BRIEFING PAPER NO. 9

CONSTITUTIONAL AMENDMENT

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CONSTITUTIONAL AMENDMENT

A constitution requires assured procedures for adaptation to changing needs and conditions. Thomas Jefferson pointed out this need in a letter in 1816 urging revision of the Virginia state constitution:

> Each generation is independent of the one preceding, as that was of all which had gone before. It has then, like them, a right to choose for itself the form of government it believes most promotive of its own happiness; consequently, to accommodate to the circumstances in which it finds itself, that received from its predecessors; and it is for the peace and good of mankind, that a solemn opportunity of doing this every nineteen or twenty years, should be provided by the constitution; so that it may be handed on, with periodical repairs, from generation to generation, to the end of time, if anything human can so long endure. 1/

Constitutional adaptation can occur through interpretation and elaboration of provisions by the executive, legislative and judicial branches of government, or it can occur through formal amendment or revision of the constitution. 2/ This

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1/ Letter from Thomas Jefferson to Samuel Kercheval, July 12, 1816, in THE COMPLETE JEFFERSON p. 292 (S. Padover ed. 1943), quoted in Council of State Governments, MODERNIZING STATE CONSTITUTIONS: 1966-1972 p. 1 (1973) [hereinafter cited as MODERNIZING CONSTITUTIONS].

2/ Constitutional amendment ranges from adding a few words to an existing clause to reworking the entire document. Some authorities have distinguished between constitutional "amendment," meaning changes to specific provisions, and constitutional "revision," meaning changes throughout the document. E.g., Wheeler, Changing the Fundamental Law, in SALIENT ISSUES OF CONSTITUTIONAL REVISION p. 50 (J. Wheeler ed. 1961). This paper does not use that distinction because of the difficulty of precisely dividing the two categories. Instead, all types of constitutional changes are termed "amendments."

paper describes the alternatives available to the delegates with respect to the formal amendment process. Part I describes the relevant provisions of the Covenant and the general policy considerations with respect to constitutional amendment. Part II describes each of the four general methods of proposing formal changes: constitutional convention; constitutional commission; legislative initiative; and popular initiative. That part of the paper then sets out the alternatives with respect to ratification of the proposed constitutional amendments by the voters.

I. BACKGROUND AND GENERAL CONSIDERATIONS

A. Relevant Provisions of the Covenant and the United States Constitution

The Covenant permits the Commonwealth Constitution to include procedures for its own amendment.[3/] Like the original Constitution, all amendments must be consistent with the Covenant and with those provisions of the United States Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands. Courts established by the Constitution or laws of the United States have jurisdiction to review amendments for

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3/ Section 201 of the Covenant provides:

> The people of the Northern Mariana Islands will formulate and approve a Constitution and may amend their Constitution pursuant to the procedures provided therein.

this purpose.[4/]

The United States Constitution does not mandate any particular decisions by the Convention with respect to the amendment process; nor does it limit the choice among specific alternatives, although here as elsewhere certain general restrictions may apply.

B. General Policy Considerations

This section discusses three broad philosophical and political issues that underlie the decisions the Convention must make with respect to specific alternatives for the Constitution. These are: (1) the extent to which the Constitution imposes procedural requirements that restrict use of the amendment process; (2) whether the Constitution guarantees its own periodic review; and (3) the extent to which the Constitution permits or requires popular involvement in the amendment process.

4/ Section 202 of the Covenant provides in relevant part:

> Amendments to the Constitution may be made by the people of the Northern Mariana Islands without approval by the Government of the United States, but the courts established by the Constitution or laws of the United States will be competent to determine whether the Constitution and subsequent amendments thereto are consistent with this Covenant and with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands.

The first basic issue involves the nature of the Constitution that the Convention proposes. If the Constitution contains predominantly fundamental law, the need for frequent revision decreases, and the Convention might prefer stringent procedural requirements for amendment to encourage stability and discourage the future addition of material to the Constitution that might be better left for the legislature to enact by statute.[5/] On the other

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5/ The Model State Constitution takes a different view. It contains predominantly fundamental law, yet includes liberal amendment procedures. The Model's commentary explains:

> Procedures for constitutional revision should permit orderly adjustment to emerging needs while at the same time encouraging constitutional stability and discouraging the use of the fundamental law for statutory purposes. . . . The Model proposes fairly liberal rather than cumbersome amendment procedures. Experience has shown that frequent and ill-considered constitutional amendment, or constitutional instability, is not generally the result of facile amendment procedures but rather the result of the inclusion of matters of a nonfundamental nature, fixing policy on matters which should have been left to the legislature. It has been said that "frequency of amendment is in itself an indicator of objectionable particularity in the basic charter of the state." Since "objectionable particularity" has been avoided in the Model, a stable document may be anticipated without the need for repressively cumbersome amendment procedures.

National Municipal League, MODEL STATE CONSTITUTION art. XII (introductory comments), pp. 104-05 (6th rev. ed. 1968) (footnote omitted) [hereinafter cited as MODEL CONST.]

hand, if the Constitution includes detailed provisions on matters likely to change over the years, the Convention might prefer liberal amending procedures to avoid impeding necessary changes. Requiring simple legislative majorities to initiate proposed changes and simple popular majorities to ratify proposed changes facilitates change; using special machinery such as conventions or commissions to propose amendments or requiring extraordinary majorities at any step inhibits change.

The second issue is whether the Constitution should contain a provision that guarantees periodic review of the entire document. For example, the Constitution might mandate posing to the voters every 10 years the question whether a constitutional convention should review the Constitution and propose changes to it. Or the Constitution might set up periodic constitutional commissions to perform the same function. Such guaranteed review by an unlimited constitutional convention approved by the voters might preempt the need for amendment by popular initiative. Conversely, use of the initiative and flexible provisions with respect to legislative proposal of convention calls might reduce the desirability of a provision for mandatory periodic review.

The last general consideration is the extent to which the voters should be involved in the amendment process. If the Convention believes that the voters should be consulted whenever possible about changes in the fundamental

law, then it might use any or all of the following alternatives: (1) allow use of the popular initiative to propose a call for a constitutional convention; (2) mandate in the Constitution a popular referendum on a convention call at specified time intervals; (3) allow voters to participate in the constitutional convention process by requiring voter approval of any convention call by the legislature and popular election of convention delegates; (4) require constitutional commissions to report directly to the voters instead of the legislature; (5) include the popular initiative method of presenting proposed amendments to the voters as a check on an inactive legislature or a legislature opposed to popularly supported change; (6) include filing deadlines for proposed changes with Commonwealth officials that permit ample time between proposal and the vote on the proposal for public debate and formal publicity that encourages public awareness of proposed changes; and (7) require popular approval of all proposed changes to the Constitution.

Instead of maximizing voter involvement in the amendment process, the Convention might prefer to emphasize the role and authority of the legislature. This could be achieved by: (1) allowing the legislature to initiate proposals for broad revision of the Constitution; (2) allowing the legislature to call constitutional conventions without the requirement of

popular approval of the convention call; (3) setting up periodic constitutional commissions that report directly to the legislature; and (4) allowing adoption of proposed changes without popular ratification.

II. SPECIFIC ISSUES FOR DECISION

The Convention must deal with two principal matters in drafting constitutional provisions on amendment. The first is the method of proposing amendments. The second is the method of approving amendments that have been proposed.

The Convention can select one or more than one of the four basic methods of proposing amendments:

- constitutional convention: This body would be selected and would function like the present Convention, although the method of calling future conventions might differ;
- constitutional commission: This is generally an appointed rather than elected body that reviews available data, experience, suggestions and alternatives and makes proposals for amendment. A commission can be constitutional or statutory and can report to the voters or to the legislature;
- legislative initiative: This method permits the Commonwealth legislature, as a part of its

regular duties, to formulate proposals for constitutional amendment; and

- ° popular initiative: This method permits the voters to generate proposals for constitutional change by getting signatures on a petition.

Relatively few basic alternatives exist for approving a properly proposed constitutional amendment:

- ° popular vote: This would require submitting all constitutional changes to the voters for approval at a general or special election. The approval might be by:
  - simple majority (a majority of those voting in the election or voting on the question); or
  - extraordinary majority (requiring three-fifths, two-thirds or some percentage greater than a simple majority); and
- ° legislative vote: This would permit the legislature, by extraordinary majority, to approve constitutional changes.

This section of the paper deals with the various factors the Constitution might consider with respect to each of these alternatives.

A. Methods of Proposing Constitutional Amendments

Each of the methods of proposing constitutional amendments has advantages. For this reason, the Convention

may wish to consider these as possible companions rather than alternatives.

1. The constitutional convention

A constitutional convention is an assembly of delegates elected for the single purpose of drafting a new constitution or revising an existing one. An original American institution, at least 230 such bodies had been convened in the United States through 1975.[6/] Every state has held at least one, while Georgia, Louisiana, New Hampshire and Vermont have held at least 10 each.[7/] Forty-one state constitutions and the constitution of Puerto Rico expressly authorize the calling of constitutional conventions. In the remaining states, judicial interpretation and practice have established the use of a convention to revise the constitution. Although the constitutional convention is used most often for extensive revision, states have used them increasingly in recent decades for limited changes.

The use of a constitutional convention can maximize the participation of voters in the amendment process. Provisions regarding constitutional conventions can allow

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6/ MODERNIZING CONSTITUTIONS p. 8.

