




1947

Amending and Revising State Constitutions

J. E. Reeves
University of Kentucky

Kenneth E. Vanlandingham
University of Kentucky

Follow this and additional works at: <https://uknowledge.uky.edu/klj>

 Part of the [Constitutional Law Commons](#), and the [State and Local Government Law Commons](#)
Right click to open a feedback form in a new tab to let us know how this document benefits you.

Recommended Citation

Reeves, J. E. and Vanlandingham, Kenneth E. (1947) "Amending and Revising State Constitutions," *Kentucky Law Journal*: Vol. 35 : Iss. 2, Article 2.
Available at: <https://uknowledge.uky.edu/klj/vol35/iss2/2>

This Article is brought to you for free and open access by the Law Journals at UKnowledge. It has been accepted for inclusion in Kentucky Law Journal by an authorized editor of UKnowledge. For more information, please contact UKnowledge@lsv.uky.edu.

AMENDING AND REVISING STATE CONSTITUTIONS

J. E. REEVES*

and

KENNETH E. VANLANDINGHAM†

Considerable interest in state constitutional revision has been demonstrated recently. Missouri and Georgia adopted revised constitutions in 1945 and New Jersey voted down a proposed revision at the general election in 1944. The question of calling a constitutional convention was acted upon unfavorably by the Illinois legislature in May, 1945, and the Kentucky legislature, at its 1944 and 1946 sessions, passed a resolution submitting the question of calling a constitutional convention to the people of the state who will vote upon it at the general election in 1947.

The reason for this interest in revision is not difficult to detect. Vast social and economic changes have taken place since the adoption of most of our state constitutions. For instance, the Constitution of Kentucky, which is rather typical as to age, was framed in 1891 before the age of automobiles, airplanes, and radios, and before scientists had begun to dream of television, radar, and atomic energy. During the ensuing years government has grown and expanded to meet changed conditions. Toll roads were common in 1891, public schools were chiefly a matter of local concern, and public welfare, except for limited institutional care, was largely unknown. Today the states spend over twice as much for these services as for all other purposes combined. Parks, recreation, forestry, soil conservation, and public health, are other services that have been added or tremendously expanded since most of our state constitutions were written, to say nothing of the tremendous growth in the regulatory services.

The performances of these services has demanded new laws, new forms of administrative organization—new approaches to governmental problems. It is not surprising, therefore, that some of the states are passing upon the question of fundamental

* Assistant Professor of Political Science and Acting Director, Bureau of Government Research (1945-1946), University of Kentucky.

† Research Assistant, Bureau of Government Research, University of Kentucky.

changes in their basic laws, so as to enable them more readily to meet new conditions.

The means by which state constitutions may be changed thus become considerations of great importance.

METHODS OF CHANGE

Constitutions change to meet the needs of changing society primarily by four means: (1) customary growth and development, (2) interpretation, (3) amendment, and (4) complete revision. Customary growth and development, while important, can never be rapid enough to keep pace with rapidly changing conditions such as society has experienced during the past several decades.

Interpretation, the second means by which constitutions grow and develop, is facilitated by a short elastic document such as the Federal Constitution, and is materially impeded by a long restrictive document such as most state constitutions are. For instance, the Constitution of Kentucky has nine long sections,¹ containing a total of more than 1200 words, dealing with railroads and commerce. This is to be compared with the Federal Constitution's brief but effective provisions relating to the control of commerce. The difference means the effective expansion of the Federal document to meet the needs of an expanding national economy, while the Kentucky and other similar state documents remain static and unchangeable, except as subterfuge or effective nullification may occasionally be employed to evade the apparent meaning of constitutional provisions obviously unsuited to conditions which have to be met.²

The Kentucky example is typical of state constitutional provisions. While the Kentucky Constitution contains about 21,000 words, as compared with approximately 6,000 words in the Federal Constitution, the Kentucky document is not more than

¹ Sections 209-18. KENTUCKY CONSTITUTION (1891) sections 209-18.

² The latter point may be illustrated by the Kentucky provision limiting the amount of indebtedness which the Legislature may incur to \$500,000, and the decision of the State's highest court that the issuing of warrants for a part or all of a legislative appropriation did not necessarily create a debt in violation of the Constitution. See *Stanley v. Townsend*, 170 Ky. 833, 186 S. W. 941 (1916). By this means a state "debt" of over \$25,000,000 in interest bearing warrants was created.

average in length. Examples of longer ones are South Carolina's with 30,000 words, Virginia's with 23,000 words, and Louisiana's, which covers approximately 280 average sized pages. As a consequence, state constitutional development relies heavily on amendment and revision. The amendatory and revisory provisions of the forty-eight constitutions are, therefore, of more than ordinary interest. This is particularly true at the present time when state constitutional revision is, or recently has been, before the people of many of the states.

