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ALASKA COMMON GROUND
P.O. Box 241672
Anchorage, Alaska, 99524-1672

November 5, 1993

Constitutional Revision Task Force
Legislative Affairs Office, Anchorage
ATTN: Honorable Gail Philips, Chair

RE: For the record on the Committee's hearing of November 17. 1993

Dear Representative Philips,

I enclose a copy of a resolution developed by the Committee on the Alaska Constitution and subsequently adopted by the Board of Directors of Alaska Common Ground. I hope it is of assistance to the Task Force. If there is any other advice that the Task Force is seeking from the public on this or related topics that we have not addressed, please let me know.

Common Ground is an open membership, citizens group, now numbering about 200, whose purpose is to provide a forum for Alaskans from all parts of the state and walks of life to participate in gathering facts and in debate on the larger, long term, public policy issues facing the state and to highlight areas of general agreement. It takes positions only on matters where there is a broad sharing of a consensus.

It might be of assistance if I explained some of the background thinking of the Common Ground groups that considered this question. In general, we are sympathetic with the idea that participation of the average citizen in law making, including even changes in the constitution, could be improved. We like the idea of a Constitutional Review Commission under consideration by the Task Force because it does that.

Under this proposal, <u>any</u> Alaska citizen can go before the Review Commission and put forward a petition proposing a change in the Constitution which must then get some consideration by a body having considerable prestige and power. The

citizen does not have to have the free time to round up hundreds or thousands of signatures to get consideration. The petitioner does not have to have money to pay signature gatherers, or to advertize or campaign or organize an interest group. There is no advantage to being rich or well connected or being able to afford lawyers. This is a door for recommending change that is the same door for all. Of course, the commission is not going to give a lot of consideration to frivolous or poorly thought out proposals, but some consideration must be given and some response made to any proposal.

The creation of a new avenue for public participation is commended. On the other hand, to expand the existing initiative process to cover constitutional amendments fundamentally misunderstands the purpose of constitutions which is to promote limited government under law. Constitutions are political contracts constituted among people for the purpose of promoting the common welfare while protecting individual rights and avoiding tyrannies of the one, or of the several, or of the majority.

For example, the Constitution of the United States was, on its own terms, not effective without the endorsement of nine of the twelve state then participating. It had also to be approved by the Congress and the approval of states was to be also through separate conventions. Thus majorities of quite different regional and political constiuencies, in aggregate a supermajority constrained also by the deliberative process, had to be obtained to bring the new constitution into being. It was envisioned that the Constitution of the United States was to be broadly approved and not a document forced on minorities by a bare majority. We should expect no less of our state constitution.

The present Alaskan initiative process, if expanded to allow changes in the Constitution, could create fundamental law without a deliberative process, without a process of compromise and adjustment, without attention to style and drafting, potentially using misleading or confusing language, with no regard for minority rights, by the acts of a small interest group paying signature gatherers and financing a one sided campaign. We live in a Republic, a representative democracy. Such a proposal is, in principle, incompatible with this form of government.

I will try to be available to the hearing on the 17th if you have further questions about how we determined the particulars of this proposal.

Sincerely,

John Havelock
Vice-Chair, Alaska Common Cause

ALASKA COMMON GROUND

RESOLUTION OF THE BOARD RELATING TO AN AMENDMENT TO THE CONSTITUTION OF ALASKA REGARDING THE AMENDMENT PROCESS
(As submitted by the Committee on the Alaska Constitution)

WHEREAS, the existing methods of amending the Alaska Constitution do not allow for the possibility that a sitting legislature may have a conflict of interest in considering amendments that effect members personally; and

WHEREAS, the public is frustrated by its perception that proposals for constitutional amendment (as well as legislative proposals) are lost in the legislative process without explanation; and

WHEREAS, certain articles of the Constitution, such as the apportionment articles are clearly obsolete but are not fixed as a consequence of legislative deadlock, and

WHEREAS, proposals for the more effective engagement of the citizen in political processes are to be encouraged,

THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF ALASKA COMMON GROUND:

1. Common Ground supports the concept of establishing, by constitutional amendment, a Constitutional Review Commission (CRC) constituted and with functions generally as described in this Resolution. Specifics such as size, qualifications, terms, etc. are suggestive only and changes in such specifics do not necessarily mean that Common Ground's support for the concept is withdrawn.

2. The Commission should consist of seven members, one appointed by the Speaker of the House, one by the President of the Senate, two by the governor, two by the Chief Justice and one selected by these appointees. No appointee, during the term of service, should be serving in any other branch of government.

3. The CRC should be empowered and funded and directed to hold hearings around the state each year to receive testimony in favor of any constitutional amendment proposed by any citizen. The commission may generate its own amendments and rewrite for its own consideration a proposal received from any citizen and shall

consider proposals recommended to it for consideration by any legislator or legislative committee.

4. Within ten days of the commencement of each legislative session, the commission shall file a report of its activities. It shall include in its report proposals (1) which it recommends for further study, (2) proposals which it does not recommend for any purpose, (3) proposals which it commends to the legislature for adoption and (4) proposals which are submitted to the legislature for adoption under constitutional authority which shall be submitted by unanimous vote, stating briefly the reason for its decision in each case.

5. A proposal stated to be submitted under constitutional authority shall lie before the legislature for one full session beyond the session submitted. At the close of that session, the CRC shall then consider the reasons for the legislature's action or inaction and may, by unanimous vote, notify the Lieutenant Governor (but is not required to) that the proposition shall be placed on the ballot at the next general election.

6. Common Ground is opposed to any proposal to amend the constitution directly by initiative as the initiative process is currently constituted.

ADOPTED BY THE BOARD OF DIRECTORS THIS 3d DAY OF NOVEMBER, 1993

/s/ Esther Wunnicke
President

Attest: /s/ Tim Bradner
Secretary

PROPOSED AMENDMENTS

TO THE

ALASKA CONSTITUTION

1960 - 1993

Prepared by Deborah L. Davidson
Legislative Analyst
October 1993
Research Request 94.040

STATE CONSTITUTIONS AND CONSTIUTIONAL REVISION: 1986-87

By Albert L. Sturm and Janice C. May

GENERAL OVERVIEW: USE OF AUTHORIZED METHODS

State constitutional change proceeded at a modest pace in 1986-87. As table A indicates 275 constitutional propositions were submitted to the voters in 47 states; 204 were approved, including two adopted in Delaware by legislative action only. These totals represent an increase over the preceding biennium, but fall short of those proposed or adopted during the first half of the 1980s. However, as Table B shows, the number of statewide propositions proposed or adopted in 1986-87 was second only to the 1980-81 figures. Also, the approval rate for propositions in 1986-87 was the highest.

No new state constitutions were adopted or became effective during the biennium, but Rhode Island's 12th constitutional convention, which was in session throughout 1986, submitted an editorial revision without substantive change as well as 13 other ballot questions that called for substantial revision. The "rewrite" and seven of the other questions were approved.

Tables 1.2, 1.3 and 1.4 summarize the procedures associated with three methods used in 1986-87 to initiate constitutional change: proposal by the state legislature, available in all states; the constitutional initiative, authorized in 17 state constitutions; and the constitutional convention, available in all states (although not expressly authorized in nine state constitutions). A fourth method to initiate and submit proposed constitutional changes to the electorate, the constitutional commission (expressly authorized only in the Florida constitution) was not used in 1986-87, nor in any of the bienniums shown in Table A.

Legislative proposal, constitutional initiative

Legislative proposal, the most commonly used procedure for initiating constitutional change, accounted for 88 percent of the 275 proposed changes submitted to the voters in 1986-87. The adoption rate of legislative proposals, which historically has been much higher than that of other methods, reached the highest rate of the decade 77.7 percent.

As Table 1.3 indicates, 17 states adopted the constitutional initiative, appropriate only for making limited constitutional change. During 1986-87, the method accounted for 18 proposed constitutional amendments in nine states. Two other proposals, including one which would have allowed capital punishment, were removed from the ballot by the Michigan Supreme Court. Five of the constitutional initiatives were adopted, for a modest approval rate of 27.7 percent, well below half that for legislative submissions. The number of constitutional initiatives proposed and adopted in the nine states during the biennium were as follows: Arizona (1-0), Arkansas (3-1), California (2-1), Colorado (1-0), Florida (2-1), Montana (2-1), North Dakota (1-0), Ohio (1-0) and Oregon (5-1).

Constitutions conventions

The constitutional convention is the oldest, best known, and most traditional method to revise extensively an old constitution or write a new one. Through 1987, more than 230 state constitutional assemblies have convened. This method is usually initiated by the state legislature after the voters approve a convention call. An increasing number of state constitutions require asking voters periodically if a constitutional convention should be called. As Table 1.4 shows, 14 state constitutions contain such a provision: eight states provide for submission of the convention question to the voters every 20 years; one state, every 16 years; four states, every 10 years; and one, every nine years. During the biennium, mandatory periodic convention calls were placed on the ballot in November 1986 in Connecticut and Hawaii. Both were defeated, by a vote of 207,704 for and 379,812 against in Connecticut and 139,236 for and 173,977 against in Hawaii.

Only one state constitutional convention was operative during 1986-87 — Rhode Island's 12th constitutional convention. As reported in the last volume of *The Book of the States*, Rhode Island voters approved the convention call on Nov. 6, 1984 by a vote of 155,337 to 131,648. The enabling act, which was approved by the Rhode Island General Assembly on June 19, 1985, provided for an unlimited constitutional convention with 100 delegates to be elected on a non-partisan basis, one from each lower house district, on Nov. 5, 1985. The Rhode Island General Assembly appropriated initially $50,000 and later added $335,965 to provide for convention expenses. Actual convention expenditures totaled $333,622. Delegates served without compensation except for expenses.

The convention convened at the State House in Providence on Jan. 6, 1986, and adjourned Dec. 4, 1986, after having held 14 plenary sessions. Principal officers elected by the convention were a president, Keven A. McKenna, three vice presidents, a secretary and a treasurer. The convention rules provided for nine standing committees which handled 288 resolutions for constitutional change introduced by convention delegates. A total of 25 proposed amendments received at least 51 votes on second passage, the minimum required to be placed on the ballot. These 25 proposals were combined by common category into 14 ballot questions for submission to the electorate with the result that some ballot questions contained more than one amendment.

At the referendum on Nov. 4, 1986, the voters approved eight of the 14 propositions. The following questions identified by their ballot titles were adopted: 1- Rewrite of the Present Constitution, 6- Ethics in Government, 7- Budget Powers and Executive Succession, 8- Rights of the People, 9- Shore Use and Environmental Protection, 10- Felon Office Holding and Voting, 11- Libraries and 12- Bail. Rejected were 2- Judicial Selection and Discipline, 3- Legislative Pay and Mileage, 4- Four-year Term and Recall, 5- Voter Initiative, 13- Home Rule and 14- Paramount Right to Life/Abortion.

Summaries in the last two volumes of *The Book of the States* contained brief accounts of constitutional developments in the District of Columbia where a proposed Constitution of the State of New Columbia, drafted by a constitutional convention and approved by the voters in 1982, was transmitted to the U.S. Congress in the fall of 1983. On Sept. 12, 1983, D.C. Delegate Walter C. Fauntroy introduced H.R. 3861, the New Columbia Admissions Act, on which hearings were held. In response to criticisms of the proposed constitution, revisions were proposed. Finally, on May 6, 1987 the Council of the District of Columbia approved a revised document, which was transmitted to the Congress. Among the highlights of the document are the following: 11 sections instead of 18; a short 10-section Bill of Rights that parallels the U.S. Bill of Rights with the exception that an equality clause has replaced the 10th Amendment; a unicameral legislature elected by a combination of single-member districts and at-large elections; provision for amendment by legislative submission and voter approval; a relatively strong governor, no lieutenant governor, an attorney general, and

Table A

State Constitutional Changes by Method of Initiation
1980-81, 1982-83, 1984-85 and 1986-87

Method of Initiation	Number of states involved				Total proposals				Total adopted				Percentage adopted			
	1980-81	1982-83	1984-85	1986-87	1980-81	1982-83	1984-85	1986-87	1980-81	1982-83	1984-85	1986-87	1980-81	1982-83	1984-85	1986-87
All methods	46	45	45	47	388	345	238	275	272	258	158	204	70.1	73.0	65.5*	74.3*
Legislative proposal	46	45	45	46	362	330	211	243	265	255	144	191	73.2	75.5*	67.3*	77.7*
Constitutional initiative	11	9	10	9	18	15	17	18	5	3	8	5	27.8	20.0	47.1	27.7
Constitutional convention	2	-	1	1	8	-	10	14	2	-	6	8	25.0	-	60.0	57.1
Constitutional commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

*In calculating these percentages, the amendments adopted in Delaware (where proposals are not submitted to the voters) are excluded.

Albert L. Sturm was professor emeritus, Center for Public Administration and Policy, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, and Janice C. May is associate professor of Government, the University of Texas at Austin.

several constitutional boards; a two-tiered court system with merit selection of judges and 15-year terms; two fiscal articles (Budget and Financial Management, Borrowing) that together constitute about one-third of the 53-page charter; initiative, referendum, recall; and advisory neighborhood commissions. Deleted were several articles on policy, among them Land and the Environment, Public Services, Health, Housing and Social Services, and Labor. H.R. 51, the D.C. statehood bill in the 100th Congress (1987-88), was reported out favorably from committee, and House floor action was anticipated in 1988.

Constitutional commissions

Constitutional commissions generally serve two major purposes: to study the constitution and propose needed changes and to prepare for a constitutional convention. Commissions in Mississippi and Utah were the only ones operative during the biennium.

As reported in the last volume of *The Book of the States*, William A. Allain, of Mississippi, created the Governor's Constitutional Study Commission in mid-November 1985. With more than 350 members widely representative of the state's social, economic, political and professional structure, both official and unofficial, this body drafted a proposed constitution. In January 1987, Gov. Allain recommended to the legislature that it place on the ballot the question of calling a constitutional convention. The Senate approved a bill providing for the referendum, but it failed in the House committee.

By late 1987, two distinct approaches to state constitutional revision in Mississippi had developed. Newly elected Gov. Ray Mabus, like his predecessor, strongly advocated calling a constitutional convention, preferably in 1988. Under new leadership in the House of Representatives, prospects for success of this approach improved. The other proposal for substantive revision came primarily from those who opposed a convention. On request of leaders of this group, the Mississippi Economic Council (the statewide Chamber of Commerce) prepared a series of approximately 60 amendments to the existing constitution for introduction in the legislature early in 1988. Although these amendments would strengthen the governor's authority to organize the executive branch, they are designed primarily to delete surplusage and outmoded provisions and to improve the language of the present document.

The Utah Constitutional Revision Commission, a permanent body since 1977, is required by statute to submit recommendations for constitutional revision to the legislature at least 60 days before each regular session. Action on the commission's recommendations through 1987 included voter approval of revised articles on the executive branch, revenue and taxation, the judicial branch, the legislative branch and education. Proposed revisions of the articles on local government and public debt were submitted to the legislature in 1988. For more information on the Utah and Mississippi commissions, see Table 1.5.

In Oregon, an unsuccessful attempt was made in the legislature in 1987 to establish a constitutional revision commission. A proposed joint resolution (H.J.R. 28) provided for a 17-member bipartisan commission to be appointed by the president of the senate (six members), the speaker of the house (seven members), the governor (two members), and the chief justice of the state Supreme Court (two members). The commission was to report on proposals for revision of the Oregon constitution to the next legislative assembly. Although sponsored by 25 representatives and 10 senators, the resolution died.

In summary, during 1986-87, a total of 47 states took some official action to amend or revise their constitutions. All 47 states used the method of legislative proposal to initiate one or more changes, nine states used the constitutional initiative and only one convened a constitutional convention. The three states that took no action during this period were Minnesota, Pennsylvania and Tennessee.

SUBSTANTIVE CHANGES

With some exceptions, state constitutional proposals during the 1986-87 biennium accomplished relatively minor changes in state and local government. The Rhode Island constitutional convention's general revision propositions were, overall, the most substantial and the most comprehensive in scope. In four states, the legislature submitted revisions of entire articles — Utah and Kansas on education, North Dakota on the executive and Wisconsin on elections, but only the Utah and Wisconsin revisions passed.

Table B offers an overview of the general subject matter of state constitutional change by two-year periods during the 1980s. All proposals are grouped into two major categories:

those of general statewide application, which are by far the most numerous and involved 47 states in 1986-87 and proposed local amendments initiated by five states (Alabama, Delaware, Louisiana, Maryland and Texas) during the biennium. (Local amendments apply to only one or a few local areas or political subdivisions.) Of the 251 statewide proposals, 183 (exclusive of Delaware) or 73 percent were ratified by the electorate, a higher adoption rate than the preceding six years. Of the 24 local amendments, 20 were adopted. The number of local amendments declined substantially following their elimination under the new Georgia Constitution of 1982.

In Table B, statewide amendments are further classified under the principal subject matter areas of state constitutions, identified for convenience by the titles of articles found in virtually all state constitutions. Articles on the legislature and on finance typically draw the most propositions. During the biennium, 49 legislative proposals and 45 finance and taxation measures were recorded. The highest approval rates were registered by the articles on suffrage and elections (90.9 percent), the judicial article (83.3 percent) and the executive (82.6 percent). Aside from the general revision proposals (57 percent approval), the lowest rates were received by finance and taxation (64.4 percent), local government (64.7 percent) and state and local debt (66.6 percent).

The Bill of Rights, suffrage and elections.

In four states, Delaware, Maine, New Mexico and West Virginia, amendments protecting the right to keep and bear arms were approved. The New Mexico proposal prohibited local governmental regulation of the right. A declaration making English the official language was adopted in California; legislative authorization to reform tort law and to regulate the drinking age was approved in Montana. An equal rights amendment was defeated by Vermont voters, but the Rhode Island electorate approved a provision prohibiting discrimination on the grounds of gender, race or handicap. On the same ballot the Rhode Island electorate also approved free speech, due process and equal protection clauses and a statement that individual rights protected by the Rhode Island Constitution "stand independent of the U.S. Constitution." In addition, voters ratified a third ballot question that expanded environmental rights, primarily the rights of fishery and privileges of the shore.

Four proposals to state bills of rights concerned criminal justice, fewer than during the last biennium. Three of the proposed changes, all of which passed, authorized judges to deny bail for certain offenses. The Illinois bail amendment applies to persons accused of crimes that carry mandatory prison terms; the Mississippi law, to offenses punishable by imprisonment for life or a maximum of 20 years or more; and the Rhode Island provision (one of the general revision questions), to offenses for the unlawful sale or distribution of controlled substances punishable by a sentence of 10 or more years. The fourth change guaranteed certain rights to victims of crime, including restitution and

Table B

Substantive Changes in State Constitutions: Proposed and Adopted, 1980–81, 1982–83, 1984–85, and 1986-87

Subject Matter	Total Proposed				Total Adopted				Percentage Adopted			
	1980–81	1982–83	1984–85	1986–87	1980–81	1982–83	1984–85	1986–87	1980–81	1982–83	1984–85	1986–87
Proposals of statewide applicability	254	226	228	251	160	149	154	184	63.0	65.9*	67.1*	72.9**
Bill of rights	13	13	9	12*	10	13	7	10*	76.9	100.0	77.7	81.8**
Suffrage and elections	5	5	5	11	5	4	5	10	100.0	80.0	100.0	90.9
Legislative branch	43	32	37	49	21	18	19	35	48.8	56.3	51.5	71.4
Executive branch	21	19	30	23	10	9	20	19	47.6	47.4	66.7	82.6
Judicial branch	23	26	19	18	17	21	16	15	73.9	80.8	78.9*	83.3
Local government	11	13	16	17	4	9	13	11	36.4	69.2	75.0*	64.7
Finance and taxation	77	48	67	45	52	28	43	29	67.5	58.3*	64.2	64.4
State and local debt	20	26	21	12	13	19	16	8	65.0	73.1	76.2	66.6
State functions	23	31	17	29	16	18	9	22	69.6	58.1	52.9	75.8
Amendment and revision	9	2	2	0	7	1	2	0	77.8	50.0	100.0	0
General revision proposals	1	1	0	14	0	1	0	8	0	100.0	0	57.1
Miscellaneous proposals	8	10	5	22	5	8	4	17	62.5	80.0	80.0	77.2
Local amendments	134	123	10	24***	112	107	4	20*	83.6	87.0	40.0	79.1**

*One Delaware proposal was included.
**In calculating these percentages the changes adopted in Delaware (where proposals are not submitted to the voters) are excluded.
***One Delaware proposal was excluded.

the right to speak in court. Adopted by the voters of Rhode Island, it was one of the rights in a ballot question called, "Rights of the People."

Another Rhode Island proposal, one well publicized, would have created a "paramount right to life without regard to age, health, function or condition of dependency." It also expressly banned abortions and their public funding within the limits of federal law. The proposition failed together with three other anti-abortion measures in Arkansas, Massachusetts and Oregon, all of which were concerned mainly with funding of abortions. Of interest also was the amendment adopted in Mississippi that deleted an anti-miscegenation section of the General Provisions Article.

All but one of the 11 proposals to change the suffrage and elections articles passed including three Wisconsin amendments that cleaned up the language of the elections article. In Rhode Island, voters approved changes in the rights of felons and certain misdemeanants to hold office and to vote. Under the provisions, holding public office would be automatically restored upon completion of the entire sentence, including suspended portions, probation and parole. Another successful Rhode Island ballot question, Ethics in Government, proposed a voluntary system of public financing of political campaigns and a limit on private contributions.

The only elections measure to fail was one of two North Carolina propositions to change elections in that state. Moving the election of all statewide officers to the fall of odd-numbered years was killed, but a requirement for midterm elections to fill certain vacancies was approved. A Georgia amendment concerning procedures for suspending certain public officials upon their indictment also passed.

The three branches of government

Collectively, the proposals to change the legislative, executive and judicial articles constituted over one-third of the statewide propositions, exclusive of the Rhode Island general revision. Relative to the other articles the legislative article drew by far the most proposals, as was true during the entire decade, but the adoption rate lagged behind as usual. Amendments to the judicial article enjoyed high approval rates throughout the decade, but not until the current biennium did adoptions to the executive article reach the 80 percent mark.

A total of 24 of the 49 legislative proposals concerned legislative powers, organization, procedure and membership. Of eight amendments affecting legislative-executive relations, measures rejected at the polls in Alaska and Michigan would have authorized the legislative veto of administrative rules and regulations. Also rejected was a Texas proposal allowing the speaker to serve on executive committees and agencies. Measures that passed were a prohibition of the pocket veto in election years (Missouri), changes in impeachment (Nebraska and Rhode Island), authorization to the legislature to give the governor removal power (Wyoming), and authorization for interim hearings on confirmation of gubernatorial appointments (New Mexico).

Revisions of constitutional provisions on apportionment were approved in Idaho, Maine, Oregon and Vermont. The Idaho amendment authorized changes in the size of the two houses (30 to 35 senators and a House no larger than twice the number of senators). The Vermont proposition synchronized that state's apportionment cycle with the 10-year federal census.

Only one proposition concerned legislative pay. An unsuccessful attempt was made in Rhode Island to increase the compensation of state legislators from $5.00 a day for 60 days, which had been set in 1900, to a pay scale based on the average weekly earnings of Rhode Island manufacturing workers. In Texas, voters rejected a proposal to allow legislators to serve in offices where the compensation had been increased during their term, but they agreed to a change in rules governing captions. Mississippi voters rejected a change in conflict of interest provisions.

Seven proposals involved legislative terms, qualifications and vacancies. Washington voters turned down six-year terms for senators and four year terms for representatives, while the Rhode Island electorate rejected a change from two to four-year terms for legislators and other statewide elective offices as well as a recall procedure. Residence in the district as a qualification for House members was adopted in Maine and in Mississippi. The Maryland electorate approved a provision that requires persons filling a vacancy in either legislative chamber to be of the same political party, if any, of the replaced person. In Washington a provision on vacancies was defeated as was a Nebraska amendment that would have changed the date on which legislative terms begin and

when the legislature would convene in regular session.

Three propositions concerned the initiative and referendum. The voters of Rhode Island turned down a convention ballot proposal that would have established the initiative and referendum. Under a successful Oregon measure the legislature was authorized to provide by law for the settlement of certain disputes over the proper number of signatures on petitions. In Wyoming, a measure changing the election base for the enactment or rejection of propositions was adopted.

The remaining proposals for change of the legislative article were primarily concerned with policy, and will be reviewed under fiscal and other policy articles.

Few major changes were proposed in executive articles during the biennium. A North Dakota amendment that revised the entire article was rejected at the polls as was a comprehensive revision of the Colorado state personnel system. The most numerous proposals concerned terms of and succession to executive office; all but one passed. Two of these were Mississippi amendments that allowed the governor to serve an additional term and allowed the state treasurer to succeed himself. New Mexico voters approved a measure limiting state executive offices to two consecutive four-year terms beginning in 1991. Proposals for changing the beginning of terms of certain officers passed in Louisiana and North Dakota, as did a clarification of succession to the Rhode Island governorship, but the Rhode Island proposal for four-year terms for statewide elective officers failed.

The governor's power was trimmed in two states. In Texas an amendment passed that allowed the legislature to limit the appointment power of lame duck governors, and in Oklahoma the electorate approved a proposition that removed power from the governor and other members of the Board of Pardons and Paroles to grant paroles to convicts sentenced to death or to life without parole. Editorial revision of the provision on the Idaho Board of Pardons and Paroles was approved.

An attempt to take away the power of the lieutenant governor to preside over the senate was defeated in South Dakota. In Utah, the office of superintendent of public instruction was abolished; in Oklahoma, all mention of the chief mine inspector was deleted from the constitution, but in Kentucky, the voters rejected the proposition to replace the elective public school superintendent with an appointed one. The creation of a state department of public education and a state board of education was adopted in New Mexico. In Florida, the voters approved a statewide special prosecutor in the attorney general's office. A Rhode Island item in the approved Ethics in Government ballot question required the legislature to establish a nonpartisan ethics commission.

In addition to the Colorado proposal revising the personnel system, several other propositions concerned civil service and personnel policies such as retirement. A California constitutional initiative that would have substantially limited compensation of public officers and employees, including specification of the annual salary of the governor and other constitutional officers, was defeated at the polls. In New York, an amendment to allow certain aliens to earn civil service credits was adopted. Montana voters approved the abolition of a salary commission that set pay for public officers, whereas the Washington electorate approved such a body. Certain changes in the Michigan salary commission's authority were rejected.

The proposed amendments to the article on the judiciary dealt mainly with judicial selection, tenure and discipline; judicial powers; and court organization. In Rhode Island, Ohio and Connecticut, merit selection of judges or some component thereof was proposed to the voters, but only in Connecticut was it approved. The rejected Rhode Island measure also had incorporated a mandatory retirement age (72 years) and abolished the state Supreme Court's advisory opinion function. In Washington, an amendment that established a commission on judicial conduct was adopted.

In Hawaii, the voters ratified an amendment that gives the Supreme Court authority to appoint retired judges to serve temporarily on certain courts. In Louisiana, the voters turned down one proposal to allow the high court power to appoint temporary judges in certain courts but approved a similar amendment on the second try. A measure adopted in Virginia authorizes the Supreme Court to answer questions of Virginia law certified to it by federal courts and courts of other states.

Amendments authorizing the right of the state to appeal in criminal cases were adopted in Texas, where a flat ban on the right of appeal had been in force for more than 100 years, and in Virginia where a provision concerned only appeals from preliminary rulings of circuit

courts. Among other proposals that passed were increase in the civil jurisdiction of municipal courts in Arkansas, legislative authority to make uniform terms of office of all magistrates in South Carolina, state funding of clerks of courts in Maryland, and denial of compensation to a judge suspended from office after initial conviction in Georgia. A measure making compensation increases uniform by categories of judges failed in Wyoming.

Local government, finance

During the biennium, approximately two-thirds of proposed changes to the local government articles were approved. The Rhode Island constitutional convention submitted a comprehensive home rule ballot proposal that was rejected at the polls. It provided for expansion of legislative powers, including taxing power of cities and counties with charters, local initiative procedures, the requirement that local voters approve new or increased local tax exemptions, and a requirement that the state reimburse municipalities for state-mandated expenditures. The largest category of local article changes concerned terms and tenure of local officers, but only three of seven amendments were adopted: four-year terms for sheriffs in two Delaware counties (a local amendment), four-year terms for Idaho coroners and additional successive terms for Kentucky mayors. The four proposals that failed all concerned county offices: a limit of four consecutive terms for all county offices (New Mexico), four-year terms for county elective officials and justices of the peace (Arkansas), repeal of the limit on sheriff succession (West Virginia) and five year terms for sheriffs (New Jersey).

Colorado voters refused to approve an amendment that authorized boards of county commissioners to set compensation for county officers, and Missouri voters approved an amendment to keep county officials' compensation from exceeding limits set by the legislature or other proper authority. Among other amendments that passed were a Texas measure that allowed the legislature to set municipal liability limits by defining proprietary and governmental functions, a California proposition that all counties have an office of elective district attorney, a Colorado proposal that eliminated a requirement that franchises in home rule cities must receive majority approval, and a Maryland proposition that repealed the requirement that county commissioners be elected on the general ticket of each county. Texas voters turned down an amendment that would have allowed counties to perform unpaid work for other governments.

During the first six years of the 1980s, proposed changes in the fiscal articles were relatively numerous and outnumbered those submitted to the other articles. This pattern did not hold during 1986-87. Not only was the finance and taxation article second to the legislative article, but the number of propositions submitted was the lowest of the decade although close to the 1982-83 figure. The fact there were fewer propositions may suggest less popular enthusiasm for a battery of highly restrictive measures. And, in fact, the voters rejected major tax and expenditures limitations during the biennium, while approving a relatively large number of bond proposals for such purposes as supporting public education and promoting economic development.

A highlight of the biennium was the defeat of three major tax limitation measures, all of which were constitutional initiatives. Montana voters rejected a proposal to abolish the property tax, to make the sales tax contingent upon voter approval by initiative or referendum, and to require voter approval of any new or increase in taxes. The Colorado electorate turned down a proposition that required any new or increase in state or local taxes to be approved at a biennial election. And Oregonians refused to adopt a property tax change that would have replaced existing limitations with maximum property tax rates, would have limited assessed property value increases and would have allowed new or increased rates only on approval of a majority of the people voting on the issue at two annual elections. The only tax that was abolished during the biennium was the Oklahoma poll tax. Oregon voters approved a measure to remove retirement income (social security and railroad pensions) from the Oregon income tax. On the other hand, adding new or increasing existing taxes met with mixed results. Oklahoma voters approved two new tax amendments, one authorizing county voters to levy a tax for solid waste management services and another authorizing a state tax on certain federal property. Also, Washington voters approved additional taxes for school construction and, in Texas, property taxes were allowed for special districts providing emergency services. But the perennial quest in Oregon for a state sales tax was rejected again. Louisiana voters rejected an increase in the car license tax and additional levee district taxes; the West Virginia electorate voted down a 1 percent sales tax for state highways and bridges; and in Texas a property tax increase for rural fire prevention districts failed.

A few measures granting relief from existing state and local tax limitations were adopted. In California, four measures passed. One authorized a waiver for municipalities (for the purpose of retiring general obligation bonds) of the 1 percent property tax rate increase limitation. The other California measures liberalized assessment values for certain properties. A Washington measure authorizing relief from a 1 percent limit failed, however.

With respect to spending policies, Alaska voters decided to retain a limit on state appropriations first imposed in 1982, but in Arizona the voters approved an increase in school district spending limits although rejecting another measure to allow two year adjustments to spending limits. Several new funds were created, among them the Louisiana Wildlife and Fisheries Conservation Fund, the Georgia Children's Trust Fund, and a trust fund for education in Mississippi. Another electorally successful Louisiana amendment authorized funds to finance quality education and academic research. Measures to set up funds to finance economic development were passed in Texas and Wyoming, although Texas voters rejected a related proposal to provide state financing of new Texas products and businesses.

As usual, many amendments proposed exemptions from the property tax. During the biennium six passed and six failed. Among those adopted was a Kansas measure that permitted the exemption to promote economic development.

Another fiscal highlight of the biennium was the willingness of voters to approve new bond and spending proposals many of which were designed to improve the state and local infrastructure and to promote economic development. Of 14 proposals in nine states to issue bonds, nine passed in six states. Among those approved were proposals in Texas to authorize bonds for the federal Supercollider project if won by the state, for state corrections, mental hospital facilities and for water development; North Carolina proposals authorizing revenue bonds for education and local development of seaport and airports; and an Ohio proposition to finance local infrastructure. Among those that failed were an Oregon measure to finance state-county prisons and one in Ohio to build schools.

Among other approved fiscal propositions were a California amendment to transfer all proceeds from the motor fuels tax to local governments, a Kansas proposition establishing a classified property tax system, and a Mississippi measure revising property tax assessment ratios and authorizing legislative limitation of taxation of nuclear power plants.

State functions, constitutional revision, miscellaneous

Most contemporary state constitutions contain separate articles on major policy or functional areas, primarily education, corporations, health and welfare, and conservation. Policy provisions are also incorporated in the legislative and several other articles. This means that amendments to change policy articles do not represent all the policy proposals in any given biennium.

The total number of propositions concerning policy articles during 1986-87 was almost double that of the past biennium but comparable to the 1982-83 period. Of the 29 proposals, well over half (19) concerned education and most of the remainder pertained to corporations (18). The large number of education amendments is reflective of growing concern about state responsibility to improve public education. The fact that 79 percent (15) were approved is an indication of public support for these efforts. In this regard, highly significant proposals were adopted in Mississippi and West Virginia. In Mississippi, the constitution was changed to require that the legislature provide for the support of free public schools and to set up a trust fund for education. In West Virginia, state funding of a minimum foundation program was adopted. In two other states, revised education articles were submitted to the voters. The Utah proposal, a substantive revision, was adopted, but the editorial changes to the Kansas document were rejected.

Other important provisions concerned state aid to private schools. A South Dakota proposal authorizing the loan of state-owned nonsectarian textbooks was adopted, but the Massachusetts amendment to allow state and local governments to "extend aid to nonpublic schools and nonpublic students within the limits of the U.S. Constitution" failed. Indiana voters rejected a related proposition that gave permissive authority to use the common school

fund for any purpose.

Eight proposals, of which six were adopted, were amendments to articles on corporations. Mississippi measures, with a purpose to delete outmoded provisions, accounted for four of these. A similar purpose was served by an Oklahoma amendment that relieved railroads of the requirement to charge no more than 2 cents a mile for first class passengers. Both the Mississippi and Oklahoma amendments found favor with the voters. In Arizona, an amendment that authorized the corporation commission to reduce regulation of some telecommunication services and to assure available and affordable telephone service statewide was rejected.

The remaining proposals were an electorally unsuccessful tort reform amendment to the Arizona Constitution and an amendment which was adopted to the conservation article of the New York Constitution permitting changes in ski trails in the "forever wild" section.

Articles on amendment and revision in state constitutions have never attracted many proposals, but the 1986-87 biennium was the first of the decade in which none was submitted to the voters. Proposals for change in articles entitled Miscellaneous or, in some states, General Provisions were at an all-time high for the decade. Inasmuch as 12 of the 22 measures dealt with social and moral issues, such as lotteries and casino gambling, the increase was probably the result of increased popular concern about such matters and also of the desire to raise needed revenues without raising taxes.

Adding two propositions in other articles to the four in the miscellaneous article, six propositions concerned lotteries. New state lotteries were authorized in Florida, Kansas, South Dakota and Wisconsin, but rejected in North Dakota. The Ohio proposal earmarked proceeds from the lottery for education. An Oregon proposal to legalize raffles for charitable groups passed, casino gambling on a local option basis failed in Florida, but pari-mutuel betting proposals passed in Kansas and Wisconsin. In Missouri, voters approved horse racing by local option. Kansas voters approved sale of liquor by the drink, and Oklahomans adopted a measure requiring winemakers to sell to all licensed wholesale distributors in the state. Proposals on abortions and on miscegenation have already been reviewed. The remaining propositions were truly miscellaneous, including two on salary commissions, already reviewed; an Oklahoma provision deleting regulations prohibiting employment of women and girls in underground mines, which passed; and changes in wills in Mississippi and community property in Texas, both of which passed.

STATE CONSTITUTIONAL SOURCES AND RESOURCES

Literature on state constitutions continued to grow during the biennium, encouraged in part by the bicentennial celebration of the drafting of the U.S. Constitution. Two collections of papers were an outgrowth of a national conference, "State Constitutional Law in the Third Century of American Federalism: New Developments and Possibilities," held in Philadelphia March 15-17, 1987. Sponsored by the Center for the Study of Federalism at Temple University in cooperation with the American Bar Association, the Philadelphia Bar Association and the U.S. Commission on Intergovernmental Relations, and supported by the National Endowment of the Humanities, it drew more than 100 judges, attorneys, law professors, public officials, social scientists and other scholars and citizens. Conference papers as well as other articles were published in *The Annals of the American Academy of Political and Social Sciences*, 496 (March 1988) under the title "State Constitutions in a Federal System." John Kincaid was special editor of the issue. Conference papers in condensed form also appeared in Intergovernmental Perspective, 13, 2 (Spring 1987), a publication of the U.S. Advisory Commission on Intergovernmental Relations.

An entire issue of *Publius, The Journal of Federalism*, 17, 1 (Winter 1987), edited by G. Alan Tarr and Mary Cornelia Porter, was devoted to state constitutions. Entitled "New Developments in State Constitutional Law," it consisted of nine articles written by law professors and political scientists. *The National Law Journal*, Sept. 29, 1986, published a new bibliography on state constitutions in a special section compiled by Ronald K.L. Collins and Peter J. Galie.

Constitutional revision developments in Mississippi generated new publications in that state during the biennium. The Policy Research Center of the University of Mississippi released a 219 page volume in 1986 entitled, *A Contemporary Analysis of Mississippi's Constitutional Government: Proceedings of a Forum May 2-3, 1986*. Dana B. Brammer and John Winkle III served as editors. "Symposium on

Constitution Revision in Mississippi," consisting of five articles, appeared in the *Mississippi Law Journal*, 56, 1 (April 1986).

Other publications were underway but not released during the biennium. To continue with its bibliographical collection of state constitutional materials for the years 1959 through 1978, the Congressional Information Service plans to publish in 1989, a new microfiche collection covering the period from 1979 through Dec. 31, 1988. The new work will include official proceedings, debates and reports of state constitutional conventions and commissions, the most current versions of constitutions as well as publications relating to the amendment process in all 50 states. A second major enterprise in progress is a constitutional history and a provision-by-provision analysis of each of the constitutions of the 50 states. Entitled *State Constitutions of the American States*, the first volume, which will be published by the Greenwood Press, is expected in 1989. G. Alan Tarr is the editor of the series.

The selected list of references at the end of this summary analysis includes several works of particular significance: *Sources and Documents of United States Constitutions* (edited and annotated by William J. Swindler with Donald Musch), designed to integrate national and state constitutional documents into a reference collection on American constitutional developments; *Model State Constitution*, first published in 1923 by the National Municipal League and since revised six times; and *Index Digest of State Constitutions* prepared by the Legislative Drafting Research Fund at Columbia University. The selected list necessarily excludes many specific items on constitutional reform efforts in particular states and numerous special studies. Students, planners and participants in constitutional revision should consult the official documents and the special studies prepared for constitutional-making in given states, as well as publications of The Council of State Governments, the U.S. Advisory Commission on Intergovernmental Relations, the National Civic League and the League of Women Voters. Particularly useful are the complete, annotated and comparative analyses of the Illinois and Texas constitutions prepared for the delegates to the constitutional conventions in those states. In addition, a vast quantity of ephemeral material is stored in the archives and libraries of states where major constitutional reform efforts have occurred. Excepting the holdings of the Library of Congress, probably the most extensive collections of fugitive and published materials on state constitutions are those of the National Civic League and the Council of State Governments.

Sources of periodic reviews and updates of state constitutional developments include the biennial summary of official activities in *The Book of the States*. The 1982-83 volume featured a 50-year review of state constitutional history and bibliography. Since 1982, Ronald K.L. Collins has authored articles on state constitutional law that have appeared periodically in *The National Law Journal*. From 1970 through 1985, Albert L. Sturm contributed an annual survey of state constitutional developments to the *National Civic Review*.

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Table 1.1
GENERAL INFORMATION ON STATE CONSTITUTIONS
(As of December 31, 1987)

State or other jurisdiction	Number of constitutions*	Dates of adoption	Effective date of present constitution	Estimated length (number of words)	Number of amendments	
					Submitted to voters	Adopted
Alabama	6	1819, 1861, 1865, 1868, 1875, 1901	Nov. 28, 1901	174,000	679	471
Alaska	1	1956	Jan. 3, 1959	13,000	30	21
Arizona	1	1911	Feb. 14, 1912	28,876(a)	191	105
Arkansas	5	1836, 1861, 1864, 1868, 1874	Oct. 30, 1874	40,720(a)	160	73(b)
California	2	1849, 1879	July 4, 1879	33,350	768	460
Colorado	1	1876	Aug. 1, 1876	45,679	231	109
Connecticut	4	1818(c), 1965	Dec. 30, 1965	9,564	26	25
Delaware	4	1776, 1792, 1831, 1897	June 10, 1897	19,000	(d)	117
Florida	6	1839, 1861, 1865, 1868, 1886, 1968	Jan. 7, 1969	25,100	68	44
Georgia	10	1777, 1789, 1798, 1861, 1865, 1868, 1877, 1945, 1976, 1982	July 1, 1983	25,000	20(e)	18
Hawaii	1(f)	1950	Aug. 21, 1959	17,453(a)	86	78
Idaho	1	1889	July 3, 1890	21,500	186	106
Illinois	4	1818, 1848, 1870, 1970	July 1, 1971	13,200	9	4
Indiana	2	1816, 1851	Nov. 1, 1851	9,377(a)	67	36
Iowa	2	1846, 1857	Sept. 3, 1857	12,500	49	46(g)
Kansas	1	1859	Jan. 29, 1861	11,865	114	86(g)
Kentucky	4	1792, 1799, 1850, 1891	Sept. 28, 1891	23,500	56	27
Louisiana	11	1812, 1845, 1852, 1861, 1864, 1868, 1879, 1898, 1913, 1921, 1974	Jan. 1, 1975	51,448(a)	36	22
Maine	1	1819	March 15, 1820	13,500	184	136(h)
Maryland	4	1776, 1851, 1864, 1867	Oct. 5, 1867	41,349(a)	231	199
Massachusetts	1	1780	Oct. 25, 1780	36,690(a,i)	143	116
Michigan	4	1835, 1850, 1908, 1963	Jan. 1, 1964	20,000	44	15
Minnesota	1	1857	May 11, 1858	9,500	203	109
Mississippi	4	1817, 1832, 1869, 1890	Nov. 1, 1890	24,000	141	70
Missouri	4	1820, 1865, 1875, 1945	March 30, 1945	42,000	107	68
Montana	2	1889, 1972	July 1, 1973	11,866(a)	21	13
Nebraska	2	1866, 1875	Oct. 12, 1875	20,048(a)	276	184
Nevada	1	1864	Oct. 31, 1864	20,770	168	103(g)
New Hampshire	2	1776, 1784	June 2, 1784	9,200	272(j)	141(j)
New Jersey	3	1776, 1844, 1947	Jan. 1, 1948	17,086	49	36
New Mexico	1	1911	Jan. 6, 1912	27,200	224	114
New York	4	1777, 1822, 1846, 1894	Jan. 1, 1895	80,000	272	205
North Carolina	3	1776, 1868, 1970	July 1, 1971	11,000	34	27
North Dakota	1	1889	Nov. 2, 1889	20,564	215(k)	124(k)
Ohio	2	1802, 1851	Sept. 1, 1851	36,900	244	144
Oklahoma	1	1907	Nov. 16, 1907	68,800	264(l)	124(l)
Oregon	1	1857	Feb. 14, 1859	26,090	361	183
Pennsylvania	5	1776, 1790, 1838, 1873, 1968(m)	1968(m)	21,675	24(m)	19(m)
Rhode Island	2	1842(c)	May 2, 1843	19,026(a,i)	98	52
South Carolina	7	1776, 1778, 1790, 1861, 1865, 1868, 1895	Jan. 1, 1896	22,500(n)	639(o)	455(o)
South Dakota	1	1889	Nov. 2, 1889	23,300	181	94
Tennessee	3	1796, 1835, 1870	Feb. 23, 1870	15,300	55	32
Texas	5	1845, 1861, 1866, 1869, 1876	Feb. 15, 1876	62,000	459	304
Utah	1	1895	Jan. 4, 1896	11,000	124	75
Vermont	3	1777, 1786, 1793	July 9, 1793	6,600	208	50
Virginia	6	1776, 1830, 1851, 1869, 1902, 1970	July 1, 1971	18,500	23	20
Washington	1	1889	Nov. 11, 1889	29,400	147	80
West Virginia	2	1863, 1872	April 9, 1872	25,600	102	62
Wisconsin	1	1848	May 29, 1848	13,500	167	124(g)
Wyoming	1	1889	July 10, 1890	31,800	96	56
American Samoa	2	1960, 1967	July 1, 1967	6,000	13	7
No. Mariana Is.	1	1977	Oct. 24, 1977	...	...	...
Puerto Rico	1	1952	July 25, 1952	9,281(a)	6	6

GENERAL INFORMATION ON STATE CONSTITUTIONS—Continued

*The constitutions referred to in this table include those Civil War documents customarily listed by the individual states.

(a) Actual word count.

(b) Eight of the approved amendments have been superseded and are not printed in the current edition of the constitution. The total adopted does not include five amendments that were invalidated.

(c) Colonial charters with some alterations served as the first constitutions in Connecticut (1638, 1662) and in Rhode Island (1663).

(d) Proposed amendments are not submitted to the voters in Delaware.

(e) The new Georgia constitution eliminates the need for local amendments, which have been a long-term problem for state constitution makers.

(f) As a kingdom and a republic, Hawaii had five constitutions.

(g) The figure given includes amendments approved by the voters and later nullified by the state supreme court in Iowa (three), Kansas (one), Nevada (six) and Wisconsin (two).

(h) The figure does not include one amendment approved by the voters in 1967 that is inoperative until implemented by legislation.

(i) The printed constitution includes many provisions that have been annulled. The length of effective provisions is an estimated 24,122 words (12,400 annulled) in Massachusetts and, in Rhode Island before the "rewrite" of the constitution in 1986, it was 11,399 words (7,627 annulled).

(j) The constitution of 1784 was extensively revised in 1792. Figures show proposals and adoptions since the constitution was adopted in 1784.

(k) The figures do not include submission and approval of the constitution of 1889 itself and of Article XX; these are constitutional questions included in some counts of constitutional amendments and would add two to the figure in each column.

(l) The figures include five amendments submitted to, and approved by the voters which were, by decisions of the Oklahoma or U.S. Supreme Courts, rendered inoperative or ruled invalid, unconstitutional, or illegally submitted.

(m) Certain sections of the constitution were revised by the limited constitutional convention of 1967-68. Amendments proposed and adopted are since 1968.

(n) Of the estimated length, approximately two-thirds is of general statewide effect; the remainder is local amendments.

(o) As of 1981, of the 626 proposed amendments submitted to the voters, 130 were of general statewide effect and 496 were local; the voters rejected 83 (12 statewide, 71 local). Of the remaining 543, the General Assembly refused to approve 100 (22 statewide, 78 local), and 443 (96 statewide, 347 local) were finally added to the constitution.

Table 1.2
CONSTITUTIONAL AMENDMENT PROCEDURE: BY THE LEGISLATURE
Constitutional Provisions

State or other jurisdiction	Legislative vote required for proposal(a)	Consideration by two sessions required	Vote required for ratification	Limitation on the number of amendments submitted at one election
Alabama	3/5	No	Majority vote on amendment	None
Alaska	2/3	No	Majority vote on amendment	None
Arizona	Majority	No	Majority vote on amendment	None
Arkansas	Majority	No	Majority vote on amendment	3
California	2/3	No	Majority vote on amendment	None
Colorado	2/3	No	Majority vote on amendment	None(b)
Connecticut	(c)	(c)	Majority vote on amendment	None
Delaware	2/3	Yes	Not required	No referendum
Florida	3/5	No	Majority vote on amendment	None
Georgia	2/3	No	Majority vote on amendment	None
Hawaii	(d)	(d)	Majority vote on amendment(e)	None
Idaho	2/3	No	Majority vote on amendment	None
Illinois	3/5	No	(f)	3 articles
Indiana	Majority	Yes	Majority vote on amendment	None
Iowa	Majority	Yes	Majority vote on amendment	None
Kansas	2/3	No	Majority vote on amendment	5
Kentucky	3/5	No	Majority vote on amendment	4
Louisiana	2/3	No	Majority vote on amendment(g)	None
Maine	2/3(h)	No	Majority vote on amendment	None
Maryland	3/5	No	Majority vote on amendment	None
Massachusetts	Majority(i)	Yes	Majority vote on amendment	None
Michigan	2/3	No	Majority vote on amendment	None
Minnesota	Majority	No	Majority vote in election	None
Mississippi	2/3(j)	No	Majority vote on amendment	None
Missouri	Majority	No	Majority vote on amendment	None
Montana	2/3(h)	No	Majority vote on amendment	None
Nebraska	3/5	No	Majority vote on amendment(e)	None
Nevada	Majority	Yes	Majority vote on amendment	None
New Hampshire	3/5	No	2/3 vote on amendment	None
New Jersey	(k)	(k)	Majority vote on amendment	None(l)
New Mexico	Majority(m)	No	Majority vote on amendment(m)	None
New York	Majority	Yes	Majority vote on amendment	None
North Carolina	3/5	No	Majority vote on amendment	None
North Dakota	Majority	No	Majority vote on amendment	None
Ohio	3/5	No	Majority vote on amendment	None
Oklahoma	Majority	No	Majority vote on amendment	None
Oregon	(n)	No	Majority vote on amendment	None
Pennsylvania	Majority(o)	Yes(o)	Majority vote on amendment	None
Rhode Island	Majority	No	Majority vote on amendment	None
South Carolina	2/3(p)	Yes(p)	Majority vote on amendment	None
South Dakota	Majority	No	Majority vote on amendment	None
Tennessee	(q)	Yes(q)	Majority vote in election(r)	None
Texas	2/3	No	Majority vote on amendment	None
Utah	2/3	No	Majority vote on amendment	None
Vermont	(s)	Yes	Majority vote on amendment	None
Virginia	Majority	Yes	Majority vote on amendment	None
Washington	2/3	No	Majority vote on amendment	None
West Virginia	2/3	No	Majority vote on amendment	None
Wisconsin	Majority	Yes	Majority vote on amendment	None
Wyoming	2/3	No	Majority vote in election	None
American Samoa	3/5	No	Majority vote on amendment(t)	None
Puerto Rico	2/3(u)	No	Majority vote on amendment	3

CONSTITUTIONAL AMENDMENT PROCEDURE: BY THE LEGISLATURE—Continued

(a) In all states not otherwise noted, the figure shown in the column refers to the proportion of elected members in each house required for approval of proposed constitutional amendments.

(b) Legislature may not propose amendments to more than six articles of the constitution in the same legislative session.

(c) Three-fourths vote in each house at one session, or majority vote in each house in two sessions between which an election has intervened.

(d) Two-thirds vote in each house at one session, or majority vote in each house in two sessions.

(e) Majority vote on amendment must be at least 50 percent of the total votes cast at the election; or, at a special election, a majority of the votes tallied which must be at least 30 percent of the total number of registered voters.

(f) Majority voting in election or three-fifths voting on amendment.

(g) If five or fewer political subdivisions of the state are affected, majority in state as a whole and also in affected subdivision(s) is required.

(h) Two-thirds of both houses.

(i) Majority of members elected sitting in joint session.

(j) The two-thirds must include not less than a majority elected to each house.

(k) Three-fifths of all members of each house at one session, or majority of all members of each house for two successive sessions.

(l) If a proposed amendment is not approved at the election when submitted, neither the same amendment nor one which would make substantially the same change for the constitution may be again submitted to the people before the third general election thereafter.

(m) Amendments concerning certain elective franchise and education matters require three-fourths vote of members elected and approval by three-fourths of electors voting in state and two-thirds of those voting in each county.

(n) Majority vote to amend constitution, two-thirds to revise ("revise" includes all or a part of the constitution).

(o) Emergency amendments may be passed by two-thirds vote of each house, followed by ratification by majority vote of electors in election held at least one month after legislative approval.

(p) Two-thirds of members of each house, first passage; majority of members of each house after popular ratification.

(q) Majority of members elected to both houses, first passage; two-thirds of members elected to both houses, second passage.

(r) Majority of all citizens voting for governor.

(s) Two-thirds vote senate, majority vote house, first passage; majority both houses, second passage. As of 1974, amendments may be submitted only every four years.

(t) Within 30 days after voter approval, governor must submit amendment(s) to U.S. Secretary of the Interior for approval.

(u) If approved by two-thirds of members of each house, amendment(s) submitted to voters at special referendum; if approved by not less than three-fourths of total members of each house, referendum may be held at next general election.

Table 1.3
CONSTITUTIONAL AMENDMENT PROCEDURE: BY INITIATIVE
Constitutional Provisions

State	Number of signatures required on initiative petition	Distribution of signatures	Referendum vote
Arizona	15% of total votes cast for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Arkansas	10% of voters for governor at last election.	Must include 5% of voters for governor in each of 15 counties.	Majority vote on amendment.
California	8% of total voters for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Colorado	5% of total legal votes for all candidates for secretary of state at last general election.	None specified.	Majority vote on amendment.
Florida	8% of total votes cast in the state in the last election for presidential electors.	8% of total votes cast in each of 1/2 of the congressional districts.	Majority vote on amendment.
Illinois(a)	8% of total votes cast for candidates for governor at last election.	None specified.	Majority voting in election or 3/5 voting on amendment.
Massachusetts(b)	3% of total votes cast for governor at preceding biennial state election (not less than 25,000 qualified voters).	No more than 1/4 from any one county.	Majority vote on amendment which must be 30% of total ballots cast at election.
Michigan	10% of total voters for all candidates at last gubernatorial election.	None specified.	Majority vote on amendment.
Missouri	8% of legal voters for all candidates for governor at last election.	The 8% must be in each of 2/3 of the congressional districts in the state.	Majority vote on amendment.
Montana	10% of qualified electors, the number of qualified electors to be determined by number of votes cast for governor in preceding general election.	The 10% to include at least 10% of qualified electors in each of 2/5 of the legislative districts.	Majority vote on amendment.
Nebraska	10% of total votes for governor at last election.	The 10% must include 5% in each of 2/5 of the counties.	Majority vote on amendment which must be at least 35% of total vote at the election.
Nevada	10% of voters who voted in entire state in last general election.	10% of total voters who voted in each of 75% of the counties.	Majority vote on amendment in two consecutive general elections.
North Dakota	4% of population of the state.	None specified.	Majority vote on amendment.
Ohio	10% of total number of electors who voted for governor in last election.	At least 5% of qualified electors in each of 1/2 of counties in the state.	Majority vote on amendment.
Oklahoma	15% of legal voters for state office receiving highest number of voters at last general state election.	None specified.	Majority vote on amendment.
Oregon	8% of total votes for all candidates for governor at last election at which governor was elected for four-year term.	None specified.	Majority vote on amendment.
South Dakota	10% of total votes for governor in last election.	None specified.	Majority vote on amendment.

(a) Only Article IV, The Legislature, may be amended by initiative petition.
(b) Before being submitted to the electorate for ratification, initiative measures must be approved at two sessions of a successively elected legislature by not less than one-fourth of all members elected, sitting in joint session.

