

Bill 3 Rights

EFFECT OF PROVISION FOR PERIODIC VOTE ON
CALLING CONSTITUTIONAL CONVENTION

Automatic Conventions

Eight state constitutions have provisions intended to require periodic submission to the voters of the question of whether or not to hold a constitutional convention; New Hampshire, every seven years; Iowa, every ten years; Michigan, every sixteen years; Maryland, Missouri, New York, Ohio and Oklahoma, every twenty years.

An analysis of the history of constitutional revision in these states demonstrates the fact that the number of conventions does not increase in direct proportion to the facility with which conventions can be called.

1. New York. The 1846 New York constitution contained the provision for a periodic revision every twenty years if the question were approved by the voters. The question was submitted in 1866, 1886, 1914 (by virtue of legislative action) and automatically in 1936. The reason for the gap after 1886, when the question was submitted automatically, and 1914, when it was submitted by order of the legislature, was that the convention following the 1886 submission was delayed until 1894 due to a dispute between the governor and the legislature as to the method of electing delegates. Thus the next mandatory date would have been 1916. But the legislature anticipated it by two years.

On each of these occasions, 1866, 1886, 1914 and 1936, the people voted for the convention. However, the people rejected the constitution proposed by the 1867 convention except for the judiciary article which was submitted separately. The people approved the constitution proposed by the convention of 1894. The constitution of 1915 was rejected and the convention of 1938 resulted in the adoption of some and rejection of other comprehensive amendments. According to leaders of civic organizations, the vote on the 1938 proposals was a very discriminating job.

At any rate, as far as New York State is concerned, while the people voted for a convention each time they had an opportunity, they were quite selective or discriminating in voting on the products of the conventions.

2. Ohio. The automatic vote provision was incorporated in the Ohio constitution in 1912. The people voted against the convention in 1932 in spite of the fact that conservative civic organizations like the Citizens League of Cleveland urged an affirmative vote. The vote will next occur in 1952. Civic forces in Ohio are already beginning to plan the careful campaign which they think will be necessary to induce the people to vote for the convention at that time.

3. Michigan. The Michigan constitution of 1850 authorized referenda on the question of holding a constitutional convention, both by legislative action at any time, and, as a result of a mandatory provision calling for a referendum, at 16-year intervals. There have been eight referenda - four as a result of each method. Only two conventions resulted from the eight votes. On three of the six other occasions, the vote for a convention exceeded that against, but fell short of the required majority of the total vote cast at the election. Of the five constitutions submitted to the voters during the life of the state, three were approved, two rejected.

The following letter from Professor Arthur Bromage shows that the last two proposals were defeated by substantial majorities of the people voting on the question.

UNIVERSITY OF MICHIGAN
Department of Political Science

Ann Arbor

July 26, 1947

Dear Bebout:

I have your letter of July 23 in which you raise questions about the periodic vote requirements for a constitutional convention in Michigan. As to the record since the constitution of 1909, there have been two votes under the automatic provision. In 1926 the people rejected a call of a convention by a vote of Yes--119,491 and No--285,252. Again in 1942 the people rejected the call of a convention by a vote of Yes--408,188 and No--468,506.

I believe that objections to the automatic vote are not well taken. There are so many interests protected by modern state constitutions that there seems to be a natural tendency against the call of a constitutional convention. Certainly the people have the good judgment to turn down the call of a convention if they deem the time to be inappropriate. The great problem in Michigan has been in arousing the people with the need for constitutional revision.

Sincerely yours,

/s/ Arthur W. Bromage

Arthur W. Bromage

AWB:rw

4. Missouri. Two Missouri conventions have been held as a result of the automatic vote on revision provided for by a popularly initiated amendment adopted in 1920. The first submission of the convention question in accordance with the mandate of the amendment was in 1921, and the question was again submitted in 1942 (one year late). The people voted to call the convention both times. They rejected most of the work of the 1922-1923 convention while they adopted the constitution proposed by the 1943-1944 convention. Both the favorable vote on the revision question in 1942 and the adoption of the constitution in 1945 were the result of vigorous, well-organized campaigns by cross-section citizen organizations.

5. and 6. Iowa and Maryland. Iowa has had a provision requiring submission of the question of constitutional revision ever since 1867. Yet neither state has had a constitutional convention since, due generally to the popular habit of voting "No" when the question comes up.

Note the following statements by Professor Herman H. Trachsel of the State University of Iowa and Professor Joseph Ray of the University of Maryland.

THE STATE UNIVERSITY OF IOWA
Department of Political Science

Iowa City

July 26, 1947

Dear Mr. Bebout:

In accordance with the constitutional convention provision of the Iowa constitution, the question of calling a convention "to revise the Constitution, and amend the same" was first submitted to a vote of the people in 1870, and then every ten years thereafter. In 1870, 1880, 1890, 1900, 1910, 1930, and 1940 a majority of those who voted on the question opposed the calling of a convention.