7/ A. Sturm, THIRTY YEARS OF STATE CONSTITUTION-MAKING: 1938-1968 pp. 52-53 (1970).

voter participation at four stages: (1) approval of the convention call; (2) election of delegates; (3) public hearings during the course of the convention; and (4) approval or rejection of the convention's proposals. One writer states: "The [constitutional] convention . . . is probably as near as we come to popular control of the constituent power or the power to define the fundamental law."[8/]

Several advantages arise from the use of a constitutional convention: conventions enjoy a great degree of freedom in making proposals; delegates can focus attention on the single purpose of revision without other responsibilities; and conventions attract more public interest and permit more popular participation than other methods of constitutional change.[9/]

The disadvantages of constitutional conventions are primarily those of cost and the time required to authorize and assemble a convention.

The procedure for calling and holding a constitutional convention is generally similar throughout the United States. Typically, the legislature passes a resolution initiating the convention and submits it

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8/ Wheeler, Changing the Fundamental Law, in SALIENT ISSUES OF CONSTITUTIONAL REVISION p. 51 (J. Wheeler ed. 1961).

9/ MODERNIZING CONSTITUTIONS pp. 32-33.

to the voters for approval. After approval, the legislature passes an enabling act to provide for a budget, temporary officers and the election of delegates. The voters elect delegates, the convention meets, and the final product is submitted to the voters for approval.

If provision is made for amendment through constitutional conventions, consideration might be given to: the method for calling a convention; the scope of the convention's powers; the necessity for preparatory research; and the organization of the convention. Because many of these details could be handled outside the Constitution, the Convention should select carefully the subject matter that will be given constitutional stature.

a) Calling the convention

This Convention has two decisions to make with respect to calling a future constitutional convention: first, how should the call be proposed; and second, how should the proposal to call a convention be approved. These decisions may be made by choosing one of three alternatives:

- the legislature can be given the responsibility both to propose and to approve the call for a convention;
- the power to propose and approve can be reserved to the voters by requiring both a popular initiative petition for proposal of a convention and a popular vote at the next election to approve or reject that proposal;

° the proposal to hold a convention can come from the legislature, or be submitted automatically, and the voters can retain the power to approve or reject the proposal in a popular referendum. 10/

The legislature can both propose and approve the call of a convention in only six states.[11/] The advantages of this method are efficiency and timeliness. The legislature can approve a convention call more economically and quickly than any other method of approval. Proponents of this method point out that because the voters will elect the convention delegates and will have the opportunity to approve or reject the final product of the convention, permitting the legislature to handle the mechanics of calling the convention does not sacrifice popular participation. Opponents of this method assert that the voters should be permitted to object to any possible amendment of the constitution by rejecting the proposal for a convention. Rejection of the convention call proposal saves the cost of holding the convention.

10/ The referendum is discussed in BRIEFING PAPER NO. 8: ELIGIBILITY TO VOTE AND ELECTION PROCEDURES § II(c)(2).

11/ The six are: Georgia, Louisiana, Maine, South Carolina, South Dakota and Virginia. Council of State Governments, BOOK OF THE STATES: 1976-77 pp. 163, 177 (1976) [hereinafter cited as BOOK OF THE STATES].

Seventeen states have a form of popular initiative that would permit the proposal to call a convention by petition. These states also provide for proposal of a call by the legislature, however, and opinion varies whether the voters can use this device as a check on an unresponsive legislature to call a constitutional convention.[12/] Only the recently revised Montana and South Dakota constitutions specifically authorize the use of this technique,[13/] although the unique Florida provision for calling a convention depends on the filing of a petition by voters similar to an initiative petition but with more stringent signature requirements.[14/]

Most states use the third alternative -- a hybrid arrangement under which either the legislature or an executive branch official (acting under a self-executing provision of the constitution) originates the proposal to hold a convention that is then submitted to the voters for approval.

12/ Legislative Reference Bureau, HAWAII CONSTITUTIONAL CONVENTION STUDIES, ARTICLE XV: REVISION AND AMENDMENT p. 3 (1968) [hereinafter cited as HAWAII STUDIES].

13/ MONT. CONST. art. XIV, § 2; S.D. CONST. art. XXIII, § 2.

14/ FLA. CONST. art. XI, § 4(a).

In 40 of the 41 states that provide for the holding of constitutional conventions, the convention call is the responsibility of the legislature.[15/]

15/ Many constitutions specifically authorize the legislature to call a convention at any time, e.g., HAWAII CONST. art. XV, § 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?'"; and ALAS. CONST. art. XIII, § 2: "The legislature may call constitutional conventions at any time."

At least three states, Connecticut, Maryland and Tennessee, limit the frequency with which constitutional conventions may be called: "not earlier than ten years from the date of convening any prior convention," CONN. CONST. art. XIII, § 1; "in [1970] and every twenty years thereafter . . . .," MD. CONST. art. XIV, § 2; "no . . . oftener than once in six years," TENN. CONST. art. XI, § 3.

In addition, the Constitution may specify the legislative majority (or extraordinary majority) required to enact a bill calling for submission of the convention question to the electorate. Legislative initiative for calling a constitutional convention requires a two-thirds vote in 20 states and Puerto Rico, a three-fifths vote in two states, and a simple majority in 15 states. In the remaining states, the size of the legislative majority is not specified, so presumably the requirement is the same as that needed to pass any legislative bill or resolution. The Model State Constitution requires "an affirmative record vote of a majority of all the members in order to submit the proposal to the voters." MODEL CONST. art. XII, § 12.03.

Three states prohibit vetoes against convention calls: Alabama, Delaware and Hawaii. E.g., HAWAII CONST. art. XV, § 4: "No proposal for amendment of the constitution adopted in either manner provided for by this article shall be subject to a veto by the governor." Whether the governor can veto a convention question bill in other states apparently has never been tested.

The Constitution may mandate submission of the convention question to the electorate at stated intervals. This kind of provision gives the voters the opportunity to bypass a hostile or inactive legislature. Fourteen state constitutions include these provisions 16/ In Maryland, this is the only road to a convention; in other states, the method is in addition to legislative proposal. The frequency with which the convention question must be submitted in these states varies from 10 years (two states) to 20 years (eight states). Michigan requires 16-year intervals; the Model State Constitution suggests 15-year intervals.

16/ The states are: Alaska, Connecticut, Hawaii, Illinois, Iowa, Maryland, Michigan, Missouri, Montana, New Hampshire, New York, Ohio, Oklahoma and Rhode Island. BOOK OF THE STATES p. 177.

In Alaska, the lieutenant governor issues the call for a constitutional convention if the legislature has not called, a convention during the previous 10-year period, and if the voters at a referendum approve the question "Shall there be a Constitutional Convention?" ALAS. CONST. art. XIII, § 3. Hawaii's provision is similar. HAWAII CONST. art. XV, § 2. Missour vests the power with the secretary of state, MO. CONST. art. XII, § 3(a); New Hampshire with the selectmen and assessors in the various towns, N.H. CONST. art. 99.

17/ MODEL CONST. art. XII, § 12.03. An additional alternative might be to mandate a convention call question within a relatively short period of time after adoption of the Constitution, perhaps six or seven years. See COVENANT art. IX, § 902 mandating review of that document at 10-year intervals following its approval.) After this period, the Constitution might mandate a periodic call question every 15 or 20 years, or might rely on flexible provisions for legislative proposal of convention calls and the popular initiative to propose conventions. An early mandatory submission of a convention call question to the voters would allow review and adjustment of the new Constitution and new governmental structure following an initial try-out period.

Thirty-three states and Puerto Rico require popular approval of a call for a constitutional convention. Three do not specify the majority required; 23 states, Puerto Rico and the Model State Constitution specify a majority voting on the question; and seven require a majority of those voting at the election.[18/]

The calling of this Convention received voter approval in the June 1975 plebiscite election that approved the Covenant. Approval of the Covenant required the affirmative vote of at least 55 percent of the valid votes cast in the election.[19/]

The Constitution may also specify the kind of election at which the referendum must be held[20/] and can

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18/ BOOK OF THE STATES p. 177; MODEL CONST. art. XII, § 12.03(d). Two states that require a majority voting on the question require that the majority equal a percentage of the votes cast at the election: Kentucky, at least 25%; and Nebraska, at least 35%. Illinois requires a three-fifths vote on the question or a majority of those voting at the election. Most of the states requiring periodic submittal of the convention question specify a majority of those voting on the question at such elections; Maryland requires a majority at the election, and Oklahoma does not specify the majority requirement. Id.

Critics of the requirement that a majority on the question must be at least a majority voting at the election contend that the requirement makes constitutional change unnecessarily difficult and violates the principle of majority rule. HAWAII STUDIES p. 6.

19/ COVENANT art. X, § 1001(a).

20/ The most common specification is the next general election following the legislative action. E.g., P.R. CONST. art. VII, § 2. Hawaii allows submission of the question "at any general or special election . . . .," HAWAII CONST. art. XV, § 2.

include a provision for publicity on the convention question before the referendum.[21/]

b) Scope of convention powers

In those states where the legislature is responsible for formulating and submitting the convention question, the possibility exists that the legislature may try to limit the areas in which the convention may propose amendments. While obviously no such limitation applies to this Convention, the delegates may allow such limitation with respect to future conventions in the Commonwealth or may specifically prohibit such limitations.

Allowing the legislature to limit the scope of convention powers may make the legislature more willing to propose convention calls. A limited convention also might allow specific amendments to meet particular problems that have arisen. On the other hand, allowing limited conventions enables the legislature to restrict popular review of the Constitution, especially if only the legislature can call a convention.

Virginia specifically empowers its legislature to call a convention "to propose a general revision of, or specific amendments to this Constitution, as the General

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21/ Kentucky and the Model State Constitution have constitutional provisions for publicity on the convention question before the referendum. KY. CONST. § 263; MODEL CONST. art. XII, § 12.03.