Table 1.4
PROCEDURES FOR CALLING CONSTITUTIONAL CONVENTIONS
Constitutional Provisions

State or other jurisdiction	Provision for convention	Legislative vote for submission of convention question(a)	Popular vote to authorize convention	Periodic submission of convention question required(b)	Popular vote required for ratification of convention proposals
Alabama	Yes	Majority	ME	No	Not specified
Alaska	Yes	No provision(c,d)	(c)	10 years(c)	Not specified(c)
Arizona	Yes	Majority	(e)	No	MP
Arkansas	No		No		
California	Yes	2/3	MP	No	MP
Colorado	Yes	2/3	MP	No	ME
Connecticut	Yes	2/3	MP	20 years(f)	MP
Delaware	Yes	2/3	MP	No	No provision
Florida	Yes	(g)	MP	No	Not specified
Georgia	Yes	(d)	No	No	MP
Hawaii	Yes	Not specified	MP	9 years	MP(h)
Idaho	Yes	2/3	MP	No	Not specified
Illinois	Yes	3/5	(i)	20 years	MP
Indiana	No		No		
Iowa	Yes	Majority	MP	10 years; 1970	MP
Kansas	Yes	2/3	MP	No	MP
Kentucky	Yes	Majority(j)	MP(k)	No	No provision
Louisiana	Yes	(d)	No	No	MP
Maine	Yes	(d)	No	No	No provision
Maryland	Yes	Majority	ME	20 years; 1970	MP
Massachusetts	No			No	Not specified
Michigan	Yes	Majority	MP	16 years; 1978	MP
Minnesota	Yes	2/3	ME	No	3/5 voting on proposal
Mississippi	No		No		
Missouri	Yes	Majority	MP	20 years; 1962	Not specified(l)
Montana	Yes(m)	2/3(n)	MP	20 years	MP
Nebraska	Yes	3/5	MP(o)	No	MP
Nevada	Yes	2/3	ME	No	No provision
New Hampshire	Yes	Majority	MP	10 years	2/3 voting on proposal
New Jersey	No		No		
New Mexico	Yes	2/3	MP	No	Not specified
New York	Yes	Majority	MP	20 years; 1957	MP
North Carolina	Yes	2/3	MP	No	MP
North Dakota	No		No		
Ohio	Yes	2/3	MP	20 years; 1932	MP
Oklahoma	Yes	Majority	(e)	20 years	MP
Oregon	Yes	Majority	(e)	No	No provision
Pennsylvania	No		No		
Rhode Island	Yes	Majority	MP	10 years	MP
South Carolina	Yes	(d)	ME	No	No provision
South Dakota	Yes	(d)	(i	No	(p)
Tennessee	Yes(q)	Majority	M	No	MP
Texas	No		No		
Utah	Yes	2/3	ME	No	MP
Vermont	No		No		
Virginia	Yes	(d)	No	No	MP
Washington	Yes	2/3	ME	No	Not specified
West Virginia	Yes	Majority	MP	No	Not specified
Wisconsin	Yes	Majority	MP	No	No provision
Wyoming	Yes	2/3	ME	No	Not specified
American Samoa	Yes	(r)	No	No	ME(s)
Puerto Rico	Yes	2/3	MP	No	MP

PROCEDURES FOR CALLING CONSTITUTIONAL CONVENTIONS—Continued

Key:
MP—Majority voting on the proposal.
ME—Majority voting in the election.

(a) In all states not otherwise noted, the entries in this column refer to the proportion of members elected to each house required to submit to the electorate the question of calling a constitutional convention.

(b) The number listed is the interval between required submissions on the question of calling a constitutional convention; where given, the date is that of the first required submission of the convention question.

(c) Unless provided otherwise by law, convention calls are to conform as nearly as possible to the act calling the 1955 convention, which provided for a legislative vote of a majority of members elected to each house and ratification by a majority vote on the proposals. The legislature may call a constitutional convention at any time.

(d) In these states, the legislature may call a convention without submitting the question to the people. The legislative vote required is two-thirds of the members elected to each house in Georgia, Louisiana, South Carolina and Virginia; two-thirds concurrent vote of both branches in Maine; three-fourths of all members of each house in South Dakota; and not specified in Alaska, but bills require majority vote of membership of each house. In South Dakota, the question of calling a convention may be initiated by the people in the same manner as an amendment to the constitution (see Table 1.3) and requires a majority vote on the question for approval.

(e) The law calling a convention must be approved by the people.

(f) The legislature shall submit the question 20 years after the last convention, or 20 years after the last vote on the question of calling a convention, whichever date is last.

(g) The power to call a convention is reserved to the people by petition.

(h) The majority must be 50 percent of the total votes cast at a general election or at a special election, a majority of the votes tallied which must be at least 30 percent of the total number of registered voters.

(i) Majority voting in the election, or three-fifths voting on the question.

(j) Must be approved during two legislative sessions.

(k) Majority must equal one-fourth of qualified voters at last general election.

(l) Majority of those voting on the proposal is assured.

(m) The question of calling a constitutional convention may be submitted either by the legislature or by initiative petition to the secretary of state in the same manner as provided for initiated amendments (see Table 1.3).

(n) Two-thirds of all members of the legislature.

(o) Majority must be 35 percent of total votes cast at the election.

(p) Convention proposals are submitted to the electorate at a special election in a manner to be determined by the convention. Ratification by a majority of votes cast.

(q) Conventions may not be held more often than once in six years.

(r) Five years after effective date of constitutions, governor shall call a constitutional convention to consider changes proposed by a constitutional committee appointed by the governor. Delegates to the convention are to be elected by their county councils.

(s) If proposed amendments are approved by the voters, they must be submitted to the U.S. Secretary of the Interior for approval.

Table 1.5
STATE CONSTITUTIONAL COMMISSIONS
(Operative during January 1, 1986-December 31, 1987)

State	Name of commission	Method and date of creation and period of operation	Membership: number and type	Funding	Purpose of commission	Convention delegates	Convention proposals	Proposals and action
Mississippi	Governor's Constitutional Study Commission	Executive; appointed by a letter of invitation from Governor in mid-November 1985; completed work in late 1986.	More than 350 members widely representative of all branches of government, state and local, and of social, economic, professional, and political organizations in the state.	No appropriation. Members receive no compensation or per diem. Expenses are paid from resources of Governor's office.	To study the constitution and submit recommendations for revision to Governor by mid-October 1986.			The commission drafted a proposed new constitution and approved it in late 1986; in January 1987, Governor William B. Allain recommended that the legislature provide for a popular referendum on the question of calling a constitutional convention. This proposal failed in the House of Representatives.
Utah	Utah Constitutional Revision Commission	Statutory; Ch. 89, *Laws of Utah*, 1969; amended by Ch. 107, *Laws*, 1975; amended by Ch. 159, *Laws*, 1977, which made the commission permanent as of July 1, 1977. (Codified at Ch. 54, Title 63, *Utah Code Annotated*, 1953).	16; 1 ex officio, 9 appointed: by the Speaker of the House (3), President of the Senate (3), and Governor (3)—no more than 2 of each group to be from same party; and 6 additional members appointed by the 9 previously appointed members.	Appropriations through 1987 totaled $593,000 (The 1987 appropriation was $55,000, the same as for 1986).	Study constitution and recommend desirable changes, including proposed drafts.			Mandated to report recommendations at least 60 days before legislature convenes. Voter action on the commission's recommendations through 1985 included: approval of revised articles on the executive branch, revenue and taxation, the judicial branch, the legislative branch, and education. Proposed revisions of the articles on local government and public debt will be submitted to the legislature in 1988.

Table 1.6
CONSTITUTIONAL CONVENTIONS
1986-1987

State	Convention dates	Type of convention	Referendum on convention question	Preparatory bodies	Appropriations	Convention delegates	Convention proposals	Referendum on convention proposals
Rhode Island	January 6-December 4, 1986 (14 plenary sessions)	Unlimited	Nov. 6, 1984 Vote: 155,337 131,648	None (A bipartisan preparatory commission was created to assemble information on constitutional questions before the 1984 referendum on the convention question).	Original appropriation: $50,000. Later appropriation: $335,965. Expended: $333,622.	100 (elected November 5, 1985 from lower house districts; nonpartisan).	23 proposals approved by the convention were combined by common category into 14 ballot questions.	November 4, 1986: eight of the 14 proposed ballot questions for constitutional revision were approved.

STATE CONSTITUTIONS AND CONSTITUTIONAL REVISION: 1988-89 AND THE 1980s

By Janice C. May

The 1980s may well be remembered as a distinctive decade in the contemporary history of state constitutions. There has been a decline in the overall levels of amendment and revision activity by formal processes. Revision of comprehensive or general scope, including new constitutions, has fallen to the lowest level in 40 and even 50 years.[1] In contrast, the use of the constitutional initiative, which has relatively little effect on overall revision levels, has risen to historic heights during the decade.[2] The increase in the number of constitutional initiatives is part of the recent explosion in the use of the devices of direct democracy, including the statutory initiative, the referendum, and the recall.[3]

Another development has been the revival of state constitutional law.[4] In a significant number of cases, state judges have interpreted their own constitutions independently of the U.S. Constitution regarding civil rights and other controversies. State judicial review is scarcely new, but the emerging body of law is a reminder that state constitutions are changed by judicial interpretation as well as by formal amendment and revision processes. The increasing reliance on state constitutions by judges has been accompanied by an extensive new literature to which the legal profession and many others have contributed. This expanding body of information about state constitutions is a highlight of the decade. It is a reflection of the growing awareness of the importance of state constitutions in the American federal system. This may be the most important development of all, a key to future constitutional change.

General Overview: Use of Authorized Methods

The level of constitutional amendment and revision by formal methods was substantially lower in 1988-89 than at the beginning of the decade. As Table A shows, 267 proposals were referred to the voters in 45 states; 199 were approved, including two adopted in Delaware by legislative action alone. In 1980-81, however, there were 388 proposals and 272 adoptions in 46 states. A comparison of the decade with the 1970s shows an even greater decline. The total number of proposals in the 1980s was 1,513 and the number of adoptions was 1,091. But in the preceding decade, proposals numbered 2,079, or 566 more, and adoptions were 1,305, or 314 more. It is useful to compare propositions and adoptions of statewide applicability only to eliminate the large number of local amendments characteristic of bienniums through 1982-83. (See Table B.) In the 1980s, the statewide proposals and adoptions numbered 1,187 and 811, respectively, compared with 1,520 proposals and 1,011 adoptions in the 1970s. Though less than before, the differences between the decades remain substantial.

The decline in constitutional change by authorized methods was most conspicuous with respect to comprehensive or general revision during the biennium. No new constitution was proposed to the voters or adopted, no constitutional conventions were called by the voters or convened, and only two constitutional commissions were active although a third was authorized. The only electoral activity was the defeat by the Illinois voters of a referendum on a convention call, mandated by the Illinois Constitution. For the decade, only one new constitution was adopted, the new Georgia Charter in 1982. In other recent decades more constitutions were approved: six in the 1970s, four in the 1960s, two in the 1950s and three in the 1940s. In the 1980s, five constitutional conventions convened, although the Arkansas convention of 1978 met only briefly in 1980 and the New Hampshire convention of 1974 authorized to serve until 1984 was not active. Other conventions were: New Hampshire (1984), Rhode Island (1986) and the District of Columbia (1982). A comparison by decades shows eight conventions in the 1970s, 14 in the 1960s, nine in the 1950s and six in the 1940s. Nine constitutional commissions were operative in the 1980s, fewer than the other recent decades except for the 1940s. There were 12 in the 1970s, 51 in the 1960s, 14 in the 1950s and six in the 1940s. During the decade, nine convention calls were on ballots but only three were adopted. The numbers called and approved in other recent decades were: 1970s—17-10, 1960s—18-12, 1950s—15-8, and 1940s—7-5. In summary, comprehensive revision as measured by the number of new constitutions, conventions, commissions, and convention calls in the decade of the 1980s was the lowest in 50 years. The numbers of commissions and convention call approvals were the lowest in 40 years.

Use of the constitutional initiative for constitutional change turned out to be an exception to the downward trends. In 1988-89, 21 constitutional amendments were proposed by initiative and 11 were adopted, a record for the decade. In addition, the 55 percent approval rate was a rarity for constitutional initiatives in any biennium in recent years. For the decade, there were 89 proposals and 33 adoptions, the most since the 1930s. The approval rate of 37 percent matched the rate for the last 50 years. Proposals and adoptions by decade were: 1970s—69-21, 1960s—41-17, 1950s—45-16, 1940s—63-28, and 1930s—133-47.

Tables 1.2, 1.3, and 1.4 summarize the procedures associated with each of the three major methods used to initiate state constitutions' amendments and revisions: proposal by the state legislature available in all states; the constitutional initiative provided for in 17 state constitutions; and the constitutional convention accepted as legal in all states although not expressly authorized in nine state constitutions. A fourth method used to initiate and refer proposed constitutional changes to the electorate, the constitutional commission (expressly authorized only in the Florida constitution) was not used in 1988-89 or in any other biennium of the decade.

Legislative proposal, constitutional initiative

Legislative proposal, the most commonly employed method for initiating constitutional amendments, accounted for 246 of the 267 proposals referred to voters during the biennium. Of these, 188 were adopted and 186 (excluding two Delaware propositions) (75.6 percent) were approved by the voters. In the

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Table A
State Constitutional Changes by Method of Initiation
1982-83, 1984-85, 1986-87, and 1988-89

Method of Initiation	Number of states involved				Total proposals				Total adopted				Percentage adopted			
	1982-83	1984-85	1986-87	1988-89	1982-83	1984-85	1986-87	1988-89	1982-83	1984-85	1986-87	1988-89	1982-83	1984-85	1986-87	1988-89
All methods	45	45	47	45	345	238	275	267	258	158	204	199	73.0	65.5*	74.3*	74.0*
Legislative Proposal	45	45	46	45	330	211	243	246	255	144	191	188	75.5*	67.3*	77.7*	75.6*
Constitutional Initiative	9	10	9	11	16	17	18	21	4	8	5	11†	20.0	47.1	27.7†	55.0†
Constitutional Convention	2	1	1	1	-	10	14	-	-	6	8	-	-	60.0	57.1	-
Constitutional Commission	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

*In calculating these percentages, the amendments adopted in Delaware (where proposals are not submitted to the voters) are excluded.
†Excludes one Nevada constitutional initiative whose final adoption requires a second favorable vote.

1980s, 1,392 were proposed and 1043 were adopted, a 74.9 percent approval rate. The legislative proposals constituted 92 percent of proposals by all methods during the biennium and the decade. This is somewhat higher than in other periods because, although there were more constitutional initiatives, only 16 general revision propositions were proposed in 10 years.

The constitutional initiative, which empowers the public by petition to propose amendments directly to the voters, is available in one-third of the states. Appropriate only for making limited constitutional change, the method accounted for a record number of proposals and adoptions during the biennium and decade. The constitutional initiatives, however, amounted to a fairly small percentage of total proposals and adoptions — 8 percent of the proposals for the biennium and 5 percent for the decade and 5 percent of the adoptions for the biennium and 3 percent for the decade. The number of initiative proposals and adoptions by states during the current biennium and the decade are as follows: (Biennium Considered-Passed-Decade Considered-Passed) Arizona (1-1, 4-1), Arkansas (2-1, 9-3), California (4-2, 12-5), Colorado (4-2, 10-4), Florida (2-1, 4-2), Illinois (0-0, 1-1), Massachusetts (0-0,0-0), Michigan (0-0,5-0), Missouri (2-1, 4-3), Montana (0-0, 2-1), Nebraska (1-1, 2-2), Nevada (1-, 7-3), North Dakota (1-0, 1-1), Ohio (0-0, 7-0), Oklahoma (1-1, 3-2), Oregon (0-0, 10-3), South Dakota (2-1, 5-2). California leads the initiative states in numbers of proposals and adoptions by decade and Massachusetts, with no activity, is last.

Constitutional conventions

The constitutional convention is the oldest, best known, and most traditional of the methods for extensively revising an old constitution or writing a new one. As of January 1, 1990, 233 conventions, including the 1982 convention in the District of Columbia, had been held in the United States. During the biennium there were none, and in the decade, five. As Table 1.4 shows, 14 state constitutions require a popular vote periodically on the question of calling a convention. Eight states mandate one every 20 years; one state, every nine years. During the biennium, the only convention referendum question on the ballot was in Illinois, whose constitution is one of the eight to require a vote every 20 years. For Illinois this was the first vote on a call since the new Illinois charter was ratified in 1970. Opposed by the governor and most civic and political leaders, including delegates to the 1969-70 Illinois Constitutional Convention, the referendum was defeated in the general election of 1988. The vote was 900,109 in favor and 2,727,144 against; 4,697,192 votes were cast in the election. To pass, the resolution would have had to receive either a majority of the total vote or three-fifths of the vote on the referendum.

Although no constitutional convention convened in 1988 or 1989, a serious effort was mounted in Mississippi by Gov. Ray Mabus to persuade the Mississippi Legislature to place a call on the ballot in 1988. The last volume of *The Book of the States* described the unsuccessful attempt by Gov. William B. Allain, Mabus' predecessor, to win a favorable vote for a referendum on a convention call from the Legislature in 1987. Mabus also failed, but the proposal passed the House for the first time before dying in conference committee. After adjournment, a group of state legislators sought unsuccessfully to revive the Mississippi initiative and referendum as an alternative method of calling a convention. Although adopted by voters in 1914, the initiative and referendum had been invalidated by the Mississippi Supreme Court on procedural grounds in 1922.[5] Encouraged by the reasoning applied in a recent case by the court, *Burrell vs. Mississippi State Tax Commission*, 93 So.2d 848 (Miss. 1988), the legislators hoped that a test case would result in a reversal of the 1922 decision. But the legislators failed in their attempt when they were unable to obtain the required number of signatures for an initiative petition.

Constitutional commissions

Constitutional commissions serve generally two major purposes: to study the constitution and propose changes and to prepare for a constitutional convention. During the biennium, commissions in Oklahoma and Utah were operative, and a third, in Kentucky was authorized to serve to May 1988 although it was not active. During the decade there were nine: Utah, 1977-; Alaska, 1979-80 and 1980-81; Georgia, 1977-1986; New Hampshire, 1983; Rhode Island, 1983; Mississippi, 1985-86; Kentucky, 1987-88; and Oklahoma, 1988-90.

Gov. Henry Bellmon organized the Oklahoma Constitution Study Commission in October 1988 after the Oklahoma Legislature had refused twice to grant his request for funding. The governor named himself, a Republican, and U.S. Senator David Boren, a Democrat, as honorary co-chairs of the 32-member commission. Attorney General Robert Henry was chair. The members included three legislators, other state and local government officers and citizens representing business, law, agriculture, energy, and education interests. Funding was secured from three private foundations. The group organized into eight study committees. In June 1989 a 100-page draft of a revised constitution was reviewed at public hearings in six cities. After further study and revision, the Oklahoma commission gave final approval to three articles, which were submitted to the governor and the Legislature. The final report was expected to be ready in 1990.

The three proposals revised the executive, the ethics, and the corporations articles. The executive article would strengthen the governor's position substantially, which was a key objective of revision leaders. Among the specific changes were: requiring the governor and the lieutenant governor to run as a team, allowing the governor to appoint a majority of boards and commissions soon after inauguration, providing for a cabinet of not more than 15 members, and empowering the first governor elected following the amendment's adoption to reorganize the 347 executive offices and agencies, subject to a legislative veto. Called "anti-business" by the governor, the present corporations article was revised to transfer most of the provisions to the statutes, leaving only those concerning the selection and composition of the Corporation Commission and its general duties. The new ethics article, which made the Ethics Commission a permanent constitutional agency, provided for the method of selection of the five-member body and for its powers and duties. The commission is authorized to promulgate rules of ethical conduct for state officers and employees as well as for campaigns for state office and for initiatives and referenda, including civil penalties for violation of rules.

Table B
Substantive Changes in State Constitutions: Proposed and Adopted, 1982-83, 1984-85, 1986-87, and 1988-89

Subject Matter	Total Proposed				Total Adopted				Percentage Adopted			
	1982-83	1984-85	1986-87	1988-89	1982-83	1984-85	1986-87	1988-89	1982-83	1984-85	1986-87	1988-89
Proposals of state-wide applicability	226	228	251*	228*	149	154	184†	164†	65.9*	67.1*	72.9*	71.6*
Bill of Rights	13	9	121	21	13	7	10	19	100.0	77.7	81.8*	90.5
Suffrage & elections	5	5	11	12	4	5	10	8	80.0	100.0	90.9	66.7
Legislative branch	32	37	49	44	18	19	35	33	56.3	51.5	71.4	75.0
Executive branch	19	30	23	22	9	20	19	14	47.4	66.7	82.6	63.6
Judicial branch	26	19	18	18	21	16	15	14	80.8	78.9	83.3	77.8
Local government	13	16	17	14	9	11	11	10	69.2	75.0	64.7	71.4
Finance & taxation	48	67	45	54	28	43	29	33‡	58.3	64.2	64.4	62.9‡
State & local debt	26	21	12	6	19	16	8	5	73.1	76.2	66.6	83.3
State functions	31	17	29	22	18	9	22	17	58.1	52.9	75.8	77.3
Amendment & revision	2	2	0	5	1	2	0	2	50.0	100.0	0	40.0
General revision proposals	1	0	14	0	1	0	8	0	100.0	0	57.1	0
Miscellaneous proposals	10	5	22	12	8	4	17	9	80.0	80.0	77.2	75.0
Local amendments	123	40	24	39	107	4	20	35	87.0	40.0	79.1	89.7

*Excludes Delaware where proposals are not submitted to the voters
†Includes Delaware
‡Excludes one Nevada constitutional initiative whose final adoption requires a second favorable vote

The rules may be modified or vetoed by legislation, which, in turn, is subject to a gubernatorial veto. Among its other powers, the Ethics Commission is authorized to prosecute violations in state district court.

Backed by the governor, a campaign to place the three constitutional proposals on the ballot in 1990 by the constitutional initiative method was under way by September 1989. Led by a group called Amend Our Constitution Today (ACT), the requisite number of signatures was gathered for each amendment and certified by the secretary of state in time for the next year's elections. At the date of writing, the initiatives were held up by a legal challenge before the Oklahoma Supreme Court. The ballot wording was under legal review for being deceptive, insufficient and not comprehensible on an eighth grade reading level, as required by law. Regardless of the outcome, Oklahoma voters also will have the opportunity to vote on a convention call in 1990, which is mandated by the Oklahoma constitution every 20 years. The governor and other revision leaders are opposed to a convention. Their strategy is to offer to the voters a viable alternative to the convention, the process to begin in 1990.

The Utah Constitutional Revision Commission, a permanent body since 1977, is required by statute to submit recommendations for constitutional revision to the Legislature at least 60 days before each regular session. Major revisions of the articles on local government and debt submitted to the Legislature for action in 1988 were rejected. Also rejected by the Legislature were major revisions of the labor and corporations articles and lesser changes recommended the following year. The most recent recommendations, submitted to the Legislature meeting in 1990, include a major revision of the labor article and two changes to the article on the Legislature. At the 1988 general election, the voters approved two propositions, one on bail and one a "clean-up" measure, both of which had been recommended to the Legislature by the commission. For further information see Table 1.5.

The Kentucky Revision Commission was established in 1987 and served officially until May 1988. In January 1987, the Kentucky Legislative Research Commission (LRC), whose 16 members are legislative leaders, adopted a resolution to create the LRC Special Commission on Constitutional Review. In the resolution, the LRC recognized the need to review the Kentucky constitution but held that a constitutional convention was neither feasible nor warranted. The resolution directed the commission to study all 263 sections of the Kentucky Constitution and to submit an initial report by September 1987.

Most of the 41 members of the commission were appointed by the speaker of the House and the president pro tem of the Senate, the co-chairs of LRC. They appointed 14 citizens; nine representatives of business, labor, and the media (three from each); four legislators (two from each chamber and party); and two mayors and two county executives. The deans of the three state law schools each appointed one of their faculty members and the Chief Justice of the Supreme Court appointed one judge from each of three court levels. Co-chairs of the Elections and Constitutional Amendments Task Force were also members, and the LRC co-chairs served ex officio. The LRC co-chairs named J. William Howerton, Chief Judge of the Court of Appeals, as commission chairman. The director of the LRC supplied staff and support; members were reimbursed for expenses.

The commission organized into six subcommittees, each of which submitted recommendations for inclusion in the full committee report. The full committee did not change the recommendations, but used a mail survey of the members to rank the recommendations on a priority scale of 1 through 5 and to determine how many members supported each proposal. The commission report, which was submitted on Sept. 1, 1987, showed the proposal earning the highest priority called for an Emergency Budget Board to be composed of executive and legislative members and the chief justice or designee to deal with revenue shortfalls between legislative sessions. Among the 77 recommendations were the merit selection of judges, tort caps, electing the governor and lieutenant governor on a joint ticket, allowing the governor to serve while out of the state, a privacy right, and a new equal rights amendment. No recommendations concerning state bonds or a state debt limit were made, and only two recommendations received a unanimous vote.

In 1988, only one of the 77 recommendations was referred by the Legislature to the voters as a constitutional amendment. Backed by the governor, the proposal repealed the constitutional lottery prohibition. The referendum was approved by the voters at the general election.

Substantive Changes

In 1988-89 no general revision proposals were on the ballot. The amendment that came closest to effecting a comprehensive change was the editorial revision of the Maine Constitution in 1988. The editing was limited to removing gender-biased language. A few amendments offered major changes in state and local governmental structure on a piecemeal basis, but most were rejected at the polls. North Dakota voters defeated for the third time during the decade a new executive article, which was the only revision of a major article on the ballot in 1988 or 1989. The West Virginia electorate turned down major reforms of local government, including county home rule, and the executive branch. An amendment establishing a Taxation and Budget Reform Commission in Florida attracted considerable interest. The commission was empowered to propose fiscal amendments directly to the voters as well as to recommend fiscal changes to the Legislature. Constitutional proposals to change governmental policy also were limited in scope, but collectively they served as a guide to state governmental activity. This is particularly true of many fiscal amendments. During the biennium, California Proposition 98 was probably the most important single amendment to be adopted. It required a minimum level of spending for public schools and community colleges and loosened general expenditure limits. Coupled with the defeat of draconian tax reduction measures and the approval of new spending and debt proposals, the trend in 1988-89 was toward a more active state government.

Table B offers an overview of the general subject matter of state constitutional change by two-year periods during the 1980s. Proposals are placed in two major categories: those of general statewide application, which are by far, the most numerous and involved 45 states in 1988-89 and proposed local amendments considered in three states (Alabama, Maryland, and Texas) during the biennium. (Local amendments apply to only one or a few political subdivisions.) Of the 228 statewide propositions, 164 were adopted (including two in Delaware). The voters approved 71.6 percent. Of the 39 local amendments, 35 were approved, or 89.7 percent.

In Table B, statewide amendments are further classified under the principal subject areas of state constitutions, identified for convenience by the titles of articles found in most constitutions.

There is considerable variation among constitutions, however, in the placement of the same or similar subjects by article. The article on finance drew the most propositions (54), and the Legislature was next (44) during the biennium. The highest approval rate was registered by the Bill of Rights (90 percent) and the lowest by amendment and revision (40 percent), which was also the only article to drop below the 50 percent mark. For the decade, the finance and taxation article attracted the most proposals (291), which amounted to 24.5 percent of all statewide propositions. The legislative article was next (196) with 16.5 percent of the total. The highest approval rate for the decade remains with the Bill of Rights (86 percent). The lowest rate was scored by the executive article (62.9 percent). This was somewhat below the rate for finance and taxation (63.5 percent) and the legislative article (64.2 percent).

The Bill of Rights, suffrage and elections

In 1988-89, the number of proposals (21) and adoptions (19) to the state Bills of Rights reached a record-high for the decade. Over half concerned crime, and all of these were approved by the voters. Four added bills of

STATE CONSTITUTIONAL REVISION IN 1988

Janice C. May*

This is a report on the revision of state constitutions in 1988 with commentary on selected developments of significance. A survey of state constitutional amendments as well as general revision during the 1988-89 biennium will appear in the next volume of *The Book of the States*, to be published in 1990.[1]

STATE CONSTITUTIONAL REVISION IN THE 1980's: AN OVERVIEW

State constitutional revision of general or comprehensive scope ground to a virtual halt in 1988. No new or revised state constitutions were proposed or adopted; no constitutional conventions convened; only two constitutional commissions were in operation, one of which was a continuing body first authorized in 1969;[2] and the sole referendum on a convention call, a mandated ballot question, was defeated resoundingly.[3] Although slower than in other general election years of the 1980's, the pace of state constitutional revision in 1988 was characteristic of the decade as a whole. In fact, during the 1980's comprehensive constitutional revision sank to its lowest level in forty and, in some respects, even

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[1] Published by THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF THE STATES has incorporated a biennial survey of state constitutions since 1939. The primary data for the surveys are provided by official sources in every state and several other American jurisdictions.

[2] In 1977, the Utah Constitutional Revision Commission was established as a permanent body by statute. UTAH CODE ANN. § 63-52-1-9 (1953). A temporary commission, created in 1969 to serve until 1975, was extended for two more years in 1975. Ch. 89, LAWS OF UTAH 1969; amended by Ch. 107, LAWS 1975. For a discussion of the Utah Commission, see *infra*, text accompanying notes 72-75. The other commission is the unofficial Oklahoma Constitution Revision Study Commission, organized in 1988. For a discussion, see *infra*, text accompanying notes 49-53.

[3] The convention call was required by the Illinois Constitution of 1970. ILL. CONST. art. XIV, § 1, Par. (b). For a discussion, see *infra*, text accompanying notes 61, 62.

fifty years as measured by such key indicators as the number of new charters, conventions, commissions, and convention calls. During the current decade only one new constitution was adopted, the Georgia document approved in 1982, whereas three new constitutions were ratified in the 1940's, two in the 1950's, four in the 1960's, and six in the 1970's.[4] Five constitutional conventions convened in the 1980's and three of these were special cases,[5] compared with six conventions in the 1940's, nine in the 1950's, fourteen in the 1960's, and eight in the 1970's.[6] In the 1980's,[7] the number of constitutional commissions dropped to eight from highs of twelve in the 1970's, fifty-one in the 1960's, and fourteen in the 1950's, but it still exceeded the number of commissions in the 1940's.[8] Finally, the number of convention calls approved by the voters in the 1980's hit a record low although there were more calls on the ballot than in the 1940's.[9] Convention calls on the ballot and the number approved by decade are as follows: 1940's, 7 - 5; 1950's, 15 - 8; 1960's, 18 - 12; 1970's, 17 - 10; and 1980's, 9 - 3.[10]

[4] Calculated from data in THE COUNCIL OF STATE GOVERNMENTS, THE BOOK OF STATES 14-15 (1988-89 ed.) [hereinafter THE BOOK OF THE STATES].

[5] Constitutional conventions were held in Arkansas (1978-80), New Hampshire (2) (1974-84) (1984), Rhode Island (1986), and the District of Columbia (1982). The Arkansas Convention met only briefly in 1980; the New Hampshire convention was legally a continuing body from 1974 until 1984; and the District of Columbia, in which a convention was held in hopes that the constitution it drafted would help attain statehood, was not a state. THE BOOK OF THE STATES 140 (1982-83 ed.); 22 (1986-87 ed.); 21 (1988-89 ed.).

[6] The number and dates of conventions held in every state through 1981 are listed in Sturm, *The Development of American State Constitutions*, 12 PUBLIUS: THE JOURNAL OF FEDERALISM 57, 82 (1982). The numbers in the text are calculated from this source.

[7] During the 1980's, constitutional commissions were established or were in operation in the following states: Utah (1977-), Alaska (2) (1979-80) (1980-81), Georgia (1977-86), Mississippi (1985-86), New Hampshire (1983), Rhode Island (1983) and Oklahoma (1988-89). *See* THE BOOK OF THE STATES 139 (1982-83 ed.); 228-229 (1984-85 ed.); 21 (1986-87 ed.); 21 (1988-89 ed.).

[8] The calculations were based on THE BOOK OF THE STATES 124 (1982-83 ed.) and ALBERT L. STURM, THIRTY YEARS OF STATE CONSTITUTION MAKING: 1938-1968 35-37 138-155 (1970) [hereinafter STURM, THIRTY YEARS].

[9] In the 1980's, all the referenda on convention calls were mandated on a periodic basis by state constitutions with the exception of the District of Columbia vote. Calls were rejected by the voters in Iowa (1980), Alaska and Missouri (1982), Connecticut and Hawaii (1986), and Illinois (1988). Calls were adopted in the District of Columbia (1980), New Hampshire (1982), and Rhode Island (1984). THE BOOK OF THE STATES 122 (1982-83 ed.); 5 (1986-87 ed.); 3 (1988-89 ed.).

[10] Calculations based on THE BOOK OF THE STATES 122 (1982-83 ed.) and STURM, THIRTY YEARS, *supra* note 8, at 65-66.

The slowdown in general constitutional revision in the 1980's provides support for a cyclical theory of constitutional change. The trough of the 1980's has followed the peak of the 1960's and 1970's, a period of official state constitutional revision that ranks among the most active in history.[11] Diminished activity following the successes of the peak period was not unexpected; need and hence demand for large-scale constitutional change became less pressing.[12] But the failures during the same period are also relevant. Eight constitutions proposed by conventions, including the Arkansas document of 1980,[13] and three referred by state legislatures to the voters, were defeated at the polls.[14] The electorate's behavior has had, no doubt, a discouraging impact not only in states with unfavorable revision experiences but also in states in which revision has yet to be attempted. The failure of the conventions has at least contributed to the reluctance to rely on this method for general revision in the 1980's. This in turn has resulted in a drop in the number of new charters proposed and adopted, commissions, and, obviously, convention calls because they are normally part of the convention environment. While it is true that new or revised constitutions have been proposed by legislatures with or without the assistance of constitutional commissions, this alternative method is not well designed for comprehensive revision, and the convention remains the most widely used method for wholesale change.[15] In other words, a decline in conventions means, concomi-

[11] THE BOOK OF THE STATES 115 (1982-83 ed.) and STURM, THIRTY YEARS, *supra* note 8, at v.

[12] Constitutional reforms contributed to the resurgence and modernization of state governments during this period. THE BOOK OF THE STATES 115 (1982-83 ed.).

[13] Voters rejected new or revised constitutions submitted by the following conventions: New York (1967), Maryland (1968), Rhode Island (1968), New Mexico (1969), Arkansas (1970 and 1980), North Dakota (1972) and Texas (1975). Texas is a special case. The Texas Constitutional Convention of 1974, composed solely of members of the Texas Legislature, failed to report out a document. The following year, the legislature referred the convention proposals in the form of eight amendments, all of which were defeated by the electorate. Sturm, *The Development of American State Constitutions*, *supra* note 6, at 73.

[14] *Id.* State legislative proposals were defeated in Kentucky (1966), Oregon (1970), and Idaho (1970).

[15] *Id.* at 81. It is not uncommon for state legislatures to engage in some form of limited revision, such as proposing a new article or editorial changes, but serving de facto as a constitutional convention by preparing and submitting a new or substantially revised document is far rarer, although authorized expressly in a few state charters. *See* FLA. CONST. art. XII, § 1; GA. CONST. art. X, § 1 Par. 7; N.C. CONST. art. XIII, § 4; and OR. CONST. art. XVII, § 2. The unique Texas experiment with the legislature authorized to serve as a constitutional convention is not recommended. *See* May, *Texas Constitutional Revision: Lessons and Laments*, 66 NATIONAL CIVIC REVIEW 64-69 (1977).

tantly, a decline in comprehensive revision; and this is what occurred in the 1980's insofar as methods alone are concerned.

GENERAL CONSTITUTIONAL REVISION ACTIVITY IN 1988

A state-by-state survey of constitutional developments in 1988 shows that even in a slow year state constitutional revision assumes importance in a few states. In two Sunbelt States, Mississippi and Oklahoma, whose constitutions have not been revised this century, revision has become a major issue. In a third state, Illinois, the presence on the ballot of a referendum on a constitutional convention call forced onto the public agenda the issue of a revised or new charter.

Mississippi

Constitutional revision events that transpired in Mississippi in 1988 may be traced to gubernatorial leadership under William B. Allain, who was elected governor of Mississippi in 1983, and his successor, Ray Mabus, elected to the office four years later. A strong supporter of a new Mississippi Constitution, Governor Allain established in 1985 an unofficial Mississippi Constitution Study Commission to which he appointed 349 members who were representative of various social, economic, political and professional interests and groups as well as state and local government.[16] Former Mississippi governor and retired federal judge J.P. Coleman, a long-time proponent of a new Mississippi charter, was designated commission chairman.[17] Charged with the task of studying the Mississippi document and recommending changes, the commission presented to the governor a complete draft of a new charter in 1986.[18] Allain's next move was to urge the Mississippi Legislature during its 1987 session to place a convention call referendum on the ballot at the November 1987 election. The measure passed in the

[16] THE BOOK OF THE STATES 4 (1986-87 ed.); 4 (1988-89 ed.).

[17] Southwick, *State Constitutional Revision: Mississippi and The South*, 32 MISS. LAW 21, 21-25 (1986). During his tenure as governor (1956-60), Coleman proposed constitutional revision as a means of encouraging economic development. A convention resolution he supported won passage in the Mississippi Senate in 1957, but failed in the House.

[18] The commission's draft of the new charter was published in 3 JACKSON JOURNAL OF BUSINESS 27-35 (Jan. 1987).

especially in some southern states, are of local effect only and have no proper place in a constitution.

In 1970 the voters of Louisiana rejected all fifty-three amendments on the ballot at the November general election, in resistance to the increasingly heavy burden placed on them to pass judgment on matters they were not equipped to decide. The 1970 general revolt in Louisiana led to the calling of a constitutional convention soon thereafter and adoption of a new constitution. There were some indications that other states' electorates likewise were losing patience with procedures that impose an excessively heavy decision-making burden relating to matters on which voters have little basis for intelligent judgment.

During the 1970s some legislative proposals involved extensive revision of the entire constitution. In 1970 new constitutions were proposed by the legislature in Idaho, Oregon, and Virginia; only the Virginia constitution was approved.[64] A few states, including Georgia, Oregon and Florida, expressly authorized the legislature to submit a general revision to the voters. Some states used the legislative proposal technique to achieve general constitutional revision by states.[65]

The constitutional initiative. This technique enables proponents of reform measures to have their proposals submitted to the electorate, by petition, when lawmaking bodies fail to act. The ephemeral nature of popular support for initiative proposals is reflected in the results of referenda, which vary greatly in degree of voter approval. At least four new constitutions during the past thirteen years—Florida, Illinois, Montana and South Dakota—have added new provisions for the use of the constitutional initiative, despite the claims of its critics that it encourages proposals by selfish interests, that many initiative proposals are poorly drafted, and that initiatives may result in addition of more undesirable matter to the organic law.[66]

Table 4 shows that during the seventies, the number of initiative proposals ranged from twelve in Colorado and eleven in Michigan and Ohio to one each in Massachusetts, Nevada, and North Dakota. Adoptions occurred in eleven of the fourteen states in which constitutional initiatives were submitted. The rate of total adoptions was only 30.9 percent. By far the most significant of constitutional initiative proposals during the past decade and of far-reaching national importance and impact was "Proposition 13," which was approved by the California voters in June 1978.[67]

[64] See A.E. Dick Howard, "Constitutional Revision: Virginia and the Nation," *University of Richmond Law Review* 9, no. 1 (Fall 1974): 1-48.

[65] During the 1970s phased revision was achieved at least partially by this method in California, Minnesota, Nebraska, Ohio, South Carolina, South Dakota, and Utah.

[66] For more detailed discussion, see Sturm, *Thirty Years*, ch. 2, and idem, *Methods of State Constitutional Reform* (Ann Arbor: University of Michigan Press, 1954), ch. IV.

[67] This measure, which limited real property taxes to 1 percent of assessed value, has generated a chain reaction of tax and spending limitations in many states.

Another related initiative, "Proposition 9," pushed by the sponsor of Proposition 13, Howard Jarvis, and often referred to as "Jarvis II" or "Jaws II" was rejected by the California electorate on June 3, 1980.[68] Certainly few initiatives have stimulated comparable interest and reaction, both public and private.

Constitutional conventions. The oldest, best known and traditional method for extensive revision of an old constitution or writing a new one is the constitutional convention.[69] Indigenous to the United States, at least 230 such bodies have been convened in the states through 1981. Table 5 lists the number and dates of constitutional conventions in each state as of December 31, 1981.[70] New Hampshire with sixteen, Georgia with twelve and Louisiana and Vermont with eleven lead all other states in the number of conventions. Ten states have convened only one.

Table 6 gives the number of constitutional conventions operative during each quarter-century to 1950, and in the three decades since midcentury. Significantly, more conventions have been held since 1950 than during any comparable period since the Civil War and Reconstruction era.

Analysis of tables 5 and 6 indicates that sixty constitutional conventions have been held in twenty-six states during the twentieth century, and thirty-one since midcentury in nineteen states, of which twelve convened in ten states during the 1970s. Seven of the twelve conventions during the past decade were unlimited bodies with no restriction on their power to propose revisions; five were limited conventions whose power to propose changes was limited to specified subjects or areas.[71] Also during the 1970s, the electorates of sixteen states voted on seventeen convention calls: fourteen for unlimited bodies, and three for limited conventions. Six unlimited conventions were approved in six states, and all three limited

[68] Proposition 9 would have slashed state income taxes to approximately 50 percent of 1978 levels. George Wills, "Son of Prop 13 on Calif. Ballot," *Roanoke Times and World News*, 16 May 1980.

[69] For more detailed treatment, see Elmer E. Cornwell, Jr., Jay S. Goodman, and Wayne R. Swanson, *Constitutional Conventions: The Politics of Revision* (New York: National Municipal League, 1974); Graves, *Major Problems in State Constitutional Revision*, Pt. I; John P. Wheeler, Jr., *The Constitutional Convention: A Manual on Its Planning, Organization, and Operation* (New York: National Municipal League, 1961); Sturm, *Methods*, ch. V; idem, *Thirty Years*, ch. 4; and idem, *Trends*, pp. 17-27.

[70] Authorities differ in their determination of the number of constitutional conventions held in the states. Some include constitutional commissions, and some count the instances in which the legislature has served as a convention. In preparing Table 5, data provided by state officials and leading authorities on the constitution in the respective states were used. Constitutional commissions and instances in which the legislature acted as a convention (unless expressly legally authorized) have been excluded.

[71] Unlimited conventions: one each in Hawaii (1978), Illinois (1969-70), Montana (1971-72), New Hampshire (1974), and North Dakota (1971-72), and two in Arkansas (1969-70 and 1978-80); limited conventions: one each in Louisiana (1973-74), Rhode Island (1973), and Texas (1974), and two in Tennessee (1971 and 1977). For analysis of these bodies, see Albert L. Sturm, "State Constitutional Conventions during the 1970s," *State Government* 52, no. 1 (Winter 1979): 24-30.

TABLE 5
Number and Dates of Constitutional Conventions as of December 31, 1981

State	Total Number	Dates
Alabama	6	1819, [illegible], 1865, 1867, 1875, 1901
Alaska	1	1955-56
Arizona	1	1910
Arkansas	8	1836, 1861, 1864, 1868, 1874, 1917-18, 1969-70, 1978-80
California	2	1849, 1878-79
Colorado	1	1875-76
Connecticut	3	1818, 1902, 1965
Delaware	5	1776, 1792, 1831, 1853, 1897
Florida	5	1838-39, 1861, 1865, 1868, 1885
Georgia	12	1777, 1788, 1789, (2 in 1789), 1795, 1798, 1833, 1839, 1861,1865, 1868, 1877
Hawaii	3	1950, 1968, 1978
Idaho	1	1889
Illinois	6	1818, 1847, 1862, 1969-70, 1920-22, 1969-70
Indiana	2	1815, 1850-51
Iowa	3	1844, 1846, 1857
Kansas	4	1855, 1857, 1858, 1859
Kentucky	4	1792, 1794, 1849-50, 1890-91
Louisiana	11	1812, 1845, 1852, 1861, 1864, 1868, 1879, 1898, 1913, 1921, 1973-74
Maine	1	1819
Maryland	5	1776, 1850-51, 1864, 1867, 1967-68
Massachusetts	4	1779-80, 1820, 1853, 1917-19
Michigan	5	1835, 1850, 1867, 1907-08, 1961-62
Minnesota	1	1857
Mississippi	7	1817, 1832, 1851, 1861, 1865, 1868, 1890
Missouri	7	1820, 1845-46, 1861-63, 1865, 1875, 1922-23, 1943-44
Montana	4	1866, 1884, 1889, 1971-72
Nebraska	3	1871, 1875, 1919-20
Nevada	2	1863, 1864
New Hampshire	16	1776, 1778-79, 1781-83, 1791-92, 1850-51, 1876, 1889, 1902, 1912 1918-23, 1930, 1938-41, 1948, 1956-59, 1964, 1974
New Jersey	3	1844, 1947, 1966, (1944 legislature acted as convention)
New Mexico	8	1848, 1849, 1850, 1872, 1889-90, 1907, 1910, 1969
New York	9	1776-77, 1801, 1821, 1846, 1867, 1894, 1915, 1938, 1967
North Carolina	6	1776, 1835, 1861-62, 1865-66, 1868, 1875
North Dakota	2	1889, 1971-72
Ohio	4	1802, 1850-51, 1873, 1912
Oklahoma	1	1906-07
Oregon	1	1857
Pennsylvania	5	1776, 1789-90, 1837-38, 1872-73, 1967-68
Rhode Island	7	1842, 1944, 1951, 1955, 1958, 1964-69, 1973
South Carolina	5	1790, 1861, 1865, 1868, 1895
South Dakota	3	1883, 1885, 1889
Tennessee	8	1796, 1834, 1870, 1953, 1959, 1965, 1971, 1977
Texas	7	1836, 1845, 1861, 1866, 1868-69, 1876, 1974
Utah	1	1895
Vermont	11	1777, 1786, 1793, 1814, 1822, 1828, 1836, 1843, 1850, 1857, 1870
Virginia	9	1776, 1829-30, 1850-51, 1861, 1864, 1867-68, 1901-02, 1945, 1956
Washington	2	1878, 1889
West Virginia	2	1861-63, 1872
Wisconsin	2	1846, 1847-48
Wyoming	1	1889
Total conventions: 230		

Source: Sturm, *Thirty Years of State Constitution Making*, pp. 52-53 updated.

conventions were approved.[72] In seven of the eight states in which the voters rejected calls for unlimited conventions, referenda were held be-

[72] The number of approved unlimited conventions was reduced to five when a 1970 approval in Alaska was nullified in 1972. The Alaska Supreme Court invalidated the approval because of ambiguous wording of the convention question on the ballot. Boucher v. Bomhoff, 495 P.2d 77 (1972).

TABLE 6
Use of Constitutional Conventions Grouped Periodically

Period	Number of Conventions
Before 1801	26
1801-1825	14
1826-1850	38
1851-1875	67
1876-1900	25
1901-1925	20
1926-1950	9
1951-1981	31
Total	230

cause their constitutions required periodic submission of the convention question.[73]

Membership of conventions operative during the 1970s ranged from ninety-eight in North Dakota to 400 in New Hampshire. Members of the Texas legislature constituted the 1974 convention. Delegates to all other conventions were elected on a nonpartisan basis except the twenty-seven appointed delegates to the Louisiana convention and all delegates in Montana, Rhode Island, and Texas. Funding for the twelve conventions ranged from $20,000 appropriated for the limited body in Rhode Island to the $3.8 million appropriation for the limited Texas convention.[74]

Most successful conventions were preceded by careful preparatory research, as in Hawaii, Illinois, and Montana. Extensive research and an elaborate report (including a draft document), however, did not lead to success in the 1974 Texas convention, which was unable to muster the two-thirds majority required to approve a proposed revision.[75]

The usual organizational pattern for recent conventions includes a leadership structure consisting of a president, a number of vice presidents representing major electoral units, a secretary, a treasurer, a sergeant-at-arms, [illegible] various assistants to these officers, and a professional staff. All conventions have a committee organization consisting of two principal types: substantive, dealing with the subject areas of the constitutional

[73] Fourteen state constitutions require periodic submission of the convention question to the electorate: each twenty years in Connecticut, Illinois, Maryland, Missouri, Montana, New York, Ohio, and Oklahoma; sixteen years in Michigan; ten years in Alaska, Iowa, New Hampshire, and Rhode Island; and nine years in Hawaii.

[74] Delegates' compensation ranged from $3 per day plus mileage in New Hampshire to $1,000 per month plus per diem allowance in Hawaii.

[75] See Janice C. May, *The Texas Constitutional Revision Experience in the Seventies* (Austin, Tex.: Sterling Swift Publishing Company, 1975), and idem, "Texas Constitutional Revision: Lessons and Laments," *National Civic Review* 66, no. 2 (February 1977): 64-69.

system; and procedural/administrative, which are concerned with auxiliary matters and functions. Every convention operates under a set of rules adopted early in its proceedings.[76]

Proposals by constitutional conventions vary from a single amendment (as in Tennessee, 1971) to a new constitution (as in Arkansas, 1970 and 1980, and North Dakota, 1972). The manner of their submission to the voters has been important. Most proposed new constitutions submitted in a single package since 1965 were rejected.[77] But in Illinois, Louisiana and Montana the voters approved new constitutions from which major controversial issues had been separated and were voted on individually. During the 1970s five conventions in four states—Hawaii, New Hampshire, Rhode Island, and Tennessee (2)—presented a series of amendments; some were approved and some rejected. Most successful was the 1978 Hawaii convention, all of whose thirty-four proposals were approved by the electorate.

Constitutional commissions. Although Florida is the only state in which a constitutional commission is authorized to submit its proposals directly to the voters, use of commissions has greatly increased since 1960. These bodies were developed initially, and have been used primarily, as auxiliary staff arms of legislative assemblies. They have been employed principally as a source of expert advice on constitutional issues, to propose amendments, and to draft new instruments for submission to state legislatures. Constitutional commissions serve two principal purposes: to study the state's basic law and recommend appropriate changes, and to make preparations for a constitutional convention. Of the two types, by far the larger number are study commissions. Until adoption of the 1969 Florida constitution, constitutional commissions had no constitutional status in any state.

The mounting popularity of constitutional commissions is attributable mainly to their general acceptability to state legislators who prefer to rely on bodies over whose proposals they have control. Commission recommendations may be accepted, rejected, or modified in whole or in part at the discretion of the lawmaking body. In contrast, as a constituent body directly representing the people, an unlimited convention is not subject to legislative control; power of a limited convention, however, is restricted

[76] For analyses of political as well as procedural aspects of recent state constitutional conventions, see especially the series of nine State Constitutional Convention Studies published by the National Municipal League, 1969-75 (including conventions in Rhode Island, Pennsylvania, Maryland, New Jersey, Hawaii, Missouri, New York, Illinois, and Alaska); also Albert L. Sturm, *Constitution Making in Michigan, 1961-1962* (Ann Arbor: Institute of Public Administration, University of Michigan, 1963), and idem with Margaret Whitaker, *Implementing a New Constitution: The Michigan Experience* (Ann Arbor: Institute of Public Administration, University of Michigan, 1968), and works previously cited.

[77] Arkansas (1970), Maryland (1968), New Mexico (1969), New York (1967), and Rhode Island (1968).

by its mandate. Dampened enthusiasm for constitutional conventions because of recent voter rejection of their proposals, and failure of the traditional piecemeal amending process to achieve modernization of the states' organic laws are additional factors accounting for recent increased reliance on the commission device.

Table 7 shows the number of constitutional conventions and commissions operative in the fifty states during the period from the 1938 New York constitutional convention through 1981, subdivided into time period by dates of creation. Each method is classified by major subtypes. The most striking feature of the tabulation is the extensive use of both techniques during the middle and late 1960s and early 1970s, when state constitutional modernization reached its peak in the wake of the reapportionment revolution. Compared with constitutional reform activity since the Reconstruction era, the totals of forty conventions and eighty-six commissions indicate an exceptional amount of official attention to constitutional matters.

During the 1970s, constitutional commissions prepared the initial drafts of all revised constitutions proposed by state legislatures.[78] Others proposed more limited changes for consideration by legislative bodies.[79] Commissions in Louisiana, New Hampshire, and Texas prepared draft constitutions for constitutional conventions. Of the commissions operative during the 1970s, only two in Arkansas and Montana were established solely to prepare for a constitutional convention.

Most unique of all constitutional commissions of the 1970s was the Florida Constitution Revision Commission which was established in 1977 pursuant to constitutional provision.[80] Following extensive hearings, the thirty-seven-member Florida commission submitted a series of eight proposed revisions, including more than eighty constitutional changes, to the voters at the 1978 November general election. The voters rejected all eight proposals by margins ranging up to three to one against abolition of Florida's unique cabinet system.[81] The defeat may be attributable largely to the complicated nature of several proposals, the probability that eight proposals may have been too many for some voters, the governor's concentration on another ballot issue, devoting little time to promoting constitutional revision, the carry-over effect of another issue on the ballot, and other causes. There was no great popular demand in Florida in 1978 for extensive overhaul of a constitution that had been operative less than

[78] Such commissions drafted proposed new documents or extensive revisions for lawmaking bodies in Alabama, California, Delaware, Georgia, Idaho, Minnesota, Nebraska, Ohio, and South Dakota.

[79] Exemplified by commissions in Indiana, Kentucky, New Hampshire, North Dakota, Utah, and Vermont.

[80] *Constitution of Florida*, Art. XI, Sec. 2.

[81] For titles of the eight proposed revisions and the vote for and against each, see the section in "State Constitutions and Constitutional Revision: The 1970s," in *The Book of the States, 1980-1981*.

TABLE 7
Use of Constitutional Conventions and Constitutional Commissions
1938-1981
(By Date of Creation)

	Constitutional Conventions			Constitutional Commissions		
	Unlimited	Limited	Total	Study	Preparatory	Total
1938-1950	5	3	8	8	0	8
1951-1955	2	3	5	3	0	3
1956-1960	1	3	4	11	2	13
1961-1965	4	1	5	17*	2	19
1966-1970	6	2	8	22*	6	28
1971-1975	3	4	7	5	1	6
1976-1981	2	1	3	8	1	9
Totals	23	17	40	74	12	86

* Two of these bodies had both study and preparatory responsibilities.
Sources: Adapted from Sturm, *Thirty Years of State Constitution Making*, Table 14, p. 93, and idem, *Trends in State Constitution Making*, Table 4, p. 30.

ten years. Despite rejection of all commission proposals in 1978, at the general election in November 1980, Florida voters rejected a proposed constitutional amendment to abolish the constitutional revision commission.

Constitutional commissions are created by three principal methods: statutory law, executive order, and legislative resolution. Typically, members are either appointive or *ex officio*, the former far outnumbering the latter. Appointing authorities commonly include the governor, presiding officers of the legislative houses, and the chief justice of the highest state court. Most commissions are funded by direct legislative appropriations, but legislative and executive-type commissions are usually financed from appropriations to their appointing authorities.[82]

Substantive Trends

Although attention to procedure is of crucial importance in achieving constitutional modernization, the content of the organic law is the primary concern of constitution makers. This section identifies salient recent trends in altering the substance of state constitutions within the principal areas of state constitutional systems. Limitations of time and space preclude any detailed analysis of substantive trends. This section therefore

[82] The appropriation of the Florida Constitution Revision Commission was $350,000. Most generously funded of the commissions during the 1970s was the Texas Constitutional Revision Commission with an appropriation of $900,000.

will necessarily be restricted mainly to identification of principal developments since midcentury.[83]

Table 8 is a composite of the writer's efforts to classify all changes in state constitutions under appropriate substantive headings during each biennium of the 1970s.[84] The changes are divided into two principal groups: those of general statewide applicability, and local amendments that affect one or only a few political subdivisions. The first category, changes of general effect, is classified by subject matter areas.[85] No breakdown is made of local amendments, which involved only five states during the decade, as shown in table 4.[86]

Table 8 indicates that by far the largest number of changes during each of the five biennia of the 1970s was in the general area of state and local finance, encompassing taxation, debt, and financial administration. Generally, the fewest proposals were for general constitutional revision. Approximately two-thirds of the statewide proposals were adopted, and usually a somewhat higher proportion of local amendments. Further reference to changes shown in table 8 is made in the following discussion of the subject areas.

The bill of rights. The basic rights have undergone relatively little change in recent revision of state constitutions, although some newly recognized rights have emerged and found expression in new organic laws.[87] Also, some progress has been made in excising obsolete guarantees, exemplified in traditional prohibitions concerning quartering of soldiers, corruption of blood, forfeiture of estate, titles of nobility, and hereditary emoluments.

Updating of traditional provisions is probably best illustrated by the new "legal equality" and "antidiscrimination" guarantees, especially prohibitions of discrimination on the basis of sex, generally referred to as

[83] For more extensive discussion of substantive trends, see Graves, "State Constitutional Law: A Twenty-five Year Summary"; the sections on "State Constitutions and Constitutional Revision" in the volumes of *The Book of the States;* John P. Wheeler, Jr., ed., *Salient Issues of Constitutional Revision* (New York: National Municipal League, 1961); the *Model State Constitution;* and Sturm, *Trends*, pp. 42-87.

