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NEW JERSEY CONSTITUTIONAL CONVENTION

AMENDMENT AND REVISION OF STATE CONSTITUTIONS

by

John J. George

Professor of Political Science

Rutgers University, The State University of New Jersey

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Alfred E. Driscoll, Governor
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AMENDMENT AND REVISION OF STATE CONSTITUTIONS

No constitution can serve its function as basic law without being adaptable and adapted to the changes of modern life. Needed formal changes in state constitutions can be effected through either an amendment or a revision. Amendment is usually employed to obtain specific changes. Revision is reserved for overhauling the entire constitution.

I - Amendments

A. Proposing An Amendment.

1. Legislative proposal of amendments is provided for in 47 state constitutions. In 41 the amendment may originate in either house. In 20 states a majority of each house is sufficient to pass the proposed amendment; 7 require a 3/5 vote; 20 specify a 2/3 vote.

Thirteen states require action by a succeeding session of the legislature to complete the proposing of an amendment; in 34 states action by one session suffices.

2. Popular initiative may originate amendments in 13 states, ten of them being west of the Mississippi, and Massachusetts being the only seaboard state. Requisite signatures for a popularly initiated amendment usually equal the votes cast for a specified state office at the preceding election, and range from 8 to 15 per cent of such votes. Massachusetts requires 25,000 signatures, and North Dakota, 20,000.

3. In a few states, notably New York, amendments may emanate from a convention assembled to consider the whole constitution.

B. Publication of Amendments.

1. Legislative Proposed.

Forty-two states require publication of amendments proposed by the legislature. The period of publication, among the few states so specifying, ranges from four weeks to six months.

The area of publication is often the county; the congressional district has been used; Pennsylvania directs that publication be had in "two newspapers" in the state, and Vermont requires publication in the "principal newspapers of the state."

California, Nevada, Iowa, Tennessee, Wisconsin, Michigan, Virginia, New Jersey, and New York leave the manner of publication to the legislature.

2. The four states expressing themselves in the matter leave publication of convention-proposed amendments to the determination of the convention.

3. Popular initiative amendments are to be published in a variety of detail ranging from specific instructions to general legislative determination.

In four states publication includes distribution of arguments for and against the amendment, along with the amendment itself. Oklahoma and California make these arguments official arguments; they are printed at state expense.

Failure to comply with publication requirements exposes an amendment to invalidation after its approval.

C. Ratification of Amendments.

1. Time of Election at which Amendments are Submitted.

a. Amendments Offered by Legislature.

More than half the states specify that amendments be submitted "at the next general election." Nine leave the time to legislative fixation without restriction. New York is an important example. Three specify no time at all for submission. A few, including Mississippi and New Jersey, specify a period subsequent to legislative proposal of the amendment.

b. Amendments Proposed by Constitutional Convention.

Seventeen states make no requirement of popular ratification at all. Of those requiring popular ratification, ten specify no time for submission. Five leave to convention determination the time of ratification submission, Missouri specifying not less than 60 days and not more than six months after convention adjournment. New York requires a minimum of six weeks between convention adjournment and submission election on the amendments proposed by the convention.

c. Popular Initiative Amendments.

Ten of the 13 states using this instrument direct submission of initiated amendments at the next general election after petitions are filed, several prescribing a minimum time-lapse between the filing and the popular voting on the initiated amendment. Three direct submission "at election" to be held a specified minimum time after petitions are filed.

2. At a General or Special Election?

About half the states require amendments to be submitted at a general election. A few specify a special election. Several defer to legislative discretion, and a few are silent on the matter.

3. Amendments Submitted Separately?

a. For legislative amendments nearly every state provides that if more than one amendment is submitted, the voters must be allowed to vote on the amendments separately. New York, North Carolina, Virginia, and Wisconsin leave to legislative fixation the manner of submitting amendments. Arkansas, Illinois, Kansas, Kentucky, and Montana prescribe a maximum number of amendments to be submitted at one time.

b. The states using convention amendment leave to convention discretion the separateness or collectivity of amendments on submission. In 1938 the New York convention submitted eight separate amendments and grouped a large number of others into a ninth and catch-all "general amendment."

c. Detailed and specific instructions to the secretary of state as to the form of submitting initiated amendments appear in the state constitutions authorizing this instrument of constitutional amendment.

