

THE GOVERNOR'S COMMITTEE ON PREPARATORY RESEARCH

for the

NEW JERSEY CONSTITUTIONAL CONVENTION

THE DESIRABILITY OF CONSTITUTIONAL PROVISION
FOR REGISTRATION OF VOTERS

by

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Introduction

Registration is a comparatively modern election device for prequalification of voters. It dates from the turn of the century and has come to be widely adopted. Some form of registration is now employed in every state of the Union, except Arkansas, whose constitution specifically prohibits registration, and Texas, where poll tax receipts are used to qualify voters.

Types of Registration

A great variety of methods are in use for registration of voters. The system now employed in New Jersey, by which voters are registered permanently, throughout the State, for all elections, has been adopted in 27 states. In most of the other states, registration is repeated annually, before each general election. It is accomplished by an official house to house canvass, New Jersey's former practice, or by requiring voters to present themselves at registration offices, the method now utilized in New York. There are many varieties between these extremes. For example, in South Carolina voters who were not registered before 1898 must re-register every ten years; in Virginia, registration must be renewed annually, except for those registered in 1902, who are thereby qualified as voters for life; in Rhode Island, the registration lists expire biennially.

Of the states which have adopted permanent registration, only 22, like New Jersey, employ that system for all elections throughout the

state. By far the greater number of states have recurrent registration to some extent, if only for local elections in rural areas. Even among states which have the same general method of registering voters, there is wide divergence of practice with respect to such collateral features as administration, transfers upon change of address, methods for purging the lists, authority to initiate complaints and challenges, hearing of complaints, use of registration data for private purposes, and the like.

Insofar as it is possible to generalize, a tendency toward permanent registration for general elections, at least in urban areas, seems apparent. The outstanding example of the opposite tendency is New York, where, after a careful study of comparative merits, annual registration was preferred over permanent registration.

Constitutional Provisions for Registration

New Jersey's present Constitution of 1844, as amended with respect to suffrage in 1875, makes no mention of registration, nor was there any provision on the subject in the prior Constitution of 1776.

The constitutions of 22 states make some reference to registration of voters. The most common provision is a requirement that voters be registered in order to qualify for the franchise. The language varies from a simple direction that voters be registered (e. g., Arizona) to a detailed schedule of the registration system (e.g., Louisiana).

In six states the legislature is merely authorized but not directed to enact the requirement of registration. Two states, Alabama and North Carolina, specify permanent registration in their constitutions,

while New York specifically permits but does not compel permanent registration. Only one state, Arkansas, has a total prohibition of registration written into its constitution.

Purposes Served by Constitutional Provisions With
Respect to Registration.

A

Nearly all constitutions define the right of franchise. It is possible to argue that registration illegally restricts the right to vote, unless expressly sanctioned by the constitution.

In New Jersey, the power of the Legislature to require voters to qualify for the franchise by preliminary registration is not open to doubt, notwithstanding the absence of specific constitutional authorization. That was the decision of the Supreme Court in In Re Freeholders of Hudson County, 105 N.J.L. 57, where Justice Kalish said:

" . . .the legislature may, in order to insure honest elections, pass laws to prevent those not entitled to vote from voting. And this is precisely the very object at which the statute in question is aimed."

* * *

"On what sound theory this regulation, to protect the purity of the ballot box can be said to be in contravention of any constitutional right of a lawfully qualified voter has not been revealed to us. It needs no argument to establish that if an unqualified voter casts his ballot, it has the effect to impair the value of the vote of a duly qualified voter. It cannot, therefore, be logically said because the statute seeks to prevent the unqualified voter from voting at an election that such legislative action is an interference with the constitutional right of a voter, duly qualified to vote.

"A qualified constitutional voter is entitled that his or her vote shall have the effect which the law intended it should have,

and this would not be the case unless the ballot box is strictly guarded against illegal voting."

This view of the law has general acceptance, for, in addition to New Jersey, the legislatures of 24 states have adopted registration of voters without explicit constitutional sanction.

