



AN ANALYSIS

of the

PROPOSED CONSTITUTION

Number 2

December 17, 1962

DECLARATION OF RIGHTS - ARTICLE I

ELECTIONS - ARTICLE II

Important changes have been made with respect to the Declaration of Rights Article and the Elections Article in the proposed constitution.

DECLARATION OF RIGHTS

Many of the civil rights features in the federal "Bill of Rights," originally intended largely as restraints on the federal government, have been made applicable as restraints on the states by way of the Fourteenth Amendment. This Amendment prohibits: any state law abridging the privileges and immunities of United States citizens; state deprivation of any citizen's life, liberty or property without due process of law; or denial by any state of the equal protection of the laws to any person in its jurisdiction.

There remains, however, a substantial area for state policy (constitutional and statutory) with respect to civil and political rights concurrent with, and supplementary to, the federal guarantee of basic rights. A "bill of rights" therefore continues to be an important part of a state constitution as a guarantee against governmental infringement on the basic rights of the people. Protection of an individual's rights from infringement by private persons or organizations is traditionally spelled out in statute law rather than in a constitution.

Major Changes

1. A new feature guarantees fair treatment in legislative and executive investigations and hearings for all individuals, corporations and voluntary associations.
2. A verdict agreed upon by 10 of 12 jurors in civil cases is to be received.
3. A new feature guarantees an appeal as a matter of right in all criminal prosecutions.
4. The provision on subversion is eliminated.
5. A new provision guarantees equal protection of the laws, and civil and political

*Publication made possible by grants from W. K. Kellogg Foundation,
The Kresge Foundation, McGregor Fund and Relm Foundation.*

BOARD OF DIRECTORS

MEYER L. PRENTIS, PRESIDENT
WILLIAM R. CLARK, VICE PRESIDENT
HENRY T. BODMAN
HARRY G. BOWLES
ROBERT P. BRIGGS
HAROLD W. H. BURROWS

CLIFFORD C. CHRISTENSON
SIMON D. DEN UYL
LESTER R. DOWNIE
RICHARD C. GERSTENBERG
TYRONE GILLESPIE
JAMES B. GORDON
ROBERT E. PICKUP, EXECUTIVE DIRECTOR

MAX P. HEAVENRICH, JR.
JOSEPH L. HUDSON, JR.
FREDERICK B. HUNT
FRANK N. ISBEY
JAMES A. KENNEDY
DONALD F. KIGAR

WILLIAM A. MAYBERRY
KENNETH S. REAMES
THOMAS R. REID
E.H. RYDHOLM
ROBERT B. SEMPLE
HOWARD J. STODDARD

rights without discrimination because of religion, race, color or national origin.

6. A new civil rights commission given constitutional status in the executive article (Art. V, Sec. 29) will be concerned with making the above provision effective and with discrimination as related to civil rights guaranteed by the constitution and by law.
7. A new provision reserves other unenumerated rights to the people.

General and Traditional Rights

The convention added a new provision to the declaration of rights which guarantees “fair and just treatment in the course of legislative and executive investigations and hearings” for “all individuals, firms, corporations and voluntary associations.”

The provision which proclaims the people’s right to assemble peaceably, to consult for the common good, to instruct their representatives and to petition for redress of grievances was carried over with only one change—the people are given the right to petition the “government” rather than the “legislature” as in the present provision. This change was made in order that the right of petition would apply to all branches and levels of government.

No change was made in the substance or effect of the following constitutional provisions dealing with general and traditional rights which were carried over to the proposed constitution;

- all political power is “inherent in the people,” and government is “instituted for their equal benefit, security and protection.”
- guarantee of “liberty to worship God” to each person according to his conscience, supplemented in some detail and with provision for separation of church and state.
- guarantee of freedom of speech and of the press—with minor changes in phraseology.
- the “right to bear arms,” with phraseology changed to the more traditional form—“to keep and bear arms.”
- requirement of strict subordination of the military to the civil power.
- restriction on quartering of soldiers.
- prohibition of slavery, and involuntary servitude unless for the punishment of crime—with a change in punctuation.
- prohibition of bills of attainder, ex post facto laws and laws impairing the obligation of contract.
- prohibition of unreasonable searches and seizures with necessary conditions prescribed for the issue of search warrants. The part of the present provision allowing introduction as evidence in any criminal proceeding of narcotic drugs and dangerous weapons seized by peace officers *outside* the “curtilage of any dwelling house” is retained in simplified language.¹
- prohibition of suspending the writ of habeas corpus except when “in case of rebellion or inva-

¹ There has been some opposition to the retention of this exception on the grounds that it is contrary to a recent decision of the U.S. Supreme Court (**Mapp v. Ohio**, 1961). This case, however, was concerned with search and seizure *inside* the “curtilage.” If this part of the provision were held to be contrary to the federal Constitution, it would, of course, have no effect.

sion the public safety may require it.”

