinois State Board of Elections ("CBA II"), the Illinois Supreme Court, which narrowly interpreted the popular initiative provision, had provided little guidance as to what amendments were permissible under the “structural and procedural” guidelines. In CBA II, the court applied the “structural and procedural” language of article XIV, section 3 to a proposed term-limit amendment and concluded that the amendment was not a proper subject for the initiative provision.

120. Id. at 56. The court reiterated the holding in Lousin that the initiative provision may not effect substantive changes in the power of the legislature. Id. at 53 (citing Lousin, 438 N.E.2d at 1246). Furthermore, the court cited Justice Schaefer’s dissent in Coalition I for the proposition that the delegates limited the article XIV, § 3 initiative provision to prevent it from being used to achieve substantive legislation. Id. at 56 (citing Coalition I, 359 N.E.2d at 148 (Schaefer, J., dissenting)).

121. Id. at 56. The court stated:

Almost any substantive issue could be fit within the outlines of structural and procedural changes to subjects of the legislative article crafted by the TAAC. One need only provide in a proposed Amendment for the creation in each house of a special committee, provide for its membership, require notice and hearing on bills referred to the committee, and require a certain vote in each house for passage of such bills. This, according to the argument of the TAAC, would satisfy the structural and procedural requirements of section 3 of article XIV.

122. Id.

123. See supra notes 67-76 and accompanying text.

124. See supra notes 80-87 and accompanying text.

125. See Williams, supra note 9, at 1137.

126. 641 N.E.2d 525 (Ill. 1994) (per curiam) (4-3 decision); see supra note 5.

127. See supra notes 113-25 and accompanying text.

128. CBA II, 641 N.E.2d at 529.
A. The Facts and the Lower Court Opinion

In CBA II, two organizations, the Eight is Enough Committee and Term Limits Illinois (collectively referred to as "Proponents"), attempted to amend article IV of the Illinois Constitution. The Proponents circulated a petition pursuant to article XIV, section 3 of the Illinois Constitution. They accumulated 437,088 signatures, a number representing thirteen percent of those who voted in the preceding gubernatorial election of 1992, and therefore exceeded the eight-percent signature requirement in article XIV, section 3. The Proponents sought to amend article IV, subsections 2(a), 2(b), and 2(c) of the Illinois Constitution by imposing an eight-year limit on the total number of years a legislator could serve in the General Assembly. Within the required time limit, the Proponents filed a petition with the Secretary of State, who forwarded the petition to the

129. Id. at 526.
130. Id. at 527.
131. Id.
132. Id. at 528; see ILL. CONST. art. XIV, § 3. Article XIV, § 3 requires a petition to be signed by the number of electors equal to at least eight percent of the total votes cast for Governor in the preceding gubernatorial election. See supra notes 45-52 and accompanying text for further discussion of the provision's technical requirements. When the State Board of Elections conducted a sample check of the signatures on the petition, however, it projected that only 268,896 of the signatures were valid. Rick Pearson, Paid Petition Passers Sign on Just About Anywhere, CHI. TRIB., Oct. 17, 1994, § 1, at 1. The State Board of Elections attributed some of the invalid signatures to the efforts of paid petition passers hired by Term Limits Illinois to distribute the petition. Id. Although the Proponents still surpassed the threshold number of signatures required under article XIV, § 3, the significant number of invalid signatures demonstrates the difficulty in assessing the validity of initiative petitions.
133. ILL. CONST. art. IV, § 2(a)-(c).
134. CBA II, 641 N.E.2d at 527. The proposed amendment sought to add the following language to article IV, section 2:

(a) . . . For the exclusive purpose of calculating [length] of service under the tenure limitation contained in Section 2(c), a person who serves two years or less of a term of a Senator shall be deemed to have served two years and a person who serves more than two years of a four-year term of a Senator shall be deemed to have served four years.

(b) . . . For the exclusive purpose of calculating length of service under the tenure limitation contained in Section 2(c), a person who serves any part of a term of a Representative shall be deemed to have served two years.

(c) . . . No person shall be eligible to serve as a member of the General Assembly for more than eight years. No person who has served six years in the General Assembly shall be eligible to be elected to a four-year term as a Senator. This tenure limitation is not retroactive and shall not apply to service as a member of the General Assembly before the second Wednesday in January, 1995 . . .

Id. at 526-27.
135. See supra note 49 and accompanying text.
State Board of Elections (the "Board") for a determination as to its validity under the Election Code. The Board received no objections to the petition, and the sample verification revealed enough valid signatures so that the proposed amendment could be placed on the November 8, 1994 ballot.

Before the Board declared the petition officially valid, however, the CBA initiated two separate legal proceedings, alleging in both that the proposed amendment did not meet the requirements of article XIV, section 3. In the first proceeding, the CBA filed a taxpayers' action in the Cook County Circuit Court under the disbursement of public moneys statute, seeking a declaratory judgment and injunctive relief. In the second proceeding, the CBA brought an original action in the Illinois Supreme Court, seeking a writ of mandamus. In each action, the CBA named as defendants the Board, the State Comptroller, the State Treasurer, the Secretary of State, the Cook County Clerk, and the Chicago Board of Election Commissioners (collectively referred to as the "Officials").

