

HAWAII  
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CONVENTION STUDIES  
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Article II:  
Suffrage and Elections

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## Article II SUFFRAGE AND ELECTIONS

### QUALIFICATIONS

**Section 1.** Every citizen of the United States who shall have attained the age of eighteen years, have been a resident of this State not less than one year next preceding the election and be a voter registered in accordance with law, shall be qualified to vote in any state or local election. [Am Const Con 1968 and election Nov 5, 1968; am L 1971, S B No 41 and election Nov 7, 1972]

### DISQUALIFICATIONS

**Section 2.** No person who is non compos mentis shall be qualified to vote. No person convicted of a felony shall be qualified to vote except upon his final discharge or earlier as provided by law. [Am Const Con 1968 and election Nov 5, 1968]

### RESIDENCE

**Section 3.** No person shall be deemed to have gained or lost residence simply because of his presence or absence while employed in the service of the United States, or while engaged in navigation or while a student at any institution of learning.

### REGISTRATION, VOTING

**Section 4.** The legislature shall provide for the registration of voters and for absentee voting; and shall prescribe the method of voting at all elections. Secrecy of voting shall be preserved.

### GENERAL AND SPECIAL ELECTIONS

**Section 5.** General elections shall be held on the first Tuesday after the first Monday in November in all even-numbered years. Special elections may be held in accordance with law. [Am Const Con 1968 and election Nov 5, 1968]

### PRESIDENTIAL PREFERENCE PRIMARY

**Section 6.** A presidential preference primary may be held in accordance with law. [Add Const Con 1968 and election Nov 5, 1968]

### CONTESTED ELECTIONS

**Section 7.** Contested elections shall be determined by a court of competent jurisdiction in such manner as shall be provided by law. [Part of §5, ren Const Con 1968 and election Nov 5, 1968]

# Chapter 1

## AN INTRODUCTION TO SUFFRAGE AND ELECTIONS

### The Right of Suffrage and the Role of Elections

The right of suffrage (also called the right of franchise) is, simply stated, the right to vote. In a democratic society, a citizen's main check on government is through the voting process. The voting process is commonly termed an election. It is here that one may directly participate in the selection of those who exercise the power of government.

The U.S. Supreme Court, in Reynolds v. Sims, observed:<sup>1</sup>

The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.

Thus, suffrage and elections are central to the United States' system of representative government.

The electoral process serves at least 3 major purposes:<sup>2</sup>

- (1) It provides a vehicle for popular choice. Candidates, parties, and viewpoints supported by a plurality of the electorate are chosen. The degree of support for minority candidates, parties, and viewpoints is also made evident by election results.
- (2) It offers the public a chance to participate in politics. It serves an educational purpose for those who choose to be active, either as candidates for election or as concerned individuals. Through the news media, advertising, and campaigning, the general public is given the opportunity to become more aware and knowledgeable regarding issues of concern.
- (3) It legitimizes the state's authority. Obedience to state laws and acceptance of the exercise of the powers of the state should be facilitated by the knowledge that state officials have been fairly chosen by the people.

## SUFFRAGE AND ELECTIONS

State constitutions lay the basic framework for carrying out the electoral process. Major provisions deal with: (1) suffrage, the question of who may vote; and (2) elections, the process of voting. Two other important topics are: (1) nominating procedures, the extent to which such provisions should be included; and (2) initiative, referendum, and recall, 3 additional methods whereby the people may more actively participate in the democratic process.

Any discussion of state constitutional provisions must begin with an examination of the relevant sections of the U.S. Constitution. Next, a knowledge of major legislation and court action on a national level provides the essential background needed for the study of individual state constitutions.

### The U. S. Constitution

The U.S. Constitution does not positively confer suffrage on its citizens. The right of suffrage is provided by the states in state constitutions. However, the states are subject to limitations imposed by the U.S. Constitution.

Several amendments to the U.S. Constitution have expanded suffrage and guard voting interests. One authority states:<sup>3</sup>

But although technically there is no right to vote, the courts have repeatedly used the fourteenth and fifteenth amendments to protect voting interests. Three basic principles have been developed. First, once the state grants the privilege of voting to some persons, statutory exclusions of other individuals must be supported by a compelling state interest. In the absence of such an interest, the [Supreme] Court has invalidated durational residency requirements, property ownership requirements for certain elections, poll taxes, and a series of more minor exclusions. Second, actions taken under color of state law with the intent to dilute the votes of or disenfranchise a class of voters are unconstitutional. Third, the weight attached to an individual's vote cannot depend upon where he lives or whether he belongs to an identifiable minority; for this reason states have been prohibited from requiring a pattern of distribution of support in order to be elected to statewide office, and states and localities have been required, absent weighty countervailing interests, to apportion legislative bodies so that, to the extent practicable, each legislator represents an equal number of persons. [Citations omitted]

## INTRODUCTION

### Expansion of Suffrage

The number of people qualified to vote has grown steadily in the United States. This has been due to a combination of 3 factors: (1) amendments to the U.S. Constitution, (2) federal voting rights legislation, and (3) U.S. Supreme Court decisions.

### Amendments to the U. S. Constitution

Seven amendments to the U.S. Constitution have expanded suffrage.

The Fourteenth Amendment, ratified shortly after the Civil War, was adopted in order to secure citizenship rights. According to section 1:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Two years later, in 1870, the Fifteenth Amendment was adopted. It prohibited the abridgement of suffrage on the basis of race, color, or previous condition of servitude. This was the first clear expansion of suffrage under the Constitution.

The Seventeenth Amendment, ratified in 1913, provided for the popular election of United States senators. Formerly, members of the senate were selected by state legislatures.<sup>4</sup>

In 1920, the Nineteenth Amendment expanded suffrage by prohibiting discrimination in voting on account of sex. Popularly known as the "Women's Suffrage Rights" amendment, it insured that women will not be discriminated against on the basis of their sex in the determination of voting qualifications.

The Twenty-Third Amendment (1961) provided for presidential electors for the District of Columbia. Previously, the citizenry of the District of Columbia

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could not vote in national elections because the Constitution restricted that right to citizens who live in the states.

The ratification of the Twenty-Fourth Amendment in 1964 resulted in the abolishment of the use of poll taxes in federal elections only.

The Twenty-Sixth Amendment (1971) lowered the voting age to 18 years for federal, state, and local elections.

### **Federal Voting Rights Legislation**

The United States Congress is empowered to regulate the election of its members. This power is granted in Article I, section 4:

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of [chusing] Senators.

And, in Article I, section 8, clause 18, the Congress is further vested with the authority:

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

The U.S. Supreme Court, in Ex Parte Yarborough,<sup>5</sup> ruled that Congress can protect the act of voting, the place of voting, and the person who votes from personal violence or intimidation, and the election itself from corruption or fraud whether the prohibited acts are done privately or under state auspices.<sup>6</sup>

### **Voting Rights Act of 1965**

Prior to 1965, the Civil Rights Acts of 1957, 1960, and 1964 were used by persons in an attempt to gain suffrage on a case-by-case litigation approach.



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This proved to be ineffective for 2 reasons: (1) the uncompromising attitude of state and local officials, and (2) the repeated delays in the judicial process.<sup>7</sup>

This case-by-case approach was abandoned in the Voting Rights Act of 1965, which is hailed as "one of the most significant pieces of civil rights legislation ever enacted".<sup>8</sup>

The purpose of this Act was to enforce the Fourteenth and Fifteenth Amendments, and Article I, section 4, of the U.S. Constitution, as related to voting rights.

Its basic provisions included the following:

- (1) The suspension of the use of tests or devices in areas where it is believed they are being used to deny or abridge the right of suffrage on account of race or color;<sup>9</sup>
- (2) Review by the U.S. Attorney General or the U.S. district court for the District of Columbia of any changes in election practices in areas where voting rights are threatened, for a declaratory judgment that such a change will not deny or abridge the right to vote;<sup>10</sup>
- (3) The appointment of federal voting examiners to register qualified electors in areas where voting rights are threatened;<sup>11</sup>
- (4) The assignment of federal observers to enter a place of voting to assure that: (a) qualified electors are allowed to vote, and (b) votes are being properly tabulated;<sup>12</sup>
- (5) The declaration that the payment of poll taxes as a precondition to voting is violative of the right to vote. It also authorized the attorney general to institute actions for relief against such payment as a precondition to voting;<sup>13</sup> and
- (6) Provided criminal penalties for knowingly giving false information in registering or in voting.<sup>14</sup>

### Voting Rights Act Amendments of 1970

The 1970 amendments extended for an additional 5 years the provision calling for the suspension of literacy and other tests and devices.<sup>15</sup>

(a) Prior to August 6, 1975, no citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State....

The 1970 Act also declared that a durational residency requirement as a precondition to voting for President and Vice President of the United States was unconstitutional and should be abolished.<sup>16</sup>

In addition, Congress declared in the Act that it is unconstitutional to require that a citizen be 21 years of age as a precondition to voting in any election and that the voting age should be lowered to 18 in federal, state, and local elections.<sup>17</sup> The Supreme Court, in Oregon v. Mitchell,<sup>18</sup> ruled that Congress was empowered to lower the age qualification only in federal elections. The states were thus confronted with the possibility of maintaining dual registration books and holding separate elections (federal elections might have had to be held separate from state and local elections). Because of the time and cost involved in such election practices, the states were receptive to the ratification of the Twenty-Sixth Amendment (1971), which lowered the voting age to 18 for all elections.

### Voting Rights Act Amendments of 1975

A major purpose of the 1975 amendments was to make the temporary ban on tests and devices permanent throughout the United States for all elections.<sup>19</sup>

Another major provision mandated multilingual elections in certain jurisdictions.<sup>20</sup>

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(b) Prior to August 6, 1985, no State or political subdivision shall provide registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, only in the English language if the Director of the Census determines (i) that more than 5 percent of the citizens of voting age of such State or political subdivision are members of a single language minority and (ii) that the illiteracy rate of such persons as a group is higher than the national illiteracy rate: Provided, That the prohibitions of this subsection shall not apply in any political subdivision which has less than five percent voting age citizens of each language minority which comprises over five percent of the statewide population of voting age citizens. For purposes of this subsection, illiteracy means the failure to complete the fifth primary grade.

### Hawaii and the 1975 Voting Rights Act Amendments

In response to the above amendment on multilingual election requirements, the State of Hawaii in its 1976 elections provided bilingual assistance to the following language minorities: Japanese (Hawaii, Maui, and Kauai counties); Filipino (statewide, Hawaii, Maui, Kauai, and Honolulu counties), and Chinese (statewide, Honolulu county).

According to a Hawaii state department of health report, the illiteracy rates of the Japanese, Chinese, and Filipino ethnic groups have decreased enough since 1970 such that only the Filipino group still qualifies under the 1975 Voting Rights Act Amendments.<sup>21</sup> Under the "bailout" provision of the Voting Rights Act,<sup>22</sup> a suit has been filed to request that the State of Hawaii no longer be required to provide multilingual assistance in Japanese and Chinese.<sup>23</sup>

The Hawaii Revised Statutes provides for assistance to illiterate persons in the voting process:<sup>24</sup>

Any voter who, by reason of illiteracy or blindness or other physical disability, is unable to mark his ballot, shall, if he so requests, receive the assistance of two precinct officials who are not of the same political party, or of any qualified voter whom he may designate, in the marking thereof.

## United States Supreme Court Decisions

Court decisions based on constitutional amendments and on federal voting rights legislation held valid by the court have expanded the right to vote.

In Baker v. Carr,<sup>25</sup> the Court ruled that claims of malapportionment of a state legislature are justiciable (appropriate for judicial consideration) under the Fourteenth Amendment. The Court thus entered the "political thicket"<sup>26</sup> and opened itself to complaints founded on unequally populated voting districts. Previously, challenges to legislative redistricting were viewed as nonjusticiable.

In Carrington v. Rash,<sup>27</sup> a member of the armed services who had moved to Texas and planned to make a permanent home there, was denied suffrage under a Texas constitutional provision stating that persons in the service may only vote in the county in which they resided when first entering the service. The Court stated:<sup>28</sup>

We deal here with matters close to the core of our constitutional system. "The right...to choose, "...that this Court has been so zealous to protect, means, at the least, that States may not casually deprive a class of individuals of the vote because of some remote administrative benefit to the State. [Citations omitted]

In Harper v. Virginia Board of Elections,<sup>29</sup> the Court upheld the provisions of the Voting Rights Act of 1965 by ruling that poll tax payment is unrelated to intelligent voter participation, and that the requirement of such payment as a prerequisite to voting is a violation of the equal protection clause of the Fourteenth Amendment. This invalidated poll tax payments in all elections. (The Twenty-Fourth Amendment referred only to federal elections).

In Dunn v. Blumstein,<sup>30</sup> the Court ruled durational residency requirements for voting unconstitutional, because they discriminate against new residents and do not further a compelling state interest. Reasonable residency requirements to vote are permissible; however, unless the state can show a compelling state interest lengthy durational residency requirements impermissibly restrict the right to vote and the constitutional right to travel.

## INTRODUCTION

The right of suffrage has been extended to an increasing number of citizens through federal action. An examination of state constitutional provisions related to suffrage will reveal their role in determining who may vote.

## Chapter 2 SUFFRAGE

The previous chapter focused on voter qualifications on a national level, highlighting constitutional amendments, legislation, and judicial decisions. This chapter will discuss suffrage--qualifications and disqualifications for voting--on the state level.

All state constitutions include some basic qualifications and disqualifications for voting. The qualifications most commonly mentioned are: (1) United States citizenship, (2) a minimum age, and (3) a minimum period of residency. The disqualifications most commonly mentioned include: (1) conviction of certain crimes, and (2) unsound mind. Additional provisions are set by statute in some states.

In commenting on the significance of the right of suffrage, Justice Matthews in Yick Wo v. Hopkins, said:<sup>1</sup>

Though not regarded strictly as a natural right, but as a privilege merely conceded by society according to its will, under certain conditions, nevertheless it is regarded as a fundamental political right, because preservative of all rights.

The National Municipal League, in its Model State Constitution, states:<sup>2</sup>

The issue of citizen control of government permeates all questions of constitutional structure. A major goal should be to make citizen control more effective. A major tool of citizen control is the electoral process. The state constitution should protect firmly the essential political rights of the citizen, leaving to legislation, within a broad constitutional framework, responsibility for prescribing details of the electoral process.

\* \* \*

...the broadest possible participation in the electoral process is good...voter qualification requirements should be kept to a minimum. These requirements are based on such criteria as maturity, interest and awareness.

