

**HAWAII
CONSTITUTIONAL
CONVENTION STUDIES
1978**

**Article XV:
Revision and Amendment**

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Article XV

REVISION AND AMENDMENT

METHODS OF PROPOSAL

Section 1. Revisions of or amendments to this constitution may be proposed by constitutional convention or by the legislature.

CONSTITUTIONAL CONVENTION

Section 2. The legislature may submit to the electorate at any general or special election the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" If any ten-year period shall elapse during which the question shall not have been submitted, the lieutenant governor shall certify the question, to be voted on at the first general election following the expiration of such period.

ELECTION OF DELEGATES

If a majority of the ballots cast upon such question be in the affirmative, delegates to the convention shall be chosen at the next regular election unless the legislature shall provide for the election of delegates at a special election.

Notwithstanding any provision in this constitution to the contrary, other than Section 3 of Article XIV, any qualified voter of the district concerned shall be eligible to membership in the convention.

Unless the legislature shall otherwise provide, there shall be the same number of delegates to the convention, who shall be elected from the same areas, and the convention shall be convened in the same manner and have the same powers and privileges, as nearly as practicable, as provided for the convention of 1968.

ORGANIZATION; PROCEDURE

The convention shall determine its own organization and rules of procedure. It shall be the sole judge of the elections, returns and qualifications of its members and, by a two-thirds vote, may suspend or remove any member for cause. The governor shall fill any vacancy by appointment of a qualified voter from the district concerned.

RATIFICATION; APPROPRIATIONS

The convention shall provide for the time and manner in which the proposed constitutional revision or amendments shall be submitted to a vote of the electorate. The 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, or at a special election by a majority of all the votes tallied upon the question, this majority constituting at least thirty percent of the total number of registered voters.

The provisions of this section shall be self-executing, but the legislature shall make the necessary appropriations and may enact legislation to facilitate their operation. [Am Const Con 1968 and election Nov 5, 1968]

AMENDMENTS PROPOSED BY LEGISLATURE

Section 3. The legislature may propose amendments to the constitution by adopting the same, in the manner required for legislation, by a two-thirds vote of each house on final reading at any session, after either or both houses shall have given the governor at least ten days' written notice of the final form of the proposed amendment, or, with or without such notice, by a majority vote of each house on final reading at each of two successive sessions.

Upon such adoption, the proposed amendments shall be entered upon the journals, with the ayes and noes, and published once in each of four successive weeks in at least one newspaper of general circulation in each senatorial district wherein such a newspaper is published, within the two months' period immediately preceding the next general election.

At such general election the proposed amendments shall be submitted to the electorate for approval or rejection upon a separate ballot.

The conditions of and requirements for ratification of such proposed amendments shall be the same as provided in Section 2 of this article for ratification at a general election.

VETO

Section 4. No proposal for amendment of the constitution adopted in either manner provided by this article shall be subject to veto by the governor.

CONFLICTING REVISIONS OR AMENDMENTS

Section 5. If a revision or amendment proposed by a constitutional convention is in conflict with a revision or amendment proposed by the legislature and both are submitted to the electorate at the same election and both are approved, then the revision or amendment proposed by the convention shall prevail. If conflicting revisions or amendments are proposed by the same body and are submitted to the electorate at the same election and both are approved, then the revision or amendment receiving the highest number of votes shall prevail. [Add Const Con 1968 and election Nov 5, 1968]

Chapter 1

INTRODUCTION

The calling of the 1978 Hawaii State Constitutional Convention marks the latest step in a process of changing state constitutions that dates back to Delaware's Constitutional Convention of 1776.

Over the 200 years following that historical event, more than 200 state constitutional conventions have been called, resulting in 144 new documents. This phenomenon has been so pervasive that only 19 of the 50 states in the Union have the original constitutions they started with.¹ The remaining 31 states account for 125 constitutions, or an average of 4 per state. These 31 states also averaged a new constitution every 23 years.

The absence of new constitutions in the 19 states should not be construed to mean that they are immune to such pressures or historical evolution. These same states considered a total of 2,539 amendments and finally adopted 1,535, or an average of 80 adopted amendments per state. Furthermore, it should be pointed out that at least 2 states (Florida and Missouri) are prohibited from revising their constitutions by amendment because of restrictions that allow revision of not more than one article.²

This historical record provides convincing evidence that state constitutions are, by and large, in a continual process of evolution, subject to periodic evaluation and change which reflect deep-seated citizen concerns.

Against this brief historical and statistical background, Hawaii's 1978 Constitutional Convention may be given some perspective, and perhaps some direction, by the detailed analysis provided in the chapters to follow.

Certainly, the delegates to the forthcoming Hawaii Constitutional Convention should find some philosophical solace and possible inspiration in the fact that their endeavors are part of a lengthy continuum that stretches back over 200 years.

Hawaii's own brief record as a state shows that it is also entering into the historical stream of constitutional change. Although Hawaii is one of 19 states that retain their original constitutions, Hawaii has proposed 42 amendments to its Constitution, of which 37 have been adopted.

This volume addresses itself to the basic question concerning what constitutional changes mean. Related issues arise concerning (1) whether there are any meaningful patterns of constitutional change that link the states together; (2) whether state constitutions are becoming more attuned to the needs of twentieth century urban life as opposed to remaining anachronistic as some political scientists have argued; and (3) whether the people are acquiring more or less control over their destinies through changes in their state constitutions.

Viability of Existing State Constitutions in a Changing Society

A review of existing state constitutions reveals that many of them are lengthy, antiquated, badly written documents which are, by and large, ill-equipped to service the needs of a modern society of states. Thirty-two of these constitutions were drafted prior to 1900.³ Three of these states (Massachusetts, New Hampshire, and Vermont) operate under constitutions dating back to the eighteenth century.

Age alone, however, is not necessarily a negative consideration in the evaluation of constitutions. The Commission on Intergovernmental Relations noted, in 1955, that:⁴

It is significant that the Constitution prepared by the Founding Fathers, with its broad grants of authority and avoidance of legislative detail, has withstood the stress of time far better than the constitutions later adopted by the states.

The U.S. Constitution and many of the earliest state constitutions were noteworthy in their efforts to adhere principally to fundamental law. As a consequence, most of these early documents were relatively short: the

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constitution of Virginia, for example, had only 1,500 words,⁵ while the Massachusetts Constitution of 1780 was the longest, with approximately 12,000 words.⁶

Present-day state constitutions, however, were not modeled on these original state documents with their broad grants of legislative powers and simple electoral procedures. Far too many state constitutions date from the late nineteenth and early twentieth centuries when detailed amendments were enacted in an attempt to curb mounting corruption among elected and appointive public officials.

Of the 42 constitutions adopted or revised from 1870 to 1910, 22 are still in effect. Many of these documents still contain prohibitive provisions and excessive detail which reflect public suspicion and distrust of governmental and legislative powers.

It is indeed ironic that these same state constitutional restrictions, aimed at reform and control of state government, later served to cripple state efforts to meet and grapple effectively with the explosive issues generated by the Great Depression of the 1930's, World War II, and the urban problems of the 1960's and 1970's.

The weakness of the states in dealing with the economic and financial problems arising from the Great Depression was revealed clearly following President Franklin D. Roosevelt's emergency "bank holiday" measure. One commentator declared at that time that as an instrumentality for discharging important functions, "[t]he American state is finished. I do not predict that the states will go, but affirm that they have gone."⁷

Whether simpler, less detailed, and less restrictive state constitutions would have enabled the states to cope with such broad national issues as depressions and urban problems is open to question, given the limited economic and financial resources of each state. As events of the post-World War II era were to prove, however, such state constitutional restrictions as limited bonding capacity for state purposes placed severe, and in most cases, impossible

burdens upon the states. Inevitably, these burdens were shifted to the federal government.

The Reality of Federal Dominance

The inadequacy of many state constitutions drafted in the eighteenth and nineteenth centuries was underscored in the post-World War II years by the inability of state governments to cope with rapid social and economic changes. Post-war growth forced many states to expand or upgrade their health, education, and welfare services. Hampered by inflexible constitutions, state governments came to rely increasingly on the federal government to solve their problems. The Commission on Intergovernmental Relations took note of this fact:⁸

Early in its study, the commission was confronted with the fact that many state constitutions restrict the scope, effectiveness and adaptability of state and local action. These self-imposed constitutional limitations make it difficult for many states to perform all of the services their citizens require and consequently have frequently been the underlying cause of state and municipal pleas for federal assistance.

The expanding authority of the federal government is especially evident in the use of grants-in-aid to the states. While Congress has the right "to lay and collect taxes, duties, imposts, and excises to pay the debts and provide for the common defense and general welfare of the United States", it lacks any direct authority to create legislation on matters of general welfare.⁹ Through its power of taxation, however, Congress is permitted to raise large amounts of money which it conditionally grants to the states. These conditional grants are, in effect, an indirect method of federal regulation, and their significance was clearly stated by an eminent authority on state constitutions:¹⁰

The only real "state right" today is the right to decline to accept federal aid, but not to refuse to pay federal taxes. Even the long-asserted rights of nullification and secession are no longer available to dissident states. In true democratic fashion the "states rights" minority must, today, gracefully bow to the will of the "strong federal" majority, however distasteful this may be. There is no turning back, short of revolution.

The Role of the U.S. Supreme Court

The inability of nineteenth and twentieth century state governments to cope with burgeoning economic and social problems is also due, in large measure, to the doctrine of judicial review and the right of federal and state courts to interpret their constitutions. Throughout the latter part of the nineteenth and early twentieth centuries the conservative U.S. Supreme Court consistently ruled against state and federal constitutional efforts to deal with the problems of an emerging industrial society.

Beginning in 1937, the Supreme Court, however, began to move toward a more liberal interpretation of both state and federal legislative power. At the same time, excessive detail and restrictive measures in state constitutions forced many state courts to take a narrow, strict constructionist interpretation of these provisions. The resulting dilemma for many states was that their broadened scope of legislative responsibility was too often stymied by state judiciaries who found themselves bound by their restrictive interpretations of the past.¹¹

The inadequacy of existing state constitutions was highlighted again during the 1960's by the Supreme Court's "one-man, one-vote" decision in Baker v. Carr (1962). That far-reaching ruling argued that state legislative apportionment, which then tended to favor the rural, more conservative, segments in the states, violated the equal protection clause of the U.S. Constitution. The impact of this ruling on Hawaii is discussed in chapter 2.

The increasingly "activist" role of the U.S. Supreme Court affected state constitutional reform activity to a considerable degree. One authority has stated that "[s]tate constitutional activity between 1959 and 1975 was to a greater degree than ever before the result of federal judicial pressure, if not federal judicial order."¹²

In broad terms, then, it can be argued that without the intervention of the U.S. Supreme Court during the post-World War II period, extending up to the present day, state constitutional changes aimed at bringing those documents more in line with the realities of modern urban life might not have come about.

The Hawaii Constitution of 1950

Drafted midway through the twentieth century, and during the post-World War II period of state constitutional reform and revision, the Hawaii Constitution of 1950 can truly be said to have helped shape the form and pace of this significant movement. Indeed, from 1950 to 1972, only 5 states in the Union did not hold a constitutional convention, authorize a constitutional commission, or take some other important action to update their constitutions.¹³

So widespread and so quickly did the state constitutional reform movement become that within a 6-year period (1966-1972), approximately 71 per cent of the 1,825 amendments proposed within various states were accepted by the voters¹⁴ even though, during this same period, new or revised constitutions were rejected in 9 states.¹⁵

While many mainland states labored thanklessly to rework and update their constitutions, constitution-makers in Hawaii, Alaska, and Puerto Rico faced the enviable task, between 1950 and 1956, of drafting completely new documents in preparation for statehood or commonwealth status within the United States.

Unencumbered by the verbal baggage and restrictive legacies which hampered the reform work in other states, and with an awareness of the faults and failings of older state constitutions, delegates to these 3 territorial conventions drafted documents which have been heralded as examples of progressive constitution-making. The National Municipal League stated categorically that the Hawaii Constitution of 1950 "'set a new high standard in the writing of a modern state constitution by a convention"'¹⁶

The Hawaii Constitution of 1950 was not a radical document. The success or failure of Hawaii's drive for statehood depended in no small degree upon its ability to demonstrate to Congress that the people of Hawaii were mature, politically responsible citizens.

The pressing need for not only voter but also Congressional approval led to the adoption of a conservative constitution, approximately 14,000 words in

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length.¹⁷ This document dealt primarily with fundamental law, although there were certain exemptions such as the provision for a debt limit.¹⁸ To allay the suspicions of those who feared the infiltration of Communist supporters into organized labor, a highly controversial provision was inserted that stated:¹⁹

No person who advocates, or who aids or belongs to any party, organization or association which advocates the overthrow by force or violence of the government of this State or of the United States shall be qualified to hold any public office or employment.

In order to bolster the power of the executive branch, the new constitution provided for only 2 elected positions: governor and lieutenant governor. The governor was also empowered to appoint department heads and judges with the approval of the state senate. Broad powers were granted to the legislative bodies, and the house of representatives was reapportioned.

Other innovations included provisions for a merit civil service system and reduction of the voting age to 20. Employees in private enterprise were guaranteed the right to collective bargaining and public employees were permitted the right to organize and to air their grievances. Among the stated objectives of government were the promotion of the public welfare, protection of public health, and conservation of natural resources.

By a margin of 3 to 1, the voters of Hawaii approved their new constitution, which became effective upon its admission to statehood on August 21, 1959.

Chapter 2

REVISION AND AMENDMENT—PROCEDURES AND PARAMETERS

PART I. THE U.S. SUPREME COURT RULINGS 1962-1964

As the momentum for state constitutional change accelerated after World War II, the United States Supreme Court, in a series of monumental decisions, ruled that the principle of "one-man, one-vote" was to apply to all states. In effect, the Court found that representation in many states was discriminatory in favor of the rural areas, and ordered all states to reapportion their legislatures according to the realities of population distribution.¹

The effect of these rulings on Hawaii was the eventual elimination of a major and long-sustained principle of rural (neighbor island) dominance of the Hawaii legislature. The carefully structured apportionment of legislative seats by major island groupings fell apart. This system had been drafted during Hawaii's territorial days and was continued under the 1950 Constitution. Article XVI, sections 2, 3, and 4 gave the neighbor islands 15 out of 25 senate seats, or 60 per cent, and 18 out of 51 house seats, or 35 per cent, or a total of 33 elected state legislators out of a total of 75.² That represented 44 per cent of the state's total representation although the neighbor islands constituted only 20 per cent of the state's population.

This obvious imbalance served to protect the political balance of power held by the neighbor islands during the 1950's and 1960's. Senate domination by the neighbor islands served as an effective block against Oahu's majority in the lower house. It was not until the 1968 Constitutional Convention, 6 years after the Baker v. Carr decision, that this imbalance was remedied by removing the basis for arbitrarily allocating senators according to a numerical ratio. The U.S. Supreme Court ruling gave senatorial votes cast by the Hawaiian electorate the same numerical value as those cast for lower house seats. The neighbor island senate seats were reduced to 6 and their house seats reduced to 15.

The subject of legislative apportionment, or reapportionment, was thoroughly discussed in Hawaii's 1950 Constitutional Convention, where the delegates deliberately left reapportionment powers to the people instead of to the legislature.³ Indeed, as one authority has pointed out, it was the unwillingness of the Hawaii legislators to pursue the avenues open to it to reapportion itself that led to its being forced into reapportionment.⁴ The reapportionment issue was one of the primary reasons for the 1968 Constitutional Convention. For this reason an examination of that Convention and a comparison with the earlier Convention of 1950 is an appropriate way to commence an examination of the revision and amendment process of the Hawaii Constitution.

PART II. ANALYSIS OF ARTICLE XV OF THE HAWAII STATE CONSTITUTION

Hawaii has had only one constitution as a state. Although a number of constitutional amendments were adopted following the Convention in 1968, the basic structure of the 1950 Constitution remains intact, which is evidence that Hawaii's "Founding Fathers" did their work well. In the analysis to follow certain issues normally relevant to the constitutional process of change, such as the initiative and constitutional commissions, have been omitted. They will be taken up and studied in detail in chapter 3.⁵

The Mechanics of a Constitutional Convention in Hawaii

Calling the Convention. In the 41 state constitutions, including Hawaii's, providing for the holding of constitutional conventions the legislature has the responsibility for placing on the ballot the question of calling a convention. Fourteen states⁶ require a convention call at stated intervals, which range from 6 years in Tennessee to 20 years in 8 states.⁷ Hawaii requires the lieutenant governor to put the question before the electorate every 10 years, which is the same as 4 other states.⁸ The Model State Constitution does not include a provision for the intervention of a state executive to assure periodic self-

execution of the convention call. Nine states have no formal method of calling a convention.