In the taxpayers' action, the circuit court declared the proposed amendment invalid and permanently enjoined the expenditure of state funds for the amendment. Additionally, the circuit court entered an automatic notice of appeal. The trial court then transferred the

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136. *CBA II*, 641 N.E.2d at 527; see *Ill. Comp. Stat. Ann.* ch. 10, §§ 5/1-1 to 5/30-3 (West 1993 & Supp. 1995); *id.* § 5/28-11 (West 1993). Chapter 10 sets forth the procedures for determining the validity of petition signatures. *Id.* Under the statute, a signature is valid if the Board determines that "the person who signed the petition is a registered voter in that election jurisdiction or was a registered voter therein on the date the petition was signed." *Id.* If, for example, 437,000 signatures appeared, the Board would verify 10% of the signatures in this fashion. *See id.*

137. *CBA II*, 641 N.E.2d at 531 (Harrison, J., dissenting).

138. *Id.* (Harrison, J., dissenting).

139. *Ill. Comp. Stat. Ann.* ch. 735, §§ 5/11-301 to 5/11-303 (West 1992). The disbursement of public moneys statute confers standing upon any taxpaying citizen to bring an "action to restrain and enjoin" the spending of the State's public funds. *Id.* § 5/11-303; see also *CBA II*, 641 N.E.2d at 531-32 (Harrison, J., dissenting) (explaining that the proponents of the proposed term-limit amendment had standing to file suit in the circuit court to prevent the amendment from being placed on the ballot).

140. *CBA II*, 641 N.E.2d at 527.

141. *Id.* A writ of mandamus "issues from a court of superior jurisdiction, and is directed to ... an executive, administrative or judicial officer ... commanding the performance of a particular act therein specified ... ." *Black's Law Dictionary* 961 (6th ed. 1990).

142. *CBA II*, 641 N.E.2d at 527. The trial court allowed the proponents to intervene as defendants and respondents. *Id.*

143. *Id.*

144. *Id.* The trial court entered the notice of appeal pursuant to the supreme court's order. *Id.*
appeal directly to the Illinois Supreme Court and consolidated the pending mandamus proceeding with the appeal.\textsuperscript{145}

\textbf{B. The Illinois Supreme Court's Opinion}

Before discussing the substantive issues concerning the popular initiative, the supreme court dismissed the CBA's mandamus proceeding.\textsuperscript{146} The court reasoned that because a "writ of mandamus commands a public officer to perform an official, nondiscretionary duty that the petitioner is entitled to have performed," it provides affirmative, not prohibitory relief.\textsuperscript{147} Accordingly, because the CBA was seeking to prohibit the officials from placing the proposed amendment on the ballot, the court concluded that the only proper action was the taxpayers' action for injunctive relief.\textsuperscript{148}

In the taxpayers' action, the CBA argued that the proposed amendment fell outside the scope of article XIV, section 3 of the Illinois Constitution because it affected neither the General Assembly's structure nor its procedure.\textsuperscript{149} The supreme court agreed, essentially echoing its holding in \textit{Coalition I}.\textsuperscript{150} Reiterating that the word "and" in the "structural and procedural" requirement is interpreted in the con-
junctive sense, the court concluded that the word “and” limited initiatives to amendments whose subjects were both structural and procedural. The court reasoned that the delegates at the constitutional convention intended a narrow reading of the clause because of their concern that a broad initiative provision would be subject to abuse.

Applying its narrow construction to the amendment at issue, the supreme court concluded that the term-limit proposal did not meet the structural and procedural requirement of article XIV, section 3. The court first characterized the subject of the amendment—term limits—as affecting the eligibility or qualifications of the individual members of the General Assembly. The court then reasoned that eligibility and qualifications do not involve “the structure of the legislature as an institution” based on its view that the General Assembly’s organization would remain the same—a bicameral legislative body with a total of 177 members. Similarly, the court opined that the eligibility or qualifications of individual legislators does not involve the process by which the General Assembly adopts a law and thus does not affect the General Assembly’s procedures.

