

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILES 86/2

807 SCOM127: INT. COMM. CONSTITUTIONAL CONVENTION 1979-80

of the convention, he failed, but a compromise was reached and there was created the Arkansas constitutional revision study commission, composed of thirty people appointed by various elected officers and the governor had authority to appoint the majority of the commission.

234 Van Doren: Did the legislature appoint it?

235 Campbell: The legislature, the president pro-tem in the senate, the speaker of the house, each appointed five persons. Five were appointed by the chief justice, five by the president of the Arkansas Bar Association, and whatever that leaves, among the appointed groups. I think the governor had ten, and should add up to a total of thirty. I served as the executive secretary, a non-voting, salaried member. I'm a lawyer in private practice in Little Rock, my specialty through the years has been in municipal finance which brings me into contact with a good part of the constitutional provisions that relate to local government, limitations of debts and the organization of municipal governments. And, to some extent, the state legislative process, too. The work product of the study commission was in part an effort to justify the holding of the convention. A number of people who were appointed were individuals, not necessarily associated with the governor, but individuals who had been interested for a period of more than 10 years in having a good constitution. What we were dealing

with was not something just in a vacuum, but the political situation was that a number of people, democratic, republican, non-office holders, non-political types, had recognized for a long time that we needed to modernize our constitution. So, ultimately, a majority of our study commission voted to recommend to the legislature that a convention be called, because the total substantive volume of changes that needed to be made was such that it really couldn't be handled with the existing amendment process. Our legislature is permitted to submit only three amendments in each general election, each two years. Any other amendments have to come to the initiative process. We have an initiative and referendum provision roughly patterned on Oregon's in the early 1900's. It's not particularly difficult, but expensive, bothersome, it's hard to organize and all that stuff, except for very narrow special interest types of proposals, where the money or the people can be found for very narrow economically related amendments. The product of the study commission was a draft document. We were careful to style that draft document as simply a study document, and in many of the articles and sections we presented alternative solutions to what our commissioners conceived as problems. The study commission was presided over by the former dean of our law school at Arkansas, a respected scholar and a rather apolitical figure. He is not closely associated with any candidates or party affiliations, although he is commonly a Democrat, but it was not a partisan study commission, even

though it started out, its origin was that way, it didn't emerge as a partisan group. It had pretty good press coverage and we had among the people who at least were interested at all, we had a pretty good feeling about the work of the study commisison. The biggest argument we had was whether to submit the question of holding a convention to a special election or a general election, presumably because the people who were in favor of it would more likely turn out at a special election than those who were opposed to it would stay home or not care anything about it. The contrary feeling is that you turn out more people at a general election and many of those are uninformed about issues such as that, and therefore tend to vote against things they don't understand or never heard of. The legislature did decide to put the question of holding the convention in 1968 on the general election ballot, and surprisingly, most of the legislators who didn't think anybody cared about a constitutional convention, the issue passed. So we had called then in 1968, our convention. Curiously, in order to save money, we had people running for delegate positions in 1968, on the same ballot that the question of the holding of the convention was being submitted, and many of us who ran, and I didn't run for delegate position, did not know whether there was going to be a convention or not. The campaign was rather quiet, there was not a lot of money spent by delegates, and for the most part, they were, in broad categories what I would call good government type people, that is, they were not the people who had great political ambitions. Otherwise, there

was only one legislator out of a body of 100.

310 Van Doren: That was my next question. Was it a partisan election or bipartisan, and I was going to ask whether any legislators were on there, too.

313 Campbell: It was a nonpartisan election. There was no nomination process. It was required that you got a majority of votes in order to win the position, so in some cases, there was a run-off election two weeks after the general election, which almost nobody turned out for. The unusual measure, to my knowledge in modern times, was this was the first time there had ever been a run-off following a general election. Arkansas is predominately a two party, I mean a one party state, the Democratic party, the minority party candidates almost never run, and if anyone else ran it was certainly not more than one other party. The legislators were not excluded. We thought a long time in drafting the legislation for the convention and submitted it to the legislature, to put in an office holder exclusion. It is probably a good idea, but it was not considered politically smart to sort of flaunt that in the face of the legislators, whom we were asking to put the question on the ballot and to appropriate money, ultimately, for the operation of the convention. So we did not, since there had been no historical experience in recent times, there was no reason that legislators should or should not serve. We have a constitutional provision which

makes it a separation of powers argument which makes it pretty hard for a legislator to hold a public position in any other kind of government, except for having a school position, school superintendent, or a school board members. So, while we seriously debated, we did not exclude legislators. As I say, only one ran, he had served as a member of the study commission, I worked with him closely. He and I were totally opposed in almost every major position that we held, but he was the kind of person who was genuinely interested in what he was doing and provided a sort of focus for conservative impact, a focus for the conservative interest in the convention, and led them in a fairly reasoned way, so his presence was not political in the sense that you would think. Many times, state legislators focus on very narrow issues or the things that by and large makes it undesirable for them to serve because they are used to legislating and not dealing on the broader aspects of constitutional draftmanship. Now, our convention was called. It was funded adequately by the legislature. Not generously, but adequately. We met over the course, on and off, over the course of about a year, proposed a document and submitted it in the 1970 general election. It was not a radical reformation, but it was a fairly progressive reformation, and it was defeated by a vote of somewhere between 55 and 60 percent in the negative. It is probably not as much interest to the people in Alaska about the particular issues that we had, although I would be glad to go

into the particular things that we had that were problems. Most of them had to do with limitation or the removal of limitations on the property tax. There were a few very crazy things that we need to be careful about in drafting a constitution, for example in one preparatory phrase, the one word "God" was omitted just because we were moving from sort of Victorian English into the 20th Century English, and it didn't seem to be terribly important to most of us, but there were some fringe groups out there somewhere, fundamentalist ministers and other people, who said we had written a Godless constitution. Now, this wasn't a major point, but that was the kind of thing you pick up when you start changing old language which never meant anything for 100 years. It was never judicially interpreted, didn't mean a thing. You pick up people who want to argue about those things. A few other odds and ends like the constitutional provision which legalizes horse racing in one particular county in the state, these things all have historical basis and local political situations change from time to time, but you probably don't have in the relatively short life of your constitution, as many changes that have crept into it, in terms of local vested economic or political issues of that sort. If you don't have, that's very good, because then you can deal with what a constitution really ought to be about anyway, and that's the fundamentals of the operation of the system government and fine tuning of those,

after several years experience where something has not worked or it is not working as well. Unfortunately, older states, and particularly one which is slow to move on constitutional reorganization have to deal with a lot of minor unimportant things in terms of fundamentals of government, which are local issues with small groups of people. Now, the effort in 1970 failed, but from that convention came a number of things which could be dealt with legislatively or almost as well legislatively as they could have been in the constitution. I think some of the fundamental mistakes we made in some areas was where we were trying to legislate in our document when we weren't there to legislate, and we probably invited a few enemies, for example, we've had a fixed price structure on liquor prices in our state for a long time. Our constitution wanted to outlaw the so called fair trade prices for liquor. That was not a constitutional matter, but it was something that the legislature, because of the perceived domination by wholesale and retail liquor interests had never bothered to change. We thought we would get some support from the constitution and some of the people at large, if we took out the fair trade liquor prices. Well, what it ultimately turned out to be was that most of the people didn't understand the issue and didn't give a damn, but the wholesale and retail liquor people put up a lot of money to fight the new constitution because of the economic disadvantage. At any rate, in the process of the next three sessions of the legislature, a number of concepts which we proposed, reorganization of the executive

branch, and indeed in 1976 the legislature proposed itself, as a constitutional amendment, almost verbatim, the legislative article which was in the 1970 constitution. So we provided a focus and created a little stir of interest in a number of areas.

Now, all during this period of the last two years after the failure of the '70 convention, there was a lot of head shaking around, and people saying, "You know we really ought to have passed that constitution." Now in 1976, a young man named David Pryre was elected as the Democratic governor. No. David Pryre was elected in 1974. David Pryre, as a young legislator, had been one of those very outspoken in the early 1960's before the Rockefeller administration, had been outspoken in favor a constitutional convention. He had served in Congress here and there, and later came back as governor, elected in 1974. In 1975, his first term, he proposed that the legislature call and establish, not submit to the people, but simply just call a constitutional convention. Which it did. And it was one of his principal pieces of legislation, and the convention was to be limited in scope, that is there were certain areas of the 1874 constitution, with which it was not permitted to deal, and the delegates were to be appointed, rather than elected. His idea was to do it, do it quick, get that group in, and there was to be some balance

in the appointment, he wasn't going to appoint them all, although he was going to appoint a majority. But to get the group in, give it the 1970 document, let it tinker around with it, and deal with those things which had been perceived to be its weaknesses, and turn out a new document very quickly so that it could be voted on at the next general election. Our supreme court held that the legislature did not have the power to call a limited convention, that is to limit the scope of discussion, without having submitted that question to the people. This was essentially a case of first impression as far as Arkansas law is concerned. The general theme of the decision was that the inherent right of the people being represented in this convention to change their form of government should not be limited by the legislature by saying that the people in the convention cannot deal with certain areas, and if the people want to vote for a convention with that limited structure on it, that's fine, but you have got to submit the question to the people. Well, by the time that it had gone through the court and been decided, it was an issue then that the governor no longer wanted to push and he and other things that were of more interest to him, and he did not particularly push it. However, in the next session of the legislature, a bill was put through to be voted on in 1978, on the question of holding a convention. So, there was another convention held, there was another body of 100

delegates elected from throughout the state, in the manner that our house of representatives is, not exactly single member districts, but it was the one man one vote concept applied all over the state. Now, this convention reasonably completed its work, it being much in the same manner and being with almost the same rules and almost the same committee structure as the 1970 convention. Its product was submitted at the last general election and failed by about the same margin as it did in 1970. I served on the preparatory commission, which the governor appointed for this new convention. There were five persons, and four of those five were people who had come out of the 1970 convention. And essentially, what we did was housekeeping sorts of things. Set up proposed rules, we took care of mailing of initial information to delegates, we took care of acquiring of the fundamental library that they would need, we drew up some projected budgets based on what we perceived to be needed, set up an employee structure, we did not employ any staff persons, although we sort of indicated the qualifications that those people ought to have. What we did was carry them to the organizational day and met with them on the day they were organized, saw them through a two day organizational session, where they elected their own officers, and began to develop their own rules. The preparatory commission disappeared. Now, at that point, however, we had employed somebody who had at least functions to carry over for a couple of weeks, the basic functions.

Again, I'm not sure that how much is applicable to your situation, but I think there was a definite contrast between the structure of the delegate body between the 1970 and 1980 conventions. In 1970, as I indicated, those of us who ran for delegate, did not know whether there would be a convention or not. I haven't described it exactly, but in '79-'80 period, there was definitely determined that there would be a convention, because of the way that the two votes were held, and it was known by the persons who ran for the delegate positions that they would indeed to go the convention. Also, during this 10 year period, I think there was a focus of a good many special interest groups. The special interest groups had in time, become aware of the fact that there was certain things in the state constitution, and in some cases, they impacted on them. There were other things that had been going on in the past 10 years of course, that were represented by special interest. The problems in the cities had not gone away, they multiplied, and this convention, for example, came out with an article that was almost verbatim to the one that I helped draft on local government, which moved the key words around here and there and so forth, but they didn't come out with any better situation than we had done. So, economic conditions had changed, focus of inflation, the concern over taxation, some of our problems in structured county government had been changed as a result of constitutional amendment. Problems from 1874 and the old amendments

were still there, and the convention didn't do, in my judgment, it didn't do quite as good a job from the technical drafting point of view, because there were far more compromises required to be reached.

Tape Two:

004 Campbell: I have a slightly prejudiced point of view with respect to special interest groups, and I should share them with other people who would say that the convention did a wonderful job, but among the things that I think, just count this for whatever you want, but I think the purity of heart or whatever you might want to call it of the delegate body in comparison with the 1970 and 1980. There were more people who were less focused on specific economic issues in 1970 and were more interested in doing what they thought was participating in a historical event, for the first time in 100 years, that they agreed to rework the document. In 1980, the idea of a convention was not absolutely new. In 1970, the lobby, the traditional lobby groups, did not know how to work with the delegates, because fundamentally, we weren't lobbyist material. We didn't have any political ambitions. Now, that is not to say that there were not some people who emerged from the convention to later hold political office. For example, there were a couple of people, and I

didn't even know they were interested, who ran for political office, and a man who became the state's attorney general, and later served in Congress and ran unsuccessfully two years ago for the senate. But for the most part, they were professional people, probably too many lawyers, which is always and has been the case, you know, lawyers have an extremely different view points, there is no uniformity on view points, among lawyers, and they traditionally represent different economic interest, and have different ideas about things. They just simply like to disagree, so if you have to limit anybody, besides limiting legislators, you might limit lawyers. (Laughter). From the federal constitutional standpoint, we simply didn't have as many axes to grind in 1970. In 1980, as I have indicated in the tax decision by the Arkansas Supreme Court, other concerns of that sort, minority groups were better organized, and better focused, and indeed we had a better minority representation, and by that, primarily I mean the Blacks, in the 1980 convention, than we did in 1970. One of the delegates in the Black caucus, served in both conventions. The political forces and the political ladder-climbers saw the convention as a way to get involved in government and people who wanted to run for other offices, which created some problems with the legislature, because they saw people running for delegate positions, and they then thought they would see, two years later, those people running against them for their particular seats. Somebody will have

to do a scientific study and sort out the special interest groups. I don't have names or numbers with respect to that, except it is clear that there were people who were more susceptible both through the efforts of lobbyists who were more representative of narrower segments of communities in terms of economic interest, and employee groups. As a consequence, their discussions tend to be more focused on those lines than our discussion in the 1970's, which I brought. Perhaps not approaching the constitutional convention of 1787, or whatever, but at least feeling more fundamentally with the philosophy of structure. I am not saying necessarily that that is wrong, but I think it is something that you should be aware of that in a situation where you know there is going to be a convention and where there are particular interests which have been identified as being affected by the constitution or likely to be affected by the constitution, it is not unreasonable to expect that there will be effort to load up the delegate body with pressure with one point of view or another on any question. The labor experience in Illinois, it is probably better than in some states, which has better organization, let's say stronger organization. Labor never has been a force which could elect very many delegates in Arkansas. Labor had better representation in 1970 than they had in 1980. Indeed, between 1970 and 1980, labor had attempted to repeal the right to work provision in the Arkansas constitution, and it has failed by a vote of three or four to one. So the 1980 delegates didn't give

labor the time of day. The people had spoken recently on that issue, and therefore, they didn't see any reason to waste their time. The banks were much more evident and created strong lobby effort on trying to deal with the 10 percent limitation, and indeed that was one of the forces that caused great difficulty with the document and the submission of the document because it was identified by many groups as being a pro-banker's constitution. The raised interest rate, which would require the poor man to pay more. With respect to the technical organization of the 1980 convention, as I say, they built on and used for the most part what we used in 1970. They didn't attract quite as strong a staff because the idea of a convention wasn't as new and it wasn't as different. It was somewhat more politicized and some of the people that I thought were really first rate staffers that we had in 1970, you know it was ten years later and they had other career interests. There was some better support on the legal side, because some of the things that were coming before the convention had been in the court, property structure things, the attorney general had been trying to wrestle with that. The governor's office had been trying to wrestle with it, and some other groups had. We had done not extraordinarily good staff work in terms of papers, we didn't publish anything like the nine foot shelves of material that New York did or anything like that. We didn't spend a million dollars doing that. Most of

the background work had been preserved from our 1970 work and some of it was available. We were, because the university now has a law school in Little Rock, able to call on the faculty people from the law school, it was really a large help. It was something that we didn't have in 1970. Really I guess that is the end of the monologue in terms of trying to discover the ground of what has happened in 12 to 14 years. We have talked about more specific things.