4. Popular Vote Necessary to Ratify an Amendment.

a. Forty-six states require popular ratification of legislative-proposed amendments. Of these, 34 require a majority of voters voting on the amendment as necessary to adopting it. Nine states require a majority of those voting in the election in which the amendment is submitted. Connecticut exacts a majority

of qualified voters present at town meetings. Rhode Island raises the figure to 3/5 of those present and voting on amendments in town meetings. Idaho demands simply a majority of the electors.

b. Wherever authorized, popularly initiated amendments must go to referendum. In 12 states a majority of those voting on the amendment suffices. Massachusetts and Nebraska add further that those voting on the amendment must equal 30 and 35 per cent, respectively, of those voting at the election. Oklahoma alone requires that the popularly initiated amendment must receive a majority of those voting at the election.

D. Amendment of the New Jersey Constitution.

Article IX of the New Jersey Constitution, copied word for word from the 1838 constitution of Pennsylvania, provides amendment as the only means for formal changing of the New Jersey basic instrument.

Either house may originate an amendment, a majority of members elected to each house being sufficient to pass the proposed amendment. Publication for at least three months prior to choosing a succeeding Legislature, in at least one paper in each county which has a newspaper, must be had before the succeeding Legislature thus chosen proceeds to consider the proposed amendment a second time. If a similar majority of the succeeding Legislature passes the proposed amendment, it is referred to the voters in a special election. At least four months must lapse between adjournment of the second Legislature and the referendum special election.

A favorable majority of those voting on the amendment at the special election adopts the amendment.

Any number of amendments can be submitted at the special election, and each amendment must be submitted separately. But no amendment can be submitted to referendum oftener than once in five years.

In the period 1844-1934, 92 amendment proposals have passed one or both houses of the New Jersey Legislature. Fifteen amendments (including the horse racing amendment in 1939) have gone to the voters. Though as many as five amendments have been submitted on one occasion, the Constitution has been amended only four times. Obviously, the New Jersey amending process has proved extremely difficult in practice.

II - Revision of State Constitutions

Increasingly often it is recognized that piecemeal amendments to the constitution are inadequate and that only overhauling through revision will suffice.

Revision may be undertaken through a revision commission as was attempted in New Jersey in 1942 and successfully employed in Georgia in 1944. Such a commission may be created by the legislature or by the governor and legislature. The legislature may substantially transform itself into a revision commission, as was done in New Jersey in 1944.

Nearly universal, however, is the practice of revising the constitution by a convention provided especially for that purpose. Some 200 conventions have been held.

A. Authorization and Assembling of the Convention.

1. Twelve state constitutions, including that of New Jersey, are silent on the constitutional convention. However, it is well-established that the silence of the constitution means the legislature may provide for calling a convention. About 30 conventions have been thus assembled.

In 1883 the Supreme Court of Rhode Island interpreted the silence of the constitution to mean that no convention could be had. (14 R. I. 649). In 1935 the earlier position of negation was reversed by the same court. Thus constitutional silence in Rhode Island means that a convention can be called.

2. Three-fourths of the states provide in their constitutions for a constitutional convention. Of these 36, at least 26 permit the legislature to initiate the call for a convention, but require popular vote approval of the legislative proposal to call a convention. A few allow the call by the legislature without popular referendum. Twenty states require a 2/3 vote in each house to pass the call for a convention; ten accept a majority; 3/5 suffices in Nebraska.

3. When May a Convention Be Called?

a. Occasionally. Most constitutions leave the legislature free to decide when a convention should be called.

b. Periodically. Seven constitutions provide that the question of calling a convention shall go on the ballot ever so often, ranging from every seven years, as in New Hampshire, to every 20 years, New York appearing in the 20-year group.

c. Popular approval of the proposal to call a convention is expressed in various terms: a majority of those voting on the question, a majority of those voting at a general election or at the particular election, or even "a majority of the electors qualified to vote for members of the state legislature."

4. Implementing Details for Assembling the Convention.

The constitutions of New York, Michigan, and Missouri contain sufficient minutiae on the convention to eliminate "all need for supplementary legislation." Most constitutions leave detail to legislative specification or to convention determination.