The supreme court next addressed the doctrine of stare decisis, stating that the doctrine “ensure[s] that the law will not merely change erratically, but will develop in a principled and intelligible fashion.” The court maintained that in order to preserve the integrity of the

151. CBA II, 641 N.E.2d at 528-29 (citing Coalition I, 359 N.E.2d at 144).
152. Id. at 528. The court echoed the concern of several delegates at the convention, that a broad, general initiative provision “would be subject to abuse by special interest groups and might result in hasty and ill-conceived attempts to write what should have been the subject of ordinary legislation into the Constitution.” Id. (quoting Coalition I, 359 N.E.2d at 145).
153. Id. at 529. In so concluding, the court maintained that the term-limit amendment would fail not only the strict conjunctive reading of article XIV, § 3, but the dissent’s disjunctive interpretation as well. Id.; see infra note 161 and accompanying text.
154. CBA II, 641 N.E.2d at 529. The court failed to elaborate as to how term limits would affect the eligibility and qualifications of state legislators. Clearly, however, under the proposed amendment, any person who served more than eight years in the General Assembly would be ineligible to serve another term. See also Schlam, supra note 67, at 67 (explaining that a term-limit amendment would affect the eligibility of legislators).
155. CBA II, 641 N.E.2d at 529.
156. Id.
157. Id. The court explained that, under the proposed amendment, “[t]he process by which the General Assembly adopts a law would remain unchanged.” Id.
158. Id. Furthermore, the court explained that: “Stare decisis permits society to presume that fundamental principles are established in the law rather than in the proclivities of individuals.” Id. “Stare decisis” is defined as “[t]o abide by, or adhere to, decided cases.” BLACK’S LAW DICTIONARY 1406 (6th ed. 1990).
constitutional system of government, it would depart from the doctrine of stare decisis only with special justification.\(^\text{159}\) According to the supreme court, the Proponents failed to present the requisite special justification needed to depart from the court’s holding in Coalition I.\(^\text{160}\) Thus, the court invalidated the proposed amendment, holding that the proposed term-limit amendment did not meet the structural and procedural requirement of article XIV, section 3.\(^\text{161}\)

C. Justice Harrison’s Dissenting Opinion

In his dissenting opinion, Justice Harrison\(^\text{162}\) maintained that the proposed amendment properly fell within the popular initiative provision of article XIV.\(^\text{163}\) Justice Harrison argued that the court incorrectly construed the word “and” in the “structural and procedural” provision.\(^\text{164}\) Relying upon principles of construction and English usage, as set forth in Justice Schaefer’s dissent in Coalition I, together with the published reports of the constitutional convention debates, Justice Harrison concluded that the proposed amendment need not deal with both procedural and structural subjects.\(^\text{165}\)

Furthermore, Justice Harrison emphasized that the main reason the delegates included the “structural and procedural” language in the popular initiative provision was “to prevent use of [the] initiative amendment to add substantive matter to the Constitution.”\(^\text{166}\) Justice

\(\text{159. CBA II, 641 N.E.2d at 529 (citing Arizona v. Rumsey, 467 U.S. 203, 212 (1984), where the court noted an example of a 'special justification' found in Swift v. Wickham, 382 U.S. 111, 116 (1965) (overruling an important procedural principle that was found to be unworkable in practice)).}\)

\(\text{160. Id. Recognizing that 'stare decisis is not an inexorable command ... a court will detour from the straight path of stare decisis only for articulable reasons, and only when the court must bring its decisions into agreement with experience and newly ascertained facts.' Id.}\)

\(\text{161. Id. The court explained that the holding in the case would not change because the proposed amendment failed both structural and procedural requirements, 'even if the word 'and' in the 'structural and procedural' language meant 'or.' Id.}\)

\(\text{162. Justices Miller and Heiple joined in Justice Harrison’s dissenting opinion. Id. at 534 (Harrison, J., dissenting).}\)

\(\text{163. Id. at 533 (Harrison, J., dissenting). Following Justice Schaefer’s dissent in Coalition I, Justice Harrison rejected the court’s interpretation as 'untenable.' Id. (Harrison, J., dissenting).}\)

\(\text{164. Id. (Harrison, J., dissenting).}\)

\(\text{165. Id. (Harrison, J., dissenting) (citing Coalition I, 359 N.E.2d at 148-49 (Schaefer, J., dissenting)); see supra notes 80-87 and accompanying text; infra note 169 and accompanying text.}\)

\(\text{166. CBA II, 641 N.E.2d at 533 (Harrison, J., dissenting) (quoting 6 PROCEEDINGS, supra note 12, at 1561). Justice Harrison pointed out that the court in CBA I recognized that 'the proposal and the debates reflected the intent that the limited initiative not be used to accomplish substantive changes in the constitution ...'. Id. (Harrison, J.,}\)
Harrison argued that the term-limit amendment did not propose a substantive change in the legislative article. Instead, he maintained that changes inherent in the term-limit proposal contemplated changes in the composition of the General Assembly. Justice Harrison noted that the delegates at the constitutional convention expressly mentioned the composition of the General Assembly as a "critical area" subject to amendment under the popular initiative provision.

Justice Harrison then addressed the CBA's argument that the Proponents had not limited the proposed term-limit amendment to the structural or procedural subjects within article XIV, section 3. Specifically, the CBA contended that the amendment was improper because it would impair rights created by other constitutional provisions outside the legislative article. Furthermore, the CBA argued that in narrowing the class of individuals eligible to run for the General Assembly, the term-limit amendment would impair the constitutional right to vote, the right to associate with others for political purposes, and a candidate's right to be named on the ballot.