101 Van Doren: Some of the states have done it and some haven't, and in both of your cases, did the preparatory commission work on temporary rules for the convention prior to the convention meeting?

105 Campbell: Yes, we did in both cases. In both Arkansas cases, the study commission did develop. I have forgotten one job I had, in 1967, after we made our report to the legislature to the special session of the legislature which convened in 1968, the one which called for the submission of the question. Assuming that there was to be a favorable vote between the submission of our work product in March 1968, and the placing of the issue on the general election ballot to be voted on in November 1968, we had a little surplus left over in our appropriation for the study commission and the governor created a preparatory commission composed of

myself and two other people. The two people who had been the chairman and the vice chairman of the study commission. I had forgotten that we had had that little interim preparatory commission for six or seven months in 1968. What we did, largely, I carried over my principal research person. We carried over the principal staff person that we had on a modest salary because we really wanted him to be available to head the research staff if there was a convention in 1968, and his primary task was to assemble a proposed set of rules for the convention, both temporary and permanent rules. I am not sure where we borrowed those rules. We kind of patched together a set of rules from New York, some from Michigan, I can't remember where Illinois was at that point in time. Maryland was a very good model for us in many respects, and indeed now that I think about it, we may have borrowed more from Maryland than almost anyplace else, in terms of structure. Some of our drafting techniques we borrowed from Alaska and Hawaii because those had been the two most recently drafted new constitutions, and when we were looking for fundamental structures of things and how to really simplify things that didn't have a whole lot of history built into them. We looked at some of those, but now that I remember, Maryland was running just about a year ahead of us, in terms of the time table. Maryland did not have that much of a difference in history than Arkansas had in terms

of the age of the document and while it was considerably more urban, it also had the rural influences, and things like what to do with justices of the peace, you now actually no longer need anybody to provide the judicial structure of the township. The township has ceased to be in our case, and never was a significant form of government. So, we found a number of parallels in Maryland, but yes, we did have a small, in fact a one man staff preparatory commission drawing rules for us. Now, when we came to the '90 convention, the other preparatory commission, we had all the 1970 staff there, and it was a question of looking at it again and saying, well that didn't work quite right. I guess our biggest concern on the new preparatory commission was not wanting to appear to be telling the 1980 group that well, here is the way we did it in 1970 and that was perfect. That's the way we ought to do it now. We wanted at all costs to avoid saying well, fellows, here is the way we did it and this is the way you ought to do it. We probably were less effective in a couple of cases because we were always saying, well you do whatever you want to do, and by the way, here's what we did in 1970. It worked out well in transition. They changed a few things in the rules, but on the whole, they didn't change very much. We were not dictatorial, we were not saying there was only one way to do it, and I think we had a good transition in that respect, and the fact that most of us had done the '70 convention, there was no particu-

lar impediment to them. I testified a number of times before the finance and taxation committee and the judicial committee, and tried to help some of their people in drafting. I know other people who were in the '70 convention also made comments and appeared before some of the committees particularly early in the work of the '80 convention, in order to describe the problem as it was perceived in 1970, in order to explain the drafting that we had done in 1970, and to say in retrospect, I wouldn't do it that way now. Or you don't have the same problem we had. It was an effort to try and work with them, and as a result of it, I haven't done any scientific comparison, but I would say 85 to 90 percent of the 1980 document was, all of it, was structurally the same as the 1970 document. That is, the way the articles were laid out, the way the transitional provisions were put together. Now the 90 percent of it was almost perfect, a few words that seemed to have been changed only because somebody thought well, we ought not to have exactly the same words, we ought to have a few words of our own in the drafting process, somebody said, well, I don't know why they said it that way, but let's do it this way.

Now, that doesn't prove anything, except that the second convention had the benefit of part of the hard work that the public never sees, and that is somebody has got to put something down on paper and work with it, and as long as you can have a transitional group or a preparatory group, that does not appear to be, and indeed is not sort of hidden agenda from the legislature or the governor or some other

group. As long as you have a group which is perceived to be an aid to simply get material together and giving people at least a way or a perhaps an alternative way to look at solutions, delegates will receive that material well, and indeed, when they get there the first few days, if someone hasn't done that work, they are going to be mad as hell, and say why did you get all of us down here, I'm away from home, I'm not being paid enough to be here, and you hand me a book that says it is a constitution of 1874 and you don't tell me anything. One other comparison I would make between the '70 and the '80 group, and again, it relates to lawyers, and the kind of people who ran. The '80 group was probably a less informed, or that is a less well-educated group on the whole, with respect to both political issues and certainly with respect to constitutional issues. This sounds unfair, I don't mean for it to sound that way, but in '70, we had I would say, a superior group representative of the lawyers, that is people who were mature and established in a profession and people who were not special interest oriented, as such, in terms of lawyers as a group. In terms of the lay persons who were there, they were clearly more of the community leader type. They were bankers, retailers, or whatever they might happen to be. This is true of men and women. In the 1980 convention, I would say that we probably had a somewhat younger group of people, less well established in the traditional terms of leadership in business or profession.

I don't mean to say they were any less intelligent, but they were not perceived to be of quite the same status of community leadership in their various fields. And, as far as the lawyers group was concerned, it did not have as many people who were from the so-called established firms, or were from elements of leadership in the bar association structure, and so forth. Now, I don't know if that was purely just coincidental, or whether it was not a crusade, and you didn't get some busy bank executive to agree to run in 1980 because it would seem to be more of a political job and less of an event that it was in 1970. I didn't run, simply because I was, number one, I thought I had done all I could do, and I didn't feel that going out there and going through it again was worth the effort, personally, from everything that I had a solution to, the problem was already written down, in either one of two documents. Secondly, my professional work, the maturity and level of the responsibility that I had in my firm and the opportunity to make money was greater in 1980 than it was in 1970. I simply wasn't able to make that move. I do not regret it now. I enjoyed the days that I went out there to testify and sit around and tell everybody how they ought to do things, but I didn't enjoy, didn't miss, those endless hours of somebody droning on every day about something that they didn't know anything about or that they disagreed with.

249 Van Doren: Sam, what about Illinois, about rules preparatory rules?

250 Gove: The commission did prepare rules. The commission also acted as a repository for job requests for the staff of the convention, and particularly the job of accepting applications, and so forth, some members of the convention were furious that we were pre-empting their activities, and we shouldn't have even done that. There was some unhappiness on the rules that we were telling the convention how to operate. There is the sensitivity that the convention is a free agent, and they should not be, frankly, told how to do this or that, and with all the preparatory business, you must be very careful to make suggestions, but put it in such a way that you try to be helpful, not telling them how to run their business.

266 Campbell: If I may say there, I think if at all possible, of course it depends on the timing of the election and the meeting of the convention, and other things like that, but if you are going to put out a lot of paper work, even though people probably won't read it very carefully before the day before they go down, or when they get there that night, it helps, I believe, to dispell this suspicion if you get that stuff out to them as far in advance beforehand as

you can, with the most self effacing cover letter you can think of, that you are not trying to tell them how to do anything, but here is what has been done before, and you can study it and change it, and one of the first orders of business on the convention session will be to create a rules committee or to do something about rules. Our temporary rules were two sheets of paper, or something like that. It is pretty obvious that nobody was stacking anything in terms of the temporary rules. They were very insignificant and in our structure the Secretary of State, who had no other provision and no other function except to certify the results of the election, was the convening officer. The governor was not the convening officer, it was not politicized in that respect. The Secretary of State called everybody to order and made sure that the delegates had been properly certified as having been elected and sworn in and immediately after that, they proceeded to the election of their officers. Approximately in that sequence.

292 Gove: Just for the record, I should say our convention also used the Maryland convention pretty much as a model for rules. One of the important decisions we made in the rules was that the seating of delegates shall be alphabetical and that really made a difference in how the convention operated. If we had allowed people to be by districts, that would have meant that the Chicago people sat right next to each other. Things which don't seem terribly important can make a difference.

301 Van Doren: Sam, where was the Illinois convention held?

302 Gove: It convened in the House of Representatives, but then the convention moved to the old state house, where Mr. Lincoln was always in presence and led in the house divided. Here again, the theme set a tone. Things like this can make a difference.

309 Van Doren: George, how about . . . ?

309 Campbell: Both conventions met almost exclusively in the House Chamber of the present capitol. On a couple of ceremonial occasions, we did meet in our old state house. We have an 1836 structure which is fairly well preserved, although it doesn't have enough desks and seats, and was never designed for a legislature of the size of our current legislature. From the stand point of the economy, facilities, telephone, all of the housekeeping things that you need, we felt there was only one place that we could meet. It would have been terribly expensive to rent on a long term basis, a hall somewhere. We could meet in the house chambers, when the legislature was out of session, we have a sixty day limitation on our legislative sessions, with some exceptions that it generally runs a little bit longer, but 90 days is about the longest they ever meet. So, the chamber was available in late spring and summer, when our convention was really working.

326 Van Doren: In either case, were there public hearings held any other place in the state rather than at the meeting place? Either one of you, Sam?

329 Gove: Yes, our committees or subcommittees held hearings throughout the state. I don't know how important they were in getting information into the mill, but they were good P.R., and it helped some of the delegates get around and see some parts of the state. Illinois is a very sharply divided state, a lot of Chicago people have no feel for the rest of the state, so this was quite helpful to get them around the state, and to just to hear different people talk with different accents, Southern Illinois is quite different from Chicago.

342 Campbell: I would say our differences between the various sections of the state are perhaps not as pronounced in Illinois, between the people who live in Little Rock or other parts of the state, but most of us came from smaller communities in the state. There is in the small communities, a very definite sort of paranoia about that the people in Little Rock are dominating the scene, real or unreal, mostly unreal. So both, and we started this in the study commission and it carried over in the '70 convention and I believe, although I am not as familiar with the '80's one. I believe the convention did it as much as they could. In the study commission, we were trying to create, quite honestly, a

public awareness. Hearings held out in the other places in the state, were as much propaganda as they were interest in hearing from people. I don't mean to say we didn't want to hear from people. We used primarily state college facilities. Almost all of the colleges were happy, and being that one of the members of the study commission, was a college president, they were happy to have us on campus. It gave some publicity, it gave something to the students to see and hear. We had a state college president and we had the largest private college president as a member of the study commission. We moved around in different parts of the state getting input from county officials, and municipal officials. One of the most memorable hearings we had was down in the southern part of the state, where we invited people to come and talk about game and fish problems. We have a constitutionally established game and fish commission which is almost an independent department of government. A lot of folks were out talking about fox hunting and other things like that, which may or may not be significant in your state. It strikes me that that sort of thing is important, or extremely important in your state, but again, in a state such as yours, and indeed ours, where transportation is not all that convenient, it was important to get the delegates and the commissioners out with the people and to encourage the people to come. We had to do a lot of pushing. That is we had to get on the telephone and get people to come and make presentations.

We made the agenda ourselves to some extent, at all of these county and state sessions. We didn't have trouble getting people, but we tried to present some sort of balance. If there was somebody who was very definite and would speak very strongly on something, we tried to think of who had the opposite point of view. We tried to give an opportunity to have a balanced presentation if at all possible. And, with the convention then, in '70, instead of taking the whole commission as we did, with 30 people you can move out and you won't have quite all 30 people there, but you can get accommodations in your budget as such, particularly if you work with colleges, you can stretch your budget now, and don't have to pay for facilities, and a little travel and some meals and that sort of thing, but in the convention structure, we took the committees to different parts of the state, finance and taxation committee would hold four or five hearings in different corners of the state, and that sort of thing. That was helpful in terms of getting publicity in the local newspapers, and we tried to pick towns that had a TV station if possible, but certainly a good daily newspaper, so that there would be pictures and coverage of the testimony to make the people aware that there was something going on and that their community had had a part in what was going on, which made it look less like the word was coming down from the capitol or the legislature.

414 Van Doren: What about, in both cases, post convention work, as far as getting publicity out and informing the public just what you had done and that type of thing?

418 Gove: We published a message to the people which, as I remember, every voter got a copy of the newspaper which had the new constitution and explanations. There was a campaign committee which was not publicly financed, that pushed the new constitution, and the delegates as individuals campaigned for the convention, in most cases. There were a few who were in opposition. We had our main constitution and four side issues. And the side issues got a lot of attention and there was a campaign committee for merit selection of judges and magistrates, and there was a campaign committee for single member districts vs. our two thirds voting system. We have if you are interested, have you see our series, published by the University of Illinois Press? One of them just came out, regarding campaigning for the new constitution tactics.

444 Van Doren: Is that a new one? I may not have seen that one.

445 Gove: By Joanna Watson, published by the University of Illinois Press. There is another new one, a summary of the whole thing by Elmer Gertson and Joseph Shody, that is just out in hardback, but our activity for the convention process is well documented.

452 Campbell: I would say the basic weakness in the whole process in Arkansas both in the '70 and '80, was in the post convention effort. We went through the things that could be accepted and funded by public funds and in each case, the convention produced and addressed to the people was the text of the constitution followed by explanatory paragraphs, but unfortunately, of course, you don't have much room in something like that to sell something, in many cases you are restricted by simply saying this substantially incorporates the provisions of article so and so, section so and so of the 1874 constitution, which most people didn't know what that said either, in terms of the general public. In other cases, you are reduced to a fairly short summary of what the change is, so that it is, at best, a semi-scholarly explanation in the case of it being understood but not recognized as fully, that people don't, for the most part, have a recognition of constitutional issues to begin with, except for the very limited economic issues and, of course, they are concerned about that. So there was no question of anyone who was interested in getting a copy. Ours was distributed this way: Each newspaper in each county was provided a newsprint tabloid and the publication requirements. The statutory requirements was that this was to be provided to each legal newspaper, that is a regularly published newspaper in the state, free of charge, and then they received a payment of something less than the regular legal rate of publication for inserting this stuff, one time, in their newspaper and dis-

tributing it throughout the state, so that everybody who got a newspaper, which was not necessarily every household, and certainly not every voter, but everybody who got a newspaper throughout the state, got a copy of the document, plus the Secretary of the State maintained a file of these and mailed them out to the courthouses and to a number of people on their public officials mailing list, so there was a fairly wide distribution and good deal of publicity. Additional copies could be obtained from the Secretary of the State, and that sort of thing. In 1970, there was no public funding available for any promotion campaign. In 1980 there was some budget allowed for P.R. committee, and there was a P.R. committee composed of delegates, but its purpose was essentially to try to coordinate delegate's speeches and try to coordinate delegate's and try to respond to requests to luncheon clubs and professional groups of one kind or another, trade associations and other things like that, to respond to requests, and in some cases to try to generate requests for talks. There was no money spent on advertising in the sense of TV commercials or newspaper ads. There was a private group formed to solicit money and bought TV time, and some newspaper time. That effort was a little bit better in '80 than it was in '70, but it was not dramatic in the sense of Michigan or maybe in the sense of Illinois, and so forth. There was no really big campaign, and unfortunately, a well drafted constitution is pretty hard to explain. The hardest part in a well drafted constitution is finding somebody

who is willing to give enough money to support the campaign. Some narrow special interest groups may be willing to do it to some extent, but that is one of the hardest things there is, and somebody must have done it right. We have not done it right in Arkansas the past two times.