When the legislature is responsible for calling a convention, the vote required of the legislature varies among the states. Sixteen states, including Hawaii, require a simple majority vote by the legislature to submit the convention question.⁹ California requires a two-thirds vote of the legislature. Other methods of calling a convention may also be used such as in Florida through the initiation of a convention through petition.¹⁰ Montana provides for submission of the question calling for a convention by the legislature or by an initiative petition submitted to the secretary of state.¹¹

Although Hawaii's Constitution requires presentation of a call for a constitutional convention every 10 years, there is nothing in the Constitution to prevent more frequent presentation. Article XV, section 2, provides only that "[t]he Legislature may submit to the electorate at any general or special election the question, 'Shall there be a convention to propose a revision of or amendments to the Constitution?'"¹² Under territorial status, Hawaii did not have a way to call a constitutional convention into effect, but under the enabling legislation passed in 1949, the process of calling "a convention for the purpose of forming a constitution..." was established.¹³

As one of Hawaii's constitutional authorities has pointed out, the 1950 Hawaii Constitution was drafted in the shape and form of a "hope chest" to impress Congress that Hawaii was mature and conservative enough to warrant statehood status.¹⁴ The theory was that once Hawaii achieved statehood the people would be able, through elected representatives, to review and revise the basic document at their leisure. Consequently, there was some basis for believing that revision of the 1950 Constitution would be in order. However, these beliefs, or hopes, were not immediately realized after Hawaii became a state in 1959. As time went by the legislative and executive branches of the state government found less and less reason to modify what was heralded as a "model" state constitution.¹⁵

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Unlike the 1950 Constitutional Convention, which generated enormous interest in all areas of the community because of the statehood issue, the 1968 Constitutional Convention was preceded by considerable delay and "waffling", and it took the threat of direct federal court intervention to finally bring the Convention into being.¹⁶

The 1950 Constitutional Convention also differed from the 1968 Constitutional Convention in that the question of ratification of the Constitution posed to the voters in 1950 was strictly on a "yes" or "no" basis. The voters were required to adopt the basic document "as is", without the opportunity to pick and choose which portions of the Constitution they wanted or didn't want. Nevertheless, on November 7, 1950, 118,767 citizens went to the polls, and 82,788 of them voted in favor of the Constitution.¹⁷ The majority favoring the Constitution was better than 3 to 1.

The mechanics of calling the 1968 Constitutional Convention in Hawaii were complicated because the state legislature was maneuvering to head off the Convention by substituting its own version of a reapportionment plan to satisfy the federal courts. The governor was also lukewarm to the idea of a convention.¹⁸ Inevitably, because of the refusal of the federal courts to accept the legislative reapportionment plan as a permanent solution without a constitutional convention,¹⁹ the convention question was finally scheduled for vote at the general election of November, 1966. In the ensuing legislative session an enabling act providing for a special election in the Spring of 1968 to elect the delegates to a constitutional convention was finally passed.²⁰

The 1968 election results, when compared with those of 1950, proved somewhat disappointing. While 73 per cent of the registered voters of Hawaii voted in the 1950 primary, and 79 per cent voted in the runoff election, in the 1968 special election for delegates only 45 per cent of the registered voters voted, with the city and county of Honolulu registering a low 39 per cent.²¹ The absence of exciting issues and clashing parties and the disappearance of the great anticipation of statehood undoubtedly contributed to the lower voter response.

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The Referendum Process. With few exceptions, in the states which provide for constitutional conventions, once the legislature has called for such a convention, the question of whether a convention shall be held is submitted to the people. Normally, this is done early enough so that the people have time to respond, and if the response is favorable, to consider the election of delegates.

In 1950, however, Hawaii was not yet a state and did not have a constitution approved by the people. Consequently, the procedures of calling a constitutional convention into being could not follow the routes taken by other states already in the Union. No legislatively enacted referendum was ever held in Hawaii prior to statehood on the question of whether a convention should be held. Instead, in 1949, the territorial legislature enacted Act 334 which authorized the governor to call for a primary and runoff elections to elect delegates to a constitutional convention to be held in Honolulu starting "the second Tuesday after their election".²² The primary took place on February 11, 1950, and the general election on March 21, 1950. The Convention convened on April 4, 1950.

For the 1968 Hawaii Constitutional Convention no reference was made in the enabling law²³ on the majority of voters required to approve the convention question. The reason is that this provision was already included in the Hawaii Constitution. Article XV, section 2, simply states that "[i]f a majority of the ballots cast upon such question be in the affirmative, delegates to the convention shall be chosen at the next regular election unless the legislature shall provide for the election of delegates at a special election."²⁴

Twenty-two states other than Hawaii require a simple majority of those voting on the proposal for the convention question.²⁵ Seven states require a majority of those voting in the election.²⁶ Five states do not require that the legislature submit the convention question to the people.²⁷ Five states have no specific referendum voting requirement.²⁸ Nine states do not have provision for a convention.²⁹

Legislative Actions on Constitutional Amendments. Sessions--All 50 state constitutions authorize their legislature to propose amendments to the

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constitution but they vary widely in the specifics of introduction. Vermont is the only state in which the amendment process must originate in the upper house;³⁰ all the others permit either house to introduce amendments. Most states permit introduction of amendments in regular and special sessions; a few states permit introduction only during regular sessions; and Texas specifies the biennial session. In Hawaii, the Constitution provides that amendments may be introduced "at any session".³¹

While all 50 state constitutions now authorize their legislative bodies to initiate constitutional amendments, only a very few states, including Oregon and California, specifically grant their legislatures the right to propose revisions as well as amendments. In 1960 and 1962, respectively, these 2 states adopted constitutional amendments which permitted their legislatures to propose the revision of all or part of their constitutions by a two-thirds majority of each state legislative body. Ratification was to be by majority of those voting in the election.³²

A much larger number of states seem to confine the legislature to proposing amendments only, and, like Colorado, confer amending powers to the legislative body in one section, while conferring amendment and revision powers to the constitutional convention in another.³³

In Hawaii, the authority of the legislature to revise the state constitution is not clearly established. An opinion rendered by the attorney general's office in 1961³⁴ held that such authority was not granted under Article XV, despite the fact that section 1 of Article XV explicitly states: "[r]evisions of or amendments to this constitution may be proposed by constitutional convention or by the legislature." The 1950 Constitutional Convention pragmatically adopted the attitude that the legislative body did have the authority,³⁵ while the 1968 Convention did not discuss the problem.

In the 1950 Hawaii Constitutional Convention, the legislature did not propose amendments for the Convention to consider. The preparation work for the Convention had been under way under the Statehood Commission, since 1948; and despite labor opposition, the territorial legislature adopted the work of the Convention with only 2 dissenting votes.³⁶

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Prior to the 1968 Constitutional Convention, however, the Hawaii state legislature called for the election of legislators in the general election of 1966, under its reapportionment plan, while also asking the electorate to vote on the convention question. When both matters were affirmatively voted upon, this same legislative reapportionment plan was used on the 1968 general election ballot in the form of a constitutional amendment. As one authority noted wryly, "[s]ince the voters wanted a constitutional convention they would have one, but under limitations fixed by the legislature."³⁷

Procedure--The method of obtaining legislative approval of constitutional amendments also varies among the states, with most states leaving it up to the legislatures themselves to establish the procedures. To do otherwise might prove somewhat restrictive of the legislative process. Nevertheless, several states require 3 separate readings on 3 days in each house.³⁸ Among these, Hawaii provides that "[t]he legislature may propose amendments to the constitution by adopting the same, in the manner required for legislation,..."³⁹ New Jersey's Constitution requires "[a]t least twenty calendar days prior to the first vote thereon in the house in which such amendment or amendments are first introduced, the same shall be printed and placed on the desks of the members of each house."⁴⁰

Hawaii, like most other states, requires that the votes on the proposed constitutional amendments be recorded in each house, along with the amendments as finally agreed upon. New York's Constitution, however, has an unusual provision that requires any proposed amendment be submitted to the state attorney general for an opinion as to its effect on other articles of the Constitution before such amendment may be considered by the legislature.⁴¹

Majority Requirements--The size of the legislative majorities required to initiate amendments varies among the states. Eighteen states require a two-thirds vote of the total membership of each house;⁴² 17 states require a simple majority of each house;⁴³ and 9 others prescribe a three-fifths vote of each house.⁴⁴ Hawaii requires a two-thirds majority of each house, but if the vote is less than that but equal to a majority the amendment may be reintroduced at the next session and if a majority is again obtained the amendment is approved.⁴⁵

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Hawaii is the only state with this provision, but 2 other states have slightly different variations. Connecticut requires a three-fourths majority in each house,⁴⁶ and New Jersey requires three-fifths,⁴⁷ but both have the same majority feature for reintroduced amendments in successive sessions.

Twelve states require favorable action by successive legislatures to initiate amendments.⁴⁸ Usually the amendment is published at the time of the election of the second legislature with the intention that legislators may campaign on the amendment issue.

The Role of the Governor. The doctrine of separation of powers in American state governments is clearly revealed in the role of the governor in matters concerning the legislative amendment process. Most state constitutions are silent on the governor's role, which is not unusual in that the function of proposing specific amendments is not considered a normal "legislative" function subject to the governor's executive authority or approval.⁴⁹ Hawaii's Constitution, like several others, explicitly denies the right of the governor to veto proposed amendments.⁵⁰

Hawaii's enabling legislation for the 1950 and 1968 Constitutional Conventions varied widely insofar as the role and responsibilities of the governor in the amending process was concerned. In 1949, the governor was authorized to issue a proclamation ordering a primary election for convention delegates, to be followed by a runoff election. The governor was also authorized to fill any vacant delegate seats and was to be notified when the Constitution was completed. The governor could thereafter, if asked by the legislature, convene a special session to consider the proposed Constitution. The legislature was then to submit the convention work to the people. If the legislature did not so act the Constitution was automatically to be submitted to the people for ratification at an election on a day named by the governor. If the Constitution failed of passage the governor was to call the Convention back into session to frame a new constitution.⁵¹

With the adoption in 1959 of the Hawaii Constitution of 1950, the inclusion of the governor in the convention process was virtually eliminated. In 1968, the

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governor was still allowed to fill vacant delegate seats, but other involvement had been limited to selecting the site of the Convention and receiving and disbursing legislatively appropriated funds for the convention expenses.⁵²

The exception to the general rule that the governor does not actively participate in the convention process is provided in Hawaii's Constitution. Article XV, section 3, provides:⁵³

The legislature may propose amendments to the constitution by adopting the same, in the manner required for legislation, by a two-thirds vote of each house on final reading at any session, after either or both houses shall have given the governor at least ten days' written notice of the final form of the proposed amendment, or, with or without such notice, by a majority vote of each house on final reading at each of two successive sessions.

Thus, if amendments pass the legislature in one session, the governor has 10 days to give the legislature the benefit of any thoughts, pro or con. However, there is no requirement that the legislature consider the governor's response.

Submission for Ratification. Hawaii, like many states, does not limit the number or manner in which amendments may be submitted for popular vote. Other states place limits on both the manner and number. Nebraska has a self-imposed legislative limitation which states: "When two or more amendments are submitted at the same election, they shall be so submitted as to enable the electors to vote on each amendment separately."⁵⁴ Two states prohibit amendments from embracing more than one subject.⁵⁵ Colorado limits the number of articles which may be amended at the same session to 6;⁵⁶ Illinois to 3.⁵⁷ Kansas limits the number of amendments which may be submitted at an election to 5,⁵⁸ Arkansas to 3,⁵⁹ and Kentucky to 2.⁶⁰

Selection and Assembly of Delegates. Assuming an affirmative vote on the referendum calling for a convention, the legislatures of most states must then pass enabling legislation to convene the constitutional convention. In Hawaii, the first such enabling legislation was Act 334, passed by the 1949 territorial legislature. This law required that every candidate for delegate to the

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Convention be a "qualified elector of the representative district or precinct or combination of precincts in which he is a candidate for delegate".⁶¹ The wording in the 1967 enabling law, Act 222, was similar.⁶²

The Hawaii Constitution briefly states that "...any qualified voter of the district concerned shall be eligible to membership in the convention".⁶³

In 1950 and in 1968 the delegates ran for election in the same manner that representatives of the legislature did, except that in 1950 there was a primary election followed by a runoff election, whereas the 1967 enabling act eliminated the primary provision.⁶⁴

Most of the 50 states, like Hawaii, require enabling legislation to convene the constitutional convention. However, there does not appear to be any method, short of a court order, to force the legislature to so act if it does not want to. For this reason Hawaii and some other states have inserted in their constitutions self-executing means of requiring the convention call. Hawaii's Constitution provides:⁶⁵

Unless the legislature shall otherwise provide,...the ...convention shall be convened in the same manner,...as nearly as practicable, as required for the convention of 1968.

Alaska has the same provision. Whether such provision actually guarantees legislative action in calling for a convention is questionable. The decennial convention requirement in Hawaii's Constitution is ambiguously worded, and even this legislative "guarantee" of the convention call could be interpreted in a number of ways. The Constitution states:⁶⁶

The legislature may submit to the electorate...the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" (Emphasis added)

In the same section of the Hawaii Constitution the lieutenant governor is authorized to "certify the question" if "any ten-year period shall elapse during which the question shall not have been submitted". But if the legislature

refused to appropriate funds for the Convention, or otherwise refused to act, there would be a constitutional impasse. This spectre was raised at the 1968 Constitutional Convention, but the issue was not debated.⁶⁷

Date for Delegate Election. The 1949 enabling legislation for the 1950 Constitutional Convention in Hawaii did not set a specific date for the election of convention delegates. It called for the governor to "...not earlier than thirty nor later than one hundred and eighty days after the effective date of this Act, issue a proclamation ordering a primary election...for the offices of the delegates...and a final election not earlier than thirty, nor later than forty days after such primary election".⁶⁸ The election date for the 1968 Convention was, however, clearly stated in the 1967 enabling law, as follows:⁶⁹

The governor shall issue a proclamation ordering an election which shall be held on June 1, 1968, for the special election of delegates to a constitutional convention.

Hawaii's Constitution prescribes that the election of convention delegates shall take place at the next regular election following the approval of the convention call by the electorate, unless the legislature provides for the election of delegates at a special election.⁷⁰ The Model State Constitution states:⁷¹

...delegates shall be chosen at the next regular election not less than three months thereafter unless the legislature shall by law have provided for election of the delegates at the same time that the question is voted on or at a special election.

In 1965, an opinion of Hawaii's attorney general held that convention delegates may not be elected at the same general election at which the convention question is submitted to the people.⁷² This question had arisen during the 1950 Convention when a proposal was submitted which would have provided for the election of delegates at the same time the referendum was taken. This provision was not adopted by the Convention.

Those who favor holding the referendum on the Convention and the election of delegates simultaneously argue that (1) it is less costly to hold one election than separate ones; and (2) having constitutional issues on the same

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ballot as delegates create more interest in the election. Those who oppose simultaneous elections cite the advantage of having prominent people running for election because of the public confidence and support such people would inspire. The inference is that such prominent persons would prefer running on strictly convention issues rather than running for state, county, or federal office. What may be even more important than either of these positions is that sufficient time be provided between the calling of the convention and its actual commencement in order to give the people sufficient time to carefully study the issues and the candidates.

Number of Delegates. The 1950 Constitutional Convention provided for the election of 63 delegates, a number that was specified by the enabling act, based on a formula apportioning that number among 6 representative districts broken down into precincts but with a number of delegates running on an at-large basis within the 6 districts.⁷³ The 1967 enabling act increased the number of delegates to 82, apportioned among 18 representative districts.⁷⁴ The reason for the increase in delegates and districts could be traced to an increase in the legislature, from 45 persons in 1950 to 76 in 1968. One authority noted that:⁷⁵

By 1967 the formula for apportionment of delegates used in the 1950 convention appeared to have lost all utility, this notwithstanding the constitutional provision that "unless the legislature shall otherwise provide, there shall be the same number of delegates to...[the] convention, who shall be elected...as nearly as practicable, as required for the Hawaii State Constitutional Convention of 1950.

Of the 63 convention delegates elected in 1950, 27 were from the neighbor islands, representing 43 per cent of the delegate total. In the 1968 Convention, the neighbor island delegation had dropped to 19, or 23 per cent, out of a total delegate count of 82.⁷⁶ This decrease probably reflected the impact of the federal court rulings between 1962 and 1965.

Different states utilize different methods to determine the number of delegates to the Constitutional Convention. Nebraska limits the number of delegates to 100 members.⁷⁷ Colorado's Constitution provides that "[t]he number of members of the convention shall be twice that of the senate."⁷⁸ The

Model State Constitution states that "[a]ny qualified voter of the state shall be eligible to membership in the convention and one delegate shall be elected from each existing legislative district."⁷⁹

Delegate Districts. The delegates to the 1950 Hawaii Constitutional Convention had been elected on the basis of the election district formula developed by the territorial legislature. That system incorporated 3 distinct types of districts: (1) at-large districts, (2) grouped-precinct districts, and (3) single-member districts. The at-large districts numbered 6; the grouped-precinct districts 30; and the single-member districts 18. These 54 districts elected the 63 delegates. The 1968 Constitutional Convention delegates were also elected on the basis of these districts, but the at-large districts had increased to 18, the grouped-precinct districts to 36, and the single-member districts to 43. These 97 districts elected the 82 delegates.⁸⁰

The Hawaii Constitution allows considerable legislative discretion in determining delegate districts. The Constitution provides:⁸¹

Unless the legislature shall otherwise provide, there shall be the same number of delegates to such convention, who shall be elected from the same areas...as provided for the convention of 1968.

The key words are "[u]nless the legislature shall otherwise provide...." As history has shown those words mean that the number of delegates (and conceivably districts) will increase, rather than decrease, as the legislature decides in the enabling acts establishing the Convention's delegate representation.

Some states designate delegate districts; others specify either representative or senatorial districts. Missouri and New York provide for 15 delegates to run at-large.

Delegate Qualifications. Only a few state constitutions contain any provisions on the qualifications of convention delegates. California provides that delegates shall have the same qualifications as members of the legislature. Colorado, Illinois, Missouri, and Montana Constitutions require that delegates

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must meet the qualifications specified for state senators, while Kentucky delegates must meet the qualifications for state representatives.

The Hawaii Constitution explicitly provides for the eligibility of delegates which has been interpreted to allow elected public officials to qualify as convention delegates:⁸²

Notwithstanding any provision in this constitution to the contrary, other than Section 3 of Article XIV, any qualified voter of the district concerned shall be eligible to membership in the convention.