Justice Harrison maintained, however, that these same rights would be involved in an amendment proposal to change the General Assembly from a bicameral to a unicameral legislature—an amendment the 1970 convention delegates believed would be proper under article XIV, section 3. Furthermore, Justice Harrison explained that al-

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167. Id. (Harrison, J., dissenting).

168. Id. (Harrison, J., dissenting). The provisions pertaining to the composition of the General Assembly are contained in the Illinois Constitution at article IV, § 2.

169. CBA II, 641 N.E.2d at 533-34. (Harrison, J., dissenting) (quoting 4 PROCEEDINGS, supra note 40, at 2712). As to the scope of legislative provisions contained within the initiative, the convention transcripts provide insight as to what the delegates intended:

MR. TOMEI: All right. And would the same be true for questions of election? And I amplify that by saying that you refer to structure, size, et cetera; and under the pertinent sections of this proposed article, the first grouping of them—power, structure, composition, and apportionment—you do deal with size and with elections. You deal with cumulative voting—matters of that nature—and is that the kind of thing, also, that would be subject to initiative under this proposed section . . . ?

MR. PERONA: Yes. Those are the critical areas, actually.

4 PROCEEDINGS, supra note 40, at 2712.

170. CBA II, 641 N.E.2d at 534 (Harrison, J., dissenting).

171. Id. (Harrison, J., dissenting).

172. Id. (Harrison, J., dissenting).

173. Id. at 533-34 (Harrison, J., dissenting) (citing 4 PROCEEDINGS, supra note 40, at 2711-12). Justice Harrison noted that the CBA conceded that the change from a bicameral to a unicameral legislature was a proper subject under the initiative provision.
though the CBA admitted that a proposed amendment to change the structure of the General Assembly from a bicameral to a unicameral legislature would be proper, the CBA failed to distinguish how the rights involved in that change would differ from the rights involved in the proposed term-limit amendment.\textsuperscript{174}

Finally, Justice Harrison stressed that almost every structural change to the legislature would have "at least some residual effects on the right of candidates to run for election and the right of voters to cast ballots for the candidates of their choice."\textsuperscript{175} Thus, Justice Harrison explained that under the court's conjunctive construction of the initiative provision, almost no proposed amendment could meet the "structural and procedural" requirement of article XIV, section 3.\textsuperscript{176} He stated that the court's opinion essentially strips the constitution of a check upon the General Assembly.\textsuperscript{177} Justice Harrison concluded that it is unlikely that the General Assembly would pass a term-limit amendment on its own, and thus without the initiative, Illinois will never be able to realize a term-limit amendment.\textsuperscript{178}

IV. ANALYSIS

In \textit{CBA II}, the supreme court reaffirmed its conjunctive interpretation of the "structural and procedural" requirement in article XIV, section 3 before holding that the proposed term-limit amendment did not meet this requirement.\textsuperscript{179} Moreover, even if a disjunctive reading of the "structural and procedural" requirement applied, the court determined that the proposed term-limit amendment would affect neither the

\textit{Id.} (Harrison, J., dissenting).

174. \textit{Id.} at 534 (Harrison, J., dissenting). Additionally, Justice Harrison stated that the CBA failed to distinguish the court's decision in \textit{Coalition II}. \textit{Id.} (Harrison, J., dissenting); see supra notes 89-99 and accompanying text.

175. \textit{CBA II}, 641 N.E.2d at 534 (Harrison, J., dissenting).

176. \textit{Id.} (Harrison, J., dissenting).

177. \textit{Id.} (Harrison, J., dissenting) (citing \textit{Coalition II}, 415 N.E.2d at 375).

178. \textit{Id.} (Harrison, J., dissenting). Specifically, Justice Harrison stated that regardless of the wisdom behind term limits, the popular initiative:

[R]eserved to the people of the state the right to advance this amendment and to vote on it once the technical requirements of the Election Code were satisfied, as they were here. While there may be legitimate legal defects in the proposed amendment, none have been advanced by the CBA in this case and none warrant the extraordinary measure of barring the matter from the November 8 ballot. Democracy should be permitted to takes its course, as the drafters of our constitution intended. To hold that the law mandates a contrary result is a fiction that venerates the power of our incumbent legislators and demeans the intelligence of their constituents.

\textit{Id.} (Harrison, J., dissenting).

179. \textit{Id.} at 529; see supra part II.B.1 and notes 146-152 and accompanying text.
structure nor the procedures of the General Assembly. Thus, the court would have reached the same conclusion regardless of how it interpreted the provision.

Although the court determined that the proposed term-limit amendment affected neither structure nor procedure, it failed to explain its reasoning. Furthermore, the court dismissed Justice Harrison's dissent, reasoning that his reliance on a dissenting opinion rendered his own reasoning invalid and was "not the law as declared by the court." This Part analyzes the problems in the court's CBA II decision, focusing on the court's interpretation of the intent behind article XIV, section 3 and the court's rejection of its prior implicit reliance upon the dissent in Coalition I.