534 Van Dorer: Well, I think probably we are going to have to stop the meeting. The only other thing, there are other things I would like to touch on and I don't know if we will have a chance to get together or not, but one other thing I would really like to explore. if there is any possible chance to get together. I am going to meet with the people from Texas probably tonight or tomorrow, and go through this same kind of thing. I don't know if you are available, I could have a meeting with the whole committee. Just maybe some ideas on some of the pitfalls to avoid. I know you have explained some of them, and Sam has explained some of them too. We are trying to learn from other people's mistakes, and it is one thing that I think is pretty important about this, although the things that you have given me this morning have really been helpful. I have learned lots just from this morning. But I really think we should probably go. The meeting is supposed to start at 10:30. You might be thinking about that, and if there is a time. One other possibility that Bill Cassella had talked about was maybe getting together tomorrow morning, just at breakfast

rather than like this, and maybe just sit around and talk, and that will give you time to gather your thoughts a little bit, too. If it is possible, let me know. I appreciate the time you two have taken now, and I know this is a busy time, but this was one way to see people that I wasn't able to see in New York other places.

565 Gove: I wish we had a patented formula for success. One of the things we did and I think this may sound egotistical, but we studied our procedures and literature, and we did some good preparatory work.

576 Van Doren: You certainly did. As you said, Illinois is certainly well documented. I think it is probably the . . .

578 Campbell: If the money is available anywhere, that sort of good background material is very helpful, because what happened so often is that you rush in to get a staff, and you wind up picking up people who are anxious to work, but they have no real depth in the area. You can't get those people who got to that area overnight, and they can't get the material together fast enough and you come out with poorly informed answers, I don't mean to say young people don't know anything, that is not what I am trying to say, but to get somebody who knows the issues only from the limited sort of text book source or just a very fragmentated sort of thing. They don't

often get their resources developed and really inform a committee on what the substantive issues are.

599 Van Doren: Well, I think we will finish this off, since we are going to that other meeting.

END OF GOVE/CAMPBELL MEETING.

#27:12

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SPECIAL COMMITTEE #27 (~~page 11~~)

INTERIM COMMITTEE ON THE CONSTITUTIONAL CONVENTION 1979-1980

11 audio-cassettes

<u>TAPE NO.</u>	<u>DATE</u>	<u>SIGNIFICANT INFORMATION....</u>
1	9/24/80	ConCon meeting
2-4	11/7/80	Meeting in New York
5-6	11/16/80 ?	Charles Campbell, Sam Gove Jim Ray, Kathy Ray, Janice May
7	?	Ray, Ray, May - Texas
8	11/12/80	John Wheeler, Hollins, Va.
9	12/9/80	Committee meeting
10	1/10/81	Committee meeting
11	?	Guy Van Doren dictating on convention

KHS 10/83

SCOMM

27:13

THE CONSTITUTIONAL CONVENTION

YES

or

NO

**A QUESTION
ON THE GENERAL ELECTION BALLOT**

NOVEMBER 2, 1976

**A brochure prepared by the
OFFICE OF THE LEGISLATIVE REFERENCE BUREAU
pursuant to House Resolution No. 336
adopted by the House of Representatives of
the Eighth State Legislature
Regular Session of 1976**

On November 2, the general election day, you and the rest of Hawaii's registered voters will be asked, "Shall there be a convention to propose a revision of or amendments to the Constitution?" This pamphlet is meant to assist you in reaching your decision by reviewing a few of the possible constitutional issues discussed and resolved in a convention. For your further information, brief general background information about constitutions and constitutional conventions is included.

What is a constitution?

A constitution is a statement outlining the basic principles of a formal organization. It allocates the powers and functions of government among its permanent institutions, such as the executive, legislative, and judicial branches. It also sets out the structures and purposes of the organization and defines the method of selection, the terms, and powers of public officers. In modern democracies, a constitution establishes the basic legal foundation for government and the limitations of its powers.

Why is a constitution necessary?

Every group of people—from a family to a nation—has rules of conduct to govern the lives of its members. The rules encourage, require, or forbid certain kinds of behavior. The institution by which a group establishes and enforces such rules is called government.

All countries have governments to make and enforce rules to govern citizen behavior. These rules usually correspond to the values, beliefs, customs, and traditions of that society in some degree. The method and limits of power which are made are contained in the fundamental law of government—the constitution.

What does Hawaii's Constitution cover?

Hawaii's Constitution covers general subjects in sixteen Articles. Three of the longest Articles discuss the legislative procedure, the monetary process, and the legislative districts. The Bill of Rights, the state flag, and other subjects are also covered.

What is a constitutional convention?

Nearly every state constitution provides for the calling and holding of constitutional conventions.

A constitutional convention is one way of amending or proposing a new constitution. Voters elect delegates to represent them especially for the purpose. Most delegates are elected from state legislative or congressional districts, some are chosen on an at-large basis. The delegates elected to the constitutional convention meet as one body and elect their own officers and make their own rules. A constitutional convention usually forms and uses committees so that detailed consideration can be given to particular subject areas.

What is the purpose of a constitutional convention?

Most states have some method to change their constitutions without having a convention such as asking the people to vote on proposed constitutional amendments. Sometimes, however, it is felt that the changes that are possible through amendments presented one or a few at a time are too limited in scope. Major revisions of a constitution, if necessary, are difficult, costly, and time-consuming when done in a piecemeal fashion. A constitutional convention (con-con), on the other hand, allows a general review and major revision of the constitution. Although proposed changes generally result from a constitutional convention, a convention could recommend that no change be made. Consideration of various provisions could result in choosing to retain existing provisions.

How did Hawaii get its Constitution?

In 1949, the people of the Territory of Hawaii called for a constitutional convention to demonstrate their strong desire for statehood. Sixty-three con-con delegates met in 1950 to draft a constitution which was subsequently adopted by the people that year. That constitution became official and operational when Hawaii became a state in 1959.

When was the latest Hawaii constitutional convention held?

In 1968. The legislature in 1966 asked the voters whether or not to have a constitutional convention. The voters approved the calling of a con-con, and in 1967, the legislature authorized the June, 1968 election of eighty-two convention delegates. Sixty-three delegates represented Oahu and nineteen represented the neighbor islands.

The convention began on July 15, 1968 and lasted fifty-eight days. The 1968 convention cost a total of \$1,205,000, which, adjusted to present day costs, would equal \$1,875,400* for an identical convention. Nearly all constitutional amendments proposed by that convention were adopted by the voters at the general election in November of 1968.

Why is a question about a constitutional convention going to be on the ballot in November?

Our present Constitution says that the question, "Shall there be a convention to propose a revision of or amendments to the constitution?", must be presented to the voters every ten years. Although the ten-year period, since the question last appeared on the ballot, has not quite passed, the legislature enacted a law requiring the question to be placed on the 1976 general election ballot. The Constitution allows the question to be presented to the voters more frequently.

What will happen if the voters reject the calling of a constitutional convention?

There will be no convention but changes to the Constitution may still be proposed by the legislature and presented to the voters. The legislature can also present the constitutional convention question to the voters again in the future; or, if ten years pass without such action, the question will automatically be placed before the voters.

What will happen if the voters approve the calling of a constitutional convention?

The legislature will pass a law providing for the election of delegates at a special election, the date the convention will start, the powers of the convention, the salaries of delegates, and other necessary matters.

When will the constitutional convention, if approved by the voters, be held?

Since the election of delegates and the date of the convention are set by law, the law setting up the convention must be passed by the legislature and approved by the governor. The required law could be passed in 1977. The election of delegates and the constitutional convention would be held after the law is passed and approved.

What kinds of subjects can the constitutional convention consider?

The 1968 Constitutional Convention was not limited in what it could consider. That convention proposed changes that covered many areas, including the county debt limit and the eighteen-year old vote. Some possible subjects which could be considered by a constitutional convention are discussed below. Discussion is presented generally in the order that the subject matter falls within the Article groupings of the Hawaii Constitution.

THE ELECTORAL PROCESS

1. Whether there should be initiative.

Initiative is a method by which voters, by petition, are able to propose amendments to statutes (statutory initiative) or to the Constitution (constitutional initiative). An initiative is proposed by a petition with signatures of a required number of voters. If the petition meets all requirements, it can be handled by either direct or indirect initiative. Direct initiative does not involve the legislature and the people vote on the measure themselves.

*Calculated by using data from the Survey of Current Business, a U.S. Department of Commerce publication. The cost is adjusted using data from the 1st quarter of 1976. The buying power of \$1 in 1968 was roughly equal to \$1.556 by that quarter in 1976.

Indirect initiative requires the measure be sent to the legislature, which either approves or amends it.

It is argued that if there is initiative, there will be fewer voter fears of a legislature becoming too strong or unresponsive. Fewer constitutional restrictions on the legislature may result, which would enable the legislature to be more progressive while the people would also have the right to legislate directly. The initiative process when used by the people may serve to inform their representatives of voter wishes and concerns. The initiative can also be a device of the people to counteract special interest group legislation.

States not having the initiative process feel it is neither necessary nor responsible for substantial reform. In some states the initiative has been used more frequently for constitutional amendments than statutory amendments to prevent possible legislative changes later, allowing the people to have the overriding position. This practice reduced flexibility since the constitution is harder to amend than a statute. The initiative process may not be suited for a particular state, because of the time and money which are necessary to pass an initiative. Some claim, also, that the initiative is not necessary as a tool to discover wishes and concerns of the people, saying that survey polls and talking to the people would be equally or more appropriate.

2. Whether there should be referendum.

Referendum is a process by which the people can approve or disapprove a statutory or constitutional amendment proposed by the legislature. For a referendum, petitions are signed by a certain number of voters who wish to have the measure subjected to a vote of the people, and the measure is placed on the ballot for vote in the next election.

States allowing referendum feel that when properly used, referendum leads to progressive government, serves as a control on government, and acts as a protection for the people. Legislatures may tend to avoid passing a bill which many, though perhaps not a majority of the people oppose. Party politics are not necessarily involved since the people vote on the measure itself, without connection with any particular legislator or political party. Supporters of referendum also feel that it educates the public because the measures voted on are widely publicized and discussed. Thus, voters are more knowledgeable when voting on any issue before them.

States without referendum believe that too much may be expected from the voter as legislative measures are often numerous and difficult to understand and can be better handled by representatives chosen by the voters. Elections are held often enough to ensure voter control of the legislature by enabling the people to choose legislators who are more responsive. The use of the referendum, some claim, may slow down and disrupt state progress and quick handling of problems.

3. Whether there should be recall of elected officials by voters.

Recall of an elected official is a method for voters to determine whether the official should be removed from office. A recall election is held on a petition signed by a required number of voters, stating the reasons for recalling the official.

There are three basic methods for recall: indirect recall, recall with a successor chosen, and simple recall.

Indirect recall is an election to fill the office of the person removed. The official being removed is made a candidate and runs against others for the office. The winner holds office for the rest of the term.

Recall with a successor chosen requires that a voter first decide whether the person should be removed from office, and if so, who the successor should be.

In simple recall, voters only decide whether a person should be removed from office. If the vote is to remove the person, a successor is chosen according to law, either by appointment or by another election.

People favoring recall state that recall makes public officials act with greater responsibility. Because recall can be a check on how long someone stays in office, the voters need not wait until a person's term expires before removing him from office. A recall provision may also

able to vote them out of office as well.
People against recall say that removal of elected officials can always be done through the courts, the legislature, or sometimes, gubernatorial action. Officials are also removed from office when voters do not reelect them. In addition, the expense of a special election may be too high to justify recall. Opponents of recall point out that it may be abused by well-organized groups for political purposes, for it can provide a constant and legal means for special interest groups to threaten elected officials.

PUBLIC OFFICIALS

4. Whether there should be a limit on the number of terms elected officials may serve.

Twenty-three states, including Hawaii, do not limit the numbers of terms any of its elected officials may serve; twenty-seven states limit in some way the number of terms their governor may serve.

States not limiting the terms of public officials feel that the voters have the right to retain an official they believe the most qualified and able to do the best job. Limiting terms of office, it is claimed, may deny the people the service and experience of an able public servant and limit the right to elect their first choice. It is pointed out that a limitation on the number of terms results in heavy turnover in office and the loss of knowledgeable elected officials.

States limiting the terms of elected officials believe that unlimited terms provide elected officials with an opportunity to build political machines, which are used to continue their reelection even though there are others better qualified. Providing limitation on the number of terms of an elected official also makes possible the election of new people with new ideas.

5. Whether elected officials should resign before seeking another elective office.

Currently, elected officials are not required to resign before seeking another elective office.

Some people say that elected officials should be required to resign if they want to run for another office. They believe a person should devote his entire energy and time doing the job he was elected to do, and that a person who takes time to seek another office is unfair to the voters who elected him for another purpose. Proponents also believe that political strength would be equalized among the candidates running for an office.

Others feel that to require resignation would discourage public officials from seeking offices with greater responsibilities. An experienced elected official is often qualified to serve in other offices, and to force officials to resign from office would as a practical matter discourage many qualified persons willing to undertake the other office. Opponents also point to federal offices, in which U.S. Senators, for instance, can run for President without resigning from the Senate.

6. Whether elected officials should be prohibited from serving as delegates to the constitutional convention.

Presently elected officials are allowed to serve as delegates to a constitutional convention (con-con).

Some people believe that elected officials who serve as delegates may prevent some of the changes which may be considered because they are comfortable and familiar with the way things are. They also point out that the voter's intent in electing an individual to office is that the individual devote his term of office to perform his duties, which he may not be able to do while serving as a con-con delegate.

Other persons argue that prohibiting an elected official from running for con-con would exclude many knowledgeable persons from the convention. Elective officials contribute much to a con-con since they are knowledgeable concerning, and experienced in, government. Further, if a broad cross-section of the citizenry is to be represented in the con-con, then elective officials are representative of that part of the citizenry.

Increasing overlapping of public and private lives of elected officials has led to great concerns over conflicts of interest in government. Hawaii in 1967 enacted a code of ethics, establishing an ethics commission and setting standards of conduct for legislators and all other officers and employees of the state, except for judges.

Hawaii's present Constitution instructs the legislature to adopt a code of ethics; a constitutional convention, however, may consider including a code of ethics in the Constitution.

Since most legislators are part-time officials who earn a major portion of their incomes from other occupations, they may be placed in situations where voters expect legislators to help when the voter has dealings with the state. Thus, those persons in favor of a code of ethics in the Constitution believe that some protection for legislators and other elected officials against conflict of interest situations will result if a code of ethics were put in the Constitution.

Other persons argue that the Constitution is not the proper place for a code of ethics, as a constitutional provision that can be handled by statute might be too rigid to meet the changing problems of the state. The code, opponents say, may have to be amended constantly to take care of new situations and values, and generally the Constitution is not easily or swiftly amended.

8. Whether there should be an express provision on salaries, compensation, and benefits of elected and appointed officials.

Hawaii's Constitution provides legislators with a \$12,000 a year salary and by law they also receive an additional \$1,500 for expenses connected with legislative duties. The legislature is given the power to increase its own salaries and to set salaries for all other appointed public and elected state officials.

Some persons argue that limits on pay and benefits should be spelled out in the State Constitution. They question the wisdom of allowing the legislators to set their own salaries or that of other public officials, because of the possibility of abuse. A constitutional restriction would protect against this possibility.

Other people believe that because the cost of living and value of the dollar fluctuates, the legislature should have the responsibility of setting appropriate pay and benefits. In addition, the responsibilities of elected and appointed officials may change as the functions and scope of government change so that pay and benefit adjustments may be needed to attract the most qualified people to these elective and appointive offices.

LEGISLATURE

9. Whether the legislature should be other than bicameral.

Hawaii's Constitution requires a bicameral legislature composed of a fifty-one member House of Representatives and a twenty-five member Senate.

A central issue concerning legislative structure is whether the legislature should remain bicameral, that is, have two chambers—a Senate and a House. A unicameral legislature, on the other hand, has only one house. Unicameralism and bicameralism are both means to the same end—to conduct the legislative business of the state in an orderly manner.