Section 3 of Article XIV allows disqualification from public office for reasons of disloyalty and apparently includes delegates.

The 1949 enabling act was even more explicit on the subject of elected public officials being eligible to serve as convention delegates. That act stated:⁸³

The holding of the office of delegate or any other office of the convention shall not constitute a disqualification for selection for or the holding of any other office, and the holding of any other office shall not constitute a disqualification for election to or the holding of office as a delegate or any other office of the convention....

In this connection it is interesting to note that in 1950, 22 legislators ran for delegate seats, of which 12 were elected. Those, added to 6 former legislators, brought the total number of legislators to 18, or 29 per cent of the 63 delegates. In 1968, 45 legislators sought convention seats, and 37 were successful. Five former legislators were also successful. Thus, a total of 42 legislators and former legislators were seated out of a total of 82 delegates, or 51 per cent.⁸⁴

Not all states are as generously disposed toward legislators and public officials running for convention seats. The Missouri Constitution states:⁸⁵

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No person holding any other office of trust or profit (officers of the organized militia, school directors, justices of the peace and notaries public excepted) shall be eligible to be elected a delegate.

In Montana, the state supreme court ruled that legislators were ineligible for membership in the constitutional convention because they had already been elected for a term of office extending beyond the term of a delegate.⁸⁶ The same court also held later that constitutional convention delegates could not run for public office during their term.⁸⁷

Partisan and Nonpartisan Delegate Elections. Few states include provisions in their constitutions permitting or forbidding the election of convention delegates on a partisan or nonpartisan basis. The Michigan Constitution, for example, simply provides that the electors shall elect delegates "...at a partisan election".⁸⁸ The Missouri Constitution contains an unusual provision that seeks to neutralize partisanship by ensuring equal representation of both parties.⁸⁹

To secure representation from different political parties in each senatorial district, in the manner prescribed by its senatorial district committee each political party shall nominate but one candidate for delegate from each senatorial district...each candidate shall be voted for on a separate ballot bearing the party designation, each elector shall vote for but one of the candidates, and the two candidates receiving the highest number of votes in each senatorial district shall be elected...(at-large) candidates shall be voted for on a separate ballot without party designation, and the fifteen receiving the highest number of votes shall be elected.

The Hawaii Constitution is silent on the matter of partisan or nonpartisan election of delegates to the Constitutional Convention. The territorial legislature, in setting up the 1950 Convention, provided for nonpartisan primary and general elections:⁹⁰

No such nomination paper shall contain any reference to or designation of any political party, and the ballots used at such election shall be nonpartisan and shall not contain any reference to or designation of the political party or affiliation of any candidate.

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The same procedure and virtually the same wording to assure nonpartisan election of convention delegates was prescribed in the enabling act for the 1968 Hawaii Constitutional Convention.⁹¹

Although some authorities argue that partisan elections of convention delegates may inject unnecessary partisanship in the Convention,⁹² another noted authority, after careful research of conventions held over a 15-year period, concluded that even though most delegates had been elected on a partisan basis, convention delegates "seldom divided into well defined blocs or factions...."⁹³

Time and Place of Assembly. In 1949, the territorial legislature omitted any reference to assignment of responsibility for preparations for the Convention. Secretary of Hawaii Oren E. Long assumed this responsibility, to the satisfaction of all concerned parties.⁹⁴ The site selected was the Honolulu Armory, now the site of the state capitol. In 1968, the legislature left the responsibility of finding a suitable site to the governor.⁹⁵ The site eventually selected was Kapiolani Community College and the adjoining McKinley High School gymnasium.

The Hawaii Constitution, prior to its being amended in 1968, stated that unless the legislature otherwise provides, "...the convention shall be convened in the same manner, as nearly as practicable, as required for the Hawaii State Constitutional Convention of 1950".⁹⁶ The enabling act of 1949 stated:⁹⁷

The delegates to the convention thus elected shall meet at Honolulu on the second Tuesday after their election, excluding the day of election in case such day shall be Tuesday....

The legislature, in the enabling act calling for the Convention in 1968, provided for a specific meeting date--July 15, 1968.⁹⁸

Scope of Convention Powers. There are 3 sources of limitations on the power of constitutional conventions to enact amendments or revisions. They are: (1) federal limitations, (2) state constitutional limitations, and (3) state legislative limitations.

Federal Limitations. The provisions of the U.S. Constitution are the major limitation on all state constitutions. State constitutions cannot contain provisions contrary to the U.S. Constitution. The provisions of the Bill of Rights, for example, cannot be abridged by state constitutions. Nor can any state constitution incorporate any of the powers exclusively delegated to the federal government by the U.S. Constitution.

Congress also limits state constitutions by setting certain conditions for admission to the Union. But in this exercise of federal power, the U.S. Supreme Court has ruled that Congress may limit an entering state's authority only if the limits pertain to similar matters limiting all of the states. These limits must also conform to areas of concern already granted to the federal government by the U.S. Constitution.⁹⁹

Consequently, when Hawaii entered the Union, Congress required the inclusion of 4 amendments to the Hawaii Constitution of 1950. The first amendment (section 10 of Article XVI) set the guidelines for the first statehood election for all state and congressional elective offices. The other 3 amendments are still in effect today: (1) recognition by Hawaii of the Hawaiian home lands;¹⁰⁰ (2) establishment of Hawaii's state boundaries;¹⁰¹ and (3) provisions concerning a reservation of rights to the United States.¹⁰²

Congress further required Hawaii to adopt the Hawaiian Homes Commission Act of 1920, as amended, as a provision of its Constitution. Section 4 of the Admission Act appears to be a legitimate constitutional exercise of congressional power inasmuch as the subject matter concerns public lands. This view was maintained by a Hawaii Legislative Reference Bureau scholar in 1964.¹⁰³ What Section 4 of the Admission Act mandates, according to Hawaii's attorney general, is (1) that Hawaii constitutionally guarantee the continuance of the Hawaiian Homes Commission as a state law; and (2) that the Hawaiian Homes Commission be amended, through constitutional amendment or by legislative action or repeal, only with the consent of Congress, unless otherwise expressly provided therein by Congress.¹⁰⁴

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Congress was also acting constitutionally by establishing Hawaii's state boundaries inasmuch as that authority is incidental to the power of Congress to admit states to the Union. Hawaii would therefore need congressional consent to alter the boundaries set forth in section 1 of Article XIII of the state constitution.

Section 9 of Article XIV--the General and Miscellaneous Provisions provision--states that the State of Hawaii and its people consent to all the provisions of the Admission Act reserving rights and powers of the United States and the terms or conditions of the grants of land or other property made to the state by the United States.

State Constitutional Limitations. The question whether a state constitutional convention is a "sovereign" body that can alter, amend, revise, or completely rewrite a constitution has long been argued by scholars.

The general rule governing the extent to which a constitutional convention is bound by existing state constitutions has been stated by a state constitutional authority, who argued that:¹⁰⁵

...as a general principle...the convention is independent of any restrictions on its power contained in a previous constitution, such as a provision that the bill of rights should never be changed. The very purpose of a convention is to revise and amend the previous constitution, and nothing therein contained can prevent its doing so if the people have conferred plenary powers upon the convention.

State Legislative Limitations. As in the case of state constitutional limitations on state conventions, the issue of state legislative limitations on conventions has long been a matter of considerable debate. Hawaii's legislature avoided placing restrictions on the subjects to be covered in the 1950 and 1968 Conventions, although the question of whether the legislature could limit the Convention has arisen.

During the 1968 Hawaii Constitutional Convention, Delegate Hebden Porteus, President of the Convention, delivered a brief speech relating to convention delegate powers. In the course of this speech he stated:¹⁰⁶

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The question was raised in 1950 as to what would happen if the voters decided that they wanted a constitutional convention and then the legislature did not pass an act providing for the number of delegates in the district. In effect, the voters would have acted but the legislature would have the power of veto by not providing the mechanics. It was assumed by many of the delegates that the legislature wouldn't hesitate to do this.

Porteus' statement laid bare what many of the legislative delegates may have thought, or desired, namely that in the final analysis it was the state legislature that was supreme, rather than the constitutional convention, because it could, by its inaction, effectively prevent the convention from even meeting. Whether the legislature could be forced to act by the courts if such an eventuality came to pass is not certain.

The accepted view of state legislative limitations imposed upon constitutional conventions was best expressed in a Pennsylvania court case:¹⁰⁷

A convention has no inherent rights; it exercised powers only. Delegated powers defines itself. To be delegated it must come in some adopted manner to convey it by some defined means. This adopted manner therefore becomes the measure of the powers conferred. The right of the people is absolute in the language of the bill of rights, "to alter, reform, or abolish their government in such manner as they may think proper."

Further:

It is only when (the people) exercise this right ...[that] they determine...the extent of the powers they intend to delegate. Hence the argument which imputes sovereignty to a convention, because of the reservation in the bill of rights, is utterly illogical and unsound. The bill of rights is a reservation of rights out of the general powers of government to themselves, but is no delegation of powers to a convention.

This Pennsylvania ruling favors the concept of limited convention powers. Two states, however, specifically prohibit the limiting of a constitutional convention. The Alaska Constitution states:¹⁰⁸

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Constitutional conventions shall have plenary powers to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.

The other state with similar prohibitions is Alabama.

The wording of the convention question in various state constitutions can, in some instances, be used as evidence that there are express prohibitions against limiting convention powers. The New York Constitution, for example, words the question as follows:¹⁰⁹ "Shall there be a convention to revise the constitution and amend the same?" The Hawaii Constitution is similarly worded:¹¹⁰ "Shall there be a convention to propose a revision of or amendments to the Constitution?" The absence of any limitations or qualifications in such questions adds weight to the arguments of those who state that state conventions with such questions in their constitutions have virtually unlimited revision authority.

Certainly, in 1967, the Hawaii state legislature, in passing enabling legislation for the 1968 Constitutional Convention, explicitly upheld broad convention powers:¹¹¹

In addition to its inherent powers under the Constitution, the convention may exercise the powers of legislative committees....

The issue of state legislative powers vs. state constitutional convention powers was best summarized by 2 authorities from Illinois:¹¹²

...there is a nice, but rather theoretical, question concerning the extent to which a constitutional convention is a "sovereign" body, a free agent, not subject to any limitation imposed by the legislature or by a preceding constitution...the question is mainly theoretical. For one thing, the supposed restrictions on the "sovereign" convention usually are not too burdensome to live with. For another thing, a convention would be a bit rash and insensitive to the needs of its constituency to jeopardize its work product solely to flaunt its "sovereign" power. Finally, most restrictions are likely to be sensible ones.

Research Prior to the Convention. For the 1950 Constitutional Convention, the Hawaii Statehood Commission, in 1948, appointed a Hawaiian Constitutional Committee to begin drafting a preliminary constitution. That same year the commission called upon the Legislative Reference Bureau of the University of Hawaii to assist in compiling background studies for use by the convention delegates. The result of this latter effort was the 1950 Manual on State Constitutional Provisions, which became the major convention study resource. This work proved so successful that in 1968 the Legislative Reference Bureau was again called upon to provide systematic and detailed pre-convention studies. This led to a 17-volume series, financed by legislative funds, entitled Hawaii Constitutional Convention Studies. That series forms the basis for the 1978 pre-convention research effort, also by the same bureau, which was transferred to the state legislature in 1972.

Up to the time of the 1968 Hawaii Constitutional Convention, no other state, with the possible exception of New York in 1958, had worked so diligently to research all the constitutional articles, sections, and subsections in a state constitution, and to relate them to the other states, territories, and even to the Model State Constitution. The extensive and exhaustive research project assisted in making the convention delegates extraordinarily well-briefed. The bureau also served capably during the convention period in a research capacity.

The value of organized preparatory research for state constitutional conventions is now recognized nationwide. A leading state constitutional authority declared that:¹¹³

The importance of basic research in preparation for rewriting state constitutions has so conclusively been demonstrated by recent experience that a constitutional requirement for creation of a preparatory commission before a convention ultimately is called appears to be more than warranted.

The Model State Constitution included such a provision:¹¹⁴

The legislature, prior to a popular vote on the holding of a convention, shall provide for a preparatory commission to assemble information on constitutional questions to assist the voters and, if

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a convention is authorized, the commission shall be continued for the assistance of the delegates.

Although the Hawaii Constitution does not specifically provide for a preparatory research commission, it does prescribe that with regard to the provisions pertaining to the Constitutional Convention "...the legislature...may enact legislation to facilitate their operation".¹¹⁵ The legislative act convening the 1968 Constitutional Convention appropriated funds "...to the Legislative Reference Bureau...for the purpose of updating the 1950 Manual on State Constitutional Provisions and to prepare necessary reports for the convention".¹¹⁶

Form Required. Most of the states do not specify the manner and form in which legislative proposals on constitutional amendments shall be submitted to the electorate or leave the matter for the legislature to decide. A number of states, however, require that there be separate votes for different legislative amendments. The Hawaii Constitution does not require the legislature to submit amendments separately. Hawaii, like some other states, however, does require that constitutional amendments be submitted separately from the list of candidates at the same general election.¹¹⁷ Missouri's Constitution requires that all amendments proposed either by the general assembly or by the initiative be submitted "on a separate ballot without party designation".¹¹⁸

Most state constitutions do not make specific provisions regarding the form in which convention proposals are to be submitted to the voters. It would appear that this would be a normal function of either the convention itself, or of the legislature. One authority argues that the manner and form in which the proposals of a convention are to be presented is far too important to be left to the legislature:¹¹⁹

Determination of the manner in which the proposals of a convention shall be presented to the people falls logically within the sphere of the convention's function. To permit the legislature to decide how the product of a convention's labors is to be submitted is to subordinate the temporary organ to the regular lawmaking body. Power to determine the manner of submission, or possibly to determine whether proposals shall be submitted at all, may well be that of life or death and should not be vested in the legislative assembly.

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The Hawaii Constitution follows the principle that the Convention should decide how its work is to be submitted to the voters. It states:¹²⁰

The convention shall provide for the...manner in which the proposed constitutional revision or amendments shall be submitted to a vote of the electorate....

States that authorize the convention to decide on the form and manner in which constitutional amendments or revisions are to be submitted to the voters undoubtedly gain necessary flexibility in determining whether amendments, for example, should be submitted as one "package", or separately. This decision is often crucial to the success or failure of the convention's labors.

Proponents of a single, all-or-nothing proposal or package argue that the intent of the convention must be preserved and that a rejected constitution is better than a partially ratified, unbalanced document. Those who favor piecemeal submission, however, contend that one controversial provision could doom the entire work of the convention. They point to the work of 5 unlimited constitutional conventions, held between 1966 and 1972, in Arkansas, Maryland, New Mexico, New York, and Rhode Island. These 5 states submitted their completed work on a "take-it-or-leave-it" basis, and every one of the constitutions was defeated.

Where highly controversial proposals are separated from a revised constitution, the record is somewhat better. In Illinois and Montana, also between 1966 and 1972, where the citizens were permitted to vote separately on the revised constitutions and other more controversial issues, both constitutions were ratified, even though most of the separate controversial amendments were defeated.

Two eminent state constitutional authorities, W. Brooke Graves and Albert L. Sturm, have decried the piecemeal approach to constitutional change. Graves attacks the fragmentary approach to constitutional problems by arguing that such fundamental but complex matters as streamlining state governmental organization, tax and fiscal matters, and the system for constitutional revision itself "has not demonstrated that [the fragmentary approach] possesses much

fitness for dealing with such problems".¹²¹ Sturm marshalls a whole array of arguments against the piecemeal approach, including the point that many individual amendments are designed to meet pressing problems of the present only. He also argues that many proposals are so vague or so technical that many voters can't understand them. This in turn, he states, leads to diminished voter interest.¹²²

The November 7, 1968 Hawaii election for ratification of the Constitutional Convention's proposed amendments offers strong evidence of the importance that form plays in obtaining electorate support. For that election the convention prepared a combination of 3 ballots on one form. In Part A, the voter could signify approval of all of the 23 proposed amendments; in Part B, disapproval could be indicated of all of the proposals; in Part C, the voter could vote "no" on any of the 23 proposals, but if there was no negative choice beside a proposal, that proposal automatically received a "yes" vote.¹²³

The form in which this ballot was drafted actually supported the amending process because of Part C. Those opposed to some or all of the proposals had to signify that opinion by marking either Part B or individual proposals in Part C, whereas supporters of all or part of the convention "package" automatically received affirmative votes whenever "no" votes did not appear. This form was a compromise between those fearful of the effect of the "35 per cent rule", in the Hawaii Constitution, so named because it requires 35 per cent of the total votes cast by voters in a general election to ratify constitutional amendments, and those who supported this provision.

The results of the election proved the effectiveness of the "yes, no, and yes-but" ballot. Twenty-two of the 23 proposals were passed. Had these same proposals been offered on a straight "35 per cent rule" basis, more of them might well have been defeated.

The submittal of "packaged" amendments to the voters on a "yes" or "no" proposition has become dangerous in recent years. One authority, comparing the constitutional convention results in 7 states between the years 1964 through 1970, noted that "[o]nly in Hawaii and Illinois, where provisions were voted on separately, did the new documents (amendments) pass."¹²⁴

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Publicity Requirements and Community Input. The degree of public apathy on constitutional matters is a matter of historical record. Usually, if candidate elections are held at the same time as referenda for amendments, the latter invariably draw fewer votes. In some states in which a majority of voters in the general election must favor a convention call, conventions have actually failed because of an absence of required voters.