STATE CONSTITUTIONAL AMENDMENT

Generally speaking, it can be said that state constitutional amendment requires submission by the legislature and approval by popular vote, but beyond this, methods of amendment show such wide variation that it cannot be said that any particular mode predominates.

Requirements for submission of amendments by state legislatures differ widely. Some constitutions require proposals to pass only one legislature; others require passage by two legislatures. The Constitution of South Carolina requires that the proposal be submitted by two thirds vote of the members elected, adopted by a majority of those voting in a general election and ratified by a majority vote of both houses of the next legislature. Massachusetts requires that amendments be proposed in joint session by a majority vote of all the members elected. New Hampshire is the only state having no provision for constitutional amendment.

In a group of 32 states, requiring passage by one legislature, the following majorities in each house are required :

Majority of members elected.....	8 states ³
Majority of quorum.....	1 state ⁴
3/5 of members elected	6 states ⁵
3/5 of quorum	1 state ⁶
2/3 of members elected	14 states ⁷
2/3 of quorum	2 states ⁸

¹ Arkansas, Arizona, Missouri, New Mexico, North Dakota, Oklahoma, Oregon, and South Dakota.

⁴ Minnesota.

⁵ Alabama, Florida, Kentucky, Maryland, Nebraska (only one house), and Ohio.

⁶ North Carolina.

⁷ California, Colorado, Georgia, Idaho, Illinois, Kansas, Louisiana, Michigan, Montana, Texas, Utah, Washington, West Virginia, and Wyoming.

⁸ Maine and Mississippi.

Fifteen states require passage of proposed amendments by two regular sessions of the legislature. In this group, eleven states require the following majorities in each house:

Majority of members elected, 2 sessions.....10 states⁹
 2/3 of members elected, 2 sessions1 state¹⁰

Four states have rather unique requirements in regard to submission of proposed amendments. Connecticut proposes amendments by a majority vote of the House of Representatives in the first session of the legislature and requires a 2/3 vote of each house in the second session. Tennessee requires that a proposed amendment pass in the first session of the legislature by a majority vote of all members elected and in the second session 2/3 of all members elected must approve. In Vermont, where amendments may be proposed every ten years, 2/3 of the Senate must concur with a majority of the House in the first session and in the second session there must be approval by a majority vote of the members of each house. The method of amendment in South Carolina has already been discussed.

Amendments are ratified by the people in either general or special elections. Most usually it is necessary that they be submitted in a general election although some constitutions permit the option of choosing between the two. It is mandatory, however, for amendments to be ratified in New Jersey in a special election. While this may be desirable, the expense involved is necessarily great. It is not necessary that the people ratify amendments in Delaware.

Most state constitutions require amendments to be adopted by a mere majority of those voting on the amendment in a general election; however, there exist some marked exceptions. At least five states require amendments to be ratified by a majority of all the voters in a general election.¹¹ This type of provision makes it difficult to secure adoption of amendments since many voters fail to notice amendments appearing on the ballot. Rhode Island requires that amendments be adopted by a 3/5 vote of the

⁹ Indiana, Iowa, New Jersey, New York, Pennsylvania, Virginia, Massachusetts, Nevada, Rhode Island, and Wisconsin. Amendments are proposed in a joint session of the Legislature of Massachusetts.

¹⁰ Delaware.

¹¹ Minnesota, Mississippi, Tennessee, Wyoming, and Oklahoma. The Legislature of Oklahoma by 2/3 vote can provide a special election to pass amendments. See Note (1941) 131 A.L.R. 1382.

electors of the state present and voting, while Nebraska has the provision that for amendments to be adopted there must be approval of at least 35 per cent of the voters, voting in a general election. From one point of view such provisions seem desirable since a constitutional amendment becomes part of the fundamental law of the state and should be adopted by a reasonable number of electors. They appear too stringent, however, when we consider the fact that most states have long restrictive documents which need frequent amending.

Additional restrictions on the amendment process exist in several states. New York requires the advice of the Attorney General on the effect of a proposed amendment before passage by the legislature; however, the legislature is not obliged to pay attention to advice. Practically all states require that amendments relate to one subject, and that, when two or more amendments are submitted at the same time, they be submitted so as to enable the voter to vote on each separately.

Louisiana requires amendments to be proposed within the first thirty days of the legislative session. A few states limit the number of amendments that may be submitted. Arkansas, Kansas, and Montana permit no more than three amendments to be submitted, while in Kentucky only two amendments can be submitted at a single session. Should an amendment be defeated by the voters of Kentucky it cannot be submitted again for five years. No amendment or amendments can be submitted oftener than once in six years in Tennessee, no oftener than once in ten years in Vermont.