Assembly in its call may stipulate." 22/ Alabama, Alaska and Montana specifically forbid the limiting of a constitutional convention. The Alaska provision states:

> Constitutional conventions shall have plenary power 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. 23/

A number of state constitutions that require periodic submission of the convention question to the voters include in the constitution the precise question to be put to the voters with respect to the convention. For example, the Hawaii constitution provides:

> 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?" 24/

This type of provision denies the legislature the opportunity to limit the scope of convention powers.

c) Preparatory research

A constitutional convention generally needs a preparatory commission or committee to plan the logistics of the convention, assemble special studies

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22/ VA. CONST. art. XII, § 2.

23/ ALAS. CONST. art. XIII, § 4.

24/ HAWAII CONST. art. XV, § 2.

and resource materials for delegates, prepare agenda and proposed convention rules, recruit a convention staff, and perform other services.[25/] Preparatory commissions have become increasingly popular in the past few decades,[26/] and the Model State Constitution makes specific provision for such a body:

> 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 a convention is authorized, the commission shall be continued for the assistance of the delegates.[27/]

No state constitution, however, currently provides for the establishment of a preparatory commission. Commissions are generally authorized in the legislative enabling act that sets up the convention.

The enabling act for this Convention establishes a pre-convention committee with four members.[28/] The committee's duties include planning and organizing the convention, securing accommodations and facilities, and specifying the actual date for the convening of the convention. The assembling of information, special studies and research

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25/ MODERNIZING CONSTITUTIONS pp. 12-13.

26/ Preparatory bodies were operative during 1966-1972 in Arkansas, Illinois, Maryland, Montana, New Mexico, New York and Pennsylvania. Both Hawaii and Alaska established statehood commissions when developing their first constitutions. Id.

27/ MODEL CONST. art. XII, § 12.03(b).

28/ NORTHERN MARIANA ISLANDS DIST. LAW NO. 347-1976, § 8 (Aug. 19, 1976).

materials was done prior to the convening of the committee under contract to the Office of Transitional Studies and Planning.

d) Organization of the convention

The organizational details of a convention, including the number of delegates, their qualifications and method of election, the time and place of the convention and similar matters, can be spelled out in the Constitution or left to the legislature for specification in the enabling act.

Current state constitutions have widely varying approaches to this problem. For example, the Wisconsin constitution leaves the entire matter to the legislature:

> And if it shall appear that a majority of the electors voting thereon have [sic] voted for a convention, the legislature shall, at its next session, provide for calling such convention.29/

The Illinois constitution states in greater detail what the enabling act should include:

> The General Assembly, at the session following approval by the electors, by law shall provide for the Convention and for the election of two delegates from each Legislative District; designate the time and place of the Convention's first meeting which shall be within three months after the election of delegates; fix and provide for the pay of delegates and officers; and provide for expenses necessarily incurred by the Convention.30/

29/ WIS. CONST. art. XII, § 2. Similarly, the Puerto Rico constitution provides for a "constitutional convention elected in the manner provided by law." P.R. CONST. art. VII, § 2.

30/ ILL. CONST. art. XIV, § 1(d).

The Connecticut constitution directs that the legislature, by a two-thirds vote, shall prescribe by law the manner of selecting delegates, the date of convening a convention and the date of final adjournment.[31] The Alaska and Hawaii constitutions allow their legislatures to provide details, but in case they do not, Alaska provides for its conventions to conform as closely as possible to the Alaska Constitutional Convention of 1955, and Hawaii makes a similar provision with reference to the Hawaii State Constitutional Convention of 1968.[32] At the other extreme, the New York constitution includes such abundant detail that an enabling act for a convention is almost unnecessary.[33]

The principal disadvantage to a constitutional provision that spells out the structure and organization of future conventions is that circumstances may change, and projecting past practice into the future may produce rigidity that impedes further conventions. Simply directing the legislature to provide for future conventions provides flexibility to meet future needs. Broad legislative discretion, however, also opens the possibility of legislative refusal to pass an enabling act or to appropriate funds for

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31/ CONN. CONST. art. XIII, § 3.

32/ ALAS. CONST. art. XIII, § 3; HAWAII CONST. art. XV, § 2.

33/ N.Y. CONST. art. XIX, § 2.

convention called by popular initiative or pursuant to a mandatory periodic convention question provision. Including self-executing details in a constitution with respect to convention structure and organization may ensure that a convention proceeds once the voters approve a convention question.

Details regarding convention organization sometimes included in constitutions are (in descending order of importance):

- the number of delegates
- delegate qualifications
- districts from which the delegates are elected
- partisan and non-partisan elections
- date of the delegate election
- delegate vacancies occurring after election
- appropriation for convention expenses
- time and place for convening the convention
- organization and procedures to be used by the convention

The factors affecting the utility of each of these types of provisions are described briefly below.

i) Number of delegates. The size of a constitutional convention can affect its success. The

National Municipal League suggests that the number of delegates be: (1) large enough to provide adequate representation for the major population elements of the state -- geographic, economic and political; and (2) small enough to permit efficient organization and procedure.[34/] Following the one-man one-vote principle,[35/] each delegate should represent a number of persons as equal as is practicable to the number of persons represented by each other delegate. Should the delegates decide to provide for the size of future conventions, their experience with this convention will help them make a practical determination.[36/] The size of the lower house of the legislature created by the Constitution also may provide a guide for the optimum size of future conventions.

34/ J. Wheeler, THE CONSTITUTIONAL CONVERNTION: A MANUAL ON ITS PLANNING, ORGANIZATION AND OPERATION p. 30 (1961).

35/ This requirement is discussed in detail in BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH § II(B).

36/ The act establishing this Convention permits not more than 41 delegates: 25 elected at-large from Saipan; one elected at-large from the islands north of Saipan; five elected at-large from Tinian; eight elected at-large from Rota; and two additional delegates from Saipan appointed at the discretion of the resident commissioner. NORTHERN MARIANA ISLANDS DIST. LAW NO. 347-1976, § 2(A) (Aug. 19, 1976). The act allows greater proportional representation for Rota, Tinian and the northern islands than strict application of the one man-one vote rule would permit.

Of the 41 state constitutions providing for constitutional conventions, over half make some reference to the number of delegates. In Alaska and Hawaii, unless the legislature provides otherwise, the number of delegates duplicates the number at the statehood constitutional convention. The remaining states utilize three different methods for determining the number of delegates to the convention: prescribing maximum or minimum limits;[37/] fixing the number of delegates with reference to the number of seats in one or both houses of the legislature;[38/] or fixing a specific number of delegates.[39/]

ii) Delegate qualifications. The Convention may want to prescribe delegate qualifications, particularly

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37/ E.g., NEB. CONST. art. XVI, § 2: "The Convention shall consist of not more than one hundred members"; N.M. CONST. art. XIX, § 2: "Such convention shall consist of at least as many delegates as there are members of the house of representatives."

38/ E.g., COLO. CONST. art. XIX, § 1: "The number of members of the convention shall be twice that of the senate . . . ."; MO. CONST. art. XII, § 3(a): "The electors of the state shall elect fifteen delegates-at-large and the electors of each state senatorial district shall elect two delegates."

Illinois, Maryland and New Hampshire relate the size of the convention to the size of the total legislature. ILL. CONST. art. XIV, § 1(d); MD. CONST. art. XIV, § 2; N.H. CONST. art. 99.

39/ Only one state, Delaware, fixes an exact number, 41. DEL. CONST. art. XVI, § 2.

if it wants to disqualify certain groups of officeholders.[40] Some states disqualify legislators and other public officials from becoming convention delegates through constitutional prohibitions on dual-office holding or accepting an office created by the legislature of which the legislator is a member. The Missouri constitution states:

> 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.[41]

The Hawaii constitution explicitly provides for the eligibility of legislators and other public officials:

> 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.[42]

40/ Each delegate to this Convention is at least 21 years of age, a validly registered voter in the Northern Mariana Islands, not currently under a judgment of mental incompetency or insanity, and not currently under parole, probation or sentence for any felony for which the delegate was convicted by any court of the Trust Territory or within the jurisdiction of the United States, unless the delegate has been paroled. NORTHERN MARIANA ISLANDS DIST. LAW NO. 347-1976, § 3(A) (Aug. 19, 1976). The act did not disqualify any candidate for delegate because the person held another office.

41/ MO. CONST. art. XII, § 3(a). Five state constitutions currently contain other types of provisions on the qualifications of convention delegates. Illinois and Montana provide that delegates shall have the same qualifications as members of the legislature; for Colorado and Missouri, they must meet the qualifications specified for state senators; and in Kentucky the delegates must meet the qualifications for state representatives. ILL. CONST. art. XIV, § 1(e); MONT. CONST. art. XIV, § 4; COLO. CONST. art. XIX, § 1; MO. CONST. art. XII, § 3(a); KY. CONST. § 259.

42/ HAWAII CONST. art. XV, § 2.

(iii) At-large or district representation. Voters can choose constitutional convention delegates in at-large elections (as the delegates for this Convention were chosen); in district elections (with the same election districts used for general elections or with different ones); or by a combination of election, appointment and ex officio designation. The majority of states provides for the election of delegates in a manner to be prescribed by law.[43/]

Only twelve states include reference to delegate districts in their constitutions.[44/] Of these, at least four specify representative districts and four specify senatorial districts.[45/] Michigan specifies that there shall be one delegate from each representative and senatorial district.[46/] Illinois provides for two delegates from each legislative district.[47/] The Model State Constitution provides for one delegate from each legislative district.[48/]

43/ E.g., VA. CONST. art. XII, § 2.

44/ HAWAII STUDIES p. 10. California and Georgia require each delegate to represent an equal number of voters as is practical, but do not specify delegate districts. CAL. CONST. art. XVIII, § 2; GA. CONST. art. XIII, § I, ¶ II.

45/ Delaware, Florida, Kentucky and Montana (representative districts); Colorado, Illinois, Missouri and New York (senatorial districts). HAWAII STUDIES p. 10.