The reasons for this lack of interest in constitutional amendments or revision are recognized by scholars. They include the insertion of technical matters to be voted upon, or confusing and verbose amendments, or matters that do not readily lend themselves to simplistic analysis. Methods to offset voter apathy on constitutional issues are provided for in many state constitutions. The Hawaii Constitution, for example, provides:¹²⁵

...the proposed [legislative] amendments shall be...published once in each of four successive weeks in at least one newspaper of general circulation in each senatorial district wherein such a newspaper is published, within the two months' period immediately preceding the next general election.

Most of the states require similar publication of proposed amendments and include requirements for geographical distribution as well. Missouri's Constitution calls for the publication, once a week, for 2 consecutive weeks in 2 newspapers of different political faith in each county, of proposed amendments.¹²⁶ A few states require that publication of amendments shall be in a manner prescribed by law. Other states require amendments to be published with the laws of the session in which they were approved. Massachusetts has an unusual constitutional provision that requires opposing and supporting arguments for amendments and initiative proposals be sent to each elector, as follows:¹²⁷

The secretary of the commonwealth shall cause to be printed and sent to each registered voter in the commonwealth the full text of every measure to be submitted to the people, together with a copy of the legislative committee's majority and minority reports, if there be such...and a fair, concise summary of the measure...and shall...cause to be prepared and sent to the voters other information and arguments for and against the measure.

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Hawaii's experience with convention publicity and community action has been highly successful, with an overwhelming voter turnout recorded for the ratification of the 1950 Constitutional Convention and an equally successful referendum in 1966 on the convention question, added to the ratification of 22 of the 23 amendments proposed by the 1968 Constitutional Convention.

The 1950 Constitutional Convention in Hawaii was not well-financed and the Hawaii Statehood Commission was understaffed. But the significance of the Convention did not escape the public at large, nor the newspapers. The work of the Legislative Reference Bureau was widely distributed. A University of Hawaii student group held a model state constitutional convention in 1948 which drew wide attention. The Statehood Commission became a coordinating body for various community efforts aimed at promoting the Convention and its work. The newspapers continually featured news about the forthcoming Convention and its importance to Hawaii's statehood efforts. The results of all this effort were dramatic, with over a 3 to 1 majority of voters finally ratifying the Convention's proposed Constitution on November 7, 1950.

By comparison, the 1968 Constitutional Convention publicity and community activities were well-financed and generated exceptional national as well as state interest. With an initial \$100,000 appropriated for pre-convention efforts, plus \$80,000 for the Legislative Reference Bureau, money was not a problem.¹²⁸ Two major committees were organized to push the convention work. One was government sponsored, the other was primarily a women's movement. The governor's constitutional convention public information committee emphasized a heavy media program which eventually spent all but \$10,000 of its allotted funds.¹²⁹

In contrast to the governor's media efforts, 3 women's groups, the League of Women Voters, the American Association of University Women, and the Junior League of Honolulu banded together to form The Citizens Committee on the Constitutional Convention. Its budget was less than \$20,000. The work of these women, supplemented by male volunteers and supporters of both sexes, was impressive and effective. Its efforts were directed toward citizen education rather than solely toward the Convention. A speakers bureau was organized,

thousands of brochures were distributed, and a symposium on the constitutional convention, featuring mainland experts, was sponsored. These efforts involved hundreds of individuals, all volunteers. A number of "interest group" organizations also engaged in their own publicity efforts. They included such diverse groups as the Citizens Committee on Ethics in Government and the Tax Foundation of Hawaii.

Ballot Titles and Summaries. Other means of publicizing constitutional amendments include provisions regarding the ballot title or summary. The Missouri Constitution leaves the manner of implementing this to the legislature, with amendments to be submitted "...by ballot title as may be provided by law".¹³⁰ Michigan's Constitution states:¹³¹

The ballot shall be used in such election shall contain a statement of the purpose of the proposed amendment, expressed in not more than 100 words....

Only one state, Alabama, requires that information about legislatively proposed amendments accompany the ballot. The Alabama Constitution states:¹³²

Upon the ballots used at all elections provided for in Section 284 of this Constitution the substance or subject matter of each proposed amendment shall be so printed that the nature thereof shall be clearly indicated.

The Model State Constitution also calls for such information. It states:¹³³

Each proposed constitutional amendment shall be submitted to the voters by a ballot title which shall be descriptive but not argumentative or prejudicial, and which shall be prepared by the legal department of the state, subject to review by the courts.

In the case of Hawaii, the Constitution is silent on the requirement for ballot titles and summaries. This is true of most states that provide for constitutional conventions. The inference is that in such states the convention itself is deemed best able to make the determination whether ballot titles are to be used, and how. In the 1950 Hawaii Constitutional Convention there was no

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issue on this matter inasmuch as the Constitution was submitted on a "yes" or "no" basis to the voters, while in 1968, the Convention organized its 86 amendments into 23 "highlights".

Timing of Elections. The importance of timing in the submission of constitutional provisions is self-evident. If such submission coincides with a general or regular election the constitutional provisions may become campaign issues. Furthermore, if sufficient time is not allowed between legislative approval of the convention question and the election of the delegates, the issues may not be sufficiently discussed and digested by the electorate. Finally, the calling of a special election for constitutional amendments and/or revision will enable the voters to concentrate only on such matters.

The Hawaii Constitution provides that legislatively proposed amendments shall be submitted only at the general election following legislative approval.¹³⁴ None of the 50 states restrict the submission of legislatively proposed amendments to special elections. However, about half of the states, like Hawaii, designate the next general or regular election as the date for referral to the voters. A smaller number of states permit such amendments to be submitted at either the next general election or at a special election called by the governor or the legislature. Among these states Michigan specifies a minimum time within which the referendum must be held, as follows:¹³⁵

Proposed amendments...shall be submitted, not less than 60 days thereafter, to the electors at the next general election or special election as the legislature shall direct.

Very few state constitutions specify the date at which convention proposals are to be voted upon, and even these refer only to general elections. Most state constitutions are silent on the subject, or, like Hawaii, leave it to the convention to decide. Hawaii's Constitution states:¹³⁶

The convention shall provide for the time and manner in which the proposed constitutional revision or amendments shall be submitted to a vote of the electorate.

In 1950, the Hawaii territorial legislature did not specify a date for ratification of the convention results, presumably leaving it up to the Convention to decide. In 1967, however, the state legislature included the general election of 1968 (November 7) as the date the convention's work was to be submitted to the electorate, "[u]nless the convention determines otherwise...."¹³⁷ The Convention concluded its work on September 24, 1968, barely 6 weeks before the general election date of November 7, 1968.

Ratification of Constitutional Amendments and Revisions

Amending or revising constitutions, whether at the state or federal level, is not easy. The U.S. Constitution has been amended only 26 times since 1789, primarily because of the difficulty of obtaining the necessary congressional and/or state majorities required. The great number of state constitutional amendments accumulated since virtually colonial days should not be misinterpreted. Every state constitution is difficult to amend because of the procedures required, the time involved, and the extraordinary majorities needed, particularly at the inception stage in the legislature and again during the ratification process.

In Hawaii, Minnesota, and New Hampshire the ratification process is particularly difficult because the majorities required for ratification by the electorate are extraordinary. Hawaii's Constitution, for example, defines the majority required to ratify constitutional revision or amendments, as follows:¹³⁸

The revision or amendments shall be effective only if approved at a general election by a majority of all of the votes tallied upon the question, this majority constituting at least thirty-five percent of the total vote cast at the election, or at a special election by a majority...constituting at least thirty percent of the total number of registered voters....

This extraordinary requirement for ratification was debated at the Hawaii Constitutional Conventions of 1950 and 1968. In the 1950 Constitutional Convention, Delegate Harold S. Roberts spoke at length against retention of the "35 per cent rule". His most telling argument was that:¹³⁹

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...the experience of other states with the amendment procedure has been that it is extremely difficult to get in excess of 50 per cent of those who are eligible to vote. This, in fact, would then require 35 per cent of approximately 50, which would require close to 70 per cent of those total voting.

Speaking against Roberts' position were a number of delegates, including Hebden Porteus, who argued that under the "35 per cent rule", if 100,000 voters went to the polls, 35,001 affirmative votes would enact an amendment, but that under the proposed reduction to 25 per cent, it would take only 25,001 affirmative votes to enact an amendment. Porteus then declared: "...I don't think that 25,001 out of 100,000 should be able to put the [amendment] idea over."¹⁴⁰

Delegate Roberts countered by pointing to the significance of the "35 per cent rule". He stated:¹⁴¹

I think this is one of the most serious questions which has come before the Convention.... The question of constitutional amendment goes to the very heart of the things we are working on. Most of the states provide a majority of those voting on the question.... What we're proposing here is an actual requirement of an affirmative vote.

Delegate Hannibal Tavares sided with Porteus. He said:¹⁴²

Here we are going to allow any kind of minority, no matter how small, so long as it's more than the people voting against, to change our basic law.... I hope, then, that the motion to amend will not be adopted.

The conservative view prevailed and the 35 per cent requirement for ratification stood.

Years later, during the 1968 Hawaii Constitutional Convention, Delegate Robert G. Dodge continued the attack on the "35 per cent rule".¹⁴³ Dodge pointed to the apparent inconsistency between the simple majority required in 1950 to ratify Hawaii's Constitution and the 35 per cent required to ratify amendments to that Constitution (in 1968). He further pointed out that if the 35 per cent requirement had been enforced when the Honolulu city charter was

voted upon, it would have lost. Dodge's motion to amend the 35 per cent provision also failed.

Authorities do not agree on the issue of making constitutional amendments or revision easier. Proponents of the "make-it-harder" position argue that such percentage requirements make it more difficult for minorities to "railroad" their favorite measures through. They also argue that posting extraordinary majority requirements ensure constitutional stability. Finally, they say that making constitutional amendments more difficult to pass encourages the use of the legislature to enact needed changes.

Critics of extraordinary majority requirements, on the other hand, argue that such requirements violate the principle of majority rule, and charge that proponents of such requirements assume that those voting who do not also vote on the amendments are actually voting "no". This may in fact not be the case. As two scholars state:¹⁴⁴

Often overlooked...is the fact that some who do not cast ballots are fully aware of the proposals but may not care whether they are accepted or rejected. This is not necessarily a sterile position. It may actually constitute a real opinion--for implicit in this silence may be the voter's willingness to acquiesce in whatever decision is reached by those who do participate. Such an attitude would explain the differences in total number of votes cast on various proposals appearing at the same election.

Two other authorities take a middle-of-the-road position by questioning whether a real issue exists. Their conclusion states:¹⁴⁵

It is not necessary to choose between these propositions, and it is probably not possible to settle the matter, anyway. The important thing is to keep one's eye on the ball by keeping statutory detail out of the constitutions.

The Model State Constitution provides that:¹⁴⁶

Any constitutional revision submitted to the voters in accordance with this section shall require the approval of a majority of the qualified voters voting thereon,...

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The results of the 1968 ratification election on the convention proposals seem to support critics of the "35 per cent rule". Although 22 out of 23 proposals were affirmed by the electorate, one authority, however, drew a different conclusion from these results. He states:¹⁴⁷

At the general election in 1968, 239,765 votes were cast and none of the 23 issues received a positive "yes" vote equalling 35 percent of this amount. It was only the "yes by implication" procedure which saved them...[and] had Hawaii followed the normal practice of a "yes" or "no" vote on each of the 23 proposals, more issues...would have been defeated.

Thus, in the 1968 election for ratification of the convention proposals, it appears that the form established by the Convention itself--the decision to submit the amendments in a 3-phase ballot instead of submitting 23 proposals for "yes" or "no" votes on the "35 per cent rule"--turned what might have been the loss of several or all of proposed amendments into the loss of only one.

Conflicting Measures. Many state constitutions contain provisions for dealing with voter ratification of conflicting constitutional amendment or revision proposals. The Hawaii Constitution states:¹⁴⁸

If a revision or amendment proposed by a constitutional convention is in conflict with a revision or amendment proposed by the legislature and both are submitted to the electorate at the same election and both are approved, then the revision or amendment proposed by the convention shall prevail. If conflicting revisions or amendments are proposed by the same body and are submitted to the electorate at the same election and both are approved, then the revision or amendment receiving the highest number of votes shall prevail.

The Model State Constitution states:¹⁴⁹

If conflicting constitutional amendments or revisions submitted to the voters at the same election are approved, the amendments or revision receiving the highest number of affirmative votes shall prevail to the extent of such conflict.

Effective Date of Amendments and Revision. Only a few states specify the effective date of amendments or revision. Alaska specifies 30 days after

certification of the election, unless otherwise provided.¹⁵⁰ Michigan specifies 45 days after the election;¹⁵¹ Missouri¹⁵² and New Jersey¹⁵³ specify 30 days, while North Dakota¹⁵⁴ specifies 10 days after the election. Hawaii does not specify any date, nor does the majority of states. The assumption is that the constitutional convention would set this date. Generally, in practice, the effective date of constitutional amendments in Hawaii has been the date of ratification by the electorate.

The Model State Constitution calls for the date of effectiveness of approved constitutional revision to be 30 days after the date of the election, "...unless the revision itself otherwise provides".¹⁵⁵

Neither the 1950 nor the 1968 Hawaii Constitutional Convention enabling acts referred to an effective date for adopted amendments and/or revision.

PART III. EVALUATION OF THE HAWAII CONSTITUTION BY POLITICAL SCIENTISTS

By September 24, 1968, the Hawaii State Constitutional Convention had completed its deliberative work, and on November 7, 1968, the voters of Hawaii went to the polls to register their collective judgment. Unlike the 1950 Constitution, which was presented to the Hawaii territorial voters in toto, the 1968 Convention undertook a limited process of change. The 1950 document, which was in effect from August 21, 1959, had demonstrated its basic viability through the first 10 years of Hawaii's development as a state.

The results of the deliberations of the 1968 Constitutional Convention delegates bore out the strengths of the state constitution. Only 23 amendments were finally proposed.

There were a few "radical" provisions among the 23 proposed amendments. One proposed to lower the voting age from 20 to 18. Another proposed the restoration of the franchise to felons. The minimum age of legislators was reduced to 20 instead of 30; and the governor's age requirement was also

lowered, from 35 to 30. Government employees were to be allowed to organize and bargain collectively. Legislative salaries were increased from \$4,000 per biennium to \$12,000 per annum. A reapportionment plan was established to conform to the U.S. Supreme Court's edicts.

By and large, even these proposals no longer seem "radical", but in tune with the conditions facing the nation as well as this state. Generally, the proposed amendments were conservative in nature, and they recognized the need for state government to face the economic and social realities of this century, while adding such bedrock rights as a guarantee against unreasonable invasion of privacy. The 1968 Constitutional Convention retained the controversial "35 per cent rule" for ratification of constitutional amendments and revision, and defeated attempts by supporters of the initiative proposal to have that innovation placed on the ballot.

The Hawaii Constitution, originally drafted in 1950, and amended in 1968, has drawn almost universal praise from political scientists and practitioners of government. Only a few representative examples are noted in this study. W. Brooke Graves noted in his study that the "...constituent assemblies on Hawaii, Puerto Rico, and Alaska all deserve high marks".¹⁵⁶ He listed the good features of the 3 constitutions: (1) brevity; (2) faithful reflection of the changes in informed constitutional circles about needed constitutional reform; (3) avoidance of diffusion of the executive authority and responsibility; (4) a system of appointive judges; and (5) assignment of responsibility for periodic reapportionment to a nonlegislative agency.

One of the most searching studies on state constitutional conventions during the 1960's noted that Hawaii's 1950 Constitution was so widely praised by political analysts and government practitioners that it seemed "...unlikely that the state would have another convention as early as 1968".¹⁵⁷

It remained for one of Hawaii's most respected scholars in the field of state government to place Hawaii's Constitution in its proper perspective:¹⁵⁸

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The convention which met in 1950 was primarily concerned with achieving statehood, and understood that adapting over the existing territorial structure and processes of government with minimal change for use by the state would facilitate this goal.

Further:

The convention which met in 1968 was similarly uninterested in probing the basic polity and then proposing corrective revision. Just as in 1950, the delegates were disposed toward minimal, incremental change, and the convention product was of the pruning and grafting variety.

Most authorities agree that Hawaii's Constitution incorporates many of the features of the "ideal" state constitution. More important, that basic document has survived almost 2 decades of spectacular growth in the state. And as one of only 19 states which still retain their original constitutions, Hawaii's experience in self-governance under statehood indicates that the built-in process of constitutional change authorized in its Constitution has served both a useful and effective purpose.

Chapter 3

OTHER ISSUES RELEVANT TO REVISION AND AMENDMENT

Mainland State Constitutional Developments, 1968-1977

Hawaii's Constitutional Convention of 1968 occurred during a period of widespread and intense constitutional revision and amendment all over the nation. The period from 1966 to 1974 witnessed 27 states partaking in this activity. Six states successfully promulgated new constitutions during this period,¹ and 2 others, California and Hawaii, were able to obtain electorate approval of extensive constitutional amendments. A large number of other states were able to obtain less sweeping constitutional revision.

But this widespread constitutional activity was not totally successful. The fact that 7 new state constitutions were rejected at the polls² during this same period meant, in the words of one authority, that constitutional "[e]nthusiasm for change had not reached the grass roots in some states...."³

Nevertheless, there was no denying that the national mood during the 1960's and early 1970's was one of constitutional reform. So widespread among the states was this activity that a scholar stated that this period "...was to see state constitutional revision become almost a fad".⁴ In her mind, there was no doubt that "[t]he period from 1959-1975 will remain for a long time the most productive period of constitutional change since the...1820's."⁵

Forces Behind Constitutional Revision. The forces behind this broad movement for constitutional revision came from several sources. They included:

- (1) The work of the National Municipal League since 1921, especially its widely read and debated Model State Constitution, which had a profound influence on constitutional thinking among the states.
- (2) The United States Supreme Court decisions of the early 1960's, which, in the words of another scholar:⁶

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...served to remove or reduce opposition to general constitutional revision by those who formerly feared that it would open the door to alteration of apportionment patterns.