Restrictions also exist in various states as to the number of parts of constitutions that may be amended. Colorado does not permit amendments to be submitted to more than six articles at one session while Illinois requires that amendments be submitted to no more than one article at a single session nor to the same article oftener than once in four years. Missouri requires that no proposed amendment shall contain more than one amended and revised article of the Constitution or one new article which shall contain but one subject. Georgia has the unique provision that an amendment affecting only part of a state must gain majority approval of that portion as well as a majority vote of the entire state. Of the states requiring action by two legislatures to propose an amendment, Indiana does not permit an

amendment to be introduced in the second legislature, when amendments from the previous session are awaiting action.

AMENDMENT BY INITIATIVE

The constitutions of fourteen states reserve to the people the power to propose amendments.¹² It is significant that this group includes only one eastern state.¹³ By and large, the use of the initiative is confined to the mid-western and western states. Initiative provisions do not vary greatly; however, some exceptions may be noted. Usually 8 or 10 per cent of the legal voters are required to place an amendment on the ballot. Ordinarily the total vote cast for the office of governor in the last election is the basis upon which the number of signatures of legal voters is computed. For example, the Constitution of Michigan requires that initiative amendments be proposed by 10 per cent of the legal voters and the total vote cast for governor in the last election is the basis upon which this percentage is computed. Some states require a stated number of signatures to initiate amendments. For instance, North Dakota requires the signature of 20,000 voters. Perhaps the Massachusetts Constitution contains the most stringent requirements relative to initiative amendments. Here the amendment must be signed by 25,000 voters and must also receive the approval of 1/4 of all the members elected to two successive legislatures. Generally speaking, initiative amendments are ratified by a majority vote of those voting on the question; however, not only must a majority be received in Nebraska and Massachusetts, but the vote cast for the amendment must be at least 35 and 30 per cent, respectively, of the total vote cast in a general election.

In concluding this discussion of amendments, it may be said that on the whole, the amendatory provisions seem rather stringent. Some of the states, such as Oregon, New Mexico, Arizona, and the Dakotas, which require only passage by a majority of the members elected and ratification by a majority of those voting on the amendment, apparently have suffered no ill effects from this laxity.

¹² Arizona, Arkansas, California, Colorado, Idaho, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, and Oregon.

¹³ Massachusetts.

The exacting nature of the amendatory clauses of most of our state constitutions, coupled with the fact that the people of the states traditionally approve only a small percentage of the amendments submitted to them,¹⁴ make frequent constitutional revisions appear desirable. It has been the practice of most states to resort to revisions fairly frequently. Kentucky has revised her Constitution approximately every fifty years, which again appears to be fairly typical. Only five of the existing state constitutions are over 100 years old,¹⁵ and four of these are short documents with comparatively few restrictions on legislative action.

STATE CONSTITUTIONAL CONVENTIONS

Provisions in state constitutions for the adoption of revised constitutions are much more uniform than provisions for constitutional amendment. This is not to state, however, that wide variation in practices do not exist among the states, relative to submitting the question of calling a convention to the people for their approval or rejection. If the question be approved, delegates are then elected to the convention which will revise the constitution. Ordinarily before a constitution can be declared valid, it must be ratified by the people.

The constitutions of twelve states contain no specific provisions for the calling of a constitutional convention.¹⁶ Some constitutional lawyers hold that the legislatures of these states may call conventions at will under their general legislative powers, but Charles A. Beard, an outstanding authority on constitutions, contends there are some doubts on that point.¹⁷ Notwithstanding, it was held in *Bennett v. Jackson*¹⁸ that the legislature of Indiana could refer the question of calling a convention to the voters for their approval or rejection. It was further held that the general legislative power granted by a constitution does not give authority to call a constitutional convention without a vote of the people.

¹⁴ Note the several unsuccessful efforts of Kentucky to amend Sec. 246 of its Constitution replacing the \$5000 salary limitation.

¹⁵ Massachusetts, Connecticut, New Hampshire, New Jersey and Rhode Island.

¹⁶ Arkansas, Connecticut, Indiana, Louisiana, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Rhode Island, Texas, and Vermont.

¹⁷ BEARD, AMERICAN GOVERNMENT AND POLITICS (8th Ed., 1939) p. 498.

¹⁸ 186 Ind. 533, 116 N.E. 921 (1917).

The Rhode Island Court in an advisory opinion, *In Re Opinion to the Governor*, rendered to the Governor in 1935, related that the legislature had authority to pass a law calling a constitutional convention with or without a vote of the people.¹⁹ It must be remembered, however, that this was an advisory opinion and not a binding decision.

