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The Supreme Court's Veto Power: The Council of Revision

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Under the first Illinois Constitution, the Council of Revision was a constitutionally created body consisting of the Illinois governor and the four members of the Supreme Court of Illinois. Its purpose was to approve or reject legislation passed by the Illinois General Assembly. The governor did not have sole veto power but shared that function with the members of the Court. When the Supreme Court expanded from four to nine members after the 1841 judiciary act, the Council of Revision increased to ten members. Illinois adopted this practice from New York, the only other state to provide veto power to two government branches jointly.

After the Illinois state legislature passed a bill, the Council of Revision reviewed the bill. If the Council took no action in ten days, the bill became law. If the Council vetoed it, the bill returned to the originating legislative body with the Council's reasons and suggestions. Both houses in the legislature needed a simple majority vote to overturn the veto.

In a 1916 study of the governor's veto power by Neils H. Debel, the Illinois legislature passed 3,158 bills from 1818 to 1848, and the Council of Revision vetoed 104 (a little more than 3%). Debel noted that the 104 vetoes fell into three distinct categories: constitutional grounds, policy/expediency grounds, and defective bills. The legislature overturned only 11 of the 104 bills over the Council's veto. In the great majority of the remaining 93 bills vetoed, the legislature amended the bill or refiled the bill according to the Council's recommendations.

One example concerned a bill passed in 1835 providing for the election of recorders and surveyors. Under the bill, it was possible that two people could be elected for the same position, and the bill provided no remedy for contested elections. The Council vetoed the bill due to these deficiencies, and the legislature passed another bill correcting the mistakes.

The most significant bill vetoed by the Council was the 1841 judiciary act, which expanded the Supreme Court from four to nine members and returned circuit duties to the justices. The Council vetoed the bill because it would overburden the Supreme Court. The legislature overturned the Council's veto.

Several books on the history of Illinois note the lack of constitutional issues coming before the Illinois Supreme Court during the period of the first Constitution, highlighting the lack of judicial experience, the Court as a political stepping stone, and the subservient role of the judicial branch during that time. Lacking in this assessment, however, is the Supreme Court's role in reviewing and revising legislation immediately after passage--before an issue reached the court system. One example was an 1823 bill establishing courts of probate. The bill called for elections for probate judges at each session of the legislature. The Council rejected the bill because the Illinois Constitution stipulated judges of lower courts hold their offices during good behavior. The Council's ability to offer suggestions to revise the bill before becoming law prevented potential lawsuits.

The Supreme Court served many roles during the formative years of the state—not only as the state's highest court, but also holding circuit court in each of the counties, and reviewing legislation. The steady increase of cases before the Supreme Court and the burden of many responsibilities caused a change in the 1848 Constitution, stripping from the Court circuit riding duties and Council of Revision duties. The new 1848 Constitution eliminated the Council of Revision. The new constitution, and subsequent 1870 and 1970 Constitutions, gave the power of the veto solely to the governor.