The vote of the people in 1920 was 279,652 for and 221,763 against calling a convention. On January 20, 1921, a bill was introduced into the House of Representatives making provision "for a convention to revise and amend the constitution, naming the number of delegates and districts;..." This bill passed the House on March 15 and was messaged to the Senate on the following day. On March 30 it passed the Senate with amendments which the House refused to accept. A conference committee was appointed; but the House rejected its report on April 8, which was the last day of the session. Thus the General Assembly adjourned without making any provision for a constitutional convention.

In support of the position taken by the General Assembly, some of the members and others insisted that there was no popular demand for a revision of the constitution. One representative, however, did not believe the General Assembly "should override the wishes of the people." Another said the "people expressed a wish for the convention and it is for the assembly to make necessary machinery for it." However, nothing was done and there has been no constitutional convention since 1857. Every ten years the question is submitted to the voters on a separate ballot.

Although no general revision of the constitution of 1857 has been made through the process of a constitutional convention, amendments adopted since 1857 have effected substantial changes in the document. Nineteen amendments have been added, five in 1868, one in 1880, one in 1882, four in 1884, two in 1904, and one each in 1908, 1916, 1926, 1928, 1936, and 1942.

Very sincerely,

/s/ Herman H. Trachsel

Herman H. Trachsel

EFFECT OF PROVISION IN MARYLAND CONSTITUTION
FOR VOTE EVERY 20 YEARS ON QUESTION OF
CALLING A CONSTITUTIONAL CONVENTION

So far as I know the constitutional provision requiring a referendum on the question of calling a convention has been religiously observed by the Maryland legislature. I have not investigated the matter thoroughly but it is my definite impression that the vote has been taken each time when it was due and that the voters themselves have rejected the proposition.

Joseph M. Ray
Professor of Government and Politics
University of Maryland - July 25, 1947

7. Oklahoma. The 1907 constitution provided for a vote every twenty years. There has been no convention since. The provision, which is not self-executing, orders the legislature to submit the question. The 1947 legislature passed the required bill; but the bill was vetoed and could not muster enough votes for repassage.

8. New Hampshire. The New Hampshire constitution is unique in that a constitutional convention is the only method for submitting any amendment or change. Yet, the provision for an automatic vote in town meetings every seven years on the question of holding a convention has resulted in only eight conventions since the provision was written into the constitution of 1784. Two complete revisions have been submitted, only to be rejected by the people. Six conventions have submitted partial revisions by a large number of amendments which were only partly adopted. The people this year voted for a convention which will be elected in 1948.

CONCLUSIONS:

A total of 191 conventions of one sort or another had been called or held by the several states through 1943. Of these, only 23 were held in the present century. Louisiana, with no provision for calling conventions, has had 10 meetings; Mississippi, with no provision, has had 7; similarly, Arkansas has had 6; Alabama, requiring a majority vote of the legislature and a vote by the people, has had 6; Virginia, with the same provision, has had 8; while New York, with the same requirement plus a mandatory provision calling for a popular referendum every twenty years, has had 8.

The record simply does not bear out the claim that the people vote for revision every chance they get. Indeed our own New Jersey experience should indicate that. As a matter of fact the people generally do not vote for revision either by calling a convention or approving a product thereof unless there is a well-organized campaign conducted by some sort of cross section of citizen interests and organizations.

The fact is that Americans are pretty conservative about their constitutions and the people are prone to vote against change unless they feel they have an affirmative reason for voting for it. When in doubt on anything as complicated as constitutional revision they are inclined to vote "No". This is especially so in times of stress, when people are preoccupied with other matters which touch them more personally. The rejection of the proposition to hold a convention in Michigan in 1942 was based on the argument, specious in our opinion, that they should not undertake such revision during the war. It should be noted that the people of Ohio voted "No" on a convention proposal in 1932, at the depth of the depression.

The following paragraphs by W. Brooke Graves, one of the leading authorities on state governments and constitutions, and Irving J. Zipin, member of the Philadelphia Bar, appeared in the Book of the States, 1943-1944 and 1945-1946. These paragraphs indicate that the real problem is to get the public to undertake revision, not to keep the public from voting for revision without good cause.

"Whenever a proposal is made to revise a state constitution, it is always in danger of defeat from supposed friends who admit the need of revision but question the advisability of undertaking the project at the time. If business conditions are good, they favor postponement for fear of "rocking the boat". If times are bad, they fear that so important a venture should not be undertaken when men are worried and their minds disturbed. These reasons, as Governor Edison of New Jersey pointed out, are often used to camouflage real reasons which would not bear public scrutiny. If one were to be guided by these prophets of disaster, there would never be a proper time to revise a constitution, and the task would never be undertaken.

"It is to be hoped that the electorate of the several states will not be misled by any such arguments. Constitutional revision is urgently needed, not in one state but in many, and the time to act is now, in preparation for the new era, the coming of which we confidently await at the conclusion of the war. Our armed forces are fighting in distant parts of the world to preserve the democratic way of life. We do not want to save democracy in faraway lands only to discover that we have failed to preserve it at home. We shall not strengthen the democratic tradition by declaring a moratorium on progress in state and local government affairs for the duration."

John E. Bebout

July 31, 1947.