## United States Citizenship

All states require U.S. citizenship as a voting qualification in their constitutions.<sup>3</sup> Such a qualification results in the denial of the right of suffrage to aliens who are not naturalized. These provisions are not unconstitutional according to the U.S. Supreme Court in Sugarman v. Dougall:<sup>4</sup>

This Court has never held that aliens have a constitutional right to vote or to hold high public office under the Equal Protection Clause. Indeed, implicit in many of this Court's voting rights decisions is the notion that citizenship is a permissible criterion for limiting such rights.

Two states have a durational citizenship requirement. Minnesota requires a voter to be a U.S. citizen for at least 3 months; Pennsylvania requires one month.

The Model State Constitution also requires citizenship as a voting qualification.<sup>5</sup>

## Age

The voting age was lowered to 18 years in all states, for all elections, by the ratification in 1971 of the Twenty-Sixth Amendment to the U.S. Constitution. It states:

The right of citizens of the United States, who are 18 years of age or older, to vote shall not be denied or abridged by the United States or any state on account of age.

Although a number of states have not yet amended their voting age provisions for state election purposes, any age mentioned over 18 is superseded by this amendment.

The 1968 Constitutional Convention in Hawaii considered lowering the voting age to 18. After extensive debate in the committee of the whole, the proposal was passed.<sup>6</sup> When it was put to a vote by the people in the November 1968 election, however, it was the only one of 23 proposed constitutional amendments that was defeated.

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The Hawaii state legislature, regular session of 1971, passed a bill for an act calling for a constitutional amendment lowering the age qualification for voting from 20 to 18.<sup>7</sup> The electorate voted in favor of this amendment in the November 1972 general election.

The Model State Constitution requires a minimum age of 18 years.<sup>8</sup>

### Educational Qualifications

All literacy and other tests or devices were totally suspended by the Voting Rights Act Amendments of 1975 which reads in part:<sup>9</sup>

(a) No citizen shall be denied, because of his failure to comply with any test or device, the right to vote in any Federal, State, or local election conducted in any State or political subdivision of a State.

(b) As used in this section, the term "test or device" means any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

The U.S. Supreme Court, in Oregon v. Mitchell,<sup>10</sup> upheld the power of Congress to bar the use of literacy tests in federal, state, and local elections.

The standing committee on the bill of rights, suffrage and elections, of the 1968 Hawaii Constitutional Convention, considered the literacy provision. Hawaii's provision requiring literacy at that time read as follows:

No person shall be qualified to vote unless he is also able, except for physical disability, to speak, read and write the English or Hawaiian language.

The committee reported:<sup>11</sup>

Hawaii's centralized education system has resulted in an unusually literate citizenry and the provision does not appear to be a significant factor in the disenfranchisement of potential voters. There is no test or standard established to determine literacy, and the provision has seldom, if ever, been enforced.... It is also



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inconsistent with the spirit of the Federal Voting Rights Act of 1965.... For these reasons, the literacy requirement appears surplusage in fact and suspect in spirit of the law.

After a debate on the pros and cons of the literacy provision in the committee of the whole, the delegates voted for the deletion of the literacy requirement.<sup>12</sup>

The proposed constitutional amendment was presented to the electorate of the state in the November 1968 general election, and resulted in the deletion of the literacy provision in the state constitution.

### **Economic Qualifications**

Poll tax payments and property ownership requirements are no longer valid constitutional qualifications for voting in federal, state, or local elections.

The Twenty-Fourth Amendment to the U.S. Constitution invalidated the poll tax requirement in federal elections.

The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

The U.S. Supreme Court, in Harper v. Virginia Board of Elections,<sup>13</sup> voided the poll tax requirement in state elections.

We conclude that a State violates the Equal Protection Clause of the Fourteenth Amendment whenever it makes the affluence of the voter or payment of any fee an electoral standard. Voter qualifications have no relation to wealth nor to paying or not paying this or any other tax.

In Kramer v. Union Free School District,<sup>14</sup> the U.S. Supreme Court ruled that a New York law requiring that voters in a school district election must: (1) own (or lease) taxable real property within the district, or (2) be parents (or have custody of) children enrolled in local public schools; was in violation of the equal protection clause of the Fourteenth Amendment and therefore is invalid.

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In Cipriano v. City of Houma,<sup>15</sup> the U.S. Supreme Court ruled that a Louisiana law which gave only "property taxpayers" the right of suffrage in elections called to approve the issuance of revenue bonds by a municipal utility was in violation of the equal protection clause of the Fourteenth Amendment.

Economic qualifications for voting are not found in Hawaii's Constitution or the Model State Constitution.

### Residency

There are 4 basic reasons for the inclusion of residency requirements for voting in state constitutions. They: (1) seek to insure that the voter makes an informed decision about the candidates and issues; (2) provide an interest in the outcome of an election; (3) serve to prevent some of the abuses of the electoral process such as multiple voting and temporary settlement to influence the outcome of an election, and (4) facilitate the necessary record keeping in election administration.

Durational Residency Requirements. Durational residency requirements for voting have been declared unconstitutional by the U.S. Supreme Court. However, a reasonable length of time for registration may be imposed by the states--a period of perhaps 30 days.<sup>16</sup>

In Oregon v. Mitchell,<sup>17</sup> the U.S. Supreme Court declared valid the provision of the 1970 voting rights act relating to presidential and vice presidential elections. The provision abolished the durational residency requirement as a precondition to voting in such elections.<sup>18</sup>

In Dunn v. Blumstein,<sup>19</sup> the U.S. Supreme Court ruled that durational residency requirements for voting are not necessary to further a compelling state interest and are unconstitutional under the equal protection clause of the Fourteenth Amendment. The case specifically dealt with Tennessee's one-year state and 3-month county durational residency requirement for voting.

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Citing the Dunn v. Blumstein case, the State of Hawaii, department of the attorney general, deemed Hawaii's durational residency requirement as unconstitutional.<sup>20</sup>

...the provisions of the Hawaii Constitution and the Hawaii Revised Statutes...are, to the extent that they impose a one-year's residence requirement for voter qualification, unconstitutional. They may no longer be given effect. Bona fide residence in the State of Hawaii continues to be the basis of the right to vote, but no durational requirement may be imposed.

Twenty states and the District of Columbia have no minimum residence requirements before election; 30 states have minimum residence requirements for state and local elections ranging from 10 to 60 days.<sup>21</sup>

The 1968 Hawaii Constitutional Convention did not change the residency requirement for voting, although several proposals were offered to lower the state residency requirement from one year to 6 months. A convention report stated:<sup>22</sup>

Your Committee has found no compelling reason to change the one-year requirement which is of reasonable duration to insure that the voter makes an informed decision about the candidates and issues.

No debates in the committee of the whole ensued as a result of the report.

The Model State Constitution requires bona fide residence in the state to vote "in the election of all officers that may be elected by the people and upon all questions that may be submitted to the voters...."<sup>23</sup>

Gain or Loss of Residence. The constitutions of 12 states contain provisions stating that under certain conditions, state residence is neither gained nor lost for voting purposes.<sup>24</sup> The most commonly mentioned provisions are: (1) employment in the service of the United States; (2) engagement in navigation; (3) enrollment at an institution of learning; and (4) confinement in a poorhouse or other asylum at public expense.

Gain or loss of residence provisions combine 2 principles: (1) that those who are only temporarily within a state's borders should not gain residence

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merely by physical presence, and (2) that those who have left the state but intend to maintain their domicile in the state should not be required to meet residency qualifications each time that they return. Persons belonging to either one of the above categories are faced with obstacles in obtaining a new residence because of the assumption that they are at the place for a limited time and purpose and have not truly integrated into the life of the community, unless they can show they will stay in the community irrespective of their status as a member of one of the categories.

Four additional states--Hawaii, Indiana, New Mexico, and Wisconsin--have similar gain or loss of residence provisions; however, they are not necessarily limited to the purpose of voting. Hawaii's provision states:<sup>25</sup>

No person shall be deemed to have gained or lost residence simply because of his presence or absence while employed in the service of the United States, or while engaged in navigation or while a student at any institution of learning.

Article XIV of Hawaii's State Constitution, general and miscellaneous provisions, states:<sup>26</sup>

The provisions of this constitution shall be self-executing to the fullest extent that their respective natures permit.

Thus, the gain or loss of residence provision may be construed for purposes other than voting.

The 1968 Hawaii Constitutional Convention did not consider the gain or loss of residence provision; no proposals were received on the subject.

The 1950 Hawaii Constitutional Convention decided that the gain or loss of residence provision was "declaratory of the law as it now exists".<sup>27</sup> Their action resulted in the deletion of the term "voter" and substitution of the term "person" in the section.

In recent years, 6 states have repealed their gain or loss of residence provisions.<sup>28</sup> Four of these states now provide that the legislature (or general assembly) shall by law define residence for voting purposes.<sup>29</sup> This is in keeping with the Model State Constitution which provides that "[t]he legislature shall by law define bona fide residence for voting purposes...."<sup>30</sup>

## Conviction of Crime

The conviction of certain crimes as a disqualification for voting is mentioned in the constitutions of all 50 states.<sup>31</sup> The most commonly mentioned offenses include: (1) felonies--26 states, (2) election crimes--14 states, (3) treason--13 states, and (4) infamous crimes--12 states. In most states, constitutional provisions are supplemented by statutory law.<sup>32</sup> Such provisions are included because it is thought that convicted criminals, by their conduct, have demonstrated irresponsibility and opposition to basic social standards.

Typically, constitutional provisions may consist of one or both of the following: (1) naming of the crimes or conditions under which the right of suffrage is lost, and (2) provisions for reinstatement of the right of suffrage. The constitutions of 2 states--Connecticut and New Jersey--do not contain the specifics of either (1) or (2) mentioned above. Connecticut's provision states:<sup>33</sup>

The general assembly shall by law prescribe the offenses on conviction of which the privileges of an elector shall be forfeited and the conditions on which and methods by which such rights may be restored.

New Jersey's provision states:<sup>34</sup>

The Legislature may pass laws to deprive persons of the right of suffrage who shall be convicted of such crimes as it may designate. Any person so deprived, when pardoned or otherwise restored by law to the right of suffrage, shall again enjoy that right.

Connecticut and New Jersey appraise the specifics of disqualification from voting for conviction of crime as a statutory rather than a constitutional matter.

Similarly, the Model State Constitution provides that:<sup>35</sup>

...the legislature may by law establish disqualifications for voting for...conviction of felony.

Hawaii's constitutional provision states:<sup>36</sup>

No person convicted of a felony shall be qualified to vote except upon his final discharge or earlier as provided by law.

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It was amended by the 1968 Hawaii Constitutional Convention after debate in the committee of the whole. The former provision read as follows:

...no person convicted of felony, unless pardoned and restored to his civil rights, shall be qualified to vote.

It was argued that the provision was inflexible. The Uniform Act on the Status of Convicted Persons was mentioned by 2 delegates as worthy of consideration as a statutory supplement to our constitutional provision.<sup>37</sup> Our constitutional provision, however, needed to be amended to allow the legislature to consider adoption of the Act. The convention voted to amend the provision and the electorate ratified it in the November 1968 general election.

The Hawaii state legislature, regular session of 1969, passed the Uniform Act on the Status of Convicted Persons.<sup>38</sup> Two other states, Minnesota and New Hampshire, have also passed versions of that Act.<sup>39</sup> Generally, the Act allows persons convicted of crimes other than felonies, to retain all political, personal, and civil rights. A convicted felon may vote either upon parole or execution of sentence.<sup>40</sup>

Hawaii's provision states:<sup>41</sup>

(a) A person sentenced for a felony, from the time of his sentence until his final discharge, may not:

- (1) Vote in an election, but if execution of sentence is suspended with or without the defendant being placed on probation or he is paroled after commitment to imprisonment, he may vote during the period of the suspension or parole....

The U.S. Supreme Court, in Richardson v. Ramirez,<sup>42</sup> upheld California's constitutional and statutory provisions disenfranchising convicted felons who completed their sentences and paroles. The provisions were found to be not violative of the equal protection clause of the Fourteenth Amendment; and supported by section 2 of the Fourteenth Amendment, which sanctions abridgement of the right of suffrage "for participation in rebellion or other crime".

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The Court stated:<sup>43</sup>

...the exclusion of felons from the vote has an affirmative sanction in section 2 of the Fourteenth Amendment.... We hold that the understanding of those who adopted the Fourteenth Amendment, as reflected in the express language of section 2 and in the historical and judicial interpretation of the Amendment's applicability to state laws disenfranchising felons, is of controlling significance in distinguishing such laws from those other state limitations on the franchise which have been held invalid under the Equal Protection Clause by this Court.

### Unsound Mind

Unsound mind as a disqualification for voting is found in the constitutions of 40 states.<sup>44</sup> Such provisions consist of one or more of the following parts: (1) the mental conditions under which the right of suffrage is lost, (2) how mental incompetency is determined, and (3) when the right of suffrage may be restored. Similar provisions are found statutorily in some states.

The terms used to describe the mental conditions under which the right of suffrage is lost include: idiot, incompetent, insane, interdicted, in an institution for mental retardation, lunatic, mentally ill, mentally incompetent, mentally diseased, mentally deficient, mentally disabled, non compos mentis, under guardianship, unsound mind, and committed by judicial order. In commenting on the various mental conditions named by state constitutions, one study states:<sup>45</sup>

What terms such as "insane" or "lunatic" mean with reference to the right to vote is not clearly established by statutes or case law. Such descriptions are imprecise and without definition, thus providing virtually no guidelines for the administrators of the statutes whose actions become largely discretionary.

The question of the constitutionality of provisions denying persons of unsound mind the right of suffrage has not been brought to the U.S. Supreme Court.

Hawaii's Constitution states: "No person who is non compos mentis shall be qualified to vote."<sup>46</sup> The Hawaii Revised Statutes supplements this as follows:<sup>47</sup>

## SUFFRAGE AND ELECTIONS

Whenever the clerk receives from the department of health or any informing agency information of...adjudication of insanity or feeble-mindedness...or any other disqualification to vote, of any person registered to vote in his county, or who he has reason to believe may be registered to vote therein, he shall thereupon make such investigation as he may deem necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation he finds that the person is...non compos mentis...he shall remove the name of the person from the register.

The 1968 Hawaii Constitutional Convention did not change the provision. The committee report stated:<sup>48</sup>

No meritorious reason given for change of the term "non compos mentis" to read "mentally ill" as proposed, your Committee retained the term "non compos mentis" as words of art with established meaning.

The provision was not debated in the committee of the whole.