Persons favoring unicameralism believe a one-house structure demands greater accountability of legislators to the people of the state, since there is no "other house" to blame for poor legislation or lack of action. Legislators would be required to pay more attention to their legislation, promoting decision-making likely to result in quality legislation. Duplication of work may be minimized by introducing bills in a single house only, as well as reducing the repetitive aspect of considering bills in two houses.

These persons feel unicameralism is simpler, and that the public will be better able to monitor the legislative process. In turn, the legislature can better monitor the execution of legislative policy. The one-house structure avoids the necessity of conference committees to resolve

sure a close, intensified watching function when the legislature. They feel it is necessary for each house to monitor the work, processes, and products of the other house, eliminating the possibility of one house being able to do mischief with the laws, since each house subjects the legislation of the other to critical examination and review.

Duplication in both the voting and committee procedure is a positive feature of the legislative process. This positive duplication affords the public a greater opportunity to be heard, requires that legislative action be informed rather than hasty, and insures that support is substantial and long-lasting rather than temporary.

Finally, they feel a two-house legislature is less vulnerable to domination by any interest group faction.

A form of government which has not received as much attention as the bicameral or unicameral legislature is the parliamentary form.

Parliamentary government, or cabinet government, consolidates both the executive and legislative functions into one governing body which selects an executive head (governor) from its own ranks to serve at its pleasure.

The executive head governs only so long as he has the support of the parliament (legislature). The executive chooses the heads of government departments, from the majority political party of the parliament. They hold ministerial (departmental) office only as long as they have majority support in an elected house. A defeat for the executive through an adverse legislative vote, on an important issue, indicates a lack of confidence requiring the executive either to resign or to attempt, by means of a general election, to secure a new majority in the parliament.

Persons in favor of the parliamentary form of government believe that stalemates between an executive of one party and a legislature of another, as occurs with the American system of separated powers, is impossible in the parliamentary system. Further, this form of government prevents "passing the buck" between branches of government.

Those against the parliamentary form of government point out that instability of executive authority results in numerous expensive elections. They also feel that it is foreign to the traditional form of government in the United States and the familiar separation of powers structure. Further, it increases the possibility of a dominating political machine.

10. Whether there should be single-member or multi-member legislative districts.

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution requires that each member of an elected body represent, as far as practicable, voters equal in number to the number of voters represented by every other member. Thus, each citizen's vote is equal in weight to the vote of any other citizen.

A "single-member district" is one in which the voters elect one legislator to represent a district. A "multi-member district" is one in which the voters elect more than one legislator to represent their district. Presently, Hawaii has single and multi-member districts in both the Senate and the House. The Senate has twenty-five senators divided among eight senatorial districts, while the House has fifty-one representatives divided among twenty-seven representative districts.

Persons believing in single-member districts point out that such districts are relatively small in area and population, and allow greater personal identification between the voter and the legislator. Smaller districts, some claim, reduce campaign expenses, encouraging individuals who otherwise may not run because of the costs and hardships of a campaign in a large district.

On the other hand, persons believing in multi-member districts argue that single-member districts represent only a very small portion of the state, and may lead legislators from the small districts to be primarily concerned with highly localized issues and to ignore the broader issues facing the state. Further, group representation from a larger geographic area leads in many cases to team representation of the district and increases the large district's strength and cohesive-

Before the 1955 Constitutional Convention, the terms of senators were staggered and in each election year, approximately one-half of the Senate seats were up for election. Under the present Constitution, members of the House of Representatives are elected for a two-year term while those of the Senate are all elected for a four-year term without being staggered.

Persons against staggered terms believe that if all members serve for the same period it will allow committee chairmen to become more knowledgeable about their subject matter and, without the election pressures every two years like their House counterparts, senators can provide a more deliberate approach to examining legislation. Furthermore, the voters of the state are able to assess the work of the entire legislature every four years and have an opportunity to elect an entirely new legislature or to reelect some members while electing a large number of new members both in the House and the Senate simultaneously.

Those persons in favor of the staggered term concept argue that staggered terms allow the voter to assess the performance of the Senate every two years, although not all of the Senate is up for election every two years. They also point out that without staggered terms the House is forced to be the only legislative chamber accountable for legislation enacted by Senate in off-election years. Further, staggering Senate terms will mean that it would be impossible to have a completely inexperienced legislature.

12. Whether there should be a change in legislative sessions, e.g. split sessions or longer sessions.

Hawaii's Constitution provides that the legislature shall be a continuous body for two-year periods beginning when newly elected House members take office. The legislature meets once a year in regular session for not more than sixty legislative days. The legislature may also be convened in special session by the governor or at the request of a majority of the legislators. The governor may also convene both houses or the Senate alone in special session.

There are two related constitutional issues in the discussion of legislative sessions, these go to frequency and duration. The issue of frequency concerns annual or biennial sessions, and the issue of duration concerns the length of each legislative session.

FREQUENCY

Biennial Sessions. Biennial sessions require the legislature to meet once in a two-year period. Persons in favor of biennial sessions feel the quality of legislators may be better because some of the state's best citizens, who may be too busy to meet the time demands of legislative service each year, might be willing to give time every two years. The biennial system, it is said, allows legislators time to meet with the voting public. In addition, the time between biennial sessions allows better performance of between-session studies and other interim work.

Annual Sessions. Persons in favor of annual sessions believe the balance of power of the governor and the legislature may be threatened, because the legislature would not be a continuous body and it would be more dependent on the executive branch of government. Annual sessions tend to overcome this imbalance. Annual sessions allow the budgeting and legislative process to more responsibly react to changes because of inflation, population shifts, the expansion of government functions, and unforeseen emergencies, which can occur every year.

DURATION

Split Session During Annual Sessions. A split session divides a session, for example, into three parts, using a recess between a short preliminary session in which bills are introduced and a long session in which the bills are debated, passed, or rejected.

Those in favor of a split session argue that it provides legislators and the people with an opportunity to study pending legislation. Split

Unlimited Sessions. Those in favor of limited sessions, such as the 60-day session Hawaii uses, argue that unlimited sessions may make it impossible for many people to serve as legislators. They point out that unlimited sessions may end Hawaii's tradition of a citizen or part-time legislator and may create a professional or full-time legislator. It is also felt that unlimited sessions are expensive and may lead to unnecessary legislation. During a short legislative session or a less frequent session, it is easier for the public and the press to keep track of legislative activity.

Unlimited Legislative Sessions. Persons in favor of unlimited sessions believe that just because the length of a session is unlimited does not mean it will continue indefinitely. Unlimited sessions allow the legislature to be the judge of how much time it needs to give adequate consideration to proposed laws. Although some feel that legislators may not work as hard if there are no limits on sessions, persons in favor of unlimited sessions point out that fixed annual salaries encourage legislators to finish their work as soon as possible, since they have no reason to work indefinitely. Short and compact sessions tend to make it easier for bills to be overlooked according to unlimited session proponents.

EXECUTIVE

13. Whether any executive (department) officer should be elected.

The governor is the head of the executive branch of Hawaii's government and appoints all department heads, except the Department of Education which is headed by an elective board.

In some other states, however, one or more department heads are elected, as well as the governor and the lieutenant governor. These elected department heads often are the attorney general and the comptroller.

The attorney general is the legal adviser of the state and also appears in court to represent the state, its officers, and agencies. The comptroller (head of the department of accounting and general services in Hawaii) determines and carries out the state's accounting system, controls various fiscal operations, and gives voucher approval.

Where these officers are elected, it is felt that voter control of government is best achieved through election. Supporters of elected officials believe that public interest and participation in government increases, and responsibility is more clearly fixed. Further, the elected officials have more independence than appointed officials.

States favoring appointed officials believe that a department must carry out state policy, so the departmental heads must be directly responsible to the governor. Appointed department heads mean, also, that responsibility and accountability are clearly placed in the governor. This, proponents of appointed officials believe, allows the voters to decide more clearly whether or not to keep the governor at the next election.

JUDICIARY

14. Whether there should be a change in the manner of selecting judges.

It is generally felt that the Constitution should provide for a strong and independent judiciary, because the courts are so important in keeping order and resolving disputes. The independence of the courts allows fair decisions to be made by judges without fear or favor. There is also general agreement that judges must somehow be accountable to the people.

Hawaii's judges are appointed. The governor appoints the judges to the supreme court and the circuit courts, and the chief justice of the supreme court appoints district court judges.

Judges are appointed in thirteen states by either their governors or

judges to nominate candidates, from which the governor appoints the judges. After a judge serves a short term, for example, one year, the voters are asked if the judge should be kept in office a longer term based upon his performance.

Opponents to appointment of judges say it increases the political considerations in selecting a judge, whereas the election method insures direct responsibility of judges to the people.

People favoring appointed judges say the election method forces judges to be politicians, making their judgments based on politics or public opinion, and not on fairness and law. Further, although politics may enter into the appointment, the judge is independent once in office.

TAXATION AND FINANCE

15. Whether counties should have the authority for taxation.

In Hawaii the authority to tax is in the state, except where delegated to the counties. To date, however, no major delegation of taxing authority has been made to the counties.

Those in favor of allowing the counties to tax contend that taxes could be made in relation to specific local conditions and requirements, with each county bearing the full responsibility for the taxes it levies. Responsibility of the individual counties for fiscal planning and administration are to be promoted in this way. Pressure on the state and federal governments to solve local problems and to provide increased services is reduced, according to proponents of county taxing power.

People against giving taxing powers to the counties say that the state has the ultimate responsibility for the financial solvency of the counties, which requires the full authority to determine which taxes are to be levied by which level of government. It is claimed that general state interests would not progress if the state government's authority to make taxation policy is left to the counties. Furthermore, the imbalance of resources among the counties presents a danger of inconsistent and inequitable use of local taxing powers among the counties of the state.

16. Whether the debt limit should be abolished or changed (e.g., some bonds, such as revenue bonds, do not count in the debt limit).

The Hawaii Constitution allows the state to borrow money, but balances this power with certain restrictions, including a "debt limit", which limits the amount of state debts. This of course means that the legislature cannot authorize borrowing money beyond that limit. Any change in the debt limit, therefore, involves two basic alternatives, either no debt limit with unrestricted legislative power, or a more restrictive debt limit.

Those who argue for fewer restrictions believe the state is still growing, and that construction of facilities, financed by borrowing, must continue. Since land and construction costs may rise in the future, delays forced by a restrictive debt limit could be costly. Borrowing, now, could save money in the long run.

It is also argued that any debt limit is ineffective, and makes borrowing more difficult and expensive. Other states have evaded rigid debt provisions through the use of revenue bonds and other forms of more expensive, non-guaranteed borrowing methods.

Those people favoring restricting the state's power to incur debt say that as the state's total debt increases, repayment becomes less certain, and higher interest rates must be paid to attract lenders. Restricting the total debt, therefore, holds down state interest costs on new debt.

Further, an accurate debt limit shows lenders that their money is secure, and the state's credit is good. Future taxpayers, it is argued, are, therefore, not heavily overburdened with debts incurred today.

EDUCATION

17. Whether there should be a change in the manner of selecting the Board of Education.

In 1964, the Hawaii voters approved a constitutional amendment changing the method of selecting the Board of Education from one appointed by the governor to one elected by the voters. Proposals to change back to an appointed board keep surfacing.

Those who favor an appointed board feel it may attract more qualified individuals who would serve if they did not have to run for office. It is also felt that under the appointive system, there are clearer lines of responsibility; for example, if the school board does a poor job of administering the Department of Education, the governor is responsible. An appointive board also avoids the problems of the one man, one vote rule which applies to elected bodies.

People wanting an elected board believe elected members will be directly accountable and responsive to the voters. An elected board may also create greater citizen interest, support, and participation in school affairs since voters have a direct line to the elected board to express their views on school policies. Proponents of an elected board also point out that Hawaii's citizens have shown that they want a more direct voice in school decision-making by voting for the elected school board against later amendments to change back to an appointive board.

18. Whether the powers, functions, or duties of the Board of Education should be changed.

The responsibilities for education in Hawaii are shared by the legislature, the governor, and the Board of Education. The Department of Education provides the staff to carry out the day-to-day operations of public education. The legislature appropriates money and makes laws for education. The governor sees that all laws are carried out, and may also reduce the amount of money available to the Department of Education. The Board of Education makes policy for and controls the public school system through the superintendent of education, whom the board appoints.

Some persons suggest that the present system is in need of clarification. For example, the governor and the board both supervise the Department of Education; however, the governor can disapprove a rule adopted by the board. Also, both the legislature and the governor may delete, reduce, add, or expand educational programs.

Some suggesting clarification of the responsibility for making policy for education feel that the Board of Education is the expert in the area and should have full control. They point out that the board was elected by the people specifically for this purpose, while the legislature and the governor were not.

However, even under the present system, not all state educational policy is decided by the legislature or the governor. Supporters of the present system point to the broad discretionary power the board is given over public education.

They further feel the existing three-way input by the board, the governor, and the legislature is a proper balance of power. The governor, it is claimed, should control board rules and budget because the governor represents all the people and must balance the total needs of the state. The legislature should also retain its present role, some claim, as legislators are closer to the voters (i.e., each legislator represents fewer people than a board member), are better known than the board members, and have the power to appropriate money and pass laws. Like the governor, the legislature also sees the total needs of the state and must provide for all of those needs.

CONSERVATION

19. Whether the responsibilities of the state in land use matters should be specified, e.g., preservation of lands specifically identified and the manner in which land, public and private, in the state should be used.

Natural resources are generally thought to consist of usable mate-

rial (timber, running water, and other sources of energy). Hawaii has few of these resources, but does have resources such as land, climate, and the natural beauty of the islands. Thus, when speaking of conserving Hawaii's natural resources, people usually focus on the land and how it is used.

Presently, the Constitution generally requires the legislature to promote the conservation, development, and utilization of natural resources, and places the power in the state.

Some people believe that broad statements about conservation do not protect natural resources well. They feel that the Constitution should specifically identify conservation areas to be protected, such as in the "forever wild" forest reserve section in one state's constitution, requiring the forest lands of that state to be kept forever, not to be sold or destroyed.

Some state constitutions have brief statements about conservation similar to Hawaii's which state conservation policy and allow the legislature to decide the use of the resources. These states feel that it is better to allow the legislature to develop a comprehensive program that can easily take into account the changing values and needs of the people as well as scientific developments in resource management.

ORGANIZATION AND COLLECTIVE BARGAINING

20. Whether the right to strike of public employees should be limited.

Hawaii's Constitution permits state and county public employees the right to organize for the purposes of collective bargaining, and statutes give details of public employee rights, including provisions for bargaining procedures, settlement of disputes, and rights and prohibitions of going on strike.

Hawaii has no restrictions and permits all public employees to strike, but that right is not unlimited. Certain steps, such as mediation, fact-finding and arbitration, must be taken before employees can strike.

Some persons argue that public employees should not have the right to strike since there are differences between private industry where strikes should be allowed and in government where strikes should not be allowed. For example, the profit motive which influences the private employer's willingness to grant wage increases or fringe benefits and the threat of a firm going out of business or going bankrupt are factors to be taken into account by unions. These factors do not apply to a government. Private employee demands cannot be too excessive or the private employer seeks alternatives not open to a government. For example, if labor costs are too high, the private employer can relocate or close down, but government cannot do this. Private industry has direct control over expenses as some money may be saved by reducing, stopping, or selling some part of the business. Most services provided by the government, however, cannot be reduced or stopped.