[84] Published in the sections on state constitutions in *The Book of the States*.

[85] Some changes obviously might be classified in more than one category, and allocation to the various areas would vary with the classifier; however, the relative degree of change in the major areas is generally clear.

[86] Alabama (seventy-one proposed, fifty-two adopted), California (two proposed and adopted), Georgia (eighty-seven proposed, sixty-six adopted), Maryland (twenty-two proposed, sixteen adopted), South Carolina (eighty-two proposed, sixty adopted).

[87] For further discussion, see Robert S. Rankin, *State Constitutions: The Bill of Rights* (New York: National Municipal League, 1960); Milton R. Konvitz, "Civil Rights," *International Encyclopedia of the Social Sciences*, vol. 3, pp. 312-318; Milton Greenberg, "Civil Liberties," in *Salient Issues of Constitutional Revision*, and Albert L. Sturm with Kaye M. Wright, "Civil Liberties in Revised State Constitutions," in *Civil Liberties: Policy and Policy Making*, ed. Stephen Wasby (Carbondale, Ill., Southern Illinois University Press, 1976).

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8

The Constitutional Initiative: A Threat to Rights?

JANICE C. MAY

Unique among methods of state constitutional policymaking, the constitutional initiative enables the voters to propose and to adopt constitutional amendments independently of the legislature or of a constitutional convention. First adopted in its modern form by the State of Oregon in 1902, the initiative is in use in seventeen states today. During the last two decades, the nation has witnessed an increase in the number of constitutional amendments proposed and adopted by the constitutional initiative procedure. This increase has coincided with a rediscovery of state constitutions as sources of rights and liberties. The confluence of these two developments has revived an old controversy over the constitutional initiative as an appropriate instrument for constitutional change.

Although hailed, particularly by the judiciary, as quintessentially democratic, a means whereby the people can directly exercise their reserved and sovereign power to change constitutions, the constitutional initiative has also been criticized as a threat to rights and liberties, primarily minority rights. Critics have even charged that the device imperils constitutional government and destroys the integrity of state constitutions as fundamental law. Moreover, the courts, as guardians of rights, have been criticized for their deference to direct democracy at the cost of the protection of minority rights. In this regard, state judges, who in most states must face the electorate, are said to be particularly vulnerable to voter backlash for decisions protective of rights unpopular with the populace.

In this chapter, the controversy over the constitutional initiative will

be reviewed as it applies to state constitutional decisionmaking, with emphasis upon rights and liberties. There is evidence that the constitutional initiative is a relatively minor method of state constitutional change except in a few states; that its threat to rights and liberties has been exaggerated; and that, although there may be cause for concern, the constitutional initiative is probably no worse and no better than many other democratic processes or institutions in the United States.

The Constitutional Initiative

The constitutional initiative is as old as the nation. The Georgia Constitution of 1777 could be amended only by a procedure originating with the voters of the counties, but it was never utilized.[1] The modern constitutional initiative at the state level owes its origins largely to the progressive movement at the turn of the twentieth century. The initiative was part of a package of reforms designed to increase popular participation in government and political parties intended as a cure for the political ills of the day. In 1902, Oregon, a pioneer with respect to these reforms, which became known as the Oregon plan or system, was the first state to adopt the constitutional initiative.[2] By the end of 1918, twelve additional states, all in the West or Midwest except for Massachusetts and Arkansas, had approved the device The order of adoption was as follows: Oklahoma (1907), Missouri (1908), Michigan (1908), Arkansas (1909), Arizona (1910) Colorado (1910), California (1911), Nebraska (1912), Ohio (1912), Nevada (1912), North Dakota (1914), and Massachusetts (1918).[3]

Fifty years later, during a second burst of enthusiasm for direct democracy, the voters of four more states accepted the mechanism: Florida in 1968, Illinois in 1970, and Montana and South Dakota in 1972.[4] Except for South Dakota, the constitutional initiative was incorporated in new or revised constitutions ratified on the dates listed.

All but one of the seventeen states utilizing the constitutional initiative have adopted the direct model, which allows the voters to place a proposition on the ballot independently of the legislature or a constitutional convention. Massachusetts, the only eastern state among the seventeen, is also the only one to boast the indirect version, which requires petitions for initiated propositions to be submitted to the legislature. The legislature may then approve the proposition with or without amendment for placement on the ballot, or it may refuse to submit the proposition to the voters.[5]

Frequency of Use and Electoral Success

The frequency with which the constitutional initiative has been used since the first proposition was adopted in Oregon in 1906 has varied greatly over the years. Arranged by decades, the number of proposals and adoptions is as follows:[6]

1900–1909	11–7	1950–1959	45–16
1910–1919	137–50	1960–1969	41–17
1920–1929	68–14	1970–1979	63–20
1930–1939	133–47	1980–1986	67–22
1940–1949	63–28		

The most prolific period was 1910–1919, during which 137 proposals were on the ballot and 50 were approved. The 1930s were a close second. The decade of the 1980s is well on its way to becoming the third most active decade by overtaking the 1920s, currently the third. It does not seem appropriate, however, to describe the past twenty years of activity as an initiative explosion insofar as the constitutional initiative alone is concerned. The number of propositions may appear to be especially high, however, because if the truncated first period is disregarded, the 1960s produced the fewest propositions.

The total number of propositions during the eighty-year history of the constitutional initiative is 628, of which 221 passed, for a modest electoral success rate of 35.2 percent. In addition, numerous propositions have never reached the ballot stage. California data indicate that, from 1912 to 1979, about two-thirds of the propositions "titled" by the attorney general prior to the collection of signatures failed to qualify for ballot placement. Since 1960, an astounding 80 percent did not qualify.[7]

The seventeen states with the constitutional initiative differ considerably with respect to their use of and electoral success with the device. Ranking the states by the number of proposals and adoptions yields the following order:[8]

California	102–32	North Dakota	33–20
Oregon	100–32	Nebraska	17–8
Colorado	79–23	Nevada	10–6
Arkansas	55–32	Montana	5–2
Arizona	49–19	Florida	4–2
Ohio	46–9	South Dakota	3–1
Oklahoma	44–12	Massachusetts	2–2
Michigan	44–11	Illinois	1–1
Missouri	34–9		

California and Oregon are the heaviest users followed by Colorado. In five states, all but one of which have adopted the constitutional initiative

Table 1
Constitutional Initiative Propositions as a Percentage of State Constitutional Amendments Proposed and Adopted in Seventeen States (as of December 1986)

State	Total Amendments		Constitutional Initiatives	
	Proposals	Adoptions	Percentage of Proposals	Percentage of Adoptions
Arizona	191	105	25.6	18.0
Arkansas	160	73	34.3	43.8
California	768	460	18.4	06.9
Colorado	231	109	34.1	21.1
Florida	68	44	05.8	04.5
Illinois	9	4	11.1	25.0
Massachusetts	143	116	01.3	01.7
Michigan	44	15	36.3	33.3
Missouri	107	68	07.4	04.4
Montana	21	13	14.2	15.3
Nebraska	278	184	06.1	04.3
Nevada	168	103	05.9	05.8
North Dakota	214	123	15.4	16.2
Ohio	241	142	19.0	06.3
Oklahoma	264	124	16.6	09.6
Oregon	360	182	27.7	17.5
South Dakota	181	94	01.6	01.0
Total	3,448	1,959	19.1	11.3

Sources: Adapted from The Book of the States, 1986-87, p. 14, Table 1.1 and preliminary data for the 1988-89 edition; Congressional Research Service, A Compilation of Statewide Initiative Proposals Appearing on Ballots Through 1976; and National Civic Review, annual surveys on "State Constitutional Development," 1977-1985.

The number of amendments and the number of initiatives are limited to the Michigan Constitution of 1963.

The number of amendments and the number of initiatives are limited to the Missouri Constitution of 1945.

within the past twenty years, the number of proposals was five or fewer, and the number of adoptions was only one or two.

To assess the importance of the constitutional initiative as a method of constitutional change in the initiative states, a comparison of initiative usage with that of alternative methods of change is useful. Data from table 1 show that the constitutional initiative has accounted for 19 percent

of the 3,449 constitutional amendments proposed and 11 percent of the 1,959 amendments adopted.[9] In only three states (Arkansas, Colorado, and Michigan) did initiatives amount to as much as one-third (34 to 36 percent) of the proposals, and in just two (Arkansas and Michigan) did initiative adoptions reach or exceed that level. Moreover, the approval rate for propositions submitted by other methods was almost twice as high as that for the initiative (61 percent compared with 35 percent). In only two states with a substantial number of initiatives did the success rate for the initiative overtake that enjoyed by other propositions: North Dakota (60.6 percent to 53.9 percent) and Arkansas (58.1 percent to 39 percent). In no state did the number of initiated measures surpass the total proposed or adopted by all other methods. It is also of interest that the constitutional initiative has accounted for only 4 percent of the total number of amendments to all state constitutions currently in effect. The vast majority of amendments (90 percent) to the fifty state charters have been proposed by state legislatures.[10] In terms of sheer volume, the constitutional initiative does not appear to pose a threat to the body politic or to representative institutions.

Constitutional Initiative Propositions on Rights

From the turn of the century to the present, critics of the constitutional initiative have expressed grave concern that the voters, yielding to prejudice and passion and indifferent to constitutional niceties, will use the procedure to tamper with rights and liberties, particularly minority rights. After eighty years of experience with the constitutional initiative, a record exists on which to make an informed judgment about such a serious charge. The record consists of initiative proposals and adoptions from the time of the first initiative proposal in 1906 to the present. Although questions may always be raised about the data, the compilation of statewide initiatives provides essential information about the number and general categories, as well as the specific content of propositions.[11]

A striking finding from the listing of propositions is that a very small proportion of the total of 628 measures pertains to rights. In fact, if the propositions were limited to traditional rights normally placed in a bill of rights, such as the fundamental freedoms of speech, press, religion, and assembly, various equality rights, and the rights of persons accused of crime, the number would be even smaller, approximately twenty-three. By adopting a broader standard to encompass nontraditional rights, such as the right to work, which is found in the bills of rights of three of the constitutional initiative states,[12] and several other provisions, relating mostly to the rights of women and minorities, the number expands to fifty-seven. Even with the larger number, only 9 percent of the 628 constitutional initiatives proposed over an eighty-year span con-

cerned rights. Corroboration of a low number is provided by a study of initiative propositions submitted for ballot qualification, including those that failed, from 1912 to 1979 in California.[13] Measures classified under the label "civil liberties–civil rights" amounted to only 4 percent of the total. One reason is the apparent lack of public interest in civil rights issues, as demonstrated by public opinion surveys.[14]

It is also significant that only twenty-five of the fifty-seven propositions passed, an extremely low number for eighty years of activity, amounting to one every three or four years. This is only 11 percent of the 221 propositions approved by the voters. The approval rate, however, is 44.5 percent, almost ten points higher than that for all constitutional initiatives.

Another surprising finding concerns the types of rights propositions on the ballot. The most numerous category pertained to women's rights. This was accounted for principally by the nine women's suffrage and one woman-on-juries propositions early in the history of the constitutional initiative. In addition, there were three antiabortion measures and a repeal-the-ERA proposal, to bring the total to fourteen. The eleven right-to-work propositions that divorce membership in unions from hiring and firing practices constituted the second most numerous group. Nine measures related to ethnic, immigrant, racial, or low-income groups, among them the grandfather clause and property rights for aliens.[15] Seven dealt with criminal justice[16] and four with civil trials and tort reform.[17] The others were scattered among health rights (three), rights of expression and association (three), religion (three), equality of representation (one), eminent domain (one), and the right to keep and bear arms (one).

In view of the concern over the threat to liberty posed by the constitutional initiative, the fact that the device has been used to promote rights has been overlooked. Ten of the propositions pertaining to women were designed to increase their rights (nine suffrage and one jury service). Other provisions favorable to rights included one extending property rights to aliens and three criminal justice provisions (abolishing the death penalty, requiring indictment by a grand jury, and speedy arraignment). Two removed the poll tax as a requirement for voting. The right to keep and bear arms is a new but not universally acclaimed state constitutional right.

Several of the other propositions are difficult to classify as for or against an expansion of rights. The so-called right-to-work proposals, which by a triumph of public relations appear to but do not guarantee anyone the right to a job, may be regarded as conferring freedom of choice on workers or as strictly an antiunion proposition that may reduce workers' rights by discouraging unionism. Another problem is tort reform. Consumer groups and attorneys who defend low-income persons

on a contingency fee basis look upon reform as a restriction on the constitutional right of access to the courts, whereas defendants in tort cases regard the proposals as essential to their rights. In a few other instances, information was lacking for a definitive classification.

There is considerable evidence that, although not numerous, more of the electorally successful constitutional initiatives have reduced rather than expanded rights. Every one of the proposals that diminished minority rights passed (grandfather clause, repeal of fair housing, antibusing, and antidesegregation), and others that are less obviously minority related have also been adopted (making English the official language and the mandatory referendum on low-rent housing). All the propositions limiting the rights of the accused were approved (restoration of the death penalty, the Victims' Bill of Rights, and allowing comment on refusal to testify). Moreover, a substantial number of pro-rights measures failed, mainly the eight women's rights propositions (seven suffrage and one jury) and the attempt to confer property rights on aliens.

In contrast, at least eight pro-rights measures passed: the two anti–poll tax suffrage proposals that are historically relevant to minority rights, three items favorable to criminal defendants (abolition of the death penalty, grand jury indictment, and speedy arraignment), two of the women's suffrage proposals, and the right to keep and bear arms. Moreover, the voters have rejected a significant number of questionable measures. Among these are the California Francis Amendment that would have denied rights to subversives, a state-aid-to-private-schools measure, two antiabortion proposals, and a repeal-the-ERA proposition. It is also significant that none of the measures pertaining to religion or expression was adopted. Most of the right-to-work proposals failed, including one that would have prohibited right-to-work laws, and the tort reform measures divided evenly.

An analysis of propositions by historical period casts a different light on the content of the initiatives. The types of propositions considered changed about 1950. Since then, an imbalance is evident in that, except for one poll tax proposal, none of the propositions has favored women, minorities, or persons accused of crime. Instead, the initiatives are antifeminist, antiminority, antiaccused, and also antiunion, with one exception. Conspicuous by their absence are modern antidiscrimination proposals (state ERAs and protection of the handicapped, elderly and other groups), rights of privacy, environmental rights, the right to know, and similar measures. These rights-expanding proposals have been submitted to the voters by legislatures and constitutional conventions.[18]

Sponsors of constitutional initiatives have apparently been marching to the beat of a different drummer. Moreover, during the past two decades, a comparatively large number of propositions are new to the

constitutional initiative procedure. They include the following subjects: English as the official language, tort reform, repeal of a state ERA, antibusing, antiabortion, restoration of the death penalty, California Victims' Bill of Rights, and the right to keep and bear arms. In addition, all these proposals have a conservative cast, and many concern "morals, life style, and race."[19] Finally, the purpose of several of the propositions adopted during the past two decades has been to strike at judicial decisions favorable to rights. Restoration of the death penalty in California by initiative after the California Supreme Court had held capital punishment unconstitutional is a well-publicized example.

In sum, over an eighty-year period, the number of constitutional initiatives concerned with rights has been small, and the number adopted is very small. The prediction that the constitutional initiative would destroy rights and liberties has not been borne out, although it is true that a few proposals were designed to reduce rights. But generally there are too many checks on the process to allow radical changes in state constitutional rights should the attempt be made to employ the initiative for that purpose.

The Judicial Check

Constitutional initiative procedures and propositions are subject to judicial scrutiny, and they are not infrequently circumscribed by the federal and state courts to protect rights. In fact, the initiative, both constitutional and statutory, has spawned so many cases over so many points of contention that some commentators have warned of the danger of overloading the courts with litigation.[20] Nonetheless, the volume of cases has not quieted those who question whether the courts have adequately protected rights. Critics argue that the courts are too deferential to, even paralyzed by, the initiative because the courts are reluctant to interfere with the exercise of an instrument of popular sovereignty.[21] Other commentators claim that the courts are aggressive, perhaps even too aggressive, particularly in their enforcement of the laws governing the constitutional initiative procedure.[22] A brief analysis of the judicial check on the constitutional initiative and its effectiveness as a protector of rights follows.

Constitutionality of the Initiative

The initiative had scarcely been adopted before litigation commenced. The legal issue that threatened all devices of direct democracy in use in the United States was their constitutionality: did they destroy the representative character of the government and thereby violate the guaranty clause of Article IV of the U.S. Constitution, which reads in part: "The United States shall guarantee to every State in this Union a Republican Form of Government."?[23] The first and still leading U.S. Supreme Court case on this question is *Pacific States Telephone and Telegraph Co. v. Oregon*, decided in 1912.[24] At issue was a licensing tax levied by a statutory initiative proposal adopted by the voters. The company refused to pay the tax on a number of grounds, including the contention that its imposition was in violation of the republican form of government clause. The nation's highest court refused to rule on the merits of the argument. It based its decision on the principle followed in *Luther v. Borden* that whether a government is republican in form is a political question to be decided by the legislative and executive branches.[25] In short, the issue was held to be nonjusticiable. Inasmuch as it had seated the Oregon congressional delegation, the Congress apparently had found no fatal objection to the initiative and referendum procedures. The Supreme Court, in like fashion, declined to rule whether the initiative and referendum violated the U.S. Constitution.

In two earlier state cases, the supreme courts of Oregon and Oklahoma did move to the merits of the issue of constitutionality.[26] In upholding the initiative and referendum, the Oregon court made three points of interest: (1) the guaranty clause fails to describe or to prohibit specific types of governmental procedures or structures; (2) the people have the power to reserve for themselves a portion of the legislative power; and (3) republican government has not been threatened or replaced by the devices of direct democracy because they are only supplemental to representative institutions. In its ruling sustaining the constitutionality of the Oklahoma initiative and referendum amendment, the Oklahoma Supreme Court followed the Oregon precedent. Since these early decisions, no court, federal or state, has struck down the devices of direct democracy on constitutional grounds. In fact, various statements by judges in cases in which the devices have been at issue have indicated their wholehearted endorsement of this "precious right" of the people.[27]

U.S. Supreme Court Decisions on Constitutional Initiative Propositions

Although the courts have not found the constitutional initiative invalid as a process or procedure, they have set aside specific constitutional initiative propositions. In four leading cases on civil rights, the U.S. Supreme Court has ruled on the merits of measures adopted by the procedure. In none of the four did the fact that the initiative procedure was the source of the proposition determine the outcome, although the contending parties and the justices considered its relevance.

In the first case, *Guinn v. United States*, decided in 1915, the Court invalidated on Fifteenth Amendment grounds a constitutional initiative

that provided for the so-called grandfather clause under which white voters were sheltered from a literacy test.[28] In *Lucas v. Colorado General Assembly*, the Court overturned a constitutional initiative whose purpose was to validate the federal analogy of representation for the Colorado legislature by allowing factors other than population to be included in the base of representation for one house of the bicameral body.[29] The fact that the voters ("a majority") had approved the principle did not save the provision from running afoul of the equal protection of the laws clause of the Fourteenth Amendment.[30]

In the remaining cases, the Court considered more subtle forms of discrimination, and the results were mixed. In *Reitman v. Mulkey*, the U.S. Supreme Court reviewed a constitutional initiative that, in effect, repealed California's fair housing laws and privatized decisions on the sale, rental, or purchase of real estate.[31] The Court affirmed the California Supreme Court's ruling that the proposition was in violation of the equal protection clause of the U.S. Constitution. In dissent, Justice John M. Harlan, joined by Justices Hugo Black, Tom Clark, and Potter Stewart, argued that the state enactment was constitutional because it had been adopted in the "most democratic of processes" "on a matter left open by the federal Constitution."[32]

The only case to uphold the constitutionality of the challenged constitutional initiative proposition was *James v. Valtierra*.[33] At issue was a California proposition that required a popular referendum in cities and counties before a state public body could engage in federally aided low-rent housing projects. For the majority, Justice Hugo Black wrote that not only was the mandatory referendum racially neutral but also that it enabled the voters to take part in decisions affecting the development of their communities. "Provisions for referendums demonstrate devotion to democracy, not to bias, discrimination or prejudice," he wrote.[34]

State Limitations on the Constitutional Initiative

Constitutional initiatives must conform not only to the U.S. Constitution but also to state laws. An important difference between the limitations imposed by the U.S. Constitution and the state constitutions is that an electorally successful initiative will become part of the state charter, the highest state law, provided no U.S. or state constitutional prohibitions have been breached. State constitutional issues will be focused therefore primarily on procedural and specific content requirements of state constitutions as they apply to the initiative,[35] whereas the constitutionality of a substantive change in rights or liberties will more likely be based on the U.S. Constitution.

The constitutional initiative has been the subject of considerable litigation in state courts. In view of the volume of cases, the number of

constitutional and statutory provisions applying to the initiative, and the different approaches taken by the courts to enforce the limitations, it is difficult to draw an overall conclusion about the adequacy of the state judicial check on the constitutional initiative. An analysis of major issues will contribute to this end.

Propositions Not Constitutional Amendments. One issue reaching the state courts is whether a constitutional initiative proposition is, in reality, a proposal for constitutional change. As might be anticipated, constitutional initiatives have been challenged for placing statutory material rather than fundamental law into state constitutions. In an early case, the Supreme Court of Missouri held that the constitutional initiative did not confer a right to insert "mere legislative acts" in the constitution.[36] In later cases, the courts have refused to draw distinctions between statutory and constitutional law, requiring only that initiatives comply with the procedures governing the process.[37] But the issue of whether a given proposition is a constitutional initiative is not dead. In 1984, the Montana Supreme Court struck from the ballot a proposal intended to compel the state legislature to petition the Congress to call a constitutional convention to consider adoption of the federal balanced budget amendment.[38] The state's highest court ruled that the initiative was, in reality, a legislative resolution rather than a proposed constitutional amendment. The court held that the proposal was also in violation of the U.S. Constitution because Article V, the amending article, authorized only state legislatures to petition the Congress to call a convention. In the same year, the California Supreme Court removed from the ballot for substantially the same reasons a similar proposition that was a statutory rather than a constitutional initiative.[39]

State courts have also refused to sanction proposals that are constitutional revisions rather than amendments. The leading case is *McFadden v. Jordan*, in which the California high court ruled that the constitutional initiative could not be employed to consummate extensive revision.[40] The decision was rendered before the California constitution had been amended to provide for the single-subject rule, which also precludes comprehensive revision by limiting the scope of proposals.

Single-Subject Rule. The single-subject rule, specifically incorporated in five state constitutions and applicable to others, has loomed large as a state legal issue in constitutional initiative cases.[41] In recent years, the Florida and California courts have interpreted the rule in highly important cases pertaining to individual rights as well as to other subjects.

In Florida, the state's supreme court has developed what one commentator calls a "complex and rather confusing body of law" on the single-subject limitation.[42] Applying its guidelines, the court has struck from the ballot three major propositions: a proposal for a unicameral legislature,[43] a Proposition 13–type tax-limitation measure,[44] and a tort

reform proposal.[45] Although the Florida courts have upheld propositions in the face of challenges for violation of the single-subject rule,[46] the overall impression is one of judicial aggressiveness.

The California Supreme Court has assumed a more relaxed posture.[47] In two recent cases, the California court applied the rule to Proposition 13, the Jarvis-Gann property tax limitation measure, and the California Victims' Bill of Rights, adopted in 1978 and 1982, respectively. In *Amador Valley Joint Union High School District v. State Board of Equalization*,[48] the court held that the sections of Proposition 13 were "reasonably germane and functionally related to the general subject of property tax relief."[49] The Victims' Bill of Rights also passed muster under the germaneness test in *Brosnahan v. Brown*.[50] The court found that the ten sections, despite their diversity, all related to criminal justice and popular concern about victims of crime. The majority opinion stated that the court "should not prohibit the sovereign people from either expressing or implementing their own will" on such important matters as their own safety.[51] The California decisions raise questions about judicial deference to the voters and the effectiveness of the single-subject rule. According to one commentator, no initiative has failed the one-subject test in California since the 1940s.[52]

Subject Exclusions. The Illinois and Massachusetts courts have enforced their state constitutional provisions limiting the subjects that may be included in constitutional initiative proposals. In Illinois, an attempt to add an ethics reform proposal by constitutional initiative fell victim to the clear wording of a constitutional provision that restricted the initiative to legislative structures and procedures.[53] In Massachusetts, the Supreme Judicial Court ruled that the constitutional limitation on appropriations prohibited a highway fund;[54] in a second case, a proposal to reduce the size of the Massachusetts lower chamber and to change reapportionment was upheld over the objection that judicial powers had been unconstitutionally reduced.[55]

Ballot Wording. Another procedural limitation that has been an issue in several cases is the requirement that ballot titles and summaries be clear and unbiased. The tort reform measure in Florida failed not only the single-subject test but also the "clear and unambiguous language" standard as interpreted by the court from statutory regulations on ballot wording.[56] The court compared the language of the actual amendment and the ballot summary with a measure of exactitude that again suggests that judicial activism persists in Florida.

The Arkansas Supreme Court has also applied language standards to initiative propositions. In 1984 it removed from the general election ballot a constitutional initiative that prohibited public funding for abortions. The court ruled that the wording prepared by the attorney general was "biased" and had a "partisan coloring" because it referred to the fetus as an "unborn child."[57]

Preelection Judicial Review. In several cases, the courts have removed a proposition from the ballot before the election, thereby depriving the electorate of the opportunity to vote on it. The question of the propriety of preelection as opposed to postelection review by the courts has inspired a lively controversy.[58]

Preelection review of procedural and other technical requirements is defended as necessary to make the constitutional initiative process work as intended and to protect the voter and the integrity of the ballot. An additional consideration is that, following the approval of a proposition in the election, it is virtually impossible to persuade the courts to enforce violations of the requirements.[59] Called "election-cures-errors," the practice assumes that the public has spoken on the issue and that this should dispose of the matter.

In contrast, preelection review of substantive issues, including the constitutionality of the proposition, has been challenged as judicial encroachment on the legitimate powers of the electorate. It is contended that initiatives should be treated in the same manner as proposed laws before the legislature, which normally cannot be litigated until after passage.

The Constitutional Initiative as a Check on Judicial Review. Although the state courts have ample authority to enforce state constitutional and statutory limits on the constitutional initiative, the courts themselves may be trammeled by this instrument of direct democracy. A certain tension has existed between the electorate and the courts from the time of the adoption of the initiative; and attempts have been made to use the constitutional initiative to curb the courts and to overturn their decisions.[60] An early but atypical example is a constitutional initiative approved by the Colorado voters in 1912. It sought to deprive the Colorado state courts, except for the supreme court, of the power to review specified laws under the state and the U.S. Constitution. In addition, it required a popular vote on Colorado Supreme Court decisions that overturned state laws on either state or federal constitutional grounds; a "no" vote would serve to "recall" the decision. In companion cases decided in 1921, the Colorado high court held the provisions unconstitutional on federal supremacy and due process grounds.[61]

Several of the constitutional initiatives concerning rights and liberties were obviously inspired by displeasure with court decisions, both federal and state. In a contemporary setting, the 1956 Arkansas initiative directing the state legislature to oppose desegregation by all lawful means was clearly a response to *Brown v. Board of Education*.[62] The antibusing proposition, approved by the Colorado voters in 1974, was a reaction to *Keyes v. School District No. One*[63] and other busing decisions of the federal courts. The antiabortion funding proposals of 1984 and 1986 were indirectly responsive to *Roe v. Wade*.[64] Dissatisfaction with the state civil

justice system has led to tort reform measures in Arizona, Montana, and Florida; and concern about state criminal justice has resulted in the initiatives on the death penalty and the Victims' Bill of Rights. In addition, several of the initiatives were designed to reverse specific court decisions. Three California constitutional initiatives are in point, and a recent Oregon proposition is relevant.

The first of the three California measures was adopted in 1950 to reverse the decision in *Housing Authority for the City of Eureka v. Superior Court.*[65] The California Supreme Court had held that the referendum process could not be invoked to overturn a decision of local authorities to apply for federal aid for low-rent housing projects; the decision was said to be administrative rather than legislative. In the same year, a proposition to require a referendum before such projects could be approved was qualified for the ballot and accepted by the voters. (This constitutional initiative was upheld in *James v. Valtierra.*) In 1972, California voters adopted by initiative a constitutional amendment to restore the death penalty after capital punishment had been held in violation of the cruel or unusual punishment clause of the California bill of rights by the California Supreme Court in *People v. Anderson.*[66] The third proposition is the California Victims' Bill of Rights, Proposition 8, ratified in 1982. Although less differentiated, sweeping, and policy oriented than the other two California initiatives, Proposition 8 also targeted specific court decisions for overrule, the most publicized of which, perhaps, were those imposing the exclusionary rule.[67] One commentator has estimated that as many as fifty cases may be affected by the passage of the initiative, but its full impact will not be known for some time.[68]

The constitutional initiative that in 1984 resurrected the death penalty in Oregon represents a somewhat different approach to changing state court decisions. In *Oregon v. Quinn*, the Oregon Supreme Court invalidated a 1978 statutory initiative that permitted the judge to impose capital punishment in given circumstances.[69] The court held that the law violated the state constitutional right to a trial by jury "on all essential elements of an offense."[70] The constitutional initiative of 1984 was designed not only to remedy the constitutional infirmity found by the court in *Quinn* but also to prevent the Oregon courts from invalidating the death penalty on other state constitutional grounds not yet litigated. In other words, its purpose was to immunize the proposition from state constitutional objections.

The use of the constitutional initiative to dilute rights needs to be placed in perspective. The number of initiatives actually overturning decisions expanding rights is not large. It is a smaller subset of a small group of initiative propositions that have been proposed and a very small group of initiatives that have been adopted to curb rights. Moreover, even when a constitutional amendment is adopted, the state courts have

the power to interpret and apply the new provision. As James K. Fischer has written: "It must not be forgotten that successful ballot propositions become part of the state constitution and ultimately are subject to state court construction and interpretation. This judicial scrutiny can alter the results achieved by ballot propositions."[71] Fischer also writes that "majoritarian use of ballot propositions to change state constitutional law from that wrought by state courts has been notoriously ineffective."[72]

The California Supreme Court's interpretation of the constitutional initiative restoring the death penalty is instructive on this point. In *People v. Superior Court of Santa Clara County (Engert)*, the court struck down, on due process grounds for vagueness, a state law applying the death penalty in aggravating circumstances.[73] The court noted that the death penalty might be held unconstitutional in a future case should the penalty be wholly disproportionate to the crime to which it was applied.

The complex and loosely worded California Victims' Bill of Rights will undoubtedly be revised as courts attempt to enforce its provisions. As Judge Stanley Mosk of the California Supreme Court has said, it "contains more enigmas than any recent enactment."[74] In one case decided soon after its adoption, the California high court held that the truth-in-evidence section did not apply to juvenile cases with respect to the use of incriminating statements as substantive evidence at trial.[75]

In sum, the state and federal courts have enforced procedural and substantive limitations upon the constitutional initiative. Ballot propositions have been invalidated for violations of rights protected by the U.S. Constitution and for noncompliance with a host of state procedural and other requirements. The courts have reviewed, with varying degrees of aggressiveness, sometimes to the point of criticism for undue interference with the voters' rights to use the constitutional initiative. In short, the judicial check on the constitutional initiative is a force to be reckoned with.

The Electoral Check

The author of the most recent and comprehensive empirical study of the initiative (constitutional and statutory) is critical of the device as a method of policymaking and is concerned about its threat to civil rights and liberties.[76] Generally his description is one of low and unrepresentative voting turnouts; irrational, uninformed, and prejudiced voters; costly campaigns with access to the ballot and to the media restricted to the few people with resources; and special-interest and single-issue confrontational politics that exacerbates factional divisions in the United States. But this characterization of the initiative is overdrawn; other democratic institutions and processes suffer from many of the same flaws when judged by empirical standards.

Studies of voter turnout on initiative propositions reveal a number of findings surprisingly favorable to the initiative. Although ballot propositions typically draw fewer voters than do candidates for public office,[77] initiative propositions are more likely to capture the voters' interest than other propositions. Significantly, proposals placed on the ballot by the initiative outpoll those submitted by the legislature.[78] Moreover, at least in California and Colorado, the turnout for initiatives is comparable to that for the "down ballot" candidate races. In seven California elections from 1970 to 1983, the average drop-off rate from the total vote in the election was 8 percent on initiatives. This was about the same as the turnout for controller (7 percent), attorney general (6 percent), and general assembly (8 percent) and better than that for the board of equalization (12 percent) and the supreme court (32 percent).[79] In the 1976 general election, the drop-off for initiatives was less than that for all the candidate races except for president.[80] In the Colorado general election of 1976, voter participation was higher for the ten initiatives than for the legislative and judicial retention elections; more votes were cast for six of the initiatives than the statewide vote for Congress; and, in at least four counties, the vote on a given initiative exceeded that for president of the United States.[81] Moreover, in California, voter fatigue is usually not a factor with initiatives; voters seek them out wherever they are on the ballot, as was the case with last-placed Proposition 13.[82]

Moreover, critics of the initiative may well have overestimated the effectiveness of elitist groups with substantial organizational capabilities and financial resources. Passage of initiatives cannot be bought with large campaign contributions,[83] and citizen groups with modest means, including those outside the political mainstream, have enjoyed a measure of success, particularly in certain policy areas such as nuclear power and environmental protection. It has been estimated that as many as one-fourth of the initiatives in California in recent years have originated with short-term groups lacking ties to the established political structures.[84] Additionally, "virtually every type of interest group . . . has utilized the initiative process in California," according to V. O. Key, Jr., and Winston W. Crouch.[85]

On the basis of empirical research, it can be assumed that the constitutional initiative has proved to be less than a perfect method for democratic participation in constitutional change; but studies of the actual operation of the device fail to demonstrate that the procedure has been dangerous to our institutions or rights or without positive merit. One reason is that the voters behave in a manner that adds yet another check on any potential threats to rights that the device might engender: their pronounced tendency to reject ballot propositions. About two-thirds of all initiatives and 60 percent of those concerned with rights have been defeated. This negative bias in voting behavior may not be the same as

perfect rationality but, insofar as rights are concerned, support of the status quo is generally a vote to preserve rights. State constitutions have been traditionally protective of rights and, if no change occurs, the constitutional shield will remain. New rights may be desirable, but civil libertarians would probably have preferred a "no" vote on some of those adopted in recent years.

Moreover, experience with the initiative over an eighty-year period points up the fact that propositions concerned with governmental structures and processes far outnumber those on rights and liberties.[86] Among these have been major reforms, including Nebraska's unicameral legislature, Missouri's merit selection of judges, Illinois' reduction in the size of the lower house of the state legislature and the substitution of single-member districts for the unique cumulative voting system, Florida's "sunshine amendment" on ethics and financial disclosure, Ohio's county home rule amendment, and countless others. Many citizens and scholars regard these reforms as contributing to better government.

Furthermore, though the constitutional initiative may be less than a perfect instrument of democracy, other processes and institutions are also flawed. Relatively low and unrepresentative turnouts have been characteristic of American elections in the twentieth century. State legislatures suffer from some of the same electoral problems that plague the initiative, not the least of which is the influence of well-organized and well-financed interest groups on access to legislators and the quality of representation.[87] Additionally, rational decisionmaking models scarcely apply to the legislature or other institutions. But perhaps most important is the fact that, historically, the state legislature has not been in the forefront of racial progress. The handful of antiracial propositions adopted by the initiative pales in significance when compared with segregation, racial gerrymandering, disenfranchisement, and other discriminatory laws enacted by state legislatures in the not-so-distant past.

Summary and Conclusions

The constitutional initiative has proved to be a relatively minor method of state constitutional policymaking in all but a few of the seventeen states in which it is available to the voters. Even in the heavy user states, the constitutional initiative accounts for a lesser number of proposals and adoptions than do other methods of state constitutional amendment. Moreover, the adoption rate of initiative proposals is half that of the alternate procedures. In five initiative states, or 30 percent of the seventeen, the number of constitutional initiatives is minuscule, ranging from a maximum of five proposals to a high of only two adoptions.

Although commonly indicted as a threat to rights and liberties, the constitutional initiative has been utilized infrequently to reduce or to

terminate them. Under a broad and generous definition of rights, less than 10 percent of the proposals submitted to the voters have even concerned rights, and less than half of these have been adopted, for a grand total of twenty-five in eighty years. Three of these were later declared unconstitutional by the U.S. Supreme Court. No more than ten of the electorally successful propositions sought to reduce the rights of racial minorities or of persons accused of crime. In contrast, at least eight were designed to expand rights.

One reason for the low volume of constitutional initiative activity in civil rights is the network of checks that restrict its use. Initiatives must conform to U.S. constitutional standards protective of rights. Numerous state constitutional and statutory requirements, most of them governing the initiative process, have been enforced by state courts. Moreover, patterns of voter behavior operate as a restraint because the electorate rejects approximately two-thirds of the ballot propositions.

Although resorted to sparingly to alter civil rights, the constitutional initiative has been utilized far more frequently to change governmental structures and processes, including a number of major reforms. Moreover, voter turnout on initiatives has been respectable in comparison with proposals submitted by the legislature and with "down ballot" candidate races; and a variety of citizen groups has been engaged in the process with a measure of success.

Inasmuch as the threat to rights has been exaggerated, state constitutional reforms have been adopted, and citizen participation has been encouraged, it appears that condemnation of the constitutional initiative for its shortcomings as a democratic procedure is excessive. None of our institutions, including elections and the state legislature, is free from defects. The constitutional initiative, which may be regarded as an ancillary procedure that offers but does not guarantee effective popular participation in state constitutional policymaking, is no better and no worse than other democratic procedures and institutions in the United States. Furthermore, elite behavior is not so exemplary that outlets for public expression and power should be abandoned.

Notes

1. Walter Fairleigh Dodd, *The Revision and Amendment of State Constitutions* (Baltimore: Johns Hopkins University Press, 1910), p. 42.

2. Id., p. 127. Oregon sec. 1(2)(a).

3. David B. Magleby, *Direct Legislation: Voting on Ballot Propositions in the United States* (Baltimore and London: Johns Hopkins University Press, 1984), pp. 38–40, table 3.1. The voters of Nevada adopted the referendum in 1904 and added the initiative in 1912.

4. Id. Florida Const., Art. XI, sec. 3; South Dakota Const., Art. XXIII, sec. 1, sec. 2. (These sources differ from Magleby's.)

5. Massachusetts Const., Art. XLVIII, sec. 1, sec. 2.

6. The source for initiatives from 1906 through 1976 was the Congressional Research Service. See Virginia Graham, *A Compilation of Statewide Initiative Proposals Appearing on Ballots through 1976* (Washington, D.C.: Library of Congress, 1978). Sources for initiatives from 1977 through 1986 were the *National Civic Review*, annual surveys on "State Constitutional Developments," and preliminary data collected for the forthcoming edition of *The Book of the States, 1988–89* by Albert L. Sturm.

7. Magleby, *Direct Legislation*, p. 67, table 4.1

8. Graham, *Compilation; National Civic Review*; annual surveys; preliminary data for *The Book of the States*.

9. The percentage of constitutional initiatives would be somewhat higher if the calculations included only the total number of constitutional amendments proposed and adopted beginning with the effective date of the adoption of the constitutional initiative in each state. These data are not readily obtainable for all states. Data collected for California from 1912, when the initiative was authorized, through 1976 indicate that the percentage of initiatives was 16 percent of the total constitutional amendment proposals and 18 percent of adoptions, figures comparable to those in the text that includes all amendments from the date of the initial adoption of the California constitution in 1879. The calculations for California from 1912–1976 are drawn from Eugene C. Lee, "California," in *Referendums: A Comparative Study of Practice and Theory*, ed. David Butler and Austin Ranney (Washington, D.C.: American Enterprise Institute for Public Policy Research, 1978), p. 90, table 5.1.

10. Janice C. May, "Constitutional Amendment and Revision Revisited," *Publius: The Journal of Federalism* 17 (Winter 1987): 159, table 1.

11. Information about each proposition was drawn from Graham, *Compilation, National Civic Review*, and preliminary data for *The Book of the States, 1988–89*. Space considerations prevented the inclusion of a four-page table that organized the propositions by state, date, topic, and electoral outcome. Problems arose from the reliance on captions or titles rather than complete descriptions of the proposals and from missing data. Scholars may well differ with my decisions on inclusion of a proposition as a rights measure and its classification in the text that follows.

12. Florida Const., Art. I, sec. 8; Missouri Const., Art. 1, sec. 29; South Dakota Const., Art. VI, sec. 2.

13. Magleby, *Direct Legislation*, p. 204, Appendix B.

14. Id., pp. 74–76.

15. The remaining seven were two anti–poll tax measures and one each of the following: mandatory referendums on low-rent housing, antidesegregation, fair housing repeal, antibusing, and English as the official language.

16. Three were on the death penalty and one each on allowing comments on failure to testify, speedy appearance before magistrate, grand jury indictment, and the California Victims' Bill of Rights.

17. Two provided for jury verdicts by three-quarters of the jurors, but one was joined with a proposal to allow women to serve on juries, which was counted as a women's rights measure only. One proposal to define contempt of court and to provide a jury trial for contempt was classified as civil because it was

probably directed at contempt for failure to comply with injunctions during labor disputes.

18. May, "Constitutional Amendment and Revision," pp. 173–75.

19. Magleby, *Direct Legislation*, p. 191. Magleby comments on the conservative nature of recent initiatives.

20. Id., pp. 47, 194.

21. See Comment, "Judicial Review of Laws Enacted by Popular Vote," *Washington Law Review* 55 (December 1979): 183.

22. Richard Briffault, "Distrust of Democracy," book review, *Texas Law Review* 63 (March-April 1985): 1365.

23. U.S. Constitution, Art. IV, sec. 4.

24. Pacific States Telephone and Telegraph Co. v. Oregon, 223 U.S. 116 (1912).

25. Luther v. Borden, 7 How. 1 (1849).

26. Kadderly v. City of Portland, 94 P.710 (Ore. 1903) and Ex parte Wagner, 95 P.435 (Okla. 1908).

27. For example, see comments in Brosnahan v. Brown, 651 P.2d 274, 281 (Cal. 1982), and James v. Valtierra, 402 U.S. 137, 141 (1972).

28. Guinn v. United States, 238 U.S. 347 (1915). U.S. Constitution, Amend. XV, reads in part as follows: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color, or previous condition of servitude."

29. Lucas v. Colorado General Assembly, 377 U.S. 713 (1964).

30. U.S. Constitution, Amend. XIV, sec. 1 reads in part as follows: "nor shall any State . . . deny to any person within its jurisdiction the equal protection of the laws."

31. Reitman v. Mulkey, 387 U.S. 368 (1067).

32. Id. at 391, 396.

33. James v. Valtierra, 402 U.S. 137 (1967).

34. Id. at 141. Black dismissed the argument that low-income persons were discriminated against, an issue pursued by the court minority.

35. The constitutions of a few states expressly exclude certain subjects from inclusion in a constitutional initiative. Of these, Illinois is the most restrictive because all topics are off limits except "structural and procedural subjects" contained in the legislative article (Art. XIV, sec. 3). The Massachusetts document excludes four types of subjects: religion and most other civil rights and liberties; the judiciary, including court decisions, which may not be reversed; local and special laws; and appropriations Art. XLVII, Sec. 2). The Missouri charter excludes appropriations (Art. III, sec. 51), and the California document contains two prohibitions: no proposition may name a person to hold public office or identify a private corporation to exercise a power or to perform a function (Art. II, Sec. 12).

36. State ex rel. Halliburton v. Roach, 130 S.W. 689, 696 (Mo. 1910).

37. The Nebraska Supreme Court considers this point at some length in Omaha National Bank v. Spire, 389 N.W.2d 269 (Neb. 1986). See cases cited by the court.

38. State ex rel. Harper v. Waltermire, 691 P.2d 836 (Mont. 1984).

39. AFL-CIO v. Eu, 686 P.2d 609 (Cal. 1984).

40. McFadden v. Jordan, 196 P.2d 787 (Cal. 1948).

41. The single-subject rule is expressly incorporated in the following state constitutional provisions: California (Art. IV, sec. 22 (d)); Florida (Art. XI, sec. 3); Missouri (Art. III, sec. 49), Oregon (Art. IV, sec. 1(4)); and Oklahoma (Art. XXIV, sec. 1).

42. Comment, "Amendment Nine and the Initiative Process: A Costly Trip to Nowhere," *Stetson Law Review* 14 (Spring 1985): 356.

43. Adams v. Gunter, 238 So.2d 824 (Fla. 1970). The decision was reached before the passage in 1972 of a constitutional amendment that specifically incorporated the single-subject rule.

44. Fine v. Firestone, 448 So.2d 984 (Fla. 1984).

45. Evans v. Firestone, 457 So.2d 1351 (Fla. 1984).

46. Floridians against Casino Takeover v. Let's Help Florida, 363 So.2d 337 (Fla. 1978) (private casinos); Weber v. Smathers, 338 So.2d 819 (Fla. 1976) ("sunshine amendment"); Carroll v. Firestone, 497 So.2d 1204 (Fla. 1986) (state lottery).

47. For a discussion of the single-subject rule in the California courts, see Daniel H. Lowenstein, "California Initiatives and the Single-Subject Rule," *UCLA Law Review* 30 (1983): 936–75.

48. Amador Valley Joint Union High School District v. State Board of Equalization, 583 P.2d 1281 (Cal. 1978).

49. The words quoted are those of California Supreme Court Justice Stanley Mosk, taken from his dissenting opinion in Brosnahan v. Eu, 641 P.2d 200, 204 (Cal. 1982).

50. Brosnahan v. Brown, 651 P.2d 274 (1982).

51. Id. at 281.

52. Comment, "New Limits on the California Initiative: An Analysis and Critique," *Loyola of Los Angeles Law Review* 19 (May 1986): 1054.

53. Coalition for Political Honesty v. State Board of Elections, 359 N.E.2d 138 (Ill. 1976).

54. Opinion of the Justices, 9 N.E.2d 186 (Mass. 1937).

55. Cohen v. Attorney General, 237 N.E.2d 657 (Mass. 1957).

56. Evans v. Firestone, 457 So.2d 1351, 1353–1355.

57. Arkansas Women's Political Caucus v. Riviera, 677 S.W.2d 846 (Ark. 1984).

58. Among the numerous articles on the subject are the following: Note, "The Judiciary and Popular Democracy: Should Courts Review Ballot Measures Prior to Elections?" *Fordham Law Review* 53 (March 1983): 928; Comments, "Preelection Judicial Review: Taking the Initiative in Voter Protection," *California Law Review* 71 (July 1983): 1216–38.

59. Comments, "Preelection Judicial Review": 1217, n. 5.

60. James M. Fischer, "Ballot Propositions: The Challenge of Direct Democracy to State Constitutional Jurisprudence," *Hastings Constitutional Law Quarterly* 11 (Fall 1983): 47. His observation is limited to California.

61. People v. Max, 198 P. 150 (Colo. 1921) and People v. Western Union Tel. Co., 198 P. 146 (Colo. 1921).

62. Brown v. Board of Education, 347 U.S. 483 (1954).

63. Keyes v. School District No. One, 413 U.S. 189 (1973).

64. Roe v. Wade, 410 U.S. 113 (1973).

65. Housing Authority for the City of Eureka v. Superior Court, 219 P.2d 457 (1950).

66. People v. Anderson, 493 P.2d 880, cert. den. 406 U.S. 958 (1972).

67. Early cases on the California exclusionary rule, such as People v. Cahan, 282 P.2d 905 (Cal. 1955) have been overruled. See In re Lance, 694 P.2d 744 (Cal. 1985).

68. K. Connie King, "Brown's Court Legacy: Crusaders Against Social Injustice," *California Journal* 13 (September 1982): 311.

69. Oregon v. Quinn, 623 P.2d 639 (Or. 1981).

70. See Katherine H. Waldo, "The 1984 Death Penalty Initiative: A State Constitutional Analysis," *Willamette Law Review* 22 (Winter 1986): 285–353.

71. Fischer, "Ballet Propositions," p. 80.

72. Id., p. 45.

73. People v. Superior Court of Santa Clara County, 647 P.2d 76 (Cal. 1982).

74. A. D. Ertuckel, "Debating Initiative Reform: A Summary of the Second Annual Symposium on Elections at the Center for the Study of Law and Politics," *Journal of Law and Politics* 2 (Fall 1985): 329.

75. Ramona R. v. Superior Court, 693 P.2d 789 (Cal. 1983).

76. Magleby, *Direct Legislation*.

77. Id., p. 100. From 15 to 18 percent fewer voters participate in elections on ballot propositions than for candidates.

78. Id., p. 84, table 5.2

79. Id.

80. Id., p. 91, table 5.6.

81. John S. Shockley, *The Initiative Process in Colorado Politics: An Assessment*, Bureau of Governmental Research and Service (Boulder, Colo.: University of Colorado, August 1980), pp. 2–3, table 1.

82. Magleby, *Direct Legislation*, pp. 90–92.

83. Id., pp. 147–48. See table 8.1.

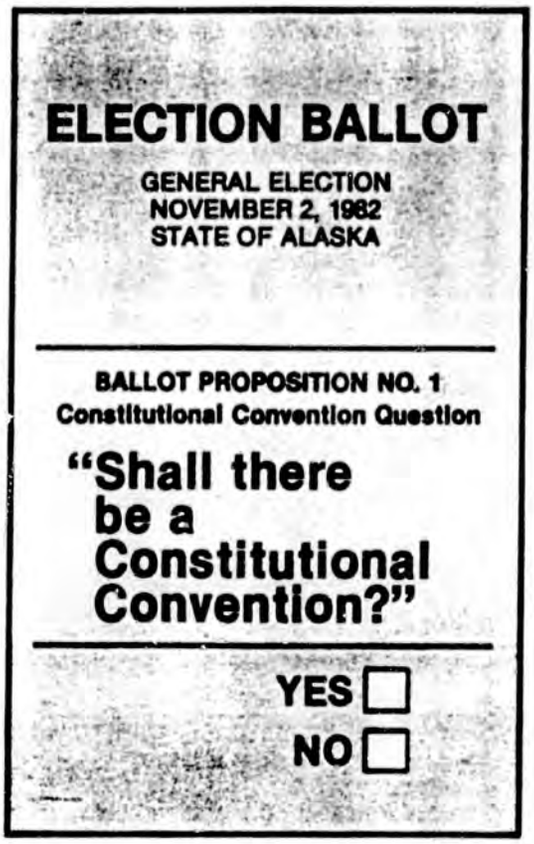
84. Briffault, "Distrust of Democracy" p. 1358.

85. V. O. Key, Jr., and Winston W. Crouch, *The Initiative and Referendum in California* (Berkeley: University of California Press, 1939), p. 447.

86. Magleby, *Direct Legislation*, p. 74. Referring to a "categorization of more than twelve hundred initiatives voted on since 1898," Magleby observes that the "subject areas most apt to result in initiatives are governmental processes and taxes." The numerical dominance of propositions concerning governmental structures and processes was borne out by my analysis of the 628 constitutional initiatives in the study for this chapter. Approximately 220 constitutional initiatives proposed changes in governmental organization and procedures, exclusive of women's suffrage and poll tax provisions, that were placed in the category of rights; 256 were related to fiscal policy.

87. Briffault, "Distrust of Democracy" pp. 1361–64. In succinct fashion, Briffault reviews legislative shortcomings when measured against ideal standards of representation, deliberation, and sensitivity to minority interests.

Shall there be a Constitutional Convention?



WHY is this question on the ballot November 2?

Alaska's Constitution requires that at least once every ten years the public will have the opportunity to decide whether or not a constitutional convention is necessary. Article XIII, Section 3, provides:

If during any ten-year period, a constitutional convention has not been held, the Lieutenant Governor shall place on the ballot for the next general election the question: 'Shall there be a constitutional convention?' If a majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten-year period...

A Commonwealth North Report

This report was prepared by Commonwealth North to evaluate the pros and cons of holding a constitutional convention; to prepare recommendations as to the mechanics of a convention should one be held; and to identify alternative methods of amending Alaska's Constitution. The intent is to educate ourselves and the public. No position is taken on the question of a constitutional convention.

October 4, 1982

Q What is the purpose of a constitution?

A It sets out the basic philosophy, policy, and framework of government; the mechanics of who does what; and the powers, restraints, relationships, and limits of government.

Q When was Alaska's Constitution drafted?

A Fifty-five delegates drafted our constitution two years before Statehood during the original 1955-56 convention. The National Municipal League termed it "one of the best, if not the best, state constitutions ever written." It was ratified by the voters April 24, 1956.

Q What can a constitutional convention do?

A Alaska's Constitution gives a convention plenary power, which means the power to propose amendments to the entire constitution. Proposed amendments must be submitted to the public for approval.

Q What if the voters decide against a convention?

A If no convention is called within the next ten years, the question will be placed on the ballot again in 1992. The legislature has the authority to call a convention at any time.

Q What if the voters decide to have a convention?

A Delegates will be elected at the next statewide election, unless the legislature calls a special election before then. The legislature will determine the details of the convention, such as the opening date, number of delegates, etc.

Q Are there other ways to amend our constitution?

A The legislature can propose amendments to the constitution by a two-thirds vote of each house. The proposed amendment then is placed on a ballot for a public vote. The November 2 ballot contains three constitutional amendments proposed by the legislature.

Q Have Alaskans voted on this question before?

A Yes. In 1970 the question was placed on the ballot as follows: "As required by the Constitution of the State of Alaska, Article XIII, Section 3, shall there be a constitutional convention?" It narrowly passed - 34,911 to 34,472. However, a suit was filed on the grounds that the wording implied that the constitution required a convention. The court threw out the election results and the question was placed on the ballot at the next general election in 1972. It was worded: "Shall there be a constitutional convention?". It was defeated 55,389 to 29,492.

Shall there be a Constitutional Convention?

YES We need to review our constitution in light of the changes of the past 26 years.

Radical changes have occurred in Alaska since the constitution was drafted: vast wealth is at the disposal of the State government; the population has doubled; new economic and political interests have evolved. These basic changes generate issues scarcely envisioned in 1956: limitations on state spending; subsistence rights; the propriety of continued state borrowing, etc. In a society that has changed this much, there should be a presumption in favor of reviewing the basic law.

NO Alaska's Constitution sets out a strong, vital framework for our state government.

Our constitution is one of the shortest and most flexible in the United States, designed to allow for the great changes expected in a new state. It is free of the special "solutions" that tie the hands of future leaders. It allows the legislature its choice of legitimate means in the development of public policy; establishes a strong, unified executive, and an independent, unified judiciary. We don't need a convention when we already have one of the best constitutions in the country.

NO There is only one reason to call a constitutional convention—the need for major revision.

A constitutional convention is held for the purpose of making substantial changes to a state's constitution. A convention only becomes necessary after it has been decided that large portions of a constitution are outdated or restrictive. There has been no claim that Alaska's Constitution needs major revision. The call for a convention comes from individual groups advocating individual changes. Individual changes are made through the normal amendment process, not through a convention.

YES Alaskans are entitled to evaluate the modifications made since Statehood.

In a real sense, the constitution of 1982 is not the constitution of 1956. Our constitution is constantly modified in its actual meaning by action of the judicial, legislative, and executive branches of government. The Alaska judiciary has the obligation to interpret the constitution. The legislature and executive also make decisions with constitutional implications that are not always challenged in the courts. Whether these modifications are "right" or "wrong" is certainly a matter which the people are entitled to evaluate.

YES A convention would provide new leadership, foster greater understanding.

A convention would be healthy for Alaska at this time, focusing attention on the basic legal structure and attracting community leaders who do not have time to consider legislative service. It could generate a new reservoir of leaders of great value to the state and provide a forum for broad discussion of those issues that now divide Alaska, leading to concensus, compromise, or at least a greater understanding for divergent positions.

NO A constitutional convention is not a remedy for weak leadership.

Many of the problems facing Alaskans today are not the result of an improperly drafted constitution, but simply the failure of the executive and legislative branches to function properly in some areas. Weak leadership is not something that can be amended in a constitutional convention. A constitutional convention is an extremely expensive, time-consuming, potentially disruptive event. It is worthwhile only if the constitution needs major revision. When a convention is not necessary, it simply endangers the integrity of a constitution to no purpose.