The Model State Constitution declares it a legislative matter:<sup>49</sup>

...the legislature may by law establish...disqualifications for voting for mental incompetency....

There has recently been a drive for voter registration for the mentally disabled in some states.<sup>50</sup> In the fall of 1974, the Suffolk Developmental Center of New York, with a population of 1,600 mentally retarded residents, held a voter registration drive. The drive included educational programs, campaigning, and an evening question-and-answer session attended by 6 candidates. It resulted in the registration of 250 out of the 400 residents who were not severely retarded. New York state has amended its law to provide that a person must be legally declared incompetent in order to be denied the right to vote.

In Montgomery County, Maryland, the Great Oaks Center has started a voter registration program for its mentally retarded population. Seventy-one of the 253 residents who met the age requirement registered to vote after being read a statement explaining their right to vote. Maryland's statutes allow mentally retarded persons to vote as long as they are at least 18 years of age and have not been found to be legally incompetent or under guardianship.



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According to the elections administration of the city and county of Honolulu, no person has, as yet, been denied the right to vote in their jurisdiction, on the basis of unsound mind.<sup>51</sup> A person must be legally adjudicated incompetent in Hawaii in order for their name to be struck from the register. The official registering persons for voting does not have the authority to judge a person's mental competency or incompetency. As part of their voter registration drive, the elections administration of the State of Hawaii, and the city and county of Honolulu, go to various institutions in the state to register voters; they also assist on election day by returning to the institutions to aid in the marking of absentee ballots.

Since the Hawaii provision in this area is limited to persons legally adjudged incompetent and not merely mentally retarded, it appears that the Hawaii provision is basically sound.

### **Legislative Power to Impose Qualifications and Disqualifications**

State legislatures have the unlimited power to enact laws relative to the right of suffrage, except as restricted by federal statute and by the federal and state constitutions.<sup>52</sup> In Hawaii this power is restrained by Article I, section 6, of the Hawaii Constitution which extends the guarantee of due process to every instance of disfranchisement. It states:

No citizen shall be disfranchised, or deprived of any of the rights or privileges secured to other citizens, unless by the law of the land.

Some authorities, however, believe that the right to vote is so fundamental that it is solely a constitutional matter. The Model State Constitution takes a different approach by specifying that the legislature may by law "...establish disqualifications for voting for mental incompetency or conviction of felony."<sup>53</sup>

## Chapter 3 ELECTIONS

The right of suffrage has been greatly extended in the twentieth century, as the 2 previous chapters have indicated. The right of suffrage, however, is only one of the 2 halves of the American voting system: the other half being the electoral (elections) process. The electoral process can be an effective instrument of citizen control of government only if: (1) citizens are assured of the right of suffrage, and (2) election systems facilitate and encourage eligible voters to exercise their right of suffrage.

Most state constitutions contain a few basic statements on the electoral process, and order the legislature to provide for the details of the conduct and administration of elections. The major statements applying to the electoral process are: (1) time of elections, (2) orderly succession to office, (3) the act of voting, (4) the ballot, (5) administration, (6) registration, (7) absentee voting, (8) purity of elections, and (9) contested elections.

### Time of Elections

A basic principle of government by the consent of the governed is that elections be held regularly. Twenty-five states constitutionally provide for annual or biennial general elections.<sup>1</sup> The Hawaii constitutional provision is typical of the 25 states:<sup>2</sup>

General elections shall be held on the first Tuesday after the first Monday in November in all even-numbered years.

Hawaii also provides in the same section that "Special elections may be held in accordance with law."<sup>3</sup>

Where the constitution does not specifically provide for general elections, the election date for certain officials may be stated in that section of the constitution creating the office. The Model State Constitution does this when it states under the legislative article:<sup>4</sup>

## ELECTIONS

Members of the legislature shall be elected at the regular election in each odd-numbered year.

And under the executive article:<sup>5</sup>

The governor shall be elected, at the regular election every other odd-numbered year....

The National Municipal League, in A Model Election System, claims that the frequency of elections in America may be placing too great a burden upon the voter. It states:<sup>6</sup>

The number of elections...may also directly affect voter participation. Somewhere in this country an election is taking place every month of every year. Worse, in many states an individual voter may be called on to go to the polls five or six times a year.... These constant demands on the voter's attention are almost sure to be attended by a diminution of his interest.

\* \* \*

In an attempt to insulate local government from the influences of national politics, many municipal elections have been scheduled in non-presidential years or at times other than November in a presidential year. The separation of local and national elections shortens the ballot required for each election and may help focus public attention on local issues, but these benefits are achieved at some cost. Separate local elections place an additional financial burden on local governments and, most importantly, voter turnout is reduced substantially.

In Hawaii, all national, state, and local public officials are elected at the regular general election held in even-numbered years. The constitution provides for the election of governor, lieutenant governor, and the members of the legislature.<sup>7</sup> The election calendar of other public officials is provided by statute.

### Orderly Succession to Office

State constitutions seek to insure orderly succession to office after elections by 3 major types of provisions.

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Majority Required. Many state constitutions provide that the candidate receiving the highest number of votes shall be declared elected. This eliminates special run-off elections or governmental crisis in the event that a candidate fails to obtain a simple majority of the votes. Arizona's provision is typical:<sup>8</sup>

In all elections held, by the people, in this State, the person, or persons, receiving the highest number of legal votes shall be declared elected.

Hawaii's State Constitution makes such provision for the offices of governor and lieutenant governor.<sup>9</sup>

Term Commencement. Some state constitutions specify the date at which the terms of public officials begin. Utah's provision is typical:<sup>10</sup>

The terms of all officers elected at any general election, shall commence on the first Monday in January next following the date of their election.

Hawaii's State Constitution similarly provides for the commencement date for the terms of governor, lieutenant governor, and the members of the legislature.<sup>11</sup>

Continuity of Office. Several states include provisions for the continuity of office: (1) in the event that a newly elected official is unable to take office at the specified date, or (2) in the event of absence or disability of an elected official. North Carolina's constitutional provision states:<sup>12</sup>

In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

Hawaii's State Constitution provides for the continuity of governorship in case of absence or disability of the governor and lieutenant governor.<sup>13</sup> It also provides that vacancies in the legislature are to be filled as prescribed by law, or lacking legislation, by gubernatorial appointment.<sup>14</sup>

The Hawaii Revised Statutes provides a chapter on gubernatorial transition, in order "to promote the orderly transfer of the executive power in connection with the expiration of the term of office of a governor and the inauguration of a new governor".<sup>15</sup>

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The Hawaii Revised Statutes also provides for the order of succession to the offices of governor and lieutenant governor,<sup>16</sup> while the orderly succession to office of the officials of Hawaii, Maui, Kauai, and Honolulu counties is provided by charter.<sup>17</sup>

The Model State Constitution refers to the orderly succession to office in those sections of the constitution creating the office. Under the legislative article, it provides for continuity of office:<sup>18</sup>

When a vacancy occurs in the legislature it shall be filled as provided by law.

Under the executive article, there are 2 provisions for succession to governorship. First, the article specifies the date of term commencement:<sup>19</sup>

The governor shall be elected...for a term of four years beginning on the first day of [December] [January] next following his election.

Second, the article provides for succession to governorship under various conditions in a detailed 5-part section.<sup>20</sup>

### **The Act of Voting**

Secrecy. The concept of secrecy in voting was not fully established in the United States until the late nineteenth and early twentieth centuries. From colonial times through the early years of the Republic, voting was oral. Later, each political party began to print and distribute their own ballots. The distinctive colors used by each party made it easy to determine how each elector voted.

The "Australian", or secret ballot, began to be adopted by the states in 1888, in order to assure that a person could vote without outside pressure. The Australian ballot system provides an official ballot which: (1) is printed at public expense, (2) is uniform in size, shape, and color, (3) contains the names of all eligible candidates, (4) is distributed only at polling places by designated officials, and (5) is marked in a private booth.

## SUFFRAGE AND ELECTIONS

Hawaii's State Constitution states: "Secrecy of voting shall be preserved."<sup>21</sup>

The issue of secrecy in voting was considered by the 1968 Hawaii Constitutional Convention during a regular day session.<sup>22</sup> It was proposed to amend the provision as follows:<sup>23</sup>

Secrecy of voting shall be preserved and no record or list of the party ballot selected by each voter shall be maintained.

The proposal was defeated when put to a vote by the delegates of the convention.

The Model State Constitution states: "The legislature shall by law...insure secrecy in voting...."<sup>24</sup>

### Arbitrary Arrests

Some state constitutions include provisions protecting voters from arbitrary arrests during the voting process. Neither the Model State Constitution nor the Hawaii State Constitution provides protection from arbitrary arrests. The Hawaii Revised Statutes, however, provides that:<sup>25</sup>

Every voter shall be privileged from arrest on election day while at his polling place and in going to and returning therefrom, except in case of breach of the peace then committed, or in case of treason or felony.

### The Ballot

The ballot is the medium on which people indicate their choices in an election. Issues about the ballot are centered around: (1) its form, (2) its length, and (3) the order in which the candidates' names appear.

Form. There are 2 major ballot forms used in the United States: the party column (Indiana) ballot, and the office block (Massachusetts) ballot.

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The party column ballot groups candidates in columns under a party label and provides a circle at the top of the list of candidates which, if marked, indicates that the voter wishes to support all candidates of that party. Some authorities state that this form of ballot encourages party voting and increases straight ticket voting.

The office block ballot groups candidates by the office they seek; no circle is provided for straight party voting. Supporters of this type of ballot contend that it encourages voting based on qualifications of individual candidates and requires the voter to be informed on issues of current importance.

The Hawaii Revised Statutes provides that candidates shall be placed on the ballot under the office they seek in alphabetical order.<sup>26</sup>

Length. The long ballot is typical of most American states. It is a product of the belief that public officeholders, as servants of the people, should hold their mandates directly from the populace and be elected rather than appointed. Hawaii is one of the few states whose only elected executive officials are the governor and the lieutenant governor.

The following factors, often found in long ballots, present difficulties to administrators and voters: (1) the large number of candidates, (2) the large number of offices, and (3) the large number of initiative and referendum questions that may be presented to the electorate in a single election. A recent study by the United States General Accounting Office states:<sup>27</sup>

In an Ohio Democratic primary election of May 1972, the ballot for delegates and alternates to the national convention contained 285 names. Because of the long ballot, the secretary of state directed that every jurisdiction use a paper ballot for these candidates. This ballot permitted the voter to cast a vote for a slate of delegates pledged to a presidential candidate by making a single X or to vote on each delegate individually. The option of individual voting was virtually ignored.... The voters in Ohio, when confronted with this ballot, chose to cast their ballots for slates committed to a presidential candidate. Even the most well known political leaders failed to draw a significant number of individual votes.

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Pros and Cons of the Long Ballot. The pros and cons of the long ballot may be summarized as follows:

Pro:

- (1) The long ballot blocks a concentration of power.
- (2) Extending opportunities to elect public officials stimulates civic education and participation.
- (3) The long ballot strengthens political parties.
- (4) The use of patronage is reduced by electing rather than appointing public officials.

Con:

- (1) Only offices which are important enough to attract and deserve public scrutiny should be elective.
- (2) Long ballots increase the difficulty of the voter in rendering an informed decision, increasing the chance of arbitrary, random voting.
- (3) Executive responsibility is weakened when the chief executive and lesser administrative officials are members of different parties.
- (4) The low visibility of most elected officials permits mediocre individuals to retain office.
- (5) The long ballots cause waiting in long lines on election day, discouraging citizens from the act of voting.

The National Municipal League, in A Model Election System, opposes the long ballot:<sup>28</sup>

It is fair to conclude that the simpler the ballot the better the voter's performance will be. As a corollary, the more significant the choices presented the more incentive the voter will have to participate. Most important, the voter may focus on the issues more easily when he can identify them clearly on a ballot limited to major offices.

Order of Names on the Ballot. The states utilize any one of 3 methods of positioning candidates' names on the ballot: (1) an alphabetical listing of names, (2) a lottery system which lists names according to a drawing, and (3) a rotation system which varies the name arrangement on the ballot. The Hawaii



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Revised Statutes provides that candidates' names be arranged on ballots in alphabetical order under the offices they seek.<sup>29</sup>

In Holtzman v. Power,<sup>30</sup> the New York Supreme Court held that candidates listed first on the ballot have an advantage over their opponents. The Court stated:<sup>31</sup>

It was found herein as a matter of fact that there is a distinct advantage to the candidate whose name appears first on a ballot. Aside from the factual determination, such a belief appears to be so widespread and so universally accepted as to make it almost a matter of public knowledge.

The United States Supreme Court has not yet ruled on the issue as to whether candidates whose names are listed first on the ballot are given an unfair advantage over their opponents.

### **Administration**

A Legislative Responsibility. State constitutions usually assign the responsibility of providing for election administration to the legislature. Constitutionally, the most detailed system for the administration of elections is found in Arkansas.<sup>32</sup>

The Model State Constitution provides:<sup>33</sup>

The legislature shall by law...provide for...the administration of elections....

The Hawaii State Constitution provides:<sup>34</sup>

The legislature shall provide for the registration of voters and for absentee voting; and shall prescribe the method of voting at all elections.

Uniform Procedures. Uniform procedures of election administration permit the development of equal suffrage throughout a state. In most states, however, each county and municipal government is given the responsibility of conducting

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elections. Without a central authority, the various jurisdictions "are often left to their own devices to interpret laws that may be vague or outdated. . . . This results in a set of ambiguous and contradictory provisions for local use."<sup>35</sup> For this reason, the National Municipal League's A Model Election Administration System recommends strong administrative leadership at the state level responsible for the development and implementation of uniform procedures of election administration. The league summarizes their model as follows:<sup>36</sup>

- (1) To exercise its responsibility for providing uniform registration and voting opportunities, a state should centralize authority over elections in an administrative office headed by a single officer of state government.
- (2) At a minimum, a state should finance voter registration, training for election workers, and state-mandated meetings of election personnel.
- (3) The state's chief electoral officer should have general authority to implement the law, establish rules for procedures and supervise the election system.
- (4) Each state should establish an election council to provide partisan balance in the administration of elections.
- (5) A single officer at the county level should be answerable to the chief electoral officer for the local administration of registration and voting.
- (6) A single official should be responsible for the conduct of elections within each precinct or voting district.

In recent years, a number of states have begun to shift the responsibility of election administration from the county to the state level. Since 1973, Florida, Georgia, Illinois, Indiana, Kansas, Rhode Island,<sup>37</sup> Tennessee, Virginia, and Wyoming<sup>38</sup> have acted to centralize state authority over the conduct of elections.