A. Plain Meaning Overshadows Intent

In CBA II, the Illinois Supreme Court attempted to resolve the debate over the scope of the popular initiative simply by relying upon the plain language in the constitution. Despite the court's holding, the question remains as to whether the word "and" in "structural and procedural" must plainly be construed in the conjunctive sense. To answer in the affirmative, one must take the position that a disjunctive interpretation of the word "and" is "strained" or unlikely.

In previous decisions, the court has recognized that the true inquiry in construing a constitutional provision involves examining the intent of those who adopted the provision. Illinois courts frequently con-

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180. CBA II, 641 N.E.2d at 529; see supra notes 149-61 and accompanying text.
181. Justice Harrison's dissent relied in part upon Justice Schaefer's dissent in Coalition I. See supra notes 80-87 and accompanying text.
182. CBA II, 641 N.E.2d at 529.
183. Id.
184. Id. (alteration in original). Would anyone wishing "fairly and impartially" to ascertain the meaning of the word "and" in the phrase "structural and procedural" assign to it a disjunctive interpretation? Professor Schlam answers in the affirmative, noting that Justice Schaefer utilized a disjunctive interpretation in Coalition I. Id. at 61.
185. See People ex rel. Keenan v. McGuane, 150 N.E.2d 168, 172 (Ill.), cert. denied, 358 U.S. 829 (1958) (noting that the primary objective in the construction of a statute or constitution is to ascertain and give effect to the intent of the framers).
sult the debates of the members of constitutional conventions in determining the meaning of doubtful provisions. Nevertheless, in *CBA II*, the Illinois Supreme Court neglected to reconsider the meaning that the framers of the constitution may have intended in enacting article XIV, section 3. A careful reconsideration of the 1970 convention transcripts provides a powerful argument in favor of a less strict reading of the "structural and procedural" requirement in the initiative provision than the one that the court employed.

Illinois has never provided for a broad use of the initiative provision, and the record of convention debates clearly illustrates that the delegates intended a limited use of article XIV, section 3. For example, a majority of delegates on the Committee on Suffrage and Constitutional Amending at the 1970 constitutional convention voted against a general initiative for all parts of the constitution. Ultimately, the delegates instituted a limited initiative provision—a "safety mechanism" through which Illinois voters could amend the legislative article regardless of the actions of the General Assembly.

While discussing the proposed initiative clause, however, Delegate Perona, a member of the Committee on Suffrage and Constitutional Amending, observed that the initiative would allow voters to address issues which the General Assembly would be least likely to address because of its vested interest in its own makeup. The delegates

186. See, e.g., *id.; see also Coalition I*, 359 N.E.2d at 144-45 (explaining the need to examine the framer's intent in interpreting ambiguous terms).

187. The court failed to cite any language from the debates on the popular initiative provision at the 1970 convention. Instead, the court relied upon its interpretation of the framer's intent set forth in *Coalition I*. *CBA II*, 641 N.E.2d at 528 (citing *Coalition I*, 359 N.E.2d at 145); see supra notes 73-76 and accompanying text (discussing the *Coalition I* court's examination of the convention debates on the meaning of the "structure and procedural" provision).

188. The debates indicate that the delegates were less concerned that the initiative provision be drafted in the conjunctive sense, and more concerned that the provision should "prevent [the] use of [the] initiative amendment to add substantive matter to the Constitution." *Id.* at 533 (quoting 6 PROCEEDINGS, *supra* note 12, at 1561).

189. 4 PROCEEDINGS, *supra* note 40, at 2710-11. The delegates discussed the problems inherent in the initiative method of constitutional amendment. *Id.* For example, Delegate Pappas expressed her concern that the popular initiative would become a method the citizens would use to circumvent the General Assembly, "the very body that has been elected and constituted to act on ... matters of public policy." *Id.* at 2710.

190. 7 PROCEEDINGS, *supra* note 107, at 2298.


192. *Id.*

193. 4 PROCEEDINGS, *supra* note 40, at 2710. In explaining why the Committee on Suffrage and Constitutional Amending provided for a limited popular initiative, Delegate
indicated that an initiative provision limited to the legislative article would prevent the use of the provision by special interest groups to pass legislation which should occur through the use of statutes. Therefore, rather than emphasizing that proposed amendments would be limited to structural and procedural subjects in the legislative article, the delegates wanted to prevent the initiative provision from providing a method for implementing substantive policy.