- prohibition of imprisonment for debt in connection with an express or implied contract it except in cases of fraud or breach of trust.”²

Rights in Court Procedure

The right to prosecute or defend a court suit in person or by an attorney is retained but the authorization to use an agent of one’s choice for such purposes is deleted. The right of trial by jury unless waived by both parties in civil cases is retained but with an added stipulation that a verdict agreed upon by 10 of 12 jurors in civil cases shall be received.

The proposed constitution retains without change the prohibition of any person being rendered incompetent as a witness because of “his opinions on matters of religious belief” and the provision relating to trial procedure in, and truth as a defense against, libel suits and prosecutions.

Rights in Criminal Procedure. The guarantee against double jeopardy has been rewritten to conform more closely with the federal guarantee and with federal and state practice: no person “shall be subject for the same offense to be twice put in jeopardy” replaces “after acquittal upon the merits, shall be tried for the same offense.” The prohibition of excessive bail, excessive fines, cruel or unusual punishment and unreasonable detention of witnesses, the guarantee against compulsory self-incrimination in any criminal case and the due process of law clause were carried over unchanged.

The following rights of an accused person in criminal prosecution were carried over to the proposed constitution: to a “speedy and public trial by an impartial jury” of 12 (less than 12 jurors are allowed in other than courts of record); to be informed of the accusation; confrontation of witnesses; compulsory process for favorable witnesses; assistance of counsel and when ordered by a court of record “reasonable assistance as may be necessary to perfect and prosecute an appeal.” The convention added to these rights the requirement that an accused in every criminal prosecution shall have “an appeal as a matter of right.”

The guarantee against prosecution for treason on unsubstantial evidence was carried over with only a minor change in punctuation. Although jurisdiction over prosecutions for treason and sedition has been preempted by the federal government as was made clear in **Pennsylvania v. Nelson** (1956), the convention decided to retain this guarantee in view of the possibility that the federal government might relinquish to the states some of the jurisdiction in this area which is presently preempted. The possibility that war disaster might cut the state off from federal authority for a period of time was also considered in the decision to retain this provision.

The present constitutional provision on subversion—adopted as an amendment in 1950—was not carried over to the proposed constitution. The convention concluded that it was inappropriate in a bill of rights since it defined a new crime and made it punishable and therefore limited rather than guaranteed rights. The convention felt that its last paragraph violated freedom of speech as provided for in the state and federal constitutions and that statutes could deal effectively with this subject matter within the limits of the state and federal constitutions.

Equal Protection and Civil Rights

A new provision guarantees each person the “equal protection of the laws” and the exercise of his

² A redundant phrase and an obsolete sentence relating to imprisonment for military fine in time of peace were eliminated.

civil or political rights without discrimination because of religion, race, color or national origin.” The legislature is required to implement the provision “by appropriate legislation.”

Civil Rights Commission. A new civil rights commission would be established by a provision in the executive article (Art. V, Sec. 29). This commission would be concerned with the new provision on equal protection and civil rights and other constitutional and statutory civil rights guarantees. This commission’s constitutional status would be unique among the states. It would have eight members—not more than four of the same political party—appointed by the governor, subject to senate disapproval within 60 days, for four-year staggered terms. An annual appropriation for the commission is required.

The commission is required to investigate cases of “alleged discrimination against any person because of religion, race, color or national origin” with respect to civil rights guaranteed by the constitution or by law. The commission is also required to “secure the equal protection of such civil rights without such discrimination.” The commission is given power in accordance with the constitution and general laws governing administrative agencies to prescribe its own procedures, to hold hearings, administer oaths, subpoena witnesses and records through court authorization, take testimony, and to issue appropriate orders; and to have “other powers provided by law to carry out its purposes.” Appeals from orders of the commission are to be tried (de novo) in the circuit court having jurisdiction.

Unenumerated Rights Reserved

A new provision states that the enumeration of constitutional rights “shall not be construed to deny or disparage others retained by the people.”

