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Committee Documents

VOLUME X

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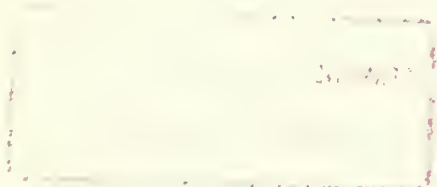
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Louisiana Constitutional
Committee Documents

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LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

VOLUME 754



LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

LOUISIANA CONSTITUTIONAL CONVENTION RECORDS COMMISSION

MEMBERS OF THE COMMISSION:

Chairman Moise W. Dennerly

Vice-Chairman David R. Poynter

Chris J. Roy

Max N. Tobias, Jr.

Mark T. Carleton

Louis E. Newman

W. Lee Hargrave

C. B. Ellis

Thomas Jacques

Donald J. Lemieux

Norma M. Duncan

Sallie Farrell (February, 1975 - June, 1975)

A. Edward Hardin, Coordinator of Research

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**COMMITTEE ON
BILL OF RIGHTS AND
ELECTIONS**

I. Minutes

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Heid, pursuant to notice mailed by the Secretary of the Convention on March 1, 1973

State Capitol, Baton Rouge, Louisiana

Committee Room 9

Friday, March 16, 1973 (10:00 a.m. - 4:00 p.m.)

Saturday, March 17, 1973 (10:00 a.m. - 3:15 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman (until 11:45 a.m., March 16)
Mrs. Judy Dunlap, Vice-Chairman (from 11:45 a.m. until close of meeting)

Present

Mrs. Judy Dunlap
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss
Anthony J. Guarisco, Jr.

Absent

Rep. Shady Wall

Roll call was taken by the committee secretary, Mary Ann Fields. A quorum was present. Chairman Jackson introduced the Research Staff, Lee Hargrave, Walter Landry, and Mary Ann Fields. Dr. Weiss asked for their qualifications. Each staff member gave a brief resume of his qualifications and background.

The following agenda as contained in the notice was read by the Chairman. Chairman Jackson stated that the agenda included: (1) plans for future meetings. (2) scheduling of future meetings. (3) potential speakers (4) possible proposals that might come before the committee and (5) examination of committee responsibilities and coverage of them. The Chairman asked and received approval for this approach.

A general discussion occurred on possible future meetings of the committee. Dr. Weiss asked how many meetings are allowed for the committee and if the work would be completed by April as discussed previously. It was later brought out in the meeting that the committee was allocated 4 days a month for committee meetings.

Chairman Jackson stated that the committee should complete the work by May 1 and hold hearings of the committee's tentative report around the state. The Chairman suggested that the committee include March 30 and 31 as possible

meeting dates. A motion offered by Delegate Roy that the next meeting dates be March 30 and 31 was approved.

The committee considered internal rules of operation. Delegate Roy offered a motion to allocate the first hour of the meeting for the public who wished to participate in the meetings. After considerable discussion the motion in amended form was adopted (See Resolution No. 1).

Dr. Weiss introduced a motion regarding the Louisiana Hospital Television Network and the possibility of two

-2-

hour televised hearings every two weeks. The motion approved. (See Resolution No. 2).

Mr. Landry suggested that the committee begin by reviewing the potential subject matter in its area of responsibility and then proceed to consider a Bill of Rights.

Chairman Jackson asked the staff to obtain Bills of Rights from various states so that the committee would then be ready to consider a Bill of Rights in detail.

Chairman Jackson took leave of the committee and Mrs. Dunlap assumed the chair.

Other members requested information of the staff on various topics.

The committee recessed at 12:00 for lunch.

After lunch, Mrs. Dunlap, the acting Chairman suggested that the committee start off with a discussion of the Preamble. Mr. Landry read the Louisiana Preamble and observed that a Preamble tends to recite the hopes and aspirations of the people in framing a constitution. Delegate Guarisco suggested that the Preamble should be broadened to include the present goals and aspirations of the people. The discussion centered on the question of what language should be used in the Preamble.

Delegate Roy raised the question of minority reports. Delegate Vick moved that the Rules Committee be requested to inform the Committee on Bill of Rights and Elections of its interpretation of the Rules on the filing of a minority report. The motion was approved. (See Resolution No. 3).

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There was general discussion on the question of shield laws and the right of a reporter to keep his source confidential.

Delegate Vick moved that the meeting be adjourned for the day. The meeting adjourned at 4:00 p.m.

THE MEETING RECONVENED

Saturday, March 17, 1973, 10:00 a.m.

Presiding: Mrs. Judy Dunlap, Vice-Chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss

Absent

Rep. Alphonse Jackson, Jr.
Rep. Shady Wall

Roll call was taken by the committee secretary. A quorum was present. Chairman Dunlap asked persons who would like to speak before the committee to sign in with the secretary.

The first speaker was Roy Brun of the Young Americans for Freedom Chapter at L.S.U. He spoke on property rights. He brought out in his discussion the problem of zoning laws and the violation of private property. He stated that the economic freedom the government needs to protect is the right of property. He also stated that a legitimate government protects property from physical force. He was closely questioned by members of the Committee.

Ms. Karline Tierney of the Women in Politics Organization in Baton Rouge discussed the desirability of inserting an

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Equal Rights Clause in the Bill of Rights. Ms. Tierney submitted a report to the Bill of Rights Committee asking for inclusion in the Bill of Rights of the Louisiana State Constitution, a statement which would read:

"Equality of rights under the law, shall not be denied or abridged because of race, color, creed, sex or national origin."

Mr. Jack Jackson, president of the American Civil Liberties Union in Louisiana, also spoke on the question of an Equal Rights Clause in the Bill of Rights. Mr. Jackson stated that an equal rights provision in the Constitution would include equal pay for equal jobs and equality of treatment of men and women for jury service. Mr. Jackson stated that it was the committee's responsibility and obligation to write a Bill of Rights that is going to give the widest possible civil liberties to our people. Mr. Jackson stated that the people are ready for equal rights for women in the state.

Ms. Annebell Walker from the New Orleans Chapter of the National Organization for Women (NOW) also spoke on desirability of an Equal Rights Clause for the Bill of Rights. Ms. Walker submitted a petition from the citizens of the New Orleans area asking that the following be included in the Constitution:

"Equality of rights under the law shall not be denied or abridged by or in the State of Louisiana on account of sex, race, religion, or national origin."

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Ms. Mable Walker of St. Charles Parish submitted the following statement, "women are interested in equality for themselves and equal rights and more so for human rights"

Ms. Debby Millenson, a New Orleans attorney, also spoke on the desirability of an Equal Rights Clause for the Bill of Rights. Ms. Millenson stated that the community property law of Louisiana deprives women of having husbands accountable for management of the community. She also spoke on equal jobs and equal pay for women. She was closely questioned by members of the committee and replied in a lively exchange.

After the speakers concluded their remarks, the Chairman recessed for lunch.

After lunch, Delegate Roy moved to adopt a Preamble patterned after that of the State of Illinois. (See Tentative Proposal No. 1). Delegate Jenkins urged that the Preamble exclude the word poverty which is difficult of definition. Delegate Jenkins then moved to amend Delegate Roy's proposal (See Tentative Proposal No. 2).

Delegate Roy stated that he accepted Delegate Jenkins' amendment.

Mr. Stinson proposed deletion of "eliminate inequality of rights" and insertion of "assure equality of rights", to the proposed Preamble (See Tentative Proposal No. 3).

Dr. Weiss submitted a substitute proposal which was rejected. (See Tentative Proposal No. 4).

Delegate Jenkins then moved to rearrange the phrases in the proposed Preamble. This was accepted by Delegate

-6-

Roy and as such it was adopted by the Committee. (See Tentative Proposal No. 5).

The committee agreed that the subject matter of the next meeting would be Bill of Rights and Human Rights.

There being no further business, the meeting adjourned at 3:15 p.m.


Alphonse Jackson, Jr., Chairman

Mrs. Judy Dunlap, Vice-Chairman

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CC '73 Committee on Bill of Rights and Elections (CBRE)

CBRE RESOLUTION No. 1 by Mr. Roy

A RESOLUTION

Establishing a Morning Hour for Witnesses

BE IT RESOLVED that the initial one hour period of each meeting of the Committee on Bill of Rights and Elections shall be set

aside for receiving the testimony of persons wishing to appear before the Committee.

BE IT FURTHER RESOLVED that witnesses desiring to testify will so inform the Senior Research Assistant of the Committee. The Chairman will then allot time to each witness, based on the number of persons wishing to testify, with priority being given to those witnesses submitting copies of their prepared statements to the committee.

CC '73 Committee on Bill of Rights and Elections (CBRE)

CBRE RESOLUTION No. 2 by Dr. Weias

A RESOLUTION

Televised Meetings Via LHT Network

BE IT RESOLVED that the Committee on Bill of Rights and Elections seek to have televised meetings of two hours duration every two weeks, with appropriate testimony and questioning of witnesses, utilizing the facilities of the Louisiana Hospital Television Network.

CC '73 Committee on Bill of Rights and Elections (CBRE)

CBRE RESOLUTION No. 3 by Mr. Vick

A RESOLUTION

Minority Report Ruling Requested

BE IT RESOLVED that the Rules Committee of CC '73 is requested to inform the Committee on Bill of Rights and Elections of its interpretation of the Rules with respect to minority reports particularly Rule 60 and related rules regarding (1) whether a minority report is to be in written form and attached to the majority report or is to be merely oral, and (2) if a minority report is to be in written form whether a single member of the Committee may file such a minority report.

NOTES

Tentative Proposals Nos. 1-5
are reproduced below in Chapter II.

MINUTES

Minutes of the meeting of the Bill of Rights
and Elections Committee of the Constitutional
Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on March 28, 1973
Conservation Auditorium of the Natural Resource
Building, Baton Rouge, Louisiana
Friday, April 6, 1973 (10:00 a.m. - 4:00 p.m.)
Saturday, April 7, 1973 (10:00 a.m. - 5:00 p.m.)

Presiding: Mrs. Judy Dunlap, Vice Chairman (presided until
11:00 a.m., April 6; thereafter Rep. Alphonse
Jackson, Jr. presided).

Friday, April 6, 1973

Present

Mrs. Judy Dunlap
Rep. Alphonse Jackson, Jr.
Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Kendall Vick

Roll call was taken by the committee secretary. A quorum was present. Vice Chairman Dunlap announced that the first order of business would be the reading of a letter from Mr. Vick by Mr. Landry. The letter stated some personal observations of Mr. Vick with regard to the previous meeting of Saturday, March 17, 1973. He was concerned that representatives of various organizations attending committee meetings were confusing the objective analysis of committee members with advocacy. He strongly urged the chairman to admonish the public in attendance during the period of general discussion by the committee members that they, the public, should exercise care in reporting the deliberations of the committee to their constituents. He also urged the public not to represent debate between committee members as final positions for or against any proposition until the final report of the committee is presented to the convention.

Chairman Dunlap suggested that the committee should suspend approval of the minutes because of the large number of speakers who wished to speak before the committee. Such a motion was adopted. It was also agreed to suspend the rules to allow more than one hour for hearing witnesses. Mrs. Dunlap asked each speaker to limit his remarks to three minutes. Delegate Jenkins asked that witnesses be limited to two hours or until 12:00 noon.