In Hawaii, the chief election officer is the lieutenant governor. The lieutenant governor is responsible for supervising all state elections and for delegating responsibilities in state elections within a county to the clerk or other specified official of that county.<sup>39</sup>

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Election Personnel. Most authorities agree that in light of recent federal legislation and judicial decisions, there is an obvious need for extensive training programs to develop competent and responsible election personnel. The Illinois state board of elections has recently developed a 10-week training course for its state coordinators of elections: 6 weeks of classroom work and 4 weeks of field work. Connecticut, Ohio, and South Carolina have also recently started extensive training programs for election officials.<sup>40</sup>

The Hawaii Revised Statutes provides that:<sup>41</sup>

All prospective precinct officials shall attend a school of instruction. The chairman of the precinct officials shall be required to also attend a refresher course before each election. It shall be at the discretion of the chief election officer or the county clerk in county elections to require those precinct officials with previous training to attend a school of instruction prior to each election.

According to the lieutenant governor's office which handles the elections administration of the state, all prospective precinct officials: (1) must view a training film which gives them a background of the role of precinct officials in Hawaii, (2) must participate in a workshop in which they become precinct officials in a simulated environment, and (3) are given 2 manuals which cover their duties and responsibilities as precinct officials.<sup>42</sup>

## Registration

History and Purpose. Voter registration systems arose as a result of: (1) large increases in population, particularly through immigration; (2) the density of population in urban places; and (3) the mobility of the population. Election officials could no longer recognize each voter at the polls. In order to prevent fraudulent voting, voter registration systems developed.

Registration Systems. There are 2 major types of registration systems: periodic and permanent.

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Periodic systems require all voter registration records to become invalid at stated intervals, thus requiring all voters to re-register. Texas constitutionally required annual registration for voting until 1971, when a 3-judge federal district court unanimously invalidated the constitutional and statutory provisions requiring annual registration as violative of the Equal Protection Clause of the Fourteenth Amendment.<sup>43</sup> Judge Singleton stated:<sup>44</sup>

It is beyond doubt that the present Texas voter registration procedures tend to disenfranchise multitudes of Texas citizens otherwise qualified to vote.

No state presently provides in its constitution for periodic registration of voters. Proponents of a periodic system maintain that such a system's records are more accurate and current than that of a permanent system, thus diminishing the chances for fraudulent voting. Opponents of a periodic system contend that: (1) it is too costly, (2) it is inconvenient for the public, and (3) it is an undue burden on registration officials.

Permanent systems require a voter to register only once; except for a change of residence or name, or failure to vote in a given number of elections. Six states--Alabama, Alaska, Arkansas, Louisiana, New York, and Rhode Island--constitutionally provide for permanent registration. Proponents of a permanent system maintain that: (1) it is convenient for the voter and thus encourages voting; and (2) it facilitates record keeping because voter registers need only be updated, entering newly eligible voters and deleting ineligible voters, instead of completely redoing the register. Opponents of a permanent system contend that: (1) the chances of fraudulent voting are increased because the list is not always up to date. Voters who have died, moved away, or otherwise lost their eligibility remain on the list for possibly several years; and (2) the high mobility rate of today's society makes such provisions useless.

Thirty-six states constitutionally authorize lawmakers to provide for the registration of voters.<sup>45</sup> This is done in a brief statement. Hawaii's provision is typical: "The legislature shall provide for the registration of voters...."<sup>46</sup> The Model State Constitution similarly provides: "The legislature shall by law...provide for the registration of voters....."<sup>47</sup>

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The Hawaii Constitutional Convention of 1968 received 2 proposals relating to registration and voting; however, it did not choose to amend the Constitution regarding this area.<sup>48</sup> Registration was not a subject of debate in the committee of the whole.

The National Municipal League, in A Model Election System, advocates government-initiated rather than personally initiated voter registration. The league outlines 8 major recommendations to implement their concept:<sup>49</sup>

- (1) All voting precincts in the state should be systematically canvassed every one or two years to register all eligible voters and to remove the names of voters who no longer reside at their registered address. The canvass should be conducted through door-to-door visitation.
- (2) Canvassers should be required to seek only information necessary to establish a citizen's voter qualifications and to identify him at the polls.
- (3) The duration of the annual canvass will depend on the techniques used. The area to be canvassed should be small enough to be covered by a canvasser twice within the period of one week.
- (4) Canvassers should be nominated by the political parties but should be selected by and responsible to the county administrator of elections. They should be required to attend a comprehensive training session prior to each canvass.
- (5) If a state requires party registration, voters may enroll in the party of their choice at the time of the canvass or in a supplementary mail procedure.
- (6) The statewide canvass should be followed by a short period for claims and objections during which errors in the list may be corrected and the names of voters overlooked during the canvass may be added.
- (7) Canvassers should be deputized to serve as registrars in their precincts throughout the year.
- (8) Voters who are not registered during the statewide canvass and are unable to register in person at other times should be able to register by mail throughout the year.

Voter Registration by Mail. Mail voter registration laws have been passed in 14 states and the District of Columbia.<sup>50</sup> The mail registration systems in

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those states have 2 common characteristics: (1) they supplement rather than replace in-person voter registration, and (2) they are administered by local officials with a state agency overseeing the local actions.

Mail voter registration is a fairly new concept, with all but 3 of the 14 states passing mail registration laws since 1974. As of January 1976, 41 per cent of the voting-age population of the nation were able to register to vote by mail.<sup>51</sup>

Data on the effectiveness of mail registration systems are as yet initial and incomplete. The results of a study on the Maryland and New Jersey systems state:<sup>52</sup>

Mail registration provides an added convenience to persons who wish to register and vote. By itself, it does not necessarily increase voter registration.

\* \* \*

The relationship between mail registration and party identification is inconclusive.

\* \* \*

Anticipated administrative problems arising from duplicate registrations, illegible handwriting, and difficulty in locating certain types of addresses...have proven to be minor and manageable in Maryland and New Jersey.

\* \* \*

There is a potential for vote fraud under the mail-registration system. The safeguards written into the law are stronger than those actually implemented in practice.

\* \* \*

Maryland and New Jersey officials in general support the concept of voter registration by mail. Few, however, favor federal legislation on mail registration.

\* \* \*

Mail registration, if adopted by the states, poses no problem of dual voter-registration systems.

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Closing of Registration. In 2 United States Supreme Court decisions, the closing of registration 50 days before elections was upheld in per curiam decisions.

In Marston v. Lewis,<sup>53</sup> Arizona's 50-day durational voter residency and registration requirements were held constitutionally permissible, excluding presidential elections. The Court stated:<sup>54</sup>

...a person does not have a federal constitutional right to walk up to a voting place on election day and demand a ballot. States have valid and sufficient interests in providing some period of time--prior to an election--in order to prepare adequate voter records and protect its electoral processes from possible frauds...the Arizona requirement is tied to the closing of the State's registration process at 50 days prior to elections and reflects a state legislative judgment that the period is necessary to achieve the State's legitimate goals.

On the same day, in Burns v. Fortson,<sup>55</sup> Georgia's closure of voter registration 50 days before the November general elections (except for presidential elections) was found permissible as it promoted the important interest of accurate voter lists. Justice Blackmun, concurring in the decision stated: "I feel that each case in this area should be decided on its own record unrestricted by an arbitrary number-of-days figure."<sup>56</sup>

In Hawaii, registration is closed:<sup>57</sup>

At 4:30 p.m. on the thirtieth day prior to each primary, special primary or special election (but if such day is a Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter),...

\* \* \*

Notwithstanding the closing of the register for registration to vote at the primary or special primary election, the register shall remain open for the registration of persons seeking to vote at the general or special general election, until 4:30 p.m. on the thirtieth day prior to the general or special general election (but if such day is on Saturday, Sunday, or holiday then at 4:30 p.m. on the first working day immediately thereafter),...

## Absentee Voting

Congress has passed 3 major acts to extend absentee voting rights to citizens of the United States.

The Federal Voting Assistance Act of 1955, amended in 1968 as the Federal Absentee Voting Assistance Act, recommends state enactment of absentee voting legislation which would allow:

- (1) Members of the Armed Forces while in the active service, and their spouses and dependents;
- (2) Members of the merchant marine of the United States, and their spouses and dependents;
- (3) Citizens of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia, and their spouses and dependents when residing with or accompanying them

to vote by absentee ballot while absent from their place of voting residence.<sup>58</sup>

The Voting Rights Act Amendments of 1970 established national standards for absentee voting and registration in presidential elections, to ensure that all qualified voters, no matter where they might be within the United States on election day, would have the opportunity to vote for President and Vice President.<sup>59</sup> The absentee balloting provision of the 1974 Amendments was found to be valid by the United States Supreme Court in Oregon v. Mitchell.<sup>60</sup>

The Overseas Citizens Voting Rights Act of 1975 allows all qualified U.S. citizens residing outside the United States (who are otherwise qualified to vote) the right to vote by absentee ballot in federal elections.<sup>61</sup>

Most authorities agree that in view of the high mobility of American society, absentee voting privileges should be extended to all qualified electors who are unable to vote in person, because they are absent from the community or otherwise unable to go to the polls.



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The constitutions of 23 states, including Hawaii, provide for absentee voting.<sup>62</sup> All 50 states and the District of Columbia statutorily define groups of voters eligible for absentee ballots.<sup>63</sup>

The Model State Constitution provides:<sup>64</sup>

The legislature shall by law...provide for...absentee voting.....

The Hawaii Revised Statutes enumerates the conditions under which specific groups of people may vote by absentee ballot. The provision, however, may be considered a general one, because it adds:<sup>65</sup>

Any other voter unable to appear at his polling place on election day for causes determined by the chief election officer by rule to be good and sufficient shall be entitled to vote as provided by this chapter and the rules promulgated thereunder.

The National Municipal League's A Model Election System does not present a complete system of absentee voting; however, it does recommend the following guidelines:<sup>66</sup>

- (1) Absentee voting provisions should apply to both primary and general elections.
- (2) Absentee voting should be available to any qualified voter who expects to be away from his county or city on election day or who is ill or physically disabled.
- (3) There should be no requirement for notarization of the absentee ballot application or the absentee ballot.
- (4) No special application form should be required to obtain an absentee ballot.
- (5) Applications for absentee ballots should be accepted up to 7 days before an election and absentee ballots should be counted if received by the time the polls close.
- (6) To preserve the secrecy of the ballot and to prevent fraud, absentee ballots should be returned to and counted at the central election office which issued them rather than distributed to each precinct.
- (7) Every state should adopt all recommendations made in the Federal Voting Assistance Act of 1955 as amended.

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- (8) American citizens who reside outside the territorial limits of the United States and are otherwise qualified to vote should be able to register and vote at least in federal elections where they last resided in the United States.

The last point listed was achieved by enactment of the Overseas Citizens Voting Rights Act of 1975.<sup>67</sup>

### Purity of Elections

The integrity of the electoral process must be protected to retain public confidence in election results and to permit candidates and their supporters to accept defeat. Thirty-four states constitutionally safeguard the purity of elections.<sup>68</sup>

According to one source, there are 2 major purposes of constitutional and statutory provisions to preserve the purity of elections: (1) to guard against voting abuses (such as bribery) on the part of candidates or other persons in attempting to secure votes; and (2) to place a poorer candidate upon a more equitable level with an affluent opponent regarding campaign expenditures.<sup>69</sup>

All 50 states statutorily prohibit fraudulent registration and fraudulent voting.<sup>70</sup> Additionally, all 50 states statutorily regulate campaign contributions and expenditures in certain elections.<sup>71</sup> Neither the Model State Constitution nor the Hawaii State Constitution include a specific or general provision requiring the legislature to preserve the purity of elections.

Congress passed the Federal Election Campaign Act of 1971 (amended in 1974) to regulate the conduct of federal election campaigns. It required public disclosure of campaign funds used by a candidate seeking election to a federal office. It also provided overall limitations on campaign expenditures and political contributions, extensive reporting and record keeping requirements for candidates and political committees, and established the Federal Election Commission.<sup>72</sup>

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The United States Supreme Court, in Buckley v. Valeo,<sup>73</sup> upheld the contribution limitations and disclosure and record keeping requirements of the Act; but held that certain expenditure limitations were violative of the First Amendment of the U.S. Constitution, and that the appointment procedures of the Federal Election Commission were unconstitutional.

In 1976 the Act was again amended to comply with the Buckley v. Valeo decision.<sup>74</sup>

### Contested Elections

Provision for the efficient and prompt resolution of contested elections is an important safeguard of the purity of elections and the continuity of government. Only 8 state constitutions, including Hawaii's, contain a provision for the resolution of all contested elections.<sup>75</sup> Where the constitution is silent, the legislature is assumed to have the power to provide a method for resolving contested elections under its broad power to control and regulate elections. The Model State Constitution does not specifically provide for contested elections. Hawaii's provision states:<sup>76</sup>

Contested elections shall be determined by a court of competent jurisdiction in such manner as shall be provided by law.

Hawaii has provided that election contests will be determined by the Hawaii Supreme Court.<sup>77</sup>

The pros and cons of court versus legislature determination of contested elections is summarized by one source as follows:<sup>78</sup>

Each sovereign state has the power, subject to the limitations of the federal constitution, to control and regulate all phases of elections, including election contests, held within its boundaries. Although this power rests in the legislative branch of the state government, the legislature has usually empowered the state judiciary to hear election contests. By delegating this jurisdiction to the judiciary, the legislature has sacrificed expediency and expertise for the procedural safeguards and judicial aura of a court proceeding. Although, alternatively, a special legislative agency could conduct election contests, the decision to

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delegate them to the courts appears sound, for a contest easily lends itself to the judicial forum: The courts not only are adapted to the functions of statutory construction and the following of precedent, but they also maintain instruments of process that might be required. In the absence of any authority for the courts to hear a contest, moreover, the losing candidate's judicial remedy would be limited to a writ of quo warranto, an inadequate substitute at best.

Article I, section 5, of the United States Constitution provides that "[e]ach House shall be the judge of the elections, returns, and qualifications of its own Members...." Pursuant to this provision, Congress in 1969 passed the Federal Contested Election Act, to provide an efficient and expedient means of resolving contested elections in the House of Representatives.<sup>79</sup> Traditionally, the U.S. Senate considers each contested election directly, without any governing statute.

## Chapter 4

### NOMINATING PROCEDURES: THE DETERMINATION OF CANDIDATES

The nominating process determines which persons shall be placed on the ballot for election. It is thus a critical phase of the electoral process, because it limits the range of choice open to voters in their selection of elected officials.