46/ MICH. CONST. art. XII, § 3.

47/ ILL. CONST. art. XIV, § 1(d).

48/ MODEL CONST. art. XII, § 12.03(c).

The comment to the provision explains that since the Model State Constitution provides sufficient guarantees for a fairly apportioned legislature, using these legislative districts for the selection of delegates will guarantee a fairly apportioned convention.[49/] Missouri and New York each provide for 15 at-large delegates in addition to those elected from each senatorial district.[50/]

iv) Partisan or non-partisan elections. The enabling act for this convention prohibited any reference to or designation of affiliation of a candidate for delegate with a political party on the nominating papers or ballots used for the election of delegates.[51/] The Convention may also want to use this non-partisan method for the election of delegates to future constitutional conventions. Only two state constitutions currently attempt to do this. The Ohio constitution explicitly forbids partisan election of convention delegates; candidates must be voted for "upon one independent and separate ballot without any emblem or party designation whatever."[52/] The Missouri constitution seeks

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49/ Id. (Comment), p. 110.

50/ MO. CONST. art. XII, § 3(a) (two from each district); N.Y. CONST. art. XIX, § 2 (three from each district).

51/ NORTHERN MARIANA ISLANDS DIST. LAW NO. 347-1976, § 6(A) (Aug. 19, 1976).

52/ OHIO CONST. art. XVI, § 2.

to neutralize partisanship by ensuring equal representation of both parties.[53/]

v) Date for delegate election. The Constitution may provide for the setting of the date of delegate election for future conventions. Voters elected delegates to this Convention at a special election held 45 days after the enactment of the enabling legislation.

Seven states include constitutional provisions specifying the time at which the election of the delegates to the convention shall take place.[54/] Six of the states prescribe that the election shall take place at the next general election following the approval of the convention call by the electorate. Of the six, Alaska and Hawaii permit the legislature to call a special election for the convention delegates. Michigan specifies that the election for convention delegates be held not later than six months following the referendum, and Missouri provides for an election not less than three months nor more than six months after submission of the convention question.

53/ MO. CONST. art. XII, § 3(a).

54/ ALAS. CONST. art. XIII, § 3; DEL. CONST. art. XVI, § 2; HAWAII CONST. art. XV, § 2; MICH. CONST. art. XII, § 3; MO. CONST. art. XII, § 3(a); N.Y. CONST. art. XIX, § 2; TENN. CONST. art. XI, § 3.

The Model State Constitution offers three alternatives for the delegate election:

> If a majority of the qualified voters voting on the question of holding a convention approves it, 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.55/

vi) Delegate vacancies. The Convention may provide for the filling of vacancies in delegate positions that occur after the delegate election.

The enabling act for this Convention provides for the filling of delegate vacancies "by the candidate receiving the next highest number of votes in the election of delegates from the same electoral precinct." If that person refuses or is unable to serve and the runner-up list is exhausted, the mayor of the delegate's municipality fills the vacancy by appointment.56/

Seven state constitutions include provisions for filling delegate vacancies. Colorado and Montana provide for the filling of vacancies in the same manner as

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55/ MODEL CONST. art. XII, § 12.03(b).

56/ NORTHERN MARIANA DIST. LAW NO. 347-1976, § 7 (Aug. 19, 1976).

legislative vacancies.[57] In Delaware, "a writ of election to fill such vacancy shall be issued by the Governor, and such vacancy shall be filled by the qualified electors of such district or county."[58] New York provides:

> In case of a vacancy . . . of any district delegate . . . such vacancy shall be filled by a vote of the remaining delegates representing the district in which such a vacancy occurs . . . . [I]n the office of a delegate-at-large, such vacancy shall be filled by a vote of the remaining delegates-at-large.[59]

Hawaii, Michigan and Missouri provide for the governor to fill delegate vacancies by appointments. The Hawaii provision states: "The governor shall fill any vacancy by appointment of a qualified voter from the district concerned."[60] Both Michigan and Missouri require the appointees to be a member of the same political party as the delegate vacating the office.[61]

vii) Appropriations. Except when the Constitution expressly authorizes funds for a constitutional convention, a convention depends upon the legislature to appropriate necessary funds. For example, the enabling act

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57/ COLO. CONST. art. XIX, § 1; MONT. CONST. art. XIV, § 8.

58/ DEL. CONST. art. XVI, § 2.

59/ N.Y. CONST. art. XIX, § 3.

60/ HAWAII CONST. art. XV, § 2.

61/ MICH. CONST. art. XII, § 3; MO. CONST. art. XII, § 3(b).

for this Convention specifically provides for the "financial support" of the Convention and for compensation of delegates.[62/] The Illinois constitution requires the fixing of appropriations in the legislative enabling act.[63/] The Missouri constitution explicitly authorizes the convention to appropriate money: "The convention may . . . appropriate money for the expenditures incurred."[64/] The Alaska constitution states: "The appropriation provisions of the call shall be self-executing and shall constitute a first claim on the state treasury."[65/] The Hawaii constitution provides: "[T]he legislature shall make the necessary appropriations . . . ."[66/]

viii) Date and place for convening. Sixteen state constitutions designate the date on which future conventions shall convene and five designate the place of the initial meeting. Nine states fix the date at three months after the delegates have been elected; Nevada sets the date at six months after the convention enabling act has been passed, and Missouri convenes six months after selection of the

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62/ NORTHERN MARIANA DIST. LAW NO. 347-1976, §§ 11-12 (Aug. 19, 1976).

63/ ILL. CONST. art. XIV, § 1 (d).

64/ MO. CONST. art. XII, § 3(b).

65/ ALAS. CONST. art. XIII, § 3.

66/ HAWAII CONST. art. XV, § 2.

delegates. At least two states prescribe a specific day after the delegate election: Delaware the first Tuesday in October and New York the first Tuesday in April. The Connecticut constitution fixes the day at not later than one year after the legislature has taken a roll call vote on submitting the convention question. The five states designating the convention site all require the delegates to meet at the state capital.[67/] The Florida constitutional provision is an example:

> On the twenty-first day following that election [of the delegates], the convention shall sit at the capital, elect officers, adopt rules of procedure, judge the election of its membership, and fix a time and place for its future meetings.[68/]

ix) Organization and procedures. Few state constitutions include provisions on the organization and procedure of constitutional conventions. States that do not address these subjects leave the task to the legislature or to the convention itself.

Those states that include provisions take differing approaches. The Hawaii provision is an example:

67/ HAWAII STUDIES pp. 13-14.

68/ FLA. CONST. art. XI, § 4.

> 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 provisions of this section shall be self-executing 69/

The constitutions of Michigan, Missouri, and New York contain detailed provisions on organization and procedure.70/ For example, the New York constitution provides:

> A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the ayes and noes being entered on the journal to be kept. The convention shall have the power to appoint such officers, employees and assistants as it may deem necessary, and fix their compensation and to provide for printing of its documents, journal, proceedings and other expenses of said convention. . . .71/

The enabling act for this Convention sets out some of the basic procedures,72/ although the Convention

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69/ HAWAII CONST. art. XV, § 2.

70/ MICH. CONST. art. XII, § 3; MO. CONST. art. XII, § 3(b); N.Y. CONST. art. XIX, § 2.

71/ N.Y. CONST. art. XIX, § 2.

72/ NORTHERN MARIANA DIST. LAW NO. 347-1976, § 9 (Aug. 19, 1976). For example, the enabling act provides for the date, location and duration of the convention, in addition to designating the resident commissioner as president of the Convention until a president is selected from among the membership. The act provides for guidelines in adopting rules of procedure and establishes a quorum number. In addition, the act addresses the duties of the President and chairmen of established committees.

must determine its own organization and adopt further rules of procedure.

2. The constitutional commission

A constitutional commission is a body of people brought together for the specific purpose of revising a constitution. While in that sense it resembles a constitutional convention, a constitutional commission may be distinguished from a constitutional convention in two important ways. Generally, the voters elect constitutional convention delegates who propose constitutional amendments and present them to the voters for approval or rejection. Constitutional commission members are appointed or designated ex officio (by reason of the office they hold), and they usually present their suggested constitutional changes to the legislature. Only those proposals approved by the legislature are submitted to the voters for ratification. A constitutional commission typically performs the same service for a legislature as a preparatory commission does for a constitutional convention.

Constitutional commissions have gained increasing popularity in the past several decades. During the period from 1950 to 1965, 23 states established 38 constitutional commissions, 24 of them between 1960 and 1965.[73/] From 1968

73/ Sturm & Craig, State Constitutional Commissions: Fifteen Years of Increasing Use, 39 STATE GOVERNMENT p. 56, at 57 (1966).

to 1972, 38 commissions operated in 31 states.[74] During 1974 and 1975, eight commissions operated in eight states.[75] To date, however, all constitutional commissions have been established by statute, executive order or legislative resolution rather than by constitutional provision.

A recent amendment to the Florida constitution makes it the first state constitution to provide specifically for revision by constitutional commission. The Florida provision calls for the direct submission of commission proposals to the voters without referral to the legislature.[76] In 1979 and each twentieth year thereafter, a 37-member commission will study the constitution and propose a revision of all or any part of it. The complete provision states:

> Within thirty days after the adjournment of the regular session of the legislature convened in the tenth year following that in which this constitution is adopted, and each twentieth year thereafter, there shall be established a constitution revision commission composed of the following thirty-seven members:

74/ MODERNIZING CONSTITUTIONS p. 12.

75/ BOOK OF THE STATES p. 166.

76/ FLA. CONST. art. XI, § 5.