The delegates' reasoning for limiting the initiative to "structural and procedural" subjects in the legislative article—to prohibit substantive changes in the constitution—suggests that any amendment proposing a change in the legislative article, but not involving an issue of substantive law, should be within the scope of article XIV, section 3. Nevertheless, in adopting a strict conjunctive interpretation of the "structural and procedural" requirement, the supreme court in CBA II ignored the delegates refusal to revise the initiative provision to reflect explicitly a conjunctive interpretation. Accordingly, the court's requirement that the proposed amendment affect both structural and procedural aspects of the General Assembly restricts the use of the popular initiative beyond the intent of the convention delegates. A less

Perona explained that "it's unlikely that the legislature would propose an amendment reducing the number of legislators or in changing from cumulative voting ... to single-member districts." Id.

194. See id. at 2711. Delegate Perona commented: "If you get too specific with the limitation, you inhibit the possibility of change within the legislative setup; and if you leave it broad, of course, they say, 'Well, you might be able to bring in something else under it.'" Id.

195. 6 PROCEEDINGS, supra note 12, at 1400. The Committee on Suffrage and Constitutional Amending proposal for what would ultimately become article XIV, § 3 explained that any amendment proposed under the initiative provision "would be required to be limited to subjects contained in the Legislative Article, namely matters of structure and procedure and not matters of substantive policy." Id.

196. See Allen, supra note 191, at 131. As an example of an impermissible substantive change, Allen mentions "[a]n amendment of the constitutional provision concerning special legislation." Id. at 131 n.59 (citing ILL. CONST. art. 4, § 13).

197. See Coalition I, 359 N.E.2d at 149 (Schaefer, J., dissenting) (citing 5 PROCEEDINGS, supra note 76, at 4547). Specifically, the delegates failed to adopt language that would have changed the initiative provision to read, "'Amendments proposed by petition shall be limited to the structure of the General Assembly and to procedural provisions affected by changes in structure.'" Id. (quoting 6 PROCEEDINGS, supra note 12, at 1561). But cf. Schlam, supra note 67, at 61-62 n.249 (maintaining that legislative intent should not be inferred from the rejection of a "proposed amendment to a pending bill"). Justice Schaefer, in rejecting the court's conjunctive reading, "said that he could 'not find anything in the proceedings ... [of the] convention which suggests that no change in any of the numerous procedural provisions of article IV can be brought about by initiative unless the same amendment brings about a change in the structure of the legislative body.'" Id. at 63 n.256 (quoting Coalition I, 359 N.E.2d at 148 (Schaefer, J., dissenting)).
strict approach, focusing on whether the proposed amendment involves an issue of substantive law, would be consistent with the delegates’ intent, and would continue to prevent substantive changes to the constitution that the delegates feared.\(^{199}\)

**B. Previous Adoption of the Coalition I Dissent**

Although the Illinois Supreme Court has previously relied on the *Coalition I* dissent when interpreting the initiative provision,\(^{200}\) in *CBA II* the court rejected Justice Harrison’s dissent *because* it relied on the *Coalition I* dissent.\(^{201}\) Had the court continued down the path of its earlier decisions, it too would have applied the substantive changes test set forth in Justice Schaefer’s *Coalition I* dissent.\(^{202}\) Instead, the court stated that stare decisis dictated the application of the court’s decision in *Coalition I*, barring special justification to the contrary.\(^{203}\)

In *Coalition I*, the court established a strict conjunctive test for determining the constitutionality of proposed amendments.\(^{204}\) Subsequently, in *Lousin*, an Illinois appellate court, while purporting to apply the *Coalition I* test, essentially applied the substantive changes

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199. See *Schlam*, *supra* note 67, at 67-68. *CBA I* provides an example of how focusing on whether an amendment changes substantive law prevents legislation by initiative. Here, the court held a proposed amendment to the legislative article to be unconstitutional. *CBA I*, 561 N.E.2d at 56. The court did so, not because the proposal failed the “structural and procedural” requirement, but because it attempted substantive changes to the legislative article. *Id.*; *see supra* notes 113-25 and accompanying text.
200. *See supra* notes 120-25 and accompanying text.
201. *CBA II*, 641 N.E.2d at 529. In rejecting Justice Harrison’s dissent, the court stated that “fundamentally, the dissent relies upon a dissent and not the law as declared by this court.” *Id.*
202. In discussing whether a proposed term-limit amendment would satisfy article XIV, § 3, *Schlam* analyzed a term-limit amendment using both the strict conjunctive test and the substantive changes test, stating:

This sort of amendment would impact the eligibility of legislators, the manner and method of their selection, and certainly matters of seniority and administrative organization. Term limits would be a change not likely to be initiated by the legislature and would not be a substantive matter, i.e., one seeking modification of substantive law or constitutional policy. . . . The amendment would probably satisfy the current conjunctive test by meeting the structural change requirement “and, of necessity, [incidentally affecting] the procedure of the General Assembly,” i.e., there most likely would be “structural” changes and “procedural provisions affected by changes in the structure.”