The nominating process is generally considered a legislative matter. Only 11 states have constitutional provisions referring to primary elections or the nominating process.<sup>1</sup> Hawaii's Constitution does not provide for primary elections.

The Model State Constitution, however, provides that, "The legislature shall by law...provide for...the nomination of candidates."<sup>2</sup> The provision is explained as follows:<sup>3</sup>

The requirement that the legislature provide for the process by which candidates are nominated places an important phase of the total election system under the same constitutional regulation as the actual election procedure.

#### Methods of Nomination

There are 2 basic methods of nomination: (1) the convention system, and (2) the direct primary system.

The Convention System. One authority defines a convention as "an assembly of delegates chosen by a political party, or by the party organization in a larger or smaller territory to nominate candidates for an approaching election".<sup>4</sup> By 1840, the convention system was firmly established as the major nominating procedure in the states. It has since been replaced by the direct primary system as the major nominating procedure.

State nominating conventions fall into 2 classifications: (1) the post-primary convention, and (2) the pre-primary convention.

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A post-primary convention is held in case no candidate obtains a certain percentage of votes cast. In Iowa and South Dakota, if no candidate obtains 35 per cent of the votes cast at the primary, a convention is held to determine the party's nominee.<sup>5</sup>

A pre-primary convention is held: (1) to nominate candidates, and (2) to endorse candidates. Fourteen states statutorily provide for the nomination of candidates by convention.<sup>6</sup> All 14 states also provide the option of nominating candidates by direct primary.<sup>7</sup>

The convention system is not the sole method of nominating candidates in any one of the 50 states. The decline in popularity of the convention system is explained by one authority as follows:<sup>8</sup>

Although conditions differ from state to state, the parties did establish a complete scheme of organization based on the theory that all party members would participate. With the passage of time those functions expected of the party members were more and more exercised by a small group of professionals. Progressive wings in both parties began denouncing the system at first because they could not control it. Charges of fraud and corruption were soon heard from other sources and the convention appeared to be losing its status as an effective nominating instrument.

\* \* \*

Continuing allegations of fraud and corruption, according to political historians, so discredited the convention system, that, without giving legal regulation a fair trial, abolition rather than amendment was demanded. With popular sentiment favoring greater citizen participation in the nominating process, the direct primary became the successor to the convention as the nominating vehicle.

The Direct Primary System. Direct primary systems were developed to replace convention systems--to return the nominating process to the people. In large measure, they transferred control of the nomination machinery from the party to the state, all parties choosing candidates on the same day under the supervision of public election officials, with secret, standardized ballots printed at public expense.

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Candidates for nomination usually qualify for a place on the primary ballot by securing a required number of signatures of qualified voters on a petition. There are 4 major types of direct primaries: (1) the closed primary, (2) the open primary, (3) the run-off primary, and (4) the nonpartisan primary.

Closed Primary. In a closed primary election, only those voters who have registered as members of a given party, or who declare their party affiliation when casting their ballots, are entitled to receive that party's ballot. Thirty-nine states (including Hawaii) and the District of Columbia provide the closed primary for state officers.<sup>9</sup>

The Hawaii Revised Statutes provides in part:<sup>10</sup>

In any primary or special primary election in the year 1970 and thereafter, no person shall be entitled to select a primary or special primary ballot of a type other than that which he had selected at the next preceding primary or special primary election in which he voted, unless, not later than 4:30 p.m. on the ninetieth day preceding the primary or special election (but if such day is a Saturday, Sunday, or holiday then not later than 4:30 p.m. on the first working day immediately preceding) in which such ballot is to be selected, he has registered with the county clerk to change his party to another party or to a nonpartisan designation.

The department of the attorney general, State of Hawaii, has determined that the provisions of the Hawaii Revised Statutes relating to the closed primary are valid.<sup>11</sup>

Proponents of the closed primary maintain that party candidates should be selected only by those who subscribe to the basic philosophy of the party, and that the party must be responsible for the candidates chosen. They also maintain that the possibility of raids by members of the opposing party to bring about the nomination of weaker candidates is eliminated.

Opponents of the closed primary contend that it discourages and sometimes denies participation in the nominating process on the part of unaffiliated voters. In addition, the voter is required to make party preference a matter of public record, thus undermining the secrecy of the ballot.

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Open Primary. In an open primary election, voters receive the ballots of all participating parties. Eleven states provide the open primary for state officers.<sup>12</sup> In 8 states, voters are restricted to voting for the candidates of only one party but receive the ballots for all parties; in 3 states, voters may choose among candidates from all parties. This latter method of voting is sometimes called a blanket primary.<sup>13</sup>

Proponents of the open primary maintain that it permits voters who are not members of the 2 major political parties to participate in the nomination of candidates, and it guarantees secrecy of the ballot. In addition, it stimulates more discriminate and independent voting since the voter is not bound by party affiliation.

Opponents of the open primary contend that it allows the possibility of cross-over voting by members of the opposing parties and by nonparty affiliated voters which may bring about the nomination of weaker candidates.

Run-Off Primary. A run-off primary is held in some states when a candidate fails to receive a majority in the first primary. This second primary is used to insure that candidates are nominated on a majority basis.

Nonpartisan Primary. In nonpartisan primaries, candidates as well as electors need not be affiliated with a party. Generally, the candidates receiving the highest number of votes are nominated. This type of primary is used principally for judicial, school, and county offices.

In Hawaii, members of the state board of education are elected in a nonpartisan primary.<sup>14</sup>

The school board ballot shall contain the names of all board candidates arranged alphabetically and grouped by party and nonpartisanship.... Each voter shall only vote for the candidates of one party or nonpartisan.

The 1968 Constitutional Convention of Hawaii received 2 proposals relating to primary elections. A committee report stated:<sup>15</sup>



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The preservation of secrecy of political party affiliation was raised but was believed to be inconsistent with the two-party system. The matter of open primaries and the inclusion of specific dates for primary elections were also discussed but your Committee finds that such matters are better left for legislative determination.

A proposal to amend Article II, section 4, of Hawaii's Constitution to read "Secrecy of voting and political party affiliation shall be preserved" was defeated after debate in the committee of the whole.<sup>16</sup>

### Presidential Primaries

A presidential primary is a method whereby the electorate may directly vote to choose delegates to national conventions. Only a few states, including Hawaii, constitutionally provide for presidential primaries. One of the most explicit provisions is found in Ohio's Constitution:<sup>17</sup>

All delegates from this state to the national conventions of political parties shall be chosen by direct vote of the electors. Each candidate for such delegate shall state his first and second choices for the presidency, which preferences shall be printed upon the primary ballot below the name of such candidate, but the name of no candidate for the presidency shall be so used without his written authority.

Most states statutorily provide for presidential primaries. There are 5 major types of presidential primary laws. They provide for:<sup>18</sup>

- (1) Direct election of delegates but without provisions for a preference vote for the presidential candidates and pledging of delegates; or
- (2) Preference vote, with selection of delegates by a convention; or
- (3) Preference vote and direct election of delegates with:
  - (A) No statement on ballot of delegates preference;
  - (B) No statement but a promise to abide by the outcome of the preference vote; and

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- (C) Statement of preference on ballot by delegate; or
- (4) Preference vote for president, with delegates to be chosen by candidate; or
- (5) The listing of delegates' preferences, without a preference vote.

The Legislative Reference Service of the Library of Congress has defined the limits of Congress' power to legislate a presidential primary law.<sup>19</sup>

It can be argued with some plausibility that if the power of Congress to regulate "elections" encompasses primaries, and if Congress has power to preserve the purity and integrity of presidential elections, then Congress may establish a national Presidential primary.

It may be observed that if Congress has a general power of criminal legislation to assure the purity of the election of presidential electors, even though it may be only as against extra-State influences, it may result that it has the same general power over the nominations by primaries: if it has this general power over primaries, it may be difficult to prevent the general course of centralization favored by the present Supreme Court from going to the length of national primary laws, which, in the States, were based on this same power of preventing fraud, corruption, and other undue influences.

But until the Supreme Court has spoken on the point, it must be conceded that under the Constitution as now constituted, and in light of the older cases on the restricted power of Congress, the authority of Congress to establish national presidential primaries is at best only arguable. This accounts for the fact that most of the legislative proposals dealing with the matter have been in the form of amendments to the Constitution.

The United States Supreme Court has not ruled on the power of Congress to establish a national presidential primary.

The 1968 Constitutional Convention debated the issue of adding a presidential primary amendment to the state constitution. Proponents of such an amendment maintained that: (1) adoption of a presidential preference primary provision would allow greater involvement and participation of the electorate in presidential elections, and (2) the cost of a special election is small considering the importance of a presidential election. Opponents of such an

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amendment contended that: (1) primary elections are a legislative rather than a constitutional matter, (2) it would be too costly to hold a special election, considering its history of low voter turnout.<sup>20</sup>

The delegates voted in favor of the amendment, and the electorate ratified the proposal in the November 1968 general election. It states: "A presidential preference primary may be held in accordance with law."<sup>21</sup> No law has been passed to implement this provision.

## Chapter 5

### INITIATIVE, REFERENDUM, AND RECALL

Initiative, referendum, and recall comprise 3 methods whereby the people may more actively participate in the democratic process. Initiative and referendum are sometimes called "direct legislation", because they involve the people in the direct exercise of legislative powers. In recall, the people may remove an elected or appointed official from office through a special election called by petition.

#### **Historical Background**

The concept of direct legislation may be traced back to the plebiscitum of the ancient Roman Republic. Here, the "enfranchised commoners" could vote on the enactment or repeal of the senate laws.<sup>1</sup>

This process developed further in Switzerland, where the referendum has been deemed compulsory for any amendments or changes to the Swiss Constitution since 1848.<sup>2</sup>

Subsequently, during the progressive reform movement of the early twentieth century in the United States, initiative, referendum, and recall were advocated as immediate checks on established political institutions.<sup>3</sup> By 1910, 9 states had adopted initiative and referendum provisions in their constitutions.<sup>4</sup>

The movement to adopt the initiative, referendum, and recall had waned by 1917. However, no state has rescinded their adoption of these provisions. There are no provisions found in the U.S. Constitution relating to initiative, referendum, or recall--these methods are mainly used at the state and local government levels in the United States.

## THE INITIATIVE

### Definitions

Initiative is the process through which the electorate, by petition, may propose legislation or constitutional amendments and enact the same by direct vote of a majority of the people. This is done independently of the legislature, and thus is a direct, rather than representative, form of democracy. There are 2 types of initiative: direct and indirect.

In direct initiative, a petition concerning a certain measure is circulated for signature. After the required number of signatures is obtained, the proposal is placed on the ballot for a vote at the next election. Upon ratification, the measure becomes law.

On the other hand, the indirect initiative requires the completed petition to be submitted to the legislature for consideration. The legislature must, within a specified period of time, enact the proposed measure or a substantially similar measure. If not acted upon, the proposal is automatically placed on the ballot for a vote by the electorate.

### State Utilization

At present, 21 states have initiative provisions for state legislation.<sup>5</sup> Of these, 13 provide the direct initiative, 5 provide the indirect initiative, and 3 provide both the direct and indirect initiative. In all states, the initiative has been established by constitutional amendment.

Concurrently, 17 states have initiative provisions for state constitutional amendment.<sup>6</sup> These provisions are found in the constitutions of each state.

The Hawaii, Maui, Kauai, and Honolulu county charters provide for initiative. The initiative provisions have seldom been used in these counties.

## General Features of Initiative Systems

As a whole, constitutional provisions relating to initiative are lengthy and detailed. There are 2 important reasons for the detail.<sup>7</sup>

- (1) The extent to which the provision can be implemented without enabling legislation affects the extent to which the legislature can adversely or favorably affect the ability of the people to utilize the provision.
- (2) The procedural requirements determine the real availability of the initiative. If requirements are rigid, initiated legislation is more theoretical than real. If requirements are loose, almost any motivated group can get its proposition on the ballot.

These points are frequently specified in constitutional provisions:

- (1) Number and Geographical Distribution of Signatures. Eight per cent of the votes cast in the last general election is the most common number quoted.<sup>8</sup> The number varies from 3 to 15 per cent.
- (2) Filing the Petition. Eleven of the 21 states require the petition to be filed with the secretary of state. The most common deadline for filing is not less than 4 months prior to the election.
- (3) Petition Review. Only California and Massachusetts require prior review of initiative provisions. Reasons for such a review include the assurance of correct draftsmanship, avoidance of later litigation, and prevention of illegal petitions reaching the ballot.<sup>9</sup>
- (4) Circulation Requirements. Details mentioned in several state constitutions include the form of the petition, who may sign and circulate it, and the prohibition of circulating petitions for pay.
- (5) Common Limitations on Subject Matter. These include:
  - (A) No enactment of measures outside of legislative jurisdiction;

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- (B) No special or local legislation;
  - (C) No appropriations of state moneys;
  - (D) No enactment of measures related to judicial functions;
  - (E) Restrictions on the frequency of resubmitting defeated measures;
  - (F) One subject per proposal with title-subject agreement;
  - (G) Legislature prohibited from amendment or repeal of an initiated measure except by referendum.
- (6) Publicity. To increase public awareness concerning the proposed measures, several states require summaries and arguments, pro and con, to be distributed to all registered voters at public expense.
- (7) Majority Required to Approve Measure. Usually requires a simple majority of the electorate voting on the measure. However, some states require the majority to equal a given percentage of those voting in the election. When a large number of people vote in the election but do not vote on the initiative question, this can be a significant restriction to the initiative process.

## THE REFERENDUM

### Definitions

The referendum is a process through which the electorate may approve or reject at the polls an act or constitutional amendment passed by the legislature. Although it is not used at the federal level for nationwide voting, it is used by every state for approving or rejecting state constitutional amendments.<sup>10</sup> There are 3 types of referendum: petition, optional, and constitutional requirement.

Under the petition referendum (sometimes called direct referendum), laws passed by the legislature (except emergency ones) will not go into effect for a

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specified period of time. A petition is circulated for signature during this time to decide whether or not a referendum will be held concerning the matter. If the required number of signatures is obtained, the law will be kept dormant until the referendum takes place.

The optional referendum (sometimes called indirect referendum) allows the electorate to approve or reject legislation voluntarily submitted to them by the legislature or the governor.

A third type of referendum is by constitutional requirement. A state constitution may require that certain questions be submitted to the people for consideration. Article XV (Revision and Amendment) of Hawaii's State Constitution provides in section 2:

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

Section 2 further states that the constitutional convention shall submit to the electorate for approval proposed constitutional revisions or amendments. Section 3 of the same article states that the legislature shall submit to the electorate any proposed amendments at the next general election after proposal.