The first speaker, Delegate Gary O'Neill recommended the "Declaration of Individual Rights" which Mr. Jenkins was proposing. Delegate O'Neill pointed out that rights reside in individuals. Group rights do not exist except as an extension of individual rights. He urged the committee to differentiate between a bogus right and a genuine right. A genuine right applies equally to all and not at the expense of another person. He stated that the committee should constantly bear the following question in mind when writing the Bill of Rights: "At whose

(2)

expense?". If all the people of Louisiana are presented a constitution that requires them to pay the expenses of someone in particular, simply because it is in the bill of rights, the people will turn it down. He stated that Mr. Jenkins' proposed set of rights do not favor any one person. No group

is given preference at the expense of someone else.

Mr. Russel Gaspard, director of the State Board of Registration, representing the state board and the Louisiana Registrar of Voters submitted a proposed "right to vote" provision to the Bill of Rights Committee for consideration as follows:

Every citizen of this state and of the United States, native born or naturalized, not less than 18 years of age; who is an actual bona fide resident and who has registered 30 days prior to any election, shall be an elector and shall be entitled to vote at any election held in the precinct in which he is registered.

Mr. Gaspard stated that registration 30 days prior to election is sufficient time for his office and that there was no need for a longer period. Once the records were computerized, a shorter period, such as 15 days, would even be feasible.

Mr. Charles MacMurdo, representing the Baton Rouge Citizens for Law and Order and its President L. N. Day, spoke on the bill of rights in general. He said a bill of rights should state distinctly fundamental rights and freedoms of the people which government is prohibited from violating. These rights and freedoms should include the following:

- (1) not to be deprived of life, liberty, and property except by due process of law,
- (2) freedom of speech, religion, press, petition, and peaceable assembly,

(3)

- (3) to be secure in one's personal home,
- (4) equal justice,
- (5) to keep and bear arms, and
- (6) to enjoy other freedoms not specifically mentioned in the bill of rights.

Mr. MacMurdo stated that "A good bill of rights will contribute toward insuring the domestic tranquility thereby reducing occasions for lawbreaking and disorder".

Professor Robert A. Pascal, an LSU Law School professor, appeared in his personal capacity. He spoke in opposition to capital punishment and discussed generally the question of equal rights for women. Prof. Pascal stated that any blanket prohibition of the use of sex for differentiating the right and obligations of people will result in very serious harm to the family structure.

Mrs. Carolyn Groves, representing, Concerned Parents Association of Baton Rouge, spoke against the Equal Rights Amendment and urged the committee "not to liberate us from freedom to serfdom".

Mrs. Babs Minhinette, representing, "Females Opposed to Equality" (FOE), stated that a unisex clause in the Louisiana State Constitution would violate the religious freedom guaranteed us by the First Amendment in the Bill of Rights of the U. S. Constitution. Mrs. Minhinette further stated that the inclusion of a neuter gender clause in the new constitution would cause the new constitution to be rejected at the polls.

Ms. W. E. Reise, representing Jack W. Leggett, leader of

Deus Dux (God Is Our Leader), stated that her organization was opposed to any provision that will disturb the family

(4)

structure and therefore opposed an "Equal Rights Clause" in the constitution.

Mrs. Bonnie Christian, representing Rep. Louise Johnson of Bernice, Louisiana, advised the committee that Rep. Johnson would campaign against the new constitution if it included a unisex clause.

Mrs. Martha Dutsch, representing the Covington Conservative Association, was also opposed to an "Equal Rights Amendment". She stated that the federal laws already provide for equal rights in jobs and other areas.

Ms. Elsie J. Allen, representing the Shreveport League of Women Voters, recommended that the following language be included in the new constitution:

"The rights of a citizen of Louisiana will not be denied or abridged because of race, religion, sex, or national origin."

She stated that women must have the rights and privileges of a first class citizen. She also said that the laws and regulations of Louisiana are 50 years behind the times.

Dr. Joe McManus, representing the New Orleans Chapter of the National Organization for Women (NOW), stated that a constitution in 1973 should provide equal justice for all citizens, black and white, male and female.

Ms. Paul W. McIlhenny, representing the Independent Women's Organization, supported the inclusion of an equal rights provision.

Mrs. Dan M. Moore, Jr., representing the American Association of University Women in support of an equal rights provision, stated that the biggest discrimination for women is in the field of employment.

(5)

After a break for lunch, Mrs. Charlotte Felt, representing the Women's Auxilliary of the Chamber of Commerce of the Greater New Orleans Area and Mrs. Nelson K. Brown, president of the Women's Protective League of Baton Rouge, spoke in opposition to an equal rights provision.

The committee then began a discussion of its internal business. The minutes were approved with one change.

Chairman Jackson called attention to a letter from David Poynter on the question of minority reports.

Delegate Jenkins made a presentation to the committee on freedom. He suggested that one could talk about economic freedom and social freedom. He criticized the liberal-conservative analysis of contemporary politics saying that conservatives advocated less social freedom and more economic freedom, and liberals advocated more social freedom and less economic freedom. He claimed that this was becoming irrelevant analysis for the youth of today. He considers that the new

polarization in politics is tending toward competition between those who believe in both economic and social freedom and those who would have less of both. He urged on the committee a proposed "Declaration of Individual Rights", designed to maximize both economic and social freedom. Delegate Jenkins suggested that Americans have three ultimate protections, (1) the jury box, (2) the ballot box and (3) the cartridge box.

After the presentation by Delegate Jenkins, the meeting recessed at 4:00 p.m.

THE MEETING RECONVENED

Saturday, April 7, 1973, 10:00 a.m.

(6)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Rep. Alphonse Jackson, Jr.
Anthony J. Guarisco, Jr.
Rep. Louis "Woolly" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss

Absent

Mrs. Judy Dunlap
Rep. Shady Wall

Roll call was taken by the committee secretary. A quorum was present. Chairman Jackson asked for the first speaker to come forward and the hearings continued.

The first speaker was Mrs. Nancy Weiler of Bossier City who represented herself and urged support for an equal rights provision.

Ms. Linda Martin, representing the Shreveport-Bossier Chapter of the National Organization for Women (NOW), called for a human rights clause that would insure that all citizens are protected, including minorities and women. She also stated that the 14th Amendment to the United States Constitution did not protect the women of our country.

Mr. John Martzell, representing the Louisiana Trial Lawyers Association as its president, called for a right of trial by jury with no review of the facts on appeal. He pointed out that Louisiana is the only jurisdiction in the western world where a jury trial is recognized that permits review of facts on appeal.

Mr. A. J. Plaisance, a Lafayette attorney, supported Mr. Martzell's testimony and urged that jury trials should be granted without additional cost to the plaintiff. He pointed

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out that papers can get a jury trial by right but that the average working person often feels he cannot afford the \$1300 a day (the amount varies by parish) that a jury trial costs.

Mr. Arthur Cobb, representing the Louisiana Trial Lawyers Association, supported the position of Messrs. Martzell and Plaisance. He did not believe that a right to a jury trial should be determined by cost.

Ms. Quincy Hamilton, representing the National Association for the Advancement of Colored People (NAACP), addressed the committee in support of an "Equal Protection Clause."

Ms. Roberta Madden, representing the Consumer Protection Center, expressed her views about protection of the consumer, regardless of sex. Ms. Madden asked for consideration of a clause guaranteeing equal protection in the marketplace in our new state constitution.

Mr. Chester L. Martin, past president of the Lafayette Board of Realtors, representing himself, urged recognition of family, property, and cultural rights. He pointed out that Cajuns have been denied, for a long time, the right to speak the French language in school. He urged support for a provision on cultural rights in the constitution.

Ms. Madine Henneman, representing the State Board of the League of Women Voters, called for a bill of rights written in concise language easily understood by all the people. Ms. Henneman supported an equal protection clause in the bill of rights. She also urged the bill of rights to include a statement on the environment.

Dr. Francine Merritt, representing Common Cause and the

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American Association of University Women, submitted the following statements to the committee:

"THE RIGHT TO KNOW"

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases specified by statute in which the demand of individual privacy clearly exceeds the merits of public disclosure.

"THE RIGHT TO PRIVACY"

The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest.

Dr. Francine Merritt also called for an equal protection clause.

Mr. Roger Batz, representing Common Cause and for Paul Y. Burns, vice president of the Louisiana Council on Human Relations submitted the following suggested language for inclusion in the bill of rights:

All persons have the right to freedom, equality, and adequate conditions of life in a safe, healthful, and attractive environment that permits a life of dignity and well-being. All citizens are responsible for protecting and improving the environment for present and future generations.

Ms. Debra Millenson, representing the Council for a New State Constitution informed the committee that the council had adopted resolutions in support of:

- (1) equal rights, (2) abolishing capital punishment,
- (3) a newsman's shield provision, (4) right to counsel in grand jury investigations, (5) a strong right to redress, (6) a strong right to privacy,
- (7) a provision for equal housing, and (8) greater

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facilities for bail in criminal cases.

She praised Dr. Weiss's proposal on the right to vote but suggested a 30 day period instead of a 50 day period for registration in advance of an election.

Chairman Jackson called for a discussion on the time and agenda for the next meeting. Delegate Roy suggested that the committee first consider the subject of minority reports. Chairman Jackson suggested that the next committee meeting start at 10:00 a.m. and go on to an evening session.

Delegate Soniat proposed and it was agreed that the committee use the Louisiana Law Institute Project for a guide in the preparation of the bill of rights.

Delegate Jenkins proposed and it was agreed that the committee would not have speakers at the next meeting and instead proceed immediately to draft a rights article.

Delegate Roy moved, that for a minority report to be attached to the preliminary majority report to be sent to the Committee on Style and Drafting, it should receive a vote of 30 percent of those voting on the committee. (See Resolution No. 4).

Delegate Stinson introduced a substitute motion that the vote of only one person was sufficient for a minority report. Delegate Stinson withdrew his substitute motion after Delegate Roy explained that his motion only applied to preliminary submissions and not to the submission to the convention in July.

Senior Researcher, Walter Landry, suggested preparation of a composite working document putting together all the proposals of the delegates and project for the use by delegates next time

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in their drafting of a proposed bill of rights. There was general agreement that this should be done.

Walter Landry recommended the provisions from the 1921 constitution that should be considered definitely by the committee in response to Research Director Duncan's letter of March 28, 1973, to Chairman Jackson. The committee made several changes with respect to specific provisions and then authorized Mr. Landry to reply to Mrs. Duncan's letter on behalf of the committee.

There being no further business, the meeting adjourned at 5:00 p.m.


Rep. Alphonse Jackson, Jr., Chairman

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April 16, 1973

CBRE Tentative Proposal No. 29

by Messrs. Roy, Weiss and Vick

Background: Text of TP No. 23 as amended by TP No. 24.

Section _____. Right to Individual Dignity

No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas. Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted.

Disposition: Tentatively adopted, April 16, 1973 by a roll call vote 7-2. The comment is to explain that the committee does not intend to endorse the concept of racial or other quotas and is inconsistent with the proposal.