*Schlam*, *supra* note 67, at 67 (citations omitted).
203. *CBA II*, 641 N.E.2d at 529. According to the supreme court, the Proponents had not advanced the special justification necessary to overcome the doctrine of stare decisis. *Id.*
204. *Coalition I*, 359 N.E.2d at 147; *see supra* notes 57-79 and accompanying text.
test set forth in Justice Schaefer's *Coalition I* dissent.\textsuperscript{205} Then, in *CBA I*, the Illinois Supreme Court implicitly adopted Justice Schaefer's *Coalition I* dissent by relying on the Illinois appellate court's *Lousin* decision.\textsuperscript{206} Thus, before the supreme court's decision in *CBA II*, it appeared that the substantive changes test would apply in interpreting the initiative provision in article XIV, section 3.\textsuperscript{207}

Instead, the court based its decision in *CBA II* entirely upon the strict conjunctive test set forth in *Coalition I*,\textsuperscript{208} failing to address its previous reliance upon Justice Schaefer's dissent.\textsuperscript{209} Thus, the court bypassed all discussion of the substantive changes test\textsuperscript{210} under which the term-limits proposal certainly would have been constitutional.\textsuperscript{211}

\textbf{C. Questionable Application of the Conjunctive Test}

Even if the *CBA II* court was correct in relying upon *Coalition I*, the court's application of the strict conjunctive test is questionable. The supreme court concluded that the term-limit amendment did not meet either the structural aspect or the procedural aspect of the requirement of article XIV, section 3.\textsuperscript{212} This conclusion is questionable because

\textsuperscript{205} *Lousin*, 438 N.E.2d at 1246. The appellate court agreed with Justice Schaefer's contention in *Coalition I* that some possible changes to the legislative article would affect neither the structure nor the procedures of the General Assembly, and would instead involve changes to legislative powers. \textit{Id.} Schaefer argued, and the *Lousin* court agreed, that the "structural and procedural" requirement of article XIV, § 3, was adopted to prevent substantive changes to the legislative power. \textit{Id.} Thus, under Justice Schaefer's reasoning, a term-limit amendment would pass constitutional muster because, although it may affect the eligibility of members of the General Assembly, it clearly does not involve legislative powers.

\textsuperscript{206} *CBA I*, 561 N.E.2d at 55-56. The court failed to address the structural and procedural effects that the proposed Tax Accountability Amendment would have upon the legislative article, leaving in question the continuing weight of the prior strict conjunctive standard. \textit{Id.; see supra} notes 113-25 and accompanying text.

\textsuperscript{207} See *Williams*, supra note 9, at 1135.

\textsuperscript{208} *CBA II*, 641 N.E.2d at 529.

\textsuperscript{209} See supra note 206 and accompanying text.

\textsuperscript{210} Justice Harrison's dissent applied Justice Schaefer's substantive changes test, following the court's interpretation of the initiative provision prior to *CBA II*. *CBA II*, 641 N.E.2d at 533 (Harrison, J., dissenting). Justice Harrison concluded that because the term-limit proposal related directly to the composition of the General Assembly, a "critical area" subject to the initiative process, it should have been allowed on the ballot. \textit{Id.} at 533-34 (Harrison, J., dissenting) (citing 4 PROCEEDINGS, supra note 40, at 2712).

\textsuperscript{211} See supra note 197. Although term limits may impact "the eligibility of legislators, the manner and method of their selection, and . . . matters of seniority and administrative organization," they would not involve changes in "substantive law or constitutional policy." *Schlam*, supra note 67, at 67.

\textsuperscript{212} *CBA II*, 641 N.E.2d at 529. The court adhered to the conjunctive interpretation of the initiative provision set forth in *Coalition I*, but it maintained that even under a
the term-limit amendment would affect the composition of the General Assembly.

Therefore, the term-limit amendment would satisfy the conjunctive test by meeting the structural change requirement "and, of necessity, [incidentally affecting] the procedure of the General Assembly." For instance, the changes in the seniority system necessitated by the term-limit amendment would affect the structure of the General Assembly and would require changes in the procedures used to select members of legislative committees. Nevertheless, the court refused to consider the structural and procedural changes necessitated by the term-limit proposal, instead stating that the "General Assembly would remain a bicameral legislature consisting of a House and Senate with a total of 177 members, and would maintain the same organization." Thus, the court declared the term-limit proposal unconstitutional without adequately explaining its refusal to apply the substantive changes test.

V. IMPACT

After the Illinois Supreme Court's decision in CBA II, a proposed constitutional amendment must explicitly affect both structural and procedural subjects contained in the legislative article before an amendment will appear on the general election ballot. The "structural and procedural" phrase in article XIV, section 3, however, should not require the application of a strict conjunctive interpretation. The drafters intended to limit the use of the initiative to constitutional rather than statutory changes, and the use of the phrase "structural and procedural" attempts to express the drafters' intent to limit the use of the provision to amendments of the legislative article not affecting substantive law. The transcripts from the 1970 constitutional convention contain a few specific references to permissible subjects under the initiative provision, some of which do not pertain to both structure and disjunctive interpretation of the provision, the term-limit amendment was unconstitutional. Id.; see supra note 161.