What's being said in debate...

CON POSITION: Alaska doesn't need a convention, we already have a model constitution.

OBJECTION: Alaska's Constitution is indeed a model, but it does not follow that it cannot be improved. Any legal system, however admirably conceived, is subject to improvement based on experience with its actual operation. Our constitution was drafted before Statehood. Today we need to evaluate it, not as a matter of theory, but on the basis of performance.

RESPONSE: Alaska's Constitution was designed to take advantage of the experiences of the other states. It is used as a guide for states now modernizing their constitutions because it is a "model" in the sense of best-of-the-line, rather than in the sense of an antique. It can be, and has been, improved through the amendment process, but it is not in need of the massive revisions that make it necessary to call a convention.

PRO POSITION: A convention does not necessarily mean massive revision of our constitution.

OBJECTION: The calling of a convention opens our entire constitution to revision. Under Alaska's Constitution, a convention has plenary power -- power to propose changes to the entire document. The public does have the final vote, but the lesson of the 12 constitutional conventions held in other states during the 1970's is clear: conventions produce many amendments. It is almost impossible for anyone to make an informed vote when faced with ballots filled with amendments.

RESPONSE: The calling of a constitutional convention would not represent "an attack" on the present constitution. Since the public has to ratify all proposed amendments, a convention would only result in changes deemed beneficial by the majority. Features of the constitution which have demonstrated their viability should remain untouched. The purpose of a convention is simply to review and make recommendations as to whether specific changes could be made to improve the operation of state government.

CON POSITION: We already have an amendment process for the changes needed.

OBJECTION: The constitution requires approval of two-thirds of the legislature before a proposal is submitted to the people. This requirement may pose an inordinate barrier to implementation of needed measures. Some 290 resolutions to amend the constitution have been introduced since Statehood. Only 23 have passed both houses of the legislature.

RESPONSE: The amendment process has worked very well to change those provisions which the majority of the people want changed. In twenty-three years of Statehood, sixteen amendments -- dealing with such basic issues as establishment of the Alaska Permanent Fund, the right of privacy, limited entry in fisheries -- have been ratified by the voters. This process is designed to pass needed amendments, not adopt every resolution ever made.

PRO POSITION: The legislature will not reform itself. Reform amendments will only come out of a constitutional convention.

OBJECTION: Legislators are elected by the people. To say that the legislature will not reform itself, is to admit that the people cannot elect legislators to do what the majority want. It is true that some proposed amendments have failed repeatedly. It is not necessarily true to conclude unreasoned blocking. It is possible that some ideas simply don't hold up under analysis. Many of these repeat proposals were also debated and voted down by the 1956 convention.

RESPONSE: The legislature consistently blocks proposed amendments that restrict its powers or affect its structure. Amendments to limit the length of the legislative session have been introduced 23 times since Statehood. The concept of a unicameral legislature has been introduced 13 times. The legislature has continued to prevent a public vote on these issues even after both were approved by voters in statewide advisory referendums.

Alternative approaches to amending Alaska's Constitution

There are two questions which must be considered apart from the issue of whether or not a constitutional convention is necessary at this time: first, whether the amendment process Alaska has now can be improved; and second, whether there are other methods of amendment which might merit study?

In pursuing these questions, three concepts were explored: use of the initiative for constitutional amendment; use of a Constitutional Revision Commission; and use of a legislative standing committee.

It is concluded that, regardless of the outcome of the election, all three concepts merit further consideration.

The two-level review process in constitutional amendment

Alaska's Constitution can be amended through a convention or through the legislature. Both methods require approval of proposed amendments by a majority of the voters.

This two-level review process was designed to meet concerns of the 1956 convention delegates that there be adequate methods of updating the constitution and adequate safeguards so amendments would not be haphazard.

Alaska has not had a convention since Statehood, but there has been substantial use of the legislative amendment process.

Two criticisms of this process are, first, time constraints -- on both citizen's groups and legislators -- hamper adequate analysis of proposed amendment issues; and second, it is difficult for citizens to bring their concerns to the attention of legislators.

Any alternative approaches to constitutional amendment should meet the concern of safeguarding the constitution, while alleviating the criticisms of citizen's groups today.

Use of the initiative in constitutional amendment

The initiative is the power granted to the people to propose laws and to enact them at the polls independent of a legislative body. While Alaska's Constitution grants the power to enact certain types of law by initiative, it does not extend

the process to constitutional amendment. To do so would require a constitutional amendment.

The principle argument in favor of extending the initiative is that the process provides a means for voters to modify a constitution when their legislature has not responded to public requests.

The principle argument against is that the initiative process eliminates the check and balance of a two-level review. Initiatives are both proposed, and directly voted on, by the voters.

It is concluded that the initiative process, as it is presently set out to enact Alaska statutes, should not be extended to the constitution. However, further study might show that the concept of constitutional initiative could provide an acceptable alternative if sufficient restrictions are placed on the process to ensure adequate review.

Use of a Constitutional Revision Commission

A Constitutional Revision Commission is a state agency charged with the responsibility of researching and preparing constitutional amendments. These agencies are being used, in one form or another, in many states.

Such a commission has one purpose -- to improve the processes used to amend a state constitution. It studies both the need for, and effect of, amendments.

Its charge would be to hold public hearings; review areas of public interest; contract research; draft and present proposed amendments to the legislature.

It could, for example, be directed to research the effect of various ways amendment by initiative might work, and if the concept is approved, have a role in researching initiative proposals from the public.

A Constitutional Revision Commission can be created by executive or legislative act without a constitutional amendment.

Such a commission should be free of control of any government branch. One recommendation would be a bi-partisan body with an appointee from each government branch and four elected public members. The present Alaska Code Revision Commission, which updates and revises existing statutes, could serve as a guide.

Use of a legislative standing committee

A third option would be to request the Alaska Legislature to establish its own standing committee to implement the amendment process. An Alaska Constitutional Amendment Hearing and Action Committee would:

- receive requests from both the public sector and the legislature for amendments to the Constitution;
- hold public hearings on such requests; and
- introduce proposals to the legislature for action.

It is not expected that every proposal would be submitted to the legislature, rather the objective would be to allow the public and the legislators the opportunity to consider and publically review and debate the merits of major proposals.

The mechanics of a constitutional convention

If a convention is called, when will it start...how many delegates...how long will it last? These questions are of interest regardless of whether a voter is in favor of, or opposed to, a convention.

The answers to these questions, the mechanics of planning a convention should one be called, is the responsibility of the legislature. Convention legislation has been considered in the past, particularly in 1970 when Governor William Egan introduced House Bill 117 in response to a constitutional vote. The legislation was never enacted because the convention was ultimately rejected, but the key areas of consideration of that bill have served as a guide for all subsequent proposed enabling acts.

The provisions summarized and commented on here include the areas of consideration in HB 117. They are intended as discussion points if the voters approve a convention in November.

Setting the stage: the key provisions

PROVISION: That the legislature establish a Constitutional Convention Commission to prepare the groundwork for an effective convention.

COMMENT: If the voters approve a convention on the November ballot, it is expected that the next legislature would pass the enabling statute and the convention would be convened in 1983. This leaves only a short preparation time. Alaska's 1956 constitutional convention was successful, in part, because of thorough preparation. Other states having successful conventions stress the importance of this first step. The primary duties of the commission would be to compile materials useful to the delegates; undertake research; organize appropriate background material; and provide information on request.

PROVISION: That the election of delegates take place at a special election and that such election be nonpartisan in every respect.

COMMENT: Due to the singular importance of the constitution as the basic law of the state, it is concluded that the enabling provisions should, insofar as possible, focus attention on the convention by separating it from on-going political concerns.

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Amending State Bills of Rights: Do Voters Reduce Rights?

Janice C. May

The renewed attention to state constitutions during the past 20 years has raised questions about the impact of formal amendment and revision processes on the viability of these charters as protectors of individual rights. A primary reason why questions have arisen is that state constitutions are amended frequently. "Amendomania" is a term that has been applied by some critics to the hundreds of amendments regularly proposed and added to state constitutions. Constant tinkering with a state's fundamental law may not, therefore, augur well for the permanency of rights.

A key concern is the role of the voter, who possesses the sovereign power to decide the fate of constitutional amendments referred by the legislature or by a convention (and in Florida by commissions). Under the constitutional initiative process available in 17 states (only one of which uses the indirect form), voters may propose and adopt amendments independently of the legislature or a convention. Although the U.S. Constitution provides a floor of protection for certain rights, are state constitutional rights imperiled by procedures that allow continual exposure to public opinion? Can the "majority" be trusted to protect "minority rights"?

An analysis of state constitutional amendments referred to the voters can shed considerable light on these questions. In this article, such an analysis will be made on the basis of surveys conducted by the author and the late Albert L. Sturm.[1]

Infrequent Rights Amendments

The first important finding is that state bills of rights have been amended relatively infrequently. From 1970 through 1990, approximately 155 rights amendments were proposed, of which 126 were added to bills of rights.[2] This is an average of 3.0 proposals and 2.5 adoptions for each state, or about one adoption per state every eight years. Of the 11 major articles of state charters, the bill of rights ranked near the bottom with respect to the total number of constitutional amendment proposals (ninth) and adoptions (eighth). Expressed in another way, amendments to bills of rights accounted for about 5 percent of proposals and 7 percent of adoptions. The fact that rights proposals enjoyed the highest rate of adoption among the articles (82 percent) explains the somewhat larger proportion of rights measures ratified by the voters.

Interest in amending bills of rights as measured by the number of propositions on ballots was slightly higher in the 1970s than in the 1980s (75 proposals and 60 adoptions in the 1970s compared to 68 proposals and 59 adoptions in the 1980s). The biennium showing the most activity during the past 20 years was 1972-73—26 propositions, of which 22 were ratified.

An exception to the slight downward trend in the 1980s was an increase in the number of constitutional initiatives to amend state bills of rights. While only five such propositions were on the ballot in the 1970s, of which two were approved, the number in the next decade grew to eight, almost a four-fold increase, with seven adoptions. In 1990, five more initiatives were voted on, and two were approved. This jump in the popularity of the initiative is significant, but the numbers are small. The device has been used sparingly to change rights.[3] Thirteen proposals and nine adoptions over 11 years (1980-1990) amounts to under one proposal and well under one adoption on average for the 17 states having the initiative.

Counting only amendments to state bills of rights understates somewhat the extent to which bills of rights have been changed. By custom, new constitutions and certain other major revisions are not counted as amendments. Suffice it to say that even with the addition of revisions the changes in bills of rights are far from being a flood. The general pattern exhibited by the seven new

constitutions adopted during the past 21 years has been one of retention of traditional rights, editorial improvements, and additions of a few new rights.[4] In summary, then, "amendomania" has not affected state bills of rights nearly as much as it has affected other sections of state constitutions.

Do Voters Expand or Contract Rights?

Of greater interest than the number of amendments is whether the trend has been toward expansion or contraction of rights and whether certain rights are more popular than others.

From 1970 through 1985, the largest category of rights amendments (including rights identical or similar to those in state bills of rights but located in other articles) concerned criminal justice.[5] All but a few of these reduced rights, and most passed. The second largest group, however, consisted of antidiscrimination measures, mostly equal rights amendments (ERAs), which were expansive. Most of these were approved by voters. Coupled with other proposals in different categories, the amendments that expanded rights came close to parity with those that contracted them. If rights from new constitutions were added, the balance would be on the side of expansion in 1970-1985.

During the past five years, criminal justice proposals and various kinds of antidiscrimination measures and related items have dominated the rights scene. Together, they made up 61 percent of both proposals and adoptions. Other rights amendments covered a medley of topics, many of minor importance. Again, though, depending in part on how one classifies amendments, voters expanded rights about as often as they contracted them during 1986-1990. What follows is a detailed discussion of these activities.

Criminal Justice Rights

Criminal justice measures constituted the largest single group of rights propositions in 1986-1990, but were proportionately less numerous than in 1970-1985 (one-third of the total rather than 43 percent). However, the approval rate of 90 percent was somewhat higher.

The most important substantive difference from 1970-1985 was the larger contingent of eight proposals in seven states giving rights to victims of crime (Arizona, California-2, Florida, Michigan, Rhode Island, Texas, Washington). Only the California Victims' Bill of Rights had been on the ballot before 1986. Seven of the eight victims' rights propositions were adopted. The measures represent a new direction for criminal justice, one that has drawn considerable national and international support. (Forty-four states have adopted statutory provisions on victims' rights). All but three of the proposals (California-2, Arizona) may be regarded as expansive because their intent is to add new rights for victims "to the extent that these rights do not interfere with the constitutional rights of the accused" (as expressed in the Florida measure).

Seven other measures in six states (Illinois, Mississippi, New Mexico, Oklahoma, Rhode Island-2, Utah), all passing muster with the voters, cut back on the right to bail and are therefore classified as diminishing rights. The remaining five criminal justice propositions, of which four passed, will be regarded as rights neutral because they involved changes in structure or law enforcement policy, or they mixed rights reductions with expansions.[6]

Antidiscrimination Measures

The number of antidiscrimination measures decreased after 1985. Only two ERAs were on the ballot: a Vermont proposition that failed at the polls and a Rhode Island proposal that included "race, gender, or handicap," which passed. Other developments were favorable to minorities and women, but were largely symbolic. The most ambitious of these was an editorial revision of the entire Maine Constitution to render it gender neutral, which was ratified by the voters in 1988. Quite a few other state charters have been edited for this purpose, but not the whole document. Three successful amendments removed vestiges of segregation: the repeal of an "interposition" amendment that directed the Arkansas legislature to oppose the "Un-Constitutional" school segregation cases (*Brown* v. *Board of Education*), and the removal of two Mississippi provisions, one forbidding interracial marriage and the other requiring segregation of prison inmates.

Abortion Rights

In contrast to 1970-1985, seven abortion measures were on the ballot in 1986-1990 (Arkansas-2, Colorado, Massachusetts, Oregon-2, Rhode Island); all but one were designed to restrict women's rights to abortion. Five of the six were defeated by voters. The only successful measure was an Arkansas amendment prohibiting public funds for abortion. These anti-abortion proposals are classified as rights restricting because they are intended to constrain a right currently articulated by the U.S. Supreme Court and supported by many citizens. The seventh measure, which failed, was a Colorado initiative to repeal a ban on public funding of abortions. However, it should be noted that the U.S. Supreme Court has not recognized a right to a publicly funded abortion (although several state courts have done so), and from a pro-life perspective, any provision to restrict abortion is rights expanding.

Language Rights

A group of five "English Only" amendments represented the only new category of importance since 1985. (The Nebraska Constitution was amended in 1920 for this purpose.) All were approved (Alabama, Arizona, California, Colorado, Florida). Although their language appears benign, except for the Arizona proposition, which was declared unconstitutional by a federal district court in 1988,[7] promoting English as the official language is often thought of as a retreat from language rights for minorities. All the English measures, therefore, will be classified as diminishing rights, although it is not yet evident that these amendments will in fact reduce rights, and, with the possible exception of the Arizona provision, they do not explicitly take away an existing right.

Tort Reform

Four amendments concerned tort reform or regulation (Arizona-2, Florida, Montana), but only the Montana proposal was adopted. Because these proposals can be

considered as limiting access to the courts, an expressly protected right in some state constitutions, they will be classified as contracting rights.

Gun Control

Six propositions dealt with the right to keep and bear arms, and all were accepted by the voters (Delaware,[8] Florida, Maine, New Mexico, Nebraska, West Virginia). Unlike the others, the Florida proposition requires a three-day waiting period before purchasing handguns. One view held by some constitutional analysts is that the right to bear arms is a collective rather than an individual right. However, amendments can be considered rights expansive if the intent is to establish a clear individual right. The propositions are so classified here, except for the Florida measure, which is treated as a police regulation of an individual right.

Civil Jury Trials

Another group of four amendments dealt with jury trials in civil cases (Hawaii, Minnesota, New Hampshire-2). These are, at most, minor restrictions on the right to a jury trial. Typically, they raise the value of the amount in controversy or allow smaller juries, or both. All won at the polls, except a New Hampshire proposition that would have left changes up to the legislature.

Miscellaneous

Of the remaining amendments, three major provisions dealt with freedom of speech (Rhode Island) and the environment (Rhode Island, Kentucky). All of these passed and are classified as expansive. Two other proposals involved sovereign immunity relaxation (Georgia-2) that might increase rights, one of which failed. An Alaska proposition awarding preference to its own residents was ratified and can be regarded as restrictive. Another five amendments were excluded from classification for various reasons: a one-word change (Wisconsin), dual office-holding (Maryland), classified property tax (Wyoming), a drinking age regulation (Montana), and two highly technical "takings clauses" (Oklahoma, South Dakota). One of the takings proposals was defeated, but all the others won.

Voters Restrict Criminal Rights but Not Necessarily Other Rights

Combining the various proposals that were classified as reducing or expanding rights yields the following results: 30 restrictive and 22 expansive proposals; 20 restrictive and 19 expansive adoptions.[9] Although the restrictive propositions were more numerous, the adoption rate of the expansive measures was higher (86 percent to 66 percent), thus leading to a virtual tie between the expansive and restrictive measures. Of the major categories, criminal justice measures accounted for 33 percent of the rights-reducing propositions and 45 percent of their adoptions. The English language and abortion measures were slightly more numerous than the crime propositions among the restrictive proposals (36 percent), but fewer were adopted (30 percent). Hence, concern for crime is the major source of rights-reducing measures approved by the voters. Antidiscrimination propositions (including one pro-choice abortion item) amounted to 31 percent of the expansive proposals and 26 percent of the adoptions.

It is also of interest that, unlike the 1970-1985 period, half (15 of 30) of the restrictive proposals and 40 percent (8 of 20) of the adoptions during 1986-1990 were constitutional initiatives.[10] Although the number of initiatives was small (17), they contributed a disproportionate share of the rights-reducing measures.

Again, however, it should be noted that one can reach different conclusions depending on how one classifies the rights measures. If the anti-abortion measures are classified as rights expanding and if all but one (Arizona) of the "English only" measures are classified as neutral, then one will conclude that there were 20 restrictive and 27 expansive proposals, and 14 restrictive and 20 expansive adoptions. Thus, from this perspective, voters expanded rights more often than they contracted them.

Nailing State Courts to the Federal Floor

Amendments to state constitutions have occasionally overturned state court rulings on rights, and a few amendments have taken a stand on "the new judicial federalism" (state judicial interpretation of state constitutional rights independently of the national document). During 1970-1985, at least six court rulings were singled out for rejection by amendments; in addition, voters in California and Florida adopted "lockstep" propositions mandating that their state courts not exceed standards set by the U.S. Supreme Court in certain rights cases.[11] Even so, California voters also approved in 1974 a clear statement that rights under the state constitution "are not dependent on those guaranteed by the U.S. Constitution" (Art. I, Sec. 24).

Since 1985, the most significant development was the ratification in June 1990 by the California electorate of Proposition 115, the Crime Victims Justice Reform Act. A constitutional initiative, the proposal launched a full-scale attack on the new judicial federalism in criminal cases. For the first time in California history, the state's courts may have been required to give up their power to interpret the rights of "criminal defendants" under the state's fundamental law and, in essence, "delegate" it to the federal courts. Expressing the view that defendants' rights "had been unnecessarily expanded far beyond that which is required by the U.S. Constitution," the proposition directed the California courts to construe 12 enumerated rights, such as due process and privacy, "consistent with the U.S. Constitution" and *not* to construe the state's charter to "afford greater rights to criminal defendants than those afforded by the U.S. Constitution." The state supreme court estimated that the mandates in Proposition 115 would eliminate at least 32 rights, and one commentator stated that 100 cases developed over a span of 40 years would be overturned.[12]

Calling the provisions "devastating," the California Supreme Court, in *Raven* v. *Deukmejian*, struck them down as an unconstitutional "revision" of the state constitution instead of an "amendment," to which California constitutional initiatives must be limited. Chief Justice Malcolm Lucas argued that the measure was a

"qualitative" revision because it would change the basic framework of the state's judicial and constitutional system by "substantially altering the substance and integrity of the state constitution as a document of independent force and effect" and by depriving courts of their basic functions. The court left standing three new sections to the bill of rights incorporated in Proposition 115. One, which has also been described as historic, confers on the *state* for the first time the rights of due process and to a speedy and public trial. The other changes would overturn at least three cases.[13]

At the general election of 1990, California voters rejected Proposition 129, a constitutional initiative that included a provision "reenacting" Proposition 115, but with a proviso that a woman's right to reproductive choice would continue to be protected under the right to privacy in the state constitution.

Another major event relating to the new judicial federalism was the adoption in 1986 of a Rhode Island proposition holding that state constitutional rights are not dependent on the U.S. Constitution. In an ironic twist, considering Proposition 115, the voters also approved new "equal protection" and "due process" clauses taken from the U.S. Constitution to ensure that the Rhode Island courts would be able to interpret them independently and more broadly than the U.S. Supreme Court's interpretation of the U.S. Constitution.[14] It is difficult to predict whether more states will support the new judicial federalism by amendment, but it seems likely that more attempts will be made to limit state courts to federal standards in criminal cases.

Conclusion

On balance, the state constitutional amendment process has not been a threat to state bills of rights, although there may be some long-run cause for concern. For one thing, the process is used relatively infrequently to change bills of rights. Second, voters approve proposals expanding rights in about equal measure to those reducing them. Among the rights-expanding propositions put to voters during the past 21 years, a large number of antidiscrimination amendments (mainly ERAs) were adopted to provide more protection for women and minorities than that afforded by the U.S. Constitution. Of the rights-reducing measures adopted by the voters, it is significant that almost half concerned crime.

In this respect, the question of whether voters can be trusted to protect rights is misguided. The desire to narrow the rights of the accused is pervasive, reaching as it does right into the Congress, the White House, and the U.S. Supreme Court. In other words, voters thus far have not been significantly out of step with many political leaders and judges.

The experience with Proposition 115 also sheds light on the controversial constitutional initiative. Various checks provide safeguards against misuse of the initiative, which in recent years has been the source of about half of the proposals limiting rights. The judicial check "kicked in" to hold unconstitutional the most far-reaching provisions of Proposition 115. Thus, while the state constitutional amendment process may leave many citizens feeling uneasy about the ability of state charters to guarantee rights, the process does allow the public to participate, to forge new rights, and to define rights in controversial areas such as abortion. In our federal democracy, this process is not only a very desirable attribute but also the sovereign prerogative of the people.

Notes

[1] Primary data were provided by official sources in every state. All but the 1990 data have been included in biennial surveys of state constitutions published in *The Book of the States* (Lexington, Kentucky: The Council of State Governments).

[2] The numbers apply to state bills of rights only and not to rights located in other articles of state constitutions. Rights incorporated in new constitutions and certain other "general revisions" are also excluded.

[3] See Janice C. May, "The Constitutional Initiative: A Threat to Rights?" in Stanley H. Friedelbaum, ed., *Human Rights in the States: New Directions in Constitutional Policymaking* (Westport, Connecticut: Greenwood Press, 1988), p. 168. From 1906 to 1986, only 25 rights measures were passed by constitutional initiative.

[4] Albert L. Sturm, "The Development of American State Constitutions," *Publius: The Journal of Federalism* 12 (Winter 1982): 87.

[5] Janice C. May, "Constitutional Amendment and Revision Revisited," *Publius: The Journal of Federalism* 17 (Winter 1987): 170-176.

[6] Regarded as structural changes rather than as rights were three grand jury propositions (South Carolina); two passed. A measure on forfeiture of property in civil proceedings for use in law enforcement was considered law enforcement policy (Louisiana); it passed. A right to a jury measure that included both restrictive and expansive features (Oklahoma) was dropped; it passed. The proposition also included civil trials, but will be classified as criminal.

[7] Yniguez v. Mofford, 730 F. Supp. 309 (1990). Unsuccessful challenges to the Colorado and Florida amendments were not based on the language used in the measures. See Montero v. Meyer, 861 F.2d 603 (1988) and Delgado v. Smith, 861 F.2d 1489 (1988).

[8] In Delaware, amendments are not referred to the voters. They are, however, published before a general election that occurs between the two sessions at which the legislature must approve amendments before their final adoption.

[9] The 30 restrictive proposals were: 3 crime victims, 7 bail, 6 abortion, 5 English, 4 torts and 4 civil jury, and 1 Alaska resident preference. The 22 expansive proposals were: 5 crime victims, 6 antidiscrimination, 1 abortion, 5 arms, 2 environment, 1 speech, and 2 sovereign immunity. Restrictive measures adopted were: 2 crime victims, 7 bail, 1 abortion, 5 English, 1 torts, 3 civil juries, and 1 Alaska residence. Adoptions of expansive measures were: 5 crime victims, 5 antidiscrimination, 5 arms, 2 environment, 1 sovereign immunity, and 1 speech.

[10] The restrictive constitutional initiative proposals were: 3 crime victims (Arizona, California-2), 4 English (California, Arizona, Colorado, Florida), 4 torts (Arizona-2, Florida, Montana), and 4 abortion (Arkansas-2, Oregon-2). The adoptions were: 2 crime victims (Arizona, California), 4 English, 1 torts (Montan), and 1 abortion (Arkansas).

[11] May, "Constitutional Amendment and Revision," pp. 175-176.

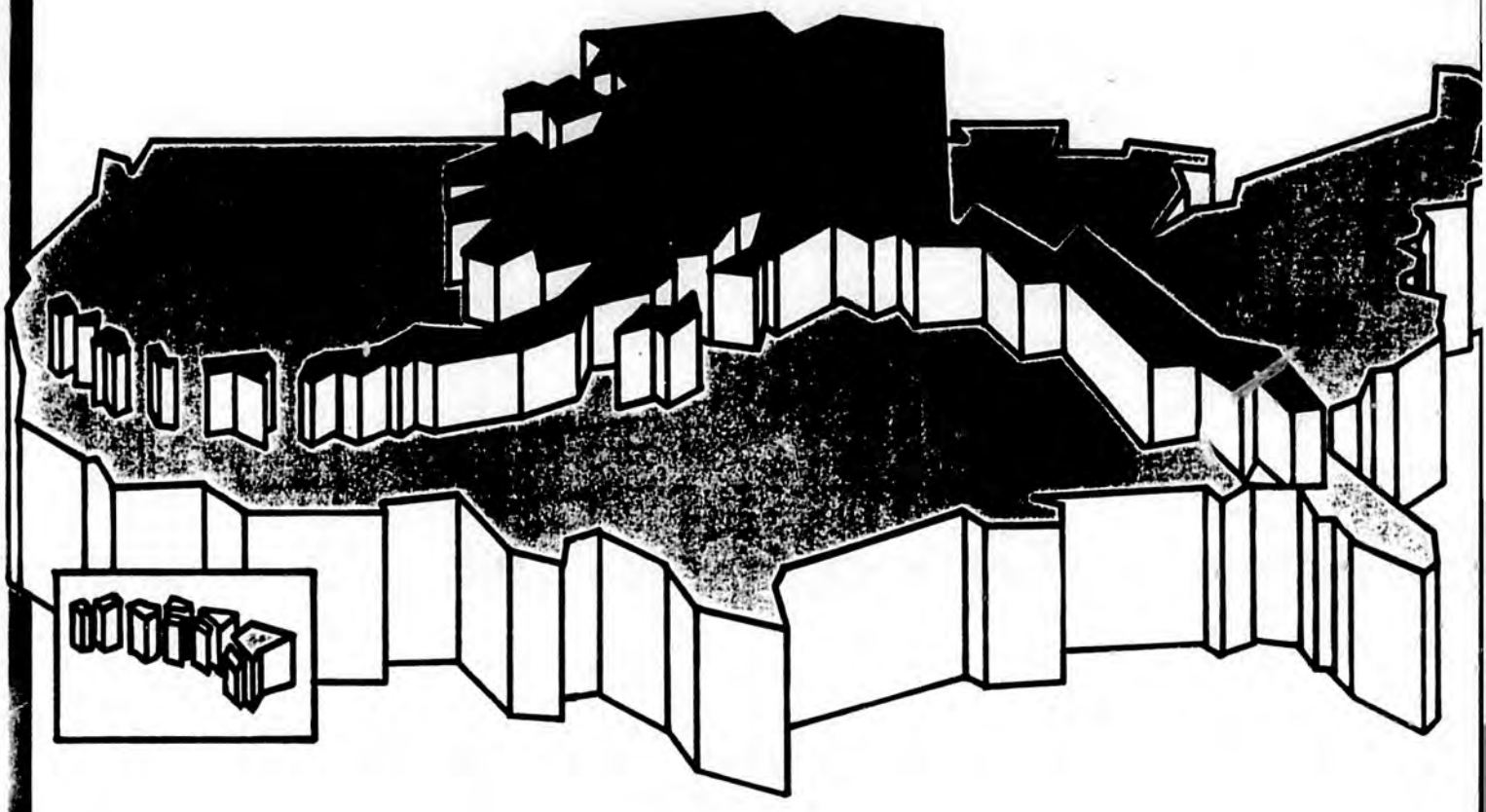
[12] See Raven v. Deukmejian, 801 P.2d 1077 (CA 1990); and Gerald F. Uelmen, "The California Constitution after Proposition 115," *Emerging Issues in State Constitutional Law* 3 (1990): 61.

[13] See "Proposition 115: The Crime Victims Justice Reform Act," *Pacific Law Journal* 22 (1991): 1018-1027.

[14] Constitution of the State of Rhode Island and Providence Plantations, Ann. Ed. Art. I, Sec. 24. The commentary reads in part: "This resolution adds to the Constitution a concept that the state Constitution is to be interpreted as expanding and not limiting individual rights, even though similar rights in the federal Constitution may be more narrowly defined."

MORE PERFECT UNION

A Plan for Action



FINAL REPORT

By the Alaska Statehood Commission

MORE PERFECT UNION

A Plan for Action

FINAL REPORT

By the Alaska Statehood Commission

January 1983

January 24, 1983

President of the Alaska Senate
Speaker of the Alaska House

Dear Mr. President and Mr. Speaker:

We submit the Alaska Statehood Commission's final report as required by Chapter 161 SLA 1980 and by vote of the people. This report concludes our two-year study of Alaska's relationship to the United States. It sets forth a plan for action to improve that relationship.

In our first year we studied alternative forms of association that the people of Alaska might seek with the United States. We determined that all alternatives to statehood are now undesirable. We have concentrated our final efforts on the positive contributions that Alaska might make to improve the union. The evolution of our nation is not complete--nor are the promises of Alaska's Statehood Act of 1958 all fulfilled.

Once a forgotten territory, Alaska today is a state unique in size, cultures, and resource potentials. Alaska is a redoubt of the nation's military defense. Alaska daily pumps one out of every five barrels of oil the nation produces.

But with our new prosperity and importance come louder demands from our countrymen. Events of the 1970s and now congressional moves to limit state resource revenues teach us that we cannot afford to ignore developments from the Potomac.

As the least populated state of 50, our hopes lie in persuasion and a commitment to national unity.

When a dispute looms with the federal government, we must be ready to act. We must have research facilities already in place with facts in hand. We must stimulate coalitions of like-minded states. We must bring to Alaska those who make or sway national opinion so that they can see our situation for themselves. We must take our cases to the courts. We must gird ourselves with facts and friends.

We thank the people of Alaska for this opportunity to study and to serve. We submit this plan for action with the conviction that good government can be made better.

Sincerely,

John B. (Jack) Coghill, Chairman

climate research, and migratory wildlife management.

To facilitate this conference and to expand Alaska's relations with the international community at large, we recommend that the governor create an interagency task force on foreign affairs.

With such action states can take charge of the regional interests they claim Washington is neglecting.

This task force would join a foreign-relations specialist[24] on the governor's staff with representatives of the Council on Science and Technology, and the Departments of Fish and Game, Commerce and Economic Development, Natural Resources, Transportation and Public Facilities, and Law.

With such action states can take charge of the regional interests they claim Washington is neglecting.

12 The Alaska Legislature and governor should immediately invite representatives of Hawaii and the noncontiguous possessions to meet with them to explore setting up a permanent coalition to deal with common interests and problems, such as the effects of discriminatory transportation laws.

Not being geographically connected to the first 48 states has threaded the histories of Alaska, Hawaii, Puerto Rico, the Virgin Islands, American Samoa, Guam and now the Northern Marianas with a common experience--that of suffering second-class political citizenship.

Alaska and Hawaii overcame this burden in 1959 by achieving statehood, but even now, remnants of territorial status remain for them in the form of discriminatory laws. The Jones Act is the best example.

The nonstate possessions remain politically impotent. None have a voting delegate to Congress. None vote in elections for president.[25]

Helping any possession to achieve greater self-government through democratic means can only benefit Alaska. If statehood occurs, the new senators and the new congressmen will understand the problems of noncontiguity and can be supposed to join Alaska's delegation in overcoming them.

For the present, the noncontiguous states and possessions share concerns about oil exploration on the Outer Continental Shelf, about fishing, about treaty making, about delayed economic development, and about transportation systems or their lack.

Alaska, for example, must out of principle oppose any efforts to make the Jones Act apply to the Virgin Islands, the one island territory excepted from the act. The Virgin Islands has built an oil-refining industry around that exception, which lets foreign tankers carry American oil to Virgin Islands docks. Some of that oil is from Alaska.

One item for discussion by the noncontiguous parts of the United States could be the establishment of a federal Region 11 just to coordinate federal programs applying to them. Under the existing federal structure of 10 administrative districts, the needs of the noncontiguous areas sometimes get treated as the needs of barely remembered stepchildren.

The western noncontiguous states and territories should also have a distinct federal appellate circuit, the 11th Circuit Court of Appeals.

Alaska in any case has the need to develop new coalitions of friends, and it should reach out to Hawaii and the noncontiguous possessions to ask them to talk over the opportunities for mutual advantage.

13 Alaska must vigorously police federal implementation of the Alaska Statehood Act. We should insist that the remaining land transfers be completed at the rate agreed upon in 1981 (13 million acres transferred to the state per year) and we must guard against congressional attempts to unilaterally change the Statehood Act and the Constitution of the State of Alaska. The Legislature should authorize and direct the lieutenant governor to place all such attempted changes in the Statehood Act and the state's constitution before the voters in a ballot proposition.

In our preliminary report we documented the failure of the federal government to carry out the contract it made in the Alaska Statehood Act of

[24]See Recommendation No. 17. We envision this task force as separate from but working with an office of external relations.

[25]For a complete description of the political status of America's possessions, see the Alaska Statehood Commission publication, *Hawaii and the U.S. Territories*, by Howard Bray and Doris Deakin, 1981.

1958.[26] Land conveyances are years behind schedule. The land freeze of 1966, followed by federal land withdrawals of the Alaska Native Claims Settlement Act (ANCSA) and the Alaska National Interest Lands Conservation Act (ANILCA, commonly known as the D-2 Act), prevented the state from choosing which lands it wanted for the remainder of its entitlement. The state is facing many difficulties gaining access to lands it holds within blocks of land withdrawn under ANCSA and ANILCA.

In an outrageous move to pre-empt all state opposition, Section 10 of ANCSA put a unique one-year statute of limitations on lawsuits by the state. It penalized legal action with a "blackmail clause"[27] promising to stop all state land transfers for the duration of any suit against ANCSA, however valid.

The federal government may renege again on its land conveyance obligations if Alaska fails to muster its full legal, economic, and political powers to compel the federal government to live up to its solemn promises.

We have been monitoring the fulfillment of an out-of-court settlement between Alaska and the federal government on the rate of land conveyances. In this settlement, *Alaska v. Reagan* (1981), the Interior Department promised to convey 13 million acres per year to the state.

The department has so far kept its promise. It conveyed 13,310,856 acres to Alaska in fiscal year 1981. At the agreed pace of 13 million acres per year, Alaska should have all its Statehood Act lands by the end of 1985.

By Oct. 1, 1982, the federal government had transferred 65,644,104 acres to the state, including about 62 percent of the state's general grant of 102,550,000 acres. Native corporations held 23,202,420 acres towards their entitlement of 40 million acres. Private holdings, not including Native lands, are approximately 2 million acres, or less than 1 percent of Alaska's land.

The federal budget will get tighter, however, and with four more years of conveyances to go, the pace of transfers could slow. State officials and Alaska's congressional delegation should make clear that federal funds for carrying out the Statehood pact are not "optional," to be cut back like a federal grant for library improvements or rat control.

It is time to wind up implementation of the Statehood Act. The federal government is already behind schedule, and in 1980 had to extend the compliance deadline to 1994, 10 years beyond the original 25-year deadline of 1984.

Alaskans should stand against any unilateral attempts by Congress to change any provision of the Alaska Statehood Act, for the act is a compact between the United States and the people of Alaska. Similarly, Alaskans should not permit Congress to rewrite the Alaska Constitution.

It is time to wind up implementation of the Statehood Act.

Congress may attempt to change the formulas contained in the Statehood Act for revenue sharing from mineral revenues from onshore federal lands: 90 percent to the state and 10 percent to the federal government. The Interior Department attempted a unilateral change recently. In 1975 and until corrected by the U.S. Supreme Court, Interior altered the sharing formula for oil revenues from the Kenai National Moose Range to give 75 percent to the federal government, 25 percent to the Kenai Peninsula Borough, and nothing to the state. The Supreme Court set the Interior Department straight on this matter, but we are concerned with the Court's language suggesting that these percentages can be changed in the future, at Congress's discretion.

The Legislature in an omnibus bill should authorize and direct the lieutenant governor to place any proposed change to the Statehood Act or Alaska Constitution before Alaska's voters in a ballot proposition, asking them to say yes or no to the change.

The Alaska Statehood Act required the consent of Alaskan voters to become effective.[28] Similarly, Alaskan voters should have the opportunity to pass upon suggested changes to the Statehood Act. If the voters disapprove the change the state will have a mandate to oppose the attempted change in court.

In our two years of study we have devoted more time to monitoring implementation of the Alaska Statehood Act than to any other issue. Other agencies will continue the scrutiny as the commission expires, for Alaska has not yet achieved full statehood.

14

Alaskans should consider two amendments to the state constitution which will clarify the philosophy and the powers of our state government in the federal union.

We suggest few additions to the Alaska Constitution. Ratified in 1956, it is recognized nationwide as a model charter, for its brevity, clarity, and innovations. Federal powers have done a lot

[26]For a detailed discussion of the Alaska Statehood Act, see the Statehood Commission publication, *The Concept of Statehood Within the American Federal System*, 1981, pp. 89-120.

[27]Section 10 of ANCSA, 43 U.S.C. Sec. 1609.

[28]Sec. 8(b), Public Law 85-508, July 7, 1958.

of growing since then, however, and we offer two possible amendments to help define Alaska's role.

The first addition is modelled after Article I, Section 1 of the Texas Constitution. That section of the Texas Constitution reads:

> "Texas is a free and independent State, subject only to the Constitution of the United States, and the maintenance of our free institutions and the perpetuity of the Union depend upon the preservation of the right of local self-government, unimpaired to all the States."

A similar amendment to the Alaska Constitution can serve to link the ideas of citizenship, statehood, and local self-government.[29]

The state should not hesitate to lay claim to all the authority given states by the history and practice of the U.S. Constitution.

A second amendment would clarify the state's power to cooperate with foreign nations.

Article XII, Section 2 of the Alaska Constitution now reads:

> "The State and its political subdivisions may cooperate with the United States and its territories, and with other states and their political subdivisions on matters of common interest. The respective legislative bodies may make appropriations for this purpose."

We suggest adding a phrase after the words "on matters of common interest":

> "...and to the extent consistent with the Constitution of the United States, with foreign nations."

An early draft of this section of the Alaska Constitution contained a very similar phrase,[30] but the framers deleted it for fear that Congress would not approve a state constitution referring to foreign cooperation.

Research for the Statehood Commission (Schechter and Elazar, pp. 57-68) shows that American courts allow states much leeway to engage in friendly relations with Canada and other nations. A 1978 study located 766 agreements and understandings between American states and Canadian provinces (Swanson, pp. 221-265).

The state should not hesitate to lay claim to all the authority given states by the history and practice of the U.S. Constitution. Our research shows that states *are* sovereign entities, and they *do* have some powers to engage in friendly foreign relations. The above two amendments to the Alaska Constitution would elaborate those powers.

15 State officials should refuse federal grants carrying burdensome requirements.

The federal government exercises control over more subject areas by grant requirements than by direct orders to state and local governments. It is through grant conditions, for example, that the federal government enforces a national 55 mph speed limit upon the states.

The U.S. Supreme Court allows the federal government to impose controls on the states by conditional funding that would be otherwise unconstitutional if imposed by federal statute or regulation. The Court places few limits to what a federal grant can demand, reasoning that a state can always turn the money down.

In reality, most state and local governments cannot afford to turn down federal money even if they wish. In many cities, grants once seen as "extra" now keep the buses running and the lights on in City Hall. This poor state of affairs grows in part from the federal government's hogging of the tax base.

Alaska is prosperous enough--for the time being--to turn down some federal grants when the conditions or the paperwork required are not worth the dollars. State officials should inventory grant programs, comparing the drawbacks and benefits of each, and be prepared to turn down offers of federal money.[31] The state should reject grants demanding reorganization of state government.

[29]A detailed discussion of these and other amendments to the Alaska Constitution may be found in the Alaska Statehood Commission publication, *The Role of the States as Polities in the American Federal System*, by Stephen Schechter and Daniel Elazar, 1982.

[30]See committee proposal No. 12, introduced in the Alaska Constitutional Convention Dec. 16, 1955. That phrase read, "...and to the extent consistent with the laws of the United States, with foreign nations."

[31]This inventory is a good idea anyway, as the federal money available for grants is dropping sharply. The state should know in advance which grants are worth fighting for and which are not.

Our research[32] indicates that a state can, by rejecting a grant it accepted in prior years, embarrass the federal bureaucracy into reforming the grant and pruning the tendrils of conditions which have sprouted from it.

16 The Legislature should fund the Department of Revenue or other appropriate agency to make an annual study of and report on the flow of federal spending and revenues in Alaska.

Basic data about the federal government's economic relationship with Alaska has been difficult to obtain in coherent form from either federal or state agencies, though this information is critical for defending against congressional efforts to confiscate or limit state oil and other resource revenues.

The information is also critical for showing our fellow Americans through the national media that Alaska contributes more to the national treasury than it withdraws.

Because of the lack of available data, the Statehood Commission commissioned two studies on federal revenue and spending in Alaska from the University of Alaska's Institute of Social and Economic Research (ISER, 1981, 1982).

The first study, covering federal fiscal year 1980, showed that the federal government was earning $2 from general economic activity in Alaska for every $1 that it spent here. The second study, for fiscal year 1981, showed that by then the federal government was earning $3 in Alaska for every $1 that it spent.

The latter study showed that economic activity in Alaska accounted for one-sixth of all of the federal government's Windfall Profits Tax revenues in 1981 and one-twentieth of all of its revenues from corporate income taxes.

The studies also showed that the federal income tax lands unfairly on Alaskans, hurting families and businesses and distorting investment decisions in this state.

Put in the larger context of economic data about Alaska's high cost of living, its lack of transportation and of energy systems and its lack of adequate housing, the information from these economic studies can show the fair minded that Alaska not only is paying its way in the family of states but has urgent needs at home for its income from temporary oil supplies. Poor until recently, Alaska needs to catch up in supplying to its citizens the basic services that other states offer and most Americans take for granted.

A general theme in this final report from the Statehood Commission is that Alaska must collect more precise, reliable information about itself and disperse it widely across the nation and the state.

Keeping up with how much the federal government earns from Alaska and how much it spends here is a key part of that effort.

17 The governor should establish an office of external relations on his staff, to be headed by a special assistant to coordinate Alaska's expanded relations with other states and with foreign nations.

Much of this report argues the necessity for Alaska to reach out to other states and its neighbors in Canada to establish new coalitions, working groups and conferences to deal with mutual needs.

This work is so important that the Statehood Commission feels that one high-ranking official reporting directly to the governor should have the responsibility of coordinating and directing these efforts with all parts of state government.

It is just as important, however, that this office also concern itself with Alaska's efforts to strengthen its relationships with many foreign nations, especially those with which it trades and those with which it hopes to increase trade.

It is not generally known that in 1981 *"Alaska rated number one in the nation for exports as percentage of total shipments from the state. Furthermore, export-related employment in Alaska was 34.7 percent of jobs in Alaska's manufacturing sector, which includes seafood processing"* (Hemphill, p. 2).

Alaska's exports to foreign markets in 1981 equalled $1.2 billion; its imports from foreign countries totaled $229 million, according to Hemphill. Alaska thus was one of the few U.S. states in 1981 with a positive trade balance and so made a significant contribution to the country's trade situation.

Japan bought most of Alaska's exports--$935 million worth. Japan also was the largest exporter to Alaska--$59 million in goods.

Four classes of goods made up the bulk of Alaska's 1981 exports: seafood products, at $427 million; liquefied natural gas, at $310 million; forest products, at $278 million and fertilizers, at $133 million. These figures do not include goods shipped from Alaska to other U.S. states for reprocessing and export.

The nation and Alaska need to expand markets for these products and to find markets for such other Alaska products as coal, other minerals and grains. Developing these markets demands con-

[32]See the Alaska Statehood Commission publication, *Shifting Power from the Federal Government to the State of Alaska*, by Harold Hovey, 1982.

Table 11
VOTING STATISTICS FOR GUBERNATORIAL ELECTIONS

State	Primary			General election						
	Republican	Democrat	Total	Republican	Per-cent	Democrat	Per-cent	Other	Per-cent	Total
Alabama	18,832	834,686	853,518	196,963	25.9	551,886	72.6	11,625	1.6	760,474
Alaska	81,422	20,845	102,267	49,580	39.1	25,656	20.2	51,674	40.6	126,910
Arizona	112,637	139,667	252,304	241,093	44.8	282,605	52.5	14,858	2.7	538,556
Arkansas †	8,131	144,111	452,442	435,684	51.9	403,241	48.1	...	...	838,925
California	2,299,017	3,122,614	5,421,631	2,526,534	36.5	3,878,812	56.0	515,927	7.5	6,921,273
Colorado	134,871	unopposed	134,871	317,292	38.5	483,985	58.7	22,530	2.8	823,507
Connecticut	unopposed	203,504	203,504	422,316	40.7	613,109	59.1	...	...	1,035,425
Delaware †	unopposed	unopposed	...	159,004	70.7	64,217	28.5	1,815	0.8	225,036
Florida	369,413	1,015,156	1,384,569	1,123,888	44.4	1,406,580	55.6	...	...	2,530,568
Georgia	23,769	640,104	663,873	128,139	19.3	534,572	80.7	...	...	662,711
Hawaii	22,330	259,458	281,788	124,610	44.3	153,394	54.5	3,583	1.3	281,587
Idaho	116,628	unopposed	116,628	114,149	39.6	169,540	58.8	4,877	1.7	288,566
Illinois	unopposed	684,578	684,578	1,859,684	59.0	1,263,134	40.1	27,283	1.0	3,150,001
Indiana †	unopposed	536,594	536,594	1,257,383	57.7	913,116	41.9	7,904	0.4	2,178,403
Iowa	155,562	106,667	262,229	491,713	58.3	345,519	41.0	5,882	0.7	843,114
Kansas	204,051	124,948	328,999	348,015	47.3	363,835	49.4	24,396	3.3	736,246
Kentucky †	565,814	132,642	698,456	379,932	41.0	553,077	59.0	...	...	933,009
Louisiana †	...	...	1,385,852 (a)	690,691	50.3	681,134	49.7	...	...	1,371,825
Maine	73,440	70,671	144,111	126,862	34.3	176,493	47.7	65,889	17.8	369,244
Maryland	129,388	563,748	693,136	293,635	29.0	718,328	71.0	...	...	1,011,963
Massachusetts	247,197	845,905	1,093,102	926,072	47.2	1,030,297	52.5	...	...	1,956,366
Michigan	unopposed	605,199	605,199	1,628,485	56.8	1,237,256	43.2	...	...	2,865,741
Minnesota	207,708	481,719	689,427	830,019	52.3	718,244	45.3	37,331	2.3	1,585,594
Mississippi †	688,274	30,399	718,673	247,162	39.0	382,512	61.0	...	...	629,674
Missouri †	342,692	639,392	982,084	1,098,950	52.6	981,884	47.0	7,193	0.4	2,088,027
Montana †	69,959	131,793	201,752	160,892	44.6	199,574	55.4	...	...	360,466
Nebraska	194,757	128,617	323,374	275,473	56.0	216,754	44.0	...	...	492,227
Nevada	43,392	81,020	124,412	108,097	56.7	76,361	39.7	7,987	4.2	192,445
New Hampshire †	98,076	46,257	144,333	156,178	40.7	226,436	59.0	1,318	0.3	383,932
New Jersey §	385,146	612,562	997,708	1,145,999	49.5	1,144,202	49.4	27,038	1.1	2,317,239
New Mexico	46,105	145,253	191,358	170,848	49.5	174,631	50.5	...	...	345,479
New York	...	717,779	717,779	2,156,404	45.2	2,429,272	50.9	182,643	3.8	4,768,319
North Carolina †	149,294	750,601	899,895	691,449	37.4	1,143,145	61.9	12,838	0.7	1,847,432
North Dakota †	67,027	unopposed	67,027	160,230	53.6	140,391	46.4	...	...	300,621
Ohio	579,693	581,709	1,161,402	1,402,167	49.3	1,354,631	47.6	86,528	3.0	2,843,326
Oklahoma	96,314	552,416	648,730	367,055	47.2	402,240	51.7	8,119	1.0	777,414
Oregon	244,214	276,804	521,018	498,452	54.7	409,411	44.9	...	...	907,863
Pennsylvania	972,693	1,242,289	1,214,982	1,966,042	52.5	1,737,888	46.4	37,655	1.0	3,741,585
Rhode Island †	unopposed	unopposed	...	106,729	26.3	299,174	73.7	...	...	405,903
South Carolina	23,683	331,835	355,518	236,949	37.8	385,016	61.4	5,338	0.9	627,300
South Dakota	90,934	69,481	160,415	147,116	56.6	112,679	43.4	...	...	259,795
Tennessee	230,300	704,872	935,172	661,959	55.6	523,495	44.0	4,139	0.4	1,189,593
Texas	126,980	1,780,564	1,907,544	1,183,839	50.0	1,166,979	49.2	18,834	0.8	2,369,652
Utah †	...	...	...	566,578	44.4	330,974	55.2	2,467	0.4	600,019
Vermont †	43,660	31,006	74,666	123,229	58.6	77,363	36.8	9,538	4.5	210,130
Virginia §	...	...	...	659,398	46.4	760,357	53.5	856	0.1	1,420,611
Washington †	363,589	220,660	584,249	981,083	56.7	749,813	43.3	...	...	1,730,896
West Virginia †	unopposed	312,747	312,747	337,240	45.4	401,863	54.2	3,047	0.4	742,150
Wisconsin	314,673	338,631	653,304	816,056	54.4	673,813	44.9	10,935	0.7	1,500,804
Wyoming	66,049	42,210	108,259	67,595	49.1	69,972	50.9	...	...	137,567

Source: Congressional Quarterly Weekly Reports and state election administration offices. Figures are for 1978 except where indicated: †1979; ‡1980; §1981.

(a) Louisiana has an open primary which requires all candidates, regardless of party affiliation, to appear on a single ballot. Persons receiving over 50 percent of the vote are elected. If no majority on first ballot, a single election is held between the two candidates receiving the most votes.

3. Constitutions

STATE CONSTITUTIONS AND CONSTITUTIONAL REVISION: 1980-81 AND THE PAST 50 YEARS

By Albert L. Sturm and Janice C. May

SINCE THE FIRST analysis of constitutional developments in *The Book of the States* was published in the 1930s, more than four-fifths of the states have attempted to modernize their constitutions. Although no state adopted a new constitution between 1921 and 1945, during the ensuing 36 years 15 new organic laws have been approved by the voters and become effective in 14 states.[1] This reflects efforts in many states to adapt basic charters to the changing needs of government in the aftermath of the Great Depression and World War II. State constitutional modernization reached its peak during the late 1960s and early 1970s, mainly as a result of the "reapportionment revolution" in the mid- and late-1960s. In the wake of *Baker* v. *Carr*[2], mandates of the U.S. Supreme Court resulted in more equitable representation in state lawmaking bodies, which, for many years, had been hostile to modernization by general constitutional revision. With representation aligned on the "one person, one vote" principle, many legislatures, no longer malapportioned under rural domination, proved more responsive to reform. Following the exceptional record of revision in the 1960s, constitutional revision continued into the 1970s, but slackened substantially in later years of the decade. In retrospect, a significant legacy of constitutional revision has been its contribution to the remarkable resurgence and modernization of state governments during the past 20 years.[3]

Preceding volumes of *The Book of the States* have reported the major state constitutional developments during the past half century. This summary analysis provides a general overview in addition to more specific data on alterations proposed and adopted during the 1980-81 biennium.

General Features of State Constitutions

In the 1930s, only seven state constitutions were products of the 20th century. Table 1 indicates that by 1982 the number had increased to 18, or more than one-third of all state charters. Twenty-nine organic laws, now in effect, date from the 19th century, and three New England constitutions—Massachusetts (1780), New Hampshire (1784) and Vermont (1793)—were drafted in the 18th century. The Massachusetts document is the oldest constitution now in operation in the world. Of the present state organic laws that have been extensively revised since 1930, perhaps the most typical are those that were adopted orginally

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during the last quarter of the 19th century; approximately a third of current state constitutions date from this period. The average age of state constitutions operative in 1982 was approximately 82 years.

As shown in Table 1, since the first state constitutions became effective in 1776, American states have operated under at least 145 constitutions. Nineteen states in 1982 were functioning with their first state constitutions. Louisiana leads all the states with 11 constitutions, and the South leads all sections of the nation in constitution-making. With the single exception of Pennsylvania, all states that have adopted five or more constitutions are southern. Much of the constitution-making in these states occurred during the Civil War and Reconstruction era.[4]

The average estimated length of state constitutions effective in 1982 was approximately 26,150 words, excluding the local amendments to the Georgia constitution which comprise the largest part of the document's verbiage. The Georgia constitution is by far the longest document if the local amendments are included; they have never been counted, but certainly exceed 500,000 words. Estimated length of the published part of the constitution of Georgia, which includes only those provisions of statewide applicability, is approximately 48,000 words. Second in length to the Georgia constitution is Alabama's organic law with an estimated 129,000 words. Shortest and also one of the oldest is the constitution of Vermont with an estimated 6,600 words. The median estimated length of the 50 documents falls between that of South Carolina with 22,500 words and the Pennsylvania constitution with 21,675.

Table A shows the number of constitutional changes proposed and adopted in the 50 states through 1981 by all authorized methods of initiating change. Excepting Delaware, where legislative action only is required to change the constitution, a total of 7,953 proposed constitutional changes have been submitted to the voters in 49 states, and 4,988 have been adopted. As Table A indicates, the number of constitutional alterations varies greatly, ranging from 735 proposals with 438 adoptions in California and 626 proposals with 443 adoptions in South Carolina (both 19th-century documents) down to the five proposals with two adoptions in Illinois, where the new constitution (effective since 1971) was unamended until 1980.

The Georgia constitution provides a special case in any consideration of amendments to state charters now operative. The present Georgia document, adopted in 1976, was an editorial revision of the 1945 Georgia constitution proposed by the Georgia General Assembly to facilitate later substantive revision on an article-by-article basis. The General Assembly, however, made little change in the substance of the 1945 Georgia constitution, which has resulted in submission to the voters of more than a thousand proposed amendments, most of which were of local effect only. Georgia voters will have an opportunity in November 1982 to approve a new constitution that eliminates provisions for local amendments.