Other people say there is no difference between private industry and government for purposes of the right to strike. They point out that all employees have the same problems at work, such as rising prices, job security, promotions, and lay-offs, whether in government or private industry. The right to strike is a bargaining tool for better wages, conditions, and benefits and is necessary to balance the power of the employer no matter who the employer is. Since government may be able to contract for services when employees are on strike, some claim it can keep on providing essential public services.

A third view is represented by those states prohibiting only certain employees, such as policemen and firemen, from striking. These states feel that while public employees have a right to strike, certain services requiring special training must be provided because there is no way to contract for such services. These states believe that these services are crucial for the health and safety of the people, and so must be treated as a separate category.

CONSTITUTIONAL



CONVENTION

CON-CON - SATURDAY,
ELECTION MAY 20, 1978

Prepared by:
Office of the Lieutenant Governor
and
Association of Clerks and Election
Officers of Hawaii
(ACEOH)

HAWAII'S CONSTITUTIONAL CONVENTION

WHAT IS A CONSTITUTION?

IT IS A DOCUMENT THAT:

- Outlines the basic principles of a formal government.
- Guarantees certain rights of the people against infringement.
- Assigns the powers and functions of government.
- Defines the method of selection of our leaders.
- Establishes the basic legal foundation for government and the limitation of its powers.

* * *

WHAT IS A CONSTITUTIONAL CONVENTION?

- A way of reviewing and changing a constitution.
- Composed of delegates usually elected from representative districts or a combination of election precincts, or on an at-large basis.
- Changes proposed by the delegates are voted upon by the people before becoming official.

* * *

HAWAII'S PAST CONSTITUTIONAL CONVENTIONS

CON-CON 1950

- Called for through Act 334, 1949, by Territory Legislature to demonstrate Hawaii's desire for statehood.
- Sixty-three delegates met in 1950 to draft a State Constitution.
- Voted For adoption by the people in 1950.
- Became operational in 1959 when Hawaii became a State.

CON-CON 1968

- In 1966, the Legislature asked voters whether or not to have a Con-Con.
- Voted for by the people in 1966.
- In 1967, the Legislature authorized a convention to be held in 1968.
- Eighty-two delegates were elected in June, 1968.
- Convention began July 15, 1968 and lasted 58 days.
- Convention cost a total of \$1,205,000.
- All changes proposed by the convention, except one, were adopted by the people in the General Election of 1968.

* * *

1978 CONSTITUTIONAL CONVENTION

- Voted for by the people in the 1976 General Election.
- Convention convenes July 5, 1978 in Honolulu with no time limit.
- Election to be held May 20, 1978.
- Election will be nonpartisan with candidates names listed alphabetically on ballot.
- Proposals to be submitted to the voters at the General Election of November 1978, unless the convention determines otherwise.

* * *

VOTER REGISTRATION FOR CON-CON

IF YOU ARE NOT ALREADY A VOTER OF HAWAII, YOU MAY REGISTER FOR THE CON-CON AND ALL OTHER ELECTIONS IF:

- you are a citizen of the United States.
- you will be 18 years old on the day of the election.
- you are a legal resident of the State of Hawaii.

* * *

IT'S EASY TO REGISTER

Just appear in person to register at any County Clerk's Office or other designated locations throughout the State. Refer to back page for registration locations.

* * *

RE-REGISTER

Sometimes you have to register again, even though you have done so before. Re-registration is required if:

- you did not vote in both the 1976 primary and general elections, or
- you have changed your name or address since the 1976 elections.

* * *

REGISTRATION DEADLINE

Registration for the Constitutional Convention will be closed at 4:30 p.m. on April 20, 1978.

* * *

ABSENTEE VOTING

You may request an absentee ballot from the Clerk's Office if:

- you are registered to vote in the 1978 Con-Con.
- you will be out of the state, county or district on election day.
- you are confined at a hospital or institution on election day.
- you are ill or disabled at home on election day.
- you are prevented from voting at your polling place by religious beliefs.
- you live ten miles or more from your polling place.

* * *

CON-CON ABSENTEE

Absentee requests will be accepted during the following dates:

- Out of State - March 21, 1978 to May 13, 1978
- Confinees - up to 6:00 p.m. on May 20, 1978

Absentee voting in person at the Clerk's Office will begin ten days before election day from:

- May 10, 1978 to May 19, 1978

For hours of operation, please contact your County Clerk.

* * *

CANDIDATES FOR CON-CON

QUALIFICATIONS

- U.S. Citizen.
- Legal Resident of the State of Hawaii.
- Qualified Elector of the District seeking election.

* * *

NOMINATION PAPERS

Nomination papers for a candidate for a Con-Con seat may be picked up and filed at the Lt. Governor's Office. Neighbor Island candidates may pick up nomination papers at their respective county clerk's office.

Nomination papers must be signed by not less than 15 qualified electors of the Con-Con district.

Deadline for filing - 4:30 p.m. on April 20, 1978.

* * *

FILING FEES

\$25.00 at the time of filing.

* * *

DELEGATE'S SALARY

Delegates to the convention will receive a salary of \$1,000 a month, but not more than \$4,000 for the convention, plus an allowance of \$10 per diem for Oahu delegates and \$30 per diem for neighbor island delegates.

* * *

CAMPAIGN EXPENSES

All candidates for Con-Con must file reports with the Campaign Spending Commission. For more information call or contact:

Campaign Spending Commission
State Capitol, Room 436
Phone: 548-5411

Neighbor Islands:
For information only
Call Operator, ask for
Enterprise 5406

* * *

CONSTITUTIONAL CONVENTION DISTRICTS

REGISTRATION LOCATIONS STATEWIDE*

CON-CON DISTRICT	COMBINED ELECTION PRECINCTS	AT-LARGE DELEGATES	DISTRICT DELEGATES
HAWAII COUNTY			
1st	All	2	1
2nd	1-6 & 12	-	2
	7-11, 13 & 14	-	2
3rd	All	2	-
4th	All	2	-
MAUI COUNTY			
5th	1-8	-	2
	9-15	-	2
6th	1-6, 10-13	-	2
	7-9, 14-16	-	2
CITY AND COUNTY OF HONOLULU			
7th	1-4	-	2
	5-8	-	2
8th	1-3	-	2
	4-7	-	2
9th	1, 3, 7 & 8	-	2
	2, 4, 6	-	2
10th	1-3	-	2
	4-7	-	2
11th	1, 2 & 4	-	2
	3, 5 & 6	-	2
12th	1, 3 & 5	-	2
	2, 4, 6 & 7	-	2
13th	1-3	-	2
	4, 5 & 9	-	2
	6-8	-	2
14th	1, 3 & 6	-	2
	4, 5 & 7	-	2
15th	1-4	-	2
	5-8	-	2
16th	1, 6-8	-	2
	2-5	-	2
17th	1-3	-	2
	4-8	-	2
18th	1, 3 & 5	-	2
	4, 6-8	-	2
19th	1-3	-	2
	4-6	-	2
20th	1-4	-	2
	5-8	-	2
21st	1-3	-	2
	4-6	-	2
22nd	1-4	-	2
	5-8	-	2
23rd	All	2	-
24th	1-3	-	2
	4-6	-	2
25th	1-3	-	2
	4-7	-	2
26th	All	2	-
KAUAI COUNTY			
27th	1, 10-13	-	2
	8 & 9	-	2
	2-7	-	2
27 Districts	234 Precincts	10	92

CITY AND COUNTY OF HONOLULU

Office of the City Clerk
Honolulu Hale
530 South King Street
Honolulu, Hawaii 96813
Phone: 523-4293

Beretania Neighborhood
Community Center
Phone: 521-6664
Ewa Beach Satellite City Hall
Phone: 689-7914

Hauula Satellite City Hall
Phone: 293-8551
Hawaii Kai Satellite City Hall
Phone: 395-4418

Kailua Satellite City Hall
Phone: 261-8575

Kalihi Satellite City Hall
Phone: 847-4688

Kaneohe Satellite City Hall
Phone: 235-4571

Wahiawa Satellite City Hall
Phone: 621-0791

Waianae Satellite City Hall
Phone: 696-6371

Waipahu Satellite City Hall
Phone: 671-5638

COUNTY OF HAWAII

Office of the County Clerk
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720
Phone: 961-8277

Kailua Fire Station
Phone: 329-1590

Captain Cook Fire Station
Phone: 723-3636

Finance Factors Building
Kealahou, Kona
Phone: 322-2747

Bell Book and Candle
Kona Coast Shopping Center
Phone: 329-1441

Sandal Basket
Kailua, Kona
Phone: 329-1969
Honokaa Police Station
Phone: 775-7228

Kohala Police Station
Phone: 889-6225
Naalehu Police Station
Phone: 929-7331

Waimea Police Station
Phone: 885-7334

Waimea Fire Station
Phone: 885-4282

Laupahoehoe Police Station
Phone: 962-6211

Keaau Fire Station
Phone: 966-9395

COUNTY OF KAUAI

Office of the County Clerk
County of Kauai
4396 Rice Street
Lihue, Hawaii 96766
Phone: 245-4785

COUNTY OF MAUI

Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawaii 96793
Phone: 244-7825

Molokai District Court
Phone: 553-5451

Lanai District Court
Phone: 565-5285

STATE OF HAWAII

Office of the Lt. Governor
State Capitol, 5th Floor
Honolulu, Hawaii 96813
Phone: 548-2517

*Permanent Locations only. Call your County Clerk or the Lt. Governor's Office for temporary registration locations.



THE PEOPLE ARE THE SOURCE OF THE LAW
A project of the League of Women Voters of Hawaii Education Fund, Inc.

E R R A T A

THE LEAGUE OF WOMEN VOTERS EDUCATION FUND KA PO'E PROJECT REGRETS THAT IT IS NECESSARY TO CORRECT TWO SERIOUS ERRORS WHICH OCCURRED IN THE PRINTING OF THESE BROCHURES.

ON PAGE FIVE, THE SECOND AND THIRD SENTENCES SHOULD READ: THE LEGISLATURE PROVIDED FOR A CONSTITUTIONAL CONVENTION OF 102 DELEGATES FROM 27 DISTRICTS. THEY WILL BE ELECTED ON MAY 20, 1978, AND START MEETING ON JULY 5, 1978.

WE ASK THAT PEOPLE MAKE THESE CORRECTIONS IN THEIR COPIES TO AVOID THE SPREADING OF MISINFORMATION.

IT IS OUR HOPE THAT YOU FIND THE BROCHURE USEFUL AND ENJOYABLE.



CONstitutional CONvention '78

Facts for you prepared by the League of Women Voters of Hawaii Education Fund, Inc., and illustrated by Corky Trinidad.



The People are the Source of the Law



YOU, the People, are the

WHAT is a CONSTITUTION?

A constitution is the basic legal document of a state. It proclaims the powers and responsibilities given to a state government by its people.



Constitution making is like a hukilau, where everybody shares the work of bringing in the catch, and has equal rights to the catch.



Constitution making is like paddling a canoe, where everyone has equal responsibility to keep the boat moving.



Just as the framework outlines the basic construction of a house and determines what it will look like, so does the Constitution state the basic powers and responsibilities of government, guarantee our rights and set the course for our future.



Source of the Law

A CONSTITUTION CAN BE REMODELED

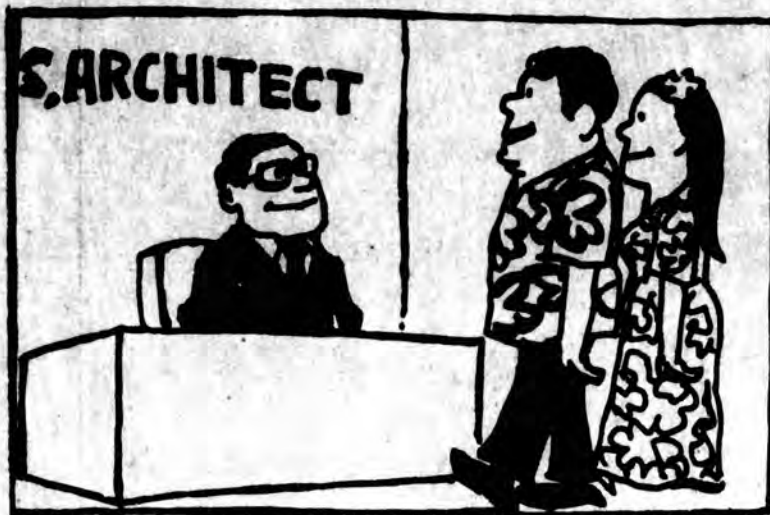
We live in a house for a while and our needs change as our family grows.

We want to remodel our house to suit our new outlook on life. The Constitution can also be altered to reflect our changing ideas on how we want to govern ourselves.



A CONSTITUTIONAL CONVENTION IS..

We can elect representatives to meet, discuss ideas, and change the Constitution, a meeting called a *Constitutional Convention*.



A representative can be anyone who is at least 18 years old, a U.S. citizen, and a legal resident of Hawaii.



The suggestions for change that the representatives decide upon are then presented to the people, who vote on whether or not to accept the changes.

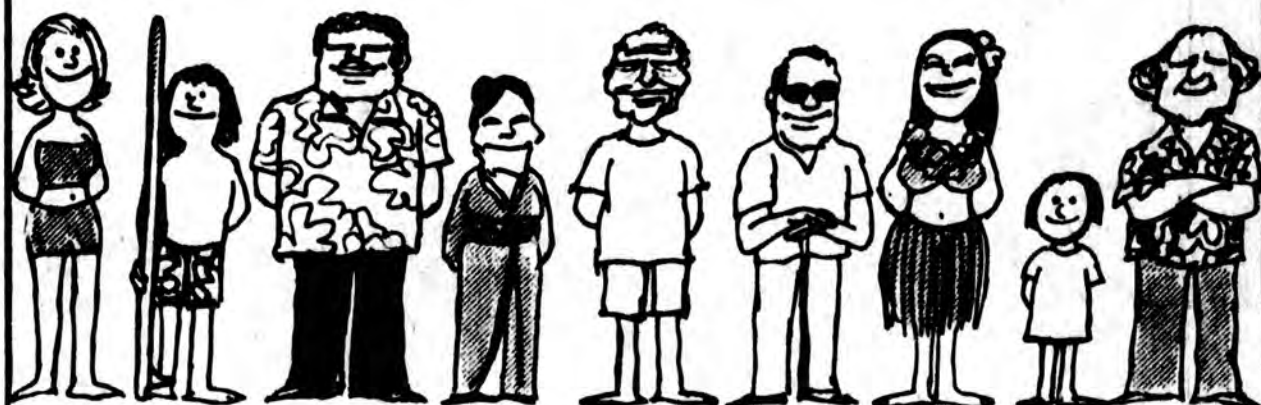


THE 1978 CONSTITUTIONAL CONVENTION

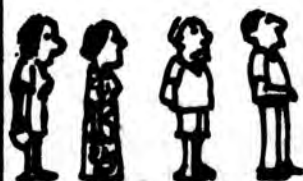


In 1976 the people of Hawaii voted three to one to have another look at their Constitution. The statute provided for a Constitutional Convention of 103

delegates from 27 districts. They will be elected on May 20, 1978 and start meeting June 5, 1978. Each delegate will be paid \$4,000 for serving in the Convention.



The revised Constitution will be presented to voters at a time selected by the Convention. (It is possible that the Convention will present the proposed changes to the voters in time for the 1978 election.)



OUR BILL OF RIGHTS

Article One of the Hawaii State Constitution, called the *Bill of Rights*, lists 20 rights of the people.



These include the freedom of religion, speech, press, and the right of people peaceably to assemble and to petition the government to correct what they think is wrong.



Legal rights, such as the right to a trial by jury, to a speedy and public trial, and to habeas corpus (a safeguard against illegal detention or imprisonment) are listed in the Bill of Rights.