The Roll Call

Dunlap	Yes
Guarisco	Yes
Jackson	Yes
Jenkins	No
Roy	Yes
Soniat	Yes
Stinson	No
Vick	Yes
Wall	Absent
Weiss	Yes

(Corrected in accordance with the Minutes of the meeting of May 4 and 5, 1973.)

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973
Held pursuant to notice mailed by the Secretary of the Convention on April 9, 1973
State Capitol, Baton Rouge, Louisiana
Room 205
Monday, April 16, 1973 (10:00 a.m. - 5:30 p.m.)
Tuesday, April 17, 1973 (9:00 a.m. - 3:45 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Absent

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyae E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Roll call was taken by the committee secretary. A quorum was present. The chairman asked for the approval of the minutes by the committee. The minutes were adopted as printed. Chairman Jackson asked for the adoption of the proposed agenda. The agenda was approved and adopted by the committee. Chairman Jackson stated that the first item on the agenda was a report from Mr. Landry on Item 6 on potential election dates at which the proposed constitution may be submitted to the people. Mr. Landry said the secretary o

of state's office advised him that the election could be held six weeks after that office received the ballot material. If the material is submitted to the governor on January 4, 1974, he could conceivably call an election six weeks thereafter on a Saturday which would be mid-February, 1974. This is the earliest possible time a special election can be called. The latest possible time is November 5, 1974, which is the date for the next general election. After general discussion, it was decided that Chairman Jackson would refer this matter to the Executive Committee.

Chairman Jackson stated that at the last meeting the committee had agreed to consider the Louisiana Law Institute Projet on the Bill of Rights in conjunction with proposals by committee members. He asked Mr. Landry to explain to the committee the CBRE working document (Document 23). Mr. Landry stated that he had combined all proposals together by subject matter using the Projet order as a guide in preparing the working document.

The working session commenced with Mr. Roy proposing a section on the origin and purpose of government based on the Projet (See TP No. 6). Dr. Weiss moved to substitute his proposal entitled "Inalienable Rights" but this was defeated 4-3 (See TP No. 7).

Delegate Jenkins offered a substitute proposal (TP No. 8) for TP No. 6 which was in the nature of an amendment to TP No. 7, but it was also rejected after Delegate Vick argued that TP No. 8 was an extension of the "Preamble". Delegate Vick moved to amend Mr. Roy's proposal with TP No. 9 and this was accepted by Mr. Roy.

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Delegate Weiss and Stinson offered an amendment (See TP No. 10) to Delegate Vick's proposal, but it was rejected.

Delegate Jenkins stated that "for the good of the whole," is undefined or undefinable. He stated that it is important to talk about the individual. In support of his position he offered TP No. 6 which was rejected.

Delegate Jenkins next proposed TP No. 12 which was adopted by Messrs. Roy and Vick.

Delegate Jenkins proposed TP No. 13 which was rejected 2-5 after Mr. Roy spoke against it.

Delegate Roy offered TP No. 14 which was accepted by Messrs. Jenkins and Vick.

Delegate Stinson proposed that the title for the section be "Origin and Purpose of Government," (See TP No. 15). This was accepted by Messrs. Roy, Vick, and Jenkins.

The original TP No. 6 as amended by TP Nos. 9, 12, 14, and 16, was then adopted (See TP No. 16).

Delegate Jenkins stated that the basic rights of each human being are not contradictory and that he would like the courts to accept this principle in the constitution. He therefore proposed TP No. 17 which was tabled.

An original section was proposed by Dr. Weiss entitled "Right to Life" (See TP No. 18), but he agreed after discussion, to defer action on it.

Dr. Weiss proposed TP No. 19 entitled "Rights of the Family." Mr. Jenkins attempted to amend it (See TP No. 20) and then the entire matter was referred to the research staff.

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Delegate Stinson suggested the committee accept the document in the Projet, Article I, Section 2. Delegate Jenkins, stating that it doesn't provide needed protection, proposed TP No. 21, which was adopted with the title "Prohibited Laws" also proposed by Mr. Jenkins (See TP No. 22).

Delegate Roy and Delegate Weiss submitted identical proposals (See TP No. 23).

Delegate Vick moved to strike the first sentence of TP No. 23 as having no legal effect and this was accepted by Messrs. Roy and Weiss (See TP No. 24).

Delegate Jenkins made several attempts to amend TP 23 further (See TP Nos. 25, 26, 27, and 28) but all were rejected. TP Nos. 27 and 28 were rejected by roll call votes.

TP No. 23 as amended by TP No. 24 was then adopted 7-2 by a roll call vote (See TP No. 29).

Delegate Weiss offered a TP No. 30 based on the Louisiana Law Institute Projet, Article I, Section 3.

Delegate Jenkins moved to substitute TP No. 31 which was adopted 7-3 after several amendments to it (TP Nos. 31, 32, 33, and 34) were rejected.

Mr. Guarisco proposed TP No. 35 on freedom of religion based on Louisiana Law Projet, Article I, Section 4 with the first sentence deleted as having no legal effect. After a brief discussion regarding the sensibilities of the public if the sentence were removed, Mr. Guarisco agreed to add the sentence at the end. Mr. Stinson suggested "Freedom of Religion" as the title of the section and this was adopted (See TP No. 36).

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Mr. Jenkins proposed an original section entitled "Administering of Oaths" but after a brief discussion agreed to withdraw it (See TP No. 37).

Mr. Jenkins proposed an original section entitled "Freedom of Movement" but this was tabled.

"Freedom to Dissent," which was TP No. 39 by Mr. Jenkins, was withdrawn.

Dr. Weiss proposed a section (TP No. 40) the right of an assembly based on the Louisiana Law Institute Projet, Article I, Section 5. It was amended by the addition of a provision on freedom of movement by Mr. Jenkins (TP No. 41) the deletion of the word "officials" by Mr. Vick (TP No. 42) and the addition of a longer title by Dr. Weiss (See TP No. 43).

Mr. Jenkins introduced an original proposal entitled "Freedom of Commerce" (TP No. 44) which was rejected 1-6. Mr. Jenkins' proposal entitled "Prohibition of Government Competition and Monopolies" was referred to the research staff (See TP No. 45).

The proposal by Mr. Roy entitled "Freedom from Discriminatic (TP No. 46) evoked considerable debate after which the meeting adjourned until the following day.

THE MEETING RECONVENED

Tuesday, April 17, 1973, 9:00 a.m.
Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

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Roll call was taken by the committee secretary. A quorum was present. Delegate Roy reintroduced TP No. 46. Mrs. Soniat moved to amend it to prohibit discrimination in access to public accomodations (TP NO. 47). Her proposal was adopted 5-4. In the debate it was pointed out that the section was intended to prohibit private discrimination as opposed to state action which was covered in the section entitled "Right to Individual Dignity."

Mr. Jenkins proposed TP No. 48 as an amendment involving freedom of association and it was accepted by Messrs. Roy and Soniat. The proposal was then adopted 5-4 by a roll call vote (See TP No. 48).

Dr. Weiss proposed TP No. 49 consisting of three original proposed sections entitled "Right of Redress," "Rights of the Child," and "Right to Due Process of Law." Mr. Roy proposed TP No. 50 "Access to Courts" as a substitute for "Right of Redress" and it was adopted 8-1. Mr. Jenkins proposed TP No. 51 entitled "Due Process of Law" in lieu of the Weiss proposal on the same subject and it was adopted. The Weiss proposal "Rights of the Child" was referred to the research staff. TP No. 51 in turn was amended by TP No. 52 of Mr. Vick, and as amended was adopted unanimously with one person absent.

Mr. Jenkins' proposal, TP No. 53, entitled "Availability of Rights" was withdrawn.

Mr. Guarisco proposed a section involving a right to a civil jury trial based on the Seventh Amendment to the United States Constitution (See TP No. 54). A motion to table was defeated 3-4.

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Mr. Roy proposed a single word amendment which was accepted by Mr. Guarisco (TP No. 55). Mr. Jenkins then proposed an amendment entitled "Trial by Jury in Civil Cases" (TP No. 54) which was accepted by Messrs. Guarisco and Roy and passed unanimously. The proposal passed despite the fact that Mr. Tobias of the Judiciary Committee made a special appearance before the Bill of Rights Committee urging that the matter be tabled because it was also being considered by the Judiciary Committee.

Mr. Jenkins proposed TP No. 57 entitled "Searches and Seizures." Mr. Roy moved to substitute TP No. 58 which in turn was amended by Mr. Vick (TP No. 59) and Mr. Jenkins (TP No. 60). The amcnments were accepted and the Roy proposal as amended was adopted unanimously.

Dr. Weiss proposed TP No. 61 on the right to property. Mr. Jenkins moved to substitute his TP No. 62 and then the entire matter was referred to the research staff.

Dr. Weiss proposed TP No. 63 entitled "Freedom from Military Intrusion." It was amended slightly by Mr. Roy (TP No. 64) and then adopted 7-1.

Dr. Weiss proposed TP No. 65 on the right to vote but action was deferred on the matter.

The Weiss proposal entitled "Right to Direct Participation in Government" (TP No. 66) was referred to the research staff.

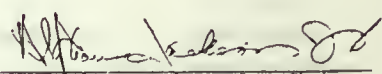
Action on the Weiss proposal, "Civil Service Rights" was deferred (See TP No. 67).

The Jenkins proposal, "Freedom to Keep and Bear Arms" (TP No. 69) was introduced. The attempt by Mr. Vick to

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substitute "Right to Arms" (TP No. 69) was rejected. Dr. Weiss then proposed TP No. 70 which was amended by Mr. Jenkins (TP No. 71) and adopted.

Mrs. Dunlap moved for adjournment and the meeting adjourned at 5:30 p.m.


Rep. Alphonse Jackson, Jr., Chairman

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on April 24, 1973

State Capitol, Baton Rouge, Louisiana

Room 206

Friday, May 4, 1973 (10:00 a.m. - 4:30 p.m.)

Saturday, May 5, 1973 (9:00 a.m. - 3:30 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendal Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Roll call was taken by the committee secretary. A quorum was present. The chairman asked for the approval of the minutes by the members. Two corrections were made in the minutes; one was to TP No. 27 in which Mrs. Judy Dunlap should have been recorded as voting "no" instead of "yes". The second correction was to TP No. 29 in which Rep. Jenkins pointed out that the phrase "and is inconsistent with the proposal" should be added after the word "quotas" under the heading entitled "disposition". The minutes were accepted and adopted with the proposed corrections. Chairman Jackson made a report to the committee on the response of the public around the state. He stated that the tentative proposals of the committee will be submitted to the press and will be the subject of further public hearings. He asked the committee members to give reports of meetings attended through out the state. Mr. Vick gave a report from the New Orleans meeting in which he represented the committee chairman. He stated that a gentleman made a presentation for the Council on Aging and asked that his remarks be directed to the appropriate committee.

Mr. Roy reported on a memo from Caddo Parish District Attorney John Richardson. Mr. Roy was encouraged by the generally laudatory comments in the memo regarding the Preamble, Access to Courts, and Freedom from Discrimination. The section entitled "Right and Assembly and Freedom of Movement" was the subject of some concern with regard to the system of parole. Mr. Roy thought the memo was in error on this point but that it could be considered later.

