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Quinn's proposed ban raises questions

Law professors say governor may overreach with amendatory veto

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SPRINGFIELD — Even if Gov. Patrick J. Quinn's proposed statewide assault weapons ban wins approval from the Illinois General Assembly, it could later face legal challenges over the way he introduced the legislation.

Quinn used an amendatory veto Tuesday to alter Senate Bill 681, a measure that sought to allow state residents to buy ammunition from Illinois companies via mail.

The bill now returns to the legislature for approval with entirely new language that would ban a long list of weapons and ammunition.

At a press conference, Quinn defended his use of the amendatory veto, noting the Illinois Supreme Court frequently issued rulings upholding the power.

He said the court made it clear the constitution authorizes him to change bills passed by the legislature.

"I think it's important that we use that right in a proper way to protect the public safety," he said.

The state constitution says that the governor "may return a bill together with specific recommendations for change to the house in which it originated."

But Dawn Clark Netsch, a professor emerita at Northwestern University School of Law, said Quinn overstepped

the intended use of the power.

Netsch, a delegate to the 1970 Illinois Constitutional Convention, proposed the idea of the amendatory veto.

She said she saw other states effectively implement it, but hoped it would be used to make simpler, technical changes to bills.

"It certainly was not intended to allow a governor to sit back and not participate and then rewrite a piece of legislation," she said, "particularly if the amendatory part was not consistent and not an extension of the basic theme of the legislation."

Though Netsch said she approves of an assault weapons ban, Quinn's action "pushes the edge" of the amendatory veto. Many other governors, however, also used the power before Quinn did, she said.

"It still is a good idea, a useful tool," she said, "but it has been enormously overextended by a number of the governors."

The Supreme Court issued rulings involving the amendatory veto on multiple occasions, but did not determine its exact extent.

In *People ex rel. Klinger v. Howlett*, 50 Ill.2d 242 (1972), the court said the "imprecise text" of the constitution made it difficult to outline the power, but found it could not be used for "the substitution of complete new bills."

In 1974, voters narrowly rejected a proposed constitutional amendment that sought to limit the amendatory veto power. A high court ruling in *Continental Illinois National Bank v. Zagel*, 78 Ill.2d 387 (1979), indicated the ballot result showed that voters wanted the governor's power to extend beyond mere proof-reading changes.



Patrick J. Quinn

A year later, though, in *People ex rel. City of Canton v. Crouch*, 79 Ill.2d 356 (1980), the court said the governor couldn't "change the fundamental purpose" of legislation. It also said, though, that judging the difference between small and major alterations "becomes a question of guided discretion."

Quinn contended the plan passes constitutional muster, as it relates to the same topic as the legislation that lawmakers sent to him.

"The bill deals with ammunition, this bill has been changed to deal with an ammunition issue," Quinn said. "I think it's germane. I think any person looking at it would consider it germane."

Ann M. Lousin, a professor at The John Marshall Law School who teaches state constitutional law, said Quinn potentially doomed the proposal by changing the bill so significantly.

Quinn's revision replaces all of the original language, which Lousin said courts could view as the substitution of a new bill.

"Because he struck everything



Dawn Clark Netsch

after the enacting clause, in all probability this would not succeed as an amendatory veto — if it ever gets into court," she said.

But the chances of the proposal making it to that point appear slim, Lousin said, even though it needs only a simple majority vote from lawmakers for approval.

Legislative committees could block it from reaching the floor, she said, labeling it an inappropriate use of the amendatory veto.

Cook County's own assault weapons ban, enacted in 1993 and updated in 2006, continues to face legal challenges. Earlier this year, the high court allowed a lawsuit alleging the ban violates the Second Amendment to proceed.

A spokesman for Cook County Board President Toni Preckwinkle said "the language is similar" in Quinn's bill and the local ban.

The office continues to review how a statewide ban would affect Cook County's policy, he said.