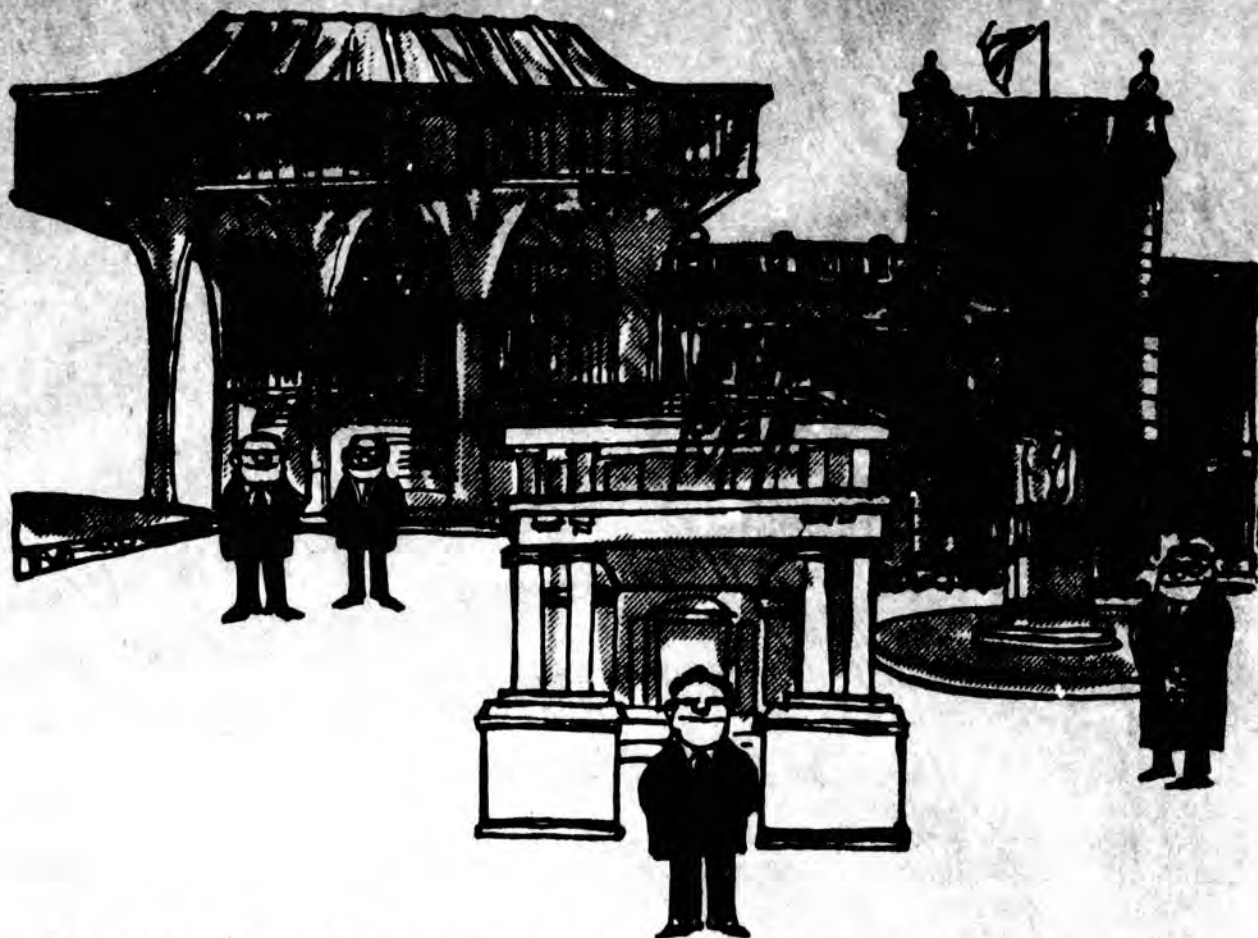
The Constitutional Convention might consider adding to or changing some of those rights, such as changing the grand jury's role, strengthening the right to privacy, adding the right to a healthful environment.



GRAND JUR



THE HAWAII STATE GOVERNMENT



The Hawaii State Government is divided into three parts, or branches. The *legislative branch*, consisting of the *Senate* and the *House of Representatives*, meets every year for 60 working days and makes the laws. For example, the legislature recently passed a law stating the meetings of government agencies must be open to the public.

The *executive branch*, headed by the *Governor* and his *departments*, is responsible for carrying out the laws. In the example, it is the responsibility of all state and county agencies to assure that their business meetings are open public meetings, with advance public notice.

The *judicial branch*, consisting of one *state supreme court*, *circuit courts* and *district courts*, rules in disputes involving the law. Therefore, in the example, any citizen who feels he or she has been denied admittance to a meeting of a government agency can take his case to court.



THE GOVERNMENT WE WANT

The kind of legislature we want depends upon the powers and responsibilities we spell out in the Constitution. Our ideas are reflected in such issues as *nonpartisan elections, regulation of legislative salaries, etc.*, which may be considered at the Constitutional Convention.



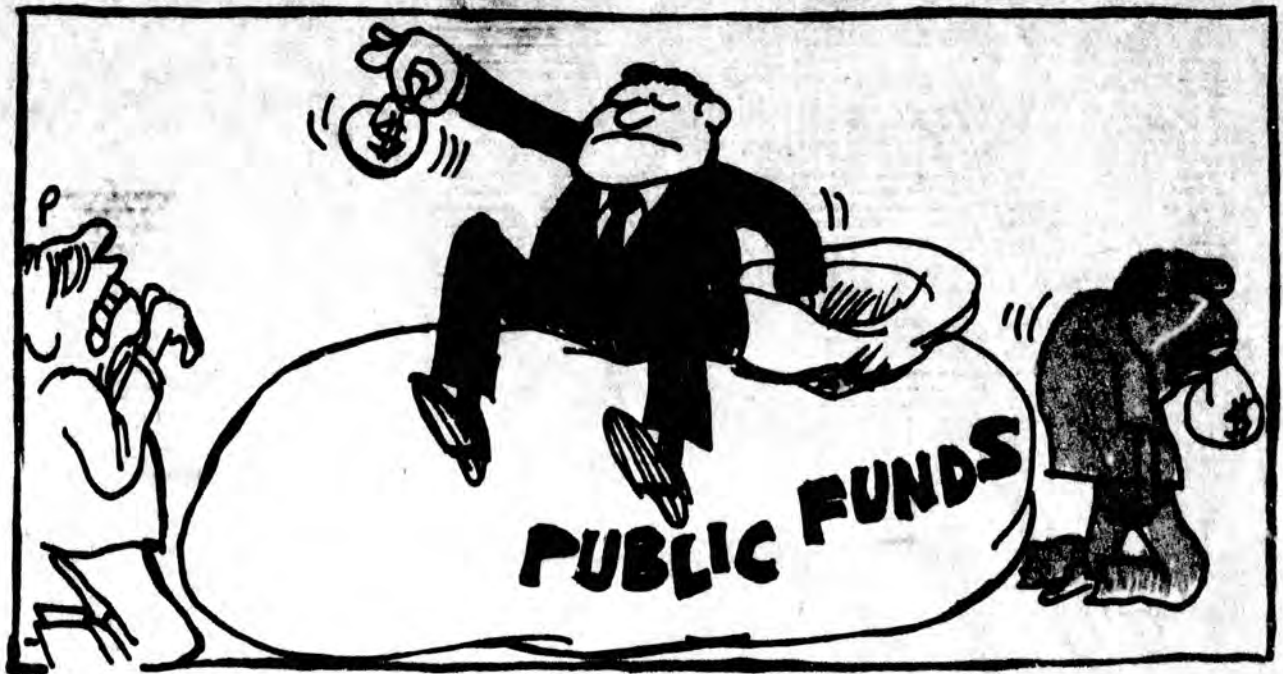
Should legislators be required to run for office without any party labels?



Should the amount that legislators are paid be stated in the Constitution?

DEPENDS UPON US

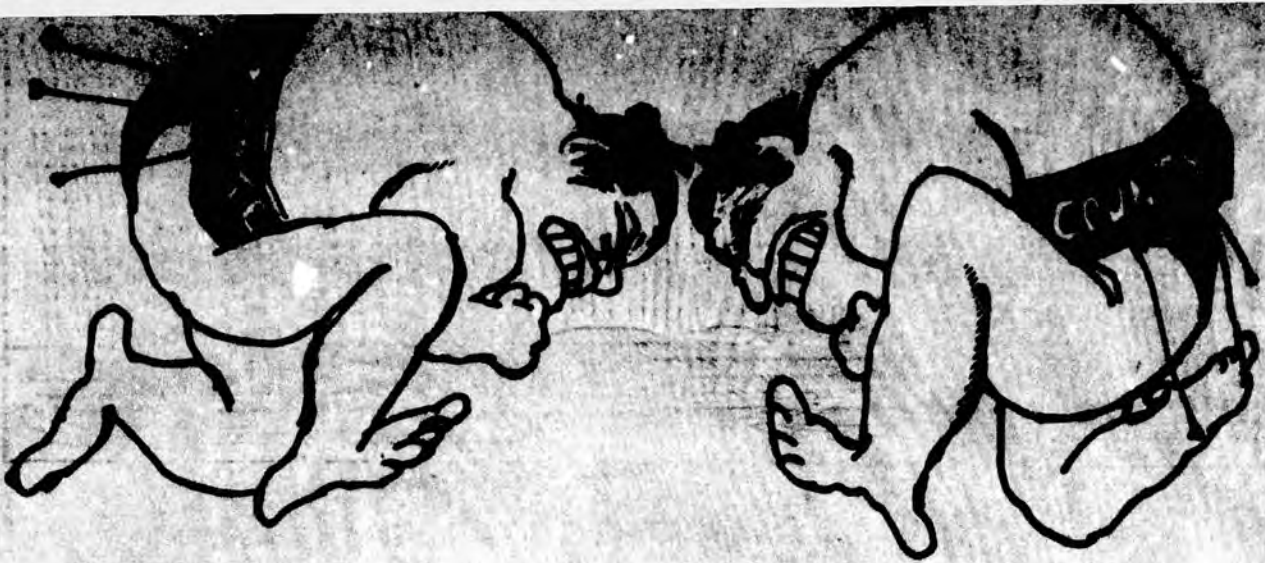
Our present Constitution gives broad powers to the Governor and his departments. Possible changes include *limiting the Governor's right to withhold appropriated funds, electing the Attorney General, requiring the Governor to submit a balanced budget to the legislature, and others which may be considered at the Constitutional Convention.*



Many possibilities for change have been raised concerning the judicial branch of the government. These include *merit selection and election of judges, creation of an appeals court, changing the present 10 year appointment for judges.*

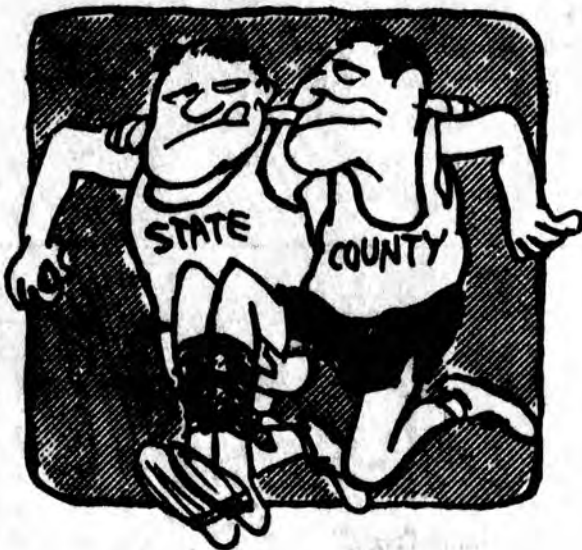
Should judges be selected by a citizen panel and elected by the voters, or should they continue to be appointed by the Governor, subject to confirmation by the Senate?





STATE-COUNTY RELATIONS

The counties are created by the state. In order to provide for state-county cooperation, the Constitutional Convention may consider such issues as



merging overlapping state-county responsibilities,

giving the counties more taxing power, or even abolishing the counties!





HOW WE USE OUR LAND

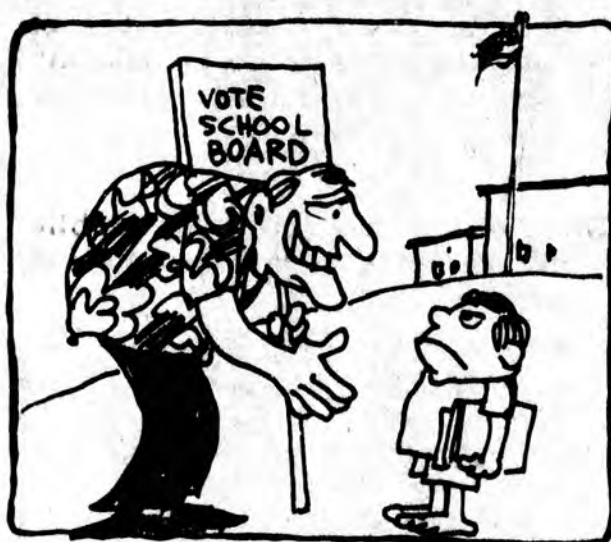
The delicate balance between land use and population growth is a very real problem in our state of Hawaii. Should we try to limit population growth? Should certain land use changes be made only by popular vote? Should the Constitution include our ideas on energy conservation? These and other issues may be discussed at the Constitutional Convention.



EDUCATION



How can we best prepare our children for adulthood and social responsibility?



Is our present statewide educational system the best way, or should the counties have more power over schools? Do we still want to elect our Board of Education? What powers should the Board of Education and the University Board of Regents have? Should the Governor appoint the entire Board of Regents? These Constitutional issues may be discussed at the Convention.



CONTRACTS FOR GOVERNMENT WORKERS

The present Constitution permits public employees to organize for the purpose of collective bargaining. This bargaining is usually done in closed sessions, between administration and employee representatives. Questions the Constitutional Convention may consider include:

Should certain types of public employee bargaining sessions be required to be open?

Should the right of government workers to strike be limited?





considered at the Constitutional Convention.

Should there be more control of government spending?

Should the government be subjected to stricter debt limits?



Should the public be given the right to initiate and vote on legislation?

Should the public be given the right to vote on certain laws passed by the legislature?



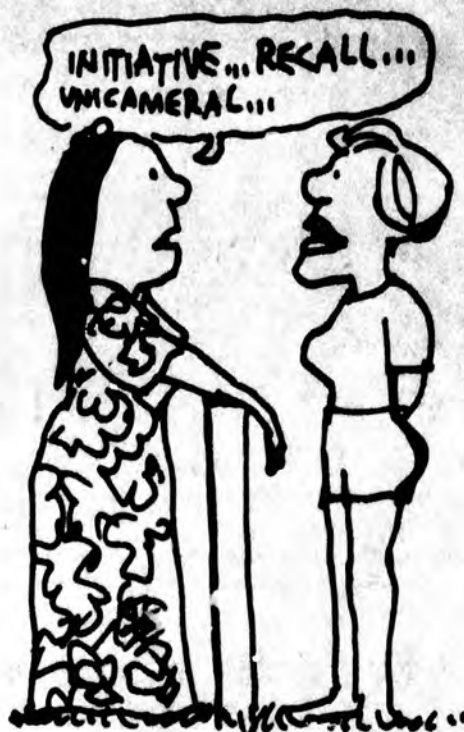
Should there be a one-house legislature, or should we continue to have two houses?

HOW TO GET INVOLVED IN CONCON



LEARN about issues now being discussed.
SUGGEST new topics of concern for CONCON.