Mr. Stinson suggested that both Mr. Richardson and the head of the District Attorneys' Association be invited to address the committee and there was general agreement with this idea.

The committee first took up the question of the right to property and briefly considered Staff Memo. No. 32 on the subject. Mr. Jenkins introduced his own Tentative Proposal (TP) No. 72 entitled "Right to Property". In the

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course of discussion and debate, Mr. Jenkins began amending the proposal and accepting amendments proposed by others. Dr. Weiss wanted to provide that the disposition of property may be subject to reasonable laws to protect the family.

After lengthy discussion, the committee recessed for lunch at 12:35 p.m.

After lunch, Mr. Jenkins' "Right to Property" was debated and amended further and finally adopted in amended form as TP No. 73.

Mr. Guarisco stated that the comment should indicate that the intent of this proposal is to abolish the law of appropriation.

Mr. Roy introduced TP No. 74 involving rights of accus-

ed persons. Mr. Jenkins introduced TP No. 75 as a substitute. Mr. Roy and others proposed amendments to the substitute which was adopted as TP No. 76.

Mr. Roy then introduced TP No. 77 dealing with the initiation of prosecution and other matters, Mr. Jenkins proposed amendments which were accepted by Mr. Roy as TP No. 78. Mr. Jenkins then attempted to delete a phrase from TP No. 78 but Mr. Roy opposed this and the attempt was rejected. See TP No. 79. TP No. 78 was then adopted.

THE MEETING RECONVENED

Saturday, May 5, 1973

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Presiding: Rep. Alphonse Jackson, Jr., chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Roll call was taken by the committee secretary. A quorum was present.

Mr. Roy introduced TP No. 80 involving criminal prosecutions and grand jury proceedings. During the course of debate Mr. Roy accepted amendments limiting the section to grand jury proceedings, TP No. 81, and as such, the section was adopted, after an attempt by Dr. Weiss to amend it was rejected. See TP No. 82.

Mrs. Dunlap assumed the chair in the absence of the chairman.

Mr. Jenkins introduced TP No. 83 on a fair trial. It was amended in committee debate and adopted as TP No. 84.

Mr. Jenkins introduced TP No. 85 on trial by jury in criminal cases. Over Mr. Jenkins' objection Mr. Roy introduced an amendment, TP No. 85, to raise the number of jurors that must concur to convict in certain cases. The amendment was adopted 4-3.

There were various additional amendments to TP No. 85

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and it was then adopted as TP No. 87. A minority report is to be submitted on the tentative proposal.

Dr. Weiss introduced TP No. 88 on the right to humane treatment. It was amended twice and then adopted. See TP Nos. 89 and 90.

Mr. Roy introduced TP No. 91 on the right to bail; after considerable discussion it was replaced by a substitute proposal of Messrs. Jenkins and Roy that was adopted. See TP No. 92.

April 16, 1973

Mr. Roy introduced TP No. 93 relating to treason, an amendment by Mr. Jenkins, TP No. 94, to delete a phrase was accepted by Mr. Roy, a motion to atriike the entire section was defeated 3-5 but a second motion to approve the section was also defeated 3-4. Inclusion of the section is to be the subject of a minority report.

Dr. Weiss introduced TP No. 94 on habeas corpus. Mr. Jenkins introduced a substitut. proposal, TP No. 95, which was adopted. Mrs. Soniat introduced TP No. 97 on the right to civilian government. It was adopted but with the understanding that it would be included elsewhere in the constitution but not in the rights article.

Dr. Weiss introduced TP No. 98 on cultural rights, after considerable debate, Mrs. Dunlap moved to amend it by deleting the last two sentences. See TP No. 99. Dr. Weiss accepted the amendment for the purpose of adopting at least part of his proposal and as such TP No. 99 was adopted 4-3.

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Mr. Jenkins proposed TP No. 100 on unenumerated rights. Mr. Roy introduced a substitute, TP No. 101, which was defeated 2-4 after which the Jenkins' proposal was adopted.


Dr. Weiss introduced TP No 34 based on CBRE Staff Memo No. 34 prepared at his request. The proposal was adopted 4-2.

Dr. Weiss then introduced TP No. 103, a proposal on the rights of the child based on the 1972 Montana Constitution. See also CBRE Staff Memo No. 33. TP No. 103 was rejected 1-5.

The committee then discussed the forthcoming television hearing on May 11, 1973, scheduled for 3 to 5 p.m. utilizing the facilities of the Louisiana Hospital Television Network. In the absence of Chairman Jackson, Delegate Jenkins agreed to aerve as moderator. However, the committee voted to havc Dr. Weiss serve as moderator.

The committee decided to emphasize in its notice of meetings for May 18 and 19 that it wished to have comments on distributions of powers, elections, general government, and constitutional revision. After hearing witnesses the committee will proceed to draft appropriate aections.

There being no further business, the meeting adjourned at 3:30 p.m.


Rep. Alphonse Jackson, Jr., Chairman

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CBRE Tentative Proposal No. 27 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

After the words, "nor shall any law," add the word "unreasonably."

Disposition: Rejected by a roll call vote 4-5.

The Roll Call

Dunlap	Yes	No	(Corrected in accordance with
Guarisco	Yes		the minutes of the meeting
Jackson	No		of May 4 and 5, 1973.)
Jenkins	Yes		
Roy	No		
Soniat	No		
Stinson	Yes		
Vick	No		
Wall	Absent		
Weiss	Yes		

Televised Hearing of the Committee on the Bill of Rights and Election of CC/73

Time: 3 to 5 p.m., May 11, 1973

Place: Louisiana Hospital Television Network Facilities at Earl K. Long Hospital in Baton Rouge and at similar facilities in Shreveport, Monroe, Alexandria, Lake Charles, Lafayette, and New Orleans.

Members Present

- Baton Rouge - Rep. Louis "Woody" Jenkins
Mrs. Judy Dunlap
Anthony Guarisco, Jr.
Kendall Vick
- Shreveport - Ford E. Stinaon
Rep. Alphonse Jackson, Jr.x (Corrected in accordance with the Minutes of May 11, 1973.)
- Monroe - Rep. Shady Wall
- Alexandria - Chris J. Roy
- Lake Charles - Gerald N. Weiss
- New Orleans - Mrs. Novyse Soniat
- MODERATOR - Rep. Louis "Woody" Jenkins

A representative of the Louisiana Hospital Television Network introduced Delegate Louia "Woody" Jenkins, who served as moderator for the televised hearing. Delegate Jenkins introduced the delegates and the members of the research staff who were present in the studio in Baton Rouge.

After explaining the procedure to be used in the televised hearing, Mr. Jenkins called for the witnesses who wers to testify. The first witness, William J. Guate, attorney general of Louisiana commented on several aspects of the Bill of Rights. He generally praised the section entitled "Rights to Individual Dignity", but suggested that the inclusion of "sex" in the section be made an alternative on the ballot. He had reservations on the section entitled "Freedom of Expression" and other sections dealing with criminal procedure rights.

The second witness, Aaron Kohn of the Metropolitan Crime Commission of New Orleans, expressed concern generally over the provision involving criminal procedure rights. He emphasized the responsibilities of citizenship and urged that the committee not do anything to hamper the prosecution of criminals.

The third witness, former Congressman James Domengeaux, who is president of the Council for the Development of French in Louisiana, generally praised the proposed new provision in the rights article involving cultural rights. He also urged that the committee adopt initiative and referendum both at the state and local level so that the people would have a greater voice in the operation of their public institutions.

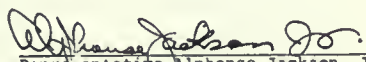
The fourth and fifth witnesses, Mrs. Phyllis Landrieu, second vice chairman of the Democratic State Committee and a member of the Democratic National Committee, and Jay Stone, executive director of the Republican Party of Louisiana, both urged caution in the election provision to be included in the new Louisiana Constitution. They both tended to favor broad general provisions and opposed specific language which might nail down an open primary system. They favored flexibility with regard to election provisions so that the legislature could decide the details of election laws. Both spoke in support of strengthening the operation of political parties in the state.

Mr. Russel Gaspard of the Board of Registration, the last

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speaker on the program, urged a right to vote provision which would facilitate registration and voting by virtually all citizens in the state.

During the course of the hearing, delegates and others from the various cities in the television network asked questions of the witnesses and brought out further details with regard to their respective positions. The program ended right on time at 5 p.m. as scheduled.


Representative Alphonse Jackson, Jr.
Chairman

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on May 9, 1973

Natural Resources Building, Conservation Auditorium,
Baton Rouge, Louisiana

Friday, May 18, 1973 (9:00 a.m. - 5:30 p.m.)

Saturday, May 19, 1973 (9:00 a.m. - 3:30 p.m.)

Presiding: Mrs. Judy Dunlap, vice chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Rep. Alphonse Jackson, Jr.

Roll call was taken by the committee secretary. A quorum was present. Chairman Dunlap asked that the reading of the minutes be suspended until after the speakers had testified. A total of 13 speakers addressed the committee during the two-day meeting.

The first speaker was MR. JOHN A. RICHARDSON, the district attorney from Caddo Parish. Mr. Richardson addressed himself to the problem areas in the proposed Bill of Rights, especially with reference to criminal procedure rights. He urged deletion of the sentence "providing that anyone adversely affected by search or seizure could raise its illegality". He also urged deletion of the flat prohibition of interception of private communication.

Mr. Richardson suggested a technical amendment with reference to trial by jury in civil cases. He urged that a responsibility clause be added to the section on Freedom of Expression.

With reference to Freedom of Assembly and Movement he suggested that the words "and leave" be deleted because it might cause problems with reference to probation and parole. However, it was pointed out to Mr. Richardson that a person undergoing punishment had his rights suspended and that this would include a person still under supervision for an offense as provided by the section on the Right to Humane Treatment.

Mr. Richardson suggested deletion of the first sentence in the section of Rights of the Accused. With reference to initiation of prosecution, Mr. Richardson urged the deletion of the phrase "or felonies necessarily punishable by hard labor" because this would cause great expense and require grand juries to remain in almost continuous session in major metropolitan areas.

Mr. Richardson urged deletion of the entire section on grand jury proceedings suggesting that this section would create another adversary proceeding and needless expense.

On Trial by Jury in Criminal Cases, Mr. Richardson suggested that "more than six months" replace "six months or more", because

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of the six months maximum for most misdemeanors. It was pointed out that the Duncan case used the language "six months or more" in requiring jury trials. With respect to the same section Mr. Richardson suggested deletion of the words "or cases in which no parole or probation is permitted" in the second sentence and a change in the third sentence involving deletion of the words "all" to "two-thirds" or "three-fourths" since unanimous verdicts in noncapital cases cause mistrials. With reference to the section on Access to Courts Mr. Richardson suggested that sover-

sign immunity not be abolished or if it is, it be abolished as to the state and not as to present governing officials.