In the absence of specific constitutional provisions, most states derive authority to revise their constitutions under that section usually contained in the Bill of Rights, which states that the people have "an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may deem proper."²⁰

As is well stated in *Ruling Case Law*:

"It seems to be an almost universal custom in all of the states, where the constitution itself does not provide for the calling of a constitutional convention, to ascertain first the will of the people and procure from them a commission to call such a convention, before the Legislature proceeds to do so. The people being the repository of the right to alter or reform its government, its will and wishes must be consulted before the Legislature can proceed to call a convention."²¹

The constitutions of nineteen states require that proposals to call a constitutional convention pass both houses of the legislature by a 2/3 vote of the members elected.²² Proposals to call conventions may be submitted by regular legislative enactments in ten states.²³ Four states require majority approval of the members elected in both houses of the legislature.²⁴ Kentucky is the only state requiring that the proposal pass two sessions of the

¹⁹ 55 R. I. 56, 178 Atl. 433 (1935). In 1883, in an advisory opinion to the State Senate, the Rhode Island Court had related that a Constitutional Convention could not be legally held in that state. Here the Court reasoned that since the Constitution gave express authority for change by amendment only a constitutional convention was prohibited by implication. *In Re Constitutional Convention*, 14 R. I. 649.

²⁰ Cited from Section 4 of the Bill of Rights of the *Constitution of the Commonwealth of Kentucky*. Most state constitutions contain similar provisions.

²¹ R.C.L., Section 17, p. 27; HOAR, CONSTITUTIONAL CONVENTION (1917) p. 68.

²² California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Kansas, Minnesota, Montana, Nevada, New Mexico, North Carolina, Ohio, South Carolina, South Dakota, Utah, Washington and Wyoming.

²³ Arizona, Iowa, Maine, Michigan, Missouri, New York, Oklahoma, Oregon, Tennessee and Wisconsin.

²⁴ Alabama, Kentucky, Virginia, and West Virginia.

Legislature, and here it must pass each session by a majority of all members elected to each house. Nebraska requires that the proposal to call a convention pass by 3/5 vote of the members elected.

The constitutions of eight states contain provisions requiring that the legislature submit to the people the question of convening a constitutional convention at definite periods. For instance, Maryland, Missouri, New York, Oklahoma, and Ohio provide that the question be submitted every twenty years. New Hampshire provides that the question be submitted every seven, Iowa every ten, and Michigan, every sixteen years.²⁵ This type of provision has its value in that it prevents the legislature from neglecting the issue. If the people feel a revised constitution is in order, they have ready means for bringing one about.

With the exception of two states, Georgia and Maine, the question of calling a constitutional convention must be ratified by the people. Ordinarily, the question of calling a convention is ratified by majority vote, but some cases exist in which the requirements are higher.²⁶ At least eight states require that the calling of a convention be ratified by majority vote of all the voters voting in a general election.²⁷ Kentucky requires that the total vote cast for the calling of a convention be equal to one-fourth the votes cast in the preceding general election. Some requirement as to the number of voters voting for a convention may be desirable, but the required number should not be so high as to prevent the occasional modernizing of a state constitution, particularly in a state with a long restrictive constitutional document.

It would be expected that state constitutions would require that a new constitution be ratified by the people. Yet, this is not the situation. Only twenty constitutions contain this requirement.²⁸ Nevertheless, it is debatable whether this provision is

²⁵ Maryland and New Hampshire provide for no other means of calling a convention.

²⁶ For judicial interpretation of constitutional provisions, see Note (1941) 131 A.L.R. 1382.

²⁷ Kansas, Minnesota, Nebraska, South Carolina, South Dakota, Utah, Washington, and Wyoming.

²⁸ Arizona, California, Colorado, Georgia, Idaho, Illinois, Indiana, Michigan, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, Ohio, Oklahoma, Utah, Washington, West Virginia and Wyoming.

necessary since the legislature or the convention itself can specify in what manner the new constitution must receive approval of the people.

CONCLUSIONS

In conclusion, it may be said that most state constitutions are long, restrictive documents, inhibiting the operation of state government in many particulars. Most of them also provide difficult methods of amendment and under most of them convening of a constitutional convention cannot be readily accomplished. On the other hand, the present or recent interest in constitutional revision in a number of states indicates the desirability of keeping state constitutions up to date. Keeping them up to date seems particularly desirable in an age of rapidly expanding governmental services, if states and their local subdivisions are not to be completely overshadowed by the Federal Government.

The picture is not entirely dark, however; a few states have led the way in providing for automatic submission to the people of the question of calling a convention at reasonable intervals. The new constitution of Georgia is not among the hardest to amend or revise and Missouri's new constitution is one of those providing for automatic submission of the question of calling a convention. In Missouri, also, the question of calling a convention may be submitted by the legislature on a vote of a majority of the members elected. An isolated case does not prove a rule, but those who wish to see less rigid constitutions adopted in the states generally may take heart from the Missouri example.