TALK to your neighbors and friends about CONCON issues.
BECOME a candidate for delegate to CONCON.
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NATIONAL MUNICIPAL LEAGUE
Draft of address by: William N. Cassella, Jr.
Executive Director
National Municipal League

KA PO'E PROJECT-CONSTITUTIONAL CONVENTION DELEGATES WORKSHOP

Honolulu, Hawaii
June 13, 1978

During 1976 in the course of my travels around the United States, I tried to visit as many of the bicentennial year exhibits as I possibly could. Of all the displays of memorabilia, artifacts, maps, publications, prints and documents, the one that made the most lasting impression on me was appropriately enough in Philadelphia, but it wasn't directly associated with the Continental Congress or the Declaration of Independence. A part of a vastly larger exhibit entitled, "A Rising People," it displayed printed copies of the first constitutions of the original thirteen states as they were distributed to the public in the years of the American Revolution. These written constitutions establishing governmental structure and powers superior to statutory law embraced a new concept. The word constitution had assumed a new meaning very different and far more specific than the vague accumulation of basic rights, operating practices and legislative enactments known as the English Constitution and with a philosophical basis very different from Cromwell's short-lived Instrument of Government, which was England's only written constitution. For the new states their constitutions were seen as their protections against future tyranny, by governors, legislatures or courts. John Jay said that citizens of American states were the "first people heaven has favored with an

opportunity of deliberation on and choosing the forms of government under which they should live."

Part of the display I saw in Philadelphia was evidence of the immediate impact of the written American state constitutions on European intellectuals. From Benjamin Franklin's personal library were copies of two of the first published compilations of state constitutions both in the French language. One published in 1778 was dedicated to Franklin, printed in Philadelphia for distribution by a Paris book dealer. Five years later Franklin sponsored another French translation published in Paris with an edition including copies printed in quarto and handsomely bound in morocco for distribution as presentation pieces to the monarchs and statesmen of Europe.

It is important to remember that development of the "free and independent" governments of the original states as Jefferson pointed out was the whole object of the Revolution and was well underway when he wrote the Declaration and included in it the following: "That to secure these rights (life, liberty and the pursuit of happiness) Governments are instituted among Men, deriving their just powers from the consent of the governed That whenever any Form of Government becomes destructive of these ends, it is the right of the people to alter and abolish it, and to institute new Government, laying foundations on such principles and organizing its powers in such form as to them shall seem most likely to affect their Safety and Happiness."

The dual philosophical base of these new governments--the doctrines of popular sovereignty and the supremacy of law over men--had enormous

importance as to both the substance of state constitutions and the process by which they were adopted. Within some of the states pressures came from groups whose discontent was almost as strong against the new governments as it had been against royal authority. Extra legal revolutionary organizations--conventions and committees were regulating almost all aspects of life. These organized citizens felt that new constitutions drawn up by legislative assemblies lacked the legitimacy required for basic law superior to ordinary statutes. It wasn't enough to solicit from the voters authority for the assembly to draft a constitution. How were the people to exercise their superior constituent power? The answer came in adapting the device of the extra-legal, irregular convention to a regularized institution for the expression of popular sovereignty. Out of the acrimonious politics of Pennsylvania came the first constitutional convention in 1776. Chosen by irregular local committees it drafted a constitution which became a symbol of democracy, but the method had been one of political expediency somewhat arbitrary to say the least.

By contrast in Massachusetts an orderly process was set in motion--a special constitutional convention was elected by the adult freemen of the state. Influenced greatly by John Adams it drafted a constitution which was adopted by a two-thirds majority in a popular referendum in 1780. Thus a method was developed whereby the people could exercise their constituent power--i.e., "a convention of delegates chosen by the people for that express purpose and no other could establish or alter a constitution" which in turn would be submitted to the electorate for

approval. Distinguished legal historians have said, "It was an extraordinary invention, the most distinctive institutional contribution...the American Revolution made to Western politics."

(Wood, p. 342. Also Palmer, V.I p. 214)

Thus the 1978 Hawaii Constitutional Convention will be operating as part of a continuing process which began two centuries ago and by which citizens perform in a very special role as the architects and builders of the structure of the government which serves them. It is necessary constantly to remind ourselves that the reason American state constitutions are particularly important parts of the corpus of the law is that they are different from regular statutory law and the extent to which this difference is blurred the special importance of the constitution is diminished.

Fortunately, constitution making in Hawaii has operated much as it did when the earliest state constitutions were drafted late in the 18th century. It has been spared the verbal excesses of the late 19th century when constitutional conventions in the South were reacting to the trauma of the civil war and its aftermath and in many other states to scandals which undermined confidence in government, particularly the legislature. It is to be hoped that a trend evident in virtually all constitutions drafted since World War II will continue. So far the constitutional conventions meeting in mid-20th century and later have recognized that the brevity of the U. S. Constitution sets a standard for a basic law with the flexibility to meet the governmental needs of

changing times and circumstances. They agree with Gladstone's famous tribute that the U. S. Constitution is "the most wonderful work ever struck off at a given time by the brain and purpose of man." It is often asserted that constitutions should be limited to fundamentals, but what is meant by "fundamentals?" The eminent political scientist, William Bennett Munro, said:

A state constitution should confine itself to fundamentals. This of course begs the question as to what one means by "fundamentals." True enough, it is hard to define, but everybody knows what it means. Or, if any one does not, he need only read the Constitution of the United States to acquaint himself with an organic document which comes measurably near fulfilling the requirement. (Munro, An Ideal State Constitution, 181 Annals 1 (1935).

In using the U. S. Constitution as a model it must be remembered that our national government is one of delegated powers and under American federalism, as the 10th amendment says, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people." Thus ultimate sovereignty is with the people who impose limits upon government exercise of power. Therefore, a constitution is a strategic instrument through which the people exercise their sovereign will.

Upon state government certain limitations have been imposed by the adoption of the U. S. Constitution and the amendments to it. There are the specific prohibitions--"no state shall enter into any treaty or alliance...coin money...pass any bill of attainder, ex post facto law or law impairing obligation of contracts or grant any title of nobility...lay an impost or duties...engage in war..." etc. (Art. I, Sec. 10).

George Washington as president of the Constitutional Convention of 1787 in the letter transmitting the Constitution to Congress said: "Individuals entering into society must give up a share of liberty to preserve the rest.... The magnitude of the sacrifice must depend as well on situation and circumstance, as on the object to be obtained. It is at all times difficult to draw with precision the line between those rights which must be surrendered and those which may be reserved...." Later some of the protected rights were stated in the Bill of Rights but this was not the complete enumeration as is so stated in the 9th Amendment--"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." Indeed a similar enumeration and a statement of rights retained by the people is part of most state constitutions including that of Hawaii. All levels of government are thus intended to be limited. We continue to hold certain rights, enumerated or not, as "self-evident."

In our state constitutions as in our national constitution we as the sovereign people not only place limitations on government but also specify the institutions which are to govern us. In his monograph, Shape of the Document, Robert Dishman says, "State constitutions...serve the same basic function as their national counterpart, that of organizing and delineating the powers of government whether by limitation, delegation or command."

In one of the best exhortations on what a constitution should contain, Brook Graves told the preparatory committee for the 1947 New Jersey Constitutional Convention:

A constitution is a body of fundamental law. It is established for the purpose of providing a set of governmental machinery, on the one hand, and of protecting the citizen from an unfair or improper use of governmental authority, on the other. When we say that the provisions of a constitution are fundamental, we imply that they are relatively more permanent, more stable, and less subject to the need for frequent change, than are the provisions of statutory law. Statutory law, on the other hand, is regarded as being more or less transitory in character, as being more concerned with current policies and practices, and less with those "eternal verities" of government which have been handed down generation after generation, from the past. A constitution is supposed to represent an attempt at stating the accumulated wisdom of the ages, on the subject of government, while statutes are a contemporary effort to deal with problems of a current nature.

As Frank Grad says in The State Constitution: Its Function and Form for Our Times, "the significance of treating a subject in the state constitution rather than leaving it to be dealt with as ordinary law... is simply this: (1) it places the matter included in the constitution beyond change by normal law-making processes, and (2) it places it at the highest level of legal authority in the state."

Clearly in every constitution there is core material. We have already mentioned a Bill of Rights. Add to it provisions on the qualifications for the right of suffrage. A well established principle of American government is the separation of powers among three separate and distinct branches--legislative, executive and judicial. Thus in the constitution it is necessary to establish the framework of government and to state in general terms the powers of each branch. For the legislative branch it must be specified whether there is one house or two--the number, election, term and qualifications of members. Also there must be a provision for the executive, again with qualifications, manner of election, and term

of office. And there is provision for a system of courts. As Graves says: "If the constitution is to endure, and remain satisfactory over a long period of time, these provisions should be brief. If they are brief, they will be flexible and elastic, susceptible of adaptation to the changing needs of the people in a rapidly changing society; if they are too long, and cluttered up with a great mass of detail, they will be inflexible and unelastic, and will cause it to be difficult, if not impossible, to make desired changes."

Finally there must be provision for amendment and revision of the constitution. The members of no constitutional convention, not even "The Great Convention of 1787" can foresee the problems which future conditions will bring about. Again from Graves' exhortations to members of a constitutional convention:

...They should not seek to impose their will and their judgment, based upon existing conditions, upon generations yet to come--generations which may find themselves living under conditions that are wholly different. These generations will of right demand the same privilege of changing their fundamental law that their forefathers exercised, and in all probability, they will be quite competent to handle the problems confronting them.

The Hawaii constitution is one of the few state constitutions which is confined in the main to fundamentals. Indeed it has been hailed by legal scholars as one of the best in the nation. Well over half of it is clearly what can be called core provisions and relatively few sections are strictly statutory. There is no question that the constitution as amended continues to pass the test of brevity. Unlike the constitutions of most of the older states it is not overstuffed with disabling "thou

shall note" or detailed prescriptions. Why then is this third Hawaiian Constitutional Convention being held? In comparison to most older states the need for revision is certainly not great. Indeed it may be that the Third Hawaii Con Con will be like the Second and make relatively few changes. While making some modifications it may once again confirm the basic soundness of the Hawaiian constitution. Of course, ten years ago it was necessary to write a new legislative apportionment provision to bring the legislative article into conformity with the U. S. Constitution. No such problem exists this time.

There is always value for the citizens of a state to appraise how well present institutions are performing, how well they are meeting changing needs and circumstances. If needs are not being met it is important to determine why that is so. The convention will certainly ask why there have been failures and if they can be traced to the constitution. It will also point to some failures of the institutions to perform as they could have under the present constitution. We know that there has been a pervasive public disillusionment with governmental and other established institutions, but we may well find that the cause of this disillusionment has little to do with the fundamental law. In many cases it may be a failure of people not institutions. Also it must be asked when dissatisfaction is felt, how general is the dissatisfaction or is it the expression of a narrow special interest? Again is the dissatisfaction a concern of the moment or a matter with long-range implications? First and foremost -- is the problem one which can and should be addressed by the

legislature? If that is the case is there anything in the constitution which impedes legislative consideration? Should anything be added to the constitution to facilitate action by the legislature?

It must be remembered that the convention is not the legislature. A Constitutional Convention cannot enact laws designed to solve the problems of crime, poverty, the environment, etc. It can simply propose mechanisms for dealing with problems and protections against infringements upon the rights of citizens. When it considers a proposal to add something to the constitution or to make a change in a fundamental provision, it has a responsibility very different from that of a legislature enacting a statute. Remember anything the convention does must be ratified by the electorate before it becomes law. Assuming the people will approve the recommended change, by adding something to the constitution it is being placed "beyond change by normal law-making processes." Thus each new constitutional provision must be considered in both short and long-run terms. Many provisions have found their way into constitutions which have been beneficial in the short run but harmful in the long run. Grad points out, "The enduring quality of a provision of the state constitution may protect a desirable policy from frivolous changes by the legislature, or it may delay or prevent the change to a new and better policy from one embedded in the constitution which is no longer responsive to current needs.... Inflexibility in the face of changed circumstances results in constitutional obsolescence and diminished power to act responsibly on the part of government organs. These factors in turn breed constitutional instability as a consequence of the need

for frequent amendment. In the light of these various possible consequences, the decision as to inclusion or exclusion of particular subjects in the constitution becomes a matter of weighing the advantages against the potential costs of inclusion."

There will always be pressure to include matters in the constitution but constitution makers must look behind the pressures to ascertain whether or not the proposal is sufficiently enduring and important in character. All too often the pressures of determined reformers on behalf of good causes have led to the inclusion of provisions which soon are shown to be totally inappropriate. A good example occurred in a midwestern state when the "good roads" movement was at its height. The 'good roads' proponents were able to get a constitutional amendment passed which wrote into the constitution a detailed description of the routes of the state's highway system. It made it impossible to change any route no matter how great the need without going to the people for another amendment to the constitution. This illustrates one of the traps into which some of our state constitutions have fallen. A mistrust of the legislature leads to rigid constitutional provisions and the more rigid the constitution the greater the need to amend it further, and amendments breed further amendment resulting in a vicious cycle. The classic case was the Louisiana constitution which in the course of 50 years was amended almost 500 times bringing it to a length of more than a quarter million words. Finally, the voters had had enough with as many as 50 amendments on the ballot in a single election. Simplification was demanded and as a result of a convention

a new constitution only a little more than one-tenth the length of the old one was adopted in 1975. The bulk of the detailed material was converted into statutes where it should have been all along.

A pet device which has limited the power of the legislature is the earmarking of certain revenues for a particular purpose. Then there is the negative implication of a positive provision, often the result of putting too much detail in the constitution, e.g., the Oklahoma provision conferring upon the State Corporation Commission the power to regulate "transportation and transmission" companies, but the draftsmen not satisfied with general language listed railroads, steam boat lines, express companies and all means of transport known at the time. Subsequently, it was ruled that since air transportation was not included in the list the commission had no power to regulate airlines even though there had been no airlines at the time the provision was adopted.

I have read with great interest the results of the Con Con poll. They certainly highlight problems which are of deep concern to the citizens of Hawaii and indicate areas in which state government should take action. Likewise they focus on some institutional changes which may be proposed for consideration by the convention. It is hoped that the citizens of the state will not be misled to thinking that the 1978 convention will be able to provide the ultimate solutions to any of the problems or to bring perfection to its government.

It is not my role to evaluate the policy proposals on the various

modifications in the basic governmental institutions which are being advocated--e.g., change to a unicameral legislature, limitation on the terms public officers may serve, the method of selecting the attorney general and the judges, home rule for local government, and the initiative and referendum. On all these matters the National Municipal League, which I serve as executive director, has specific recommendations in its Model State Constitution. (I will be pleased to discuss any of them with delegates while I am here.) It is most appropriate that proposals for basic changes be debated by the convention. Some may be included in the convention's recommendations to the people, but the central issue in the debate should be whether each proposed change will increase the responsiveness and effectiveness of your state government.

There will be much discussion of how issues are met in other states and how they are organized and function. Be sure to seek both the positive and the negative appraisals of experience elsewhere. In many areas we on the mainland have much more to learn from you than you from us. I remember my first contact some 22 years ago with Hawaiian citizens dealing with governmental structure. The chairman of the Honolulu City-County Charter Commission asked for comments on the question of "whether it is better to preserve only one unit of local government for this island, or to permit the creation of a number of municipalities." It was noted that some citizens pointed to the mainland experience of large cities bordered by incorporated suburbs as "sound and desirable." In our reply, after pointing to the complexities and problems of the central city-suburban pattern in most mainland metropolitan areas, we

urged that Honolulu not take on "the multiple vexations which inevitably flow from a complicated system of local jurisdictions."

May I commend the League of Woman Voters of Hawaii Education Fund and the other organizations which are making the holding of the 1978 Constitutional Convention a profound educational experience for the people of the state--private citizens and public officials alike. We have all too few opportunities to focus systematically on the institutions of state government and how they operate. The debates of the Convention and all of the forums, workshops and other discussions which are taking place will be a great plus for your state.