The second witness, District Attorney ED WARE of Alexandria, representing the District Attorneys' Association, generally endorsed the comments of District Attorney Richardson. He also urged that the section on the Right to Keep and Bear Arms be revised by deleting everything after "concealed weapons".

The third witness, MRS. STEPHEN LICHTBLAU, representing the League of Women Voters of Louisiana, presented specific language to the committee on Suffrage and Elections and urged a liberal provision on the Right to Vote plus a recognition of the principle of permanent registration.

MR. JAY STONE, executive director of the Republican Party of Louisiana, had to leave before he was scheduled to testify but he submitted a statement which urged that no specific election system, especially specific open primary systems, be locked into the constitution.

MR. M. G. (MARC) ANSEMAN, chairman of the Citizens Initiative Committee submitted a detailed statement on Initiative and Referendum and urged that initiative and referendum both on a state and

(3)

local basis be included in the constitution.

Former congressman, JAMES DDMENGAUX, who is president of the Council for the Development of French in Louisiana (CODOFIL), praised the committee for its inclusion of the section on Cultural Rights and urged that the principle of local initiative and referendum be included in the constitution so that the cultural rights provision could be effectively implemented.

MR. J. A. BADEAUX, Thibodaux, of the National Rifle Association urged strengthening of the section on the Right to Keep and Bear Arms. He suggested the following language:

The right of the people to keep and bear arms and ammunition, and components thereof, shall not be abridged or infringed. This provision shall not prevent the passage of laws to punish those who carry weapons concealed.

DR. JERRY MILLETT of Lafayette, state chairman of the Libertarian Party, urged the committee to adopt the principles of the Libertarian Party where applicable in the Bill of Rights. He praised the idea that a section on the Right to Property be included in the Bill of Rights but urged deletion of the requirement that the Right to Property be subject to the law of forced heirship. He also urged that there be a provision in the constitution prohibiting Sunday blue laws and price-fixing.

MR. ROSS BANISTER, an attorney for the Louisiana Department of Highways, urged that the section on the Right to Property be revised. He pointed out that the section that was drafted would prohibit the removal of billboards and if this happens the state would lose substantial federal funds in connection with the interstate highway system. He also expressed fear that the quick-taking statute would be affected by the section.

(4)

MR. JACK COUSIN, representing the Central Louisiana Electric Company (CLECO), urged that the word "purpose" replace the word "use" in the Right to Property section since it had a settled judicial meaning. He also urged deletion of the last two sentences of the section.

MR. JOE KEOGH, representing the Louisiana Municipal Association, also criticized the section on the Right to Property. He criticized particularly the provision which would prohibit a municipality from acquiring ownership in a private utility.

MR. BURT W. SPERRY of Monroe, representing various gas transmission companies, expressed agreement generally with the remarks of the other speakers on the section, the Right to Property, and urged that the language on expropriation in the old constitution be retained.

The minutes of the previous meeting were adopted with one correction to the effect that Chairman Jackson was present at the television network outlet in Shreveport. (See attached corrected sheet)

The meeting adjourned at 5:30 p.m. for the day.

THE MEETING RECONVENED

Saturday, May 19, 1973, 9:00 a.m.

Presiding: Mrs. Judy Dunlap, vice chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins

(5)

Roll call was taken by the committee secretary. A quorum was present. Chairman Dunlap asked for the first witness to come forward.

MR. MERTZWEILLER, representing the Society of Louisiana Iris, spoke on behalf of having a native flower of Louisiana known as the "Louisiana Native Iris (Iris Gigantigaerulea, Blue Form)" included in the constitution as the official state flower. He also made an interesting slide presentation.

DR. BENJAMIN M. SHIEBER of the L.S.U. Law School urged that the last sentence of the section on the Right of Privacy be deleted and agreed that inclusion of the word "communications" in the first sentence will not present any problem.

Following testimony of the witnesses the committee proceeded to vote on specific proposals.

Dr. Weiss proposed that the title of the rights be "Declaration of Rights" and this was approved. See TP No. 104

Dr. Weiss moved to accept changes proposed in Staff Memo No. 40 including the titles to four sections and this was approved. See TP No. 105

Mr. Roy offered a proposal on the Right to Vote. See TP No.

106

A substitute proposal on the Right to Vote was presented by Delegate Vick. See TP No. 107.

Mr. Roy proposed an amendment to TP No. 107 which was accepted by Mr. Vick. See TP No. 108.

Delegate Stinson moved to amend TP No. 108 to keep parolees from voting but this was rejected 3-5. See TP No. 109.

Dr. Weiss offered an amendment (TP No. 110) to TP No. 108 which was accepted by Delegates Vick and Roy.

(6)

The Vick proposal as amended by Delegates Roy and Weiss was then tentatively adopted. See TP No. 111.

A proposal (TP No. 112) regarding direct participation in government was submitted by Delegate Weiss and rejected 2-6.

In the absence of Delegate Jenkins, Delegate Roy submitted TP No. 113 regarding government competition and monopolies but this was rejected 3-3 with two abstentions. Delegates Guarisco and Soniat said they abstained out of deference to Delegate Jenkins who was absent.

Dr. Weiss presented a proposal regarding civil service rights. See TP No. 114. It was rejected 3-5 but Delegates Weiss, Roy, and Soniat are to submit a minority report urging its inclusion.

Delegate Roy submitted a proposal (TP No. 115) to amend Section 4, Right to Privacy which was previously tentatively adopted and the change was adopted. Mr. Roy then proposed other changes to Section 5, Right to Property (TP no. 116), Section 15, Grand Jury Proceedings (TP No. 117), and Section 21, Right to Keep and Bear Arms (TP No. 118) all of which were adopted.

Moving on to a new topic "Distribution of Powers", Mr. Roy proposed adoption of the Law Institute Project language of two sections and this was approved. See TP No. 119. Mr. Roy then moved that the constitution be silent on general election provisions other than the Right to Vote and this was also approved. See TP No. 120.

(7)

There being no further business the meeting adjourned at 3:30 p.m.


Rep. Alphonse Jackson, Jr., Chairman

(8)

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on May 29, 1973

Natural Resources Building, Conservation Auditorium,
Baton Rouge, Louisiana

Friday, June 8, 1973 (10:00 a.m. - 12:30 p.m.)

Saturday, June 9, 1973 (9:00 a.m. - 1:30 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., chairman (10:00 - 10:30 a.m.)

Mrs. Judy Dunlap, vice chairman (10:30 - 12:30 a.m.)

Present

Mrs. Judy Dunlap
Rep. Alphonse Jackson, Jr.
Mrs. Novyse E. Soniat
Ford E. Stinson
Chris J. Roy
Rep. Shady Wall

Absent

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Kendall Vick
Dr. Gerald N. Weisa

Roll call was taken by the committee secretary. A quorum was present. Chairman Jackson asked for the adoption of the minutes of the last meeting. Chairman Jackson asked the secretary to read the corrected sheet attached to the previous minutes of the last meeting. The minutes of the last meeting were approved and adopted by the committee.

Chairman Jackson stated that the committee had a problem of maintaining its quorum because some of the members (who are legislators) had to return to the House to consider a bill on the floor. Chairman Jackson recommended that the committee work on the proposals, and hear testimony from people who would want to speak before the committee. Chairman Jackson had to take leave of the committee and Mrs. Dunlap assumed the chair.

The first speaker was MR. DENNIS G. DRISCOLL, representing himself and Mr. Gideon Stanton from New Orleans, both of whom work in the voter registration field. Mr. Driscoll recommended a draft on voting and registration proposed by the secretary of state, Wade O. Martin with a change of the words, "lawfully imprisoned, interdicted or notoriously insane" to "convicted of a felony or presently judicially committed to a mental health facility." The purpose of this change is to allow people, who are imprisoned but not convicted, to vote. Mr. Driscoll stated also, that this change would clear up the ambiguity of the term "notoriously insane."

The second witness was MR. EROLL JOSEPH an inmate from Orleans Parish Prison, who expressed his personal views on changes that should be provided in the constitution. Mr. Joseph felt that time off for "good time" in prison should be a right, not a privilege, and that the warden should not be allowed to deprive a prisoner of this right. Mr. Joseph also expressed his grievances on the visiting privileges of prisoners. He stated that prisoners in parish jails should have the same visiting rights that are enjoyed by Louisiana Penitentiary

prisoners. He also expressed opposition to the death penalty.

The third speaker was MR. ROBERT GRIFFITH, an inmate from Orleans Parish Prison. He also spoke on grievances of prison life that should be corrected in the new constitution.

The fourth witness was MRS. DAVID BROWN, a member of the League of Women Voters of Louisiana from Baton Rouge. She said that the right to vote belongs in the Bill of Rights. She also said that there should be a separate article in the constitution on suffrage and elections or election procedures.

The meeting adjourned at 12:30 p.m. for the day.

THE MEETING RECONVENED

Saturday, June 9, 1973, 9:00 a.m.

Presiding: Mrs. Judy Dunlap, vice chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall

Absent

Dr. Gerald N. Weiss

Roll call was taken by the committee secretary. A quorum was present. The committee proceeded to consider sections for Article II. General Government Provision.

Mr. Roy proposed adoption of Section I. Three Departments with staff-suggested changes. His proposal was adopted without objection. See TP No. 121.

Mr. Roy then proposed adoption of Section II. Limitations

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of Each Department with staff-suggested changes, but with the exception clause at the end. Mr. Roy's proposal was accepted. See TP No. 122.

Mr. Roy proposed adoption of Section III. Civilian-Military Relations. The proposal was accepted. See TP No. 123.

Mr. Roy proposed adoption of a section entitled, "Oath of Office" and the section was accepted. See TP No. 124.

Mrs. Dunlap proposed adoption of a section entitled "State Capital" and the proposal was accepted. See TP No. 125.

Mrs. Dunlap proposed a section entitled "State Symbols" which would designate the native wild iris of Louisiana as the state flower under the name Louisiana Native Iris (Iris Giganticaerulea, Blue Form). The proposal was initially adopted by the roll call vote by 3-2 with one abstention and 4 absent. On reconsideration, the proposal failed 3-3 with one abstention and 3 absent. See TP No. 126.

On motion of Mr. Roy it was agreed that the new constitution would be silent with respect to bribes contained in Article XIX, Sections 12 and 13. See TP No. 127.

On motion of Mr. Roy it was agreed that the new constitution would delete the prohibition from certain aliens owning

land contained in Article 19, Section 21 of the 1921 Constitution.

On motion of Mr. Guarisco it was agreed to delete from the new constitution reference to Huey Long's birthday contained in Article 19, Section 22. See TP No. 129.

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On motion of Mr. Vick it was agreed to delete from the new constitution the naming of certain bridges "Huey Long" and "O. K. Allen" contained in Article 19, Sections 23 and 24. See TP No. 130.

At this point, Mr. Jenkins returned to the meeting and the committee began consideration of his proposal on direct legislation (initiative and referendum).

MR. M. G. (MARC) ANSEMAN, representing Citizens Initiative Committee said a few words in favor of direct legislation in the constitution.

Delegate GARY O'NEILL also spoke in favor of this proposal as the committee discussed the Jenkins' proposal. The committee members requested that the staff include in the proposal a time limit for the circulation of a petition and a prohibition against continuous resubmission of defeated direct legislation.