ELECTIONS

Many of the provisions on elections were altered by the convention in framing the proposed constitution. The provisions for the popular initiative by petition for statutes and for popular referendum by petition on laws enacted by the legislature were transferred from the legislative article to the elections article.

Major Changes

1. Legislative discretion is extended with respect to: local residence requirements for voting; exclusion of persons from voting because of mental incompetence or penal confinement; absentee voting and other matters relating to elections.
2. Property ownership is required for voting on an increase in local ad valorem tax rate limitations for more than five years.
3. The Spring election is eliminated.
4. Control of local boards of canvassers by one party is prohibited.
5. Sufficiency of a statement for recall of elected officers is made a political question not subject to judicial review.
6. Changes are made in initiative and referendum for statutes: detail deleted; amendment of initiated laws by a three-fourths vote of legislature allowed; law given immediate effect made subject to referendum.

Qualifications for Voting

The United States citizenship, 21-year age and six-month state residence requirements for voting have been retained. The requirement of 30 days' residence in a city or township (with exceptions) has been deleted and replaced by "requirements of local residence" as provided by law. The legislature is required to "define residence for voting purposes" which replaces various constitutional details on this matter. A new provision authorizes the legislature to exclude persons from voting because of mental incompetence or penal confinement.

Property Ownership Required for Special Voting Purposes. The requirement that only property owners and their spouses may vote on bond issues by a political subdivision of the state was retained. This requirement was newly applied to voting on an "increase of the ad valorem tax rate limitation" for more than five years, but eliminated for voting on the direct expenditure of public money.

Presidential Elections. In order to increase participation in presidential elections, the legislature may require a shorter period of residence for citizens residing in the state for less than six months. The legislature may also waive residence requirements for former citizens who have moved to another state if they do not meet the residence requirements for voting in that state.

Spring Election Eliminated

Under the proposed constitution, all regular elections for national, state, county and township officers are required to be held at the November election in even-numbered years.³ This provision would eliminate the April election required by the present constitution in odd-numbered years. The election of state board of education and university board members, supreme and circuit court judges and township officers would be shifted to the November election.

Regulation of Elections

The legislature is required to enact laws to regulate the "time, place and manner of all nominations and elections," except as otherwise provided in the constitution. Requirements that laws be enacted to preserve the purity of elections, and guard against abuses of the elective franchise are carried over from the present constitution.

New requirements were added that laws be enacted to "preserve the secrecy of the ballot" and to provide for a "system of voter registration and absentee voting."⁴ Another new feature prohibits a "ballot designation" for any candidate in a partisan primary or partisan election except when necessary to identify candidates for the same office having the same or similar surnames.

Boards of Canvassers

The present provision requiring establishment by law of a board of state canvassers—having four members a majority of whom shall not be of the same political party—was carried over without change in effect. The prohibition of control by one party was extended to local boards of canvass-

³ On the first Tuesday after the first Monday—or on "such other date" as members of Congress are regularly elected.

⁴ Some present constitutional details on absentee voting were deleted.

ers. A candidate for an office to be canvassed remains ineligible to be a member of the state board. Such ineligibility was extended to local boards of canvassers. Inspectors of elections were newly made ineligible to membership on the state board or local boards.

Recall of Elective Officers

The recall provision remains unchanged with respect to the 25 per cent requirement for the recall petition— 25 per cent of the number voting in the preceding election for governor in the district affected. All elective officers, except judges of courts of record, remain subject to the recall procedure. The convention added a new sentence to this provision which makes determination of the sufficiency of a statement of reasons for recall a political rather than a judicial question—that is, not subject to judicial review.

Initiative and Referendum for Statutes

The provisions on the popular initiative by petition for laws and on popular referendum by petition for laws enacted by the legislature were shifted from the legislative article in the present constitution to the elections article in the proposed constitution. Much of the procedural and other detail was deleted, but the provisions remain self-executing.

The number of signers required for an initiatory petition remains eight per cent-and for a referendum petition five per cent—of the total number of votes for governor at the preceding general election. Use of the referendum with respect to appropriation acts continues to be prohibited. The provision on the referendum was altered to make it clear that the referendum may be invoked against an act given immediate effect which would then be suspended until approved or rejected by the voters.

An initiated measure remains immune from the governor's veto. An initiated law cannot be amended or repealed except by a vote of the electors unless otherwise provided in that law, or by a three-fourths vote of the members elected to and serving in each house of the legislature. Such amendment or repeal by the threefourths legislative vote is a new feature. The legislature continues to be permitted to amend any law approved by the people under the referendum procedure.