> (1) the attorney general of the state;
> (2) fifteen members selected by the governor;
> (3) nine members selected by the speaker of the house of representatives and nine members selected by the president of the senate; and
> (4) three members selected by the chief justice of the supreme court of Florida with the advice and consent of the justices.
>
> (b) The governor shall designate one member of the commission as its chairman. Vacancies in the membership of the commission shall be filled in the same manner as the original appointments.
> (c) Each constitution revision commission shall convene at the call of its chairman, adopt its rules of procedure, examine the constitution of the state, hold public hearings, and, not later than one hundred eighty days prior to the next general election, file with the secretary of state its proposal, if any, of a revision of this constitution or any part of it.77/

A similar commission in the Commonwealth could have its size and method of selection of membership tailored to Commonwealth needs.

A constitutional commission has the advantage of expediting the amendment process, especially if the Constitution requires only minor changes and increased clarity in specific areas. The smaller size of a commission relative to a convention may facilitate efficient discussion and quick action. This expediting ability can be reflected in saved costs. For example, excluding the $830,000 appropriated for New York's three commissions (1956, 1958 and 1959), the

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77/ FLA. CONST. art. XI, § 2.

cost for the 21 legislatively supported commissions held during 1950-1965 averaged $34,909. During the same period, and excluding the $2,000,000 appropriated for the 1962 Michigan constitutional convention, the average cost of constitutional conventions held in nine states and Puerto Rico was $162,500.[78/] Another advantage of a commission is that it can have a generally high caliber appointed membership that includes experts in a variety of relevant fields.[79/]

Disadvantages of commissions include their susceptibility to selection on political grounds that may result in appointed members not serving the electorate as well as elected convention delegates. Commissions can avoid controversial issues and tailor their recommendations to suit the legislatures to which they will submit their proposals. Further, commissions have less public visibility than conventions and stimulate less public interest. Perhaps for this reason, commissions have been less successful in securing popular ratification of their proposals than have constitutional conventions.[80/] The Florida provision remains untested.

78/ Sturm & Craig, State Constitutional Commissions: Fifteen Years of Increasing Use, 39 STATE GOVERNMENT p. 56, at 59 (1966); HAWAII STUDIES p. 32.

79/ A. Sturm, THIRTY YEARS OF STATE CONSTITUTION-MAKING: 1938-1968 p. 93 (1970).

80/ Id. Part of the lack of success may result from legislative failure to submit commission proposals to the voters.

If the Convention decides to include a provision for a constitutional commission in the Commonwealth Constitution, it should make decisions with respect to establishing the commission, commission membership and referral of commission proposals.

a) Establishing the commission

The Convention may decide to provide for the periodic convening of a constitutional commission as the Florida constitution does. This makes the commission an autonomous body that can focus on an unlimited range of constitutional changes and can report its proposals directly to the voters. Alternatively, the Constitution can authorize the establishment of a commission by statute, executive order or legislative resolution. A commission established in one of these ways may be restricted by the establishing authority with respect to subject matter, scope and submission of proposed revisions.

b) Commission membership

A commission may include appointed, ex officio or popularly elected members, or a combination thereof. Appointed membership allows for political selection which can produce exceptional membership at one extreme or a group of political partisans at the other extreme. Ex officio members give some consistency to commissions and ensure the representation of

certain offices or branches of government on the commission. Popular election of commission members may reduce the possibility of non-political experts serving on the commission, but allows for popular input into the amendment process at an early stage.

In the past, nearly all commission members have been appointed, with the remaining members designated ex officio.[81/] The Florida constitution provides for a similar mix.

c) Referral of commission proposals

All commissions in the past have reported to legislatures that have had the authority to select commission proposals for submission to the voters. The Florida constitution eliminates the intermediary role of the legislature. This approach prevents legislators acting in their own self-interest from restricting advantageous constitutional change. On the other hand, the Florida approach eliminates legislative perusal of and debate concerning proposed changes. Advocates of greater popular control over the amendment process might support the Florida approach; those who view the legislature as a trustworthy and representative body might prefer to refer proposals to the legislature.

81/ BOOK OF THE STATES p. 167.

3. Legislative initiative

Legislative proposal of constitutional amendments may be used in place of or in conjunction with either the constitutional convention or constitutional commission methods discussed above. It is by far the most widely used method of constitutional change in the United States.[82/] All 50 state constitutions and the Puerto Rico constitution empower the legislature to propose constitutional amendments. Generally the requirements are more stringent than for enactment of legislation.

Arguments supporting legislative proposal of amendments include: (1) the procedure is relatively simple and not costly; (2) as the representative lawmaking body, the legislature deals with the functions, problems and policy issues facing government and is in good position to consider and propose basic changes in the fundamental law; and (3) the political expertise of legislators gives them a sense of what kinds of changes the voters are likely to approve when the proposed constitutional amendments are submitted for ratification.[83/]

Arguments against legislative proposal of amendments include: (1) legislators, unlike constitutional convention delegates, are not chosen for their views on

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82/ MODERNIZING CONSTITUTIONS p. 6. During 1966-1972, of the aggregate of constitutional changes proposed by constitutional conventions, popular initiative or legislative initiative, 94.6% of the proposals came from legislative initiative.

83/ MODERNIZING CONSTITUTIONS p. 33; HAWAII STUDIES pp. 21-22.

proposed constitutional changes or for their ability to make such proposals; (2) the legislature is unlikely to give objective consideration to constitutional proposals that affect its own structure and position within the government; and (3) legislators may be influenced by political considerations not relevant to constitutional problems.[84/]

Constitutional provisions dealing with legislative proposal of amendments generally address the procedure for such proposals and set forth certain limitations.

a) Procedure for proposal of amendments

The delegates might consider three procedural aspects of the legislative initiative method: which legislative house can propose amendments; at what legislative sessions can proposals be made; and vote requirements for proposals.[85/]

84/ MODERNIZING CONSTITUTIONS p. 33; HAWAII STUDIES pp. 21-22.

85/ Most state constitutions omit procedural details about consideration of proposed amendments. Five states (Alabama, Louisiana, South Carolina, Tennessee and West Virginia) provide that each house of the legislature give each proposed amendment three separate readings on three separate days. HAWAII STUDIES p. 22. New Jersey requires that at least 20 calendar days prior to a vote on a proposed amendment "the same shall be printed and placed on the desks of the members of each house. Thereafter and prior to such a vote a public hearing shall be held thereon." N.J. CONST. art. IX, § 1. New York requires submission of any proposed amendment to the attorney general prior to consideration by the legislature. N.Y. CONST. art. XIX, § 1. In Hawaii, if an amendment is approved under the single session method, the governor must have "at least ten days' written notice of the final form of the proposed amendment" before the legislature can take a final vote on the proposal. HAWAII CONST. art. XV, § 3.

The Constitution can provide for either house of the legislature to propose amendments, or it can grant the power to one house but not the other.[86/] Allowing either house to initiate proposals may result in more proposals representing a wider range of interests, and requiring passage by both houses of the legislature may check the proposal of capricious amendments. On the other hand, granting this power to the lower house alone might satisfy the same interests. All states except Vermont permit either house to introduce amendments;[87/] Vermont restricts the initiation of amendments to the upper house.[88/]

The Constitution can provide for proposal of amendments at any legislative session (general sessions or special sessions), or it can provide for proposal only at general sessions. This decision will probably depend on the Convention's decision with respect to the nature of special sessions. If the Constitution limits the matters the legislature may consider at such sessions, proposal of constitutional amendments might fall outside the limit. For example, if only the governor

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86/ This decision will depend on the relative roles assigned by this Convention to the two houses of the legislature. The alternatives with respect to this decision are described in BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH § II(A)(2).

87/ HAWAII STUDIES p. 22.

88/ VT. CONST. § 68.

can call a special legislative session, and the scope of the session is limited to matters designated in his convening call, then legislative proposal of amendments at the special session will depend on the governor's convening call.[89/] Three states limit the introduction of amendments to regular sessions.[90/]

The Constitution may include special voting requirements for legislative initiation of amendments. Two of the most common are requiring the approval of more than one legislative session to pass a proposal or requiring an extraordinary majority vote for passage by a single legislative session.

Requiring only a single legislative session to approve a proposed amendment eases legislative amendment of the Constitution. Requiring consideration and approval by a second legislative session following an intervening general election for members of the lower legislative house makes proposal of amendments more difficult. Supporters of this approach argue that greater difficulty produces more thoughtful proposals and, by providing a cooling-off period, moderates popular pressure that might hurry the legislature into proposing constitutional changes. The Model State Constitution, in line

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89/ The considerations with respect to special sessions are reviewed in BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH § II(D)(1).

90/ ARK. CONST. art. XIX, § 22; KY. CONST. § 256; N.M. CONST. art. XIX, § 1.

with its liberal amendment procedures, requires passage of an amendment proposal by only one legislative session.[91/] Thirty-eight states and Puerto Rico also permit submission of an amendment to the voters after one passage through the legislature.[92/] Twelve states require passage by two legislative sessions interrupted by a general election for members of the lower house.[93/]

The Constitution may require passage of a proposed amendment by a majority of the membership of each house of the legislature, or it can require passage by a specified extraordinary majority. The second alternative makes it more difficult for the legislature to propose amendments. Proponents of an extraordinary majority provision argue that such a requirement promotes constitutional stability and discourages inclusion of statutory material in the constitution. Critics contend that extraordinary majorities violate the principle of majority rule by permitting minorities to prevent change from taking place. The Model State Constitution provides for passage by a simple majority of all the members of

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91/ MODEL CONST. art. XII, § 12.01.

92/ BOOK OF THE STATES p. 175.