It is my belief that this total effort in civic education will be as important as what the convention includes in its formal recommendations. In the first place citizen understanding of the recommendations is necessary if the recommendations are to be approved. In so many referenda we have seen confirmed the adage, "If you don't know, vote No." Beyond that, the energy generated by these debates and discussions can have a most salutary effect on the legislature. It will certainly better understand its responsibilities. Perhaps the convention in the report to the people accompanying its recommendations should also report on matters which the convention did not consider appropriate for inclusion in the constitution but upon which there was a clear consensus that action should be taken by the legislature and that under the present constitution the legislature has ample authority to act.

As the convention proceeds, as the media report on its work, and as individual citizens and organized groups make their wishes and

expectations known, all must constantly be reminded that the convention has a distinctive long-range mission--that as a vehicle for constitution-making it must heed the words of the late Justice Benjamin Cardozo: "A constitution states, or ought to state, not rules for the passing hour, but principles for an expanding future."

IN THE SUPREME COURT OF THE STATE OF HAWAII

OCTOBER TERM 1978

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MIRIAM KAHALEKAI, ET AL., PLAINTIFFS, V.
NELSON DOI, LIEUTENANT GOVERNOR, STATE OF HAWAII,
ET AL., DEFENDANTS.

NO. 7216

and

THIRTY-FOUR VOTERS OF THE COUNTY OF MAUI,
PLAINTIFFS, V. NELSON DOI, LIEUTENANT GOVERNOR,
STATE OF HAWAII, ET AL., DEFENDANTS.

NO. 7218

ORIGINAL PROCEEDING

FEBRUARY 1, 1979

RICHARDSON, C.J., OGATA, MENOR AND
KIDWELL, JJ., AND RETIRED JUSTICE
KOBAYASHI FOR THE VACANCY.

FILED
FEB - 1 1979
CLERK OF THE SUPREME COURT
Hon. J. H. Chen

Constitutional Law - judicial powers and functions -
adoption of constitution and amendments.

The supreme court is vested with jurisdiction to
ascertain and to determine the validity of the manner
of submission and the ratification of changes in the
state constitution.

Same - same - same - presumption of validity - standard
of review.

Constitutional amendments ratified by the electorate
are presumed to be valid and the amendments as adopted
will be upheld unless they can be shown to be invalid
beyond a reasonable doubt.

Same - same - same - challenges to validity - burden of proof.

The party challenging the results of the election bears the burden of showing, beyond a reasonable doubt, the invalidity of a constitutional amendment which the people have adopted at a general election.

Same - adoption of constitution and amendments - elections - official ballots - form and contents.

Where the ballot used in a constitutional ratification election is in a form which produces a knowing and deliberate expression of voter choice, the vote satisfies the requirement of electoral approval.

Same - same - same - same - same - particular defects or irregularities.

A ballot is not defective merely because it is mechanically easier for the voter to vote for rather than against any given proposition, so long as the ballot language is not misleading or deceptive.

Same - same - same - same - same - scope of judicial review.

A determination of what inducements motivated voters in the adoption of a proposed amendment is outside the scope of any judicial examination where the language and meaning of a constitutional amendment are clear and the ballot is neither misleading nor deceptive.

Same - same - same - same - same - duplicity.

An amendment proposed by a constitutional convention may embrace more than one subject or purpose where the constitution authorizes the convention, in its discretion, to provide for the manner of its submission.

Same - same - same - same - same - limitation on discretion of constitutional convention.

The authority of a constitutional convention to determine the manner in which proposed amendments are to be submitted to the vote of the electorate is subject only to the limitation that the ballot must enable the voters to express their choice on the amendments presented and be in a form and language which will not mislead or deceive the voter.

Same - same - submission to popular vote - nature of convention's duty to inform.

Where there is no express publication requirement in the constitution, a constitutional convention is nevertheless under a duty to adequately inform the electorate of the contents and effect of the proposed amendments.

Same - same - same - duty of electorate to be informed.

The electorate bears a corresponding burden of educating and familiarizing themselves with the contents and effect of the amendments prior to going to the polls to cast their ballots.

Same - same - same - presumption of informed electorate.

Where the information disseminated to the public is neither deceptive nor misleading, and the public is given sufficient time within which to familiarize themselves with the contents and effect of the proposed amendments, they will be presumed to have cast informed ballots.

Same - same - same - duty of convention to inform.

Where the electorate is not sufficiently informed of the substantive nature and effect of a proposed amendment, such amendment will be deemed to have failed of ratification.

Same - same - same - same - stylistic changes.

Failure by the convention to inform the public specifically and in detail of the stylistic and purely technical changes, embodied in a proposed amendment, will not prevent ratification of the proposal, so long as these changes do not alter the sense, meaning or effect of constitutional provisions.

Same - same - reserved powers.

The power to determine whether and to what extent the organic law is to be amended or revised is reserved to the people by the constitution.

OPINION OF THE COURT BY MENOR, J.

This is an original action seeking to invalidate the results of the November 7, 1978 general election dealing with amendments to the State Constitution presented to the electorate for its approval by the 1978 Constitutional Convention.^{1/} The lieutenant governor's Computer-Final Report on the results of the election shows that all of the proposed amendments passed by the necessary constitutional margin.^{2/} At issue, however, is whether the proposed amendments were submitted to the voters in the form and manner required by law.

Following its deliberations, the Convention adopted as the definitive expression of its conclusions a document entitled, "The Constitution of the State of Hawaii With the Amendments Proposed by the Constitutional Convention of 1978." This document was referred to the Convention Committee on Submission and Information. That committee proposed a form of resolution, which was adopted by the Convention (Resolution No. 30), in which it was provided

^{1/} The 1978 Constitutional Convention was mandated by the voters in 1976, when the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" was placed on the general election ballot. Hawaii's first constitutional convention was held in 1950 when 63 delegates met to draft a document, which became official and operational when Hawaii became a state in 1959. Another convention was held in 1968 when 82 delegates met and proposed 23 amendments to the voters. The 1978 convention was attended by 102 delegates and the number of amendments offered to the electorate totalled 34.

^{2/} Article XV, §2, in pertinent part, provides that "[t]he revision or amendments shall be effective only if approved at a general election by a majority of all the votes tallied upon the question, this majority constituting at least thirty-five percent of the total vote cast at the election." Most were approved by the electorate by substantial popular vote margins.

that the proposed amendments be submitted for ratification at the November 7, 1978 general election, in the form of the ballot attached to the resolution. The attachments to the resolution consisted of the texts of the punch-card ballot and the informational booklet which were subsequently used in the general election.

The punch-card ballot listed 34 proposed amendments by short title. The ballot was divided into Parts A and B. Part A provided for a blanket "yes" or "no" vote on all proposed amendments. Part B provided for a "no" vote on each of the 34 proposed amendments, the listing of which was preceded by a caption: "I VOTE YES ON EACH OF THE PROPOSED AMENDMENTS AS LISTED BELOW EXCEPT THAT I VOTE NO ON THE FOLLOWING:." Neither the effect of the proposed amendments nor the numbers of the amended articles and sections were set forth in the punch-card ballot. However, the ballot contained, preceding Parts A & B, the following:

"Please read instructions and information in the booklet which is part of this ballot. The full text of the proposed amendments on the ballot numbered 1-34, inclusive, is available for inspection in your voting unit." (Emphasis added)

The informational booklet attached to the resolution set forth, under the same numbers and short titles used in the punch-card ballot, brief descriptive material under the words "If adopted, this amendment provides:." With the exception of proposed amendments 24, 25 and 34, article and section numbers were set forth in parenthesis after each short title. For example, the descriptive material with respect to the first proposed amendment was headed:

1. 12 MEMBER JURY: CIVIL; CASE AMOUNT (Article I, Section 13 and 14)

The forms of the ballot and informational booklet, as printed and used in the election,^{3/} conformed to those attached to the resolution, except that article and section numbers were added, in the informational booklet, after the short titles of proposed amendments 24 and 25. No article or section numbers appeared beside the short title of proposed amendment 34, in either instance.

Copies of the full text of the revised Constitution were distributed to state and municipal officers, including all county clerks, on September 21, 1978. They were also distributed to the main and branch libraries of the state library system at least two weeks before the election. The availability of the library copies for examination could have been ascertained by a phone call to the Convention office at a phone number made generally known by newspaper advertisements. No information was distributed to the general public with respect to the availability of the text of the revised Constitution at public libraries; however, a "Con-Con Summary" mailed by the Convention to the household of every registered voter in the State did advise voters that they could obtain exact wording of the amendments from the voter information center located at Convention headquarters in Honolulu.

Having completed its work on the proposed amendments, the Convention recessed on September 21, 1978. Between that date and the November 7, 1978 general election, the Convention, through its Committee on Submission and Information, implemented its plan for the education of the electorate concerning the proposed amendments.

^{3/} See Appendices "A" and "B" attached to this opinion. They follow essentially the same format as those used in the 1968 election.

It mailed to the household of every registered voter in the State a "Con-Con Summary" containing a digest of the proposed amendments. On October 29, 1978, it caused to be published an advertising supplement to the Sunday Star-Bulletin and Advertiser, as well as to the Hawaii Tribune Herald, The Maui News, and the Garden Island. Each of the sections of the revised Constitution which was identified by article and section number in the informational booklet used in the election was printed in full text in this supplement. Other amendments adopted by the Convention and reflected in the revised Constitution which was referred to the Committee on Submission and Information were not printed in the newspaper supplement. This supplement was followed by the publication of the summaries of proposed amendments 1-10 on October 30, 1978, summaries of proposed amendments 11-21 on November 1, 1978, and summaries of proposed amendments 22-34 on November 2, 1978. These summaries were published in the Honolulu Advertiser and the Honolulu Star-Bulletin, both of which are newspapers of general circulation within the State. These summaries were combined and republished in these newspapers on November 5, 1978, as a two-page advertisement. This combined summary was also distributed to the Sun Press on Oahu, the Maui News, the Hawaii Tribune Herald, and the Garden Island for dissemination to their readers. These summaries contained relevant information on some of the amendments which were not reflected in the informational booklet or in the supplement.

Additionally, the Convention during this period provided for the publication of newspaper advertisements and of radio and television announcements referring interested persons to the Convention information center and its telephone

number for answers to questions; for the establishment of a speakers bureau to make convention delegates available to interested organizations for talks explaining convention amendments; and for radio and television programs in which convention delegates discussed the proposed amendments. The office of the lieutenant governor also conducted a statewide voter education program designed to familiarize the electorate with the ballot and voting procedures. The Convention's final report on advertising expenditures shows that it expended a total of \$140,627.43 to educate the public on the amendments prior to the general election.

I

The initial issue raised by the pleadings is whether this court has jurisdiction to entertain the proceedings. We hold that we do. HRS Chapter 11, Part XI, vests in this court jurisdiction over the subject matter of this action. Moreover, this court is empowered "to make and award such judgments, decrees, orders and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it." HRS § 602-5(7).

"The power to ascertain the validity of changes in the constitution resides in the courts, and they have, with practical uniformity, exercised the authority to determine the validity of proposal, submission, or ratification of change in the organic law. The question of the validity of the adoption of an amendment to the constitution is a judicial and not a political question." 16 Am.Jur.2d, Constitutional Law, §43.

II.

In considering the merits of the issues raised by the plaintiffs, we are to be guided by the cardinal principle of judicial review that constitutional amendments ratified by the electorate will be upheld unless they can be shown to be invalid beyond a reasonable doubt. Keenan v. Price, 68 Idaho 423, 195 P.2d 662 (1948); City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967). The burden of showing this invalidity is upon the party challenging the results of the election. And "[e]very reasonable presumption is to be indulged in favor of a constitutional amendment which the people have adopted at a general election." City of Glendale v. Buchanan, 578 P.2d 221, 224 (Colo. 1978). In Keenan the court, quoting from State v. Cooney, 70 Mont. 355, 225 P. 1007, 1009 (1924), said:

"[H]ere as always we enter upon a consideration of the validity of a constitutional amendment after its adoption by the people with every presumption in its favor: The question is not whether it is possible to condemn the amendment, but whether it is possible to uphold it, and we shall not condemn it unless in our judgment its nullity is manifest beyond a reasonable doubt." 195 P.2d at 667.

A corollary to the foregoing principle is the oft-stated proposition that "[t]he people are presumed to know what they want, to have understood the proposition submitted to them in all of its implications, and by their approval vote to have determined that [the] amendment is for the public good and expresses the free opinion of a sovereign people." Larkin v. Gronna, 69 N.D. 234, 285 N.W. 59, 63 (1939).

III

The basic thrust of the plaintiffs' arguments in this case is that the constitutional amendments in question were not submitted to the electorate in the form and manner provided by law. More specifically, the plaintiffs contend in their initial argument that the form of the ballot was so irregular as to require the invalidation of the election. We disagree.

The Convention was authorized by the Constitution to determine the form of the ballot. Article XV, §2. In its Standing Committee Report No. 99, it explained its reasons for adopting the ballot used in the election:

"Your Committee considered submitting each of the proposed amendments as separate questions with a YES or NO vote. This would result in submitting to the people for ratification not less than 34 questions. Since a major problem to overcome is voter apathy, your Committee was concerned that many voters will not take the time to mark their YES votes but will mark only the question or questions that they are opposed to. For this reason your Committee has agreed that a way should be provided to the voter, if he or she wishes, to approve or reject each of the questions by one vote [Part A] or, if he or she wishes, to vote against one or more of the questions and to approve the balance [Part B]."

The irregularity charged by the plaintiffs is that the ballot contained an inherent bias towards a "yes" vote by making it more difficult to vote "no" than "yes," which in effect diluted the vote and denied the electorate their constitutional rights. They suggest that with this ballot, voter inertia would cause voters who were only slightly opposed to an amendment to permit their vote to be recorded in favor rather than to take the trouble to record a negative vote; and this, they argue, introduced into the election a

subtle form of bias which was impermissible.^{4/}

Where the ballot is in a form which produces a knowing and deliberate expression of voter choice, the vote satisfies the requirement of electoral approval. Kohler v. Tugwell, 292 F.Supp. 978 (D.La. 1968), affirmed, 393 U.S. 531. The voter here was given the choice of voting "yes" or "no" on any or all of the proposed amendments. He was clearly informed that he could vote for or against all amendments under Part A of the ballot, or he could divide his vote under Part B. If he chose to vote "no" on a question under Part B, he did so intending that his vote be divided and knowing how it would be counted. The significance of a negative vote on any proposition upon the remaining unanswered questions was obvious on the face of the ballot. At the beginning of Part B of the ballot, the following clearly appeared: "I VOTE YES ON EACH OF THE PROPOSED AMENDMENTS AS LISTED BELOW EXCEPT THAT I VOTE NO ON THE FOLLOWING:...."

In no sense can it reasonably be said that the voter was likely to be misled by the ballot language. Cf. Wright v. Board of Trustees of Tatum Ind. Sch. Dist., 520 S.W.2d 787 (Texas 1975). The essential requirement is that the ballot not be misleading. Young v. Byrne, 144 N.J.Super. 10, 364 A.2d 47 (1976). The fact that mechanically, as to

^{4/} Almost any ballot can be said to have some bias. But this fact alone will not suffice to invalidate an election. The arrangement of names in alphabetical order on an election ballot, for example, must somewhat favor some candidates over others. Such a listing is not impermissible. See HRS § 11-115. The order in which amendments were listed on the ballot in this case could arguably have had a bias effect. But to require that a ballot must be wholly unbiased would result in the imposition of an impractical standard of perfection.