B

A constitutional provision on the subject of registration of voters is a means of fixing the state's policy on the subject and, when aptly drawn, removes certain features of registration from ordinary legislative control.

The clearest instance of an effective declaration, by constitution, of the state's policy on registration is the total prohibition of registration of voters, found in the Arkansas constitution. However, in every other state which has constitutional provisions on the subject, legislative action in varying degrees has been necessary to create the registration system actually in use. To the extent that statutes were necessary to make registration practical and effective, the legislature retained its conventional, discretionary control over the mechanics of election administration. A case in point is Texas, which employs poll tax receipts to qualify voters, although the constitution authorizes registration.

It is possible, by constitution, to enact permanent restrictions upon the legislature's choice of the type or mechanics of registration. For example, Alabama's constitution specifies permanent registration throughout the state; Missouri's organic law prohibits registration in cities of less than 10,000 inhabitants; and that of Rhode Island compels

re-registration of voters biennially. The paucity of states which have written special features of their registration systems into their constitutions suggests that the provision was a response to a special, local condition.

C

A constitutional provision with respect to registration may be the means of effectuating a program for exclusion of otherwise qualified, legal voters.

The most familiar means of accomplishing this result is a constitutional or statutory definition of the right of franchise, which establishes voting qualifications according to literacy, tax payment or property holding. The project may be facilitated by constitutional provisions with respect to registration. Nearly every southern state is included among the 22 whose constitutions deal with the subject. It is possible that the constitutional treatment of registration in those states is related to the South's history of discriminatory treatment of voters according to race.

Conclusions

1. New Jersey has enacted, and periodically revised, comprehensive systems for the registration of voters. It is settled beyond controversy that an enabling provision in the Constitution is not needed for this purpose.

2. The only constitutional provisions for registration which have been effective without legislative aid, are specifications of the type or

restrictions of the mechanics to be employed. The history of New Jersey's election law features constant changes to eradicate specific abuses, to effect improvements in administration and to adopt new techniques which have been tested and proven successful in other communities. A constitutional restriction upon the Legislature's freedom of action would impair its opportunity to accommodate the law to changing circumstances, with no apparent compensating advantages.

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THE GOVERNOR -- QUALIFICATIONS, ELECTION, TERM
VACANCY IN OFFICE, SUCCESSION

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State of New Jersey
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THE GOVERNOR - -

QUALIFICATIONS, ELECTION, TERM, VACANCY IN OFFICE, SUCCESSION

Qualifications

Most states have three qualifications for governor: minimum age, United States citizenship (sometimes for a number of years), and residence in the state for a stated number of years. In 1935 North Dakota experienced considerable trouble because of the clause requiring five years' residence within the state. The winning candidate for office had lived and voted in another state within the prescribed period. The Supreme Court of the State held that he lacked the proper qualifications. As a consequence, the lieutenant governor succeeded to the office.¹

The "Model State Constitution," published by the National Municipal League, would make "any qualified voter of the state" eligible to the office of governor.²

Length of Term

In 25 states the governor serves four years; in 22 states the term is two years. New Jersey alone has the three-year term.³

Although the number of states having four-year and two-year terms is about the same, the trend is in the direction of the longer term.⁴ The chief advantage cited for the four-year term is that the governor has time to formulate a program and take steps toward its accomplishment, whereas a governor serving a two-year term is handicapped because he must concentrate on politics if he wishes to be reelected, and this to the detriment of his program.

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1. Roy L. Miller, "The Gubernatorial Controversy in North Dakota," *American Political Science Review*, June 1935, pp. 418-432.
 2. Article V, section 501. (Partial revision of 1946).
 3. Council of State Governments, *The Book of the States*, 1945-46, p. 560.
 4. Graves, W. B., *American State Government*, (3rd ed., 1946), p. 369.