Mr. Vick suggested that the staff obtain the views of CABL, PAR, League of Women Voters, and the Model State Constitution on the question of direct legislation.

Mr. Jenkins then introduced his proposal on Freedom of Contract for discussion, but agreed to defer action on it.

After a brief discussion action was also deferred on Mr. Jenkins proposal on price-fixing. Mr. Jenkins then introduced his proposal on Property Tax Elections with minor amendments. The proposal was adopted 5-2. See TP No. 131.

The committee then considered constitutional revision and began discussion of the proposal by Mr. Roy and Mr. Jenkins. After considerable discussion Mr. Vick suggested that the staff prepare additional proposals and also that the subject matter be referred to CABL, PAR, and the League of Women Voters for

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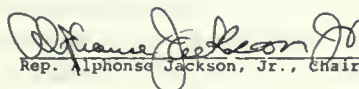
their comment and that the proposal in the Model State Constitution be obtained.

The committee resumed discussion of the Declaration of Rights and heard a brief statement from MR. ROGER BATZ, representing Common Cause, NOW, NAACP, and ACLU. He generally praised the Declaration of Rights, said his organization would support the work of the committee, urged the reinsertion of a clause prohibiting wire tapping, expressed support for the staff-suggested changes to the section on Freedom of Expression, and urged further consideration on a section on Right to Direct Participation which would discourage secret meetings of public bodies.

The committee then adopted Section I. Origin and Purpose of Government with staff-suggested changes, made no changes on Section II. Due Process of Law and revised Section III.

Right to Individual Dignity with an amendment regarding freedom of association and quotas and staff-suggested technical amendment. The committee began consideration of Section IV, Rights of the Family but failed to take definitive action because a motion to adjourn carried.

There being no further business, the meeting adjourned at 1:30 p.m.


Rep. Alphonse Jackson, Jr., Chairman

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention of June 8, 1973

State Capitol Building, Committee Room No. 9

Baton Rouge, Louisiana

Thursday, June 14, 1973 (10:00 a.m. - 6:00 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., chairman

Present

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Mrs. Judy Dunlap

Roll call was taken by the committee secretary. A quorum was present.

Chairman Jackson expressed his personal satisfaction with the work the committee and the fact that the committee had pushed ahead with the writing of the "Declaration of Rights". Delegate Jenkins also said that he was in support of the work of the committee and that he was willing to sign the proposal and support it on the floor. He said that if other delegates to the convention do not give due consideration to the committee proposals, it could jeopardize the effectiveness of the Convention. Delegate Weiss also felt that the committee had done extremely well in its long deliberations. Delegate Vick said his main purpose was to create a bill of rights for our citizens that will protect them from the "intrusion of government". He said he would like to think that this document that was almost complete represents the "little people". He believed that if there was a movement afoot to undercut what the committee had done it would be "a travesty and a sad thing".

Delegate Roy moved to adopt the minutes. Delegate Stinson moved to correct the minutes regarding the deletion of Huey Long's birthday from the constitution because it was not unanimous; there was some objection. Other minor corrections

were made (See attached pages). Chairman Jackson asked for the adoption of the minutes with the necessary corrections by the committee.

Chairman Jackson asked for and obtained adoption of the agenda with the understanding that Delegates Jenkins and Weiss would introduce proposals.

The committee started work on the Preamble. Delegate Roy moved to amend the Preamble to add the word "education" after the word "safety". He pointed out that the Supreme Court with Nixon appointees had rejected recognition of a "right to education" under the federal constitution and hence it was important to include it as a state objective. The Roy position was adopted 6-3 (See TP No. 134). After a move by Dr. Weiss to delete "health" and "safety" from the Preamble was defeated

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3-6 (See TP No. 135).

Delegate Vick asked the research staff to include authority in the comment for the proposition that the Preamble is not binding as a matter of law.

Delegate Jenkins moved to insert the word "economic" after the word "political" in the Preamble and this was accepted (See TP No. 136). The committee then accepted the Preamble as amended (See TP No. 137).

The committee adopted the section on the origin and purpose of government with only technical changes (See TP No. 137a).

A new version of the right to life by Dr. Weiss was rejected 2-7 (See TP No. 138).

The committee agreed to a proposal by Mr. Jenkins to delete the reference to quotas in the right to individual dignity and to include it in the comment but it rejected a proposal by Mr. Stinson to substitute "beliefs" for "ideas" in the section (See TP Nos. 139 and 140).

Mr. Jenkins wanted to change the title of the section on rights of the family but this became moot when Mr. Vick successfully moved to delete the section (See TP Nos. 141 and 142).

The committee considered and adopted a revised section on the right to property by Delegate Jenkins (See TP No. 143).

With reference to the right to privacy, "property" and "communications" were added to the matters to be protected and the section, so revised, was adopted (See TP No. 144).

With reference to the section on freedom from military intrusion, Delegate Jenkins proposed to delete the phrase "in time of war" because this was the only time one had to worry about unfriendly forces being quartered in one's home. Mr.

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Jenkins accepted a suggestion by Mr. Stinson to take "military" out of the title. The proposal was adopted with a 4-2 vote with one abstention (See TP No. 145).

The committee accepted a proposal by Mr. Jenkins to change "prohibit" to "impair" in the section on freedom from discrimination (See TP No. 146).

The section of freedom of expression evoked considerable comment. Mr. Jenkins, while preferring to leave the section as it was, moved to insert after "information" the words ", being responsible for the abuse of that liberty" with the understanding that the proposed minority report on the section would be dropped. It was so agreed (See TP No. 147).

The committee voted 6-3 to accept Mr. Vick's proposal to shorten the section on freedom of religion along the lines of the federal bill of rights, (TP No. 148) after defeating a substitute proposal by Mr. Jenkins (See TP No. 149).

Mr. Jenkins' proposal to add an interpretive sentence to the section on freedom of assembly and movement was approved (See TP No. 150).

The committee approved slight revisions in the sections on rights of the accused and initiation of prosecution proposed by Mr. Jenkins (See TP Nos. 151 and 152).

The section on grand jury proceedings was adopted without change (See TP No. 153).

Mr. Roy's proposal to revise the section on fair trial was adopted (See TP No. 154). The committee also agreed, despite an objection, to adopt his revision of the section on criminal jury trials (See TP No. 155).

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Technical amendments to the section on bail were adopted (See TP No. 156).

The section on humane treatment was adopted without change (See TP No. 157).

Regarding the section on the right to vote, Mr. Roy obtained a change of "interdicted" to "judicially committed" and Mr. Wall had the words "and institutionalized," added after "judicially committed" (See TP Nos. 158, 159, and 160).

Mr. Jenkins proposed that arms not be subject to confiscation or special taxation and obtained adoption of the proposal with an amendment by Mr. Vick that the right to arms be subject to the police power. A substitute proposal by Mr. Roy was defeated 4-4 (See TP Nos. 161, 162, and 163). Mr. Roy and others insisted on a minority report.

Mr. Vick was successful in proposing to delete the section on cultural rights (See TP No. 164).

The section on habeas corpus was adopted without change (See TP No. 165).

The committee agreed to technical amendments to the section on access to courts (See TP No. 166).

The section on prohibited laws was adopted without change (See TP No. 167).

A proposal by Dr. Weiss to include a section on the right to direct participation in the declaration of rights was rejected 3-5 (See TP No. 168).

The section on civil jury trials, previously deferred, was adopted in a new version proposed by Delegates Roy and Guarisco (See TP No. 169).

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The section on unenumerated rights was adopted without change (See TP No. 170).

The committee accepted a revised section on freedom of commerce which had been rejected previously when its author, Mr. Jenkins, was not present (See TP No. 171).

The committee then voted to accept the section on right to direct participation for inclusion in general governmental provisions (Sec TP No. 172).

The final action involved acceptance in principle of a series of sections on the initiative for inclusion in general governmental provisions as proposed by Mr. Jenkins. It was understood that the sections would be reviewed by the Secretary of State and reworked by the staff for final adoption at the next meeting on June 22, 1973 (See TP No. 173). *

There being no further business, the meeting adjourned at 6:00 p.m.


Rep. Alphonse Jackson, Jr., Chairman

- * The following was corrected in accordance with the Minutes of the meeting of June 14, 1973.
- * Mr. Vick specifically requested that the views of the secretary of state be obtained on the inclusion of initiative provisions in the new constitution and that Mr. Jenkins go over the initiative provisions with the secretary of state.

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on June 12, 1973

State Capitol Building, Committee Room No. 1

Friday, June 22, 1973 (10:00 a.m. - 1:00 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., chairman

Present

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Welss
Mrs. Judy Dunlap

Absent

Rep. Shady Wall

Roll call was taken by Mr. Landry. A quorum was present. Chairman Jackson welcomed Research Director Norma Duncan to her first visit to the committee.

The chairman asked for a motion to adopt the agenda. The agenda was adopted as written. The first item to be discussed was General Governmental Provisions.

MINUTES

Chairman Jackson called on staff member Walter Landry to review the action on general governmental provisions and particularly the initiative. Mr. Landry explained that Sections 1, 2, 3, 11, 12, and 13 of "Article II. General Governmental Provisions" had been adopted previously by the committee. Sections 4 through 10 had been redrafted after consultation with the Secretary of State and Delegate Jenkins. Mr. Jenkins then explained the sections on the initiative pointing out that they were carefully drawn to avoid excessive and frivolous use of the initiative. Its use was made more difficult than it is in the average state that uses the initiative. After a brief discussion, the seven initiative sections were adopted without change (See TP No. 174).

The committee then adopted the entire "Article II. General Governmental Provisions" without change (See TP No. 175).

Following this action, the committee began reconsideration of the proposed "Declaration of Rights". Mr. Jenkins moved and obtained adoption of technical amendments to the sections on freedom of expression and freedom of commerce (See TP No. 176).

Dr. Weiss asked for support for a minority report on cultural rights and Delegates Stinson and Dunlap agreed to join him in such a report (TP No. 177).

Mr. Roy obtained reconsideration of the section on bearing arms and then moved a substitute proposal, TP No. 178. Mr. Jenkins sought various amendments to the Roy proposal some of which were accepted (See TP Nos. 179, 180, 181, 182, and 183). Mr. Vick's attempt to amend Mr. Roy's proposal to provide that arms would be subject to the police power was rejected 2-7 and the Roy proposal, with amendments by Delegate Jenkins, was adopted 6-1.

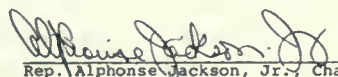
The committee then voted to adopt the entire proposal on the "Preamble" and "Declaration of Rights". The initial vote was 8-1 with one absent. Mr. Stinson in opposition agreed to

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change his vote if he could have a minority report deleting the word "sex" from "Section J. Right to Individual Dignity". The committee voted to suspend its rules requiring three votes for a minority report so Mr. Stinson could submit a minority report of one. Mr. Wall, who was chairing a Legislative Budget Committee at the time, sent word of his support for the proposal so that the vote was then unanimous.