- (3) The rapid urbanization, population increase, and attendant mobility of people, along with technical progress and development, which created growing pressure for equal treatment of minority groups and increased living standards.
- (4) The famous Kestnbaum Commission, also known as the Commission on Intergovernmental Relations, of the mid-and-late-1950's, which showed the need for more modern and adaptable state constitutions. Its work was supported by the Committee on Economic Development, the National Governors' Conference, the Council of State Governments, and the Public Administration Service of Chicago.
- (5) The successful examples of Alaska and Hawaii also played a role in raising the level of consciousness of constitutional reformists all over the country.⁷

Constitutional Activity Among the States. The general pressure for constitutional change was also reflected in the large numbers of constitutional amendments proposed and adopted by the 50 states. From 1963 to mid-1967, 723 such amendments were proposed on 50 state ballots, of which 552, or 75 per cent, were adopted. From 1968 to 1976, 670 amendments were proposed, of which 330, or 49.2 per cent, were adopted.⁸

Obviously, Hawaii's Constitutional Convention of 1968 did not take place in a vacuum, but was part of a larger national movement of constitutional revision and amendment. In another sense, Hawaii benefitted from the high caliber of constitutional work performed by other states, which, like Hawaii, relied increasingly upon competent research from professional bodies and the contributions of such groups as the National Municipal League.⁹

Evaluation of Mainland State Constitutions. A brief look at some of the successful mainland state constitutions and at some of the unsuccessful efforts may prove beneficial to constitutional scholars and government practitioners. Montana, which produced a new constitution and had it adopted in 1972, was one of the states which recently incorporated the initiative into its basic document. It also removed the previous limit on the number of proposed constitutional

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amendments to be placed on any one ballot. It also required, in its constitution, the mandatory submission of the constitutional question to the voters at least every 20 years. The new constitution was submitted to the electorate as one unit, but with separate proposals that could be voted upon individually, or in the form of a series of separate amendments.¹⁰

The new Illinois Constitution, adopted in 1970, also provided for the inclusion of the initiative, and removed the previous limit on the number of proposed constitutional amendments on any one ballot. It further called for the mandatory submission of the constitutional question to the voters at least every 20 years.¹¹

The new Florida Constitution, adopted in 1968, contained an innovation which provided constitutional status for a constitutional commission, the first time this has been done in any state.¹² This provision will be discussed in greater detail later in this chapter.

Among the defeated new constitutions, New York's, which represented so much work and hope, was rejected in 1967. Historians take note that New York is traditionally hostile to constitutional reform, which tradition goes back to the days of the founding of this nation (its voters ratified the U.S. Constitution by a margin of only 3 votes). New York, since 1938, had witnessed 150 constitutional amendment proposals, of which 102 were adopted. But the massive and costly effort to revise the state's constitution failed, according to close students of that effort, because of 2 major controversial issues: (1) state aid to parochial and private schools; and (2) assumption of welfare costs by the local citizenry.¹³

Maryland was another state whose constitutional reform effort resulted in failure in 1968. This failure was characterized by one authority in the following words:¹⁴

In Maryland, the new charter had sought to come to grips with another chronic issue of regional administration of over-lapping urban-rural services in population areas in transition from what was predominantly one to what may become predominantly the other.

In other words, the urban centers of the state had lost in the effort to replace the rural areas as the political decision-makers.

The Rhode Island effort to revise the state's constitution foundered, also in 1968. Among the controversial issues debated was the touchy subject of wiretapping, on which issue, one authority stated, "The Rhode Island constitution-makers marched up the hill and down again, but even the limited concession to the case for banning wiretapping was lost when the whole constitution was lost."¹⁵

Idaho was one of 3 states which failed to adopt a new constitution in 1970 (the other 2 were Arkansas and Oregon). That state attempted to (1) strengthen the executive branch of state government; and (2) liberalize the provisions on pledging the state's credit in bond financing.¹⁶

One scholar posed the rhetorical question: How good were the defeated constitutions? His answer was surprisingly candid and revealing. Of New York's \$7.5 million constitutional revision effort, he stated that:¹⁷

...New York's lamented rejected document had signally failed to reform the unconscionably complex judicial article....

This same authority then posed another rhetorical question about the quality of some adopted new state constitutions. He singled out 2 in particular for examination: Virginia and Florida. Of Virginia's adopted constitution (1970), he stated:¹⁸

...Virginia's just-adopted new charter elected to preserve the twenty-one year age qualification for voting without taking into account the opportunity for legislative response to the Congressional enactment of a lower voting age for national elections.

As for Florida's new constitution of 1968, another scholar drew some lessons in constitutional revision: (1) the tendency of the Florida document to blur "...the distinction between constitution and government; (2) the tendency to make the constituent function exclusively a legislative one; and (3) the

tendency to preserve certain details of the constitution which...prevent the fulfillment of the principle of popular responsibility...."¹⁹ In other words, Florida's Constitution did not resolve some of the basic reasons for constitutional revision.

The point to this evaluation of adopted and rejected state constitutions within the past 10 years is that adoption of such documents does not mean that they are all ideal constitutions, and that the rejection of proposed new constitutions does not constitute total defeat for constitutional reform.

Significant State Constitutional Trends

An examination of state constitutional change from 1968 through 1975 reveals interesting and significant trends:

- (1) A greater reliance upon legislative amendment procedures than upon constitutional conventions, constitutional commissions, and initiative proposals. During this time span, 44 states proposed 1,775 amendments, of which legislative proposals accounted for 1,671, or 94.1 per cent. Of these proposals, 1,221 were adopted, out of which legislative proposals accounted for 1,163, or 95.2 per cent.²⁰
- (2) A decreasing number of legislative proposals, overall. For 1968-69 (data in the Book of the States are for biennial periods), there were 450 legislative proposals. By 1974-75, the total had decreased to 332.
- (3) A relatively high adoption rate of legislative proposals: from 1968 to 1976, an average of 69.4 per cent.
- (4) Overall, reliance upon piecemeal amendment submittal to the electorate rather than extensive constitutional revision.
- (5) A marked decline in the number of constitutional conventions, and an even more marked decrease in constitutional convention proposals, especially since 1970-71. For 1968-69, there were 5 state constitutional conventions. By 1974-75, there were only 2. In 1968-69, a total of 34 convention proposals were submitted, of which 32 were adopted. By 1974-75, the number of proposals had dwindled to 7, of which 4 were adopted. It is interesting that the average adoption rate for constitutional convention proposals for the period 1968-76 is

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55.2 per cent, which is lower than the adoption rate for legislative proposals (69.4 per cent).

- (6) One growing trend is the increasing hostility of the voters to constitutional revision and amendment. One well-known scholar states:²¹

The heavy burden placed on voters in some states to pass judgment on large numbers of proposed amendments has aroused increasing opposition. This resistance amounted to a general revolt in Louisiana when the small proportion of the electorate who voted on constitutional amendments turned down 22 general and 31 local amendments submitted ...in November 1970. The average percentage of persons registered who voted on the amendments was only 23.6, the lowest level of participation in the fall election since 1958. There are indications that other States' electorates likewise are losing patience with procedures that impose an excessively heavy decision-making burden relating to matters on which voters have little basis for intelligent judgment.

- (7) There is also another visible trend: opposition to constitutional change. This phenomenon and its significance is underscored by another authority, who writes:²²

...what is of primary importance is the fact that there is a substantial and consistent opposition to change. The particular reasons for the opposition may vary from state to state, but the net effect is still the same, and that is to retard the expeditious development of flexible and efficient modern processes of government.

- (8) While both state legislative and constitutional convention activity have declined since 1958, the utilization of constitutional initiatives has increased in both number of states participating (5 in 1968-69 to 7 in 1974-75) and number of proposals (6 in 1968-69 to 13 in 1974-75). The adoption rate for the initiative shows impressive gains as well, from literally 0 per cent in 1968-69 to 61.5 per cent in 1974-75. Nevertheless, compared to the overall volume of constitutional amendment activity, the constitutional initiative remains extremely limited, with a total of only 40 proposals submitted out of 1,775, representing 2.2 per cent of all amendments offered in the states during the 1968-76 period. The overall adoption rate for these same years is also not impressive: 12 adoptions out of 1,671, or seven-tenths of one per cent of the total adopted by all methods. A more detailed analysis of the constitutional initiative is presented later in this chapter.

- (9) A surprising number of state constitutional commissions were active from 1968-76; no fewer than 26 states used such commissions to prepare new constitutions or to propose amendments to existing state constitutions.²³

Background Developments of the Hawaii Constitutional Convention of 1978

As the annual date for Hawaii's second state constitutional convention approached, the lieutenant governor, Nelson K. Doi, mindful of his constitutional responsibility to assure the calling of a constitutional convention every 10 years if the state legislature did not act, queried the state attorney general's office on May 12, 1975, whether such question should be placed on the ballot of the general election of November 2, 1976, or of the general election scheduled for November 7, 1978. The attorney general ruled that the question should be placed on the ballot for the November 7, 1978 election. To the lieutenant governor's further inquiry whether the state legislature could call a constitutional convention without putting the question on the ballot, the attorney general ruled in the negative.²⁴

The state legislature, however, moved on the constitutional convention. During the course of the 1976 legislative session, it prepared to submit the convention question to the voters at the general election of November 2, 1976.²⁵

The referendum of November, 1976 was a victory for the proponents of the convention. Out of 363,045 registered voters in the state, 308,029 cast their ballots. Of these, 199,831, or 64.4 per cent, voted in favor of the convention, while 69,264, or 22.4 per cent, voted against.²⁶

On the strength of this affirmative referendum result the legislature, in 1977, through legislation formally issued the call for the special election of convention delegates, to be held on May 20, 1978.²⁷ This law closely followed the procedures and authorizations established by the 1967 enabling law. Two provisions in the Act are relevant to revision and amendment:

- (1) Powers of the Convention: "In addition to its inherent powers under the Constitution, the Convention may exercise the powers of the legislative committees...and may appoint staff members...and contract for the legal and consultative services of qualified persons.²⁸
- (2) Ratification Election: "Unless the convention determines otherwise, any constitutional revision or amendment proposed by the Convention shall be submitted to the electorate at the general election of November, 1978.²⁹

The enabling act for the 1978 Constitutional Convention is silent, as was the 1967 enabling law calling the 1968 Convention, on a number of important matters. These include the scope of the Convention's studies and proposals; the organization and management of the convention operations; and the manner and form in which the convention proposals are to be submitted to the electorate. As was inferred in 1968, this silence may mean that the legislature is giving the Constitutional Convention "carte blanche" on such matters.

Constitutional Commissions

The constitutional commission, until the adoption of the Florida Constitution in 1968, was an extra-constitutional method of preparing for or researching possible revisions or amendments to state constitutions. Florida's Constitution was the first in the Union to accord official and constitutional status to a constitutional commission.

Origins. The first known state constitutional commission was created in New Jersey in 1852.³⁰ The commissions of relatively modern times started in the period between 1939-49, during which period 7 were created. Prior to 1968 there were 62 such commissions, with the numbers increasing each decade. Between 1965-68, 22 commissions were created, of which 8 were still in existence in 1976. During the intervening years 4 more commissions were created.

Constitutional commissions started out as adjuncts of the legislature without constitutional status. They were created by statute, by legislative resolution, or by executive order. Whether or not the recommendations of

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constitutional study commissions were actually adopted was entirely up to the legislature.

Types. There are 2 types of constitutional commissions: (1) the study commission; and (2) the preparatory commission. The study commission generally examines the state constitution and recommends amendments or revision. The preparatory commission is normally created in anticipation of a constitutional convention, and its purpose is to compile materials to be used by those involved in the convention process, as well as officials and the public.

The study commission is by far the most generally used. During 1970-71, for example, of the 14 commissions then operating, only one (Montana's) could be classified as a preparatory commission. It was charged specifically to make actual preparations for the constitutional convention of 1971.³¹

In some instances, a study commission will be given express authority to propose a draft constitution or extensive revision of an existing constitution. The Delaware and Idaho commissions were given such authority.³² The scope of the commission's work is generally mandated by statute, if the commission was established by such law. Then, the commission's mandates would include recommending the most appropriate procedure for implementing the recommendations, assemblage of the information on calling the constitutional convention, and submitting recommendations on various issues.³³

Membership. Membership on a constitutional commission is either (1) appointive, or (2) ex officio. The appointive commissions outnumbered the ex officio type during 1970-71, with only 6 of the 14 active commissions during those years being of the ex officio type.

Size. The average size of 13 commissions during 1970-71 was 20. The median size in 1970-71 was 16. California was an exception, with 80 commission members. Vermont had 11 and Nebraska 12.

Funding. All 14 commissions operating in 1970-71 were financed from public funds, most of them by direct appropriations. Two commissions

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(California and Indiana) were financed from legislative council funds or from legislative committee allocations. Funding varied from \$2,000 for Vermont to \$400,000 for Ohio's commission, which was in operation for 3 years. The average of 12 commissions during 1970-71 was \$96,587.

Duration. Of the 14 commissions operating during 1970-71, the life span of these commissions ran from a minimum of 6 months for Minnesota to 8 years for California. The average for the 14 commissions was 32 months.

Advice. Four commissions (California, Delaware, Idaho, and Montana) proposed revised constitutions. Other commissions recommended lesser changes. Montana and Vermont commissions recommended a constitutional convention, while the Indiana and Nebraska commissions advised against holding conventions. Three commissions (Indiana, Nebraska, and South Carolina) recommended constitutional reform on a gradual basis.

Performance Record. In 5 states (Delaware, Idaho, North Carolina, Oregon, and Virginia), preliminary constitutional work was done by commissions during 1970-71. But only 2 of these states (North Carolina and Virginia) had their constitutions approved. In Idaho and Oregon, the constitutions offered to the electorate were defeated by wide margins.

Reasons for Increasing Popularity. The increase in the use of constitutional commissions can be traced to 2 factors: (1) their acceptance and popularity among state legislatures; and (2) the fate of the product of an increasing number of constitutional conventions. Because commissions are generally the creature of the legislature, they are advisory only, but they conduct research that the legislature itself may be too busy to undertake. They are also mostly appointive bodies, and therefore less costly to operate, and they work quietly, as a rule, without fanfare. When the constitutions of several states, including Arkansas, California, Idaho, Maryland, New Mexico, New York, Oregon, and Rhode Island were defeated within a period of 2 years (1968-1970), alarmed legislatures turned increasingly to the constitutional commissions to prepare constitutional amendments and revisions.

Hawaii and the Constitutional Commission. Hawaii had a constitutional commission prior to statehood, the Statehood Commission, whose members were appointed by the governor. Before and after Hawaii became a state, the Legislative Reference Bureau served as the research and preparatory agency for the 1950, 1968, and 1978 Constitutional Conventions. Partly because of the bureau's work, perhaps, no reference or suggestion for a constitutional commission was made in either the 1950 or 1968 Hawaii Constitutional Conventions.

The Florida Constitutional Commission. The new Florida Constitution, which became effective on January 7, 1969, provides for the establishment of a 37-member constitutional revision commission 10 years after adoption of the new constitution and each 20th year thereafter, to study the state constitution and to propose a revision of all or any part of it. The membership of the commission includes: the state attorney general; 15 appointees of the governor; 9 appointees of the speaker of the house of representatives; 9 appointees of the president of the senate; and 3 appointees of the chief justice of the state supreme court. The governor appoints the chairperson. The commission convenes at the call of the chair, examines the constitution, holds public hearings, and not later than 180 days prior to the next general election files with the secretary of state its proposal, if any, of a revision of the constitution or any part of it.³⁴

Pros and Cons of Permanent Constitutional Revision Committee

Two close students of state constitutional reform suggest that states should seriously consider formation of permanent constitutional revision committees. They argued that:³⁵

There seems to be a real need for some kind of technically proficient "constitutional revision committee"...[whose] function might be compared with that of the "legislative council"...except that such a committee would function on the level of constitutional revision. This committee might be permanent, or it might function periodically--say, every five years. It should be a small, nonpartisan committee and yet have close working relations with

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legislative leaders...,pressure group leaders, and others. [because] [o]nly in this way could its work be well-grounded in realities and relevant to the forces which impinge upon the processes of constitutional revision.

The Model State Constitution does not include any reference to a constitutional commission.

The authorities are divided on the question of the importance, desirability, and effectiveness of constitutional commissions. Those who favor the institution point to its advantages of (1) economy, (2) ease of creation and appointment of members, (3) familiarity with the commission-type operation, (4) generally high caliber of work produced by constitutional commissions in states where their services have been used, (5) avoidance of political "grandstanding" and partisanship, and (6) facilitation of free discussion and quick action.³⁶

Those opposed to the constitutional commission cite the following disadvantages: (1) susceptibility to political handpicking of commission members; (2) appointed commission members are not as representative of the general community as are elected delegates to a convention; (3) commissions appointed by the legislature are apt to reflect the desires and political "slant" of the legislature; (4) commissions generally avoid controversial issues; (5) commissions, because they have far less visibility than constitutional conventions, stimulate far less popular interest in their work and recommendations; and (6) the work of constitutional commissions has not always been, in the words of one authority, "...wholly meritorious".³⁷

The case against constitutional commissions is best summed up by a leading scholar, who states:³⁸

...on the whole, [constitutional commissions] have been no more successful in securing popular adoption of their proposals than conventions.