93/ Id. These states are Delaware, Indiana, Iowa, Massachusetts, Nevada, New York, Pennsylvania, South Carolina, Tennessee, Vermont, Virginia and Wisconsin.

the legislature.[94] Of the 35 states and Puerto Rico that require only one passage of a proposed amendment by the legislature, only nine have a provision similar to the Model State Constitution provision requiring a simple majority of both houses.[95] Twenty-six states and Puerto Rico require extraordinary majorities: 16 states and Puerto Rico require a two-thirds majority of both houses, nine states require a three-fifths majority of both houses, and Nebraska requires a three-fifths majority of its unicameral legislature.

Of the 12 states requiring passage of a proposed amendment by two consecutive legislative sessions, eight require a simple majority of both houses at both sessions to propose a constitutional amendment. Tennessee and Vermont combine majority and two-thirds requirements between houses of the legislature and first and second passage.[97] South Carolina requires a two-thirds vote of one session for proposal and a majority vote of the legislature after popular approval.[98]

94/ MODEL CONST. art. XII, § 12.01(b).

95/ BOOK OF THE STATES p. 175. Oregon requires a majority to "amend" and two-thirds to "revise." Id.

96/ Id.

97/ TENN. CONST. art. XI, § 3; VT. CONST. ch. II, § 68.

98/ S.C. CONST. art. XVI, § 1.

Three states with recently written or revised constitutions give the legislature alternative methods for proposing amendments. All three allow proposal of an amendment on two passages by simple majority or proposal on one passage by extraordinary majority, as follows: Connecticut, three-fourths; Hawaii, two-thirds; and New Jersey, three-fifths.[99/]

Delaware has a unique system. It provides for the legislature to propose and ratify a constitutional amendment by passing it in two consecutive sessions of the legislature by a two-thirds majority vote of each house. It is the only state that does not require ratification of a proposed amendment by the voters.[100/]

b) Limitations on amendment proposals

The Convention may place limits on the power of the legislature to propose constitutional amendments. Some of the limitations the delegates may want to consider would affect the number of amendments that the legislature can submit at one election, the number of subjects that a single amendment can treat and the frequency with which the legislature can amend the same article.

99/ CONN. CONST. art. XII; HAWAII CONST. art. XV, § 3; N.J. CONST. art. IX, § 1.

100/ DEL. CONST. art. XVI, § 1.

The Constitution may limit the number of amendments the legislature may submit at one election or may limit the number of constitutional articles the legislature may amend at one legislative session. Kentucky allows only two simultaneous proposals, Puerto Rico and Arkansas three, and Kansas five.[101/] Colorado limits amendments to six articles and Illinois to three.[102/] Illinois' provision reads: "The General Assembly shall not submit proposed amendments to more than three Articles of the Constitution at any one election."[103/]

The Constitution may also limit proposed amendments to one subject. Kentucky and Oklahoma do this.[104/] Alternatively, a requirement that ordinary legislation deal with a single subject might be applied to legislatively proposed constitutional changes.[105/]

The Constitution may limit the frequency with which the legislature may amend the same article of the Constitution. Kentucky and Pennsylvania limit amendment of the same article

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101/ BOOK OF THE STATES p. 175.

102/ Id.

103/ ILL. CONST. art. XIV, § 2(c).

104/ KY. CONST. § 256; OKLA. CONST. art. XXIV, § 1.

105/ This requirement is described in BRIEFING PAPER NO. 3: THE LEGISLATIVE BRANCH § II(D)(3).

to once every five years; New Jersey to once every three general elections.[106/]

4. Popular initiative

The popular initiative, a fourth method for proposing constitutional amendments, may be used in conjunction with or in place of the constitutional convention, constitutional commission or legislative initiative methods described above. The popular initiative permits a designated percentage of the electorate to propose constitutional amendments and submit them to the entire electorate for approval or disapproval. Part of the direct legislation effort associated with the progressive movement at the turn of the century, the popular initiative, resembles the initiative device for proposing legislation that is discussed in Briefing Paper No. 6: Eligibility to Vote and Election Procedures § II(C)(1). Seventeen state constitutions include provisions for the constitutional initiative.[107/] Thirteen of those states adopted the initiative between 1902 and 1918; Florida, Illinois and Montana have adopted the constitutional initiative recently. Michigan, which revised its constitution in

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106/ KY. CONST. § 256; N.J. CONST. art. IX, § 7; PA. CONST. art. XI, § 1. The Vermont constitution permits legislative proposals of amendments only once every ten years. VT. CONST. ch. II, § 68. No other state constitution contains a restriction on the frequency with which the legislature may introduce constitutional amendments.

107/ BOOK OF THE STATES p. 176. The states are: Arizona, Arkansas, California, Colorado, Florida, Illinois, Massachusetts, Michigan, Missouri, Montana, Nebraska, North Dakota, Ohio, Oklahoma, Oregon and South Dakota.

1963, retained its provision for the popular initiative.[108]

The advantages of the popular initiative might be summarized as follows: (a) the initiative serves as a popular device to counter legislative failure to initiate constitutional change[109] and as a device for stimulation of public interest in important issues; (b) the mere availability of the initiative rather than its actual use may increase the responsiveness of the legislature; (c) the initiative can guide the legislature on the course of public opinion; and (d) use of the initiative will be minimal as long as the legislature responds to public needs.[110]

108/ Id.

109/ The recently adopted Illinois provision is expressly directed at a legislature opposed to constitutional changes that will affect its own duties and position in the government. That provision permits use of the constitutional initiative solely to propose changes in the "Legislative Article" of the constitution. ILL. CONST. art. XIV, § 3.

110/ The Model State Constitution favors the constitutional initiative:

> While there may be considerable doubt regarding the wisdom of providing for the statutory initiative . . . there is ample reason to support the constitutional initiative.
>
> Some way should be provided by which the people may directly effect constitutional change without depending on existing governmental institutions. No extensive use of the initiative device is either expected or hoped for, since much of the Model is based upon the proposition that legislatures can be expected to act reasonably. The insurance provided in the constitutional initiative is merely a salutory counterweight to refusal by a legislature or a convention to take popularly desired action.

MODEL CONST. art. XII, § 12.01 (Comment), p. 106.

Those opposed to the initiative contend that it is unnecessary in a constitution that provides for periodic submission to the voters of the question proposing a constitutional convention. They argue that initiative proposals are: (a) generally advanced by vested interests; (b) often poorly drafted and poorly integrated into an existing constitution; (c) usually of a nature that does not permit a debate focused on the issues they raise or compromise on the issues; (d) a direct cause of the inclusion of statutory material in constitutions. 111/

111/ The Council of State Governments does not favor the constitutional initiative:

> Designed as a popular weapon to counter legislative failure to initiate constitutional change, the initiative serves as a "gun behind the door" to be used in emergency situations. Critics of the constitutional initiative declare that it encourages proposals by selfish interests, that many initiative measures are poorly drafted and cannot be well integrated into the existing system, and that initiative 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.

MODERNIZING CONSTITUTIONS p. 8. During 1966-1972, of 28 proposals made by constitutional initiative in 10 states, voters approved only six. Id. at 7.

If the Convention decides to incorporate the initiative into the Constitution for purposes of constitutional amendment, then it should address the issue of whether the initiative will be direct or indirect and whether any additional details need be supplied.

There are two kinds of initiative. Both require circulation of the proposed amendment in petition form. Under the "direct" initiative, once the designated number of signatures are obtained and verified, the proposed amendment goes directly before the electorate for approval or disapproval. In 16 states the initiative is direct.[112/]

The "indirect" initiative requires submission of the completed petition to the legislature. The scope of legislative action depends on the power granted by the constitution. Only one state, Massachusetts, provides for the indirect initiative.[113/] In that state, submission of an initiative proposal to the electorate requires an affirmative vote by at least one-fourth of all the members of two consecutive legislatures. Three-fourths of the members of a single legislative session may amend an initiative proposal.

While the Model State Constitution also provides for the indirect initiative, it does not give the legislature

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112/ BOOK OF THE STATES p. 176.

113/ MASS. CONST. art. XLVIII, pt. IV, §§ 3-5.

the power to nullify or amend an initiated proposal.[114] It merely gives the legislature an opportunity to approve the initiative proposal and present it to the voters in the same manner as any other legislatively proposed amendment. If the legislature fails to act on the proposed amendment, the amendment still is presented to the voters for approval or disapproval.[115]

If the Convention includes a popular initiative provision in the Constitution, it may authorize the legislature to fill in the details of the initiative system, or it may provide the details in the Constitution. Because the initiative serves as a check on legislative inaction, all

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114/ MODEL CONST. art. XII, § 12.01.

115/ The applicable provisions state:

> 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 vote shall be entered on the journal and the proposed amendment shall be submitted for adoption in the same manner as amendments proposed by the legislature.

Id. § 12.01(d).

> The question of the adoption of a constitutional amendment shall be submitted to the voters . . . in the case of amendments proposed by the initiative which have failed to receive such legislative approval, not less than two months after the end of the legislative session.

Id. § 12.02(a).

states that provide for the initiative include enough detail in the constitution to make this provision self-executing. If the legislature has discretion to fill in initiative details, it can make the requirements prohibitively stringent. On the other hand, leaving the details of the system to legislative discretion prevents constitutional rigidity.

Details contained in current state initiative provisions prescribe the number and geographical distribution of petition signatures,[116] the requirements for filing the initiative petition,[117] the provision for petition review,[118]

116/ North Dakota requires the signature of 20,000 voters. The remaining 16 states express signature requirements in terms of a percentage of the votes cast in a particular previous election. The percentages range from 3% in Massachusetts to 15% in Arizona and Oklahoma. Seven states (Arkansas, Michigan, Montana, Nebraska, Nevada, Ohio, and South Dakota) specify 10%. Six states (California, Colorado, Florida, Illinois, Missouri and Oregon) specify 8%. BOOK OF THE STATES p. 176.

Twelve of the 17 states designate the number of signatures to be a percentage of the number of votes cast at the previous election for governor. Id.