Use of Authorized Methods of Change

Since the Florida constitution became effective in 1969, the states have authorized four methods of initiating proposals for constitutional amendment and revision. These are: proposal by the state legislature, available in all states; the constitutional initiative, authorized in 17 state constitutions; the constitutional convention, which is expressly authorized in 41 organic laws but may be used in all states; and the constitutional commission, which is

Table A
AMENDMENTS TO STATE CONSTITUTIONS: PROPOSED AND ADOPTED BY METHOD OF INITIATION
(As of December 31, 1981)

State	*Total amendments: all methods*		*Proposals by the legislature*		*Proposals by constitutional initiative*		*Proposals by constitutional convention or commission*	
	Proposed	*Adopted*	*Proposed*	*Adopted*	*Proposed*	*Adopted*	*Proposed*	*Adopted*
Total	7,953 (49 states)	4,988 (50 states)	7,021	4,430	539	184	393(a)	267(b)
Alabama	583(c)	393(c)	583(c)	393(c)	...	...	...	...
Alaska	23	16	23	16	...	...	...	...
Arizona	171	102	124	83	47	19	...	...
Arkansas	148	67	83	40	62	27	3	0
California	735(c)	438(c)	641(c)	412(c)	94	26	...	...
Colorado	218	101	139	77	79	24	...	...
Connecticut	17	16	17	16	...	...	...	...
Delaware	N/A	107	N/A	107	...	...	...	...
Florida	53	32	43	31	2	1	8(d)	0
Georgia	260(c)	193(c)	260(c)	193(c)	...	...	...	...
Hawaii	79(e)	74(e)	18	14	...	...	57	56
Idaho	173	94	173	94	...	...	...	...
Illinois	5	2	4	1	1	1	...	...
Indiana	63	34	63	34	...	...	...	...
Iowa	46	43	46	43	...	...	...	...
Kansas	107	80	107	80	...	...	...	...
Kentucky	53	25	53	25	...	...	...	...
Louisiana	8	8	8	8	...	...	...	...
Maine	170	146	170	146	...	...	...	...
Maryland	221(c)	189(c)	221(c)	189(c)	...	...	...	...
Massachusetts	139	115	92	81	2	2	45	32
Michigan	34	13	21	8	13	5	...	...
Minnesota	192	102	192	102	...	...	...	...
Mississippi	117	48	117	48	...	...	...	...
Missouri	81	52	74	50	7	2	...	...
Montana	12	7	9	6	3	1	...	...
Nebraska	265	176	211	129	13	6	41	41
Nevada	149	94	143	92	6	2	...	...
New Hampshire	173	75	20	8	...	...	153(f)	67(f)
New Jersey	38	28	37	27	...	...	1	1
New Mexico	205	99	205	99	...	...	...	...
New York	256	191	244	185	...	...	12	6
North Carolina	21	19	21	19	...	...	...	...
North Dakota	193	110	163	92	30	18	...	...
Ohio	234	140	151	97	42	10	41	33
Oklahoma	233	107	188	95	45	12	...	...
Oregon	335	169	244	141	91	28	...	...
Pennsylvania	20	15	20	15	...	...	...	...
Rhode Island	81	43	81	43	...	...	...	...
South Carolina	626(c)	443(c)	626(c)	443(c)	...	...	...	...
South Dakota	173	89	171	89	2	0	...	...
Tennessee	54	31	22	0	...	...	32	31
Texas	391	247	391	247	...	...	...	...
Utah	112	64	112	64	...	...	...	...
Vermont	205	48	205	48	...	...	...	...
Virginia	14	13	14	13	...	...	...	...
Washington	131	73	131	73	...	...	...	...
West Virginia	88	53	88	53	...	...	...	...
Wisconsin	159	116	159	116	...	...	...	...
Wyoming	84	47	84	47	...	...	...	...

(a) Eight by the Florida Constitution Revision Commission; 385 by conventions.
(b) All were proposed by constitutional conventions.
(c) Includes local amendments.
(d) Proposals by the Florida Constitution Revision Commission. All other proposals in this column were by constitutional conventions.
(e) Includes four amendments by the U.S. Congress.
(f) Until 1964 all proposed amendments in New Hampshire were initiated by constitutional conventions.

specifically authorized only in the Florida constitution. Only the Florida document provides expressly for the use of all four methods. In all states except Delaware, where action by the General Assembly only is required for proposal and adoption,[3] all proposed changes in the constitution must be submitted to the electorate for approval or rejection. Tables 2, 3 and 4 summarize the salient procedural requirements in state constitutions for use of the first three methods listed above.

During the past half century the states have used all methods of initiating constitutional change. Except for the constitutional initiative, which is designed only for limited changes, the various methods have been employed for all degrees of constitutional alteration up to revision or rewriting of an entire constitution.

Table B summarizes state constitutional changes by each of the four authorized methods of formal initiation during 1980-81 and the two preceding bienniums. In addition to the number of states involved, the table provides the totals of proposals, adoptions, percentages of adoptions and the aggregates for all methods.

Table B
STATE CONSTITUTIONAL CHANGES BY METHOD OF INITIATION
(1976-77, 1978-79 and 1980-81)

	Number of states involved			*Total proposals*			*Total adopted*			*Percentage adopted*		
Method of initiation	*1980 -81*	*1978 -79*	*1976 -77*	*1980 -81*	*1978 -79*	*1976 -77*	*1980 -81*	*1978 -79*	*1976 -77*	*1980 -81*	*1978 -79*	*1976 -77*
All methods	46	43	42	388	395	399	272	277	280	70.1	70.1	70.2
Legislative proposal	46	40	42	362	319	369	265	223	273	73.2	69.0	74.0
Constitutional initiative	11	10	8	18	17	18	5	6	3	27.8	35.3	16.7
Constitutional convention	2	3	1	8	51	12	2	48	4	25.0	94.1	33.3
Constitutional commission	...	1	...	...	8	...	...	0	...	...	0	...

Forty-six states were involved in formal constitutional change during 1980-81. All 46 used the legislative proposal technique, 11 states had initiative proposals, and two (Arkansas and New Hampshire) acted on proposals by constitutional conventions. Of the total of 388 proposed, 272 (70.1 percent) were adopted, which was the same percentage as during 1978-79. In contrast, the voters approved only a fourth of the proposals by constitutional initiative and conventions. No proposals by constitutional commissions were submitted directly to state electorates during the past biennium.

Legislative Proposals

Proposal of constitutional change by the state lawmaking body is by far the most commonly used method of originating proposed alterations in state constitutions. Table A shows that through 1981 this method accounted for 7,021, or 88.3 percent, of the 7,953 proposals by all methods that have been submitted to the voters in 49 states. The adoption rate for legislative proposals in all states is even higher—4,430 of 4,881 by all methods, or 90.8 percent. During the operation of present state constitutions, all states have used the legislative proposal method, and at least one proposal has been adopted in every state except Tennessee. In a few states, especially in the South, legislative proposals have included large numbers of local amendments that place a heavy burden on the voters. At the November 1980 general election in Georgia, for example, the electorate voted on a total of 137 proposed amendments, including 16 of statewide effect and 121 of local applicability only.

These figures are indicative of the key role that legislatures play in the process of constitutional reform. At least three state constitutions (Florida, Georgia and Oregon) expressly authorize the legislature to propose an entire constitution. In 1970, new constitutions were proposed by the Idaho, Oregon and Virginia legislatures, and similar extensive proposals have occurred both before and since. Less extensive legislative proposals involving proposed revisions of entire articles of state constitutions have been made during each biennium of the past decade.[4] Phased constitutional revision proposed by state lawmaking bodies is another modern trend that became increasingly popular in the past two decades. During the 1970s, constitutional revision by stages achieved at least partial success in California, Minnesota, Nebraska, Ohio, South Carolina, South Dakota and Utah.

Since the late 1960s, legislatures have given increased attention to "editorial" revision of state charters, often called "codification," "rearrangement," or "simplification" in earlier years. In 1950, for example, the voters of Maine approved an amendment permitting codification without substantive change of existing provisions. In 1953, the Connecticut document was revised editorially, and in November 1962, the New York electorate approved two amendments that shortened the organic law by 4,000 words. There were more extensive editorial revisions of state charters during the 1960s and 1970s in North Carolina (1970), Georgia (1976) and South Carolina (1968-1980s). One purpose of recent editorial revision is to remove gender bias from constitutional language.

Proposed New Constitution in Georgia. The most far-reaching proposal for constitutional reform by a legislative body during the past biennium was the proposed new constitution approved by the Georgia General Assembly on September 18, 1981. Drafted initially under the coordinative supervision of the Georgia Select Committee on Constitutional Revision, the proposed document was reviewed by a 62-member Legislative Overview Committee representing both houses of the General Assembly before it was debated and approved during a special legislative session for submission to the voters at the November 1982 general election. By a vote of 148 to 25 in the House and 39 to 27 in the Senate, the Georgia General Assembly capped years of sustained effort to modernize the state's organic law.

The proposed new constitution is more than 50 percent shorter than the published general statewide provisions of the 1976 document. Other major features include greater clarity, deletion of archaic language, more flexibility and use of gender-neutral language throughout its contents. Probably the most significant change is the elimination of local amendments, which have been the principal reason for the "bedsheet" ballot that has confronted Georgia voters at recent general elections. Deletion of much legislative minutiae would extend additional power to the General Assembly. Other salient alterations in the proposed document provide for open sessions of the General Assembly and all standing committees; more extensive legislative power over constitutional boards and commissions; a streamlined, unified judiciary; non-partisan election of most judges; reduction of tax assessments on farmland from 100 to 75 percent of fair market value; and authorization for consolidation of local governments, subject to approval in a local referendum. Retained in the proposed constitution are provisions for two successive terms for the governor and strong home rule for local governments. Also left untouched is the board of the higher education system, although approval by the General Assembly is required to establish higher educational institutions. Substantive contents of the proposed document are subject to change during the 1982 regular session.

The Constitutional Initiative

Unlike legislative proposal, which is available for all forms of constitutional revision, the constitutional initiative is appropriate only for limited alterations in the organic law. First adopted in Oregon in 1902, the constitutional initiative was available in 13 states by the 1930s,[7] and in 17 states by the early 1980s. Despite the objections of its critics that it encourages proposals by special interest groups, that many initiatives are poorly drafted and that initiatives may add undesirable matter to state constitutions,[8] since 1968 four states (Florida, Illinois, Montana and South Dakota) have added this method of proposing amendments to their organic laws. In Illinois, where the initiative is authorized only to change provisions in the legislative article, the voters approved a constitutional initiative proposal in 1980 that reduced the Illinois House of Representatives from 177 to 118 members, with one member elected from each of 118 districts. Table 3 summarizes the salient requirements for use of the constitutional initiative.

As shown in Table A, a total of 539 constitutional initiatives have been submitted to the voters in the 17 states authorizing this technique under their present constitutions; 184, or 34.1 percent, have been adopted, including at least one in each of the 17 states providing for its use except South Dakota. States that have employed this method most frequently are California (94 proposals, 26 adoptions), Oregon (91 proposals, 28 adoptions), Colorado (79 proposals, 24 adoptions) and Arkansas (62 proposals, 27 adoptions). Four other states (Arizona, North Dakota, Ohio and Oklahoma) each have had at least 30 initiative proposals, and each of the remaining nine states has voted on 13 or fewer.

Although this method has been used sparingly and the percentage of adoptions has been low, it has been the instrument for several historic changes, including the overwhelming approval of Proposition 13 by California voters in June 1978. This popularly initiated measure substantially reduced increases in local property taxes and gave impetus to a taxpayers' revolt that spawned 16 taxing and spending limitations in 1978 elections alone and many more since. Other significant changes resulting from use of the constitutional initiative include the Gateway Amendment that paved the way for the Michigan constitutional convention of 1961-62 and the Missouri plan for selection of judges adopted in 1940.

Table B indicates that 18 initiative proposals were voted on in 11 states during 1980-81; of these only five were adopted, or 27.8 percent. The numbers proposed and adopted in each state were: Arizona (1-0), Arkansas (1-0), California (2-0), Colorado (2-1), Illinois (1-1), Michigan (2-0), Missouri (1-1), Nevada (3-2), Ohio (2-0), Oregon (1-0), South Dakota (2-0). Thus, the voters of only four of 11 states approved constitutional initiatives during the biennium. The results of referendums on these measures during 1980-81 and preceding bienniums reflect the ephemeral nature of popular support for initiative proposals to alter the states' basic laws.

Constitutional Conventions

Probably no governmental institution is more uniquely American than the constitutional convention, which is the oldest, best-known and the traditional method for extensive revision of an old constitution or writing a new one. Through 1981, at least 230 such bodies had been convened in American states.[9] Table C shows the number of state constitutional conventions operative during each quarter-century through 1950, and in the 31 years since mid-century. Sixty conventions, or more than one-fourth the total number, are 20th-century bodies, and more than half of these have been called since mid-century. If the conventions

assembled in preparation for statehood and the exceptional number convened during the Civil War and Reconstruction era are excluded, the scope and significance of state constitutional modernization activity during the past three decades becomes more apparent. Table D provides additional data on the number of unlimited and limited constituent assemblies convened during the past half-century. Significantly, 12 unlimited conventions or more than half the total of 23 and eight of the 17 limited conventions were assembled during the period 1965-81. In the mid- and late-1960s the reapportionment revolution reached its high point.

Table C
STATE CONSTITUTIONAL CONVENTIONS
Grouped Periodically: 1776-1981

Period	*Number of conventions*
Before 1801	26
1801-1825	14
1826-1850	38
1851-1875	67
1876-1900	25
1901-1925	20
1926-1950	9
1951-1981	31
Total	230

Table D
STATE CONSTITUTIONAL CONVENTIONS
Grouped Periodically by Date of Assembly: 1930-1981

Period	*Unlimited conventions*	*Limited conventions*	*Total conventions*
1930-49	5	3	8
1950-59	3	6	9
1960-64	3	0	3
1965-69	7	3	10
1970-74	3	4	7
1975-81	2	1	3
Totals	23	17	40

It should be noted that the voters have rejected the proposed documents of a number of these bodies, all of which were unlimited in their authority to propose changes. During the past 20 years, new or revised constitutions proposed by seven unlimited constitutional conventions failed to win acceptance by the electorates in six states: New York (1967), Rhode Island (1968), Maryland (1968), New Mexico (1969), North Dakota (1972) and Arkansas (1970 and 1980). Also, the 1974 Texas constitutional convention failed to agree on a proposed constitution for submission to the voters.[10]

Several constitutional conventions during the past 50 years are especially noteworthy. The Missouri convention of 1943 was the first in 35 years to rewrite completely an existing state constitution. The New Jersey convention of 1947, after a decade of preparation and abortive effort, succeeded in drafting one of the best constitutions, which has served as a model for executive and judicial reform ever since. Similarly, the Alaska constitution, drafted during 1955-56 in anticipation of statehood, is often cited for its brevity, flexibility, modern provisions and general excellence. The Texas constitutional convention of 1974 was one of the most procedurally unusual bodies. A hybrid, legally it was a convention whose membership was comprised entirely of the members of the Texas Legislature, who met in a unicameral assembly at a different time from the regular legislative session. Financed by separate appropriations, the Texas convention followed convention rules and procedures and considered only convention business. Membership of the Louisiana convention of 1973-74 was unusual in that 27 delegates, representing a variety of interests, were appointed by the governor, and 105 delegates were elected.[11] In Arkansas, a limited convention consisting only of appointed delegates and called without popular referendum was declared unconstitutional by the Arkansas Supreme Court in 1975.[12]

Major characteristics and features of state constitutional conventions have been reported in *The Book of the States* since the 1930s. During the past half-century, there has been con-

siderable procedural experimentation with aspects of convention activity. Use of new ballot forms to present convention proposals, the conduct of public hearings in the various sections of the state, pre-session briefings for members of the press and increased distribution of voter information pamphlets explaining convention proposals are illustrative.

Since 1930, the question of whether a convention shall be called has been submitted to the electorates of at least 27 states. Table E shows the results of voter action on convention calls during the past half-century. Of the total of 62 referendums on the convention question, the voters approved 35, including 22 unlimited and 13 limited conventions. They rejected 27, including 25 unlimited and 2 limited bodies. The tabulation indicates the increased constitutional revision activity by the convention method during the late 1960s and early 1970s, and also the greater reluctance of state electorates to approve calls for unlimited conventions as compared with constituent bodies whose power to propose changes was limited to specified subjects or areas.

Table E
VOTER ACTION ON CONVENTION CALLS
By Periods: 1930-1981

	Unlimited conventions		*Limited conventions*		*Totals*	
Period	*Approved*	*Rejected*	*Approved*	*Rejected*	*Approved*	*Rejected*
1930-49	4	6	1	0	5	6
1950-54	2	4	2	0	4	4
1955-59	0	3	4	0	4	3
1960-64	3	3	1	1	4	4
1965-69	6	1	2	1	8	2
1970-74	4	5	2	0	6	5
1975-81	3	3	1	0	4	3
Totals	22	25	13	2	35	27

An increasing number of state constitutions require periodic submission to the voters of the question of calling a convention to consider constitutional revision. The number of such submissions required in state constitutions has grown from eight in 1939 to 14 in 1982. As shown in Table 4, eight states provide for automatic submission of the question every 20 years (Connecticut, Illinois, Maryland, Missouri, Montana, New York, Ohio and Oklahoma), four states every 10 years (Alaska, Iowa, New Hampshire and Rhode Island), one every 16 years (Michigan) and one every nine years (Hawaii).

During the past biennium, Iowa was the only state to hold a referendum on the convention question, and this occurred under the constitutional mandate for periodic submission each 10 years. On November 4, 1980, Iowa voters rejected by a three-to-two margin a call for an unlimited convention (640,130 to 404,249).

Only one constitutional convention was convened during 1980-81, the eighth Arkansas constitutional convention which assembled initially for organizational purposes in late 1978. The results of its work are discussed later in this article. In addition, however, proposals of one other convention were submitted to the voters during the past biennium, namely, six proposals of the New Hampshire convention held in 1974. Legally, the sixteenth New Hampshire convention that met for 12 days in 1974 (during the period May 8-June 26) is a continuing body for 10 years or until its successor is authorized and selected. Of the six New Hampshire convention proposals submitted to the electorate in 1980, the voters adopted

two. In the aggregate, of the 27 amendments proposed by the 1974 New Hampshire body to be voted on during 1974-80, the electorate approved 10.

Arkansas' Eighth Constitutional Convention. Action leading to the eighth Arkansas constitutional convention, its membership, organization, work and initial proposals have been summarized in the two preceding volumes of *The Book of the States.*[11] Approved by the voters in 1976, this body convened initially in organizational session December 11-12, 1978, reconvened in plenary session on May 14, 1979, and remained in session until July 16, drafting a proposed new constitution. A 1979 amendment to the enabling act of 1977 provided for the convention to reconvene on June 16, 1980, for a maximum period of two weeks, to provide the convention an opportunity to alter the draft document after the electorate reacted to it.[12] The convention reconvened on June 16, 1980, made some modifications in the original draft document, approved a separate proposition for submission to the voters offering a choice between merit selection and election by the voters of appellate court judges, and adjourned sine die on June 30, 1980.

At the 1979 plenary session, the most controversial issue was the usury provision, and the delegates decided tentatively to submit to the electorate alternative proposals on this issue separate from the proposed new constitution. In 1980, however, the convention reversed this decision, provided for legislative determination of the interest rate by a two-thirds vote, and substituted alternative proposals concerning selection of appellate court judges for separate submission to the voters. As changed during the 1980 reconvened session, the proposed constitution included provisions for: right of privacy, establishment of a statewide public defender system, mandate for open meetings and records of public bodies, recall of local officers, mandate for voting machines, single-member legislative districts, four year term for the governor, a system of county trial courts, extensive local home rule, increased flexibility in property tax provisions and overhaul of property evaluation and assessment.

Controversial issues, to which major opposition developed, included the potential costs of implementation, the usury provision, and local home-rule provisions that would enlarge the taxing power of local governments. The proposed document was endorsed by the governor, the congressional delegation, the Democratic Party, the Arkansas Bar Association, city and county organizations and other private groups. The AFL-CIO and the Arkansas Education Association led the opposition. At the referendum on November 4, 1980, Arkansas voters overwhelmingly rejected the new constitution by a vote of 276,257 (37.3 percent) in favor to 464,210 (62.7 percent) against. The failure rendered moot the separate issue offering a choice between alternative methods of selecting appellate court judges.[13]

Constitutional Commissions

Constitutional commissions serve two principal purposes: to study the state constitution and recommend appropriate changes, and to make preparations for a constitutional convention. By far the larger number are study commissions, usually serving as auxiliary staff arms of legislative assemblies, which normally have full discretion to accept, modify or reject their recommendations. Constitutional commissions are established by statute, executive order, legislative resolution or, in the unique case of Florida, by the state constitution. General characteristics of constitutional commissions have been summarized in preceding volumes of *The Book of the States.*

Table F shows the numbers of constitutional commissions established since 1930, grouped periodically according to date of creation and classified by purpose. The 88 commissions, including 76 with primarily "study and recommend" responsibilities and 12

preparatory bodies, were established in 43 states.[16] Two states, Florida and New York, each had five commissions, four states had four commissions each (Georgia, Kentucky, Michigan and Oklahoma), seven states had three, 11 states had two, and 19 states each had one commission.

Table F
CONSTITUTIONAL COMMISSIONS:
1930-1981

Period	Study commissions	Preparatory commissions	Total
1930-49	9	0	9
1950-59	12	2	14
1960-64	17	2	19
1965-69	26*	6	32
1970-74	4	1	5
1975-81	8	1	9
Totals	76	12	88

*Three of these bodies had both study and preparatory responsibilities.

Peak use of constitutional commissions occurred in the late 1960s when state lawmaking bodies relied increasingly on these special organs to prepare proposals for state constitutional revision. Many commissions have prepared draft constitutions. During the 1970s, constitutional commissions wrote the initial drafts of all revised constitutions proposed to state electorates by legislatures.[17]

Most unusual of the constitutional commissions was the Florida Constitution Revision Commission of 1977-78, established under the 1969 Florida constitution, which is the only state organic law to accord constitutional status to such an organ. Following extensive hearings and study, the Florida commission submitted eight proposed revisions to the voters at the November 1978 general election. All were defeated. In 1980, a proposed amendment initiated by the Florida legislature would have deleted from the constitution the unique provision for periodic establishment of a constitution revision commission. The voters rejected this proposal, which was the only one of 12 legislative proposals to be rejected at the three elections held during the year.[18]

Increased use of constitutional commissions has been one of the significant developments in the procedure of state constitutional revision during the past 30 years. In large measure this may be attributed to the lack of time, energy and resources of state lawmaking bodies for thorough study of the complex issues involved in constitutional reform. Burdened with the growing pressures of the modern legislative process, state legislatures will necessarily rely on the expertise potentially available through auxiliary commissions in discharging their responsibilities for initiating proposals for constitutional change.

During 1980-81, fewer state constitutional commissions or committees operated than in any biennium of the 1970s. Table 6 lists four such bodies active during the period. Oldest of these is the Utah Constitutional Revision Study Commission, which was created in 1969 and was made permanent in 1977. Through 1980, Utah voters' action on commission recommendations, which were submitted initially to the legislature, has included approval of revised articles on the legislative and executive branches, elections, amending procedure and labor. Voters rejected articles on the executive (1979), taxation and legislative compensation. The Utah commission will submit revisions of the judicial and tax articles to the legislature in 1982.

In Alaska, where a referendum on the question of calling a convention is scheduled to be

held in 1982, the legislature in 1980 renewed its mandate to the interim committee created in 1979 to evaluate the need for calling a convention. The committee, which was reconstituted as a seven-member joint legislative committee, was asked to study the organization and procedures of the 1955-56 constitutional convention, matters relating to a convention call and issues that could arise at such a constituent assembly, for the purpose of preparing guidelines and recommendations for conducting a constitutional convention. Although not renewed by the legislature in 1981, the committee had assembled materials for a "Citizens Guide to the Alaska Constitution" and may be reauthorized and funded in 1982.

Potentially the most significant development in state constitutional reform in 1981 grew out of the staff work of the Georgia Select Committee on Constitutional Revision. This 11-member body, chaired by the governor, was established in 1977 to provide overall policy direction and coordination for a continuing study and revision of the constitution. This action followed the voters' approval in 1976 of an "editorial" revision of the 1945 Georgia constitution to facilitate substantive modernization on an article-by-article basis. This method failed, however, in 1978 when the voters rejected proposed revisions of the articles on the "Elective Franchise" (Article II) and "Retirement Systems and Educational Scholarships" (Article X), which had been approved by the Georgia General Assembly. Following defeat of proposed revisions of additional articles during the 1980 legislative session, the General Assembly in 1981 established a 62-member Legislative Overview Committee to review constitutional revision proposals. Under the auspices of the Select Committee on Constitutional Revision, nine individual article revision committees prepared proposed revisions which were reviewed by the Legislative Overview Committee and submitted to the General Assembly. At the end of a special legislative session, on September 18, 1981, the Georgia lawmaking body approved a proposed new constitution for submission to the voters in November 1982.[19]

Substantive Changes

The procedure of change selected for constitutional modernization is important, but the primary concerns of constitution-makers are the substantive contents of the organic law. The following paragraphs summarize principal substantive developments both during the 1980-81 biennium and the past 50 years. Table G is a composite of state constitutional changes classified under appropriate substantive headings during each biennium of the 1970s and 1980-81. The tabulation includes proposals of statewide applicability classified by subject-matter areas and local amendments that apply to only one or a few political subdivisions. As indicated in Table A, only a few states, located mainly in the South, account for most local amendments. There is no breakdown of local amendments, which apply to constitutions currently operative in only five states (Alabama, California, Georgia, Maryland and South Carolina).

In 1980-81, of the 388 proposed changes by all methods, 254 were statewide proposals in 46 states, of which 160 or approximately 63 percent were adopted. The 134 local amendments were proposed in three states, with 112 or 83.6 percent adopted (Alabama, 10 proposed, 7 adopted; Georgia, 121 proposed, 103 adopted; and Maryland, 3 proposed, 2 adopted). Comparison of adoptions indicates that the adoption rate for local amendments exceeded that for statewide proposals during the past four bienniums.

By far the largest number of proposed changes during the entire period covered in Table G was in the general area of state and local finance, including taxation, debt and financial administration. Particularly since California voters approved the popularly initiated Prop-

Table G
SUBSTANTIVE CHANGES IN STATE CONSTITUTIONS: PROPOSED AND ADOPTED: 1970-71 to 1980-81

Subject matter	Total proposed						Total adopted						Percentage adopted					
	1980-81	1978-79	1976-77	1974-75	1972-73	1970-71	1980-81	1978-79	1976-77	1974-75	1972-73	1970-71	1980-81	1978-79	1976-77	1974-75	1972-73	1970-71
Proposals of statewide applicability	254	295	283	253	389	300	160	200	189	171	275	176	63.0	67.8	66.8	67.6	70.7	58.2
Bill of rights	13	17	10	9	26	13	10	15	6	6	22	11	76.9	88.2	60.0	66.7	84.6	84.6
Suffrage & elections	5	12	17	23	34	39	5	9	14	20	24	23	100.0	75.0	82.4	86.9	70.6	59.0
Legislative branch	43	37	40	40	46	42	21	25	18	27	25	19	48.8	67.6	45.0	67.5	54.3	45.2
Executive branch	21	16	32	34	36	27	10	12	23	20	25	22	47.6	75.0	71.9	58.8	69.4	81.5
Judicial branch	23	25	34	20	35	17	17	19	32	18	26	11	73.9	76.0	94.1	90.0	74.3	64.7
Local government	11	27	7	13	30	21	4	13	3	12	23	15	36.4	48.1	42.9	92.3	76.7	71.4
Taxation & finance	77	68	56	49	85	50	52	39	41	33	56	29	67.5	57.4	73.2	67.3	65.9	58.0
State & local debt	20	19	36	18	24	25	13	9	20	6	15	10	65.0	47.4	55.6	33.3	62.5	40.0
State functions	23	31	42	23	40	46	16	24	25	16	36	26	69.6	77.4	59.5	69.6	90.0	56.5
Amendment & revision	9	11	2	8	19	13	7	10	1	7	12	7	77.8	90.9	50.0	87.5	63.1	53.8
General revision proposals	1	1	1	12	2	7	0	1	1	3	1	3	0	100.0	100.0	25.0	50.0	42.9
Misc. proposals	8	31	6	4	12	*	5	25	5	3	10	*	62.5	80.6	83.3	75.0	83.3	*
Local amendments	134	100	116	99	141	103	112	77	91	85	93	48	83.6	77.0	78.4	85.9	65.9	46.6

*Not compiled for 1970-71.

osition 13 in June 1978, electorates in many states have voted on numerous proposals to limit taxing and spending by the states and their political subdivisions. Other major subjects of constitutional proposals relating to finance include extension and modification of tax exemptions, property classification and assessment, and requirement of state funding support for new or expanded local programs mandated by state legislatures. Further reference to changes shown in Table G is made in the following discussion of the subject areas.

The Bill of Rights, Suffrage and Elections. Although state bills of rights have undergone relatively little basic change in recent state constitutional revision, some newly recognized rights have emerged and have been incorporated into state constitutions. One such addition has been new "legal equality" and "antidiscrimination" guarantees, especially prohibitions against gender discrimination, in several states. Currently 16 states have such provisions although all are not recent adoptions, Utah (1896) and Wyoming (1890) having entered the union with them. Other recent substantive additions include the rights of privacy, of handicapped persons, to a clean and healthy environment, to work or to bargain collectively and to strike, and to an education or equal educational opportunity. Changes in procedural rights have usually related to bail, juries, indictment procedures and counsel. A significant recent development is the increased emphasis on state bills of rights to protect persons in the wake of diminished leadership in the protection of civil rights by the U.S. Supreme Court.[20]

In 1980-81, there were at least 13 proposals related to bills of rights, with 10 adopted. Significant adoptions included limitation on the right to bail (Nevada, New Mexico, Wisconsin), guarantee of the right to privacy (Florida), prohibition of discrimination against handicapped persons (Massachusetts) and authorization for juries of less than 12 persons in specified cases (California, Wyoming).

National directives during the past 25 years have overshadowed state-originated efforts to liberalize the suffrage. Most states have adopted constitutional amendments conforming their constitutions to federal requirements, relating especially to voting age and residency requirements.[21] During the 1980-81 biennium, five proposals relating to suffrage and elections were adopted, three of which liberalized requirements for voting.

The Three Branches. A major concern of state constitution-makers in recent modernization of state charters has been to strengthen the basic framework of government. This applies especially to the legislative branch, where apportionment provisions have had top

priority. Many state organic laws have been modified to conform to the "one man, one vote" standard laid down by the U.S. Supreme Court.[22] These and other changes include new or revised provisions for independent or bipartisan apportionment commissions, changes in sessions usually to annual meetings and extending legislators' control over special sessions, organization or orientation and veto sessions, requirements for open sessions and committee meetings, compensation of legislators, qualifications, legislative terms, method of filling vacancies, eligibility for other offices and conflict of interest.

As shown in Table G, in 1980-81 proposals affecting the legislative branch almost equaled the aggregate for the executive and judicial branches. Of the 43 proposed alterations in legislative articles, 21 (48.8 percent) were adopted, as compared with 21 proposals and 10 adoptions (47.6 percent) involving changes in executive provisions, and 23 proposed alterations in judicial articles of which 17 (73.9 percent) were approved—by far the highest adoption rate of the three branches. North Dakota voters rejected a proposed editorial revision of the legislative article and a revision of the executive department. In Utah, the electorate approved a general revision of the executive article, including provisions for a lieutenant governor, elimination of the office of secretary of state, and joint election of the governor and lieutenant governor.

Since the 1930s basic principles of executive and administrative reform long advocated have continued to dominate efforts to modernize state executive departments. Major trends in proposals to revise state executives include longer terms for the governor and other state officers, strengthening the governor's authority (both legislative and administrative), shortening the ballot, limiting the number of executive departments, joint election of the governor and lieutenant governor, procedure for determining the inability of the governor to perform his functions, and others. Currently, 46 states grant their governors four-year terms as compared with 35 in 1960, but two-fifths of state constitutions limit the governor to two successive terms. By 1980, tandem election of the governor and lieutenant governor had been adopted in 21 states. In 1976, Maine abolished its 155-year-old executive council.

The past few decades also have witnessed numerous reforms in state judicial systems. Principal alterations involve judicial structure and unification, selection and tenure of judges, jurisdiction, and judicial performance and discipline. New Jersey provided an outstanding example of judicial reform when the state court system was thoroughly overhauled under the leadership of Judge Arthur T. Vanderbilt after adoption of the 1947 constitution. Approximately a third of the states have adopted the Missouri plan for merit selection of judges. With California leading the way in 1960, all except a few states now provide some method for monitoring judicial performance. Usually this function is vested in a judicial qualifications commission with duties relating to the retirement, removal, disqualification and censure of judges. Most revised state judiciaries feature administrative leadership under the chief justice of the supreme court. In effecting these reforms, approximately a third of the states have adopted new or revised judicial articles; others have made adjustments by amendments of lesser scope.

Local Government and Finance. Constitutional modernization of local government structure has lagged behind reform in other areas in many states. Yet, a rapidly urbanizing population in recent decades has imposed growing strain on local resources, especially in metropolitan areas. Increased financial stress, demands for new and increased services, and growing interdependence are major contributors to extensive changes in federal-state-local governmental relationships since the 1930s. The principal lines of attack by state constitution-makers in meeting the problems growing out of the "New Federalism," aside

from financial adjustments, have been constitutional home rule for municipalities and counties, provisions for merger, consolidation and boundary changes of local units, and permissive authority for various kinds of intergovernmental cooperative arrangements.

In 1980-81, four of 11 proposed amendments to local government articles were approved or only 36.4 percent. This was the lowest percentage of adoptions of all constitutional areas, and substantially lower than the adoption rate of local government proposals in any biennium of the 1970s shown in Table G. Few, if any, areas of state constitutional systems encounter greater resistance to change than local government.

As noted previously and indicated in Table G, by far the largest number of proposed constitutional changes during the 1970s and 1980-81 concerned state and local finance. In 1980-81, of the total of 97 proposals dealing with taxation, finance and debt, 65 or approximately two-thirds were adopted. Approximately half of the popularly initiated proposals during the biennium dealt with financial matters, mainly tax and spending limitations.

A distinct trend in the past 50 years has been toward greater flexibility for state and local governments, including the general area of finance. This was a reaction against crippling restraint of earlier decades, particularly those of 19th-century origin. But Proposition 13 signaled a change in course toward limitation of both taxing and spending. Although the tide of popular support has ebbed since 1978, an era of greater fiscal restraint and retrenchment has emerged. The U.S. Advisory Commission on Intergovernmental Relations, however, declares that one of the major trends of the past 20 years has been the development of "more powerful state revenue systems."[2] It remains to be seen what effect "Reaganomics" and diminution or withdrawal of federal support from intergovernmental programs will have on financial provisions in state constitutions.

State Functions. State constitutions include a variety of provisions on policy areas of special concern to the states. Most important of these by far is education. Other traditional functional areas include health, welfare, highways, institutions, corporations and business regulation. Since the Great Depression of the 1930s, various provisions reflecting the emerging, as well as existing, needs and problems of our times have been added to state constitutions. Illustrative of these are promotion of economic development, promotion of tourism, conservation of natural resources, environmental protection, energy conservation and restrictions on nuclear energy, and similar provisions. These new functional governmental concerns, as well as modification of the more traditional policy areas, have contributed substantially to the verbiage of state constitutions.

Table G indicates a total of 23 proposals related to state policy or functional areas during the past biennium, somewhat fewer than similar proposals during most of the bienniums of the 1970s. Of these, 16 or 69.6 percent were adopted. The largest number of proposals were in education. The most extensive change in constitutional provisions for state functions during the biennium occurred in Kansas where the voters adopted a revision of the article on banks and currency.

Constitutional Amendment and Revision. Procedural provisions for altering state constitutions are among the most important parts of these documents. Compared with other areas, however, they were reformed relatively little during the past few decades. As has been noted above, the number of state charters that expressly authorize the calling of a constitutional convention has increased to 41, and the new constitutions of Florida, Illinois and Montana, plus an amendment in South Dakota, increased authorizations for use of the constitutional initiative to 17. Also, express authorization in the 1969 Florida document for use of a constitutional commission to propose changes was a significant procedural

development. In 1964, New Hampshire became the 50th state to authorize legislative proposal of amendments; previously the state had relied solely on conventions to initiate constitutional alterations. Other recent changes, most of a liberalizing nature, include provisions for: revision of an entire article by a single amendment, increasing the number of amendments that may be submitted to the voters at any one election, reducing the number of voters that must approve an amendment, periodic submission of the convention question to the voters, repeal of obsolete provisions and various other detailed changes.

During 1980-81, as Table G indicates, seven of nine proposed changes concerning amendment and revision procedures were adopted. These proposals were submitted to the voters of four states (Florida, Hawaii, Kansas and New Hampshire) and dealt mainly with procedural requirements for proposing and adopting amendments. In Florida, the voters in 1980 rejected a legislative proposal to eliminate authorization for periodic establishment of a constitution revision commission. Rejection of the only general revision proposal to be submitted to the voters during the biennium occurred at the November 1980 general election when Arkansas voters turned down the new constitution proposed by the state's eighth constitutional convention.

Constitutional Materials

Over the past 50 years, a large body of material on state constitutions and constitutional revision has been written, much of it of high quality and readily accessible to interested persons. In addition, a vast quantity of ephemeral materials is stored in state archives and libraries in individual states where major constitutional reform efforts have occurred. Principal producers of constitutional materials have been the staffs of constitutional conventions and commissions, legislative research and service agencies, university institutes of governmental research, and contributors to law reviews. Particularly valuable are the records of proceedings and debates of constitutional conventions and special studies prepared for constitution-making.

Illustrative of the materials prepared in the 1970s are the published proceedings of the Illinois, North Dakota and Texas conventions, the reports of the Arkansas and Texas constitutional commissions, and the special studies prepared for the Montana and Hawaii conventions. Of continuing significance and value are the publications and work of the National Municipal League, The Council of State Governments, the Advisory Commission on Intergovernmental Relations and the League of Women Voters. The *Model State Constitution*, first published by the National Municipal League in 1921 and since revised six times, most recently in 1968, has been widely recognized and used as a valuable resource for constitutional revision. The Legislative Drafting Fund of Columbia University has provided drafting assistance, and in 1956 and most recently in 1969, published new, up-to-date editions of the *Index-Digest of State Constitutions*, which was first prepared for the New York State Constitutional Convention of 1915. In 1980, the Fund introduced the first of a series of subject-matter indices that will replace the *Index-Digest*. An innovation of particular merit during the 1970s was the preparation of complete, annotated and comparative analyses of the Illinois and Texas constitutions for the delegates to constitutional conventions in these states.

Major publications of state constitutional conventions and commissions active between 1776 and 1959 are available on microfiche from the Congressional Information Service (CIS). A bibliographic guide compiled for this collection by Cynthia E. Browne is available separately from Greenwood Press. CIS also offers a microfiche file of constitutional revi-

sion documents from all 50 states covering the period 1959-1978. This file contains official publications of revision bodies, as well as state publications relating to amendment by legislative proposal and constitutional initiative; also included is a selection of unofficial items concerning special revision efforts. The two-volume bibliographic guide issued by CIS to accompany the 1959-1978 file is a helpful reference work in its own right.

Secondary materials of special value to students, planners and participants in state constitution-making include most of the items listed in the selected references at the end of this summary analysis. The National Municipal League's two series of *State Constitution Studies* (10 volumes) and *State Constitutional Convention Studies* (10 volumes) were heavily used by constitution-makers during the 1970s. Of special reference value is the 10-volume collection, *Sources and Documents of United States Constitutions*, edited and annotated by William F. Swindler. Included in this collection are annotations of significant sections, historical background notes, analytical tables tracing the development of specific provisions in successive constitutions, a selected bibliography and a separate index for each state. Excepting the holdings of the Library of Congress, probably the most extensive collections of fugitive and published materials on state constitutions and constitutional reform are those of the National Municipal League and The Council of State Governments.

The biennial summary analysis of state constitutional developments published in *The Book of the States* provides a concise overview of official action in this general area. Since 1970, the January (or February) issues of the *National Civic Review* have carried annual reviews of state constitutional revision activity by one of the authors, including a state-by-state summary of the substantive contents of all state constitutional changes of statewide effect during the preceding year.

District of Columbia Statehood Constitutional Convention

Although not related to an existing state constitution, a potentially significant event in American state constitutional development is the District of Columbia Statehood Constitutional Convention. This constituent assembly was called to prepare a constitution for submission to Congress as a basis for statehood. Authorization for convening it was the District of Columbia Statehood Constitutional Convention Initiative of 1979 (1 D.C. *Code*, secs. 111 et seq.), which was approved by the City Council on June 9, 1979. At the referendum on the question of calling the convention on November 4, 1980, District of Columbia voters approved the call by a vote of 104,899 (63.2 percent) to 60,972 (36.8 percent), with 12,563 not voting on the issue. Election of the convention's 45 delegates occurred a year later on November 3, 1981, when five delegates were elected from each of eight wards, with an additional five delegates elected at large, all on a non-partisan basis.

Supported by an appropriation of $150,000 the convention held its opening session on January 30, 1982, and is authorized to be in session 90 days. Officers of the convention include a president (Charles 1. Cassell), three vice-presidents, a secretary, assistant secretary, treasurer and historian. Ten substantive committees covering the principal areas of state constitutional systems have been designated to prepare the initial draft of a constitution. If the voters reject the constitution to be proposed by the convention, the delegates are authorized to reconvene to revise the proposed document for resubmission to the District electorate. The mayor is mandated to take all steps necessary for resubmission of the revised constitution within 60 days after the convention completes its revision.

Notes

1. Alaska (1956), Connecticut (1965), Florida (1968), Georgia (1945 and 1976), Hawaii (1950), Illinois (1970), Louisiana (1974), Michigan (1963), Missouri (1945), Montana (1972), New Jersey (1947), North Carolina (1970), Pennsylvania (1968) and Virginia (1970).

2. Especially *Reynolds* v. *Sims*, 377 U.S. 533 (1964). *Baker* v. *Carr*, 369 U.S. 186 (1962).

3. The U.S. Advisory Commission on Intergovernmental Relations has cited "strengthened states" as one of the major intergovernmental trends of the past 20 years. Carl W. Stenberg, "Federalism in Transition: 1959-79," *Intergovernmental Perspective* 6, 1 (Winter 1980): 8. David B. Walker of the Advisory Commission on Intergovernmental Relations has written: "No other 20-year period in American history [1959-1979] produced as many changes in the architecture and activities of state government as the last two decades." "The States and the System: Changes and Choices," *Intergovernmental Perspective* 6, 4 (Fall 1980): 6.

4. Nine states have operated with two constitutions; four states with three constitutions; nine states with four constitutions; three states with five; three states with six; one state with seven; and one state with nine constitutions. See Table 1.

5. In Delaware, amendment or revision of the constitution is accomplished by a two-thirds favorable vote in each of two successive General Assemblies between which an election has intervened.

6. Alabama, California, Indiana, Minnesota, Nebraska, North Carolina, South Carolina, South Dakota and Utah are major examples.

7. Arizona, Arkansas, California, Colorado, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma and Oregon.

8. For more detailed discussion, see Sturm, *Thirty Years of State Constitution Making: 1938-1968* (N.Y., N.Y.: National Municipal League, 1970), ch. 2, and Sturm, *Methods of State Constitutional Reform* (Ann Arbor: University of Michigan Press, 1954), ch. IV.

9. See Sturm, *Thirty Years of State Constitution Making*, pp. 52-53; this section of the last five volumes of *The Book of the States*; and Sturm, "State Constitutional Conventions during the 1970s," *State Government* 52, 1 (Winter 1979): 24-30.

10. The Texas convention, whose members were the state's 31 senators and 150 representatives, failed by three votes to muster the required two-thirds majority required for submission of convention proposals to the voters. See Janice C. May, *The Texas Constitutional Revision Experience in the Seventies* (Austin, Texas: Sterling Swift Publishing Company, 1975), and "Texas Constitutional Revision: Lessons and Laments," *National Civic Review* 66, 2 (February 1977): 64-69.

11. In *Bates et al.* v. *Edwards, Governor*, 294 So. 2d 532 (1974), the Louisiana Supreme Court rejected plaintiff's contention that the "one man, one vote" requirement applies to a constitutional convention, and declared that there is no requirement that the call for a constitutional convention must be submitted to and approved by the voters.

12. *David Pryor et al.* v. *Lynne Lowe et al.*, 258 Ark. 188 (1975).

13. See *The Book of the States*, vol. 22, p. 202 and vol. 23, pp. 11-12.

14. Act 622 of 1979, amending Act 3, Extraordinary Session, 1977.

15. The vote on the alternate proposals was as follows: merit selection by appointment—264,849 (44.2 percent); non-partisan election—334,092 (55.8 percent).

16. States that did not establish constitutional commissions during this period were Arizona, Colorado, Hawaii, Iowa, Mississippi, Nevada and Wyoming.

17. Constitutional commissions drafted proposed new documents or extensive revisions for legislatures in Alabama, California, Delaware, Georgia, Idaho, Minnesota, Nebraska, Ohio and South Dakota.

18. The vote was 1,164,824 for abolition of the commission, and 1,512,682 against it.

19. In the preparation of a proposed revised document for submission to the Georgia General Assembly, over a four-year period 1977-81, committees on the individual articles of the constitution included 231 appointed citizens and elected officials.

20. For an overview, see Robert Welsh and Ronald L. K. Collins, "Taking State Constitutions Seriously," *The Center Magazine* 14, 5 (September/October 1981): 16-35, 38-43. See also William J. Brennan Jr., "State Constitutions and the Protection of Individual Rights," *Harvard Law Review* 90 (January 1977): 489-504, and A. E. Dick Howard, "State Courts and Constitutional Rights in the Day of the Burger Court," *Virginia Law Review* 62 (June 1976): 874-944. The U.S. Advisory Commission on Intergovernmental Relations has cited the landmark California Supreme Court case of *Serrano* v. *Priest*, 487 P.2d 1241, 557 P.2d 929 (Cal. 1971 and 1976) as one of the major intergovernmental events of the past 20 years, Stenberg, "Federalism in Transition," p. 5. The case,

which promoted greater equity in the financing of public schools, protected the right to equality in the state constitution.

21. The 26th Amendment to the U.S. Constitution; in 1971, the Voting Rights Act and various U.S. Supreme Court decisions, including *Dunn v. Blumstein*, 405 U.S. 330 (1972), which struck down durational residence requirements, exemplify these federal requirements.

22. See the cases cited in footnote 2.

23. See the articles by Sterberg, "Federalism in Transition" and Walker, "The States and the System."

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Table 1
GENERAL INFORMATION ON STATE CONSTITUTIONS
(As of December 31, 1981)

State or other jurisdiction	Number of constitutions*	Dates of adoption	Effective date of present constitution	Estimated length (number of words)	Number of amendments	
					Submitted to voters	Adopted
Alabama	6	1819, 1861, 1865, 1868, 1875, 1901	Nov. 28, 1901	129,000	582	383
Alaska	1	1956	Jan. 3, 1959	12,880	23	16
Arizona	1	1911	Feb. 14, 1912	28,779(a)	171	102
Arkansas	5	1836, 1861, 1864, 1868, 1874	Oct. 30, 1874	40,469(a)	148	67(b)
California	2	1849, 1879	July 4, 1879	33,000	735	438
Colorado	1	1876	Aug. 1, 1876	39,800	218	101
Connecticut	4	1818(c), 1965	Dec. 30, 1965	7,900	17	16
Delaware	4	1776, 1792, 1831, 1897	June 10, 1897	18,700	(d)	107
Florida	6	1839, 1861, 1865, 1868, 1885, 1968	Jan. 7, 1969	25,000	53	32
Georgia	9	1777, 1789, 1798, 1861, 1865, 1868, 1877, 1945, 1976	Jan. 1, 1977	48,000(e)	260	193
Hawaii	1(f)	1950	Aug. 21, 1959	17,450(a)	79	74
Idaho	1	1889	July 3, 1890	21,323(a)	173	94
Illinois	4	1818, 1848, 1870, 1970	July 1, 1971	13,200	5	2
Indiana	2	1816, 1851	Nov. 1, 1851	10,225(a)	63	34
Iowa	2	1846, 1857	Sept. 3, 1857	12,500	46	43(g)
Kansas	1	1859	Jan. 29, 1861	11,865	107	80(g)
Kentucky	4	1792, 1799, 1850, 1891	Sept. 28, 1891	23,500	53	25
Louisiana	11	1812, 1845, 1852, 1861, 1864, 1868, 1879, 1898, 1913, 1921, 1974	Jan. 1, 1975	35,387(a)	8	8
Maine	1	1819	March 15, 1820	13,500	170	146(h)
Maryland	4	1776, 1851, 1864, 1867	Oct. 5, 1867	40,775	221	189
Massachusetts	1	1780	Oct. 25, 1780	36,612(a,i)	139	115
Michigan	4	1835, 1850, 1908, 1963	Jan. 1, 1964	20,000	34	13
Minnesota	1	1857	May 11, 1858	9,491(a)	197	103
Mississippi	4	1817, 1832, 1869, 1890	Nov. 1, 1890	23,500	117	48
Missouri	4	1820, 1865, 1875, 1945	March 30, 1945	40,134(a)	81	52
Montana	2	1889, 1972	July 1, 1973	11,812(a)	12	7
Nebraska	2	1866, 1875	Oct. 12, 1875	18,802(a)	265	176
Nevada	1	1864	Oct. 31, 1864	19,735	149	94(g)
New Hampshire	2	1776, 1784(k)	June 2, 1784	9,175	173(j)	75(j)
New Jersey	3	1776, 1844, 1947	Jan. 1, 1948	17,086	38	28
New Mexico	1	1911	Jan. 6, 1912	27,066	205	99
New York	4	1777, 1822, 1846, 1894	Jan. 1, 1895	47,000	256	191
North Carolina	3	1776, 1868, 1970	July 1, 1971	10,500	21	19
North Dakota	1	1889	Nov. 2, 1889	30,000	193(k)	110(k)
Ohio	2	1802, 1851	Sept. 1, 1851	36,300	234	140
Oklahoma	1	1907	Nov. 16, 1907	68,500	233(l)	107(l)
Oregon	1	1857	Feb. 14, 1859	25,000	335	169
Pennsylvania	5	1776, 1790, 1838, 1873, 1968(m)	1968	21,675	20(m)	15(m)
Rhode Island	2	1842(c)	May 2, 1843	19,026(a,i)	81	43
South Carolina	7	1776, 1713, 1790, 1861, 1865, 1868, 1895	Jan. 1, 1896	22,500(n)	626(o)	443(c)
South Dakota	1	1889	Nov. 2, 1889	23,250	173	89
Tennessee	3	1796, 1835, 1870	Feb. 23, 1870	15,300	54	31
Texas	5	1845, 1861, 1866, 1869, 1876	Feb. 15, 1876	61,000	391	247
Utah	1	1895	Jan. 4, 1896	17,300	112	64
Vermont	3	1777, 1786, 1793	July 9, 1793	6,600	205	48
Virginia	6	1776, 1830, 1851, 1869, 1902, 1970	July 1, 1971	18,500	14	13
Washington	1	1889	Nov. 11, 1889	29,350	131	73
West Virginia	2	1863, 1872	April 9, 1872	25,550(a)	88	33
Wisconsin	1	1848	May 29, 1848	13,435	159	116(g)
Wyoming	1	1889	July 10, 1890	27,600	84	47
American Samoa	2	1960, 1967	July 1, 1967	6,000	13	7
No. Mariana Islands	1	1977	Oct. 24, 1977	...	...	...
Puerto Rico	1	1952	July 25, 1952	9,281(a)	6	6

*The constitutions referred to in this table include those Civil War documents customarily listed by the individual states.

(a) Actual word count.

(b) Eight of the approved amendments have been superseded and are not printed in the current edition of the constitution. The total adopted does not include five amendments that were invalidated.

(c) Colonial charters with some alterations served as the first constitutions in Connecticut (1638, 1662) and in Rhode Island (1663).

(d) Proposed amendments are not submitted to the voters in Delaware.

(e) Estimated length of the printed constitution, which includes only provisions of statewide applicability. Local amendments comprise most of the total constitution.

(f) As a kingdom and a republic, Hawaii had five constitutions.

(g) The figure given includes amendments approved by the voters and later nullified by the state supreme court in Iowa (three), Kansas (one), Nevada (six) and Wisconsin (two).

(h) The figure does not include one amendment approved by the voters in 1967 that is inoperative until implemented by legislation.

(i) The printed constitution includes many provisions that have been annulled. The length of effective provisions is an estimated 24,122 words (12,490 annulled) in Massachusetts and 11,399 words (7,627 annulled) in Rhode Island.

(j) The constitution of 1784 was extensively revised in 1792. Figures show proposals and adoptions since 1793, when the revised constitution became effective.

(k) The figures do not include submission and approval of the constitution of 1889 itself and of Article XX; these are constitutional questions included in some counts of constitutional amendments and would add two to the figure in each column.

(l) The figures include one amendment submitted to and approved by the voters and subsequently ruled by the supreme court to have been illegally submitted.

(m) Certain sections of the constitution were revised by the limited constitutional convention of 1967-68. Amendments proposed and adopted are since 1968.

(n) Of the estimated length, approximately two-thirds is of general statewide effect; the remainder is local amendments.

(o) Of the 626 proposed amendments submitted to the voters, 130 were of general statewide effect and 496 were local; the voters rejected 83 (12 statewide, 71 local). Of the remaining 543, the General Assembly refused to approve 100 (22 statewide, 78 local), and 443 (96 statewide, 347 local) were finally added to the constitution.

Table 2
CONSTITUTIONAL AMENDMENT PROCEDURE: BY THE LEGISLATURE
Constitutional Provisions

State or other jurisdiction	Legislative vote required for proposal(a)	Consideration by two sessions required	Vote required for ratification	Limitation on the number of amendments submitted at one election
Alabama	3/5	No	Majority vote on amendment	None
Alaska	2/3	No	Majority vote on amendment	None
Arizona	Majority	No	Majority vote on amendment	None
Arkansas	Majority	No	Majority vote on amendment	3
California	2/3	No	Majority vote on amendment	None
Colorado	2/3	No	Majority vote on amendment	None(b)
Connecticut	(c)	(c)	Majority vote on amendment	None
Delaware	2/3	Yes	Not required	No referendum
Florida	3/5	No	Majority vote on amendment	None
Georgia	2/3	No	Majority vote on amendment	None
Hawaii	(d)	(d)	Majority vote on amendment(e)	None
Idaho	2/3	No	Majority vote on amendment	None
Illinois	3/5	No	(f)	3 articles
Indiana	Majority	Yes	Majority vote on amendment	None
Iowa	Majority	Yes	Majority vote on amendment	None
Kansas	2/3	No	Majority vote on amendment	5
Kentucky	3/5	No	Majority vote on amendment	4
Louisiana	2/3	No	Majority vote on amendment(g)	None
Maine	2/3(h)	No	Majority vote on amendment	None
Maryland	3/5	No	Majority vote on amendment	None
Massachusetts	Majority(i)	Yes	Majority vote on amendment	None
Michigan	2/3	No	Majority vote on amendment	None
Minnesota	Majority	No	Majority vote in election	None
Mississippi	2/3(j)	No	Majority vote on amendment	None
Missouri	Majority	No	Majority vote on amendment	None
Montana	2/3(h)	No	Majority vote on amendment	None
Nebraska	3/5	No	Majority vote on amendment(e)	None
Nevada	Majority	Yes	Majority vote on amendment	None
New Hampshire	3/5	No	2/3 vote on amendment	None
New Jersey	(k)	(k)	Majority vote on amendment	None(l)
New Mexico	Majority(m)	No	Majority vote on amendment(m)	None
New York	Majority	Yes	Majority vote on amendment	None
North Carolina	3/5	No	Majority vote on amendment	None
North Dakota	Majority	No	Majority vote on amendment	None
Ohio	3/5	No	Majority vote on amendment	None
Oklahoma	Majority	No	Majority vote on amendment	None
Oregon	(n)	No	Majority vote on amendment	None
Pennsylvania	Majority(o)	Yes(o)	Majority vote on amendment	None
Rhode Island	Majority	No	Majority vote on amendment	None
South Carolina	2/3(p)	Yes(p)	Majority vote on amendment	None
South Dakota	Majority	No	Majority vote on amendment	None
Tennessee	(q)	Yes(q)	Majority vote in election(r)	None
Texas	2/3	No	Majority vote on amendment	None
Utah	2/3	No	Majority vote on amendment	None
Vermont	(s)	Yes	Majority vote on amendment	None
Virginia	Majority	Yes	Majority vote on amendment	None
Washington	2/3	No	Majority vote on amendment	None
West Virginia	2/3	No	Majority vote on amendment	None
Wisconsin	Majority	Yes	Majority vote on amendment	None
Wyoming	2/3	No	Majority vote in election	None
American Samoa	3/5	No	Majority vote on amendment(t)	None
Puerto Rico	2/3(u)	No	Majority vote on amendment	3

(a) In all states not otherwise noted, the figure shown in the column refers to the proportion of elected members in each house required for approval of proposed constitutional amendments.