And the case for constitutional commissions is best summed up by another scholar, who states:³⁹

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...[The constitutional commission] is the best instrument for studying and recommending [constitutional] revisions.

The Initiative

The initiative allows voters, by petition, to frame a law or an amendment to a constitution, and have it submitted to a popular vote. There are 2 kinds of initiative: direct and indirect. The direct initiative places a proposed measure upon the ballot for submittal to the electorate without legislative action. The indirect initiative goes to the legislature, which must act upon it within a specified period. If it is passed unchanged and signed by the governor, it becomes law immediately, unless a referendum is called for. If the measure is amended, or if it is not acted upon within the specified period, it must be submitted to the electorate for approval or rejection.

There are statutory initiatives and constitutional initiatives. The statutory initiative is used to enact legislation whereas the constitutional initiative is used to initiate constitutional amendments.

General Procedures Involved. The procedure involved with the initiative is quite similar in all states that use this device. It begins with a petition drawn up by the sponsoring group which contains a draft of a proposed law or constitutional amendment. Copies of the petition are circulated to secure the number of signatures required. Several states specify the number of signatures required in terms of a percentage of voters for governor in the preceding election, from a minimum of 3 per cent in Massachusetts to a maximum of 15 per cent in Arizona and Oklahoma. North Dakota specifies 20,000 signatures.⁴⁰ If found to be in order, most states then refer the initiative petition directly to the voters.

In 2 states, Massachusetts⁴¹ and Nevada,⁴² the petitions are sent to the legislature for consideration before they are submitted to the voters. In Massachusetts, initiated constitutional amendments may be modified by three-fourths vote of the legislature meeting in joint session. If the proposal receives the support of one-fourth of the members in 2 sessions of the legislature, it is

then sent to the voters.⁴³ In Nevada, if the legislature approves the proposed constitutional amendment within 40 days and the governor signs, the amendment becomes part of the Constitution, although it may still be subject to popular referendum. If the legislature does not act, or disapproves, the amendment is voted upon at the next general election. The legislature may, with the governor's approval, submit an alternative provision, in which case both are submitted to the voters, and the one receiving the most votes becomes law.⁴⁴

Origins. The initiative came into being during the progressive movement from 1900-1920. It sprang into being, as one authority states, "...not [as] an instrument of representative government, but rather a symbol of disillusionment with representative institutions".⁴⁵ Oregon was the first state to adopt the initiative for constitutional purposes; Oklahoma followed in 1907. By 1920, the movement had run its course for the time being and the last adoption during this period was Massachusetts, in 1918. At the present time, 17 states still retain the constitutional initiative.⁴⁶ This is a slight increase over the 13 states that used the initiative in 1968 (see Appendix).

Ratification. Ratification of the initiative is by simple majority vote of the voters in 13 of the 17 states.⁴⁷ Of the remaining 4, Illinois requires a majority voting in the election or three-fifths voting on an amendment; Massachusetts requires a majority vote on an amendment which must be 30 per cent of the total voters at the election; Nebraska requires a majority vote on the amendment which must be at least 35 per cent of the total vote at the election; and Nevada requires a majority vote on the amendment in 2 consecutive general elections.

Arguments in Favor of the Initiative. Proponents of the initiative argue that:

- (1) The initiative has a lengthy history of use in the United States, going back to 1900.
- (2) The initiative helps make the legislature more responsive.
- (3) States that have recently adopted new constitutions have also incorporated the initiative and/or the referendum provision. They include Alaska, Florida, Illinois, and Montana.

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- (4) A heavy proportion of the western states have the initiative, including Alaska, Arizona, California, Colorado, Montana, Nevada, and Oregon.
- (5) The initiative gives the people a direct say in how the government is run.
- (6) The initiative allows the people to move quickly when the legislature does not.
- (7) The indirect initiative utilizes the legislature as a "sounding board" or "screening" device to weed out hastily drafted laws.
- (8) The initiative is a potential civic instrument to help keep the legislature "in line".
- (9) The initiative is the only method by which people can directly affect legislation.
- (10) All of the 4 counties in Hawaii--Maui, Hawaii, Kauai, and Honolulu--have provided for the initiative in their county charters.
- (11) Over the last 10 years, there has been an increase in the number of states incorporating the initiative.
- (12) The initiative acts as an effective device for public education and stimulates grass roots interest in important issues.
- (13) The Model State Constitution includes provision for the initiative.

Arguments in Opposition to the Initiative. Critics of the initiative argue that:

- (1) The initiative is contrary to the concept and practice of representative government, in which elected representatives of the people enact laws.
- (2) The initiative is a form of public opinion poll, with the electorate asked to vote "yes" or "no" on issues, without the possibility of compromise.
- (3) The initiative, in referendum form, is already incorporated in those state constitutions which, like Hawaii, permit or require periodic electorate response for the calling of constitutional conventions and the ratification of their work.

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- (4) The initiative asks the voter to make too many decisions for which the voter may not be particularly well-equipped to respond intelligently.
- (5) The initiative encourages minority and special interest groups to seek constitutional status for their programs and objectives.
- (6) The initiative places a premium on organization and finances because the support of some large interest group is needed to supply the finances and the people required to obtain signatures on petitions.
- (7) The initiative is unnecessary because state legislatures are, by and large, as responsive to the needs of the citizenry as can reasonably be expected.
- (8) The initiative puts the emphasis upon speed and upon immediate concerns, which may lead to rash and poorly drafted laws.
- (9) The initiative process increases the cost of government.
- (10) The initiative, by by-passing the normal legislative process, weakens the system of government.
- (11) In Hawaii, the initiative would favor the citizenry of Oahu because of its overwhelmingly majority of population and voters.
- (12) Generally, fewer voters use their franchise for initiative proposals than for office-seekers on the same ballot in the same election.
- (13) The initiative eliminates the vital function provided by the legislature, namely, careful and studied consideration of issues, with all parties heard from, with decisions made for the benefit of the entire state.

Evaluation of the Initiative Issue

Evaluation by the Experts. One state constitutional authority argues that the initiative has outlived its usefulness:⁴⁸

At the turn of the century, "initiative, referendum and recall" was all the rage as the latest thing for bringing democracy to the people. Over the years, the bloom has worn off and there is much less interest in initiative, referendum and recall as the answer to the ills of society.

But today, with (the problem of malapportioned legislatures) taken care of, the dangers of initiative seem to outweigh the claimed advantages of a bypass around an insensitive legislature. For the danger of the initiative route to constitutional amendment is that it will be used to adopt ill-advised legislation. In short, if you close the door to "crack-pot" laws but leave the constitutional window open, they will get in anyway.

This attitude is supported by another scholar:⁴⁹

Critics of the constitutional initiative declare that it encourages proposals of selfish interests, that many initiative measures are poorly drafted and cannot be well integrated into the existing system, and that initiatives may result in addition of more undesirable statutory matter to the organic law. Experience in the use of the constitutional initiative during the last seven years adds little strength to arguments for its continuing viability as an effective technique for altering constitutions.

A different critique is offered by a third authority:⁵⁰

True, the initiative has not borne out the claims of its early proponents. It has not been responsible for substantial reforms in the states; it has not had a notable effect in increasing public interest and activity in government; and it has not spread throughout the United States.... On the other hand, neither have these devices seriously affected representative government as their critics warned. Systematic studies of the use of the initiative in Oregon and California have shown some solid achievement sprinkled among some foolish ventures.

Statistical Analysis of the Initiative. The biennial publication, the Book of the States, incorporates important data on state constitutional changes by method of initiation. Careful review of the data, going back to 1968-69, indicates that:

- (1) The constitutional initiative is not a particularly widespread method of changing state constitutions. During the period 1968-1976, only 7 states engaged in constitutional initiative proposals.⁵¹
- (2) The constitutional initiative method is not a particularly effective method of changing state constitutions. Of the 40 proposals submitted by this method for the years 1968-76, only 12 were adopted, for a rate of adoption of 30.0 per cent.

That rate is the lowest of the 3 methods available to modify state constitutions, the other 2 being legislative proposals and the constitutional convention. As a percentage, the initiative method constituted only 2.2 per cent of the total proposals submitted by all methods; and the rate of adoption was only nine-tenths of one per cent.⁵²

One authority pointed to a similar poor record for the 6-year period between 1966-1972, during which period the constitutional initiative was used in 10 states in which 28 proposals were submitted to the voters, who approved only 6.⁵³

One state, Michigan, which had not enjoyed notable success in the use of the initiative, in 1961 removed through the use of the initiative a major stumbling block to the calling of conventions. The convention requirement calling for a majority of voters voting in the election was changed to a majority of those voting on the question. This change led to a constitutional convention in 1961.

Reasons for Poor Showing by Initiative. The reasons for the relatively poor showing of the constitutional initiative in recent years, according to one authority, stem from 2 basic weaknesses, as follows:⁵⁴

The constitutional initiative, which is designed to propose limited alterations that have substantial popular support when Legislatures fail to act, is inappropriate for proposing extensive constitutional change. Not only does the constitutional initiative have limited use, but proposals that originate by popular support often lack the necessary political support to assure their success.

This same authority, in earlier research, noted that during the 1970-71 biennium, the electorate in 5 states failed to approve a single initiative proposed, which evidence raised serious doubt "...concerning the continuing viability of this method for altering present constitutions".⁵⁵ He theorized that one important reason why the constitutional initiative has not had a better record of success lies in the "[i]ncreasing willingness of state lawmaking bodies to support constitutional modernization...."⁵⁶

Evaluation of the Initiative by Previous Hawaii Constitutional Conventions

The 1950 Constitutional Convention. The initiative issue was debated at great length during the 1950 Constitutional Convention. The committee on revision, amendments, initiative, referendum and recall, chaired by Delegate Yasutaka Fukushima, adopted Standing Committee Report No. 47, which dealt with all 5 subjects included in the committee's title.⁵⁷ The majority report was adopted by the Convention, but only after a minority dissenting report was also filed.⁵⁸ In the majority report, Delegate Fukushima outlined the classic arguments against adoption of the initiative proposal, citing 11 reasons. He also enumerated a number of reasons for opposing the referendum and recall. All of the proposals for the initiative, referendum, and recall were defeated.

The minority committee report did not attack the majority report on a point-by-point basis. Rather, it delivered generalizations, such as the need for "...a re-affirmation of our faith in the American way of life..."; the need to "...constantly...apprise our legislature and our legislators of their responsibilities to the people" and the "...impetus [which the initiative had given] to progressive government...."⁵⁹

The 1968 Constitutional Convention. The 1968 Constitutional Convention witnessed another debate on the initiative issue, but on a much reduced scale. Delegate Thomas K. Lalakea attempted, with a few supporters on the committee on revision, amendment and other provisions, to amend the Majority Committee Report No. 6 by inclusion of a new section titled "Initiative and Referendum". In support of this move, Lalakea listed 4 arguments in favor of the proposal, which were actually denials of the claims of the opponents of the initiative concept: (1) that careful application of the principle of the initiative would deny the use of that principle by "...militant and activist groups...to their advantage..."; (2) that experience in California, in 1964, showed that "...monied interest[s]...[could not] take over the power of initiative and referendum and work it to their advantage..."; (3) that initiative, instead of eroding the responsibility of the legislature, would make that body "...even more responsive..."; and (4) that the initiative is not

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"...antiquated...[because] out of twenty states in our union that have initiative and referendum not one of these articles has been repealed".⁶⁰

The move to include the initiative and referendum amendment in the general committee report was defeated by voice vote.⁶¹ The majority of the committee members were willing to follow the precedent established in the 1950 Convention. The final report stated:⁶²

Your Committee is in agreement with the Standing Committee Report No. 47 of the Constitutional Convention of 1950. The arguments against the inclusion of these [initiative and referendum] measures in the 1950 Convention are equally applicable to this Convention....

The main point emphasized by the 1968 committee was that there was little, if any, public support for the initiative measure.⁶³ This same point was made in the 1950 Convention, in the concluding remarks made by the chairperson of the committee on revision, amendments, initiative, referendum and recall:⁶⁴

In the absence of a clear showing of great popular demand for any such measures, or convincing evidence of the necessity for or merit and effectiveness [of the initiative, referendum and recall proposals] none of which has been satisfactorily established in the minds of the majority of your Committee, we believe that such provisions should not be included in the constitution.

The Model State Constitution on the Initiative. The Model State Constitution includes the initiative as a method of amending the state constitution. Article XII, section 12.01, under "Amending Procedure; Proposals", states:

- (a) Amendments to this constitution may be proposed by the legislature or by the initiative.

The procedure for filing an initiative proposal is included in the same article and section:

- (c) An amendment proposed by the initiative shall be incorporated by its sponsors in an initiative petition which shall contain the full text of the amendment proposed and which shall be

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signed by qualified voters equal in number to at least...per cent of the total votes cast for governor in the last preceding gubernatorial election. Initiative petitions shall be filed with the secretary of the legislature.

The Model State Constitution initiative is an indirect initiative, as confirmed in the same article and section:

- (d) An amendment proposed by the initiative shall be presented to the legislature if it is in session, and if it is not in session, when it convenes or reconvenes. If the proposal is agreed to by a majority vote of all the members, such...proposed amendment shall be submitted for adoption in the same manner as amendments proposed by the legislature.

The authority of the legislature to influence the initiative proposal was further spelled out as follows:

- (e) The legislature may provide by law for a procedure for the withdrawal by its sponsors of an initiative petition at any time prior to its submission to the voters.

For a further discussion of the initiative, referendum, and recall, see Hawaii Constitutional Convention Studies 1978, Article II: Suffrage and Elections.

Chapter 4

SUMMARY AND CONCLUSIONS

The Meaning of Constitutional Change

A great deal of state constitutional activity has occurred over the past 200 years of American history, much of it during the post-World War II era. Hawaii was an active participant in this process and achieved statehood at the outbreak of the most productive period of constitutional change since the Progressive Era of 1900-1920. This constitutional activity undoubtedly reflected a national concern about rapid urbanization and its attendant problems, which the states had to face.

The United States Supreme Court decisions of the 1960's did not create the state constitutional activity of the 1960's and 1970's, but may have accelerated it, and gave it a major political tool with which to confront urban problems--re-apportionment of state legislatures.

The significance of the mechanics of constitutional change covered in chapter 2 is that such steps in the constitutional process offer means whereby influences can be brought to bear to amend or even deny to the electorate direct access to the process itself. Generally, the electorate's participation in the process is limited to voting on the question of whether some change shall be effected, or, in the initiative process, to actually "initiate" change proposals, and then participate in the ratification process.

Thus, the concerns of the state's electorate must be directed in part to the process of constitutional change, and in this manner state constitutional activity reveals much about the attitudes, aspirations, and fears of the citizenry. Essentially, constitutional activity is a barometer of the electorate's composite concerns. During periods of deep and broad citizen interest, as when Hawaii sought statehood, a very high voter turnout for ratification of the 1950 Constitution was registered. As Hawaii matured as a state, this interest and concern waned, as the 1968 election statistics confirm.

Interpretations of State Constitutional Change: The Conservative View

Explanations, or theories, about state constitutional change have long revolved around the issue of modernizing or "streamlining" state constitutions. Proponents of this position argue that without such modernization, the states cannot effectively cope with the problems of modern society. In general, they are pessimistic about the possibilities of state constitutional change. One noted authority has written:¹

Since midcentury, more official attention has been given to revising and modernizing state constitutions than during any comparable period since the Reconstruction Era. Yet, despite effective constitutional reform in approximately one third of the States during the last two decades, major weaknesses remain in others that seriously handicap the States in effectively discharging their responsibilities in a federal system.

Another authority arbitrarily declares that the process of modernizing state constitutions doesn't work because "[t]here is a substantial and consistent opposition to change."² A third scholar is critical of many state constitutions, which he characterizes "...hedges against sin and admonitions of virtue...[which] have imposed shackles on state and local governments, preventing them from efficiently dealing with contemporary problems".³ Professor John Bebout questions "...how long the nation can afford the luxury of state constitutions that seriously inhibit...efforts to enlarge the role of the states as active, creative elements in our system". His basic concern is that "...overly detailed constitutions of such energetic and dynamic states as New York and California have a depressant effect on their performance as natural leaders in the sisterhood of states".⁴

Interpretations of State Constitutional Change: The Empirical View

In recent years a new school of political scientists have challenged the views of the conservative scholars. Essentially, the new group includes scholars who are using scientific methods to evaluate constitutional processes,

and who are not satisfied with just developing comparative data on such processes. According to one authority, "Political scientists are only just beginning such empirical study."⁵ One "empiricist", Professor Elmer E. Cornwell, Jr., argues that state governments have responded well to the urban crisis by expanding their functions and responsibilities as the national government has expanded theirs. "Indeed", he writes, "with the passage of general revenue sharing in 1972...the national government...turned to the states as a device to offset what was perceived as the sluggish federal bureaucracy". He also notes that the states perform another function, which is to serve as "...the world's principal laboratories for experimentation in the formation of written constitutions".⁶

Richard H. Leach writes that "[t]he mid-1970's find the States...becoming more financially and administratively involved in helping to solve pressing problems...." He continues: "Today almost every State is structurally equipped to meet modern demands on government. Constitutional revision has likewise proceeded apace.... There are not many constitutional horrors left."⁷

The conservative authorities have also advanced the theory that long and complex state constitutions were less effective than short, concise constitutions that concern themselves with "fundamental law". John P. Wheeler, Jr., for example, argues that "[s]tate constitutions are replete with statutory materials".⁸ In his eyes, the great danger is that "[a] needlessly complicated constitutional structure will not only hamstring majority rule...but may very well establish rule by entrenched minorities."⁹

The empiricists do not agree with this long-established theory. One such "revisionist" notes that modern state constitutions don't necessarily result in dynamic state governments, citing New Jersey as a prime example:¹⁰

New Jersey has one of the best, least restrictive state constitutions, yet it has one of the most outmoded and inadequate state tax systems in the country.