213. CBA II, 641 N.E.2d at 533 (Harrison, J., dissenting).

214. Schlam, supra note 67, at 67 (alteration in original) (quoting Lousin, 438 N.E.2d at 1251).

215. Id. Writing before the court's decision in CBA II, Professor Schlam predicted that a term-limit amendment would pass constitutional muster, because "'basic qualities' of the legislature would be impacted and no substantive matters are involved . . . ." Id.

216. CBA II, 641 N.E.2d at 529.

217. Id.

218. The substantive changes interpretation is more faithful to the drafters' purpose than the court's narrow reading of the word "and" in the phrase "structural and procedural." See supra notes 185-99 and accompanying text.

219. CBA II, 641 N.E.2d at 533 (Harrison, J., dissenting).
and procedure. For example, reducing the size of the General Assembly, a change the delegates mentioned as permissible under article XIV, section 3, would alter the composition or structure without substantially affecting the procedural provisions in the legislative article. Thus, the drafters of article XIV, section 3 could not have intended the "structural and procedural" language to require a conjunctive reading, because the delegates' relatively short list of permissible subjects under the popular initiative provision contained subjects that would not pass the Illinois Supreme Court's conjunctive test.

The supreme court should have continued in the direction of its prior decision and applied a substantive changes test in interpreting the initiative provision at issue in CBA II. Instead, the court read the provision narrowly, and, consequently, future proposals will have difficulty reaching the ballot. Because the court ignored the drafters' reasons for including the popular initiative provision in the constitution, the supreme court virtually assured that Illinois will never realize term limits, since it is the type of amendment that the General Assembly would be reluctant to implement on its own accord. Furthermore, unless a future proposed amendment is an issue specifically mentioned in the convention debates, the amendment stands virtually

220. The delegates mentioned the following subjects: a reduction in the size of the General Assembly and the change from multi-member to single-member districts, 4 PROCEEDINGS, supra note 40, at 2710; a change from a bicameral to a unicameral General Assembly, id. at 2712; and changes in elections, id.; see also Allen, supra note 191, at 132 (explaining that the delegates listed structure and procedure as "alternative amendable subjects, together with size and other 'basic qualities' of the General Assembly").

221. Nevertheless, a change in the size of the legislature may in fact affect the structure of the General Assembly, while at the same time "[incidentally affecting] the procedure of the General Assembly." Schlam, supra note 67, at 67 (citing Lousin, 438 N.E.2d at 1251). Similarly, a term-limit amendment would pass the conjunctive test because it would cause changes in "seniority and administrative organization" affecting the structure of the General Assembly, and incidentally, the procedures as well. Id.

222. See supra note 169. The court in CBA II failed to explain how a reduction in the size of the General Assembly—a change specifically mentioned by the 1970 convention delegates as permissible under the initiative provision—would pass a conjunctive reading of the provision. See CBA II, 641 N.E.2d at 524 (Harrison, J., dissenting).

223. See supra notes 121-25.

224. The court's conjunctive interpretation of article XIV, § 3 would appear to limit the scope of permissible amendments to those subjects specifically mentioned by the delegates at the convention. See supra note 220 and accompanying text.

225. Schlam, supra note 67, at 67. Professor Schlam noted: "[R]egardless of whether proposed amendments continue to need to directly impact procedural as well as structural subjects in Article IV, legislative term limits would seem to be precisely the kind of proposal suitable for popular initiative under Article XIV." Id.

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no chance of reaching the ballot.\textsuperscript{226}

VI. CONCLUSION

In Chicago Bar Association v. Illinois State Board of Elections, the Illinois Supreme Court ignored both its earlier decision in CBA I and the intent of the framers of the Illinois Constitution in strictly construing the popular initiative provision set forth in article XIV, section 3. The court held that the proposed term-limit amendment was unconstitutional because it failed to affect both the structural and procedural requirements contained in the legislative article.\textsuperscript{227} Thus, Illinois is virtually assured that a term-limit amendment pertaining to state legislators will never become a reality in the state.\textsuperscript{228} In the process, the popular initiative provision may have been weakened, as future proposals will be hard-pressed to meet the conjunctive structural and procedural requirement imposed by the Illinois Supreme Court.

STUART K. HOLCOMB III

\textsuperscript{226} See Allen, supra note 191, at 133. In discussing the court’s interpretation of the popular initiative provision in Coalition I, Allen noted that the court’s conjunctive reading prevented most proposed amendments from satisfying the “structural and procedural” requirement in article XIV, § 3. The court’s conjunctive reading in CBA II will likewise severely limit the utility of the initiative provision because the delegates at the 1970 constitutional convention set forth only a few types of amendments specifically permissible under the provision. See supra note 220 and accompanying text.

\textsuperscript{227} CBA II, 641 N.E.2d at 529.

\textsuperscript{228} Id. at 534 (Harrison, J., dissenting).