(b) Legislature may not propose amendments at the same session to more than six articles in Colorado.

(c) Three-fourths vote in each house at one session, or majority vote in each house in two sessions between which an election has intervened.

(d) Two-thirds vote in each house at one session, or majority vote in each house in two sessions.

(e) Majority on amendment must be at least 50 percent of the total votes cast at the election; or, at a special election, a majority of the votes tallied which must be at least 30 percent of the total number of registered voters.

(f) Majority voting in election or three-fifths voting on amendment.

(g) If five or fewer political subdivisions of state affected, majority in state as a whole and also in affected subdivision(s) is required.

(h) Two-thirds of both houses.

(i) Majority of members elected sitting in joint session.

(j) The two-thirds must include not less than a majority elected to each house.

(k) Three-fifths of all members of each house at one session, or majority of all members of each house for two successive sessions.

(l) If a proposed amendment is not approved at the election when submitted, neither the same amendment nor one which would make substantially the same change for the constitution may be again submitted to the people before the third general election thereafter.

(m) Amendments concerning certain elective franchise and education matters require three-fourths vote of members elected and approval by three-fourths of electors voting in state and two-thirds of those voting in each county.

(n) Majority to amend constitution, two-thirds to revise (revise includes all or a part of the constitution).

(o) Emergency amendments may be passed by two-thirds vote of each house, followed by ratification by majority vote of electors in election held at least one month after legislative approval.

(p) Two-thirds of members of each house, first passage; majority of members of each house after popular ratification.

(q) Majority of members elected to both houses, first passage; two-thirds of members elected to both houses, second passage.

(r) Majority of all citizens voting for governor.

(s) Two-thirds vote senate, majority vote house, first passage; majority both houses, second passage. As of 1974, amendments may be submitted only every four years.

(t) Within 30 days after voter approval, governor must submit amendment(s) to Secretary of the Interior for approval.

(u) If approved by two-thirds of members of each house, amendment(s) submitted to voters at special referendum; if approved by not less than three-fourths of total members of each house, referendum may be held at next general election.

Table 3
CONSTITUTIONAL AMENDMENT PROCEDURE: BY INITIATIVE
Constitutional Provisions

State	Number of signatures required on initiative petition	Distribution of signatures	Referendum vote
Arizona	15% of total votes cast for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Arkansas	10% of voters for governor at last election.	Must include 5% of voters for governor in each of 15 counties.	Majority vote on amendment.
California	8% of total voters for all candidates for governor at last election.	None specified.	Majority vote on amendment.
Colorado	5% of legal voters for secretary of state at last election.	None specified.	Majority vote on amendment.
Florida	8% of total votes cast in the state in the last election for presidential electors.	8% of total votes cast in each of 1/2 of the congressional districts.	Majority vote on amendment.
Illinois(a)	8% of total votes cast for candidates for governor at last election.	None specified.	Majority voting in election or 3/5 voting on amendment.
Massachusetts(b)	3% of total votes cast for governor at preceding biennial state election (not less than 25,000 qualified voters).	No more than 1/4 from any one county.	Majority vote on amendment which must be 30% of total ballots cast at election.
Michigan	10% of total voters for governor at last election.	None specified.	Majority vote on amendment.
Missouri	8% of legal voters for all candidates for governor at last election.	The 8% must be in each of 2/3 of the congressional districts in the state.	Majority vote on amendment.
Montana	10% of qualified electors, the number of qualified electors to be determined by number of votes cast for governor in preceding general election.	The 10% to include at least 10% of qualified electors in each of 2/5 of the legislative districts.	Majority vote on amendment.
Nebraska	10% of total votes for governor at last election.	The 10% must include 5% in each of 2/5 of the counties.	Majority vote on amendment which must be at least 35% of total vote at the election.
Nevada	10% of voters who voted in entire state in last general election.	10% of total voters who voted in each of 75% of the counties.	Majority vote on amendment in two consecutive general elections.
North Dakota	4% of population of the state.	None specified.	Majority vote on amendment.
Ohio	10% of total number of electors who voted for governor in last election.	At least 5% of qualified electors in each of 1/2 of counties in the state.	Majority vote on amendment.
Oklahoma	15% of legal voters for state office receiving highest number of voters at last general state election.	None specified.	Majority vote on amendment.
Oregon	8% of total votes for all candidates for governor elected for 4-year term at last election.	None specified.	Majority vote on amendment.
South Dakota	10% of total votes for governor in last election.	None specified.	Majority vote on amendment.

(a) Only Article IV, The Legislature, may be amended by initiative petition.

(b) Before being submitted to the electorate for ratification, initiative measures must be approved at two sessions of a successively elected legislature by not less than one-fourth of all members elected, sitting in joint session.

Table 4
PROCEDURES FOR CALLING CONSTITUTIONAL CONVENTIONS
Constitutional Provisions

State or other jurisdiction	Provision for convention	Legislative vote for submission of convention question(a)	Popular vote to authorize convention	Periodic submission of convention question required(b)	Popular vote required for ratification of convention proposals
Alabama	Yes	Majority	ME	No	Not specified
Alaska	Yes	No provision(c,d)	(c)	10 yrs.(c)	Not specified(c)
Arizona	Yes	Majority	(e)	No	MP
Arkansas	No	...	...	No	...
California	Yes	2/3	MP	No	MP
Colorado	Yes	2/3	MP	No	ME
Connecticut	Yes	2/3	MP	20 yrs. (f)	MP
Delaware	Yes	2/3	MP	No	No provision
Florida	Yes	(g)	MP	No	Not specified
Georgia	Yes	(d)	None	No	MP
Hawaii	Yes	Not specified	MP	9 years	MP(h)
Idaho	Yes	2/3	MP	No	Not specified
Illinois	Yes	3/5	(i)	20 years	MP
Indiana	No	...	...	No	...
Iowa	Yes	Majority	MP	10 yrs.; 1970	MP
Kansas	Yes	2/3	MP	No	MP
Kentucky	Yes	Majority(j)	MP(k)	No	No provision
Louisiana	Yes	(d)	None	No	MP
Maine	Yes	(d)	None	No	No provision
Maryland	Yes	Majority	ME	20 yrs.; 1970	MP
Massachusetts	No	...	...	No	...
Michigan	Yes	Majority	MP	16 yrs.; 1978	MP
Minnesota	Yes	2/3	ME	No	3/5 on P
Mississippi	No	...	...	No	...
Missouri	Yes	Majority	MP	20 yrs.; 1962	Not specified(l)
Montana	Yes(m)	2/3(n)	MP	20 years	MP
Nebraska	Yes	3/5	MP(o)	No	MP
Nevada	Yes	2/3	ME	No	No provision
New Hampshire	Yes	Majority	MP	10 years	2/3 on P
New Jersey	No	...	...	No	...
New Mexico	Yes	2/3	MP	No	Not specified
New York	Yes	Majority	MP	20 yrs.; 1957	MP
North Carolina	Yes	2/3	MP	No	MP
North Dakota	No	...	...	No	...
Ohio	Yes	2/3	MP	20 yrs.; 1932	MP
Oklahoma	Yes	Majority	(e)	20 years	MP
Oregon	Yes	Majority	(e)	No	No provision
Pennsylvania	No	...	...	No	...
Rhode Island	Yes	Majority	MP	10 years	MP
South Carolina	Yes	(d)	ME	No	No provision
South Dakota	Yes	(d)	(d)	No	MP(p)
Tennessee	Yes(q)	Majority	MP	No	MP
Texas	No	...	...	No	...
Utah	Yes	2/3	ME	No	ME
Vermont	No	...	...	No	...
Virginia	Yes	(d)	None	No	MP
Washington	Yes	2/3	ME	No	Not specified
West Virginia	Yes	Majority	MP	No	Not specified
Wisconsin	Yes	Majority	MP	No	No provision
Wyoming	Yes	2/3	ME	No	Not specified
American Samoa	Yes	(r)	None	No	ME(s)
Puerto Rico	Yes	2/3	MP	No	MP

Key:
MP—Majority voting on the proposal.
ME—Majority voting in the election.

(a) In all states not otherwise noted, the entries in this column refer to the proportion of members elected to each house required to submit to the electorate the question of calling a constitutional convention.

(b) The number listed is the interval between required submissions on the question of calling a constitutional convention; where given, the date is that of the first required submission of the convention question.

(c) Unless provided otherwise by law, convention calls are to conform as nearly as possible to the act calling the 1955 convention, which provided for a legislative vote of a majority of members elected to each house and ratification by a majority vote on the proposals. The legislature may call a constitutional convention at any time.

(d) In these states, the legislature may call a convention without submitting the question to the people. The legislative vote required is two-thirds of the members elected to each house in Georgia, Louisiana, South Carolina and Virginia; two-thirds concurrent vote of both branches in Maine; three-fourths of all members of each house in South Dakota; and not specified in Alaska, but bills require majority vote of membership of each house. In South Dakota, the question of calling a convention may be initiated by the people in the same manner as an amendment to the constitution (see Table 3) and requires a majority vote on the question for approval.

(e) The law calling a convention must be approved by the people.

(f) The legislature shall submit the question 20 years after the last convention, or 20 years after the last vote on the question of calling a convention, whichever date is last.

(g) The power to call a convention is reserved to the people by petition.

(h) The majority must be 35 percent of the total votes cast at a general election or 30 percent of the number of registered voters if at a special election.

(i) Majority voting in the election, or three-fifths voting on the question.

(j) Must be approved during two legislative sessions.

(k) Majority must equal one-fourth of qualified voters at last general election.

(l) Majority of those voting on the proposal is assumed.

(m) The question of calling a constitutional convention may be submitted either by the legislature or by initiative petition to the secretary of state in the same manner as provided for initiated amendments (see Table 3).

(n) Two-thirds of all members of the legislature.

(o) Majority must be 35 percent of total votes cast at the election.

(p) Convention proposals are submitted to the electorate at a special election in a manner to be determined by the convention.

(q) Conventions may not be held more often than once in six years.

(r) Five years after effective date of constitutions, governor shall call a constitutional convention to consider changes proposed by a constitutional committee appointed by the governor. Delegates to the convention are to be elected by their county councils.

(s) If proposed amendments are approved by the voters, they must be submitted to the Secretary of the Interior for approval.

Table 5
STATE CONSTITUTIONAL COMMISSIONS
(Operative during January 1, 1980-December 31, 1981)

State	Name of commission	Method and date of creation and period of operation	Membership: number and type	Funding	Purpose of commission	Proposals and action
Alaska	Constitutional Convention Committee	Legislative; created by Legislative Council; June 26, 1979-Jan. 9, 1980	2 members; one senator and one representative	$87,000	Study organization and procedure of 1955-56 constitutional convention, matters relating to a convention call, and issues likely to arise in convention in order to prepare guidelines and recommendations for conducting a convention	Prepared work papers; background work for committee established in 1980.
	Interim Committee on the Constitutional Convention	Legislative; SCR 43; January 1980-January 12, 1981	7; appointed from the two houses, 4 senators and 3 representatives	$143,000	Study (see above)	Continued work of previous committee. Prepared material for "A Citizen's Guide to the Alaska Constitution."
Georgia	Select Committee on Constitutional Revision	Statutory; HR 135-588, Res. Act No. 26, March 30, 1977; May 9, 1977-June 30, 1982	11 (most ex officio): gov., lt. gov., speaker of house, chf. justice of sup. ct., chf. judge of ct. of appeals, atty. gen., chmn. of sen. jud. cmte., chmn. of house jud. cmte., trial judge appid. by jud. council, pres. pro tem of sen., pres. pro tem of house	No specified amount; funded from General Assembly appropriation	Provide overall policy direction and coordination for a continuing study and revision of the constitution	Under the auspices of the select committee, nine article revision committees prepared proposed revisions which were reviewed in 1981 by a 62-member Legislative Overview Committee and submitted to the General Assembly. On Sept. 18, 1981, the General Assembly approved a proposed new constitution for submission to the voters in Nov. 1982.
Utah	Utah Constitutional Revision Study Commission	Statutory; Ch. 89, Laws of Utah, 1969; amended by Ch. 107, Laws, 1973; amended by Ch. 159, Laws, 1977, which made the commission permanent as of July 1, 1977	16; 1 ex officio, 9 appid. by speaker of house (3), pres. of sen. (3) and gov. (3)—no more than 2 of each group to be from same party; and 6 additional members appid. by the 9 previously appid. members	Appropriations through 1981 totaled $285,000. (The 1981 appropriation was $54,000.)	Study constitution and recommend desirable changes, including proposed drafts	Mandated to report recommendations at least 60 days before legislature convenes. Voter action through 1980 on commission recommendations included approval of revised articles on the legislative and executive branches, elections, amending procedure and labor; rejection of articles on the executive (1979), taxation and legislative compensation. Proposed revisions of the judicial and tax articles will be submitted to the legislature in 1982.

Table 6
CONSTITUTIONAL CONVENTIONS
1980-81

State	Convention date	Type of convention	Referendum on convention question	Preparatory bodies	Appropriations	Convention delegates	Convention proposals	Referendum on convention proposals
Arkansas	Dec. 11-12, 1979; May 14-July 16, 1979; and June 16-30, 1980	Unlimited	Nov. 2, 1976 Vote: 314,385 239,491	Constitutional Convention Preparatory Committee	$800,000	100 (elected Nov. 7, 1978 and at run-off election Nov. 21, 1978, from representative districts; non-partisan)	Proposed a new constitution plus 2 alternative proposals on the method of selecting judges submitted separately	Nov. 4, 1980: constitution rejected: vote: 276,257 (37%) 464,210 (63%) Alternative proposals (selection of judges): For merit selection by appointment—264,849; For non-partisan election—334,092. (Rejection of the proposed constitution nullified votes on the alternatives.)
New Hampshire	May 6-June 26, 1974 (met 12 days). The 16th constitutional convention is a continuing body for 10 years or until successor is authorized and selected.	Unlimited	Nov. 7, 1972 Vote: 96,793 73,365	Commission to Study the State Constitution	$180,000	400 (elected March 5, 1974 from house districts; non-partisan)	27 proposed amendments to be voted on during the period 1974-80	Nov. 5, 1974: 5 proposed amendments, 2 adopted; Feb. 24, 1976: 5 proposed, 5 rejected; Nov. 2, 1976: 7 proposed, 4 adopted; Nov. 7, 1978: 4 proposed, 2 adopted; Feb. 26, 1980: 3 proposals, 3 rejected; Nov. 4, 1980: 3 proposals, 2 adopted (Total convention proposals: 27; 10 adopted).

Section III
THE GOVERNORS AND THE EXECUTIVE BRANCH

THE GOVERNORS AND THE EXECUTIVE BRANCH, 1980-81

By Thad L. Beyle

TRENDS in state administrative organizations begun in the late 1970s continued during the first two years of the 1980s. The concerns of governors, legislators and administrators have turned from the structure and power of state government toward budget and management processes, additional revenue requirements and critical policy decisions.

In part this can be attributed to the rather extensive efforts since the mid-1960s to modernize most state governments. While some reforms remain to be carried out, as Larry Sabato was able to report "within the last fifteen years, there has been a virtual reform in state government. In most of the states as a result, the governor is now truly the master of his own house, not just the father figure."[1]

In part this shift is due to a changing federal system in which the demands on state governments and their leaders from above and below are increasing. The federalism revolution being wrought under the Reagan administration is a most visible part of these changes. But the demands for more adequate education, safer and more productive corrections policies and structures, preventive measures tied to hazardous waste disposal and health care cost containment, as well as the concern over decreasing highway revenues and increasing costs of maintaining transportation facilities, etc., all have high positions on the states' agendas.[2] With a general slow-down in additional revenues, the state tax reduction and reform efforts of the mid- to late-1970s have shifted to the state tax increases and expansions of the 1980s.

Governors

Fifteen governorships were up for election during the two-year period; in 12 of these the incumbent stood for an additional term with seven of these being re-elected. Of the five defeated governors, two were unseated in their own party's primary (Montana, Washington), and three were beaten in the general election (Arkansas, Missouri and North Dakota).

The cost of becoming governor is high, as measured by those elections. In 1980, the 13 campaigns cost the various candidates over $35 million, paced by the $12.7 million West Virginia and $6 million Missouri campaigns. This is an average of $2.7 million per gubernatorial chair, with the winners spending the greater amount (63.8 percent) as would be expected. Deleting those two largest campaigns, the average was $1.5 million per chair with the winners spending 53.4 percent.

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natures which are required to be obtained following failure of the legislature to pass the proposed law by the first Wednesday in May. Id.

The questions of law submitted for opinion by General Court, so far as they bore on constitutionality of proposed law introduced by initiative petition, related to "pending matters in order that assistance may be gained in the performance of present duties". In re Opinion of the Justices (1941) 34 N.E.2d 527, 309 Mass. 571.

Where proposal for initiative amendment to constitution received affirmative votes taken by yeas and nays of more than one-fourth of all members elected to General Court and in conformity to rules, motion for reconsideration was made immediately thereafter, adverse disposition was required to be made of motion before earlier vote would stand as final action of joint session. In re Opinion of the Justices (1935) 197 N.E. 95, 291 Mass. 578.

Reconsideration by joint session of both houses of General Court of prior vote whereby proposal for initiative amendment to constitution received affirmative vote of more than one-fourth of all members elected to General Court could be had by majority vote. Id.

Courts will not pass on general constitutionality of law proposed under popular initiative. Horton v. Attorney General (1930) 169 N.E. 552, 269 Mass. 503.

IV. LEGISLATIVE ACTION ON PROPOSED CONSTITUTIONAL AMENDMENTS.

SECTION 1. *Definition.*—A proposal for amendment to the constitution introduced into the general court by initiative petition shall be designated an initiative amendment, and an amendment introduced by a member of either house shall be designated a legislative substitute or a legislative amendment.

Cross References

Constitutional amendments, generally,
Arguments pro and con, see M.G.L.A. c. 54, §§ 53, 54.
Conflicting or alternative measures, see Amend. Art. 48, Init., Pt. 6.
Engrossment of proposals, see M.G.L.A. c. 3, § 24.
Publication, see M.G.L.A. c. 5, § 2.
Submission to people, form, see Amend. Art. 48, Init., Pt. 4, § 5.

Law Review Commentaries

Massachusetts constitution and the constitutional conventions. Arthur Lord (1916) 2 Mass.L.Q. 1.

Library References

Constitutional Law ⇐7. C.J.S. Constitutional Law § 9.

Notes of Decisions

1. In general

Supreme Judicial Court would pass on questions posed by the Commonwealth Senate regarding initiative petition seeking passage of proposed disclosure of financial interest law since issue whether the proposed act was "introduced and pending" and, hence, was required to be voted on by General Court was raised by several of the questions and related to a present duty in performance of which the Senate could be aided by the Justices opinion. Opinion of the Justices to the Senate (1978) 376 N.E.2d 810, — Mass. —.

The legislative body of state established by a written constitution cannot provide for constitutional revision except in the method provided. In re Opinion of the Justices (1917) 115 N.E. 921, 226 Mass. 607.

The state constitution can be amended or changed only in the mode therein prescribed. Opinion of Justices (1833) 60 Mass. 573, 6 Cush. 573.

SECTION 2. *Joint Session.*—If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed in the aggregate by not less than such number of voters as will equal three per cent of the entire vote cast for governor at the preceding biennial state election, or if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in May, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof.

Historical Note

Original § 2, as adopted in 1918, was stricken out in 1950 by the Eighty-first Article of Amendment and present § 2 inserted in place thereof.

The original § 2 provided:

"**Section 2. Joint Session.**—If a proposal for a specific amendment of the constitution is introduced into the general court by initiative petition signed by not less than twenty-five thousand qualified voters, or if in case of a proposal for amendment introduced into the general court by a member of either house, consideration thereof in joint session is called for by vote of either house, such proposal shall, not later than the second Wednesday in June, be laid before a joint session of the two houses, at which the president of the senate shall preside; and if the two houses fail to agree upon a time for holding any joint session hereby required, or fail to continue the same from time to time until final action has been taken upon all amendments pending, the governor shall call such joint session or continuance thereof."

Cross References

Information on proposed measures sent to voters, see M.G.L.A. c. 54, § 53.

Placing questions on ballots, see M.G.L.A. c. 54, § 42A.

Submission of questions where voting machines used, see M.G.L.A. c. 54, § 35A.

Law Review Commentaries

Constitutional amendments. Frank W. Grinnell (1932) 32 Mass.L.Q. No. 2, p. 57.

Library References

Constitutional Law ⇐7. C.J.S. Constitutional Law § 9.

Notes of Decisions

1. In general

Supreme Judicial Court would pass on questions posed by the Commonwealth Senate regarding initiative petition seeking passage of proposed disclosure of financial interest law since issue whether the proposed act was "introduced and pending" and, hence, was required to be voted on by General Court was raised by several of the questions and related to a present duty in performance of which the Senate could be aided by the Justices opinion. Opinion of the Justices to the Senate (1978) 376 N.E.2d 810, — Mass. —.

Disposition of proposed initiative amendment to constitution could be deferred by joint session of both houses of General Court to next annual session of General Court. In re Opinion of the Justices (1935) 197 N.E. 95, 291 Mass. 578.

Under this section, providing for submission of amendment to General Court before second Wednesday in June, court's agreement to proposed amendment at extra session in December was invalid. In re Opinion of the Justices (1921) 130 N.E. 202, 237 Mass. 589.

2. Action by governor

There is nothing in the constitution limiting the time within which the governor must call a joint session to consider a proposal for an initiative amendment to the constitution where such proposal has been laid before a joint session within the time required. Opinion of the Justices (1956) 135 N.E.2d 741, 334 Mass. 745.

If a proposed legislative amendment to the constitution has been seasonably laid before a joint session of the General Court not later than the second Wednesday of May of the year of its introduction, there is no time limit during the life of that General Court within which the governor must call a continuance of the session. Id.

Whenever the governor has made a genuine effort to secure action by a joint session of the General Court as to a proposed legislative amendment to the constitution and has become reasonably convinced that it will be impossible to secure it, he may exercise his powers of prorogation, even though final action on all proposed amendments has not been taken. Id.

SECTION 3. *Amendment of Proposed Amendments.*—A proposal for an amendment to the constitution introduced by initiative petition shall be voted upon in the form in which it was introduced, unless such amendment is amended by vote of three-fourths of the members voting thereon in joint session, which vote shall be taken by call of the yeas and nays if called for by any member.

Library References

Constitutional Law ⇐7. C.J.S. Constitutional Law § 9.

Notes of Decisions

1. In general

Reconsideration by joint session of both houses of General Court of prior vote whereby proposal for initiative amendment to constitution received affirmative vote of more than one-fourth of all members elected to General Court could be had by majority vote. In re Opinion of the Justices (1935) 197 N.E. 95, 291 Mass. 578.

SECTION 4. *Legislative Action.*—Final legislative action in the joint session upon any amendment shall be taken only by call of the yeas and nays, which shall be entered upon the journals of the two houses; and an unfavorable vote at any stage preceding final action shall be verified by call of the yeas and nays, to be entered in like manner. At such joint session a legislative amendment receiving the affirmative votes of a majority of all the members elected, or an initiative amendment receiving the affirmative votes of not less than one-fourth of all the members elected, shall be referred to the next general court.

Library References

Constitutional Law ⇐7. C.J.S. Constitutional Law § 9.

Notes of Decisions

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1. In general

Proposed Senate Bill No. 1363, relating to temporary service by certain retired chief justices and associate justices of the several courts of the Commonwealth, would not be, if enacted into law, in contravention of proposed constitutional amendment providing for compulsory retirement of judges at age 70 if approved by the voters of the Commonwealth at the biennial state election to be held in 1972. Opinion of the Justices (1972) 284 N.E.2d 908, 362 Mass. 907.

Where proposal for initiative amendment to constitution was agreed to at a joint session of the General Court, and in conformity to rule of house of representatives, a motion for reconsideration was made immediately thereafter, adverse disposition of such motion was required before the first vote would stand as final action of the joint session, and mere dissolution of such joint session without agreement would not terminate the motion for reconsideration. Opinion of the Justices (1956) 135 N.E.2d 741, 334 Mass. 745.

Adverse disposition had to be made of a motion for reconsideration passed immediately after a favorable vote upon a proposed initiative amendment to the constitution before the first vote would stand as the final action of the joint session, and therefore adjournment of subsequent joint sessions without such disposition of the motion did not render favorable vote on the amendment final. Id.

Proposals for legislative amendments to the constitution may be introduced in a second annual session of the General Court. Id.

In the case of In re Opinion of the Justices (1935) 197 N.E. 95, 291 Mass. 578, the court said: "Whether favorable final legislative action on the proposed amendment be taken at the current or at the next session of the present General Court cannot accelerate, retard or affect the submission of the amendment to the people."

2. Final action

Joint session of both houses of General Court enjoined by constitution for consideration of proposal for initiative amendment to constitution is a "legislative assembly," as respects whether affirmative vote of 71 members of General Court agreeing to proposal constituted a final action within provision of this section that final legislative action in joint session upon any amendment shall be taken only by call of yeas and nays. In re Opinion of the Justices (1935) 197 N. E. 95, 291 Mass. 578.

"Final legislative action," within provision of this section that final legislative action, in joint session of both houses of General Court upon any amendment to constitution shall be tak-

en only by call of yeas and nays, means such action according to established legislative procedure modified by constitutional requirements. Id.

Vote of joint session of both houses of General Court, whereby proposal for initiative amendment to constitution received affirmative vote taken by yeas and nays of more than one-fourth of all members elected constituted "final legislative action" within this section, but such action was subject to reconsideration. Id.

SECTION 5. *Submission to the People.*—If in the next general court a legislative amendment shall again be agreed to in joint session by a majority of all the members elected, or if an initiative amendment or a legislative substitute shall again receive the affirmative votes of at least one-fourth of all the members elected, such fact shall be certified by the clerk of such joint session to the secretary of the commonwealth, who shall submit the amendment to the people at the next state election. Such amendment shall become part of the constitution if approved, in the case of a legislative amendment, by a majority of the voters voting thereon, or if approved, in the case of an initiative amendment or a legislative substitute, by voters equal in number to at least thirty per cent of the total number of ballots cast at such state election and also by a majority of the voters voting on such amendment.

Library References

Constitutional Law ⇐9(1 to 3). C.J.S. Constitutional Law § 10.

Notes of Decisions

I. In general

Generally, constitutional amendment takes effect upon day of its ratification by the people. Opinion of the Justices (1972) 287 N.E.2d 910, 362 Mass. 907.

Provision of M.G.L.A. c. 54, § 115, requiring that the Governor tabulate votes on any question before electorate is as much a part of election process as is casting of votes, and the declaration of result of election is an indispensable adjunct to that process, and the only method by which approval of proposed constitutional amendment by majority of voters might be ascertained is from the provisions of election laws. Id.

Proposed amendment of Const. Pt. 2, C. 3, Art. 1 [by 1971 House No. 5328] providing for retirement of judges at the age of 70 would become a part of Constitution if adopted by vote of people at election, but it could not take effect and become operative until the final tabulation and determination by the Governor and councillors in accordance with M.G.L.A. c. 54, § 115. Id.

If proposed amendment of Const. Pt. 2, C. 3, Art. 1 [by 1971 House No. 5328] requiring judges to retire at the age of 70 is approved the voters and tabulation of the vote by the Governor and councillors pursuant to statute occurs at later date, judges required to retire pursuant to amendment will sit and otherwise discharge duties in interval between election day and date of official tabulation by Governor and councillors. Id.

There is no obligation of any kind on a joint session of the General Court to act favorably on a proposal for an initiative amendment to the constitution, and there is no means of compelling such session to take any action, and nothing to prevent the taking of favorable action too late to place a proposal on the ballot in the same year. Opinion of the Justices (1956) 135 N.E.2d 741, 334 Mass. 745.

There is nothing in this part dealing with initiative petitions for amendment that requires final action on such pro-

Adopted by the Senate: February 4, 1992

Adopted by the House of Representatives: February 12, 1992

CHAPTER NO. 715
SENATE CONCURRENT RESOLUTION NUMBER 516

A CONCURRENT RESOLUTION PROPOSING AN AMENDMENT TO SECTION 273, MISSISSIPPI CONSTITUTION OF 1890, TO PROVIDE THAT AMENDMENTS TO THE CONSTITUTION MAY BE PROPOSED BY INITIATIVE OF THE PEOPLE AND TO SET FORTH THE PROCEDURE FOR THE EXERCISE OF THE POWER OF INITIATIVE.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI, TWO-THIRDS OF THE SENATE AND HOUSE OF REPRESENTATIVES CONCURRING THEREIN, WHICH TWO-THIRDS CONSISTS OF NOT LESS THAN A MAJORITY OF THE MEMBERS ELECTED TO EACH HOUSE, That the following amendment to the Mississippi Constitution of 1890 be submitted to the qualified electors of the state for ratification or rejection at an election to be held on the first Tuesday after the first Monday of November, 1992:

Amend Section 273, Mississippi Constitution of 1890, to read as follows:

Section 273. (1) Amendments to this Constitution may be proposed by the Legislature or by initiative of the people.

(2) Whenever two-thirds (2/3) of each house of the Legislature, which two-thirds (2/3) shall consist of not less than a majority of the members elected to each house, shall deem any change, alteration or amendment necessary to this Constitution, such proposed amendment, change or alteration shall be read and passed by two-thirds (2/3) vote of each house, as herein provided; public notice shall then be given by the Secretary of State at least thirty (30) days preceding an election, at which the qualified electors shall vote directly for or against such change, alteration or amendment, and if more than one (1) amendment shall be submitted at one (1) time, they shall be submitted in such manner and form that the people may vote for or against each amendment separately; and, notwithstanding the division of the Constitution into sections, the Legislature may provide in its resolution for one or more amendments pertaining and relating to the same subject or subject matter, and may provide for one or more amendments to an article of the Constitution pertaining and relating to the same subject or subject matter, which may be included in and voted on as one (1) amendment; and if it shall appear that a majority of the qualified electors voting directly for or against the same shall have voted for the proposed change, alteration or amendment, then it shall be inserted as a part of the Constitution by proclamation of the Secretary of State certifying that it received the majority vote required by the Constitution; and the resolution may fix the date and direct the calling of elections for the purposes hereof.

(3) The people reserve unto themselves the power to propose and enact constitutional amendments by initiative. An initiative to amend the Constitution may be proposed by a petition signed over a twelve-month period by qualified electors equal in number to at least twelve percent (12%) of the votes for all candidates for Governor in the last gubernatorial election. The signatures of the qualified electors from any congressional district shall not exceed one-fifth (1/5) of the total number of signatures required to qualify an initiative petition for placement upon the ballot. If an initiative petition contains signatures from a single congressional district which exceed one-fifth (1/5) of the total number of required signatures, the excess number of signatures from that congressional district shall not be considered by the Secretary of State in determining whether the petition qualifies for placement on the ballot.

(4) The sponsor of an initiative shall identify in the text of the initiative the amount and source of revenue required to implement the initiative. If the initiative requires a reduction in any source of government revenue, or a reallocation of funding from currently funded programs, the sponsor shall identify in the text of the initiative the program or programs whose funding must be reduced or eliminated to implement the initiative. Compliance with this requirement shall not be a violation of the subject matter requirements of this section of the Constitution.

(5) The initiative process shall not be used:

(a) For the proposal, modification or repeal of any portion of the Bill of Rights of this Constitution;

(b) To amend or repeal any law or any provision of the Constitution relating to the Mississippi Public Employees' Retirement System;

(c) To amend or repeal the constitutional guarantee that the right of any person to work shall not be denied or abridged on account of membership or nonmembership in any labor union or organization; or

(d) To modify the initiative process for proposing amendments to this Constitution.

(6) The Secretary of State shall file with the Clerk of the House and the Secretary of the Senate the complete text of the certified initiative on the first day of the regular session. A constitutional initiative may be adopted by a majority vote of each house of the Legislature. If the initiative is adopted, amended or rejected by the Legislature; or if no action is taken within four (4) months of the date that the initiative is filed with the Legislature, the Secretary of State shall place the initiative on the ballot for the next statewide general election.

The chief legislative budget officer shall prepare a fiscal analysis of each initiative and each legislative alternative. A summary of each fiscal analysis shall appear on the ballot.

(7) If the Legislature amends an initiative, the amended version and the original initiative shall be submitted to the electors. An initiative or legislative alternative must receive a majority of the votes thereon and not less than forty percent (40%) of the total votes cast at the election at which the measure was submitted to be approved. If conflicting initiatives or legislative alternatives are approved at the same election, the initiative or legislative alternative receiving the highest number of affirmative votes shall prevail.

(8) If an initiative measure proposed to the Legislature has been rejected by the Legislature and an alternative measure is passed by the Legislature in lieu thereof, the ballot titles of both such measures shall be so printed on the official ballots that a voter can express separately two (2) preferences: First, by voting for the approval of either measure or against both measures, and, secondly, by voting for one measure or the other measure. If the majority of those voting on the first issue is against both measures, then both measures fail, but in that case the votes on the second issue nevertheless shall be carefully counted and made public. If a majority voting on the first issue is for the approval of either measure, then the measure receiving a majority of the votes on the second issue and also receiving not less than forty percent (40%) of the total votes cast at the election at which the measure was submitted for approval shall be law. Any person who votes for the ratification of either measure on the first issue must vote for one (1) of the measures on the second issue in order for the ballot to be valid. Any person

who votes against both measures on the first issue may vote but shall not be required to vote for any of the measures on the second issue in order for the ballot to be valid. Substantially the following form shall be a compliance with this subsection:

INITIATED BY PETITION AND ALTERNATIVE

BY LEGISLATURE

Initiative Measure No.—, entitled (here insert the ballot title of the initiative measure).

Alternative Measure No. —A, entitled (here insert the ballot title of the alternative measure).

VOTE FOR APPROVAL OF EITHER, OR AGAINST BOTH:

FOR APPROVAL OF EITHER Initiative No. —

OR Alternative No. —A.....( )

AGAINST Both Initiative No. —

AND Alternative No. —A.....( )

AND VOTE FOR ONE:

FOR Initiative Measure No. —.....( )

FOR Alternative Measure No. —A.....( )

(9) No more than five (5) initiative proposals shall be submitted to the voters on a single ballot, and the first five (5) initiative proposals submitted to the Secretary of State with sufficient petitions shall be the proposals which are submitted to the voters. The sufficiency of petitions shall be decided in the first instance by the Secretary of State, subject to review by the Supreme Court of the state, which shall have original and exclusive jurisdiction over all such cases.

(10) An initiative approved by the electors shall take effect thirty (30) days from the date of the official declaration of the vote by the Secretary of State, unless the measure provides otherwise.

(11) If any amendment to the Constitution proposed by initiative petition is rejected by a majority of the qualified electors voting thereon, no initiative petition proposing the same, or substantially the same, amendment shall be submitted to the electors for at least two (2) years after the date of the election on such amendment.

(12) The Legislature shall provide by law the manner in which initiative petitions shall be circulated, presented and certified.

(13) The Legislature may enact laws to carry out the provisions of this section but shall in no way restrict or impair the provisions of this section or the powers herein reserved to the people.

BE IT FURTHER RESOLVED, That the Secretary of State is hereby directed to give public notice of an election in the manner and for the time provided by Section 273 of the Constitution, and an election is hereby called and fixed to be held on the first Tuesday after the first Monday in November, 1992, for the purpose of submitting this and other amendments to the Constitution to qualified electors of this state for approval or rejection, said election to be conducted and held as provided by law for statewide general elections.

BE IT FURTHER RESOLVED, That the explanation of the amendment for the ballot shall read as follows: "This proposed constitutional amendment authorizes and prescribes the procedure by which the people may propose and adopt amendments to the Constitution. The initiative process cannot be used to modify or repeal the Mississippi Bill of Rights, the right to work, the initiative process or the Mississippi Public Employees' Retirement System."

BE IT FURTHER RESOLVED, That the Attorney General of the State of Mississippi is hereby directed to submit this resolution, immediately upon adoption by the Legislature, to the Attorney General of the United States or to the United States District Court for the District of Columbia, in accordance with the provisions of the Voting Rights Act of 1965, as amended and extended.

BE IT FURTHER RESOLVED, That if this proposed amendment is effectuated under the Voting Rights Act of 1965, as amended and extended, and is ratified by the electors, then this amendment to Section 273 shall take effect and be in force after the effective date of the legislation enacted by the Legislature in the 1993 Regular Session to implement this amendment, but if no such legislation is enacted, then this amendment shall take effect and be in force from and after July 1, 1993.

Adopted by the Senate: May 8, 1992

Adopted by the House of Representatives: May 8, 1992

(Decision prior to 1962 amendment of § 1 and 1962 enactment of § 4 relating to initiatives and referenda in counties and municipalities.)

The filing of a petition does not suspend the law. — There is not to be found in the referendum provision of the Constitution anything expressly giving to the filing of a referendum petition the effect of suspending the operation of the law aimed at until a vote can be had upon the question, nor can such intention be implied therefrom. State ex rel. Morton v. Howard, 49 Nev. 405, 248 P. 44 (1926). (Decision prior to the 1962 amendment of this section.)

Adding to the sales tax was an amendment of a law referred by the voters. — A one percent increase in the sales tax specifically earmarked for public schools did not violate the constitutional proscription against the Legislature's amending a referred law because the pre-existing two percent sales tax, which was a referred law, was to be paid into the general fund, and, thus, the original referred law remained unchanged. Matthews v. State ex rel. Nevada Tax Comm'n, 83 Nev. 266, 428 P.2d 371 (1967).

The Supreme Court will not disrupt the orderly process of an election. — Where resort to the Supreme Court is had to prevent an issue from being presented for popular election, and when such resort is tardily had without a showing of good cause for such lateness, and when, due to such tardiness and the nature of the issues of law presented, orderly appellate consideration cannot be had without disruption of the process of election, the Court will refuse determination of those issues on the merits. Beebe v. Koontz, 72 Nev. 247, 302 P.2d 486 (1956). (Decision prior to the 1962 amendment of this section.)

Cited in: State ex rel. Hunting v. Brodigan, 44 Nev. 306, 194 P. 845 (1921); Tesoriere v. Second Judicial Dist. Court ex rel. Washoe County, 50 Nev. 302, 258 P. 291 (1927); Dungan v. Sawyer, 250 F. Supp. 480 (D. Nev. 1965); Lundberg v. Koontz, 82 Nev. 360, 418 P.2d 808 (1966); City of Las Vegas v. Mack, 87 Nev. 105, 481 P.2d 396 (1971).

OPINIONS OF ATTORNEY GENERAL

Editor's note. — Some of the following opinions were rendered prior to amendments to this article.

Repeal effective immediately. — The repeal of a statute as a result of a referendum becomes effective immediately upon canvass of the vote. AGO 382 (8-5-1930).

Status of unapproved referendum. — Where a law submitted for referendum does not receive the required number of votes for approval or disapproval, it occupies the same status as it occupied prior to the referendum. AGO 161 (5-1-1935).

Where a law submitted to the people as a referendum measure does not receive a majority vote of approval or disapproval, the law stands as a regular statute and can be amended or repealed by the Legislature. AGO 5 (2-8-1943).

Sales and use tax law. — Sales and use tax law (NRS Chapter 372) approved by referendum vote of the people cannot be amended except by a direct vote of the people. AGO 228 (12-10-1956).

Altering a referendum. — Under Const., Art. 4, § 1, the Legislature has the authority to refer legislation to a vote of the people on its own initiative, and may subsequently amend or repeal statutes so approved without further reference to the people, because the provisions of this section, requiring a vote of the people to alter an approved referendum measure, applies only to referendum measures initiated by the people. AGO 190 (5-15-1975).

Sec. 2. Initiative: Procedure for enactment or amendment of statute or amendment to constitution.

1. Notwithstanding the provisions of section 1 of article 4 of this constitution, but subject to the limitations of section 6 of this article, the people reserve to themselves the power to propose, by initiative petition, statutes and amendments to statutes and amendments to this constitution, and to enact or reject them at the polls.

2. An initiative petition shall be in the form required by section 3 of this article and shall be proposed by a number of registered voters equal to 10 percent or more of the number of voters who voted at the last preceding

general election in not less than 75 percent of the counties in the state, but the total number of registered voters signing the initiative petition shall be equal to 10 percent or more of the voters who voted in the entire state at the last preceding general election.

3. If the initiative petition proposes a statute or an amendment to a statute, it shall be filed with the secretary of state not less than 30 days prior to any regular session of the legislature. The secretary of state shall transmit such petition to the legislature as soon as the legislature convenes and organizes. The petition shall take precedence over all other measures except appropriation bills, and the statute or amendment to a statute proposed thereby shall be enacted or rejected by the legislature without change or amendment within 40 days. If the proposed statute or amendment to a statute is enacted by the legislature and approved by the governor in the same manner as other statutes are enacted, such statute or amendment to a statute shall become law, but shall be subject to referendum petition as provided in section 1 of this article. If the statute or amendment to a statute is rejected by the legislature, or if no action is taken thereon within 40 days, the secretary of state shall submit the question of approval or disapproval of such statute or amendment to a statute to a vote of the voters at the next succeeding general election. If a majority of the voters voting on such question at such election votes approval of such statute or amendment to a statute, it shall become law and take effect upon completion of the canvass of votes by the supreme court. An initiative measure so approved by the voters shall not be amended, annulled, repealed, set aside or suspended by the legislature within 3 years from the date it takes effect. If a majority of such voters votes disapproval of such statute or amendment to a statute, no further action shall be taken on such petition. If the legislature reject such proposed statute or amendment, the governor may recommend to the legislature and the legislature may propose a different measure on the same subject, in which event, after such different measure has been approved by the governor, the question of approval or disapproval of each measure shall be submitted by the secretary of state to a vote of the voters at the next succeeding general election. If the conflicting provisions submitted to the voters are both approved by a majority of the voters voting on such measures, the measure which receives the largest number of affirmative votes shall thereupon become law.

4. If the initiative petition proposes an amendment to the constitution, it shall be filed with the secretary of state not less than 90 days before any regular general election at which the question of approval or disapproval of such amendment may be voted upon by the voters of the entire state. The secretary of state shall cause to be published in a newspaper of general circulation, on three separate occasions, in each county in the state, together with any explanatory matter which shall be placed upon the ballot, the entire text of the proposed amendment. If a majority of the voters voting on such question at such election votes disapproval of such amendment, no further action shall be taken on the petition. If a majority of such voters votes approval of such amendment, the secretary of state shall publish and

resubmit the question of approval or disapproval to a vote of the voters at the next succeeding general election in the same manner as such question was originally submitted. If a majority of such voters votes disapproval of such amendment, no further action shall be taken on such petition. If a majority of such voters votes approval of such amendment, it shall become a part of this constitution upon completion of the canvass of votes by the supreme court.

Amendments. — This section was added as proposed and passed in Statutes of Nevada 1909, p. 347; agreed to and passed in Statutes of Nevada 1911, p. 446; and ratified at the 1912 general election.

The 1958 amendment to this section was proposed by initiative petition and ratified at the 1958 general election.

The 1962 amendment to this section was proposed and passed in Statutes of Nevada 1960, p. 512; agreed to and passed in Statutes of Nevada 1961, p. 813; and ratified at the 1962 general election.

The first 1972 amendment to this section was proposed and passed in Statutes of Nevada 1969, p. 1680; agreed to and passed in Statutes of Nevada 1971, p. 2230; and ratified at the 1972 general election.

The second 1972 amendment to this section was proposed and passed in Statutes of Nevada 1969, p. 1719; agreed to and passed in Statutes of Nevada 1971, p. 2260; and ratified at the 1972 general election.

CASE NOTES

This section provides the people with an accessible power to amend the Constitution. — The intention of the people and the Legislature in adding Const., Art. 19, § 3 (see now Art. 19, § 2) was in part to provide an alternative and shorter method of amending the Constitution, and to reserve to the people the power to propose amendments to the Constitution and to enact or reject the same at the polls, independent of the Legislature. Wilson v. Koontz, 76 Nev. 33, 348 P.2d 231 (1960). (Decision prior to the 1962 amendment of this section.)

Initiative is that power reserved to the people to propose new laws; referendum, on the other hand, gives them the power to veto those laws passed by their representatives. The initiative and referendum powers granted to the citizens of this state are extremely broad, and are further reserved to the registered voters of each county and each municipality as to all local, special and municipal legislation of every kind; however, these powers apply only to "legislation," and administrative acts are excepted from initiative and referendum. Forman v. Eagle Thrifty Drugs & Mkts., Inc., 89 Nev. 533, 516 P.2d 1234 (1973).

The Constitution does not contemplate the use of an initiative without a ballot; the power to propose laws which must be enacted or rejected at the polls is distinguished from a power which would effect a legislation without an election. Rea v. City of Reno, 76 Nev. 483, 357 P.2d 585 (1960). (Decision prior to the 1962 amendment of this section.)

The meaning intended by the words "total number of votes cast," as used in the 1958 amendment to Const., Art. 19, § 3 (see now this section), was "total number of ballots cast." Wilson v. Koontz, 76 Nev. 33, 348 P.2d 231 (1960). (Decision prior to the 1962 amendment of this section.)

Effective dates of amendments. — A constitutional amendment adopted pursuant to Article 16 becomes effective upon the canvass of the votes by the Supreme Court. This provides uniformity for the effective date of amendments adopted pursuant to Article 16 and those adopted pursuant to the initiative procedures of Article 19, which specifically mandates such amendments "become a part of this constitution upon completion of the canvass of votes by the Supreme Court." Torvinen v. Rollins, 93 Nev. 92, 560 P.2d 915 (1977).

"Legislative" but not "administrative" matters may be referred. — A municipal ordinance may be either legislative or administrative; an ordinance originating or enacting a permanent law or laying down a rule of conduct or course of policy for the guidance of the citizens or their officers and agents is purely legislative in character, and may be referred, but an ordinance which simply puts into execution previously-declared policies, or previously-enacted laws, is administrative or executive in character, and may not be referred. Forman v. Eagle Thrifty Drugs & Mkts., Inc., 89 Nev. 533, 516 P.2d 1234 (1973).

When an initiative measure is submitted to the electors, the entire initiative petition need not be printed on the ballots, but only enough of it to identify the measure and show

§ 9. Prefixing Constitution to codification of laws.

Section 9. This Constitution shall be prefixed to every codification of the Laws of this State.

§ 10. Disqualification to hold office by reason of sex.

Section 10. No citizen of the State of Delaware shall be disqualified to hold and enjoy any office, or public trust, under the laws of this State, by reason of sex. (33 Del. Laws, c. 3.)

ARTICLE XVI

AMENDMENTS AND CONVENTIONS

§ 1. Proposal of Constitutional amendments in General Assembly; procedure.

Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by two thirds of all the members elected to each House, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and the Secretary of State shall cause such proposed amendment or amendments to be published three months before the next general election in at least three newspapers in each county in which such newspapers shall be published; and if in the General Assembly next after the said election such proposed amendment or amendments shall upon yea and nay vote be agreed to by two thirds of all the members elected to each House, the same shall thereupon become part of the Constitution.

History of article. — See Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

Distinction between "amendments" and "revision" made. — A distinction is made by this article between "amendments" to the Constitution under § 1 and a "revision" thereof under § 2. Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

It is clear from the constitutional debates that the drafters distinguished between "amendments," on the one hand, and a "revision" on the other. Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

But number of changes of no effect. — Legislative "amendments" are not limited in number by § 1 of this article; and a "revision," to which § 2 is applicable does not come into being by reason of the mere number of changes or the mere fact that the changes concern the entire Constitution. Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

Rather, nature and scope of changes determine. — It is the nature and scope of the changes contemplated that determine whether there is a "revision" subject to § 2 of this article or a series of "amendments" subject to § 1. Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

A "revision" is more than a mere reorganization, restatement, modernization, abbreviation, consolidation, simplification or clarification of the existing document. Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

Rather, a constitutional "revision" makes substantial, basic, fundamental changes in the plan of government; it makes extensive alterations in the basic plan and substance of the existing document; and it attains objectives and purposes beyond the lines of the present Constitution. Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

To be a "revision" the result must be to effect a change in the basic philosophy which has cast our government in its present form. Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

Otherwise, change accomplished by amendment. — A change making no substantial and fundamental change or alteration in the basic structure of State government can be accomplished by legislative amendment under § 1. Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

Though both routes may be followed simultaneously. — Where it may be found that some of the changes contemplated are amendatory while others are revisory, the § 1 of this article route may be followed as to the amendatory changes and the § 2 route may be simultaneously followed as to the revisory changes. Opinion of the Justices, 264 A.2d 342 (Del. Sup. Ct. 1970).

There is no requirement that suggested Constitutional amendment be by "bill or joint resolution." State v. Lyons, 40 Del. 77, 5 A.2d 495 (Ct. Gen. Sess. 1939).

It is only necessary that the amendment be "proposed" in either house of the General Assembly, and a court is not at liberty to determine what particular form such proposal shall take. State v. Lyons, 40 Del. 77, 5 A.2d 495 (Ct. Gen. Sess. 1939).

The Bill of Rights can be amended by action of the General Assembly pursuant to this section. State v. Bender, 293 A.2d 551 (Del. Sup. Ct. 1972).

This section does not distinguish in any way between amendments to the Bill of Rights, on the one hand, and amendments to any other articles of the Constitution. If such a limitation had been intended, it would have been a very easy matter for the delegates to the constitutional convention of 1897 to have spelled out such a significant distinction in this section and Del. Const., art. XVI, § 2. State v. Bender, 293 A.2d 551 (Del. Sup. Ct. 1972).

And Reserve Clause does not affect this power. — The Bill of Rights of the Constitution is followed by a Reserve Clause preceding article II in the following language: "We declare that everything in this Article is reserved out of the general powers of government hereinafter mentioned." However, the exercise by the General Assembly of the constitutionally conferred authority to amend the Constitution is not the exercise of "a general power of government." It is rather the General Assembly engaging in a very "special" power which, by its mode of exercise, is required by the Constitution to ultimately reflect the mind and will of the people through their election of members of the next General Assembly who must finally pass upon the proposed amendment. State v. Bender, 293 A.2d 551 (Del. Sup. Ct. 1972).

Amendment proposed by General Assembly indirectly submitted to people. — While there is no provision in Del. Const., art. 16, § 2, for the submission of the product of the work of a constitutional convention to the people, there is, by reason of this Del. Const., art. 16, § 1, provision for an indirect submission to the people of a proposed amendment to the Constitution passed by the General Assembly. This results from the requirement of publication by the Secretary of State of any proposed constitutional amendment 3 months before the holding of a general election, to be held between the final adjournment of the originating session of the General Assembly and the convening of the General Assembly to be elected at the intervening general election. State v. Bender, 293 A.2d 551 (Del. Sup. Ct. 1972).

Theory of this requirement, made clear by the delegates of the constitutional convention of 1897, is that the people, being made aware of a proposed amendment, can then judge which candidates for election to both houses of the General Assembly are in favor of the view the individual voter takes toward the proposed amendment. This is the only means provided in the Constitution for submission to the people of any change in the Constitution. In this respect, Delaware differs from all of the other states of the Union which do require approval by the people of proposed changes in their constitutions. State v. Bender, 293 A.2d 551 (Del. Sup. Ct. 1972).

The purpose and intent of the publication requirements of this section is to insure that the people of the State are informed, accurately and completely, of the details of a proposed amendment to the Constitution, in ample time for them to ascertain the positions relative thereto of the candidates for election to the next General As-

sembly, and to enable the electorate to express their approval or disapproval of the proposed amendment by voting for representatives in the next General Assembly who best reflect their preference in the matter. Opinion of the Justices, 275 A.2d 558 (Del. Sup. Ct. 1971).

These provisions for publication are mandatory; they may not be ignored even though something less than literal compliance may be acceptable under certain circumstances. Opinion of the Justices, 275 A.2d 558 (Del. Sup. Ct. 1971).

And other channels of publicity may not be substituted for those required. — Other channels of publicity, used at other and different times, may supplement the publication provisions of this section, but they may not be substituted therefor, for to do so would be to engraft new and different procedures upon this section and to rewrite the constitutional specifications for a very important stage in the amendatory process. Opinion of the Justices, 275 A.2d 558 (Del. Sup. Ct. 1971).

But partial compliance may amount to substantial compliance. — The substantial compliance rule may be applied when there has been a partial compliance with the publication provisions of this section. Opinion of the Justices, 275 A.2d 558 (Del. Sup. Ct. 1971).

However, substantial compliance may not be predicated upon no compliance. Opinion of the Justices, 275 A.2d 558 (Del. Sup. Ct. 1971).

"Substantial compliance" means such compliance with essential requirements of the constitutional provision as may be sufficient for the accomplishment of the purposes thereof. Opinion of the Justices, 275 A.2d 558 (Del. Sup. Ct. 1971).

There has been substantial compliance when there has been a partial compliance and when it is reasonable to conclude that the objective sought by the constitutional provision has been as fully attained thereby, as a practical matter, as though there had been a full and literal compliance. Opinion of the Justices, 275 A.2d 558 (Del. Sup. Ct. 1971).

Publication 81 to 87 days before election held substantial compliance. — There was substantial compliance sufficient to fulfill the constitutional requirements where the electorate of the State were neither misled nor prejudiced by the fact that the publications appeared in the press from 81 to 87 days before election day rather than the full 3 months prior thereto. Opinion of the Justices, 275 A.2d 558 (Del. Sup. Ct. 1971).

Final passage of a proposed amendment is evidenced by the record of "yea" and "nay" votes in the respective journals of the Senate and House kept in accordance with § 10, article 2 of the Constitution. Opinion of the Justices, 56 Del. 118, 190 A.2d 519 (Sup. Ct. 1963).

Effective date of amendment. — The date on which an amendment is agreed to by two thirds of all the members elected to each house is the effective date of the amendment. Opinion of the Justices, 56 Del. 118, 190 A.2d 519 (Sup. Ct. 1963).

An amendment of a Constitution, in the absence of any express limitation, becomes a part of the organic law at the time of its adoption. After an affirmative vote of the General Assembly, it is expressly provided that an amendment shall thereupon become part of the Constitution. State v. Anderson, 35 Del. 407, 166 A. 662 (Ct. Gen. Sess. 1933).

Certification not required. — The existence of rules of procedure of the General Assembly or statutes purporting to govern certification of acts cannot prevail to change a constitutional provision governing a particular matter such as this section. Opinion of the Justices, 56 Del. 118, 190 A.2d 519 (Sup. Ct. 1963).

Neither the Constitution nor the statutes contain any provision requiring the certifying of acts of the General Assembly by its officers, with the exception of 29 Del. C. § 904(c), which is applicable only to acts passed over the veto of the Governor. Opinion of the Justices, 56 Del. 118, 190 A.2d 519 (Sup. Ct. 1963).

§ 2. Constitutional Conventions; procedure; compensation of delegates; quorum; powers and duties; vacancies.

Section 2. The General Assembly by a two-thirds vote of all the members elected to each House may from time to time provide for the submission to the qualified electors of the State at the general election next thereafter the ques-

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OFFICE ID: B4500
ROUTE TO: LEGISLATIVE COUNSEL BUREAU
925 L STREET ROOM 500
ATTENTION:

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SENATE THIRD READING

SB 16 (Killea) - As Amended: September 8, 1993

ASSEMBLY ACTIONS:

COMMITTEE	RULES	VOTE 5-2	
Ayes:	Burton, Johnson, Lee, Murray, Nolan		
Nays:	Harvey, Mountjoy		

COMMITTEE	W. & M.	VOTE	14-7
Ayes:	Vasconcellos, Alpert, V. Brown, Burton, Campbell, Costa, Epple, B. Friedman, Hannigan, McDonald, Murray, Nolan, O'Connell, Polanco		
Nays:	Horcher, Allen, Johnson, Jones, Quackenbush, Seastrand, Woodruff		

DIGEST

Urgency statute. 2/3 vote required.

Existing law creates the California Law Revision Commission to examine the common law and statutes of the state and judicial decisions and recommend needed reforms to the Governor and the Legislature.

This bill creates the California Constitution Revision Commission, prescribes its membership, specifies its powers and duties, appropriates $200,000 and sunsets July 1, 1996.