Time of Election

Most state elections for governor occur in the even-numbered years. In 10 of the 25 states having the four-year term, the election for governor coincides with the presidential election; 11 use the intermediate even year; Virginia, Mississippi, and Kentucky elect their governors in odd-numbered years, and Louisiana elects in April of the presidential year. Of the 22 states having the two-year term, all elect the governor in the even-numbered years.⁵

Writers on state government urge the use of the odd years in order to focus a greater amount of attention on state issues. W. Brooke Graves, for example, states:

"The holding of state elections to coincide with national elections is unfortunate, because it ordinarily means that little or no serious thought will be given to state problems. Citizens will vote for their preferences in national offices and will without much consideration support the same parties for the state offices, whereas the problems of government in any one of the states are large and significant enough to the well being of citizens to warrant a decision based upon their own merits. The selection of state officers should not be merely an incidental aspect of national party contests."⁶

The "Model State Constitution" proposes that the election be held "in each alternate odd numbered year."⁷

Date of Taking Office

There is no uniform practice among the states as to the date of the governor's inauguration.⁸ The present provision in the New Jersey Constitution is similar to the 20th Amendment of the Federal Constitution in providing for a short delay after the Legislature convenes before the Governor is inaugurated. This gives the Legislature an opportunity to resolve a contested election. The wording of Article V, Par. 3 -- "The Governor shall hold his office for three

5. The Book of the States, p. 560.

6. American State Government, p. 368.

7. Article V, section 501.

8. The Book of the States, p. 560.

years, to commence on the third Tuesday of January next ensuing the election for Governor by the people, and to end on the Monday preceding the third Tuesday of January, three years thereafter" -- is less precise than the 1944 draft provision which called for the terms of the Governor and the Legislature to begin and end at noon on the second Tuesday of January. The "Model State Constitution" provides that the terms of the governor and the legislature shall begin on the first day of December.

Vacancy

A. Who Succeeds

New Jersey is one of 11 states having no lieutenant governor.⁹ Seven states, including New Jersey, name the presiding officer of the senate as the immediate successor to the governor; three name the secretary of state. In Maryland the General Assembly, if in session, elects a governor; if not, the President of the Senate serves until a governor is elected. Second successors are named in 44 states; 20 states name three specific successors. Only five states go beyond this number.¹⁰

B. Frequency of Vacancy

A recent survey of the frequency with which vacancies occur discloses that in 24 states over a 91-year-period the governor's office became vacant 73 times, or an average of about once in 30 years.¹¹

C. Resignation

On four occasions since 1844, the resignation of the Governor of New Jersey has resulted in the President of the Senate exercising the powers and duties of

9. Book of the States, p. 559. Georgia's new constitution provides for a lieutenant governor.

10. The Congressional Digest, March, 1946, p. 75.

11. Ibid.

the Governor.¹² On two occasions, because of the resignation of the President of the Senate, the powers and duties of the Governor's office devolved upon the Speaker of the House of Assembly.¹³ Twice the presidency of the Senate changed hands when the new Legislature organized on the second Tuesday in January.¹⁴ This meant that for a period of one week, until the newly-elected Governor was inaugurated, the new President of the Senate exercised the Governor's powers.

D. Absence from the State

The New Jersey Constitution provides that the powers and duties of the office of Governor devolve upon the President of the Senate in the event of the Governor's absence from the State. The "Model State Constitution" has a similar provision. Six states having no lieutenant governor provide for the presiding officer of the senate to assume control; three designate the secretary of state. In Illinois, which has a lieutenant governor, the governor files notice of absence from, and return to, the state.¹⁵

E. Impeachment

The New Jersey Constitution provides that in case of the impeachment of the Governor, the powers and duties of the office devolve upon the President of the Senate. Since impeachment means, technically, the official act and condemnation of the House of Assembly, with the actual trial to be held by the Senate, the President of the Senate presumably would take over the office of Governor prior to the beginning of the trial.

12. On Jan. 31, 1898, John W. Griggs resigned to become United States Attorney General; on Mar. 1, 1913, Woodrow Wilson resigned to become President of the United States; on May 16, 1919, Walter E. Edge resigned to become United States Senator; on Jan. 3, 1935, A. Harry Moore resigned to become United States Senator.