Another empiricist questions whether new or revised state constitutions, in and of themselves, do much good. She writes that:¹¹

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In the final analysis...a new or revised constitution...may offer little to the solution of a state's problems...because Constitutions, like all legal documents, can have but little permanent shape and effect beyond the good faith and ability of those called upon to put them into practice [and] the willingness of the governed to accept them as binding political instruments....

Another empiricist also denies that there is an inverse relationship between a state's constitutional length and complexity and its effectiveness. He points out that:¹²

...the length and complexity of state constitutions are not negative qualities per se. The significance of length and complexity lies in the fact that they usually contain rules that are to the advantage of some contestants in the political process and to the disadvantage of others...[so that] the statutory-code-like restrictions that litter most state constitutions come...to protect the interests of those in society who benefit from the preservation of the status quo.

An Empirical View of Hawaii's Constitutional Convention of 1968

In a recent study, 3 constitutional scholars carefully studied the constitutional conventions of 7 states, including Hawaii's 1968 Constitutional Convention.¹³ The study was conducted almost entirely by exhaustive interviews of all of the delegates before the Convention, and afterwards. The information, interpretations, and conclusions derived from this study are of major importance not only to scholars but to convention delegates and to the general citizenry.

The one major conclusion that the 3 scholars arrive at is that all 7 conventions were marked by a struggle between those interested in change and those opposed to change. In their words, "...the key basis of division and conflict in constitutional revision is between reformers and the guardians of the status quo".¹⁴

This power struggle dominated all 7 conventions studied, and there is no reason to doubt that it affects all state constitutional conventions. In the 7 cases studied, this cleavage between the "reformers" and "stand-patters" over-

shadowed political differences, party allegiances, urban vs. rural differences, and legislators' vs. nonlegislators' differences. The cleavage was also readily apparent to the delegates, who themselves ranked it as the primary issue during the conventions by a wide margin.

Commenting on Hawaii's 1968 Constitutional Convention, the scholars noted that, given the strong "stand-pat" leanings of the delegation, and the equally strong conviction among most delegates that the problem of major concern was the legislative branch of government, "[n]ot surprisingly, the changes that the delegates [in Hawaii] found to make were scattered and relatively minor."¹⁵ The authors also conceded that since Hawaii's Constitution had been thoroughly overhauled less than 20 years previously, there was very little interest in a thorough-going revision of the Constitution.¹⁶

The study also found that the convention delegates not only witnessed the cleavage between "reformers" and "stand-patters", but that they "...too had concluded that this is what constitutional revision is all about".¹⁷

The records of Hawaii's 1950 and 1968 Constitutional Conventions seem to support Cornwell's findings. In both instances, the "stand-patters" dominated the proceedings, as evidenced by the defeat of "reformer" attempts to amend the "35 per cent rule" on amendment ratification, and the defeat of proposals calling for recall, referendum, and initiative amendments.

The study also noted that not only were the convention delegates divided between "reformers" and "stand-patters", but "...so the electorate divides in a similar fashion".¹⁸

The authors were careful to define their terms. They noted that "[t]hese issues are not often liberal-conservative ones in the normal sense, nor even party-partisan ones very often, but simply change versus standing pat."¹⁹

Significance of the Empirical View of Constitutional Change

The implications of the study on 7 recent state constitutional conventions are sobering, not because the study reveals a cleavage between "reformers" and "stand-patters", but because of what the study tells us about the electorate and its reaction to constitutional change specifically and to the law-making process generally. The authors write:²⁰

...our work indicates that if modernization and meeting citizen needs are interpreted to be synonymous with structural reform, resistance is likely to be strong. Everyone must realize that devising increasingly sophisticated programs and making them work has to be carried on in an environment where electorates are not longer willing to assume that change and innovation are automatically beneficial.

Limits on Constitutional Change

If the conclusions stemming from the empirical study of 7 recent state constitutional conventions are valid, then it would appear that convention delegates are somewhat limited in the range and subject matter of constitutional changes they can submit to the electorate. This limitation, atop warnings by other scholars that there is increasing evidence of electorate hostility to the whole process of constitutional revision and amendment, poses problems for the delegates and the "reformers" who desire major changes in state constitutions.

This sobering thought--that there are finite limits to constitutional change in the states--is echoed by other scholars, who remind us that in the final analysis, it is the federal government and the U.S. Constitution that truly limits state constitutional activity. In their eyes a more modest goal of revision or amendment should be sought:²¹

There has been...little attention given to the evolving function of the states in our rapidly expanding federalism and the bearing of that function upon what it is wise to expect or to try to achieve in the remodeling of state constitutions and governments.

The Direction of State Constitutional Change

Analysis of the direction of state constitutional change points to almost conflicting conclusions. On one hand, in the period from 1959 to 1975, 10 states, including Hawaii, achieved new constitutions. And between 1966 to 1974, 27 states revised their constitutions extensively to facilitate constitutional changes. It would thus appear that the states have been moving steadily in the direction of constitutional modernization.

On the other hand, between 1968 and 1970 alone, 9 states rejected new or revised constitutions, including those of New York and California. Some authorities argue that these defeats indicate that the drive and momentum of state constitutional change have suffered major setbacks in the effort to modernize all state constitutions. Other authorities, however, question whether this negative viewpoint is valid. They argue that weaknesses and deficiencies in recently adopted state constitutions as well as recently rejected constitutions make numerical analysis meaningless.

It may be that the states as a group are moving toward a more liberal stance, if we accept the increase in the utilization of the initiative device in recent years as a criterion. There is also some evidence that the percentages required to call for constitutional conventions and to ratify their work are also being lowered. This may, of course, be in response to the decreasing interest of the electorate in constitutional issues, nationwide.

Another interpretation of state constitutional direction might be that, in effect, the states are no longer moving forward in any significant manner. One proponent of this view states that from 1966-1971, more than two-thirds of the states were engaged in drafting new constitutions, or in extensive revisions, yet, "...very few, indeed, of the revisions in state constitutions...in the past quarter of a century have featured any significantly new propositions of government or constitutional duties".²²

This interpretation could be explained by a recognition among all the states that the federal government is now the true source for broad and innovative social and economic programs.

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The Decline in State Constitutional Activity. The decrease in state constitutional activity over the past 10 years has been noted by a number of scholars. The causes for this decline are not easily found. Some authorities argue that the important cause lies in the defeat of 7 state constitutions since 1967. It is also argued that because of the widespread modernization of state constitutions the need for further constitutional change has lessened. Whatever the reasons, the fact remains that the latter 1970's has been conspicuous for its constitutional staticity. As one scholar remarked:²³

The 1974-75 biennium was the first in more than a quarter of a century during which no State held a popular referendum on question of calling a constitutional convention.

Hawaii's forthcoming 1978 Constitutional Convention will thus mark a significant milestone among the states during the last half of the 1970's.

State Constitutional Homogeneity. One interesting fact that emerges from the comparative data on state constitutional processes is the relative similarity of state constitutional procedures. These similarities may vary to some degree, but large blocs of states follow remarkably similar procedures.

This homogeneity covers states with lengthy and complicated constitutions as well as states with brief and relatively simple constitutions. The degree of difference is remarkably minor. The recent incorporation of a constitutional revision commission in the Florida Constitution is significant for its novelty as for its recognition of the function played by such commissions.

The Value of State Constitutional Innovations. The inclusion in recent state constitutions of once-heralded constitutional innovations as the recall, referendum, and initiative, has not had a major impact on constitutional activity in recent years. The use of the constitutional initiative accounts for a very small part of total constitutional activity; its value as a mechanism for constitutional change has undoubtedly been largely undermined by reapportionment of state legislatures, which are now more responsive to urban citizen needs.

The Issue of Constitutional Restraints and Responsible Government

The Progressive Era witnessed the incorporation of such constitutional restraints upon governing officials as the recall, referendum, and initiative. The length of many state constitutions stem, in part, from many restrictions placed upon state governments. More recent scholars question the need for and advisability of such restraints, arguing that they are self-defeating. One authority states this position with clarity and logic:²⁴

The notion is still too widely accepted that the only insurance against irresponsible government is constitutional restraint; that, for example, the only defense against a legislature spending a state into bankruptcy is a constitutional restriction on the power to appropriate. This approach has consistently proved self-defeating for it has prevented states from meeting the needs of a dynamic society. It is better to give power to the organs of government and then seek means to keep public officials honest and responsible than to deny them power. The constitution is a poor place to seek complete insurance against irresponsible government.

The Issue of Making Constitutional Revision Easy or Hard

Authorities do not entirely agree on whether constitutional revision should be made easy or difficult at the state level. Two conservative scholars point to the "rigidity" of state constitutions as a prime factor in holding back constitutional modernization.²⁵ Two empiricists, or "revisionist" scholars adopt a more flexible position. They argue that:²⁶

It...depends upon whether a constitution is limited to truly fundamental matters or includes statutory details.

They also hold that the issue itself confuses cause and effect, "...in that constitutions with statutory detail get amended frequently whether or not the amending process is difficult and that true constitutions do not get amended frequently no matter how easy amendment is". They conclude that:²⁷

It is not necessary to choose between these propositions, and it is probably not possible to settle the matter anyway. The important

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thing is to keep one's eye on the ball by keeping statutory matter out of the constitution.

A conservative scholar warns of the dangers inherent in making constitutions too easy to amend. He points to the California Constitution of 1949 as an example of what happens when the change process becomes overly simple: "The result was that easy constitutional amendment was taking the place of direct legislation in the form of the popular initiative."²⁸

The Issue of Constitutional Flexibility

The conservative and empirical political scientists agree on one point: the need to retain flexibility and voter control on the process of constitutional change. Almost all scholars agree that that process should be "liberal" rather than rigid or cumbersome. They also agree that the Model State Constitution is the most "ideal" state constitution.

The Role and Purpose of Constitutional Change. Two constitutional scholars recently concluded that, buried in the formulas and procedures governing the calling of constitutional conventions and the ratification of constitutional changes, was an educational process that perhaps outweighed the value of the mechanics and procedures themselves. They stated:²⁹

There is considerable evidence that the experience of popular constitution-making has a residual value of great importance to a self-governing society. This value lies in the psychological and educational increment arising from the total process of popular participation in constitution-making. Criticisms of the constitutional convention from the point of view of efficiency or of politics must be tempered by a recognition of the popular sense of participation in this important phase of self-government.

* * *

The irreducible fact, a fact of importance to the democratic process, remains, that some kind of popular participation is being enacted.

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As one authority points out:³⁰

Constitutional revision is not a panacea but it may be a sign of political vigor in a state and it may also be the necessary prelude to more effective and responsible state and local government.

FOOTNOTES

Chapter 1

1. The states are: Alaska, Arizona, Colorado, Hawaii, Idaho, Kansas, Maine, Massachusetts, Minnesota, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wisconsin, and Wyoming.
2. *Florida Const.* art. XII, sec. 5; *Missouri Const.* art. XII, sec. 2(b).
3. The states are: Arkansas, California, Colorado, Delaware, Idaho, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New York, North Dakota, Ohio, Oregon, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, Wisconsin, and Wyoming.
4. John P. Wheeler, Jr. (ed.), *Salient Issues of Constitutional Revision* (New York: National Municipal League, 1961), p. xiv.
5. John C. Buechner, *State Government in the Twentieth Century* (Boston: Houghton Mifflin, 1967), p. 52.
6. Wheeler, p. xii.
7. Luther H. Gulick, "Reorganization of the State," *Civil Engineering*, August, 1933, p. 420.
8. Quoted in Wheeler, pp. xv-xvi.
9. This matter of "general welfare" is one of the broad areas reserved for state action, as distinct from the strictly delegated powers given to the federal government.
10. W. Brooke Graves (ed.), *Major Problems in State Constitutional Revision* (Chicago: Public Administration Service, 1967), p. 10.
11. William F. Swindler, "State Constitutions for the 20th Century," *Neb. L. Rev.*, Summer, 1971, pp. 577-599.
12. *Ibid.*, p. 583.
13. Albert L. Sturm, *Trends in State Constitution-Making, 1887-1972* (Lexington, Ky.: Council of State Governments, 1973), p. 2.
14. *Ibid.*, p. 6.
15. The states are: Arkansas (1970), Maryland (1968), New Mexico (1969), New York (1967), North Dakota (1972), Rhode Island (1968), Kentucky (1966), Idaho (1970), and Oregon (1970).
16. Norman Meller, *With an Understanding Heart: Constitution Making in Hawaii* (New York: National Municipal League, 1971), p. 5.
17. *The Constitution of the State of Hawaii, 1950* (Honolulu: Department of Accounting and General Services, 1964).
18. *Ibid.*, art. VI, sec. 3.
19. *Ibid.*, art. XIV, sec. 3.

Chapter 2

1. *Baker v. Carr*, 369 U.S. 186 (1962); *Gray v. Sanders*, 372 U.S. 368 (1963); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964).
2. *The Constitution of the State of Hawaii, 1950* (Honolulu: Archives Division, Department of Accounting and General Services, 1964).
3. Harold S. Roberts, *Reapportionment and the Revision and Amending Procedures of the Hawaii State Constitution* (Honolulu: University of Hawaii, February, 1966), p. 5.
4. Norman Meller, *With an Understanding Heart: Constitution Making in Hawaii* (New York: National Municipal League, 1971), pp. 6-8.
5. The following sections have drawn heavily on the work of Judy E. Stalling, *Article XV: Revision and Amendment, Hawaii Constitutional Convention Studies* (Honolulu: University of Hawaii, Legislative Reference Bureau, 1968).
6. The states are: Alaska, Connecticut, Hawaii, Illinois, Iowa, Maryland, Michigan, Missouri, Montana, New Hampshire, New York, Ohio, Oklahoma, and Rhode Island.
7. The states are: Connecticut, Illinois, Maryland, Missouri, Montana, New York, Ohio, and Oklahoma.
8. The states are: Alaska, Iowa, New Hampshire, and Rhode Island.
9. The states are: Alabama, Arizona, Hawaii, Iowa, Kentucky, Maryland, Michigan, Missouri, New Hampshire, New York, Oklahoma, Oregon, Rhode Island, Tennessee, West Virginia, and Wisconsin.
10. *Florida Const.* art. XI, sec. 3.
11. *Montana Const.* art. XIV, secs. 1 and 2.
12. *Hawaii Const.* art. XIV, sec. 2.
13. 1949 Haw. Sess. Laws, Act 334, sec. 1.
14. Meller, pp. 4, 8-9.
15. *Ibid.*, pp. 8-9.
16. *Ibid.*, pp. 6-7.
17. *Ibid.*, p. 121.
18. *Ibid.*, p. 9.
19. *Burns v. Richardson*, 384 U.S. 73 (1966).
20. 1967 Haw. Sess. Laws, Act 222.
21. Meller, p. 34.
22. 1949 Haw. Sess. Laws, Act 334, sec. 3.
23. 1967 Haw. Sess. Laws, Act 222.
24. *Hawaii Const.* art. XV, sec. 2.