All ten members then signed a covering letter submitting the proposals on the "Preamble", "Article I. Declaration of Rights", and "Article II. General Governmental Provisions" to the delegates to the Constitutional Convention. The committee is to continue its work on elections and constitutional revision after the convention reconvenes on July 5, 1973.

There being no further business, the meeting adjourned at 1:00 p.m.


Rep. Alphonse Jackson, Jr., Chairman

Minutes of the meeting of the Bill of Rights and Elections, Committee of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with Convention rules

State Capitol Building, Committee Room No. 1

Thursday, July 12, 1973 (10:00 a.m. - 3:30 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Absent

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Roll call was taken by the committee secretary. A quorum was present. The chairman asked the committee members to take a few minutes to review the minutes of the last two meetings. The minutes of the previous two meetings were reviewed and approved with one correction. Mr. Vick requested that the minutes of the meeting of June 14, 1973, be amended to reflect that the proposal on initiative was to be referred to the secretary of state for his views. The June 14, 1973 minutes has been so corrected (See attached page).

Delegates Weiss and Jenkins each presented a proposed article on elections. After discussion it was agreed that both proposals would be considered concurrently with Delegate Jenkins explaining his proposal first.

Delegate Jenkins began a general explanation of this proposal section by section. After he had gone through three or four sections Delegate Vick moved that the proposed section on the right to register and vote be deleted as having already been covered by the declaration of rights. The motion carried unanimously (See TP No. 188).

For more orderly procedure it was decided to consider the remaining sections one at a time beginning with the first section on free elections. Mr. Jenkins proposed adoption of this first section (See TP No. 189).

Messrs Roy and Guarisco proposed amendments which were adopted (See TP No. 190 and 191).

Dr. Weiss then moved to substitute section one of his proposal but this was rejected 1-7 (See TP No. 192).

The Jenkins proposal was amended by Messrs Jenkins and Roy, then was adopted 7-1 (See TP No. 193).

After discussion of the Jenkins' proposed section on personal application and identity, Mr. Vick moved to delete the section in its entirety and the motion to delete carried 6-2 (See TP No. 194).

Mr. Jenkins proposed a section for residence for voting purposes dealing primarily with government employees (See TP No. 195).

After a presentation by MR. RUSSELL GASPARD, director of

the Board of Registration, Mr. Roy moved as a substitute a proposal on residence which would include nongovernment employees as well as those who are studying and visiting away from one's voting district (See TP No. 196).

Mr. Vick moved to delete the last sentence of the Roy proposal dealing with spouses and dependents as unnecessary and Mr. Roy accepted the Vick proposal (See TP No. 197).

Mr. Stinson urged an amendment to include members of the armed forces in addition to civilian and military employees. Mr. Roy urged rejection of the amendment as unnecessary stating that military employment included membership in the armed forces. The Stinson proposal was rejected 3-5 after which Mr. Stinson excused himself and left the room (See TP No. 198).

The committee members expressed concern regarding the actions of Delegate Stinson and after considerable discussion it was agreed that Delegate Weiss would talk to Delegate Stinson on behalf of the committee.

Mr. Guarisco proposed a technical amendment to the Roy proposal which was then adopted (See TP No. 199).

Mr. Jenkins then moved to adopt a proposal on denial of registration and the removal of names (See TP No. 200).

Mr. Roy made a substitute proposal shortening the Jenkins proposal. The Roy proposal was adopted 5-3 after a move by Mr. Vick to delete the last two sentences was defeated 3-4 (See TP No. 201 and 202).


After discussion of the role of registrars of voters, Messrs Jenkins and Roy proposed a Section 4 on registration of voters

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which was adopted without opposition.

The committee recessed with the understanding that they would meet the following day at 10:00 a.m., but that meeting had to be cancelled because of the reconvening of a session of the Constitutional Convention at 9:30 a.m.

There being no further business, the meeting adjourned at 3:30 p.m.


Rep. Alphonse Jackson, Jr., Chairman

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with Convention rules

State Capitol Building, Senate Lounge

Wednesday, July 18, 1973 (9:00 a.m. - 12:00 noon)

State Capitol Building, Committee Room No. 9

Thursday, July 19, 1973 (9:00 a.m. - 12:00 noon)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Absent

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Roll call was taken by the committee secretary. A quorum was present. The chairman asked the committee members to take a few minutes to review the minutes of the last meeting. Chairman Jackson said that the committee would consider first the proposals on election laws. The two proposals before the committee were the proposals on elections by Delegates Jenkins and Weiss. The chairman obtained a motion to adopt the minutes of the last meeting.

The committee then continued consideration of a proposed elections article. Mr. Jenkins submitted a proposed section on political parties which included provisions dealing with party registration. MR. JAY STONE of the Republican Party and MR. RUSSELL GASPARD of the Board of Registration suggested that it would not be wise to lock into the constitution a requirement of registration by parties. Mr. Jenkins agreed to strike this part of his proposed section and formally moved adoption of Section 5, "Political Parties", which was adopted with a minor change by the committee (See TP Nos. 204 and 205).

Mr. Jenkins then proposed a section dealing with residency of officeholders which Mr. Guarisco successfully moved to delete (See TP Nos. 206 and 207). Mr. Roy failed to obtain adoption of a revised section of residency of officeholders (See TP No. 208).

Mr. Roy then sought inclusion of a section dealing with qualification of holding office which would have permitted electors to be a candidate for any legislative office in his district. Mr. Jenkins proposed an amendment which would have permitted an elector to run for any public office except otherwise provided by the constitution. The Roy proposal and Jenkins' amendment were both rejected (See TP Nos. 209 and 210), after which a motion by Mr. Guarisco to delete such a section was adopted (See TP No. 211).

Mr. Jenkins introduced a section "Secret Ballot". After discussion Mr. Jenkins shortened the proposal which was adopted without opposition (See TP No. 212).

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Mr. Jenkins originally intended to introduce a proposal requiring majority vote for an election but after discussion agreed to provide only that no one would be elected unless he receives the highest number of votes cast for his office. The committee accepted the proposal without opposition (See TP No. 213). Mr. Jenkins then introduced a proposed section, "privilege from arrest" which was similar to the present

constitutional provisions except that "election fraud" would not be privilege from arrest. Mrs. Soniat expressed concern about the inclusion of election fraud as a basis for arrest on election day but the provision was nevertheless adopted 6-3 (See TP No. 214).

Mr. Jenkins then proposed a detailed section on election commissioners and plans to propose another detailed section on poll watchers. Mr. Vick objected and suggested instead that the legislature simply be mandated to provide for poll watchers at every election. The Vick proposal was adopted 7-2 (See TP Nos. 215 and 216). Mr. Jenkins then went back to a proposal entitled "Interference in an Election" which had been introduced earlier but action on it was deferred until Delegate Wall could be present to speak on the matter. Mr. Jenkins strongly urged that the committee suspend use of public funds for the purpose of urging any elector to vote for or against any candidate or proposition. The committee was divided on the subject but a motion by Mr. Vick to delete the Jenkins proposal was adopted 5-4 with one abstention.

After a brief discussion the committee agreed to meet again on Wednesday, July 25, 1973, at 10:00 a.m. (the meeting

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had to be cancelled because of the reconvening of the Constitutional Convention on the same morning).

There being no further business, the meeting adjourned at 12:00 noon.


Rep. Alphonse Jackson, Jr., Chairman

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with Convention rules

State Capitol Building, Committee Room No. 9

Thursday, July 26, 1973 (9:00 a.m. - 12:00 noon)

State Capitol Building, Committee Room No. 9

Friday, July 27, 1973 (9:00 a.m. - 12:00 noon)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss

Absent

Anthony J. Guarisco, J
Rep. Shady Wall

The meeting was called to order by the Chairman at 9:30 a.m. Roll call was taken by the committee secretary. A quorum was present. The previous minutes were adopted.

After a staff report, Delegate Jenkins moved to reconsider the section entitled "Privilege from Arrest". Delegate Roy suggested that the committee should insert in the section some language that would prevent electors from committing fraud. MR. RUSSELL GASPARD said that several appellate courts have ruled that people under arrest are denied the right to vote. He said it was illegal to prevent a person from voting.

Mrs. Judy Dunlap assumed the chair temporarily until the chairman returned.

After further discussion Mr. Jenkins moved for the adoption of the revised section on privilege from arrest which was adopted unanimously (See TP No. 219).

Mr. Jenkins then moved adoption of a section on property tax elections which had been approved tentatively by the committee at a previous meeting. Mr. Roy move that the sections be deleted and he was supported by Mr. Vick who regarded the section as a restriction on the right to vote. The section was deleted. Mr. Jenkins then moved a substitute section requiring a two-thirds vote of the people for approval of new taxes. This proposal was rejected 4-4 after which Delegates Jenkins, Dunlap, and Stinson agreed to propose it as a minority report (See TP Nos. 220, 221, and 222).

A proposal on election returns by Mr. Jenkins was adopted unanimously (See TP No. 223).

Mr. Jenkins then submitted a proposal on election fraud. It was debated extensively and then deferred to the following day.

The meeting recessed until the following day.

Friday, July 27, 1973

Presiding: Mrs. Judy Dunlap - from 9:30 a.m. until 9:45 a.m.

Anthony J. Guarisco, Jr. - from 9:45 a.m. until 12:00 noon

Present

Mrs. Judy Dunlap

Absent

Rep. Alphonse Jackson

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Present

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Roll call was taken by the committee secretary. A quorum was present.

The committee resumed consideration of the Jenkins' proposal on election fraud. After considerable additional debate, it was adopted in amended form (See TP Nos. 224-228).

A proposal on election contests was adopted with little opposition (See TP No. 229).


Mr. Jenkins then introduced his proposal on interference in

elections in amended form. (The original had been rejected earlier). After discussion the section was adopted unanimously (See TP NO. 230).

Messrs. Jenkins and Roy then introduced a section on candidacy for public office. Similar sections introduced separately had been rejected by the committee previously, but this time the section was adopted unanimously (See TP No. 231).

Dr. Weiss then introduced a section on periodic elections. There was sentiment in favor of the section and the research staff was directed to provide a better text as well as background on such a provision (See TP No. 232).

There being no further business, the meeting adjourned at 12:00 noon.


Rep. Alphonse Jackson, Jr., Chairman

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with Convention rules

State Capitol Building, Senate Lounge

Wednesday, August 2, 1973 (10:00 a.m. - 12:00 noon)

State Capitol Building, Committee Room No. 1

Tuesday, August 7, 1973 (10:00 a.m. - 5:00 p.m.)

State Capitol Building, Committee Room No. 1

Wednesday, August 8, 1973 (10:00 a.m. - 12:00 noon)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Anthony J. Guarisco, Jr.

The meeting was called to order by the Chairman at 10:00 a.m. Roll call was taken by the committee secretary. A quorum was present. The previous minutes were adopted.

Chairman Jackson called on staff researcher Walter Landry to explain the suggested staff amendments to the proposed article on elections. Mr. Landry explained the arrangement of the sections and suggested technical changes. Mr. Roy then moved adoption of Section 1 with the staff's changes. Dr. Weiss then moved a substitute adoption of Section 1 of his proposal. Mr. Jenkins requested time to study the staff recommendations. Messrs. Roy and Weiss, in deference to Mr. Jenkins withdrew their motion and deferred action.