### State Utilization

At present, 22 states constitutionally provide for petition referendum.<sup>11</sup> Twelve states provide only for optional referendum, constitutional requirement, or both. Thus, a total of 34 states provide some form of referendum on a state-wide basis.

On a local level, the Hawaii and Maui county charters provide for referendum. In the November 1976 election, the voters on Kauai amended the county charter to provide for referendum. Maui county has not utilized its



referendum provision. In the 1974 general election, one referendum item was on the Hawaii county ballot. The measure, calling for fluoridation of the public water supply, was defeated.

### **General Features of Referendum Systems**

With some differences, the general features of initiative systems are also found with respect to petition referendum systems. The differences include:

- (1) A smaller number of voter signatures is required on a petition referendum. Generally 5 per cent of the votes cast in the last general election for governor is required as opposed to 8 per cent in initiative provisions.
- (2) Emergency measures deemed "necessary for the immediate preservation of the public peace, health or safety" are excluded from repeal by the petition referendum.
- (3) Filing the petition--most states require petitions to be filed within 90 days after adjournment of the legislature which passed the act.

Referendum is rarely used in states with such provisions.<sup>12</sup> For example, New Mexico has never had a referendum qualify for the ballot, although its constitution has provided for referendum since 1911. There are at least 2 basic reasons for the disuse of referendum:

- (1) The difficulty in obtaining the required number of signatures within the short span of time given before the act in question becomes effective.
- (2) The reluctance of legislators to pass any bill strongly opposed by a large number of the state's population.

### **Pro and Con Arguments**

The following is a summary of arguments for and against the initiative and referendum:

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### Pro

- (1) The initiative and referendum help to guarantee that the will of the people and popular control shall be safeguarded.
- (2) The campaign itself will educate voters on issues of the day and stimulate public interest, thus being an educational and democratizing influence upon the electorate.
- (3) The provisions aid legislators by guiding them along the course of public opinion. If there is sufficient interest to put an issue on the ballot, legislators, as representatives of the people, must give consideration to the issue.
- (4) Legislative stalemate and the insensitivity of a malapportioned legislature may be circumvented by the use of the initiative and referendum.
- (5) Opponents argue that the side spending the most money in the campaign usually wins. However, this is also true of elections in general. They are still part of the democratic process and should not be abolished for such a reason.
- (6) Initiative and referendum measures on the ballot do not tire or confuse the voter; in fact, there is great voter response although such measures are usually found at the bottom of the ballot.

### Con

- (1) The initiative and referendum tend to lessen the legislature's sense of responsibility and make it hesitant to act, thus weakening the legislature.
- (2) The initiative and referendum may be taken over by special interest groups.
  - (A) Since large amounts of money and manpower are required to launch and carry through a campaign, it works mainly for large and moneyed organizations--not the common man. It may be added that a minority legislates for the majority.
  - (B) It is a waste of public funds to hold an election that holds interest for only such special interest groups.
- (3) The voter may be confused and burdened by the numerous and technical questions often asked.
- (4) The initiative and referendum do not afford the positive factors of legislative debate: clearing the issues, exchanging ideas, and compromising.

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- (5) The frequency of elections guarantee that the popular control shall be sustained through the election of legislators. The people have a right to vote for those who will be open and interested in issues of concern.
- (6) Cost considerations:
  - (A) The side spending the most money will probably win;
  - (B) Elections may be tilted in favor of campaigns funded by large contributions to advertising.

### Initiative and Referendum and the Model State Constitution

The first edition of the Model State Constitution, published in 1921 by the National Municipal League, incorporated the thinking of the progressive reform movement.<sup>13</sup> The progressives believed that the political system was corrupt and the ultimate power of government should go back into the hands of the people.

Over the ensuing years and enactment of initiative and referendum provisions in a number of state constitutions, the policy of the National Municipal League has changed.<sup>14</sup>

The initiative, as a result of the Progressive movement during the first two decades of this century, is not an instrument of representative government but rather a symbol of disillusionment with representative institutions. By the end of the nineteenth century the prestige of state governmental institutions reached the lowest point in their history.... By the end of World War I this movement had run its course....

Yet this is not necessarily to disparage the constitutional initiative. True, the initiative has not borne out the claims of its early proponents. It has not been responsible for substantial reforms in the states; it has not had a notable effect in increasing public interest and activity in government; and it has not spread throughout the United States. The initiative--constitutional and statutory--and the referendum and recall have not proven the panaceas the Progressives thought. On the other hand, neither have these devices seriously affected representative government as their critics warned. Systematic studies of the use of the initiative in Oregon and California have shown some solid achievements sprinkled among foolish ventures.... Perhaps its very availability rather than its actual use increases the responsiveness of legislatures....

## SUFFRAGE AND ELECTIONS

Thus, the sixth edition of the Model State Constitution finds the initiative and referendum provisions greatly reduced. Former models treated statewide initiative and referendum provisions as distinct sections or as a distinct article in the main body of the constitution. However, the present version, in the main body, provides only for the use of initiative for constitutional amendment (Article XII, Constitutional Revision). The use of initiative and referendum to propose laws has been shifted to the appendix.

Article XII provides the indirect initiative for constitutional amendments.<sup>15</sup> It is explained thus:<sup>16</sup>

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 responsibly. The insurance provided in the constitutional initiative is merely a salutary counterweight to refusal by a legislature or a convention to take popularly desired action.

The appendix of the Model provides for an article entitled Legislative Initiative and Referendum containing 3 parts.<sup>17</sup> Section 1 provides the indirect initiative for the proposal of laws; section 2 provides for an optional referendum; and section 3 provides that in the case of conflicting measures being voted on in the same election, the measure receiving the highest amount of affirmative votes shall prevail.

## THE RECALL

### Definition

The recall is a procedure through which the people may petition and vote to remove a public official from office. Like the initiative and referendum, recall grew out of the progressive reform movement.

## State Utilization

Presently, 14 states provide for the recall of state public officials.<sup>18</sup> The citizens of Montana, on November 2, 1976, voted in favor of extensive and strict procedures for the recall of elected and appointed state and local officials. On the same day, Utah citizens voted down a similar proposal.<sup>19</sup> Montana is the only state to add such provisions for recall since Alaska in 1959.

At least 18 other states have provisions for recall of officers at the local level. In the State of Hawaii, the Honolulu Charter in Article XI provides for the recall of the mayor and district councilmen. The Maui Charter in Article XII provides for the recall of any elective officers maintained in their charter. The recall provisions have not been used in either county.

## General Features of Recall

The general procedure for recall follows that of initiative and referendum provisions, with the following major differences:

- (1) The signature requirements are greater. The usual requirement is 25 per cent of the total votes cast in the last general election for governor, statewide or in the election district of the official being subject to recall.
- (2) The petition must be accompanied by a statement of the petitioners' reasons for requesting the recall.
- (3) Filing the petition--after proper filing, a special election to be held within 20 to 90 days will be called.

There are 3 types of recall elections:

- (1) Indirect Removal. An election is held with the incumbent as a candidate to succeed himself along with other nominees. The person receiving the highest number of votes will serve the remainder of the term.
- (2) Removal with a Successor Chosen. There are 2 issues placed on the ballot when utilizing this method of recall. First, the people vote on the issue of removal of the specified official. Second, they cast their vote for a successor should the vote be in favor of recalling the official in question.

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- (3) Removal Alone. The voters decide only if the official should be recalled. If so, the vacancy will be filled through a subsequent election or as authorized by law.

### Pro and Con Arguments

The following is a summary of arguments for and against the recall of public officials:

- (1) The public will not have to endure unethical, abusive, or incompetent officials until their terms are expired.
- (2) Knowing that the people have the power of recall will cause public officials to exercise continuous responsibility.
- (3) The public will be more receptive to longer terms for officials knowing they have the power to check them with recall.

#### Con

- (1) Recall elections are costly. They are generally not held at the same time as other elections. Elections for public officials are held often enough to allow voters a firm control over them.
- (2) As all states have provisions for removal of public officials guilty of improper conduct (by judicial, legislative, or gubernatorial action), the recall is unnecessary.
- (3) Recall allows well-organized groups to legally harass and intimidate public officials.
- (4) Recall does not endeavor to prove charges against officials; it merely urges the people to remove them from office.

### Recall and the Model State Constitution

The Model does not contain any provisions for the recall of public officials. However, it does provide for the impeachment of public officials which is similar to recall in its end objective of removal from office.

## Initiative, Referendum, Recall and the 1968 Hawaii Constitutional Convention

The issues of initiative, referendum, and recall were considered by the delegates of the 1968 Hawaii Constitutional Convention. Six proposals on initiative and referendum, and 2 proposals on recall were referred to the committee on revision, amendment and other provision.<sup>20</sup> Public hearings were held and testimony was heard for and against the inclusion of these proposals in Hawaii's State Constitution.

The committee reported that it was in agreement with the 1950 Constitutional Convention which voted against initiative, referendum, and recall provisions. Quoting the 1950 Convention, the committee stated:

...the controversy between proponents of and authorities on these subjects is very great as to the merits and effectiveness of any of these measures, and the evidence as to such merits and effectiveness is far from conclusive. In the absence of a clear showing of great popular demand for any such measures, or convincing evidence of the necessity for or merit and effectiveness of the same, none of which has been satisfactorily established in the minds of the majority of your Committee, we believe that such provisions should not be included in the Constitution.

On September 3, 1968, the committee of the whole met to consider amendments to Article XIV, General and Miscellaneous Provisions.<sup>21</sup> A debate ensued on the issue of adding initiative and referendum provisions to the Constitution. The text of the proposed section was read, followed by a discussion of the pros and cons of these methods of legislation. This was followed by a vote by voice and defeat of the measure. No debate was held regarding recall of public officials.

## FOOTNOTES

### Chapter 1

1. 377 U.S. 533, 555 (1964).
2. "Developments in the Law: Elections", 88 *Harv. L. Rev.* 1111, 1114-15 (1975).
3. *Ibid.*, pp. 1118-20.
4. *U.S. Const.* art. I, sec. 3; superseded by *U.S. Const.* amend. XVII, sec. 1.
5. 110 U.S. 651 (1884).
6. *Ibid.*, at 661 *et seq.*
7. H.R. Rep. No. 439, 89th Cong., 1st Sess., reprinted in *U.S. Code Congressional and Administrative News* (Washington: 1965), pp. 2440-41.
8. U.S. Commission on Civil Rights, *The Voting Rights Act: Ten Years After* (Washington: The Commission, January, 1975), p. v.
9. 42 U.S.C.A. sec. 1973b (1974).
10. *Ibid.*, sec. 1973c.
11. *Ibid.*, sec. 1973d.
12. *Ibid.*, sec. 1973f.
13. *Ibid.*, sec. 1973h.
14. *Ibid.*, sec. 1973i.
15. *Ibid.*, sec. 1973aa.
16. *Ibid.*, sec. 1973aa-1.
17. *Ibid.*, sec. 1973bb, 1973bb-1.
18. 400 U.S. 112 (1970).
19. 42 U.S.C.A. sec. 1973aa (1974-76).
20. *Ibid.*, sec. 1973aa-1a.
21. Hawaii, Research and Statistics Office, Department of Health, *Population Survey 1976: An Update of the Application of the Federal Voting Rights Act to the Hawaii Electorate* (Honolulu: 1977), p. 6.
22. 42 U.S.C.A. sec. 1973aa-1a (1974-76).
23. *Doi v. Bell*, No. 77-0256 (D. Haw., filed July 14, 1977).
24. *Hawaii Rev. Stat.*, sec. 11-139.
25. 369 U.S. 186 (1962).
26. First mentioned in *Colegrove v. Green*, 328 U.S. 549, 556 (1946).
27. 380 U.S. 89 (1965).
28. *Ibid.*, at 96.
29. 383 U.S. 663 (1966).
30. 405 U.S. 330 (1972).

### Chapter 2

1. 118 U.S. 356, 370 (1886).
2. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), pp. 38-39.
3. *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 209.
4. 413 U.S. 634, 648-49 (1973).
5. National Municipal League, *A Model Election System* (New York: 1973), p. 64; hereinafter all references to Article III, Suffrage and Elections, of the *Model State Constitution*, shall be cited in the footnotes to the latest revision of that article, found in *A Model Election System*.
6. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, pp. 47-71.
7. 1971 Haw. Sess. Laws, Proposed Constitutional Amendment, S.B. No. 41.
8. *A Model Election System*, p. 64.
9. Section (a) from: 42 U.S.C.A. sec. 1973aa (1974-76). Section (b) from: 42 U.S.C.A. sec. 1973aa (1974).
10. 400 U.S. 112 (1970).
11. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, p. 45.
12. *Ibid.*, pp. 71-78.
13. 383 U.S. 663, 666 (1966).
14. 395 U.S. 621 (1969).
15. 395 U.S. 701 (1969).
16. Ohio, Ohio Constitutional Revision Commission, *Recommendations for Amendments to the Ohio Constitution: Part 2, Elections and Suffrage*, March 15, 1975, p. 15.
17. 400 U.S. 112 (1970).
18. 42 U.S.C.A. sec. 1973aa-1 (1974).
19. 405 U.S. 330 (1972).
20. Att'y Gen. letter opinion, RE: *Hawaii's Durational Residence Requirement for Voting* (April 11, 1972).
21. *Book of the States, 1976-77*, p. 209; and *Mo. Rev. Stat. Ann.*, sec. 21-241 (1976-77 Supp.).
22. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 182.
23. *A Model Election System*, p. 64.
24. The 12 states are Arizona, Colorado, Idaho, Maine, Minnesota, Nevada, New York, North Dakota, Oklahoma, Oregon, Washington, and Wyoming. North Dakota and Wyoming specify "no elector" and the other 10 states specify "for the purpose of voting".