5. Selection of Delegates.

This is done usually by popular election in districts on party tickets or non-partisan tickets. Non-partisan often proves strictly partisan. At-large delegates are sometimes provided for, Missouri constituting a recent example.

6. Constitutions of four states, including New York, designate the state capitol as meeting place for the convention.

B. Adoption of Convention Proposals.

The American practice until about 1840 was to put constitutions into effect without popular approval. That procedure was followed by several states in the period 1860-1900. A few similar instances have occurred in the 20th century, sharp examples appearing in Louisiana and Virginia. Despite specific direction by the Virginia legislative authorizing act, that the new constitution be submitted to popular vote, the convention on its own authority declared the constitution of 1902 in force and effect.

Beginning with New Hampshire in 1792, it has become practically universal to obtain popular approval of a new constitution. Nineteen constitutions require that conventions submit the new instrument to popular vote.

The convention may submit its work to the voters in various forms. The entire product may go to referendum as a unit; Georgia and Missouri used this plan recently. Or the offering may be made as separate amendments, each to be voted on independently of the others. New York followed this procedure a few years ago. Relative to the above plans, the convention can present its work in alternative form: as a unit, and any parts of the constitution may be submitted separately. Should voters accept the entire constitution, no determinative result would attach to the vote on separate amendments. But if the entire instrument is rejected by the voters, they may at same time approve any or all of the separate proposals. This alternative plan will be utilized wherever the convention is quite uncertain about the ratification prospects.

The popular referendum may use either the special or general election. While the special election seeks to isolate the constitutional change as an issue, it seldom results that the number of voters who turn out is comparable to those who express themselves on a constitutional proposal submitted in a general election.

Most of the 19 specifying constitutions exact "a majority vote on the proposal"; a few merely state that the convention proposals shall be "ratified by the people."

C. Constitutional Convention in New Jersey.

Within 30 years after the adoption of the Constitution in 1844, its failure to provide for future conventions was recognized as a serious omission. Experience with the amending process has proved it practically unusable. Generally, the view is that governmental life at the constitutional level has become static in New Jersey. So great is the need for extensive change that piecemeal amendment is recognized as inadequate.

Such a situation has not burst upon us suddenly. Since 1873 nearly every governor has urged a constitutional convention to revise the entire instrument. The four most recent governors have supported such a move. On February 17, 1947, the Governor approved a lengthy legislative measure authorizing a convention. Chief features of the measure warrant attention.

1. Proposal to the voters that a convention be held. Voting on this proposal is to be by paper ballot at a special election held the same day as regular primary, June 3. A simple majority of those voting on the question insures that a convention will be held.

2. On the same ballot voters are asked their preference for county delegates as among those delegate-candidates whose names appear on the ballot. Provision is made in the statute for petition placement on the June 3 ballot of these delegate-candidates. Any number of delegate-candidates is permitted on the ballot, but in each county the voters will elect only as many delegates as that county has members in the Legislature. In 16 of the 21 counties bipartisan distribution of delegates has been agreed upon.

3. The creative act declares reserved from convention action the current basis of representation in the Legislature.

4. Implementing detail is provided in convention matters. The place of meeting is designated as New Brunswick, the opening day, June 12, and the hour, 11 A. M. The Governor will open the convention and "preside at its first session and until permanent officers are selected." To be adopted, proposals must receive 41 votes (of 81 total members). Convention labors may end earlier, but they must cease not later than September 12. Membership compensation is precluded, but maximum expenses up to \$10 per day are provided. Total convention expenses up to \$350,000 are to be paid from treasury funds, and \$125,000 appropriated for costs of the special constitutional election of June 3.

5. Publication of convention proposals is dealt with in a non-conclusive manner: direction is given the convention on two details, but wide discretion is left to it concerning notice, publication and distribution of the "address to the people," and the text of the convention proposals.

D. Current Questions in Constitutional Changing.

1. What important, recently developed matters must be dealt with in the modern constitution?

2. By what formal processes shall constitutions be changed?

3. Shall the convention be made a periodic and an occasional institution?

4. Does our "Dynamic Age" require easier constitutional adjustability?