25. The states are: California, Colorado, Connecticut, Delaware, Florida, Idaho, Iowa, Kansas, Kentucky, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, Ohio, Rhode Island, Tennessee, West Virginia, and Wisconsin.
26. The states are: Alabama, Maryland, Minnesota, Nevada, Utah, Washington, and Wyoming.
27. The states are: Georgia, Louisiana, South Carolina, South Dakota, and Virginia.
28. The states are: Georgia, Louisiana, Maryland, South Carolina, and Virginia.
29. The states are: Arkansas, Indiana, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Texas, and Vermont.
30. *Vermont Const.* sec. 68.
31. *Hawaii Const.* art. XV, sec. 3.
32. Russell W. Maddox and Robert F. Fuquay, *State and Local Government* (New York: D. Van Nostrand Co., 1975), p. 58.
33. *Colorado Const.* art. XIX, secs. 1 and 2.
34. Att'y Gen. Ops. No. 61-12 at p. 2 (January 25, 1961).
35. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, Committee of the Whole Report No. 48, p. 188.
36. Meller, pp. 119-120.
37. *Ibid.*, p. 8.
38. The states are: Alabama, South Carolina, Tennessee, and West Virginia.
39. *Hawaii Const.* art. XV, sec. 3.
40. *New Jersey Const.* art. IX, sec. 1.
41. *New York Const.* art. XIX, sec. 1.
42. The states are: Alaska, California, Colorado, Delaware, Georgia, Idaho, Kansas, Louisiana, Maine, Michigan, Mississippi, Montana, South Carolina, Texas, Utah, Washington, West Virginia, and Wyoming.
43. The states are: Arizona, Arkansas, Indiana, Iowa, Massachusetts, Minnesota, Missouri, Nevada, New Mexico, New York, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Virginia, and Wisconsin.
44. The states are: Alabama, Florida, Illinois, Kentucky, Maryland, Nebraska, New Hampshire, North Carolina, and Ohio.
45. *Hawaii Const.* art. XV, sec. 3.
46. *Connecticut Const.* art. XII.
47. *New Jersey Const.* art. IX, sec. 1.
48. The states are: Delaware, Indiana, Iowa, Massachusetts, Nevada, New York, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia, and Wisconsin.
49. Thomas R. White, "Amendment and Revision of State Constitutions," *U. Pa. L. Rev.* June, 1952, p. 1143.
50. *Hawaii Const.* art. XV, sec. 4.
51. 1949 Haw. Sess. Laws, Act 334, sec. 4.
52. 1967 Haw. Sess. Laws, Act 222, secs. 1, 2, and 6.
53. *Hawaii Const.* art. XV, sec. 3.
54. *Nebraska Const.* art. XVI, sec. 1.
55. The states are Kentucky and Oklahoma.
56. *Colorado Const.* art. XIX, sec. 2.
57. *Illinois Const.* art. XIV, sec. 2.
58. *Kansas Const.* art. 14, sec. 1.
59. *Arkansas Const.* art. XIX, sec. 22.
60. *Kentucky Const.* sec. 256.
61. 1949 Haw. Sess. Laws, Act 334, sec. 2.
62. 1967 Haw. Sess. Laws, Act 222, sec. 1.
63. *Hawaii Const.* art. XV, sec. 2.
64. 1949 Haw. Sess. Laws, Act 334, sec. 1.
65. *Hawaii Const.* art. XV, sec. 2.
66. *Ibid.*
67. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, Debates in Committee of the Whole, p. 527.
68. 1949 Haw. Sess. Laws, Act 334, sec. 2.
69. 1967 Haw. Sess. Laws, Act 222, sec. 1.
70. *Hawaii Const.* art. XV, sec. 2.
71. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), art. XII, sec. 12.03(b); hereinafter cited as *Model State Constitution*.
72. Att'y Gen. Ops. No. 65-16 (May 5, 1965).
73. 1949 Haw. Sess. Laws, Act 334, sec. 2.
74. 1967 Haw. Sess. Laws, Act 222, sec. 1.
75. Meller, p. 12.
76. *Ibid.*, p. 14.
77. *Nebraska Const.* art. XVI, sec. 2.
78. *Colorado Const.* art. XIX, sec. 1.
79. *Model State Constitution* art. XII, sec. 12.03(c).
80. Meller, p. 14.
81. *Hawaii Const.* art. XV, sec. 2.
82. *Ibid.*

83. 1949 Haw. Sess. Laws, Act 334, sec. 2.
84. Meller, p. 45.
85. *Missouri Const.* art. XII, sec. 3(a).
86. *Legislative Assembly v. Lennon*, 156 Mont. 416, 481 P.2d 330 (1971).
87. *State ex rel Kuaalen v. Graybill*, 496 P.2d 1127 (Mont. 1972).
88. *Michigan Const.* art. XII, sec. 3.
89. *Missouri Const.* art. XII, sec. 3(a).
90. 1949 Haw. Sess. Laws, Act 334, sec. 2.
91. 1967 Haw. Sess. Laws, Act 222, sec. 1.
92. John P. Wheeler, Jr., *The Constitutional Convention: A Manual on Its Planning, Organization and Operation*, State Constitutional Series Project, Series I, No. 4 (New York: National Municipal League, 1961), p. 34.
93. Albert L. Sturm and James B. Craig, Jr., "State Constitutional Conventions: 1950-1965," *State Government*, 38(4) (Summer, 1966), pp. 158-159.
94. Meller, p. 48.
95. 1967 Haw. Sess. Laws, Act 222, sec. 2.
96. *Hawaii Const.* art. XV, sec. 2 (1950).
97. 1949 Haw. Sess. Laws, Act 334, sec. 3.
98. 1967 Haw. Sess. Laws, Act 222, sec. 2.
99. *Coyle v. Smith*, 221 U.S. 559 (1911).
100. *Hawaii Const.* art. XI, sec. 3.
101. *Hawaii Const.* art. XIII, sec. 1.
102. *Hawaii Const.* art. XIV, sec. 9.
103. Herman S. Doi, *Legal Aspects of the Hawaiian Homes Program* (University of Hawaii, Legislative Reference Bureau, 1964, Rept. No. 1a), p. 65.
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105. White, p. 1143.
106. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, p. 527.
107. Quoted in Stalling, p. 16.
108. *Alaska Const.* art. XIII, sec. 4.
109. *New York Const.* art. XIX, sec. 2.
110. *Hawaii Const.* art. XV, sec. 2.
111. 1967 Haw. Sess. Laws, Act 222, sec. 3.
112. George D. Braden and Rubin G. Cohn, "The Illinois Constitution: An Annotated and Comparative Analysis" (University of Illinois, Institute of Government and Public Affairs, October, 1969), p. 564.
113. Albert L. Sturm, "Amendment and Revision of State Constitutions with Special Reference to Florida" (Florida State University, Institute of Government Research, May, 1966), p. 10.
114. *Model State Constitution* art. XII, sec. 12.03(b).
115. *Hawaii Const.* art. XV, sec. 2.
116. 1967 Haw. Sess. Laws, Act 222, sec. 6.
117. *Hawaii Const.* art. XV, sec. 3.
118. *Missouri Const.* art. XII, sec. 2(b).
119. Albert L. Sturm, "Methods of State Constitutional Reform" (Ann Arbor: University of Michigan Press, 1954), p. 107.
120. *Hawaii Const.* art. XV, sec. 2.
121. W. Brooke Graves, "State Constitutional Law: A Twenty-Five Year Summary," *William and Mary L. Rev.*, Fall, 1966, p. 12.
122. Sturm, "Methods of State Constitutional Reform," pp. 107-108.
123. Meller, pp. 124-125.
124. Elmer E. Cornwell, Jr., Jay S. Goodman, and Wayne R. Swanson, *State Constitutional Conventions: The Politics of the Revision Process in Seven States* (New York: Praeger, 1975), p. 51.
125. *Hawaii Const.* art. XV, sec. 3.
126. *Missouri Const.* art. XII, sec. 2(b).
127. *Massachusetts Const.* art. XII, sec. 3.
128. Meller, pp. 16-31.
129. *Ibid.*, p. 32.
130. *Missouri Const.* art. XII, sec. 2(b).
131. *Michigan Const.* art. XII, sec. 2.
132. *Alabama Const.* art. XVIII, sec. 285.
133. *Model State Constitution* art. XII, sec. 12.02(b).
134. *Hawaii Const.* art. XV, sec. 3.
135. *Michigan Const.* art. XII, sec. 1.
136. *Hawaii Const.* art. XV, sec. 2.
137. 1967 Haw. Sess. Laws, Act 222, sec. 5.
138. *Hawaii Const.* art. XV, sec. 2.
139. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, p. 764.
140. *Ibid.*, p. 765.
141. *Ibid.*
142. *Ibid.*, p. 766.
143. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, pp. 528-529.

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145. Braden and Cohn, p. 570.
146. *Model State Constitution* art. XII, sec. 12.03(d).
147. Meller, p. 133.
148. *Hawaii Const.* art. XV, sec. 5.
149. *Model State Constitution* art. XII, sec. 12.04.
150. *Alaska Const.* art. XVIII, sec. 1.
151. *Michigan Const.* art. XII, sec. 1.
152. *Missouri Const.* art. XII, sec. 2(b).
153. *New Jersey Const.* art. IX, sec. 6.
154. *North Dakota Const.* art. XV, 2:2, Am. 28, II, 25.
155. *Model State Constitution* art. XII, sec. 12.03(d).
156. W. Brooke Graves (ed.), *State Constitutional Revision* (New York: Public Administration Service, 1960), pp. 64-65.
157. Cornwell, Goodman and Swanson, p. 22.
158. Meller, p. 148.
13. William F. Swindler, "State Constitutions for the 20th Century," *Neb. L. Rev.*, Summer, 1971, p. 592.
14. *Ibid.*
15. *Ibid.*
16. *Ibid.*, p. 593.
17. *Ibid.*, p. 592.
18. *Ibid.*
19. Donald P. Sprengel, *Comparative State Politics* (Columbus: Charles E. Merrill Publishing Company, 1971), p. 94.
20. *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 163.
21. Albert L. Sturm, *Modernizing State Constitutions, 1968-1972* (Lexington, Ky.: Council of State Governments, 1972), p. 7.
22. Swindler, p. 591.
23. The states are: Alabama, Arkansas, California, Delaware, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Vermont, Virginia, and Washington.
24. Att'y Gen. Ops. No. 75-6, p. 19a (May 27, 1975).
25. 1976 Haw. Sess. Laws, Act 2, sec. 1.
26. *Result of Votes Cast, General Election, November 2, 1976* (Honolulu: Office of the Lieutenant Governor, 1976).
27. 1977 Haw. First Sp. Sess. Laws, Act 17.
28. *Ibid.*, sec. 3.
29. *Ibid.*, sec. 6.
30. John P. Wheeler, Jr. (ed.), *Salient Issues of Constitutional Revision* (New York: National Municipal League, 1961), p. 57.
31. *Book of the States, 1972-73* (Lexington, Ky.: Council of State Governments, 1973), p. 8.
32. *Ibid.*
33. *Ibid.* The following material is based on information provided in this section.
34. *Florida Const.* art. XIII, sec. 2.
35. Charles Press and Oliver P. Williams (eds.), *Democracy in the Fifty States* (Chicago: Rand McNally & Co., 1966), p. 301.
36. Yarger, pp. vii, xxviii; also Judge Bruce W. Sumner, "Constitutional Revision by Commission in California," *State Government* (Lexington, Ky.: Council of State Governments, Spring, 1972), p. 138.
37. W. Brooke Graves, *Major Problems in State Constitutional Revision* (Chicago: Public Administration Service, 1960), p. 89. See also, Wheeler, pp. 57-58.

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1. The states are: Florida (1968), Pennsylvania (1968), Illinois (1970), Virginia (1970), Montana (1972), and Louisiana (1974).
2. The states are: New York (1967), Maryland (1968), New Mexico (1969), Arkansas (1970), Idaho (1970), and Oregon (1970).
3. Susan Rice Yarger, *State Constitutional Conventions, 1959-1975* (Westpoint, Conn.: Greenwood Press, 1976), p. xiii.
4. *Ibid.*, p. xii.
5. *Ibid.*, p. xxix.
6. John E. Bebout, "State Constitutions and Constitutional Revision, 1965-1967," *Book of the States, 1968-69* (Chicago: Council of State Governments, 1969), p. 3.
7. Yarger, p. xiii.
8. Compiled from *Book of the States* for years 1962-63, 1964-65, 1966-67, 1968-69, 1970-71, 1972-73, 1974-75, and 1975-76.
9. Yarger, p. xv.
10. *Montana Const.* art. XIV, secs. 2, 3, 7, and 9; *Book of the States, 1972-73* (Lexington, Ky.: Council of State Governments, 1972), p. 14.
11. *Illinois Const.* art. XIV, sec. 1.
12. *Book of the States, 1970-71* (Lexington, Ky.: Council of State Governments, 1971), p. 3.

38. Sturm, p. 33.
39. Yarger, p. vii.
40. *Book of the States, 1976-77*, p. 176.
41. *Massachusetts Const.* amendments, art. 48, pt. IV.
42. *Nevada Const.* art. XIX, sec. 2.
43. *Massachusetts Const.* amendments, art. 48, pt. IV.
44. *Nevada Const.* art. XIX, sec. 2.
45. Wheeler, p. 55.
46. The states are: Arizona, Arkansas, California, Colorado, Florida, Illinois, Massachusetts, Michigan, Mississippi, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota.
47. The states are: Arizona, Arkansas, California, Colorado, Florida, Michigan, Missouri, Montana, North Dakota, Ohio, Oklahoma, Oregon, and South Dakota.
48. George D. Braden and Rubin G. Cohn, "The Illinois Constitution: An Annotated and Comparative Analysis" (Illinois: University of Illinois Institute of Government and Public Affairs, October, 1969), pp. 570-571.
49. Sturm, p. 8.
50. Wheeler, p. 56.
51. Albert L. Sturm, "State Constitutions and Constitutional Revision, 1974-1975," *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 163.
52. These data are derived from Sturm, "State Constitutions and Constitutional Revision, 1974-1975," Table A, p. 163.
53. Sturm, *Modernizing State Constitutions*, p. 8.
54. Sturm, "State Constitutions and Constitutional Revision, 1974-1975," p. 164.
55. Albert L. Sturm, "State Constitutions and Constitutional Revision, 1967-1969," *Book of the States, 1970-71* (Lexington, Ky.: Council of State Governments, 1970), p. 5.
56. *Ibid.*
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58. *Ibid.*, pp. 189-190.
59. *Ibid.*, p. 189.
60. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, p. 521.
61. *Ibid.*, p. 523.
62. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 210.
63. *Ibid.*
64. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. I, p. 186.

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1. Albert L. Sturm, "State Constitutions and Constitutional Revision, 1975-76," *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 162.
2. William F. Swindler, "State Constitutions for the 20th Century," *Neb. L. Rev.*, Summer, 1971, p. 591.
3. Robert S. Amdursky, "The Urban Crisis and the Need for State Constitutional Revision," *State Government* (Chicago: Council of State Governments, Summer, 1968), p. 163.
4. John E. Bebout, "The Central Issue: Constitutional Revision--What For?", ed. John P. Wheeler, Jr., *Salient Issues of Constitutional Revision* (New York: National Municipal League, 1961), p. 172.
5. Charles Press and Oliver P. Williams (eds.), *Democracy in the Fifty States* (Chicago: Rand McNally & Co., 1966), p. 2.
6. Elmer E. Cornwell, Jr., Jay S. Goodman, and Wayne R. Swanson, *State Constitutional Conventions: The Politics of the Revision Process in Seven States* (New York: Praeger, 1975), p. 5.
7. Richard H. Leach, "A Quiet Revolution: 1933-1976," *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), pp. 25, 27.
8. John P. Wheeler, Jr. (ed.), *Salient Issues of Constitutional Revision* (New York: National Municipal League, 1961), p. xiv.
9. *Ibid.*, p. xv.
10. Bebout, p. 171.
11. Susan Rice Yarger, *State Constitutional Conventions, 1958-1976* (Westpoint, Conn.: Greenwood Press, 1976), p. xxix.
12. Cornwell, p. 5.
13. *Ibid.* The 7 states are: Arkansas, Hawaii, Illinois, Maryland, New Mexico, New York, and Rhode Island.
14. *Ibid.*, p. 200.
15. *Ibid.*, p. 141.
16. *Ibid.*, p. 23.
17. *Ibid.*, p. 200.
18. *Ibid.*, p. 205.
19. *Ibid.*, p. 200.
20. *Ibid.*, p. 207.
21. Wheeler, p. x.

22. Swindler, p. 597.
23. Sturm, p. 171.
24. Wheeler, p. xiii.
25. Swindler, p. 596; Albert L. Sturm, *Major Constitutional Issues in West Virginia* (Morgantown, W. Va.: Bureau of Government Research, West Virginia University, 1961), p. 10; quoted in Cornwell, Goodman, and Swanson, pp. 6-7.
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27. *Ibid.*, p. 570.
28. Swindler, p. 598.
29. Press and Williams, p. 300.
30. Bebout, p. 172.

Appendix

CONSTITUTIONAL AMENDMENT PROCEDURE: BY INITIATIVE Constitutional Provisions

<i>State</i>	<i>Number of signatures required on initiative petition</i>	<i>Distribution of signatures</i>	<i>Referendum vote</i>
Arizona.....	15% of total votes cast for all candidates for Governor at last election	None specified	Majority vote on amendment
Arkansas.....	10% of voters for Governor at last election	Must include 5% of voters for Governor in each of 15 counties	Majority vote on amendment
California.....	8% of total voters for all candidates for Governor at last election	None specified	Majority vote on amendment
Colorado.....	8% of legal voters for Secretary of State at last election	None specified	Majority vote on amendment
Florida.....	8% of total votes cast in the State in the last election for presidential electors	8% of total votes cast in each of 1/2 of the congressional districts	Majority vote on amendment
Illinois (a).....	8% of total votes cast for candidates for Governor at last election	None specified	Majority voting in election or 3/5 voting on amendment
Massachusetts (b)....	3% of total vote for Governor at preceding biennial state election	No more than 1/4 from any one county	Majority vote on amendment which must be 30% of total voters at election
Michigan.....	10% of total voters for Governor at last election	None specified	Majority vote on amendment
Missouri.....	8% of legal voters for all candidates for Governor at last election	The 8% must be in each of 2/3 of the congressional districts in the State	Majority vote on amendment
Montana.....	10% of qualified electors, the number of qualified electors to be determined by number of votes cast for Governor in preceding general election	The 10% to include at least 10% of qualified electors in each of 2/5 of the legislative districts	Majority vote on amendment
Nebraska.....	10% of total votes for Governor at last election	The 10% must include 5% in each of 2/3 of the counties	Majority vote on amendment which must be at least 35% of total vote at the election
Nevada.....	10% of voters who voted in entire State in last general election	10% of total voters who voted in each of 75% of the counties	Majority vote on amendment in two consecutive general elections
North Dakota.....	20,000 electors	None specified	Majority vote on amendment
Ohio.....	10% of total number of electors who voted for Governor in last election	At least 5% of qualified electors in each of 1/2 of counties in the State	Majority vote on amendment
Oklahoma.....	15% of legal voters for state office receiving highest number of votes at last general state election	None specified	Majority vote on amendment
Oregon.....	8% of total votes for all candidates for Governor elected for 4-year term at last election	None specified	Majority vote on amendment
South Dakota.....	10% of total votes for Governor in last election	None specified	Majority vote on amendment

(a) Only Article IV, The Legislature, may be amended by initiative petition.
(b) Before being submitted to the electorate for ratification,

initiative measures must be approved by two sessions of the General Court (Legislature) by not less than 1/4 of all members elected, sitting in joint session.

Source: *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 176.