### Chapter 3

25. *Hawaii Const.* art. II, sec. 3.
26. *Hawaii Const.* art. XIV, sec. 15.
27. Hawaii, Constitutional Convention, 1950, *Proceedings*, Vol. II, p. 55.
28. The 6 states are: California, Illinois, Kansas, Montana, Pennsylvania, and South Dakota.
29. The 4 states are: California, Illinois, Montana, and South Dakota.
30. *A Model Election System*, p. 64.
31. See Appendix A: *Conviction of Crime as a Disqualification for Voting*.
32. Massachusetts, Legislative Research Council, *Report Relative to Voting by Prisoners and the Mentally Ill*, December 30, 1974, pp. 66-67.
33. *Connecticut Const.* art. VI, sec. 3.
34. *New Jersey Const.* art. II, sec. 7.
35. *A Model Election System*, p. 64.
36. *Hawaii Const.* art. II, sec. 2.
37. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, pp. 78-89.
38. 1969 Haw. Sess. Laws, Act 250.
39. *Book of the States, 1878-77*, p. 193.
40. National Conference of Commissioners on Uniform State Laws, *Handbook of the National Conference of Commissioners on Uniform State Laws and Proceedings of the Annual Conference* (New York: 1964), pp. 292-97.
41. *Hawaii Rev. Stat.*, sec. 831-2.
42. 418 U.S. 24 (1974).
43. *Ibid.*, at 54.
44. See Appendix B: *Unsound Mind as a Disqualification for Voting*.
45. Massachusetts, *Report Relative to Voting by Prisoners and the Mentally Ill*, p. 54.
46. *Hawaii Const.*, art. II, sec. 2.
47. *Hawaii Rev. Stat.*, sec. 11-23.
48. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 183.
49. *A Model Election System*, p. 64.
50. "Exercising a Right," *Mental Disability Law Rptv.*, Nov./Dec., 1976, p. 236.
51. Interview with Kenneth Hashimoto, Elections Administrator, City and County of Honolulu, August 31, 1977.
52. 29 C.J.S. *Elections*, sec. 7(1) (1965).
53. *A Model Election System*, p. 64.
1. The 25 states are: Alaska, Arizona, Arkansas, Colorado, Florida, Hawaii, Illinois, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, North Dakota, Oregon, Pennsylvania, Utah, Vermont, Washington, West Virginia, and Wyoming.
2. *Hawaii Const.* art. II, sec. 5.
3. *Ibid.*
4. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), p. 6; hereinafter referred to as *Model State Constitution*.
5. *Ibid.*, p. 9.
6. National Municipal League, *A Model Election System* (New York: 1973), p. 49; hereinafter referred to as *A Model Election System*.
7. *Hawaii Const.* art. IV, secs. 1 and 2 provide for the governor and lieutenant governor; art. III, sec. 5 provides for the members of the legislature.
8. *Arizona Const.* art. VII, sec. 7.
9. *Hawaii Const.* art. IV, secs. 1 and 2.
10. *Utah Const.* art. IV, sec. 9.
11. *Hawaii Const.* art. IV, secs. 1 and 2 provide for the governor and lieutenant governor; art. III, sec. 5 provides for the members of the legislature.
12. *North Carolina Const.* art. VI, sec. 10.
13. *Hawaii Const.* art. IV, sec. 4.
14. *Hawaii Const.* art. III, sec. 6; see *Hawaii Rev. Stat.*, ch. 17.
15. *Hawaii Rev. Stat.*, ch. 30.
16. *Hawaii Rev. Stat.*, sec. 26-2.
17. See, *Hawaii Charter* art. III, secs. 3-2, 3-5; art. V, secs. 5-1.1, 5-1.5; *Mauī Charter* art. III, secs. 3-2, 3-4; art. VII, secs. 7-1, 7-5; *Kauai Charter* art. III, secs. 3.03, 3.05; art. VII, secs. 7.01, 7.06; *Honolulu Charter* art. III, secs. 3-102, 3-105; art. V, secs. 5-101, 5-108.
18. *Model State Constitution*, p. 6.
19. *Ibid.*, p. 9.
20. *Ibid.*, pp. 11-12.
21. *Hawaii Const.* art. II, sec. 4.
22. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, pp. 73-76, 79.
23. *Ibid.*, p. 74.
24. *A Model Election System*, p. 64.
25. *Hawaii Rev. Stat.*, sec. 11-94.
26. *Hawaii Rev. Stat.*, sec. 11-115.

27. U.S., Office of Federal Elections, General Accounting Office, *A Study of Election Difficulties in Representative American Jurisdictions: Final Report* (Washington: January 1973), p. VIII-8.
28. *A Model Election System*, p. 47.
29. *Hawaii Rev. Stat.*, sec. 11-115.
30. 313 N.Y.S. 2d 904 (1970).
31. *Ibid.*, at 907.
32. *Arkansas Const.* art. III, sec. 3.
33. *A Model Election System*, pp. 64-65.
34. *Hawaii Const.* art. II, sec. 4.
35. *A Model Election System*, p. 7.
36. *Ibid.*, p. xi.
37. *Book of the States, 1974-76* (Lexington, Ky.: Council of State Governments, 1974), p. 28.
38. *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 207.
39. *Hawaii Rev. Stat.*, sec. 11-2.
40. *Book of the States, 1976-77*, p. 207.
41. *Hawaii Rev. Stat.*, sec. 11-73.
42. Interview with David Watson, elections administration staff, lieutenant governor's office, September 26, 1977.
43. *Beare v. Smith*, 321 F. Supp. 1100 (1971).
44. *Ibid.*, at 1103.
45. The 36 states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nevada, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
46. *Hawaii Const.* art. II, sec. 4.
47. *A Model Election System*, p. 64.
48. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, pp. 181-183.
49. *A Model Election System*, pp. 24-31.
50. The 14 states are: Alaska, California, Iowa, Kentucky, Maryland, Minnesota, Montana, New Jersey, New York, Oregon, Tennessee, Texas, Utah, and Wisconsin.
51. Council of State Governments, *State Voter Registration by Mail* (Lexington, Ky.: 1976), p. 2.
52. Richard G. Smolka, *Registering Voters by Mail: The Maryland and New Jersey Experience* (Washington: American Enterprise Institute for Public Policy Research, 1975), pp. 83-84.
53. 410 U.S. 679 (1973).
54. *Ibid.*, at 680.
55. 410 U.S. 686 (1973).
56. *Ibid.*, at 688.
57. 1977 Haw. Sess. Laws, Act 189.
58. 42 U.S.C.A. sec. 1973cc (1974-76 Supp.).
59. 42 U.S.C.A. sec. 1973aa-1 (1974).
60. 400 U.S. 112 (1970).
61. 42 U.S.C.A. sec. 1973dd-1 (1974-76 Supp.).
62. The 23 states are: Alaska, Connecticut, Delaware, Hawaii, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Missouri, Montana, New Jersey, New Mexico, New York, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Virginia, and Wyoming.
63. Note, The Submerged Constitutional Right to an Absentee Ballot, 72 *Mich. L. Rev.* 159 (1973).
64. *A Model Election System*, pp. 64-65.
65. *Hawaii Rev. Stat.*, sec. 15-2.
66. *A Model Election System*, pp. 38-41.
67. 42 U.S.C.A. sec. 1973dd-1 (1974-76 Supp.).
68. The 34 states are: Alaska, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Missouri, Montana, Nevada, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.
69. Council of State Governments, *Corrupt Practices Legislation in the 48 States* (Chicago: 1942), p. 1.
70. U.S., Congressional Research Service, *Federal and State Provisions Concerning Election Crimes, Offenses, and Corrupt Practices* (Washington: Library of Congress, 1973), p. CRS-1.
71. *Book of the States 1976-77*, pp. 223-226.
72. Federal Election Campaign Act of 1971, Pub. L. No. 92-225, 86 Stat. 3; and Federal Election Campaign Act Amendments of 1974, Pub. L. No. 93-443, 88 Stat. 1263.
73. 424 U.S. 1 (1976).
74. Federal Election Campaign Act Amendments of 1976, Pub. L. No. 94-283, 90 Stat. 475.
75. The 8 states are: Alaska, Colorado, Hawaii, Missouri, Pennsylvania, South Carolina, West Virginia, and Wyoming.
76. *Hawaii Const.* art. II, sec. 5.
77. *Hawaii Rev. Stat.*, secs. 11-171 through 11-175.
78. Note, The Role of the Courts in Election Contest Proceedings, 48 *Minn. L. Rev.* 1182-83 (1964).
79. 2 U.S.C.A. sec. 381-396 (1977).

## Chapter 4

1. See Appendix C: *Constitutional Nominating Provisions*.
2. National Municipal League, *A Model Election System* (New York: 1973), pp. 64-65.
3. *Ibid.*, p. 65.
4. 29 C.J.S. *Elections*, sec. 97 (1965).
5. *Book of the States, 1976-??* (Lexington, Ky.: Council of State Governments, 1976), p. 219.
6. The 14 states are: Alabama, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Iowa, Kansas, Michigan, South Carolina, South Dakota, Utah, and Virginia.
7. *Book of the States, 1976-??*, p. 219.
8. Massachusetts, Legislative Research Council, *Report Relative to Political Party Structure and Public Campaign Funding*, January 23, 1974, pp. 46-47.
9. The 39 states are: Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Kentucky, Maine, Maryland, Massachusetts, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, and Wyoming.
10. *Hawaii Rev. Stat.*, sec. 12-31.
11. Att'y Gen. Ops. No. 72-7 (March 20, 1972).
12. The 11 states are: Alaska, Idaho, Louisiana, Michigan, Minnesota, Montana, North Dakota, Utah, Vermont, Washington, and Wisconsin.
13. *Book of the States, 1976-??*, p. 219.
14. *Hawaii Rev. Stat.*, sec. 13-3.
15. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 183.
16. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, pp. 102-118.
17. *Ohio Const.* art. V, sec. 7.
18. Massachusetts, Legislative Research Council, *Report of the Legislative Research Council Relative to Presidential Pre-Primary Practices*, January 27, 1969, p. 29.
19. Hearing on S. 2570, *Preference Primaries for Nomination of Candidates for President and Vice President*, before the Subcommittee on Rules of the Committee on Rules and Administration, U.S. Senate, 82nd Cong., 2d Sess., March 28, 1952, p. 43.
20. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, pp. 90-97.
21. *Hawaii Const.* art. II, sec. 6.

## Chapter 5

1. Massachusetts, Legislative Research Council, *Report Relative to Revising Statewide Initiative & Referendum Provisions of the Massachusetts Constitution*, House No. 5435, February 4, 1975, p. 32.
2. Colin Braham and Jim Burton, *The Referendum Reconsidered* (London: Fabian Society, 1975), p. 5.
3. "The Initiative: A Comparative State Analysis & Reassessment of a Western Phenomenon," *The Western Political Quarterly*, June, 1975, Vol. 28, No. 2, pp. 243-244.
4. Massachusetts, *Report Relative to Revising Statewide Initiative & Referendum Provisions of the Massachusetts Constitution*, pp. 34-35.
5. See Appendix D: *Initiative Provisions for State Legislation*.
6. See Appendix E: *Constitutional Amendment Procedure by Initiative*.
7. Judy E. Stalling, *Article II: Suffrage and Elections*, Hawaii Constitutional Convention Studies (Honolulu: University of Hawaii, Legislative Reference Bureau, 1968), p. 53.
8. See Appendices D and E.
9. Massachusetts, *Report Relative to Revising Statewide Initiative & Referendum Provisions of the Massachusetts Constitution*, p. 41.
10. Braham and Burton, p. 6.
11. See Appendix F: *Provisions for Referendum on State Legislation*.
12. *The Western Political Quarterly*, p. 245.
13. This section summarizes and updates parts of a presentation in Massachusetts, *Report Relative to Revising Statewide Initiative & Referendum Provisions of the Massachusetts Constitution*, pp. 47-55.
14. National Municipal League, *Salient Issues of Constitutional Revision*, State Constitutional Studies Project, John P. Wheeler, ed. (New York: 1961), pp. 55-56.
15. National Municipal League, *Model State Constitution* (6th ed.; New York: 1968), pp. 19-21; hereinafter cited as *Model State Constitution*.
16. *Model State Constitution*, p. 106.
17. *Ibid.*, pp. 117-118.
18. See Appendix G: *Provisions for Recall of State Officials*.
19. "Ballot Box Score," *State Government News*, December, 1976, pp. 4, 6.
20. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, p. 210.
21. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. II, pp. 520-523.

## Appendix A

### CONVICTION OF CRIME AS A DISQUALIFICATION FOR VOTING

Offense	Number of States	States
Felony	26	Alaska, Arizona, Arkansas, Delaware, Florida, Hawaii, Idaho, Illinois, Kansas, Kentucky, Louisiana, Minnesota, Missouri, Montana, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Texas, Virginia, West Virginia, and Wisconsin
Treason	13	Alabama, Arizona, Georgia, Idaho, Kentucky, Minnesota, Nebraska, Nevada, New Hampshire, North Dakota, Utah, West Virginia, and Wisconsin
Infamous crimes	12	Alabama, California, Idaho, Indiana, Iowa, Maryland, New Mexico, New York, Ohio, Tennessee, Washington, and Wyoming
Crimes punishable by imprisonment	3	Alabama, Georgia, and Oregon
Crimes involving moral turpitude	2	Alabama and Georgia
Election crimes	14	Alabama, Delaware, Idaho, Kentucky, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New York, Pennsylvania, Utah, West Virginia, and Vermont
Numerous miscellaneous offenses	9	Alabama, California, Georgia, Idaho, Kentucky, Mississippi, New York, Ohio, and South Carolina
Any person while imprisoned may not vote	12	Colorado, Idaho, Illinois, Kansas, Kentucky, Louisiana, Michigan, Missouri, Montana, Oklahoma, Rhode Island, and South Carolina
While under sentence, or until pardoned, a person may not vote	4	Georgia, Hawaii, Kansas, and Rhode Island. <sup>a</sup>

Offense	Number of States	States
A person may not vote unless restored to civil rights	16	Alaska, Arizona, Florida, Kansas, Kentucky, Minnesota, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Utah, Virginia, Washington, Wisconsin, and Wyoming

Source: *Legislative Drafting Research Fund, Constitutions of the United States, National and State* (New York: Columbia University, 1975), Vols. 1-5.

a. *Until restored by act of the general assembly.*

## Appendix B

### UNSOOUND MIND AS A DISQUALIFICATION FOR VOTING

State	Constitutional Provision
Alabama	All idiots and insane persons.
Alaska	No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed.
Arizona	No person under guardianship, non compos mentis, or insane.
Arkansas	No idiot or insane person.
California	No severely mentally deficient person or insane person.
Delaware	No idiot or insane person.
Florida	No person adjudicated in this or any other state to be mentally incompetent shall be qualified to vote until removal of disability.
Georgia	Idiots and insane persons.
Hawaii	No person who is non compos mentis shall be qualified to vote.
Idaho	No person who is under guardianship, idiotic, or insane.
Iowa	No idiot or insane person.
Kansas	The legislature may exclude persons from voting because of mental illness.
Kentucky	Idiots and insane persons.
Louisiana	While a person is interdicted and judicially declared mentally incompetent.
Maine	Under guardianship for reasons of mental illness.
Maryland	Legislature may restrict or prohibit for persons under guardianship for a mental disability.
Massachusetts	Under guardianship.