Eight of the states require a geographical distribution of signatures by county or congressional district. Id.

117/ Petitions in all states (except Oklahoma) must be filed with the state election official (for example, the secretary of state in Florida) for verification of signatures. Most of the states specify that the filing must occur at a certain interval prior to the vote on the proposal. Illinois requires six months; eight states fix the date at not less than four months preceding the referendum; California requires at least 130 days unless the governor calls a special election; Florida and Ohio require at least 90 days; Montana and Nevada require at least 60 days. This allows time for public education and debate concerning the initiative proposals. HAWAII STUDIES p. 28.

118/ CAL. CONST. art. IV, § 24(d); MASS. CONST. art. LXXIV, § 1. In Massachusetts the attorney general has the important duty of ensuring that the initiative proposal does not contain subjects prohibited from initiative proposals by the constitution.

subject matter limitations on initiative proposals,[119] prohibitions on the referral of any constitutional initiative proposals to the governor for approval or disapproval,[120] publication requirements,[121] and the type of election at which proposals shall be voted on.[122]

5. Selecting among alternative methods of proposing amendments

The task of the delegates is to select one or a combination of these methods that will adequately meet foreseeable needs for constitutional amendment. It is possible that the Constitution will need specific, limited changes to existing articles to meet changed circumstances or unforeseen problems. There may also be a need to draft new individual articles to deal with new areas of endeavor or problems of increasing importance. Finally, after the passage of time,

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119/ MASS. CONST. art. XLVIII, pt. II, § 2.

120/ At least 10 state constitutions include this type of provision: Arizona, Arkansas, California, Colorado, Massachusetts, Missouri. North Dakota, Oklahoma and Oregon. Six of these constitutions, however, pre-date 1960.

121/ E.g., MONT. CONST. art. XIV, § 9:

> [T]he secretary of state shall cause the amendment to be published as provided by law twice each month for two months previous to the next regular statewide election.

122/ Nearly all of the states schedule the vote for the next general election. Three states (Arizona, Missouri and Oregon) allow the legislature to order a special election on the proposal, two states (California and North Dakota) allow the governor to order a special election, and one state (Oklahoma) allows either the governor or the legislature to do so. HAWAII STUDIES pp. 61-62.

there may be some utility in a review of the entire Constitution to delete outmoded provisions, modernize existing articles and add new sections.

In considering the alternative methods available to meet these needs, the delegates should consider first the adaptability of each of the methods to meet these needs.

The constitutional convention, constitutional commission, and legislative initiative methods can be used for all three types of changes. Constitutional conventions and commissions are generally more efficiently used for proposing long and complex new articles or for considering extensive constitutional up-dating and revision. The legislative initiative is most efficiently used for proposing specific limited changes in existing articles because more extensive changes require diverting the legislature from its normal business for an extended period. The popular initiative is generally appropriate for limited changes in existing articles or relatively short, new articles. It is not suited well to proposal of complex new articles or constitutional revision.

The delegates should then assess each of the methods against standards of cost, time requirements, quality of work product and likelihood of ratification.

The constitutional convention method is probably the most costly because it involves at least one and perhaps two elections, payment of the salaries of a number of delegates,

and creation of a special infrastructure (staff, housing and duplicating, for example). This method is also the most time-consuming. Voters must elect delegates, the convention has to organize itself and adopt rules, and each of the proposed changes must be considered and debated by delegates who may not have experience with the legislative process. The quality of the work product is likely to be quite good if the convention has sufficient consultant and staff resources available. The use of the convention is also likely to have a favorable effect on ratification because the convention delegates are popularly elected and usually will campaign for voter approval of the convention's work.

The constitutional commission is less costly than the convention because it typically does not involve the election of members, is usually smaller than a convention and requires less in the way of salaries and new infrastructure. It probably costs about as much (or perhaps slightly more) than the legislative initiative. Most legislatures use experts to assist in the preparation of constitutional amendments, although they have the option of diverting existing staff to this task and thus not incurring any new expense. The commission method is substantially more costly than the popular initiative because under the latter method, the private sector bears nearly all costs.

The commission method is less time-consuming than the convention method because commission members typically have extensive experience with the constitutional amendment task and the subject matter to be considered. Debates are less extensive, and drafting can be done more quickly. The quality of work product of a commission is likely to be higher than that of any other method because commission members can be chosen for their expert knowledge in relevant fields. The effect on ratification may be unfavorable, or at least less favorable than any other method, because of the lack of popular contact or support during the process of considering amendment.

The legislative initiative is one of the least costly and probably the least time-consuming of the four methods. All of the machinery is in place, the people involved are already on salary and very little extra cost is involved. The legislature can debate constitutional amendment proposals in the ordinary course of business and, if in session, can act quickly to approve a needed amendment. This method is also likely to turn out a good work-product because of the experience of members of the legislature and their staff in legislative drafting of the type needed for constitutional amendment. The legislative initiative probably has an effect on ratification that is as equally favorable

as that of the convention method and more favorable than the commission or popular initiative methods.

The popular initiative is the least costly of the four methods because all of the cost of obtaining signatures on the petition is borne by the private sector, and only the expense of verifying the signatures falls on the public sector. The initiative may be time-consuming, however, depending on the signature requirement. Popular initiative proposals also have less chance of ratification, at least when compared with convention and legislative initiative proposals, because of their sponsorship by special interest groups.

B. Methods for Ratification or Approval of Proposed Constitutional Amendments

Once a constitutional amendment is properly proposed -- either through constitutional convention, constitutional commission, legislative initiative or popular initiative -- it must be approved. Because of the importance of a change in the fundamental law, approval generally requires a popular vote either at a general or special election.

The Constitution drafted by this Convention will be submitted to the voters for approval. Once it completes its work, the Convention will notify the resident commissioner that it has completed drafting the Constitution. The resident

commissioner will then call for a referendum on the Constitution not more than 120 days after receipt of the Convention's notification. During the period between submission of the draft Constitution to the resident commissioner and the Constitutional referendum, the resident commissioner will conduct a campaign to educate the voters concerning the document.[123/] Approval of the Constitution will require an affirmative vote of at least 60 percent of the votes cast on the approval question.[124/]

The Convention may adopt this method of ratification for future constitutional changes or may devise a different system. The Constitution may simply prescribe ratification[125/] or it can spell out detailed requirements for the ratification process.[126/]

Details regarding ratification included in state constitutions can be divided into six areas: form for submitting proposed amendments; publicity requirements; type of

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123/ NORTHERN MARIANA DIST. LAW NO. 347-1976, § 10 (Aug. 19, 1976).

124/ Id. § 14. The question put before the voters will read: "Do you approve of the Constitution of the Northern Mariana Islands, as adopted by the Northern Marianas Constitutional Convention?" Id. § 13(B).

125/ E.g., P.R. CONST. art. VII, § 2.

> Every revision of this Constitution shall be submitted to the qualified electors at a special referendum for ratification or rejection by a majority of the votes cast at the referendum.

126/ E.g., FLA. CONST. art. XI, § 5.

election at which proposed amendments shall be submitted; limitations on the consideration of amendments; popular vote required for ratification; and effective date of ratified amendments. A brief description of each of these requirements is set out below.

1. Form for submitting proposed amendments

Most state constitutions are silent on the form in which amendments must be submitted to the electorate. The constitutions of seven states that provide for amendment through constitutional conventions expressly authorize the conventions to submit their work to the voters in the manner determined by those bodies.[127/] The Hawaii provision states:

> 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. . . . 128/

These provisions afford a convention flexibility in determining whether its work will best succeed at the polls if submitted as (1) a new constitution to be adopted or rejected in its entirety, (2) individual amendments, or (3) one amendment consolidating unchanged portions of the old constitution and the noncontroversial portions of the new constitution along with individual amendments embodying each controversial change.

127/ These states are California, Hawaii, Illinois, Michigan, Missouri, Montana and New York. HAWAII STUDIES p. 36.

128/ HAWAII CONST. art. XV, § 2.

The great majority of states that permit legislative proposal of amendments has no specific provisions regarding the form for submission of legislative proposals to the voters.[129/] This permits the legislature to specify the proper form. A few states require the submission of amendments to the voters on a separate ballot or column from the list of candidates, hoping to attract the attention of the voters to the constitutional proposals. The Hawaii constitution provides: "[T]he proposed amendments shall be submitted to the electorate for approval or rejection upon a separate ballot."[130/] The Illinois and Missouri constitutions have similar provisions.[131/] The Model State Constitution requires information about legislatively proposed amendments to accompany the ballot:

> 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. 132/

129/ HAWAII STUDIES p. 35.

130/ HAWAII CONST. art. XV, § 3.

131/ ILL. CONST. art. XIV, § 2(b); MO. CONST. art. XII, § 2(b).

132/ MODEL CONST. art. XII, § 12.02(b).

2. Publicity requirements

The Constitution also might include specific provisions to promote voter awareness of proposed constitutional changes and to encourage knowledgeable voting.

The Florida and Illinois constitutions mandate publication of amendments proposed by constitutional conventions. The Florida provision states:

> Once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, shall be published in one newspaper of general circulation in each county in which a newspaper is published. 133/

Illinois requires publications of proposed revisions or amendments "with explanations." 134/

Most state constitutions require publication of legislatively proposed amendments a specified number of times in daily or weekly newspapers. 135/ These provisions often require geographical distribution or coverage. The Hawaii constitution contains a detailed provision:

> Upon such adoption, the proposed 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. 136/

133/ FLA. CONST. art. XI, § 5(b).

134/ ILL. CONST. art. XIV, § 1(f).

135/ HAWAII STUDIES p. 39.

136/ HAWAII CONST. art. XV, § 3.