13. 1899 and 1913.

14. 1920 and 1935.

15. Clyde F. Snider, "Gubernatorial Disability," The University of Chicago Law Review, April 1941, p. 522.

F. Disability

Occasionally the question arises as to whether there is, in fact, a vacancy in the governor's office. The New Jersey Constitution provides that in case of disability, the powers and duties of the office shall devolve upon the President of the Senate. In common with almost all other states, the New Jersey Constitution provides no means of determining whether the incumbent is capable of performing his official duties. This deficiency provoked a serious controversy in Illinois during the two-year illness of Governor Horner, 1938-40. There were long periods when he was not able to go to the state house, and the charge was made that the duties of the office were performed in his name by a "bedside cabinet." He refused to relinquish the office, however, until two days before his death.¹⁶

In Mississippi, the secretary of state is empowered to submit the question of disability to the judges of the supreme court who investigate and make a determination.¹⁷ In Alabama, any two of seven officials may ask the supreme court to determine the governor's mental condition. If he is declared to be "unsound of mind," the lieutenant governor performs the duties of the office until the governor is "restored to his mind."¹⁸

G. Suggestion of Hendrickson Commission

The draft constitution proposed in the Report of the Commission on Revision of the New Jersey Constitution, 1942 (the Hendrickson Commission), contained a clause which would eliminate to some degree the confusion arising out of situations similar to those described above. The provision was that the head of the Department of Taxation and Finance exercise the powers of the office in

16. Snider, supra, pp. 521-529.

17. Constitution, Article V, Section 131.

18. Constitution, Article V, Section 128.

the event of the Governor's absence or temporary inability to discharge his duties. In case of a vacancy, the head of the Department of Taxation and Finance would serve until a new Governor was elected and qualified.¹⁹

The proposal that a department head succeed to the powers and duties of the Governor has the added advantage of assuring continuity in the policies inaugurated by him.

Disability of Governor-Elect

The disputes in Wisconsin in 1942 and in Georgia in 1946, arising out of the deaths of the governors-elect, indicate the desirability of a clear provision dealing with the inability of the governor-elect to assume office. The present Constitution provides that in the event of the death of the Governor-elect, before he is qualified into office, the powers and duties of the office shall devolve upon the President of the Senate or Speaker of the House of Assembly until a new Governor be elected and qualified.²⁰ The Constitution is silent concerning the failure of the Governor to qualify or his inability for any reason to assume the office.

Succession

Thirty states have no limitation on succession.²¹ Thirteen states make the incumbent ineligible to succeed himself. Oregon provides that the governor shall serve no more than eight years in any 12-year period.²² Tennessee, which has a two-year term, permits no more than three consecutive terms.²³ In Delaware, the governor is ineligible for a third four-year term. One governor of Arizona held office for seven two-year terms, and Maryland's "perpetual governor," Albert C. Ritchie, served four consecutive four-year terms.²⁴

19. Article IV, Section I, Paragraph 6.

20. Article V, Paragraph 14.

21. The Book of the States, p. 560.

22. Constitution, Article V, Section 1.

23. Article III, Section 4.

24. Graves, supra, pp. 369-370.

Election to Fill Vacancy

The present Constitution provides that in the event of a vacancy in the office of governor, a new Governor shall be chosen at the next election for members of the Legislature. This practice is followed by four other states of the 11 having no lieutenant governor. In five states the person succeeding to the powers and duties of the governor is permitted to retain those powers until the expiration of the term. In Maryland, the General Assembly fills the vacancy. The present Constitution of New Jersey farther provides that if the vacancy occurs within the 30-day period immediately preceding the election for members of the Legislature, the Governor shall be chosen at the second succeeding election.²⁵ The 1944 draft constitution changed the 30 days to 60. The draft also provided that there should be no election to fill an unexpired term in any year in which a Governor was to be elected for a full term.²⁶

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25. Article V, Paragraph 12.

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