Specifically, the commission would:

1) Consist of 23 members: 10 appointed by the Governor, 5 by the Senate Rules Committee, 5 by the Speaker of the Assembly, the Chief Justice of California, the Legislative Analyst, and the Director of Finance.

2) Examine the budget formulation and enactment process; the manner in which the budget serves the future needs of the state; the appropriate balance of state resources and spending; the fiscal relations of state, federal and local governments; and any constraints/impediments to a comprehensive consideration of all fiscal matters that affect budget development.

3) Examine the state government budget process and the constraints and impediments that affect the development of the budget.

4) Examine the state and local government duties, responsibilities, and priorities; the fiscal relations of state and local governments; the types of services delivered; mechanisms of service delivery; desired program outcomes; and methods of performance measurement; and any constraints/impediments that interfere with the most effective allocation of state and local responsibilities.

5) Examine the structure of state governance and propose modification that may increase accountability and improve the budget process.

- continued -

Senate Bill No. 16

CHAPTER 1243

An act to add and repeal Article 1.5 (commencing with Section 8275) of Chapter 3.5 of Division 1 of Title 2 of the Government Code, relating to the California Constitution Revision Commission, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 11, 1993. Filed with Secretary of State October 11, 1993.]

LEGISLATIVE COUNSEL'S DIGEST

SB 16, Killea. California Constitution Revision Commission.

(1) The California Constitution authorizes the Legislature to propose revisions to that document. Existing law creates in state government the California Law Revision Commission to examine the common law and statutes of the state and judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms to the Governor and the Legislature.

This bill would create the California Constitution Revision Commission, prescribe its membership, and specify its powers and duties. The measure would require the commission to submit a report to the Governor and the Legislature no later than August 1, 1995, that sets forth its findings with respect to the formulation and enactment of a state budget and recommendations for the improvement of that process. The commission would also be required to report on specified issues relating to the structure of state governance.

(2) The provisions relating to the commission would become inoperative on July 1, 1996, and would be repealed as of January 1, 1997.

(3) The bill would also appropriate $200,000 for the 1993-94 fiscal year to the commission to carry out its duties and responsibilities.

(4) The bill, in addition, would declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) California's budget process has become crippled by a complex entanglement of constraints that interfere with an orderly and comprehensive consideration of all fiscal matters. A complete review of the process by an independent citizens' commission would provide the Legislature a basis for considering changes that would

result in a more thoughtful and deliberative process.

(b) The legislative process has at times become mired in gridlock. Rivalries between the two houses of the Legislature and the executive branch have deterred the state's ability to make significant policy changes in response to the changing times. Changes to existing government organizational structures may provide a more responsive and productive form of governance for California than the current system.

(c) California's existing "system" of government is dysfunctional and does not work together sufficiently to achieve the public's goals. The various components have no common conception of mission and often work at cross-purposes.

SEC. 2. Article 1.5 (commencing with Section 8275) is added to Chapter 3.5 of Division 1 of Title 2 of the Government Code, to read:

Article 1.5. California Constitution Revision Commission

8275. There is created in state government the California Constitution Revision Commission.

8275.1. (a) The commission shall consist of 23 members, as follows:

(1) Ten members appointed by the Governor. No more than six members may be registered with the same political party.

(2) Five members appointed by the Speaker of the Assembly. No more than three members may be registered with the same political party. Two members shall be appointed in consultation with the Assembly Minority Caucus.

(3) Five members appointed by the Senate Committee on Rules. No more than three members may be registered with the same political party. Two members shall be appointed in consultation with the Senate Minority Caucus.

(4) The Chief Justice of California, or his or her designee.

(5) The Legislative Analyst, or his or her designee.

(6) The Director of Finance, or his or her designee.

The Governor, the Senate Committee on Rules, and the Speaker of the Assembly may each appoint no more than one Member of the Legislature to the commission. No lobbyist, as defined in Section 82039, may serve as a member of the commission. The membership of the commission shall broadly reflect the ethnic, racial, cultural, geographic, and gender diversity of the state.

(b) The initial appointments to the commission shall be made not later than 90 days after this article becomes operative.

8275.2. Each member of the commission shall serve without compensation, but each member other than an elected officer shall receive one hundred dollars ($100) for each day while on official business of the commission. In addition, each member shall also be entitled to receive necessary expenses actually incurred in the performance of his or her duties.

8275.3. (a) The Governor shall select one of the members as the chair of the commission.

(b) The commission may appoint an executive secretary and fix his or her compensation in accordance with law. The commission may employ and fix the compensation, in accordance with law, of any professional, clerical, and other assistants that may be necessary.

(c) The Legislative Counsel, Legislative Analyst, State Auditor, and the Department of Finance shall assist the commission in the performance of its duties.

8275.4. The commission shall assist the Governor and the Legislature by doing the following:

(a) Examining the process by which a budget is formulated and enacted by state government, the manner in which the budget serves the future needs of the state, the appropriate balance of resources and spending by the state, and the fiscal relations of the state, federal, and local governments, and any constraints and impediments that interfere with an orderly and comprehensive consideration of all fiscal matters that impact upon the development of a budget for the state.

(b) Examining the structure of state governance and proposed modifications that may increase accountability and improve the process of formulation, consideration, and approval of policy determinations and a budget for the state.

(c) Examining the current configuration of state and local government duties, responsibilities, and priorities; the fiscal relations of state and local governments; the types of services delivered; mechanisms of service delivery; desired program outcomes; and methods of performance measurement; and any constraints or impediments that interfere with the most effective allocation of state and local responsibilities.

(d) Examining the feasibility of integrating community resources into service delivery mechanisms in order to reduce duplication and increase efficiency, and the feasibility of community coalitions making recommendations to local entities regarding a community's vision and goals.

8275.5. The commission shall submit a report to the Governor and the Legislature no later than August 1, 1995, that sets forth its findings with respect to the mandate in Section 8275.4. The commission should submit interim reports before that date whenever it makes a finding and recommendation on a specific topic.

8275.6. In carrying out its duties and responsibilities, the commission shall have the following powers:

(a) To meet at times and places as it may deem proper. The commission is a state body subject to the provisions of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3).

(b) To issue subpoenas to compel the attendance of witnesses and

the production of books, records, papers, accounts, reports, and documents.

(c) To administer oaths.

(d) To contract, as it deems necessary, for the rendition of services, facilities, studies, and reports to the commission as will best assist it to carry out its duties and responsibilities.

(e) To cooperate with and to secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of its duties and responsibilities, and to direct the sheriff of any county or any marshal to serve subpoenas, orders, and other process.

(f) To secure directly from every department, agency, or instrumentality full cooperation, access to its records, and access to any information, suggestions, estimates, data, and statistics that it may have available.

(g) To do any and all things necessary or convenient to enable it fully and adequately to perform its duties and to exercise the powers expressly granted to it.

8275.7. This article shall become inoperative on July 1, 1996, and, as of January 1, 1997, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 1997, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 3. The sum of two hundred thousand dollars ($200,000) is hereby appropriated from the General Fund for the 1993–94 fiscal year to the California Constitution Revision Commission established by this act to carry out its duties and responsibilities under this act.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the California Constitution Revision Commission, created by this act, to carry out its functions and duties as soon as possible, it is necessary that this act take effect immediately.

O

6) Examine the feasibility of integrating community resources into service delivery mechanisms to reduce duplication and increase efficiency.

6) Submit interim reports and its final report by August 1, 1995.

FISCAL EFFECT

Appropriates $200,000 from the General Fund for the 1993-94 Fiscal Year to the commission for per diem, travel, staff and operating expenses.

COMMENTS

Pursuant to the provisions of ACR 188 (W. Brown) Resolution Chapter 171, Statutes of 1990, a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

Prior legislation:

1) AB 2398 (Isenberg) of 1991-92, differed only in that appointments were to be made no later than 60 days of enactment, allowed the commission to appoint the chair, the reporting dates, and appropriated $500,000. This bill died in Conference.

2) SB 55 (Alquist) of 1991-92, created a 60 member commission to review both the state's fiscal process and initiative process. This bill was vetoed by the Governor.

3) SB 458 (Killea) of 1991-92, differed only in the reporting dates and appropriated $300,000. This bill was vetoed by the Governor.

FN 005584

- continued -

UNFINISHED BUSINESS

SB 16

Killea (I), et al

9/8/93

27 - Urgency

p. 2425, 7/16/93

61-17, 9/9/93

SUBJECT: California Constitution Revision Commission

SOURCE: The author

DIGEST: This bill would create the California Constitution Revision Commission, prescribe its membership, and specify its powers and duties. This measure would require the Commission to submit a report to the Governor and the Legislature no later than August 1, 1995, that sets forth its findings with respect to the formulation and enactment of a state budget and recommendations for the improvement of that process. The Commission would also be required to report on specified issues relating to the structure of state governance. Appropriates $200,000.

This bill sunsets January 1, 1997.

Assembly Amendment:

1. Increases the date of submittal of the report from March 31, 1994 to January 1, 1995.

2. Increases the committee from 20 to 23 by adding the Chief Justice of the Supreme Court, Legislative Analyst, and Director of Finance, or his or her designee.

3. Adds several items for the commission to examine.

ANALYSIS: Pursuant to the provisions of ACR 188 (W. Brown; Res. Chap. 171, Statutes of 1990), a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing

fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

The California Constitution authorizes the Legislature to propose revisions to the California Constitution.

In 1962, the Legislature adopted a constitutional amendment, which was approved by the people, providing for revision of the Constitution.

In the 1963 First Extraordinary Session, the Legislature adopted a concurrent resolution establishing the Constitution Revision Commission under the Joint Committee on Legislative Organization. Having studied and reported on every article of the Constitution, the Commission's existence was terminated by the Legislature in 1974.

Existing law creates the California Law Revision Commission for the purpose of examining the common law and statutes of the state and judicial decisions and recommending needed reforms to the Governor and the Legislature.

SB 458 creates the California Constitution Revision Commission. The Commission would terminate on January 1, 1997.

The bill states the following legislative findings and declarations:

--That California's budget process has become crippled by a complex entanglement of constraints that interfere with an orderly and comprehensive consideration of all fiscal matters. A complete review of the process by a independent citizens' commission would provide the Legislature a basis for considering changes that would result in a more thoughtful and deliberative process.

-- That the legislative process has at times become mired in gridlock. Rivalries between the two houses of the Legislature and the executive branch have deterred the state's ability to make significant policy changes in response to the changing times. Changes to existing government organizational structures may provide a more responsive and productive form of governance for California than they current system.

The Commission would:

1. Examine the budget formulation and enactment process; the manner in which the budget serves the future needs of the state; the appropriate balance of state resources and spending; the fiscal relations of state, federal and local governments; and any constraints/impediments to a comprehensive consideration of all fiscal matters that affect budget development.

2. Examine the state government budget process and the constraints and impediments that affect the development of the budget.

CONTINUED

3. Examine the state and local government duties, responsibilities, and priorities; the fiscal relations of state and local governments; the types of services delivered; mechanisms of service delivery; desired program outcomes; and methods of performance measurement; and any constraints/impediments that interfere with the most effective allocation of state and local responsibilities.

4. Examine the structure of state governance and propose modification that may increase accountability and improve the budget process.

5. Examine the feasibility of integrating community resources into service delivery mechanisms to reduce duplication and increase efficiency.

Appointments

The bill would prescribe the following:

(a) The Governor will appoint 10 members, the Senate Committee on Rules 5 members, and the Speaker of the Assembly 5 members to the Commission, and appoint no more than one Member of the Legislature each as part of their appointment allotment.

The Chief Justice of California, the Legislative Analyst, the Director of Finance, or his or her designee would be members.

No lobbyist may serve as a member of the commission.

(b) Membership of the Commission would broadly reflect the economic, geographic, ethnic, racial, cultural, and gender diversity of the state.

(c) The initial appointments to the Commission would be made not later than 90 days after adoption of this resolution.

Each member would receive $100 for each day while on official commission business plus any necessary expenses incurred.

The Governor is to select one of its members as the Chairman of the Commission.

The Commission may appoint an executive secretary and employ professional, clerical, and other assistants that may be necessary. The Legislative Counsel, Legislative Analyst, State Auditor, and Department of Finance would assist the Commission. The Commission would be required to submit a report to the Governor and the Legislature by August 1, 1994.

Two hundred thousand dollars ($200,000) would be appropriated from the General Fund for the 1993-94 fiscal year.

SIMILAR LEGISLATION: A very similar bill, SB 458 (Killea) of 1992 passed the Senate by a vote of 27-10 but was subsequently vetoed by the Governor.

CONTINUED

The difference between the two is that SB 16 does not put the Chief Justice on the Commission.

Senate Floor Vote: (P. 8188, 8/31/92)

VETO MESSAGE:

"This bill would create the California Constitution Revision Commission to review the state's budget process and the attendant constraints that interfere with an orderly and comprehensive consideration of all fiscal matters.

"While I agree that the budget process and consideration of fiscal matters needs considerable attention, I do not agree that the formation of a new Commission is the method we should use to achieve this objective. Members of the legislative and executive branches of government are fully aware of the issues that must be resolved. We do not need a Commission for this purpose. Instead, it would be wiser if we confronted these problems directly and immediately. It would be my hope that we could do so early in 1993."

FISCAL EFFECT: Appropriation: Yes Fiscal Committee: Yes Local: No

Appropriates $200,000 for the 1993-94 fiscal year.

ASSEMBLY FLOOR VOTE:

CONTINUED

DLW:jk 9/10/92 Senate Floor Analyses

CONTINUED

ASSEMBLY THIRD READING

SB 16 (Killea) - As Amended: September 3, 1993

ASSEMBLY ACTIONS:

COMMITTEE	RULES	VOTE 5-2	COMMITTEE W. & M. VOTE 14-7
Ayes:	Burton, Johnson, Lee, Murray, Nolan	Ayes:	Vasconcellos, Alpert, V. Brown, Burton, Campbell, Costa, Epple, B. Friedman, Hannigan, McDonald, Murray, Nolan, O'Connell, Polanco
Nays:	Harvey, Mountjoy	Nays:	Horcher, Allen, Johnson, Jones, Quackenbush, Seastrand, Woodruff

DIGEST

Urgency statute. 2/3 vote required.

Existing law creates the California Law Revision Commission to examine the common law and statutes of the state and judicial decisions and recommend needed reforms to the Governor and the Legislature.

This bill creates the California Constitution Revision Commission, prescribes its membership, specifies its powers and duties, appropriates $200,000 and sunsets July 1, 1996. Specifically, the commission would:

1) Consist of 20 members: 10 appointed by the Governor, 5 by the Senate Rules Committee, and 5 by the Speaker of the Assembly. The Chief Justice of California, or his or her designee, would serve ex-officio.

2) Examine the budget formulation and enactment process; the manner in which the budget serves the future needs of the state; the appropriate balance of state resources and spending; the fiscal relations of state, federal and local governments; and any constraints/impediments to a comprehensive consideration of all fiscal matters that affect budget development.

3) Examine the state government budget process and the constraints and impediments that affect the development of the budget.

4) Examine the state and local government duties, responsibilities, and priorities; the fiscal relations of state and local governments; the types of services delivered; mechanisms of service delivery; desired program outcomes; and methods of performance measurement; and any constraints/impediments that interfere with the most effective allocation of state and local responsibilities.

5) Examine the structure of state governance and propose modification that may increase accountability and improve the budget process.

- continued -

6) Examine the feasibility of integrating community resources into service delivery mechanisms to reduce duplication and increase efficiency.

6) Submit interim reports and its final report by December 1, 1994.

FISCAL EFFECT

Appropriates $200,000 from the General Fund for the 1993-94 Fiscal Year to the commission for per diem, travel, staff and operating expenses.

COMMENTS

Pursuant to the provisions of ACR 188 (W. Brown), Resolution Chapter 171, Statutes of 1990, a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

Prior legislation:

1) AB 2398 (Isenberg) of 1991-92, differed only in that appointments were to be made no later than 60 days of enactment, allowed the commission to appoint the chair, the reporting dates, and appropriated $500,000. This bill died in Conference.

2) SB 55 (Alquist) of 1991-92, created a 60 member commission to review both the state's fiscal process and initiative process. This bill was vetoed by the Governor.

3) SB 458 (Killea) of 1991-92, differed only in the reporting dates and appropriated $300,000. This bill was vetoed by the Governor.

FN 005131

- continued -

WAYS AND MEANS COMMITTEE ANALYSIS

Author: Killea | Amended: 07/13/93 | Bill No.: SB 16

Policy Committee: Rules | Vote: 05-02

Urgency: Yes | Hear g Date: 09/01/93

State Mandated Local Program: No | Staf omments By:

Reimbursable: | Tim Gage

Summary

This bill establishes a 20-member California Constitution Revision Commission, 10 appointed by the Governor, 5 by the Senate Rules Committee and 5 by the Speaker of the Assembly, to:

1) Examine the budget formulation and enactment process; the manner in which the budget serves the future needs of the state; the appropriate balance of state resources and spending; the fiscal relations of state, federal and local governments; and any constraints/impediments to a comprehensive consideration of all fiscal matters that affect budget development.

2) Examine the structure of state governance and modifications that may increase accountability and improve the policy and budget formulation process.

3) Report its findings to the Governor and Legislature by March 31, 1994.

The commission would cease to operate July 1, 1996.

Fiscal

The bill appropriates $200,000 General Fund for support of the commission for per diem, travel, staff and operating expenses for the 1993-94 fiscal year.

Comments

AB 665 (Vasconcellos), currently on the Appropriations Committee suspense file, creates a Commission to Reinvent State and Local Government.

SB 458 (Killea) and AB 2398 (Isenberg) of 1992 would have created a California Constitution Revision Commission to examine the budget process and the initiative process. SB 458 was vetoed and AB 2398 died in conference.

SB 55 (Alquist) of 1991 contained similar provisions and was vetoed.

TG

Date of Hearing: August 30, 1993

ASSEMBLY COMMITTEE ON RULES

John Burton, Chair

SB 16 (Killea) - As Amended: July 13, 1993

SUBJECT

California Constitution Revision Commission.

DIGEST

Urgency statute. 2/3 vote required.

This bill creates the California Constitution Revision Commission, prescribes its membership, specifies its powers and duties, appropriates $200,000 and sunsets July 1, 1996.

Specifically, this commission would:

1) Consist of 20 members: 10 appointed by the Governor, 5 by the Senate Rules Committee, and 5 by the Speaker of the Assembly. They are each allowed to appoint only one member of the Legislature. No lobbyist may serve on the commission. The initial appointments are to be made no later than 90 days after enactment of this measure. Each member would receive $100 per diem and necessary expenses.

   The Governor appoints the chair and the commission appoints an executive secretary and employs professional, clerical, and other assistants as needed. The Legislative Counsel, Legislative Analyst, State Auditor, and the Department of Finance would assist the commission.

2) Examine the state government budget process and the constraints and impediments that affect the development of the budget.

3) Examine the structure of state governance and propose modification that may increase accountability and improve the budget process.

4) Submit interim reports and its final report by March 31, 1994.

FISCAL EFFECT

- continued -

Appropriates $200,000 from the General Fund for the 1993-94 Fiscal Year to the commission.

COMMENTS

Pursuant to the provisions of ACR 188 (W. Brown) Resolution Chapter 171, Statutes of 1990, a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

Prior legislation:

1) AB 2398 (Isenberg) of 1991-92, differed only in that it put the Chief Justice on the commission, appointments were to be made no later than 60 days of enactment, allowed the commission to appoint the chair, the reporting dates, and appropriated $500,000. This bill died in Conference.

2) SB 55 (Alquist) of 1991-92, created a 60 member commission to review both the state's fiscal process and initiative process. This bill was vetoed by the Governor. In his message, he stated:

> "I am concerned that the size of this Commission would make it too unwieldly to accomplish its stated purpose. Moreover, the composition of the Commission does not provide for equal representatives for the executive branch of government. When concerning the important and extensive subject of State fiscal procedures, the two branches should be represented in a cooperative, positive, and equal basis."

3) SB 458 (Killea) of 1991-92, differed only in that it put the Chief Justice on the commission, the reporting dates and appropriated $300,000. This bill was vetoed by the Governor. In his message, he stated:

> "While I agree that the budget process and consideration of fiscal matters needs considerable attention, I do not agree that the formation of a new Commission is the method we should use to achieve this objective. Members of the legislative and executive branches of government are fully aware of the issues that must be resolved. We do not need a Commission for this purpose. Instead, it would be wiser if we confronted these problems directly and immediately. It would be my hope that we could do so early in 1993."

- continued -

THIRD READING

SB 16

Killea (I), et al

7/13/93

27 - Urgency

SUBJECT: California Constitution Revision Commission

SOURCE: The author

DIGEST: This bill would create the California Constitution Revision Commission, prescribe its membership, and specify its powers and duties. This measure would require the Commission to submit a report to the Governor and the Legislature no later than March 31, 1994, that sets forth its findings with respect to the formulation and enactment of a state budget and recommendations for the improvement of that process. The Commission would also be required to report on specified issues relating to the structure of state governance. Appropriates $200,000.

This bill sunsets January 1, 1997.

ANALYSIS: Pursuant to the provisions of ACR 188 (W. Brown; Res. Chap. 171, Statutes of 1990), a staff report was prepared by the Joint Legislative Budget Committee. The report concluded that the highest potential for overhauling the state's existing fiscal process would be achieved by the creation of a Constitution Revision Commission whose duties were goal specific and whose membership represented a cross section of knowledgeable and respected citizens.

The California Constitution authorizes the Legislature to propose revisions to the California Constitution.

In 1962, the Legislature adopted a constitutional amendment, which was approved by the people, providing for revision of the Constitution.

In the 1963 First Extraordinary Session, the Legislature adopted a concurrent resolution establishing the Constitution Revision Commission under the Joint Committee on Legislative Organization. Having studied and reported on every article of the Constitution, the Commission's existence was terminated by the Legislature in 1974.

Existing law creates the California Law Revision Commission for the purpose of examining the common law and statutes of the state and judicial decisions and recommending needed reforms to the Governor and the Legislature.

SB 458 creates the California Constitution Revision Commission. The Commission would terminate on January 1, 1997.

The bill states the following legislative findings and declarations:

--That California's budget process has become crippled by a complex entanglement of constraints that interfere with an orderly and comprehensive consideration of all fiscal matters. A complete review of the process by a independent citizens' commission would provide the Legislature a basis for considering changes that would result in a more thoughtful and deliberative process.

-- That the legislative process has at times become mired in gridlock. Rivalries between the two houses of the Legislature and the executive branch have deterred the state's ability to make significant policy changes in response to the changing times. Changes to existing government organizational structures may provide a more responsive and productive form of governance for California than they current system.

The Commission would be charged with examining the process by which a budget is formulated and enacted by state government, the manner in which the budget serves the future needs of the state, the appropriate balance of resources and spending by the state, the fiscal relations of the state, federal, and local government, and any impediments that interfere with this process.

It would also examine the structure of state governance and proposed modifications that may increase accountability and improve the process of formulation, consideration and approval of policy determinations and a budget for the state.

Appointments

The bill would prescribe the following:

(a) The Governor will appoint 10 members, the Senate Committee on Rules 5 members, and the Speaker of the Assembly 5 members to the Commission, and appoint no more than one Member of the Legislature each as part of their appointment allotment.

No lobbyist may serve as a member of the commission.

CONTINUED

(b) Membership of the Commission would broadly reflect the economic, geographic, ethnic, racial, cultural, and gender diversity of the state.

(c) The initial appointments to the Commission would be made not later than 90 days after adoption of this resolution.

Each member would receive $100 for each day while on official commission business plus any necessary expenses incurred.

The Governor is to select one of its members as the Chairman of the Commission.

The Commission may appoint an executive secretary and employ professional, clerical, and other assistants that may be necessary. The Legislative Counsel, Legislative Analyst, State Auditor, and Department of Finance would assist the Commission. The Commission would be required to submit a report to the Governor and the Legislature by March 31, 1994.

Two hundred thousand dollars ($200,000) would be appropriated from the General Fund for the 1993-94 fiscal year.

SIMILAR LEGISLATION: A very similar bill, SB 458 (Killea) of 1992 passed the Senate by a vote of 27-10 but was subsequently vetoed by the Governor.

The difference between the two is that SB 16 does not put the Chief Justice on the Commission.

Senate Floor Vote: (P. 8188, 8/31/92)

VETO MESSAGE:

"This bill would create the California Constitution Revision Commission to review the state's budget process and the attendant constraints that interfere with an orderly and comprehensive consideration of all fiscal matters.

"While I agree that the budget process and consideration of fiscal matters needs considerable attention, I do not agree that the formation of a new Commission is the method we should use to achieve this objective. Members of the legislative and executive branches of

CONTINUED

government are fully aware of the issues that must be resolved. We do not need a Commission for this purpose. Instead, it would be wiser if we confronted these problems directly and immediately. It would be my hope that we could do so early in 1993."

FISCAL EFFECT: Appropriation: Yes Fiscal Committee: Yes Local: No

Appropriates $200,000 for the 1993-94 fiscal year.

DLW:jk 7/14/92 Senate Floor Analyses

CONTINUED

SENATE BUDGET AND
FISCAL REVIEW COMMITTEE
Senator Alquist, Chairman

BILL NO.: SB 16
AUTHOR: Killea
VERSION:
As Amended: 6/28/93
Consultant: JG

HEARING DATE: July 7, 1993

FISCAL: Yes

SUBJECT: Creation of California Constitution Revision Commission

SUMMARY:

This bill, an urgency measure, creates the California Constitution Revision Commission, prescribes its membership, specifies its duties, and makes an appropriation for its support.

BACKGROUND

Three different methods have been used historically to accomplish constitutional changes in California: (1) limited scope proposals initiated by the Legislature or by the pubic through the initiative process; (2) proposals initiated through a constitutional convention; and (3) proposals initiated by a constitution revision commission for legislative consideration as ballot measures.

PROPOSED LAW:

This bill, an urgency measure, as amended, creates a 20-member Constitution Revision Commission, specifies its duties, provides for staffing, per diem and necessary expenses of members, requires a report by March 1, 1994, and terminates its existence on July 1, 1996.

The bill provides that the twenty members of the commission are to be appointed as follows: 10 by the governor, 5 by the Senate Rules Committee, and 5 by the Speaker of the Assembly. The Chief Justice of California, or his or her designee, shall also serve as an ex officio nonvoting member. The Governor is authorized to select one of the members to serve as the chair of the commission.

The bill specifies the duties of the commission shall be to assist the Governor and the Legislature by (a) examining the state government budget process and the constraints and impediments that affect the development of the budget; and (2) examining the structure of state governance and proposed modifications that may increase accountability and improve the budget process. The commission's report is due to the Legislature and the Governor no later than March 31, 1994. It may also issue interim reports before that date.

FISCAL EFFECT:

The bill appropriates $200,000 from the General Fund to the Constitution Revision Commission for the 1993-94 year.

SUPPORT:

The author's office provided the following list of supporters of SB 458, which was an identical bill last year (see comments below). There was insufficient time to verify their support for SB 16.

California Common Cause
Contra Costa County
Nevada County
Amador County
John MacDonald, Chair, San Diego Board of Supervisors
David Blakely, Chair, San Luis Obispo Board of Supervisors
John Larson, Past Chairman, FPPC
A. Alan Post, Former Legislative Analyst
Sacramento Bee

OPPOSED:

None received

COMMENTS:

Two similar measures have passed the Legislature in the past two years, but both have been vetoed by the Governor. In 1992, SB 458 (Killea) differed only in the reporting dates and the size of the appropriation (it appropriated $300,000 instead of $200,000). The Governor vetoed the measure on the grounds that a new commission was not needed to achieve the objective of overhauling the state's budget process.

In 1991 the Governor vetoed SB 55 (Alquist) because the proposed commission in SB 55 was too large (60 members) and because it did not provide the governor with half of the appointments (it provided the governor 24 of the 60 appointments). This measure differs from SB 55 in that it (1) creates a smaller commission, (2) deletes the requirement that the commission examine the initiative process, and (3) requires the commission to examine the structure of state governance.

UTAH

CHAPTER 54

CONSTITUTIONAL REVISION STUDY COMMISSION

63-54-1. Creation — Members — Appointment — Qualifications.

There is hereby created a state commission to be known as the Utah Constitutional Revision Study Commission. This commission shall be composed of 16 members, three of whom shall be appointed by the speaker of the House of Representatives from the House of Representatives, not more than two of whom shall be from the same political party; three of whom shall be appointed by the president of the Senate from the Senate, not more than two of whom shall be from the same political party; three of whom shall be appointed by the governor, not more than two of whom shall be from the same political party. The nine members appointed, as provided for above, shall then select six additional members. In selecting these six additional members, consideration shall be given to achieving representation from the major geographical areas

of the state and to achieving as closely as possible equal bipartisan representation. The legislative research director shall be an ex officio member of the commission.

History: L. 1969, ch. 89, § 1; 1975, ch. 107, § 1; 1977, ch. 159, § 1.
Cross-References. — Amendment and revision of Constitution, Utah Const., Art. XXIII, Secs. 1 to 3.

63-54-2. Organization — Vacancies.

The commission shall select a chairman and a vice-chairman from its own membership. Said selection shall be made at the first meeting of the commission. The commission shall also employ a secretary, who need not be a member. If one of the members appointed by the speaker of the House shall resign or be unable to serve, the vacancy shall be filled by the speaker of the House. If one of the members appointed by the president of the Senate shall resign or be unable to serve, the vacancy shall be filled by the president of the Senate. If one of the members appointed by the governor shall resign or be unable to serve, the vacancy shall be filled by the governor. If one of the members appointed by the board shall resign or be unable to serve, the vacancy shall be filled by the board.

History: L. 1969, ch. 89, § 2.

63-54-3. Duties.

The purpose of the commission shall be to make a comprehensive examination of the Constitution of the State of Utah, and of the amendments thereto, and thereafter to make recommendations to the governor and the Legislature as to specific proposed constitutional amendments designed to carry out the commission's recommendations for changes in the constitution. The commission upon request shall also advise the governor and the Legislature on any proposed constitutional amendment or revision.

History: L. 1969, ch. 89, § 3; 1975, ch. 107, § 2.

63-54-4. Recommendations to commission.

The commission in performing its duties and responsibilities shall consider any recommendations from the governor, state agencies, members of the Utah Legislature, and responsible segments of the public.

History: L. 1969, ch. 89, § 4.

63-54-5. Public hearings — Purpose.

The Utah Constitutional Revision Study Commission may hold such public hearings as it deems advisable and in such locations within the state as it may choose in order that all interested persons who are citizens of this state may be afforded an opportunity to appear and present their views in respect to any subject relating to the work of the commission.

History: L. 1969, ch. 89, § 5.

63-54-6. Compensation of members — Reports to legislators and to governor.

The members of the commission shall receive a per diem for their services and necessary travel and subsistence expenses, as provided by law. The commission shall submit to the members of the Legislature and to the governor at least sixty days prior to the convening of the Legislature its reports and recommendations for revisions and amendments of the Constitution of the state of Utah.

History: L. 1969, ch. 89, § 6; 1975, ch. 107, § 3; 1983, ch. 320, § 69.
Cross-References. — Per diem rates and travel and mileage expenses, §§ 63-1-14.5, 63-1-15.

63-54-7. Terms of members — Vacancies — Reappointment.

The members initially appointed shall serve from the date of their appointment until June 30, 1977. After July 1, 1977, members shall be appointed as provided for in Section 63-54-1 of this chapter, except that those appointed shall draw by lot for terms of office of two, four, and six years each so that the terms of office of five members expire every two years on June 30th. Their successors shall be appointed for terms of six years each, except that when a vacancy occurs in the membership of the commission for any reason, the replacement shall be appointed for the unexpired term. All members of the commission, including those appointed before July 1, 1977, shall be eligible for reappointment one time.

History: L. 1969, ch. 89, § 7; 1975, ch. 107, § 4; 1977, ch. 159, § 2.

63-54-8. Appointment of staff.

The commission is hereby authorized to employ professional assistance and other staff members as it deems desirable or necessary.

History: L. 1969, ch. 89, § 8.

63-54-9. Publication of reports.

The commission shall also be authorized to prepare, publish and distribute from time to time reports of its studies and recommendations and statements in support thereof.

History: L. 1969, ch. 89, § 9.

REFERENCE SERVICES QUARTERLY

Agencies

Nations Center for Human Settlement)

:tor, IYSH

signated by the U.N. General Assembly as
f Shelter for the Homeless. "It is intended to
and action for the estimated over 100 million
who have to live on the streets or in make-
d deplorable housing."
arm of the U.N. in charge of promoting the
arily by calling on and working with non-
zations to support shelter and shelter-related

Housing and Urban Development
and Research Section
23
agency in the U.S. for IYSH.

Official Record of General Assembly, 37th
#8 (A/38/8).
ated the International Year of Shelter for the

Pathfinder: Methods of State Constitutional Revision

Michael Colantuono

I. INTRODUCTORY NOTE

The purpose of this Pathfinder is to present and analyze sources of law regarding state constitutional change. Constitutions may be altered in at least the following ways: (1) judicial interpretation; (2) amendment or revision by procedures set forth within the constitution; (3) amendment or revision by other lawful means; and, (4) revolution. The first and fourth are not discussed in this Pathfinder. Instead, the focus here is on the processes of *legal* change of the constitutional text, both those provided within a constitution and those given the force of law despite their deviation from textual provisions.

The lawful means of constitutional change are of several types. First, there is an important distinction to be made between an "amendment" and a "revision." As used here, an amendment is a relatively small change in one or a few specific provisions of a constitution. A revision is a wholesale redrafting of the document. Some states impose a "single subject" limitation on the subject matter of an amendment proposal. Such a proposal must be limited to a single subject to prevent voter confusion and "logrolling," the creation of an illusory "majority" by combining separate minorities favoring different aspects of a multisubject proposal. Other states require only that an amendment not be of such scope as to constitute a revision. These are the "single

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subject" and "non-revision" rules, respectively. Note that some states impose neither requirement in some or all circumstances. While the amendment-revision distinction is of legal import in only some of the states (see Sections 4 and 5 within), it is analytically useful for comparative purposes.

All American constitutions provide some means by which they may be amended. Amendments may be proposed by the legislature (see Section 2.C.1 within), by popular initiative (Section 2.C.2.), by a constitution revision commission (Section 2.C.5), or by a constitutional convention (Sections 2.C.3 and 2.C.4). Typically, an amendment must be ratified by the electorate before it becomes a part of the state's organic law; Delaware is an important exception to this rule (see Ref. 63, below).

Constitutional revision is most often achieved by the calling of a popularly elected constitutional convention (see Sections 2.C.3 and 2.C.4, within). It is increasingly common, however, for revisions to be proposed directly by the legislature (Section 2.C.1) by an appointed constitutional revision commission (Section 2.C.5), or by these two institutions jointly. No state allows constitutional revision by popular initiative (Section 2.C.2), though a few allow popular initiation of the convention process (Section 2.C.3). Typically, a revised constitution takes force only upon electoral ratification, but exceptions to this practice are common (Sections 2.C.3 and 2.C.4).

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Because some constitutions provide no means for constitutional revision and because constitutional processes sometimes prove cumbersome, many states have seen attempts to revise their organic law by means other than those prescribed by the constitution in force. Such unauthorized procedures are here referred to as "extra-textual" procedures. Two state constitutions specifically proscribe extra-textual revision or amendment (see Section 2.C.6), but most often the validity of such procedures has been determined by the courts. Some courts have upheld these attempts, reasoning that the exercise of popular sovereignty in the ratification of the proposal at the polls "cures" any defect in the process of drafting and presenting the proposal. Others reach this result by arguing that a legislature has inherent power to call a popularly elected convention without textual authority (Section 4). Other courts deny the validity of extra-textual revision procedures (Section 5). These courts often argue that only the popular sovereign may make or alter organic law and that creatures of a particular constitution – specifically the legislature – may have only that role in the processes of constitutional change as is specifically granted them by the constitution in force.

The core of this annotation is found in two kinds of primary authority: constitutional provisions and caselaw. Two other forms of primary authority are excluded: legislation and administrative regulations. These are omitted despite their obvious relevance because a fifty state survey of those materials would be an overwhelming task. This Pathfinder has chosen to retain its fifty state scope despite the necessary sacrifice of depth. However, rather than leave the user completely adrift, a list of chief state election officers (Section 3) is provided to facilitate initial access to the relevant code provisions and regulations. This officer was chosen because it is election law which is most commonly implicated by statutory and regulatory questions relating to constitutional change.

There are questions related to the subject of this work which are not answered here. The Pathfinder does, however, provide some initial access to the relevant sources. These questions are listed here with references to the relevant sections of this work:

1. The relative power of constitutional conventions and legislatures to determine the procedures and agenda of a convention; see Section 2.C.3 and Sections 6, 7, and 8.
2. The application of the single subject and non-revision requirements in particular states; see Section 5 and Sections 6, 7, and 8.
3. The authority and role of constitution revision commissions that lack constitutional status; see Section 3 and Sections 6, 7, and 8. Note also that Section 2.A provides basic information about state constitutional history.

Each of the Sections of this Pathfinder provides a more detailed description of its scope and content. Note finally that Section 9 includes tables of jurisdictions, cases, and persons

2. CONSTITUTIONAL PROVISIONS

A. Sources of All Fifty State Constitutions.

1. Columbia University, *Legislative Drafting and Research Fund, Constitutions of the United States: National and State* (2d ed. 1974-) Dobbs Ferry, NY: Oceana Publications, Inc.

This looseleaf is updated several times a year. It is an invaluable collection of the constitutional texts from all fifty states, the federal constitution, the Model State Constitution prepared by the National Municipal League (see Ref. 268) and the organic documents of the U.S. territories and possessions. References 2-4 are indexes which provide access to the set.

2. Sachs, Barbara Faith (ed.), *Index to the Constitutions of the United States: National and State* (2d ed. 1980) Dobbs Ferry, NY: Oceana Publications, Inc.

This index is published in a hard-bound volume and is updated with pocket parts. It provides an elaborate index to the provisions of all the documents collected in reference 1. It is the only complete tool providing current access to the state constitutions. However, while the index provides elaborate and complete coverage, it is somewhat unwieldy. The publisher intends to replace this single volume index with a series of subject indexes which will together provide comprehensive access to the constitutional texts. The first two subject indexes have been published and are noted in references 3 and 4.

3. Sachs, Barbara Faith (ed.), *Fundamental Liberties and Rights: A Fifty-State Index* (1980-) Dobbs Ferry, NY: Oceana Publications, Inc.

This is the first of a series of subject indexes to the constitutional texts designed to replace the single index provided by reference 2. It is published in a looseleaf format and will be updated regularly. It is available as a part of reference 1 or independently. Although the index is elaborate and therefore helpful in providing access to the texts, the subject format requires the user to consult topic lists to identify which of the subject indexes (most of which are as yet unavailable) contains the headings of interest; this may complicate rather than simplify use of these tools.

4. Sachs, Barbara Faith (ed.), *Laws, Legislatures and Legislative Procedures: A Fifty-State Index* (1982-) Dobbs Ferry, NY: Oceana Publications, Inc.

This is the second of a series of subject indexes designed to replace the single index provided by reference 2. The comments regarding reference 3 are applicable here. Major topics surprisingly excluded from this index are Initiatives and Referenda.

5. Swindler, William F. (ed.), *Sources and Documents of United States Constitutions* (First series, 10 volumes, 1973-1979; Second series, 3 volumes, 1982-1983) Dobbs Ferry, NY: Oceana Publications, Inc.

This compilation is most useful for historical purposes. It is not updated as is the looseleaf service noted in reference 1. Rather its strength lies in its collection of not only constitutions now in force and their predecessors, but also ancillary documents such as constitutional convention resolutions and ordinances.

B. The State Constitutions.

This section lists the basic information about the constitutions now in force in the American states. For each document, this table lists the official title, the means of its promulgation, and the number of prior constitutions adopted in the jurisdiction. Most of the documents were drafted by a convention, a body composed of delegates elected by the populace, or a commission, a body comprised of members appointed without an election. All the information presented here is derived from reference 1. It is included because the validity of a revision or amendment proposal will often hinge on the text and history of the constitution then in force.

6. Alabama. Constitution of 1901. This document was drafted by a convention and ratified by the electorate. Alabama has had five prior constitutions.
7. Alaska. The Alaska Constitution. This document was

drafted by a convention, ratified by the electorate, and became effective when Alaska achieved statehood. It is the first constitution of the state.

8. Arizona. Constitution of 1912. This document was drafted by a convention, ratified by the electorate, and became the state's first constitution when Arizona achieved statehood.
9. Arkansas. Constitution of 1974. This document was drafted by a convention, ratified by the electorate, and is the fifth constitution of the state.
10. California. Constitution of 1879. This document was drafted by a convention, ratified by the electorate, and is the second organic law of the state.
11. Colorado. Constitution of 1876. This document was drafted by a convention and ratified by the electorate. It became the first organic law of the state when Colorado achieved statehood.
12. Connecticut. Constitution of 1965. This second constitution of Connecticut was drafted by a convention and ratified by the electorate.
13. Delaware. Constitution of 1897. This constitution was drafted and promulgated by a convention with no participation by the electorate. Each of the three prior constitutions was also promulgated with no electoral participation. It is interesting to note that the only provision for constitutional change in Delaware also provides no popular role. See Ref. 73, below.
14. Florida. Revised Constitution of 1968. This Constitution was proposed by three successive joint resolutions, adopted by a special session of the legislature and ratified by the electorate. It is the sixth constitution of the state.
15. Georgia. Constitution of 1976. This document was drafted by a constitutional commission and ratified by the electorate. It is the ninth constitution of Georgia.
16. Hawaii. Constitution of 1978. This document is the second constitution of the state. It was drafted by a convention and ratified by the electorate.
17. Idaho. Constitution of 1890. This document is the first constitution of the state and took effect when Idaho was admitted to the Union. It was drafted by a convention and ratified by the electorate.
18. Illinois. Constitution of 1970. This document was drafted by a convention, ratified by the electorate, and is the fourth organic law of the state.
19. Indiana. Constitution of 1851. This document is the state's second constitution. It was drafted by a convention and submitted for electoral ratification.
20. Iowa. Constitution of 1857. This second state constitution was drafted by a convention and ratified in an election.
21. Kansas. Constitution of 1861. This is the first constitution of the state and took effect when Kansas became a state. It was drafted by a convention and ratified at the polls.
22. Kentucky. Constitution of 1891. This is the fourth constitution of the state. It was originally drafted by a convention and achieved electoral ratification. Following the election, the convention reconvened and made stylistic as well as a few substantive changes in the document. The document was then promulgated without further electoral review.
23. Louisiana. Constitution of 1975. This is the eleventh constitution of the state and was drafted by a convention and ratified by the electorate. No state has altered its constitution more frequently than Louisiana.
24. Maine. Constitution of 1820. This is the first constitution of the state. It was drafted by a convention and ratified by the electorate. Amendment LXV authorizes the Chief Justice of the Supreme Judicial Court to recodify the document to delete superceded and obsolete provisions as often as the state legislature recodifies the statutes of the state. The Constitution was most recently recodified in 1973.
25. Maryland. Constitution of 1867. The Constitution was drafted by a convention and submitted to the electorate for ratification. It is the fourth organic law of the state. A recent attempt at constitutional revision was defeated at the polls; see Ref. 274, below.
26. Massachusetts. Constitution of 1780. This is the first con

45. South Carolina. Constitution of 1895. This constitution is the state's seventh and was drafted and promulgated by a convention without submission to the voters.
46. South Dakota. Constitution of 1889. This is the first constitution of the state and was drafted by a convention and ratified at the polls.
47. Tennessee. Constitution of 1870. This document is the state's third organic law. It was written by a convention and ratified by the voters.
48. Texas. Constitution of 1876. Including the organic law of the Republic of Texas, this charter is the state's fifth. It was written by a convention and ratified by the electorate.
49. Utah. Constitution of 1896. This document was drafted by a convention, ratified by the electorate, and is the state's first constitution.
50. Vermont. Constitution of 1793. This second Vermont Constitution was drafted and promulgated by a convention without electoral ratification.
51. Virginia. Revised Constitution of 1971. This document was drafted by the state legislature and presented for electoral ratification. It is the eighth constitution of the state. See Ref. 255, below, for a complete discussion of its adoption.
52. Washington. Constitution of 1889. This constitution was drafted by a convention and ratified by the voters. It is Washington's first organic law.
53. West Virginia. Constitution of 1872. This document is the second organic law of the state. It was drafted by a convention and adopted by the electorate.
54. Wisconsin. Constitution of 1848. This constitution is the state's first. It was drafted by a convention and ratified by the voters.
55. Wyoming. Constitution of 1890. This first constitution of the state was drafted by a convention and ratified by the electorate.

C. Constitutional Provisions Regarding Amendment and Revision

C.1. Provisions for Legislative Proposal of Amendments and Revisions

All fifty state constitutions permit amendment by legislative proposal. Some states allow the legislature to propose constitutional revisions as well. For a discussion of the distinction between "amendments" and "revisions," see the Introductory Note (Section I) and Ref. 245, below. Unless explicitly stated otherwise, the provisions identified below allow the proposal of amendments only. The usual procedure is for a proposal to be made by a specified supermajority of both houses of the legislature and then ratified by either a majority of the votes cast on the proposal (designated in the table as MP) or a majority of the votes cast in the election as a whole (ME). The provisions are listed in alphabetical order by state. Except where otherwise indicated, constitutional provisions will be cited to article and section numbers by use of roman and arabic numbers. For example, XVIII 284 refers to section 284 of article 18. The following table presents the legislative and electoral majorities required by the state constitution.

56. Alabama	XVIII 284 XVIII 287	3/5 majority in both chambers; MP
57. Alaska	XIII 1	2/3 majority in both chambers; MP
58. Arizona	XXI 1	simple majority in both chambers; MP
59. Arkansas	XIX 22	simple majority in both chambers; ME; only three amendments may appear on a single ballot
60. California	XVIII 1	2/3 majority of both

		houses may propose either an amendment or a revision;
	XVIII 4	MP
61. Colorado	XIX 2	2/3 majority of both houses; MP; no more than 6 articles of the Constitution may be amended by a single (two-year) legislature
62. Connecticut	XII	(as amended in 1974 by Amendment 6) simple majority in each chamber in each of two successive (two-year) legislatures or a 3/4 majority of both chambers in a single legislature; MP
63. Delaware	XVI 1	2/3 majority of both houses in two successive (two-year) legislatures; no requirement of electoral submission
64. Florida	XI 1	3/5 majority of both houses may propose either an amendment or a revision;
	XI 5	MP
65. Georgia	X 1, 2	2/3 majority of both chambers may propose either an amendment or a revision; MP
66. Hawaii	XVIII 1, 3	2/3 majority of both chambers in a single

		legislature or a simple majority of both chambers in two successive legislatures may propose an amendment or a revision; MP
67. Idaho	XX 1	2/3 majority of both chambers; MP
68. Illinois	XIV 2	3/5 majority of both chambers; 3/5 majority of the votes on the proposal or a majority of the total voters for ratification; no more than 3 articles may be amended at any single election
69. Indiana	XVI 1	simple majority of both chambers in each of two successive legislatures; MP
70. Iowa	X 1	simple majority of both chambers in each of two successive legislatures; MP
71. Kansas	XIV 1	2/3 majority of both chambers; MP; no more than five amendments may be proposed in a single election
72. Kentucky	Sec. 256	3/5 majority of each chamber; MP; only four amendments may

		appear in a single election
73. Louisiana	XIII 1	2/3 majority of each chamber; MP
74. Maine	X 4	2/3 majority of each chamber; MP
75. Maryland	XIV 1	3/5 majority of each chamber; MP
76. Massachusetts	Amendments Art. XLVIII, secs. 4, 5	simple majority of all legislators sitting in two consecutive legislatures; MP and 30% of the total votes cast in the election
77. Michigan	XII 1	2/3 majority of both chambers; MP
78. Minnesota	IX 1	simple majority of both chambers; ME
79. Mississippi	Sec. 273	2/3 majority of both chambers; MP
80. Missouri	XII 2(a), 2(b)	simple majority of both chambers; MP
81. Montana	XIV 9	2/3 majority of legislature as a whole; MP
82. Nebraska	XVI 1	3/5 majority of unicameral legislature; MP and 35% of the total votes cast in the election
83. Nevada	XVI 1	simple majority of both houses in each of two successive legislatures; MP

84. New Hampshire	Part 2d, Art 100, secs. a and c	3/5 majority in both chambers; 2/3 majority of votes on the proposal
85. New Jersey	IX 1	3/5 majority of both chambers or simple majority of both chambers in each of two successive legislatures;
	IX 6	MP
86. New Mexico	XIX 1	simple majority of both chambers; MP
87. New York	XIX 1	simple majority of both chambers in each of two successive legislatures; MP
88. North Carolina	XIII 4	3/5 majority of both chambers may propose either a revision or an amendment; MP
89. North Dakota	IX 16	simple majority of both chambers; MP
90. Ohio	XVI 1	3/5 majority of both chambers; MP
91. Oklahoma	XXIV 1	simple majority of both chambers; MP
92. Oregon	XVII 1	simple majority of both chambers may propose amendment; MP
	XVII 3	2/3 majority of both chambers may propose revision; MP
93. Pennsylvania	XI 1	simple majority of

		both chambers in each of two successive legislatures; MP
94. Rhode Island	Amendment XLII, sec. 1	simple majority of both chambers; MP
95. South Carolina	XVI 1	2/3 majority of both chambers may propose an amendment which must be ratified by MP and a simple majority of both chambers of the succeeding legislature
96. South Dakota	XXIII 1	simple majority of both chambers; MP
	XXIII 3	
97. Tennessee	XI 3	simple majority of both chambers of an initial legislature; a 2/3 majority of both chambers of the next succeeding legislature; ME (defined as the total votes cast in the gubernatorial election)
98. Texas	XVII 1	2/3 majority of both chambers; MP
99. Utah	XXIII 1	2/3 majority of both chambers; MP
100. Vermont	Ch. II, sec. 72	2/3 majority of Senate and simple majority of House in initial legislature; simple majority of both chambers in

		succeeding legislature; MP
101. Virginia	XII 1	simple majority of both chambers in each of two successive legislatures; MP
102. Washington	XXIII 1	2/3 majority of both chambers; MP
103. West Virginia	XIV 2	2/3 majority of both chambers; MP
104. Wisconsin	XII 1	simple majority of both chambers in each of two successive legislatures; MP
105. Wyoming	XX 1	2/3 majority of both chambers; ME

C.2 Provisions for Initiative Proposal of Amendments

Seventeen states permit the constitutional initiative. All place some limitation on the subject of an initiative proposal. The requirement that an initiative encompass only a single subject (the "single subject requirement") is the most common. No state permits initiative constitutional revision. See Ref. 245 for a discussion of the amendment-revision distinction.

The procedure for constitutional initiative requires proponents to gather the signatures of a specified number of registered voters to place the issue on the ballot. This number is usually expressed as a percentage of either the total electorate or of the total votes cast for a particular office – usually the governor – in a prior state election. The measure must then be ratified by the electorate. The table below specifies the percentage required and the office which provides the base for the determination of the number of signatures. The required electoral ratification is expressed as MP (majority of those voting on the proposal) or ME (majority of the total vote cast in the election as a whole).

106. Arizona	XXI 1	15% governor; MP
107. Arkansas	Amendment VII	10% of the legal voters; MP
108. California	II 8 II 10	8% governor; MP
109. Colorado	V 1	5% secretary of state; MP
110. Florida	XI 3	8% president; this number must include 8% of the voters in each of one half of the state's congressional districts;
	XI 5	MP
111. Illinois	XIV 3	8% governor; 3/5 majority on the proposal or ME; initiative constitutional amendments are limited to the legislative article (Article IV)
112. Massachusetts	Amendment LXXXI	3% governor; the petition is then submitted to both chambers of the legislature sitting together as a "constitutional convention"
	Amendment XLVIII, Part IV, sec. 3	a 3/4 majority of the "constitutional convention" may amend or substitute another proposal for the initiative proposal

	Amendment XLVIII, Part IV, sec. 4	if the initiative proposal receives the support of at least 1/4 of the "constitutional convention" then it is submitted to the succeeding legislature
	Amendment XLVIII Part IV, sec. 5	if the initiative proposal receives the support of 1/4 of the second "constitutional convention" it is placed on the ballot for popular approval; the proposal requires MP or 30% of the total election vote to gain ratification
113. Michigan	XII 2	10% governor; MP
114. Missouri	III 50	8% governor; the total must include 8% of the voters in 2/3 of the state's congressional districts; only one article may be added or revised by a single amendment initiative;
	III 51	MP
115. Montana	XIV 9	10% governor; the total must include 10% of the voters in 2/3 of the state legislative districts; MP
116. Nebraska	III 2	10% governor; the total must include 5% of the voters in 2/5 of

		the counties in the state;
	III 4	MP and 35% of the total vote cast in the election
117. Nevada	XIX 2	10% total vote cast in last general election; the total must include 10% of the voters in 3/4 of the state's counties;
	XIX 4	MP in two successive elections
118. North Dakota	III 9	4% of federal census figure for the state's total population;
	III 5	MP
119. Ohio	II 1(a)	10% governor;
	II 1(b)	MP
120. Oklahoma	V 2	15% of total vote for that office election for which the most votes were cast in the last general;
	V 3	MP
121. Oregon	IV 2	8% governor;
	IV 4	MP
122. South Dakota	XXIII 1	10% governor
	XXIII 3	MP

C.3 Provisions for Legislative or Initiative Call of Convention

Explicit provisions for the calling of a constitutional convention are found in forty-one state constitutions. See Refs. 240 and 257 for authority for the proposition that a convention may be legislatively called even in the absence of an explicit provision.

The usual procedure is for a specified majority of the legislature to propose a convention. This proposal becomes a call when ratified by the electorate. Some constitutions allow a legislative call with no electoral ratification and others allow a convention to be called by initiative. Any constitutional changes proposed by the convention usually require electoral ratification. If this requirement is not specified by the constitution itself, it may be imposed by the terms of the convention call. The table below summarizes the provisions regarding convention calls and the ratification of convention proposals. Provisions for the periodic submission to the electorate of the issue of whether to call a constitutional convention are presented in section C.4 below.