State	Constitutional Provision
Michigan	Legislature may restrict for mental incompetence.
Minnesota	Under guardianship, insane or not mentally competent.
Mississippi	Insane or idiot persons.
Missouri	No idiot or person who has a guardian of his or her estate or person.
Montana	Unsound mind, as determined by a court.
Nebraska	Non compos mentis.
Nevada	No idiot or insane person.
New Jersey	No idiot or insane person.
New Mexico	No idiot or insane person.
North Dakota	Under guardianship, non compos mentis, or insane.
Ohio	No idiot or insane person.
Oklahoma	No patient in an institution for mental retardation or who has been committed by judicial order to an institution for mental illness.
Oregon	No idiot or mentally diseased person.
Rhode Island	No person who has been lawfully adjudicated to be non compos mentis.
South Carolina	The General Assembly shall establish disqualifications for voting by reason of mental incompetence and may provide for the removal of such disqualifications.
South Dakota	Unless disqualified by law for mental incompetence.
Texas	Idiots and lunatics.
Utah	No idiot or insane person.
Virginia	No person adjudicated to be mentally incompetent shall be qualified to vote until his competency has been reestablished.
Washington	All idiots and insane persons.

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State	Constitutional Provision
West Virginia	Unsound mind.
Wisconsin	No person under guardianship, non compos mentis, or insane.
Wyoming	All idiots and insane persons.

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Source: *Legislative Drafting Research Fund, Constitutions of the United States, National and State* (New York: Columbia University, 1975), Vols. 1-5.



## Appendix C

### CONSTITUTIONAL NOMINATING PROVISIONS

State	Constitutional Provision
Alabama	The legislature shall also make provision by law, not inconsistent with this article, for the regulation of primary elections...but shall not make primary elections compulsory. (Article VIII, sec. 190)
Arizona	The legislature shall enact a direct primary election law, which shall provide for the nomination of candidates for all elective state, county, and city offices, including candidates for United States Senator and for Representative in Congress. (Article VII, sec. 10)
California	The legislature shall provide for primary elections for partisan offices.... (Article III, sec. 4)
Michigan	The legislature shall enact laws to regulate the time, place and manner of all nominations...except as otherwise provided in this constitution or in the constitution and laws of the United States.... No law shall be enacted which permits a candidate in any partisan primary...to have a ballot designation except when required for identification of candidates for the same office who have the same or similar surnames. (Article II, sec. 4)
Mississippi	The legislature shall enact laws to secure fairness in party primary elections, conventions, or other methods of naming party candidates. (Article XII, sec. 247)
Nebraska	Each member [legislator] shall be nominated and elected in a nonpartisan manner and without any indication on the ballot that he is affiliated with or endorsed by any political party or organization. (Article III, sec. 7)
Ohio	All nominations for elective state, district, county and municipal offices shall be made at direct primary elections or by petition as provided by law, and provision shall be made by law for a preferential vote for United States senator;... (Article V, sec. 7)

State	Constitutional Provision
Oklahoma	The legislature shall enact laws providing for a mandatory primary system, which shall provide for the nomination of all candidates in all elections for State, District, County, and municipal officers, for all political parties, including United States Senators.... (Article III, sec. 5)
South Carolina	The General Assembly shall provide for the nomination of candidates.... (Article II, sec. 10)
South Dakota	The legislature shall by law...provide for... the nomination of candidates.... (Article VII, sec. 3)
Virginia	The General Assembly shall provide for the nomination of candidates, shall regulate the time, place, manner, conduct, and administration of primary...elections.... (Article II, sec. 4)

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Source: *Legislative Drafting Research Fund, Constitutions of the United States, National and State* (New York: Columbia University, 1975), Vols 1-5.

# Appendix D

## INITIATIVE PROVISIONS FOR STATE LEGISLATION

<i>State</i>	<i>Type (a)</i>	<i>Established by constitutional provision</i>	<i>Petition requirement (b)</i>	<i>Initiative provisions are also available to all or some local government units (c)</i>
Alaska.....	D	X	10% of those voting in the last general election and resident in at least $\frac{3}{4}$ of election districts	X
Arizona.....	D	X	10% of qualified electors	X
Arkansas.....	D	X	8% of those voting in the last general election for Governor	X
California.....	D	X	5% of votes cast in the last general election for Governor	X
Colorado.....	D	X	8% of votes cast in the last general election for Secretary of State	X
Idaho.....	D	X	10% of votes cast in the last general election for Governor	X
Maine.....	I	X	10% of votes cast in last general election for Governor	X
Massachusetts.....	I	X	3% of votes cast in last general election for Governor	X
Michigan.....	I	X	8% of votes cast in last general election for Governor	X
Missouri.....	D	X	5% of voters in each of $\frac{2}{3}$ of congressional districts	X
Montana.....	D	X	5% of qualified electors in each of at least $\frac{1}{4}$ of legislative representative districts; total must equal 5% of total qualified electors	X
Nebraska.....	D	X	7% of votes cast in last general election for Governor	X
Nevada.....	I	X	10% of voters in last general election in 75% of the 17 counties	X
North Dakota.....	D	X	10,000 electors	X
Ohio.....	B	X	3% of electors	X
Oklahoma.....	D	X	8% of total vote for state office receiving largest number of votes in last general election	X
Oregon.....	D	X	6% of total votes cast in last election for Governor	X
South Dakota.....	I	X	5% of votes cast in last general election for Governor	X
Utah.....	B	X	10% of electors (direct); 5% from majority of counties (indirect) (d)	X
Washington.....	B	X	8% of votes cast in last general election for Governor	X
Wyoming.....	D	X	15% of voters in last general election and resident in at least $\frac{2}{3}$ of counties in State	X

(a) The initiative may be direct or indirect. The direct type, designated D in this table, places a proposed measure on the ballot for submission to the electorate, without legislative action. The indirect type, designated I, requires the Legislature to act upon an initiated measure within a reasonable period before it is voted upon by the electorate. In some States both types, designated B, are used.

(b) In each State where the initiative may occur, a majority of the popular vote is required to enact a measure. Idaho: a majority equal to the majority of the aggregate vote cast for

Governor at such general election; Massachusetts: the measure must also be approved by at least 30 percent of the ballots cast.

(c) In addition to those listed in this column, the following States have an initiative process that is available only to local units of government: Georgia, Kentucky, Louisiana, Minnesota, New Jersey, Pennsylvania, South Carolina, Texas, Vermont, Virginia and West Virginia.

(d) These requirements are established by law.

Source: *Book of the States, 1976-77 (Lexington, Ky.: Council of State Governments, 1976), p. 218.*

## Appendix E

### CONSTITUTIONAL AMENDMENT PROCEDURE: BY INITIATIVE Constitutional Provisions

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

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

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

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

# Appendix F

## PROVISIONS FOR REFERENDUM ON STATE LEGISLATION

<i>State or other jurisdiction</i>	<i>Established by constitutional provision</i>	<i>Basis of referendum (a)</i>	<i>Petition requirement (b)</i>	<i>Referendum provisions are also available to all or some local government units (c)</i>
Alaska.....	★	Petition of people	10% of votes cast in last general election for Governor and resident in at least $\frac{3}{4}$ of election districts	★
Arizona.....	★	Petition of people Submitted by Legislature	5% of qualified voters	★
Arkansas.....	★	Petition of people	6% of votes cast in last general election for Governor	★
California.....	★	Petition of people (d) Constitutional requirement	5% of votes cast in last general election for Governor	★
Colorado.....	★	Petition of people Submitted by Legislature	5% of votes cast in last general election for Secretary of State	★
Florida.....	★	Constitutional requirement	.....	★
Georgia.....	★ (e)	Submitted by Legislature Constitutional requirement	.....	★
Idaho.....	★	Petition of people	10% of votes cast in last general election for Governor	★
Illinois.....	★	Submitted by Legislature	.....	★
Iowa.....	★	Constitutional requirement	.....	★
Kansas.....	★	Constitutional requirement	.....	★
Kentucky.....	★	Petition of people (f) Constitutional requirement	5% of votes cast in last general election for Governor	★
Maine.....	★ (e)	Petition of people Submitted by Legislature Constitutional requirement	10% of votes cast in last general election for Governor	★
Maryland.....	★ (e)	Petition of people Submitted by Legislature	3% of votes cast in last general election for Governor	★
Massachusetts..	★	Petition of people	2% of votes cast in last general election for Governor	★
Michigan.....	★	Petition of people Submitted by Legislature Constitutional requirement	5% of votes cast in last general election for Governor	★
Missouri.....	★	Petition of people Submitted by Legislature	5% of legal voters in each of $\frac{3}{4}$ of congressional districts	★
Montana.....	★	Petition of people Submitted by Legislature	5% of total qualified electors and 5% in at least $\frac{1}{3}$ of legislative districts	★
Nebraska.....	★	Petition of people	5% of votes cast in last general election for Governor	★
Nevada.....	★	Petition of people	10% of votes in last general election	★
New Hampshire..	★	Submitted by Legislature	.....	...
New Jersey.....	★	Submitted by Legislature Constitutional requirement	.....	★
New Mexico.....	★	Petition of people Constitutional requirement	10% of votes cast in last general election and 10% of electors in $\frac{1}{4}$ of the counties	...
New York.....	★	Constitutional requirement	.....	...
North Carolina..	★	Submitted by Legislature Constitutional requirement	.....	...
North Dakota...	★	Petition of people	7,000 signatures	★
Ohio.....	★	Petition of people Constitutional requirement	6% of electors	★
Oklahoma.....	★	Petition of people Submitted by Legislature Constitutional requirement	5% of votes cast for state office receiving largest number of votes in last general election	★
Oregon.....	★	Petition of people Submitted by Legislature	4% of votes cast in last election for Governor	★
Pennsylvania...	★	Constitutional requirement	.....	★
Rhode Island...	★	Constitutional requirement	.....	★
South Carolina..	★	Submitted by Legislature Constitutional requirement	.....	★
South Dakota...	★	Petition of people	5% of votes cast in last general election for Governor	★
Utah.....	★	Petition of people	10% of votes cast in last general election for Governor	★

<i>State or other jurisdiction</i>	<i>Established by constitutional provision</i>	<i>Basis of referendum (a)</i>	<i>Petition requirement (b)</i>	<i>Referendum provisions are also available to all or some local government units (c)</i>
Vermont.....	...	Submitted by Legislature	.....	★
Virginia.....	★	Submitted by Legislature Constitutional requirement	.....	★
Washington....	★	Petition of people Submitted by Legislature Constitutional requirement	4% of votes cast in last general election for Governor	★
Wisconsin.....	★ (e)	Submitted by Legislature Constitutional requirement	.....	★
Wyoming.....	★	Petition of people Constitutional requirement	15% of those voting in last general election and resident in at least 3/4 of counties of State	★
Guam.....	★	Submitted by Legislature	3/4 of persons voting for Governor in last preceding general election at which Governor was elected	...
Puerto Rico....	...	Submitted by Legislature	.....	...
Virgin Islands...	★	Petition of people Submitted by Legislature	50% of votes cast in last general election for Governor	...

(a) Three forms of referendum exist: (1) Petition of people--the people may petition for a referendum, usually with the intention of repealing existing legislation; (2) Submitted by Legislature--the Legislature may voluntarily submit laws to the electorate for their approval; and (3) Constitutional requirement--the state constitution may require certain questions to be submitted to the people, often debt authorization.

(b) In each State where referendum may occur, a majority of the popular vote is required to enact a measure. Idaho: a majority equal to a majority of the aggregate vote cast for Governor at such general election; Massachusetts: the measure must also be approved by at least 30 percent of the ballots cast.

(c) In addition to those listed in this column, the following States have a referendum process that is available only to local units of government: Minnesota, North Carolina, Pennsylvania, South Carolina, Texas, Virginia, West Virginia, and Wyoming.

(d) Amendments or repeals of initiative statutes by another statute must be submitted to the electorate for approval unless the initiative statute provides to the contrary.

(e) The type of referendum held at the request of the Legislature is not established by a constitutional provision.

(f) Applies only to referendum on legislation classifying property and providing for differential taxation on same.

Source: *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), pp. 216-217.

# Appendix G

## PROVISIONS FOR RECALL OF STATE OFFICIALS

State or other jurisdiction	Officers to whom applicable	Established by constitutional provision	Petition requirement*	Also available to all or some local governmental units**
Alaska.....	All elective officials	X	25% of voters in last general election in district in which election occurred	X
Arizona.....	All elective officials	X	25% of votes cast in last election for office of official sought to be recalled	X
California....	All elective officials	X	State officer: 12% of votes cast in last election for office sought to be recalled; state legislators, members of Board of Equalization, and judges: 20%	X
Colorado.....	All elective officials	X	25% of votes cast in last election for office of official sought to be recalled	X
Idaho.....	All elective officials except judicial officers	X	20% of the number of electors registered to vote in the last general election held in the jurisdiction from which the officer was elected	X
Kansas.....	All elected public officials in the State except judicial officers	X	Legislature has not implemented the amendment	X
Louisiana.....	All elective officials except judges of courts of record	X	25% of voters voting; 40% of voters in districts of less than 1,000 voters	X
Michigan.....	All elective officials except judges of courts of record	X	25% of voters in last election for Governor in electoral district of officer sought to be recalled	X
Montana.....	All elected and appointed officials of the state	X	10% of the number of persons voting at the preceding state general election.	X
Nevada.....	All elective officials	X	25% of voters voting in the jurisdiction electing official sought to be recalled	X
North Dakota...	All elective officials	X	30% of votes cast in last general election for Governor	X
Oregon.....	All elective officials	X	25% of votes cast in last general election for Supreme Court Justice	X
Washington....	All elective officials except judges of courts of record	X	25%-35% of qualified electors depending on unit of government	X
Wisconsin.....	All elective officials	X	25% of votes cast in last general election for Governor	X
Guam.....	Governor	X	Petition for referendum: 2/3 vote of Legislature or petition of Legislature by 50% of voters voting in last Governor election. Referendum election: "yes" votes must total 2/3 of votes cast in last Governor election, and majority voting on issue must be "yes"	
Virgin Islands.	Governor	X	40% of votes cast for Governor in last election	

Source: *Book of the States, 1972-77* (Lexington, Ky.: Council of State Governments, 1976), p. 137.

\*In each State where a recall election may occur, a majority of the popular vote is required to recall an official.

\*\*In addition to those listed, the following States have a recall process available only to local units of government: Arkansas, Georgia, Hawaii, Illinois, Iowa, Maine, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, Ohio, Oklahoma, South Carolina, Texas, and Wyoming.