Puerto Rico's constitution simply states:

> Once approved, a proposed amendment must be published at least three months prior to the date of the referendum. 137/

Kentucky and South Dakota provide for publication in a manner prescribed by law. 138/

The Massachusetts constitution requires the mailing of arguments supporting and opposing each amendment to each voter. 139/

Many constitutions require a time lapse between passage of proposed amendments by the legislature and the date of submission of the proposals to the voters in order to give voters time to become informed about the proposals. 140/ The Model State Constitution requires a vote on a proposal "no less than two months after it has been agreed to by the vote of the legislature. . . ." 141/

3. Type of election at which proposed amendments are submitted

Constitutional provisions fixing the time of the referendum, in addition to making the process of amendment self-executing, affect the visibility of proposed amendments

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137/ P.R. CONST. art. VII, § 1.

138/ KY. CONST. § 257; S.D. CONST. art. XXIII, § 1.

139/ MASS. CONST. art. LXXIV, § 4.

140/ E.g., FLA. CONST. art. XI, § 5(a) (90 days); ILL. CONST. art. XIV, § 2(a) (six months); N.J. CONST. art. IX, §§ 3-4 (three months).

141/ MODEL CONST. art. XII, § 12.02.

as campaign issues. Requiring submission of proposals at general or regular elections allows candidates running at the same elections to make the proposed amendments campaign issues. Submission of amendments at special elections focuses voters' attention on the proposed amendments rather than on political personalities, but also increases the likelihood of a smaller voter turnout.

Eight state constitutions and the constitution of Puerto Rico contain provisions fixing the time of the referendum on amendments proposed by constitutional conventions.[142] Florida, Georgia, Minnesota and Utah require referral of convention proposals at general elections. Arizona and Oklahoma permit submission at general or special elections. The Virginia constitution states:

> The General Assembly shall provide by law . . . for the submission, in such manner as it shall prescribe and not sooner than ninety days after final adjournment of the convention, of the proposals of the convention to the voters qualified to vote in elections by the people. [143]

Puerto Rico requires submission of convention proposals at a special election.[144]

142/ HAWAII STUDIES p. 39.

143/ VA. CONST. art. XII, § 2.

144/ P.R. CONST. art. VII, § 2.

Most state constitutions are either silent on the matter or authorize the convention to provide for the timing of the ratification vote.[145/]

4. Limitations on proposal of amendments

Several types of provisions might limit proposal of amendments. These apply principally to amendments proposed by the legislature.

a) Separate vote requirements

A provision requiring a separate vote on each amendment when submitting the proposed amendments to the voters for ratification limits the legislature's power to revise the Constitution extensively. Such a provision permits voters to approve some proposals and reject others at the same time. As a result, the legislature cannot count on passage of broad revision schemes.[146/]

145/ E.g., HAWAII CONST. art. XV, § 2: "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 Illinois constitution provides for submission of proposed amendments "at an election designated or called by the Convention occurring not less than two nor more than six months after the Convention's adjournment." ILL. CONST. art. XIV, § 1(f). The wording of the Colorado provision is similar to the Illinois provision. COLO. CONST. art. XIV, § 1.

146/ On the other hand, if a series of proposed amendments are combined in a single question, all the proposals may meet defeat because of one or two controversial proposals. This strategy helped cause the defeat of the revised constitution proposed by the 1967 Maryland constitutional convention. J. Wheeler & M. Kinsey, MAGNIFICENT FAILURE p. 209 (1970).

More than 30 state constitutions include such provisions.[147] For example, Nebraska provides: "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."[148]

b) Limit on number of amendments submitted to voters simultaneously

The Constitution may limit the number of amendments the legislature may submit at one election. Supporters of this kind of provision argue that voters cannot intelligently consider a large number of proposed amendments at one time. Arkansas and Puerto Rico permit three legislatively proposed amendments, Kansas permits five, and Kentucky allows not more than two.[149] The Puerto Rico constitution reads: "Each proposed amendment shall be voted on separately and not more than three proposed amendments may be submitted at the same referendum."[150]

5. Vote requirement

The options with respect to popular ratification of proposed amendments are to require ratification by a majority of those voting on a particular proposal, or to

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147/ HAWAII STUDIES p. 21.

148/ NEB. CONST. art. XVI, § 1.

149/ BOOK OF THE STATES p. 175.

150/ P.R. CONST. art. VII, § 1.

require ratification by an extraordinary majority. Such a majority could be a required percentage over 50 percent (for example, the 60 percent vote required by the enabling act to approve the Constitution), a majority at least equal to a specified percentage of those voting in the general election, or a majority of registered voters, regardless of how many vote on the particular amendment or in the general election. The same vote can be required to ratify a proposed amendment regardless of its manner of initiation, or different vote requirements can be matched with different approved methods of initiation.

Proponents of a simple majority vote for ratification cite the principle of majority rule. They argue that an extraordinary majority requirement can restrict constitutional change despite clear popular approval of a proposed amendment. They believe there is no support for the inference that those who vote in a general election but not on the question of a particular amendment are opposed to the particular amendment.

Proponents of extraordinary majority requirements argue that they contribute to constitutional stability, preserve the fundamental nature of a constitution by encouraging the use of the legislative process to enact change, and require the approval of a substantial portion of the total electorate to alter the fundamental law.

Fourteen of the 41 state constitutions that provide for constitutional conventions do not mention the required vote for ratification of a proposed amendment.[151/] The omission leaves the decision to the legislature when it draws up the enabling act for a convention, or to the convention if the legislature is silent. This practice promotes flexibility to adjust to political situations, and also gives the legislature great power to thwart constitutional change by requiring extraordinary majority votes for approval of changes. Twenty-one state constitutions and the Puerto Rico constitution require a majority voting on the question to approve a proposed amendment.[152/] Colorado and Utah require approval by a majority voting in the election.[153/] Minnesota requires three-fifths of those voting on the question for approval, and New Hampshire requires two-thirds voting on the question.[154/] Hawaii requires a majority voting on the question at least equal to 35 percent of the votes cast at the general election.[155/]

151/ BOOK OF THE STATES p. 177. The states are: Alabama, Delaware, Florida, Idaho, Kentucky, Maine, Missouri, Nevada, New Mexico, Oregon, Washington, West Virginia, Wisconsin and Wyoming. Alaska also makes no provision, but unless the legislature provides otherwise, the requirement is controlled by the provision of the act calling the 1955 convention that required a majority vote on the question. ALAS. CONST. art. XII, § 3.

152/ BOOK OF THE STATES p. 177.

153/ COLO. CONST. art. XIX, § 1; UTAH CONST. art. XXIII, § 3.

154/ MINN. CONST. art. XIV, § 3; N.H. CONST. pt. II, art. 99.

155/ HAWAII CONST. art. XV, § 2. Hawaii also requires a majority equal to 30% of the registered voters if at a special election. Id.

Amendments proposed by legislative initiative require approval by a simple majority in the Model State Constitution,[156] 41 state constitutions and the Puerto Rico constitution. Three states require a majority of those voting favorably on a proposed amendment equal to at least a majority of those voting at the general election. Hawaii and Nebraska require the majority voting on the question to equal at least 35 percent of the total vote cast in the general election.[157] The Illinois constitution states:

> A proposed amendment shall become effective as the amendment provides if approved by either three-fifths of those voting on the question or a majority of those voting in the election. [158]

Thirteen of the states that provide for the popular initiative require a simple majority voting on the proposal to adopt the amendment.[159] In Massachusetts the majority must equal at least 30 percent of the ballots cast in the general election; in Nebraska at least 35 percent of the ballots cast. Nevada requires a majority vote on the question in two consecutive general elections.[160]

156/ MODEL CONST. art. XII, § 12.02.

157/ BOOK OF THE STATES p. 175.

158/ ILL. CONST. art. XIV, § 2(b).

159/ BOOK OF THE STATES p. 176.

160/ Id.

The Florida constitution provides the same method of ratification for all proposed amendments, whether initiated by constitutional convention, constitutional commission, legislative initiative, or popular initiative. The complete provision states:

> A proposed amendment to or revision of this constitution, or any part of it, shall be submitted to the electors at the next general election held more than ninety days after the joint resolution, initiative petition or report of revision commission or constitutional convention proposing it is filed with the secretary of state, unless, pursuant to law enacted by the affirmative vote of three-fourths of the membership of each house of the legislature and limited to a single amendment or revision, it is submitted at an earlier special election held more than ninety days after such filing.161/

6. Effective date of approved amendments

The Constitution may specify the date an approved amendment will take effect. At least five state constitutions refer to effective dates of amendments.162/ The Florida provision is an example:

161/ FLA. CONST. art. XI, § 5.

162/ Connecticut: 30 days after the election unless otherwise provided in the proposal, CONN. CONST. art. XIII, § 4 (for proposals by a constitutional convention); Florida: the first Tuesday after the first Monday in January following approval unless otherwise provided in the proposal, FLA. CONST. art. XI, § 5; Michigan: as provided by the convention or 45 days after the election for proposals by legislative or popular initiative, MICH. CONST. art. XII, §§ 1-3; Missouri: 30 days after the election, MO. CONST. art. XII, §§ 2(b), 3(c) (for proposals by legislative initiative or by a constitutional convention); and New York: the first day of January following approval, N.Y. CONST. art. XIX, §§ 1, 2 (for proposals by legislative initiative or by a constitutional convention).

> If the proposed amendment or revision is approved by vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.163/

Conclusion

The constitutional amendment provision, perhaps as much as any other provision, will be important in creating the sense of confidence in the new Constitution that will be required to secure ratification by the voters. The provision must provide sufficient access to change to meet apprehension about ratifying the current version and at the same time offer sufficient protection against inappropriate change to make the constitution an enduring and fundamental document.

163/ FLA. CONST. art. XI, § 5.