123. Alabama	XVIII 286	simple majority of both chambers; MP; no provision for the ratification of convention proposals
124. Alaska	XIII 2	simple majority of both chambers; no electoral ratification required;
	XIII 4	convention proposals require ratification by MP
125. Arizona	XXI 2	simple majority of both chambers; MP; convention proposals ratified by MP
126. Arkansas		no provision
127. California	XVIII 2	2/3 majority of both chambers; MP;
	XVIII 4	convention proposals ratified by MP
128. Colorado	XIX 1	2/3 majority of both chambers; MP;

		convention proposals require ME
129. Connecticut	XIII 1	2/3 majority of both chambers may call a convention without electoral ratification at any time after ten years following the last convention;
	XIII 3	2/3 majority of both chambers may establish rules for the convention;
	XIII 4	convention proposals must be ratified by MP
130. Delaware	XVI 2	2/3 majority of both chambers; MP;
	XVI 3	provisions for the selection of the convention are determined by the legislature; no provision for electoral ratification of convention proposals
131. Florida	XI 4	the legislature may not initiate a convention call, but it may itself propose a revision (see Ref. 64, above); a convention may be proposed by a petition containing signatures numbering 15% of the last presidential vote which must include at

		least 15% of the presidential vote in each of one half the state's congressional districts; this proposal becomes a call when ratified by MP;
	XI 5	convention proposals require MP ratification
132. Georgia	X 4	2/3 majority of both chambers; no electoral ratification is required; convention proposals must be ratified by MP
133. Hawaii	XVII 2	a simple majority of both chambers may propose a convention; MP; conventions may propose revisions, but convention amendments must be limited to a single subject; convention proposals are ratified by ME unless a special election is called on the convention proposal, in which case the proposals will be ratified by MP and 30% of all registered voters
134. Idaho	XX 3	2/3 majority of both chambers; MP;

	XX 4	convention proposals require MP ratification
135. Illinois	XIV 1	3/5 majority of both chambers; call is ratified by 3/5 MP or ME; convention proposals are ratified by MP
136. Indiana		no provision
137. Iowa		periodic submission only; see Ref. 177 below
138. Kansas	XIV 2	2/3 majority of both chambers; MP; convention proposals ratified by MP
139. Kentucky	Sec. 258	simple majority of both chambers; MP; no provision for electoral ratification of convention proposals
140. Louisiana	XIII 2	2/3 majority of both chambers may call a convention without electoral approval; convention proposals require MP approval
141. Maine	IV, Part 3, sec. 15	2/3 majority of both chambers may call a convention without electoral approval; no provision for electoral ratification of convention proposals

142. Maryland		periodic submission provision only; see Ref. 178 below
143. Massachusetts		the two legislative chambers sitting jointly are the "constitutional convention"; there is no provision for calling a convention independent of the legislature; see Refs. 76 and 112, above
144. Michigan		periodic submission provision only; see Ref. 179, below
145. Minnesota	IX 2	2/3 majority of both chambers; ME;
	IX 3	convention proposal require [illegible]
146. Mississippi		no provision
147. Missouri		periodic submission provision only; see Ref. 180, below
148. Montana	XIV 1	this provision authorizes 2/3 of all legislators to call an unlimited convention; this may strip the legislature of common law power to limit the terms of the legislative call;
	XIV 2	petitions signed by voters numbering 10% of the number of votes

		cast in the last gubernatorial election, including 10% of the number cast in each of 2/5 of the state's legislative districts may propose an unlimited convention;
	XIV 4	convention call must be ratified by MP;
	XIV 7	convention proposals ratified by MP
149. Nebraska	XVI 2	3/5 of unicameral legislature may propose a convention; the call is made by MP and 35% ME; convention proposals are ratified by MP
150. Nevada	XVI 2	2/3 majority of both chambers; call made by ME, defined as a majority of the number of votes cast in the next prior election for the office for which the most votes were cast; no provision for electoral ratification of convention proposals
151. New Hampshire	Part 2d, Art. 100, sec. b	simple majority of both chambers; MP;
	Part 2d, Art. 100, sec. c	a 3/5 majority of convention delegates is required to place a proposal before the electorate;
	Part 2d,	

	Art. 100	2/3 MP is required to ratify convention proposals
152. New Jersey		no provision
153. New Mexico	XIX 2	2/3 majority of both chambers; MP; convention proposals require MP ratification
154. New York		periodic submission provision only; see Ref. 183, below
155. North Carolina	XIII 1	2/3 majority of both chambers; MP;
	XIII 3	convention proposals require MP ratification
156. North Dakota	III 1, 4, 9	reservation of popular power to initiate convention call; it is unclear whether the 2% of census population required for an initiative statute or the 4% figure required to initiate a constitutional amendment is the number of signatures required to initiate a convention call
	III 5	all initiatives require MP ratification; no provision for legislative convention call
157. Ohio	XVI 2	2/3 majority of both chambers; MP;

	XVI 3	convention proposals require MP ratification
158. Oklahoma	XXIV 2	convention called by statute upheld by referendum (this amounts to simple majority of both chambers and MP with the opportunity for a gubernatorial veto); convention proposals need MP ratification
159. Oregon		no provision for convention, though legislature has power to propose constitutional revision directly; see Ref. 92. above
160. Pennsylvania		no provision
161. Rhode Island	Amendment XLII, sec. 2	simple majority of both chambers; MP; convention proposals require MP ratification
162. South Carolina	XVI 3	2/3 majority of both chambers; MP
163. South Dakota	XXIII 2 XXIII 3	3/4 majority of both chambers; MP; convention proposals require MP ratification
164. Tennessee	XI 3	simple majority of both chambers; MP; convention proposals require MP ratification
165. Texas	XVII 2	this provision was

		added by amendment in 1972 and provided an authorized convention procedure valid only for a 1973 convention call; presumably this precedent would require a constitutional amendment to call another convention
166. Utah	XXIII 2 XXIII 3	2/3 majority of both chambers; ME; convention proposals ratified by ME
167. Vermont		no provision
168. Virginia	XII 2	2/3 majority of both chambers; no electoral call; convention proposals ratified by MP
169. Washington	XXIII 2 XXIII 3	2/3 majority of both chambers; ME; convention proposals must be submitted for popular ratification (MP ?)
170. West Virginia	XIV 1	simple majority of both chambers; ME; convention proposals submitted to people (MP ?)
171. Wisconsin	XII 2	simple majority of both chambers; MP no provision for

		ratification of convention proposals
172. Wyoming	XX 3	2/3 majority of both chambers; ME;
	XX 4	convention proposals must be submitted to the people (MP ?)

C.4 Provisions for Periodic Submission of Convention Call Question to Electorate

A number of constitutions require the secretary of state or some other official to periodically place the question of calling a convention on the ballot. If the required electoral approval is received, a convention is called. The table below identifies these provisions and specifies the period of years and the electoral majority required to ratify the call.

173. Alaska	XIII 4	10 years; MP
174. Connecticut	XIII 2	20 years; MP
175. Hawaii	XVII 2	9 years; MP
176. Illinois	XIV 1	20 years; 3/5 MP or ME
177. Iowa	X 2	10 years; MP
178. Maryland	XIV 2	20 years; ME
179. Michigan	XII 3	16 years; MP
180. Missouri	XII 3(a)	20 years; MP
181. Montana	XIV 3 XIV 4	20 years; MP
182. New Hampshire	Part 2d, Art. 100, sec. b	10 years; MP
183. New York	XIX 2	20 years; MP
184. Ohio	XVI 3	20 years; MP

185. Oklahoma	XXIV 2	20 years; MP
186. Rhode Island	Amendment XLII 2	10 years; MP

C.5 Provisions Granting Constitutional Status to Constitution Revision Commission

It is increasingly common for legislatures and executives to appoint constitutional revision commissions to assist them in the use of their own constitutional amendment and revision powers. One state has given the revision commission constitutional status.

187. Florida XI 2

This provision provides for a Constitution Revision Commission to be appointed by executive, legislative, and judicial leaders every twenty years. Once established, the commission has independent constitutional authority to place amendments and revisions on the ballot for popular approval. Under this Constitution, then, there are three means of initiative constitutional change: (1) an amendment or revision placed on the ballot by the legislature (Ref. 64, above); (2) a revision or amendment placed on the ballot by a revision commission; or, (3) a convention called by popular initiative to propose amendments or revisions (see Ref. 131, above).

C.6 Provisions Excluding Extra-Textual Methods of Revision or Amendment

The question of whether extra-textual procedures of constitutional revision may be validly exercised has most often been left to the courts. See Sections 4 and 5 of this Pathfinder, below. However, a few constitutions expressly prohibit extra-textual procedures. These provisions are:

188. Missouri	XII 1
189. North Carolina	XIII 2

3. CHIEF STATE ELECTION OFFICIALS

The litigation of issues surrounding state constitutional amendment and revision will often involve legislation and administrative regulations. This is so because many provisions direct or require legislative or administrative action and because the electoral process is utilized. Therefore election law is frequently relevant to research in this area.

However, it is beyond the scope of this research effort to identify, much less summarize, the myriad statutory and regulatory provisions that may apply in each of the fifty states. Rather than leave this important area of research entirely up to the user, this section lists the name and address of the chief elections official of each of the fifty states. This official should provide assistance in further research. This information is derived from the 1986-87 Book of States (Ref. 255, below) and may not include the results of the 1986 elections. The telephone numbers are for central switchboards.

190. Alabama
Don Siegelman, Secretary of State
State Capitol
Montgomery, AL 36130
205-261-2500

191. Alaska
Stephen McAlpine, Lt. Governor
State Capitol
Juneau, AK 99811
907-465-2111

192. Arizona
Rose Mofford, Secretary of State
State Capitol
Phoenix, AZ 85007
602-225-4900

193. Arkansas
W. J. "Bill" McCuen, Secretary of State
State Capitol
Little Rock, AR 72201
501-371-3000

194. California
Marge Fong Fu, Secretary of State
State Capitol
Sacramento, CA 95814
916-322-9900

195. Colorado
Natalie Meyer, Secretary of State
State Capitol
Denver, CO 80203
303-866-5000

196. Connecticut
Julia H. J. Tashjian, Secretary of State
State Capitol
Hartford, CT 06106
203-566-2211

197. Delaware
S. B. Woo, Lt. Governor
Legislative Hall
Dover, DE 19901
302-736-4000

198. Florida
George Firestone, Secretary of State
The Capitol
Tallahassee, FL 32301
904-488-1234

199. Georgia
Max Cleland, Secretary of State
State Capitol
Atlanta, GA 30334
404-656-2000

200. Hawaii
John Waihee, Lt. Governor
State Capitol
Honolulu, HI 96813
808-548-2211

201. Idaho
Pete T. Cenarrusa, Secretary of State
State Capitol
Boise, ID 83720
208-334-2411

202. Illinois
State Board of Elections
State House
Springfield, IL 62706
217-782-2000

203. Indiana
State Elections Board
State House
Indianapolis, IN 46204
317-232-3140

204. Iowa
Mary Jane Odell, Secretary of State
State Capitol
Des Moines, IA 50319
515-281-5011

205. Kansas
Jack H. Brier, Secretary of State
State House
Topeka, KS 66612
913-296-0111

206. Kentucky
Drexell Davis, Secretary of the Commonwealth
State Capitol
Frankfort, KY 40601
502-564-2500

207. Louisiana
Jerry M. Fowler, Commissioner of Elections
State Capitol
Baton Rouge, LA 70804
504-342-6600

208. Maine
Commission on Governmental Ethics and Election Practices
State House
Augusta, ME 04333
207-289-1110

209. Maryland
State Administrative Board of Election Laws
State House
Annapolis, MD 21401
301-269-6200

210. Massachusetts
Michael J. Connolly, Secretary of the Commonwealth
State House
Boston, MA 02133
617-727-2121

211. Michigan
Richard H. Austin, Secretary of State
State Capitol
Lansing,,MI 48909
517-373-1837

212. Minnesota
Joan Anderson Growe, Secretary of State
State Capitol
St. Paul, MN 55515
612-296-6013

213. Mississippi
Dick Molpus, Secretary of State
New Capitol
Jackson, MS 39201
601-359-1000
(The State Election Commission is comprised of the governor, the secretary of state, and the attorney general.)

214. Missouri
Roy Blunt, Secretary of State
State Capitol
Jefferson City, MO 65101
314-751-2151

215. Montana
Jim Waltermire, Secretary of State
State Capitol
Helena, MT 59620
406-444-2511

216. Nebraska
Allen J. Beermann, Secretary of State
State Capitol
Lincoln, NE 68509
402-471-2311

217. Nevada
William D. Swackhamer, Secretary of State
Legislative Hall
Carson City, NV 89710
702-885-5000

218. New Hampshire
Secretary of State (an appointed official)
State House
Concord, NH 03301
603-271-1110

219. New Jersey
Election Law Enforcement Commission
State House
Trenton, NJ 08625
609-292-2121

220. New Mexico
Clara P. Jones, Secretary of State
State Capitol
Santa Fe, NM 87503
505-827-4011

221. New York
State Board of Elections
State Capitol
Albany, NY 12224
518-474-2121

222. North Carolina
State Board of Elections
State Legislative Building
Raleigh, NC 27611
919-733-1110

223. North Dakota
Ben Meier, Secretary of State
State Capitol
Bismarck, ND 58505
701-224-2000

224. Ohio
Sherrod Brown, Secretary of State
State House
Columbus, OH 43215
614-466-2000

225. Oklahoma
State Elections Board
State Capitol
Oklahoma City, OK 73105
405-521-2011

226. Oregon
Barbara Roberts, Secretary of State
State Capitol
Salem, OR 97310
503-378-3131

227. Pennsylvania
Secretary of the Commonwealth (an appointed official)
Main Capitol Building
Harrisburg, PA 17120
717-787-2121

228. Rhode Island
Susan L. Farmer, Secretary of the State of Rhode Island and Providence Plantations
State House
Providence, RI 02903
401-277-2000

229. South Carolina
John T. Campbell, Secretary of State
State House
Columbia, SC 29211
803-758-0221

230. South Dakota
Alice Kundert, Secretary of State
State Capitol
Pierre, SD 57501
605-773-3011

231. Tennessee
Secretary of State
State Capitol
Nashville, TN 37219
615-741-3011
(This appointed official in turn appoints the State Coordinator of Elections.)

232. Texas — Secretary of State (an appointed official)
State Capitol
Austin, TX 78711
512-475-2323

233. Utah — Pete Smith, Lt. Governor
State Capitol
Salt Lake City, UT 84114
801-533-4000

234. Vermont — James H. Douglas, Secretary of State
State House
Montpelier, VT 05602
802-828-1110

235. Virginia — State Board of Elections
State Capitol
Richmond, VA 23219
804-786-0000

236. Washington — Ralph Munro, Secretary of State
Legislative Building
Olympia, WA 9850
206-753-5000

237. West Virginia — Ken Hechler, Secretary of State
State Capitol
Charleston, WV 25305
304-348-3456

238. Wisconsin — State Elections Board
State Capitol
Madison, WI 53702
608-266-2211

239. Wyoming — Thyra Thompson, Secretary of State
State Capitol
Cheyenne, WY 82002
307-777-7220

4. CASES HOLDING THAT EXTRA-TEXTUAL MEANS OF ACHIEVING CONSTITUTIONAL CHANGE ARE VALID

A. Revision by Convention in the Absence of Provision for Calling a Convention

240. *In re Opinion to the Governor*, 55 R.I. 56, 178 A. 433(1935).

In an advisory opinion requested by the Governor, the Justices of the Rhode Island Supreme Court concluded that a constitutional convention might be called in the absence of explicit constitutional authority for such a convention.

The court relied on a provision allowing the legislature to exercise all powers it had exercised under the colonial Charter of 1663. The colonial legislature had exercised the power to initiate a convention call – when it called the convention which produced the constitution lacking a convention provision.

The case is useful as authority outside Rhode Island because of its lengthy discussion of the various sources of authority on this question. Its rationale for rejecting contary precedent of the Rhode Island and Massachusetts courts is instructive and delves extensively into constitutional theory, history, and law. Further support for this holding is provided by Ref. 237, below.

B. Revision by Legislative Procedures not Provided in Constitution

241. *Wheeler v. Board of Trustees*, 200 Ga. 323, 37 S.E.2d 322 (1946).

The Georgia Supreme Court upheld the adoption of a new constitution following its electoral ratification although it had been placed on the ballot by the legislature in the absence of constitutional authority to do so. Effectively, the result allowed the legislature to (1) achieve a *revision* by the textually provided *amendment* procedure; and (2) usurp the role of the convention in drafting a constitution.

The opinion relied on a theory of popular sovereignty and argued that the new constitution took validity from the expression

of popular support at the polls and that the election "cured" any procedural defect in the preparation of the document. The court's second argument derives from history: the American Constitution was drafted by a convention called merely to propose amendments to the Articles of Confederation. As the American Constitutional Convention exceeded its mandate under the Articles of Confederation but produced a valid organic law upon popular ratification, so too the Georgia legislature could be the agent of a valid organic law if the electorate affirms.

This case is perhaps the leading case in this line and has been cited in many of the others. It has been characterized by the dissent in Ref. 242 as an act of "expediency."

242. *Gatewood v. Matthews*, 403 S.W.2d 716 (Kentucky 1966).

The Kentucky court relied on *Wheeler* (Ref. 241) and its popular sovereignty rationale to refuse to enjoin an election to ratify a constitution placed on the ballot by the legislature without textual authority to do so. It is worth noting that the electorate refused to ratify the proposed constitution. For a critical analysis of this opinion, see Ref. 272, below.

In addition to its reliance on *Wheeler*, the Kentucky court found support in a provision in the Kentucky Bill of Rights expressing the dogma of popular sovereignty. The provision relied upon, like the 9th Amendment of the American Constitution, is a common provision of American constitutions.

243. *Smith v. Cenarrusa*, 93 Idaho 818, 475 P.2d 11 (1970).

The Idaho court upheld the legislature's placement of a new constitution on the ballot for electoral ratification in a procedure similar to that authorized by the constitution for amendment proposals. The court thus authorized a legislative refusal to use the convention procedure provided in the constitution.

The court relied on *Gatewood* (Ref. 242) and *Wheeler* (Ref. 241); it provides little original analysis of its own. The opinion considers but rejects the analysis of *McFadden v. Jordan* (Ref. 245).

5. CASES HOLDING THAT EXTRA-TEXTUAL MEANS OF CONSTITUTIONAL CHANGE ARE NOT AVAILABLE

244. *State v. Manley*, 441 So. 2d 864 (Alabama 1983).

The legislature sought to submit a new constitution to the electorate for ratification by procedures established for amendment. The Alabama Supreme Court enjoined the election under the rationale of *McFadden v. Jordan* (Ref. 245).

245. *McFadden v. Jordan*, 32 Cal. 2d 330, 196 P.2d 787 (1948).

This decision is the leading case holding that extra-textual means of constitutional change are invalid. Specifically, the court, in an opinion written by Justice Roger Traynor, held that a proposed initiative constitutional amendment was an invalid attempt to revise the constitution. The court reasoned that the existence of both revision and amendment procedures required that a distinction between revisions and amendments be maintained. The amendment procedure could be used to enact only proposals of limited scope. Broader change could be effected only by the more difficult revision procedures. This is the origin of the "non-revision" limitation upon the scope of a proposed constitutional amendment.

246. *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 208, 583 P.2d 1281, 149 Cal. Rptr. 239 (1978).

This decision upheld Proposition 13, the widely noted tax-cutting proposition, in the face of attacks alleging, among other things, that the proposal violated the non-revision limitation upon the scope of an amendment proposal. The court articulated a standard under *McFadden v. Jordan* (Ref. 245) that provided that an amendment would be invalid as a revision if it was overly broad either "qualitatively" or "quantitatively." By these terms, the court referred to the number of provisions of the existing document that would be amended and the qualitative impact that a change would have. As an example of an unconstitutional

revision that would be qualitatively overbroad, the court suggested proposals to abolish the judiciary or to grant judicial power to the legislature.

The qualitative and quantitative test has considerable appeal, but it should be noted that the California court only reluctantly invalidates amendments on non-revision grounds. The test is applied with considerable deference, as its application to Proposition 13 in this case demonstrates.

247. *Opinion of the Justices*, 264 A.2d 342 (Delaware 1970).

This is an advisory opinion requested by the governor as to the validity of a plan to revise the state constitution by a series of amendments.

The court recognized the non-revision requirement and the revision-amendment distinction offered in *McFadden v. Jordan* (Ref. 245) and provided a "nature and scope" test under Delaware law similar to the *Amador Valley* (Ref. 240) test. The proposed amendments would, the court indicated, each face scrutiny under the non-revision limitation, but no objection to a series of amendments *per se* could be made. See Refs. 63 and 130, above and note that Delaware provides no electoral role in constitutional amendment, but does provide such a role in constitutional revision.

248. *Rivera-Cruz v. Gray*, 104 So. 2d 501 (Florida 1958).

The legislature attempted to revise the state constitution by proposing 14 amendments, each of which revised an article or articles. Each of the amendments provided that it would not go into effect unless all of the others were also approved. The court adopted the *McFadden v. Jordan* (Ref. 245) rationale and invalidated the amendment proposals as violative of the non-revision requirement.

249. *Adams v. Gunter*, 238 So. 2d 824 (Florida 1970).

The court invalidated a proposed amendment to create a unicameral legislature as an unconstitutional revision, citing *Rivera-Cruz* (Ref. 248) and *McFadden* (Ref. 245). The dissenting opinion denies that a non-revision limit on the amendment power exists.

250. *Floridians Against Casino Takeover v. Let's Help Florida*, 363 So. 2d 337 (Florida 1978).

Although this case involved an attack on an initiative constitutional amendment charging that it violated the single subject rule, the opinion is cited here because it includes a lengthy and helpful discussion of the revision-amendment distinction.

251. *Ellingham v. Dye*, 178 Ind. 336, 98 N.E. 1, *appeal dismissed*, 23 U.S. 250 (1912).

The Indiana Supreme Court invalidated a legislative attempt to circumvent the convention process by presenting a revision drafted under legislative supervision to the electorate. The court's rationale, similar but somewhat different from that of *McFadden* (Ref. 245), argues that the legislature is possessed only of ordinary legislative authority and may have only such a role in the extra-ordinary process of constitutional change as is expressly provided by the constitution. Therefore, the legislature had no power to propose a constitutional revision because the people of the state had granted that power to a convention alone.

252. *Opinion of the Justices*, 60 Mass. (6 Cush.) 573 (1833).

This terse advisory opinion, requested by the House of Representatives, is cited as authority for the proposition that the textual provisions for constitutional amendment are the sole means by which constitutional change may be effected. This decision is discussed and criticized by the Rhode Island court in Ref. 240. The court does suggest that a convention could have *extra*-constitutional authority by virtue of popular election. Its holding of invalidity, then, means invalid under the existing constitution, not necessarily invalid *in toto*.

253. *State ex rel Miller v. Taylor*, 22 N.D. 362, 133 N.W. 1046 (1911).

This early decision of the North Dakota Supreme Court is the oldest articulation of the amendment-revision distinction discovered in this research. The court recognized the force of the distinction, but concluded that the drafters of the constitution had mistakenly used the word "revise" in a provision limiting the location of state-maintained educational institutions where the word "amend" was clearly required.

This opinion is relevant here not only for its early recognition of the amendment-revision distinction, but because its analysis offers a useful guide to the scope and meaning of that distinction.

254. *Holmes v. Appling*, 237 Ore. 546, 392 P.2d 636 (1964).

The Oregon Supreme Court invalidated an attempt to adopt a new constitution via initiative. The court relied upon the amendment-revision distinction for its holding and cited *McFadden* (Ref. 245).

6. BACKGROUND MATERIALS ON STATE CONSTITUTIONAL CHANGE

A. In General

255. Council of State Governments, *The Book of the States*, 26 vols. through 1986, 1986-87 edition dated 1986, Lexington, Ky.: Council of State Governments.

This biannually produced reference tool is an invaluable compendium of information about state constitutions, governance, politics, economics, etc. It includes many tables, charts, and bibliographies on a variety of subjects. The first chapter of each edition summarizes state constitutional change in the two year period covered and is the most accessible source of information about state constitutional change.

256. Graves, W. Brooke (ed.), *Major Problems in State Constitutional Revision*, Brattleboro, Vt.: The Vermont Printing Co., 1960.

Collected essays on the processes of constitutional change and the particular reforms needed in American constitutions as of 1960. Although this work is dated, it aids analysis of constitutional developments in the 1960s and 1970s because it called for changes subsequently enacted in many states. Note that most of the essays are works of political science rather than of legal scholarship.

257. Dodd, Walter F., *The Revision and Amendment of State Constitutions*, New York: Da Capo Press, 1970, reprint of the Johns Hopkins Press, Baltimore, Md., 1910.

Scholarly but dated discussion of the history of American constitutions and the legal theory of constitutional revision. The work includes extensive citation to caselaw. It is cited here because it is the source of the arguments in some of the older cases noted and is cited by those opinions. No comparable modern work on this subject appears to exist.

258. Sturm, Albert L., *Trends in State Constitution Making: 1966-1972*, Lexington, Ky.: The Council of State Governments, 1973.

This work replicates the information presented in the *Book of States* volumes for the appropriate bienniums. It summarizes state constitutional revision procedures, recent changes enacted, and makes recommendations for change. Includes a variety of useful tables.

259. Council of State Governments, *Recent Constitutional Revisions Activities: 1967-1968*, Chicago: Council of State Governments, 1969.

This work replicates the information provided in the 1967-1968 *Book of States*. It is a summary of constitutional revisions activity in all 50 states in the specified period.

260. Sturm, Albert L., *Methods of State Constitutional Reform*, Ann Arbor, Mich.: University of Michigan Press, 1954.

Dated, but useful, basic introduction to the methods of constitutional revision, their relative strengths and weaknesses, and their history.

261. Clem, Alan L. (ed.), *Contemporary Approaches to State Constitutional Revision*, Vermillion, S.D.: Governmental Research Bureau, University of South Dakota, 1970.

This work is the edited transcript of the Charles Hill Dillon Lectures in Law and Government at the University of South Dakota given by Professors David Fellman of the University of Wisconsin, John Bebout of Rutgers University, and G. Theodore Mitau, of Macalester College. The lectures coincided with the first meeting of the South Dakota Constitutional Revision Commission and consist of the advice of academics to the commission on recommended changes and on the experience of other states.

262. Comment, *Judicial Review of Initiative Constitutional Amendments*, 14 U.C.D.L. Rev. 461 (1980).

This comment provides a useful summary of the requirements for initiative constitutional amendment in the seventeen states that allow this procedure. The author makes an unpersuasive argument that courts should review amendment proposals with great deference in order to avoid frustrating popular sovereignty. The appendix lists constitutional and statutory references for each jurisdiction.

263. Lumb, R. D., *Methods of Alteration of State Constitutions in the United States and Australia*, 13 Fed. L. Rev. 1 (1982).

This article presents a concise comparison of American state constitutional revision procedures with Australian practice. The author argues for an increased popular role in the Australian amendment procedures.

264. Ertukel, A. D., *Debating Initiative Reform: A Summary of the Second Annual Symposium on Elections at the Center for the Study of Law and Politics*, 2 J. L. & Pol. 313 (1985).

This work includes a useful summary of current criticisms of the initiative process and of current suggestions for reform. The discussion covers both constitutional and statutory initiatives.

265. Magelby, David B., *Direct Legislation: Voting on Ballot Propositions in the United States*, Baltimore, Md.: John Hopkins University Press, 1984.

A political scientist's analysis of the processes of initiative and referendum and a study of how voters make ballot choices. The book contains an extensive bibliography and summary data on recent ballot propositions in many jurisdictions. It also evaluates the legitimacy of direct democracy in terms of political theory.

266. Butler, D. and A. Ranney, *Referendums: A Comparative Study of Practice and Theory*, Washington, D.C.: American Enterprise Institute for Public Policy Research, 1978.

An international comparison of referendum politics and theory with chapters on the United States and California. Provides a helpful summary of the arguments for and against initiative and referendum. The work includes a wealth of data as to where and how these devices are available.

267. Fischer, James M., *Ballot Propositions: The Challenge of Direct Democracy to State Constitutional Jurisprudence*, 11 Hastings Const. L. Q. 43 (1983).

The article reviews the extent to which state constitutional adjudication is insulated from majoritarianism and argues for a modified and restrained course of adjudicating ballot propositions to prevent majoritarian backlash. This work is rich in citations to caselaw and discusses initiative constitutional amendments and other methods of constitutional change.

268. National Municipal League, *Model State Constitution*, 6th ed., New York: National Municipal League, 1963, revised, 1968.

The text of this model Constitution is also available in Ref. 1. The document is the work of legal scholars, practitioners, and political leaders and reflects contemporary attitudes toward state constitutional development. Particularly useful is comparison of the six editions of the document to disclose the changes in American attitudes toward constitutions and to enlighten discussion of constitutional reform.

B. Particular States

269. Cornwell, E., Jr., J. Goodman, and W. Swanson, *State Constitutional Conventions: The Politics of the Revision Process in Seven States*, New York: Praeger Publishers, 1975.

This book is a comparative political science analysis of the work of seven state constitutional conventions. It provides useful history and data about procedures used in Rhode Island, New York, Maryland, Hawaii, New Mexico, Arkansas, and Illinois.

270. Sturm, Albert L., *The Procedure of State Constitutional Change – With Special Emphasis on the South and Florida*, 5 Fla. State U.L. Rev. 569 (1977).

The author discusses procedures for constitutional change with a detailed overview of Florida's constitutional history. Professor Sturm analyzes the various procedures in terms of their efficacy and suitability in light of the expressed goals of flexibility and stability in state constitutional law.

271. Florida State University Law Review, *Symposium on the Proposed Revisions to the Florida Constitution*, Vol. 6, No. 3, Summer 1978.

This symposium edition includes the text of the revised constitution and articles analyzing each revision proposal. The issue

contains documentation of the Constitution Review Commission proceedings that lead to the proposals.

272. Oberst, Paul and J. Kendrick Wells, *Constitutional Reform in Kentucky – The 1966 Proposal*, 55 Ky. L.J. 50 (1966).

The authors analyze and defend the decision in *Gatewood* (Ref. 242) as jurisprudentially and politically sound in light of the broad problem of constitutional change. Essentials of the argument are a contention that popular sovereignty is served by allowing the legislature to propose a revision despite the absence of explicit constitutional authority to do so and a belief that the constitutional provisions for change in Kentucky's organic law (see Refs. 72 and 139 above) are inadequate.

273. Southwick, Leslie H., *State Constitutional Revision: Mississippi and the South*, The Mississippi Lawyer 32, 3 (November-December 1985): pp. 21-25.

A short review of the recent history of constitutional change in Mississippi with reference to the experience of other southern states.

274. Howard, A. E. Dick, *Constitutional Revision: Virginia and the Nation*, 9 Univ. of Richmond (Va.) L. Rev. 1 (1974).

Overview of Virginia constitutional revision process leading to the Constitution of 1970 with analysis of why constitutional change was accomplished in Virginia while other states failed. The author was Executive Director of the Virginia Commission on Constitutional Revision and directed the campaign in favor of ratification of the revision proposal at the polls.

275. National Municipal League, *State Constitutional Studies*, 10 vols. in 2 series. New York: National Municipal League, 1969-1978.

A compendium of research collected and/or commissioned by the League on the topics of state constitutional law and development over a ten year period.

276. National Municipal League, *State Constitution Studies*, 10 vols. in 2 series. New York: National Municipal League, 1960-1965.

A compendium of research collected and/or commissioned by the League on the topic of state constitutional law and development over a five year period. This work is a predecessor to Ref. 275 and the works are productively used together.

7. BIBLIOGRAPHIES OF STATE CONSTITUTIONAL CONVENTION DOCUMENTS

The following works are bibliographies of state constitutional convention documents ranging from transcripts of convention deliberations, to proposed revisions and amendments, to commentaries and histories.

277. University of Chicago Library, Document Section, *Official Publications Relating to American State Constitutional Conventions*, New York: H.W. Wilson, 1936.

A bibliography of transcripts, legislative calls, convention proposals and ordinances.

278. Sturm, Albert L., *Selected Bibliography on State Constitutional Revision*, prepared for the Florida Constitution Revision Commission (created by Senate Bill No. 977, approved June 24, 1965), Tallahassee, Fla.: Institute of Governmental Research, The Florida State University at Tallahassee, 1966.

This manuscript provides a selection of materials on the theory and practice of state constitutional revision with a focus on the experience of states that attempted revision in the 1950s and 1960s. The work is now somewhat dated.

279. Sturm, Albert L., *A Bibliography on State Constitutions and Constitutional Revision*, 1974-1975, Englewood, Col.: The Citizens Conference on State Legislatures, August 1975.

280. Halevy, Balfour J., *A Selective Bibliography on State Constitutional Revision*, 2d ed., New York: National Municipal League, 1967.

Broad based compilation of official publications with analytical commentary. Although the work is somewhat dated, the section entitled "Methods of Revision" (pp. 145-153) is especially useful.

281. Brown, Cynthia E. (ed.), *State Constitutional Conventions: From Independence to the Completion of the Present Union: A Bibliography*, Westport, Ct.: Greenwood Press, 1973.

Supplemented by Refs. 282 and 283, this work compiles available materials on state constitutional conventions for the first 175 years of the United States.

282. Yarger, Susan Pace (ed.), *State Constitutional Conventions, 1959-1975*, Westport, Ct.: Greenwood Press, 1976.

This work supplements Ref. 281.

283. Canning, B. (ed.), *State Constitutional Conventions, Revisions and Amendments, 1959-1976: A Bibliography*. Westport, Ct.: Greenwood Press, 1977.

This work supplements Refs. 281 and 282.

8. EXPANDING AND UPDATING THIS PATHFINDER

The material presented in this pathfinder is necessarily limited in depth because of its fifty-state scope. It is anticipated that the user, who will likely be interested in the law of a particular state, will wish to update and expand upon the research compiled here. This section includes persons, organizations, and libraries which may be of special help in that task.

A. Experts

284. Professor A. E. Dick Howard
White Burkett Miller Professor
of Law and Public Affairs
University of Virginia
Charlottesville, VA 22901

Professor Howard was the Executive Director of the Virginia Commission on Constitutional Revision (1968-1969) and Director of referendum campaign leading to the approval of the Virginia Constitution of 1970. His academic work has included studies of state amendment procedures.

285. Professor Albert L. Sturm
Professor Emeritus
Center for Public Administration and Policy
Virginia Polytechnic Institute and
State University
Blacksburg, Virginia 24061

Professor Sturm has devoted his career to the study of the theory and practice of state constitutional change. In addition to the many works cited herein (see listing in Table of Persons and Organizations), Professor Sturm writes the constitutional law and development chapter of the biannual *Book of States* and serves as a consultant to the Council of State Governments on issues concerning state constitutional development. He has been an advisor to the Constitution Revision Commissions in Florida and Texas.

B. Organizations

286. Advisory Commission on Intergovernmental Relations
1111 20th Street, N.W., Suite 2000
Washington, D.C. 20575
202-653-5540
S. Kenneth Howard, Executive Director

This is an independent agency of the United States government which studies relationships among local governments, states, and the national government. The Commission addresses particular

issues and has studied initiative and constitutional questions in the past. The Commission produces a variety of publications and reports.

287. Citizens Forum on Self-Government/
National Municipal League
(formerly the National Municipal League)
55 W. 44th Street, 6th Floor
New York, NY 10036
212-730-7930
John Parr, Executive Director

Founded in 1894 as an association for the improvement of state government, the League serves as a clearinghouse for information related to state government. Its 8000 volume library is especially strong on state constitutional history. The League publishes the *National Civic Review* eleven times each year and has a working group entitled "Committee on Initiative and Referendum." The *National Civic Review* publishes an annual report on state constitutional development in its January or February issue.

288. The Council of State Governments
Iron Works Pike
P.O. Box 11910
Lexington, KY 40578
606-252-2291

The Council is the official organization of the fifty state governments as well as the governments of the U.S. territories and possessions. Its leadership is elected from among the state governors. It is affiliated with a number of organizations of elected state officials, e.g. The National Governors Association, The National Democratic Governors Association, etc. The League has regional offices in New York, Chicago, Atlanta, San Francisco, and Washington, D.C. Each office possesses a staff and library. The Council publishes a variety of documents and reports, perhaps the most useful of which is the *Book of States*, Ref. 255, above.

289. Initiative News Report
1980-1985, fortnightly
Capitol Publications, Inc.
1300 N. 17th Street
Arlington, Virginia 22209
ISSN 0273-3196

This newsletter, no longer in publication, was a topical update on initiatives and referendum pending in the fifty states. It is of historical relevance for the period in which it was published. The publishers also produce other newsletters on government and politics.

290. League of Women Voters of the United States
1730 M Street, N.W.
Washington, D.C. 20036
202-429-1965
Grant Thompson, Executive Director

The League includes hundreds of local, state, and regional chapters including at least one in each state. The organization was formed to promote political responsibility through informed and active citize participation. The League collects, analyzes and distributes information on political issues. The products of the League tend to be either general voter information or reports on specific issues. The League chapter for a state of interest will be able to provide information and advice on issues of public interest in which they have been involved.

291. The National Center for Initiative Review Foundation
5670 S. Syracuse Circle, Suite 328
Englewood, CO 80111
303-779-1949
Greg Williams, Acting Executive Director

The Center was founded in 1981 to assist in the long term improvement of the initiative process. It publishes the *Initiative Quarterly*, and gathers, analyzes, and disseminates information and about initiative activity. The organization also assists those who seek initiative reform.

C. Libraries

Each state possesses a state library or archives. This research center will frequently be staffed with experts on the law and history of the state. Therefore, this should be the most useful collection for work on a particular problem. In fact, many documents such as convention transcripts and the like will be unavailable from any other source. For information about a particular state's collection, begin with the Chief State Elections Officer listed in Section 3, above.

292. Federal Election Commission
National Clearinghouse on Election Administration
Document Center
1325 K Street, N.W.
Washington, D.C. 20463
800-424-9530
Gwenn Hofmann, Assistant to the Director

The FEC possesses a 3000 volume library on federal and state election law and administration, census data, and related information. It is comprised of published materials as well as contract research project reports. Information may be obtained via the Clearinghouse's toll free phone line.

293. University of California, Berkeley—
Government Documents Department
General Library
Berkeley, CA 94720
415-642-3287
Elizabeth Myers, Head Librarian

This is a collection of federal and state government materials on topics including constitutions, elections, and politics. The library is a U.S. depository library and receives the majority of the depository items published by the federal government. All states have depository libraries.

294. University of Connecticut—The Roper Center
Box U-164 R
Storrs, CT 06268
203-486-4440
Everett C. Ladd, Executive Director

This collection devoted to public opinion research contains the results of over 10,000 surveys taken by major survey organizations world wide. This vast collection of public opinion data contains references to election contests including initiative and other constitutional ratification elections.

D. Annotations of Related Caselaw

The annotations listed below were prepared by the Lawyers Cooperative Publishing Co. in their *American Law Reports Annotated* series. Though each of the annotations is dated, the publisher provides updates and the caselaw in the area of state constitutional revision is sufficiently thin that dated cases are of use. The title of the annotations supply all the commentary necessary.

295. *Proposition Submitted to People as Covering One or More Than One Proposed Constitutional Amendment Within Contemplation of Constitutional Provision in that Regard*, 94 A.L.R. 1510 (1935).

296. *Power of State Legislature to Limit the Powers of a State Constitutional Convention*, 158 A.L.R. 512 (1945).

297. *Injunction Relief Against Submission of Constitutional Amendment, Statute, Municipal Charter, or Municipal Ordinance, on Ground that Proposed Action Would be Unconstitutional*, 19 A.L.R.2d 519 (1951).

E. Search Terms

This section reproduces index headings and other research data used to produce this Pathfinder. This information should prove helpful in locating materials produced subsequent to this tool

298. Library of Congress Subject Headings.

These subject headings are used in most major library catalogs and by some other indexes such as the Legal Resources Index. The topics helpful for this subject include:

Constitutional Law, State—Amendments
Constitutional Conventions
Constituent Power
Referendum
Initiative, Right of

299. InfoTrac Subject Headings.

These subject headings, based on, but more detailed than, the Library of Congress subject division include these relevant index headings:

Constitutional Conventions—Evaluation
—Law and Legislation
—Management
Constitutions, States
Constitutions, State—Comparative Method
—Interpretation and Construction
—Litigation
Initiative, Right of—Cases
Referendum—Analysis
—Cases
—Constitutional Law
—Evaluation
—History
—Law and Legislation
—Research
—Standards

300. WESTLAW and LEXIX Search Terms.

While the nature of a full text database search will necessarily depend on the particular subject of the search the following terms of art will be helpful in formulating a search:

Initiative Constitutional Amendment
Non-Revision w/ (Requirement or Limitation or Rule)
Single-Subject w/ (Rule or Requirement)

A. TABLE OF JURISDICTIONS.

References are to Reference Numbers.

A. TABLE OF JURISDICTIONS (continued)

B. TABLE OF CASES.

Cases are listed by both Plaintiff and Defendant names in a single alphabetical series. References are to Reference Numbers.

C. TABLE OF PERSONS AND ORGANIZATIONS.

References are to Reference Numbers.

C. TABLE OF PERSONS AND ORGANIZATIONS

(continued)

References are to Reference Numbers.

Courts and Indians: Sixty-Five Years of Legal Analysis: Bibliography of Periodical Articles Relating to Native American Law, 1922-1986

Rory SnowArrow Fausett
Judith V. Royster

INTRODUCTION

This bibliography is intended to be a research tool. Its purposes are to ease the task of reviewing the legal literature pertaining to Indian law, to provide a teaching aid for courses in federal Indian law, and to serve as a reference work for students and practitioners. We hope it is responsive to the needs of those working in Native American law, both lawyer and non-lawyer, as a mechanism to save labor and to improve their products. It is our intention also that this compilation draw attention to areas in which further detailed legal analysis of Native American jurisprudence is most needed.

Rory SnowArrow Fausett, JD, 1986, University of Wisconsin-Madison. Mr. Fausett is Siska (Blackfoot). He is employed currently by the State of Wisconsin Department of Justice, Environmental Protection Unit, and has worked on several Native American issues for the Department.

Judith V. Royster, JD, 1986, University of Wisconsin-Madison, is Law Clerk to the Hon. Barbara B. Crabb, Chief Judge, Western District of Wisconsin. Ms. Royster has worked extensively on Native American issues during a previous clerkship with the Wisconsin Department of Justice.

Legal Reference Services Quarterly, Vol. 7(2/3/4), Summer/Fall/Winter 1987

CONSTITUTIONAL AMENDMENTS APPEARING ON THE BALLOT

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Vote Totals	
				For	Against
08/23/66	Residency Requirement to Vote for President	Article V, Section 1	SJR 1	36,667	*12,383*
08/27/68	Commission on Judicial Qualifications	Article IV, Section 10	HJR 74	32,481	*12,823*
08/27/68	Compensation of Judicial Qualification Commission	Article IV, Section 13	HJR 74	27,156	*17,467*
08/25/70	Establishing Voting Age at 18 Years	Article V, Section 1	HJR 7	36,590	*31,216*
08/25/70	English Eliminated as Requisite for Voting	Article V, Section 1	HJR 51	34,079	*32,578*
08/25/70	Secretary of State Designated Lieutenant Governor	Article III, Sections 7 – 11, 13 – 15 and 25; Article XI, Sections 2 – 6; Article XIII, Sections 1 and 3; and Article XV, Section 9	SJR 2	46,102	*18,781*
08/25/70	Chief Justice Election by Supreme Court	Article IV, Section 2	HJR 11	44,055	*19,583*
08/25/70	Term of Office for Judicial System Administrator	Article IV, Section 16	HJR 11	43,462	*18,651*
08/22/72	Residency Requirement for Voting	Article V, Section 1	HJR 126	31,130	*20,745*
08/22/72	Prohibition of Sexual Discrimination	Article I, Section 3	HJR 102	43,281	*10,278*

CONSTITUTIONAL AMENDMENTS APPEARING ON THE BALLOT

Election Date	Subject of Amendment	Provisions Affected	Resolution Number	Vote Totals	
				For	Against
08/22/72	Right of Privacy	Article I, Section 22	SJR 68	45,539	*7,303*
08/22/72	Eliminate City Representation on Borough Assemblies	Article X, Section 4	SJR 52	30,132	*19,354*
08/22/72	Limited Entry Fisheries	Article VIII, Section 15	SJR 10	39,837	*10,761*
08/27/74	Voting on Constitutional Amendments at General Elections	Article XIII, Section 1	HJR 20	56,017	*20,403*
11/02/76	Action on Veto of Bills	Article II, Sections 9 and 16	HJR 11	71,829	*39,980*
11/02/76	Permanent Fund from Nonrenewable Resource Revenue	Article IX, Sections 7 and 15	HJR 39	75,588	*38,518*
11/02/76	Administration and Review of State Land Disposals	Article VIII, Section 10	SJR 10	*46,652*	64,744
11/02/76	Direct Financial Aid to Students	Article VII, Section 1	HJR 73	*54,636*	64,211
11/07/78	Powers of Legislative Interim Committees	Article II, Section 11	SJR 16	*48,078*	68,403
11/04/80	Legislative Annulment of Regulations	Article II, (New Section)	HJR 82	*58,808*	82,010
11/04/80	Disqualifications of Legislators	Article II, Section 25	SJR 2	*47,054*	99,705
11/04/80	Interim and Special Legislative Committees	Article II, Section 11	HJR 80	*41,868*	102,270
11/04/80	Appointment and Confirmation of Members	Article III, Section 26	HJR 20	*56,316*	90,506

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11/02/82	Veterans' Housing Bonding Authority	Article IX, Section 8	HJR 71	111,460	*69,497*
11/02/82	Changes in Commission on Judical	Article IV, Section 10	HJR 32	123,172	*53,424*
11/02/82	Limiting Increases in Appropriations	Article IX, Section 16; Article XV, Sections 26, 27 and 28	SJR 4	110,669	*71,531*
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11/08/88	Resident Hiring Preference	Article I, Section 23	HJR 18	162,997	*30,650*
11/06/90	Budget Reserve Fund	Article IX, Section 17	SJR 5	124,280	*63,307*

Rejected by voters.

Prepared by the Legislative Research Agency, September 1992 (92.A).

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Prepared by the Legislative Research Agency, September 1992 (92.A).

PREFACE

A majority of Alaskans voting on Aug. 26, 1980, authorized the creation of the Alaska Statehood Commission. They directed the commission to study the status of the people of Alaska within the United States, and to make recommendations on that relationship.

It was the first time since the Civil War that citizens of a state have by their vote indicated unease with federal union.

The law provides for 11 commissioners: five appointed by the governor, two appointed by the president of the Senate, two by the House speaker, and two by the Legislative Council. We first gathered on Oct. 22, 1980, in Constitution Hall at the University of Alaska-Fairbanks. In 27 months of work, we met and heard public comment in Barrow, Kotzebue, Anchorage, Nenana, Fairbanks, Juneau, Ketchikan, Sitka and Homer. We contracted for 14 expert studies totaling 2,000 pages, on topics ranging from an oral history of the statehood movement to an analysis of the flow of funds between Alaska and the federal government. Commission staff prepared other research at our direction.

In the final pages of this report readers will find a research bibliography. Full copies of our contract research are available at state legislative information offices and most public libraries.

In January 1982 we published our first findings, entitled *More Perfect Union: A Preliminary Report.* That spring we held statewide teleconference hearings on the report.

In this final report, we set forth 20 recommendations. Some of them do not originate with the Statehood Commission; for example, a legal action fund for the states is a suggestion from the U.S. Advisory Commission on Intergovernmental Relations. Because our enabling legislation charged us to preserve Native interests, we checked to ensure that none of the actions we recommend would interfere with the legal rights of Natives. None would.

Together, our two reports give a complete picture of our duties and how we discharged them. Our preliminary report stressed findings and conclusions--few of which changed after its publication. Our final report recommends deeds: hence the title, *More Perfect Union: A Plan for Action.*

Executive Summary

History, economics and technology have combined to offer Alaska a chance for leadership beyond its borders. Once isolated, but no more, Alaska must become a vigorous actor on the national scene, eager to dispel ignorance about itself, a state eager to support the powers of all states, a state willing to break new trails with other states in forming new compacts and coalitions to solve mutual problems. Alaska must speak out against abuses of federal power, in the press and in the courts and in councils of the states and of the nation.

In August 1980 Alaskans created the Alaska Statehood Commission to study and make recommendations on the relationship of Alaska to the United States.

We considered the benefits and liabilities of commonwealth, of free association, of territoryhood, and of partition. We studied independence by legal means. None is preferable to statehood.

We have spent more than two years on this work. We compared the government we have with the Constitution we honor. We studied alternative forms of association with the United States.

We considered the benefits and liabilities of commonwealth, of free association, of territoryhood, and of partition. We studied independence by legal means. None is preferable to statehood.

We do believe that our union needs fundamental change, for federal influence has grown without guidance. But one state out of 50 can do little on its own. All states must share in the work: to write rules to clarify Article V of the U.S. Constitution, which empowers states to propose amendments; to take joint legal action to oppose federal intrusions; to sponsor a national gathering to forge a balanced federalism. Gaining control of our union will take decades of work.

Alaska has the money and the need to spur these and other nationwide projects. We must become an activist state, reaching out for coalitions obvious (western and resource states) and not so obvious (the fishing states of Massachusetts and Maine). We must defend our regional interests with research, persuasion, and pragmatic politics. We must refuse federal grant money if it comes with conditions that undercut our self-determination.

States cannot passively depend that court decisions will quote the 10th Amendment to stop federal action. The 10th Amendment, which reserves unspecified powers to the states, needs action by the states to flesh it out.

We learned that full statehood has not yet come to Alaska.

The Alaska Statehood Act contains mutual promises between the people of Alaska and the federal government. The federal government in 1959 promised to transfer to Alaska an entitlement of 103 million acres of land by 1984. The national government would not meet that deadline and had to extend it to 1994. Alaska sued to get action. The Interior Department promised in a 1981 out-of-court settlement to transfer 13 million acres each year until the total is satisfied. The lesson of the past is clear: the federal government will not honor the land and revenue-sharing pacts of the Statehood Act without Alaska's constant vigilance.

Alaskans also have agreements to keep. When we voted for the Alaska Constitution and for the Statehood act we promised to surrender forever all claims to federal lands in Alaska. We should not now repudiate this "clause irrevocable" to pursue fruitless court suits claiming title to this land.

This report is addressed to Alaskans and dwells on Alaskan particulars. But every state has some problems with federal dominance, be it Hawaii with the Jones Act, Florida with immigration, California with accelerated federal oil leasing of the Outer Continental Shelf, or the New England states with federal treaties that parcel out fisheries.

We studied the powers of the states. We reject the notion that our governmental system forms a pyramid of power with the federal government seated on top. The states and federal government

are partners. Each has important duties. States contribute new ideas. They train national leaders. States adapt national goals to local realities. We are a federal republic and federalism thrives in diversity, on pluralism. A federal nation will always have variety; states have different needs and incomes, different economies, different penalties for crimes, different kinds of local government powers. And, at any given time, some states once poor--like Alaska--prosper while others count pennies. This is nothing new. Wealth flows among the states under the pull of the fickle but irresistible tides of population, economy, and technology. Some resource-poor states would breast these tides. Their officials appeal for federal laws to cap state severance taxes on energy resources, encouraged by a 1981 U.S. Supreme Court opinion[1] that Congress does have power to limit states' mineral revenues. They call for changes to the Windfall Profits Tax[2] to put a levy on states' royalty incomes. Either law would pull down a pillar of state sovereignty: the power to raise necessary revenues. Either law eventually would hurt the states now advocating them, for the precedent once established would spread to all state revenue measures.

We Alaskans wince at the unfamiliarity the leaders of these states display about our wealth, our resources, our climate, and our needs for the highways and the sewers and the safe-water systems that other states take for granted. We must dispel this ignorance with facts and better press relations. We also must educate our own children about the history and cultures of our state, and its niche in the union. We must teach every schoolchild the rights and responsibilities of American and Alaskan citizenship.

Resource-poor states, mainly those of the Northeast and Midwest, also lobby for new grant formulas which would cut federal aid to prosperous states. Alaskans do not automatically oppose some level of redistribution. Already the federal government collects $3 in taxes on general economic activity in Alaska for every $1 it spends here. It collects 46 percent of the total revenue from the Prudhoe Bay oil field owned by the state. The state collects 31 percent.[3]

We must make clear that a healthy and prosperous Alaska is in every American's interest. From Alaska comes one-eighth of the nation's gold; one-fifth of the nation's oil production; and two-fifths of its harvested fish. Off Alaska is the world's richest salmon fishery. Alaska has 10 of 16 strategic minerals needed for the nation's security.[4] In Southeast Alaska is one of the world's biggest metal deposits: a mountain of molybdenum called Quartz Hill. Alaska--once thought hopelessly distant from arteries of trade --now sits at the hub of international air routes and the Pacific Rim trade. Half the world's population lives on the Pacific Rim.

A federal nation will always have variety; states have different needs...

Alaska's bounty and its trade suffer under such federal laws as the Export Administration Act of 1979, which bans the export of Alaska oil, and the Jones Act, which requires U.S. shipping between U.S. ports. Some Alaska oil fields and mineral deposits will never develop due to the artificially high transportation costs these shipping acts breed. Further, these laws sap revenue from the deposits we have already opened. Lifting the oil export ban could raise Alaska's oil revenues $500 to $800 million yearly, and increase federal revenues $1.2 to $1.8 billion yearly.

Problems like the Export Administration Act need immediate attention. Other tasks--like rebuilding the powers of the states--will take years. Some changes we Alaskans may have to accept for the good of the nation though they do not profit us in the short term. But eventually we will see the states transformed, giving new life to the nation Abraham Lincoln called the "last, best hope of earth."

Therefore, we recommend:

1. Alaska should become an activist state. It should take a lead among states to define the boundaries of state powers in our union.

2. Repeal of the Jones Act will serve Alaska's and the nation's interest, and Alaska should seek repeal. In the short term, the state should dedi-

[1] *Commonwealth Edison v. Montana*, 69 L.Ed.2d 884.

[2] A federal district court judge in Wyoming recently ruled the Windfall Profits Tax Act unconstitutional on the grounds that geographic distinctions in the act exempting some areas of Alaska from taxation violate Article I, Section 8 of the U.S. Constitution. This section requires that "excises shall be uniform throughout the United States." Whatever the outcome of the lawsuit, Alaskans should consider the advantages of dropping the current geographic exemption in favor of an exemption for new oil development regardless of location. Such an approach might answer both the constitutional challenge and legitimate national energy interests. It might strengthen Alaska's role in the federal system.

[3] Industry collects 23 percent. These percentages reflect the *total* take of revenue from the field. They do not reflect the shares which would be taken by each if wellhead price went up. If the wellhead price goes up, the division of these additional dollars is weighted even more toward the federal government, largely due to the federal Windfall Profits Tax. If, for example, wellhead price of Alaska oil went up one dollar after repeal of the Jones Act, the federal government would capture about 60 cents of the increase, the state 28 cents, and industry 10 cents.

[4] These are in deposits believed to be commercially viable. However, the bulk of Alaska's cobalt and nickel ores are located in Glacier Bay National Park, which is not open to mining. Geologists estimate that Alaska has one-sixth of the nation's cobalt reserves and one-fifth of its nickel.

cate itself to getting the Jones Act amended to allow the use of foreign-built ships in the Jones Act trade.

3. Alaska and our congressional delegation should vigorously oppose extension of that portion of the Export Administration Act of 1979 which bans the export of Alaska North Slope oil. This law expires in September 1983.

4. Alaska must act immediately to create in Washington, D.C., a research and advocacy institute and ask other resource states to join in supporting it. The institute would combat efforts in Congress to limit or tax state resource revenues.

5. The state Board of Education and Alaska school districts should require the teaching of Alaskan history, citizenship and culture.

6. The Alaska State Legislature should pass a resolution applying to Congress under Article V of the U.S. Constitution for the calling of a national constitutional convention. The convention's sole duty would be to define the procedures governing all future constitutional conventions called by the states.

7. Alaska should take the initiative to establish a legal action fund for the states. Lawyers for this fund would sue to oppose illegal and coercive federal restrictions, regulations burdensome to state and local government, and excessive use by Congress of its commerce powers to override state and local laws.

8. Alaska should provide seed money to the National Governors' Association or like organization to sponsor a national convocation on federalism in the United States.

Shown here are some of the national assets Alaska supplies.

9. Alaska and other states should consider amending the U.S. Constitution to strengthen the role of the states.

10. The governor of Alaska should prepare the political impact statements on proposed major federal actions. Eventually, the National Governors' Association should prepare them on the behalf of all states.

11. Alaska's governor should invite the leaders of northwestern states and the western Canadian provinces and territories to join Alaska in establishing a conference modelled after the New England Governors and Eastern Canadian Premiers Conference. The governor should establish in the executive branch an interagency task force on foreign relations.

12. The Legislature and the governor should immediately invite representatives of Hawaii and the noncontiguous possessions to meet with them to explore setting up a permanent coalition to deal with such common interests and problems as the effects of discriminatory transportation laws.

13. Alaska must vigorously police federal implementation of the Alaska Statehood Act. We should insist that the remaining land transfers be completed within four years, and we must guard against congressional attempts to unilaterally change the Statehood Act or Alaska Constitution. The Legislature should authorize and direct the lieutenant governor to place all such attempted changes in the Statehood Act or Alaska Constitution before Alaskan voters in a ballot proposition.

14. Alaskans should consider two amendments to the state constitution which will clarify Alaska's powers as a sovereign state and its authority to engage in foreign relations.

15. State officials should refuse federal grants carrying particularly burdensome requirements.

16. The Legislature should fund the Department of Revenue or other appropriate agency to make an annual study of and report on the flow of federal spending and revenues in Alaska.

17. The governor should establish an office of external relations on his staff, to be headed by a special assistant charged with coordinating Alaska's expanded relations with other states and with foreign nations.

18. The State of Alaska should explore with the federal government and Native organizations the establishment of a permanent joint fact-finding and advisory body to air and help reconcile problems that arise over land, resources and other interests.

19. The Legislature, in order to give all Alaskans the greatest measure of home rule, should divide Alaska's single unorganized borough into regional unorganized boroughs in accordance with the intent of the state constitution.

20. The state should establish an Alaska information office under the governor's direction to produce clear, objective, precise information about Alaska for nationwide distribution and to arrange for visits to Alaska by members of the national press corps, members of government and other opinion-makers.