Mr. Jenkins then introduced his proposal on constitutional revision. He explained that his proposal was basically the same as the present provisions of the constitution on revision

with the additional section providing for conventions called by the people or by the legislature.

MRS. LOUISE DAY of the League of Women Voters spoke up and urged the committee to adopt a proposal with an easier amending process. There was general discussion of the Jenkins proposal, an earlier proposal previously considered by the committee.

It was suggested that additional outside opinion be obtained and that representatives of PAR and CABL and others knowledgeable in constitutional revision testify before the committee. It was agreed that there would be a hearing the following week and that the election article would be taken up the following day.

The meeting then recessed but because of convention scheduling the committee was unable to meet the next day and did not resume its considerations until August 7, 1973.

August 7, 1973

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy

Absent

Anthony J. Guarisco, Jr.
Ford E. Stinson

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Present

Mrs. Novyse E. Soniat
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

The meeting was called to order by the chairman. Roll call was taken by the committee secretary. A quorum was present.

Chairman Jackson recognized various experts who had come to testify before the committee and thanked them for their interest. Witnesses appearing before the committee included MR. ED STAGG of the Council for a Better Louisiana, MR. ED STEIMEL of the Public Affairs Research Council, MR. PAUL TATE, an attorney, a member of the Law Institute, MRS. LOUISE DAY of the League of Women Voters, Judge AL TATE, a delegate and Justice of the Supreme Court and MR. PHILIP BERGERON, a delegate who had submitted a proposal on constitutional revision. Most of the witnesses favored a fairly easy amending process and generally supported the Jenkins proposal in varying degrees. Delegate PHILIP BERGERON favored a more difficult amending process and ED STEIMEL wanted an amendment to be passed in two consecutive sessions of the legislature before it was submitted to the people.

Before hearing the last two speakers the committee began consideration of the article on constitutional revision.

Mr. Jenkins formally proposed Paragraph A of "Section 1. Amendments" of his proposal which after discussion was adopted unanimously (See TP No. 233). Section 1(B) of the Jenkins proposal was also adopted unanimously (See TP No. 234).

Mr. Roy then moved reconsideration of Section 1, and

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proposed a revised version of it which was adopted unanimously. This necessitated revision of Paragraph B which was adopted without objection (See TP Nos. 235 and 236).

Mr. Jenkins then moved adoption of Paragraph C which was also adopted without objection (See TP No. 237).

Mr. Jenkins' proposed "Section 2. Convention Called by the Legislature" evoked considerable discussion. Messrs. Roy and Weiss succeeded in adding an amendment which permitted the legislature to provide for additional delegates to be appointed by the governor (See TP No. 239). An attempt by Mr. Jenkins to require that the appointed delegate "be from various regions of the state" was defeated (See TP No. 240). The section as a whole was adopted (See TP No. 238).

Mr. Jenkins introduced his proposed "Section 3. Convention Called by the People" which was adopted unanimously (See TP No. 241).

Mr. Jenkins proposed "Section 4. Laws Effectuating Amendments" This amendment was also adopted unanimously (See TP No. 242). It was agreed that the section that was adopted be viewed by the staff for technical amendments.

The committee then began consideration of "Article 10, Elections". Mr. Jenkins moved adoption of "Section 1. Free Elections", and with some of the technical amendments included, it was adopted unanimously. Dr. Weiss' substitute proposal "Section 1. Election Laws" was rejected 1-5 (See TP Nos. 243 and 244).

The committee went through the various additional sections with Sections 2. Secret Ballot, 3, Residence of Electors, 4,

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Political Activities, 5, Privilege from Arrest, all being adopted by unanimous votes (See TP Nos. 245, 246, 247, 248, and 249).

Section 6. Candidacy for Public Office, 7, Vote Required for Elections, 8, Limitation on Terms of Office and 9, Prohibited Use of Public Funds were all adopted without objection (See TP No. 250).

A proposed "Section 10. Registrars of Voters" urged by Mr. Roy was adopted without objection after an amendment by Mr. Jenkins to retain a fixed term for the registrars was rejected 2-4 (See TP Nos. 251 and 252).

Sections 11. Commissioners and Pollwatchers, 12, Election Returns, 13, Registration Challenges, 14, Election Contests, and 15, Election Fraud, all proposed by Mr. Jenkins were adopted without objection (See TP No. 253).

Delegates Roy and Dunlap then proposed a new "Section 16. Code of Elections" which was also adopted without objection (See TP No. 254).

The committee then recessed until August 8, 1973.

August 8, 1973

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

Kendall Vick

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The meeting was called to order by the chairman. Roll call was taken by the committee secretary. A quorum was present.

Following testimony on constitutional revision, Dr. Weiss moved to amend the section on constitutional amendments to require that amendments be adopted in two consecutive regular sessions before being submitted to the people. His amendment was rejected 1-7 (See TP No. 255).

The committee formally adopted a motion by Mr. Roy that Delegate Proposal 14 by MR. BERGERON be reported to the convention unfavorably. The unfavorable report was adopted 7-1 (See TP No. 256).

The committee then reconsidered three sections of the elections article. Mr. Roy moved to include an exception phrase in "Section 4. Political Activities" which was adopted without objection (See TP No. 257). Mr. Roy also moved an amendment to "Section 10. Registrars of Voters" which was also adopted without objection (See TP No. 258).

Mr. Jenkins moved to amend "Section 12. Election Returns" to delete the exception clause so that all returns for public officials would be made to the secretary of state. There was no objection to this amendment (See TP No. 259).

The entire election article was then approved. Dr. Weiss withdrew his separate election proposal and every member of the committee endorsed the election proposal and agreed to cosponsor it (See TP No. 260).

The committee agreed to meet on August 21, and 22, 1973 for public hearings on the "Declaration of Rights". The committee scheduled a meeting during the week of August 12, 1973

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to consider staff-suggested technical amendments to the article on constitutional revisions.

There being no further business, the meeting adjourned at 12:00 noon.


Rep. Alphonse Jackson, Jr., Chairman

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice in accordance with the rules of the Convention

White House Inn, Independence Hall

on

Convention Floor

Thursday, August 17, 1973 (5:10 p.m. - 5:20 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Absent

The meeting was called to order by the chairman at 5:10 p.m. A roll call was taken and a quorum was present.

Chairman Jackson called on staff researcher Walter J. Landry to explain the suggested staff amendments to the proposed article on constitutional revision. Mr. Landry explained the suggested changes.

Mr. Roy proposed adoption of Section 1(A). Only Dr. Weiss opposed adoption (See TP No. 257). Sections 1(B) and 1(C) were adopted without opposition.

Section 2 with the proposed staff changes was adopted with only Dr. Weiss in opposition. Mr. Roy also proposed adoption of Sections 3 and 4 which were adopted without opposition (See TP Nos. 258-262).

Mr. Roy then moved adoption of the entire article with staff-suggested changes and the entire article was adopted without opposition. (See TP No. 263).

The committee then adopted the committee report with the staff-suggested language except for a slight change in the report on Section 2.

There being no further business, the committee meeting adjourned at 5:20 p.m.


Rep. Alphonse Jackson, Jr., Chairman

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with convention rules

State Capitol Building, Committee Room No. 1
Tuesday, August 21, 1973 (10:00 a.m. - 9:00 p.m.)

State Capitol Building, Committee Room No. 9

Wednesday, August 22, 1973 (8:30 a.m. - 9:30 a.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Kendall Vick
Dr. Gerald N. Weiss
Mrs. Judy Dunlap

Absent

Ford E. Stinson
Rep. Shady Wall

Roll call was taken by the committee secretary. A quorum was present.

The chairman welcomed a capacity crowd of witnesses wishing to testify before the Bill of Rights Committee and spectators. The following witnesses testifying before the committee were REV. PHIL KAPELA of the Christ the King Chapel, L.S.U., MR. HARVEY BRITTON, Field Director of the NAACP of New Orleans, MR. JOHN MARTZELL, representing himself, REV. WILLIAM FINNIN of the United Catholic Ministry, REV. H. S. APPLE of the University Presbyterian Church, MS. KARLINE TIERNEY representing Women in Politics, MS. ELEANOR SHIRLEY representing the League of Women Voters, MR. MARK WHEELER representing Senior Citizens Coalition of New Orleans Council on Aging, MRS. PRISCILLA ENGOLIA representing the New Orleans Council on Aging, MRS. REBECCA PETERS a member of the League of Women Voters, MRS. BABS MINHINETTE representing Females Opposed to Equality, MR. THOMAS I. EVANSTON, MRS. CAROLYN GROVES representing the Concerned Parents of Baton Rouge, DR. RALPH DREGER of the Louisiana Council on Human Relations, MR. ROGER BATZ a member of Common Cause, Baton Rouge, MRS. NELSON BROWN a member of the Women's Protective League, MR. ED WARE representing the District Attorneys Association, DELEGATE JOHN THISLETHWAITE of CC/73, DR. ASHTON THOMAS representing the Louisiana State Medical Society, MR. PAUL PERRETT representing the Louisiana State Medical Society, MR. JACK COUSIN representing CLECO, MR. JIM HUGHES of the State Times, DOUG MANSHIP representing the Louisiana Association of Broadcasters, MR. SMILEY ANDERS representing Sigma Delta Chi Journalism Society, MRS. PAUL McILHENNY representing herself, MRS. LILLIAN WALKER, MR. GIDEON STANTON representing the Council for a New State Constitution, MR. DENNIS DRISCOLL representing himself, MR. BUD MAPES of Bud Mapes Association, MR. BRENER representing the Inter-Faith Committee, MR. VERN EWING representing the Retailers Bureau - Chamber of Commerce, MR. CHARLES SMITH of the Construction Industry - Legislative Council, MR. TERANCE LEACH representing the Physically Limited Advancement Coalition for Equality, MR. BRYANT MOORE a member of the New Orleans Chapter of Handicapped, MR. BERT PARSMAN a member of the New Orleans Chapter of Handicapped, MISS ROSE CAMERON from L.S.U., Congressman JAMES DOMENGEAUX President

of CODOFIL, MR. J. T. HAYES executive secretary of the Police Jury Association, MR. RON MOORE and MR. DAVID MADDEN representing themselves, MR. STANLEY BABIN and MR. JOHN F. WARD representing the Louisiana School Boards Association, MS. JEAN SMIETANA, MISS MIRIAM ATTAYA, and MR. TERENCE BEVEN representing the Louisiana State Medical Society.

After the witnesses concluded their testimony the committee reviewed the proposed "Preamble" and "Declaration of Rights" and made changes in selected sections.

Mr. Jenkins proposed that the words "provide for" in connection with the phrase "provide for health, safety, and welfare of the people" be changed to "promote." The change was made without objection (See TP No. 264).

Mr. Roy proposed that the word and punctuation "age," be included after the word and punctuation "race," in Section 3. Right to Individual Dignity. The proposal was adopted 4-2 (See TP No. 265).

Mr. Roy then proposed that the words "or condition" in Section 3 be changed to "physical condition". The proposal was adopted 5-2 (See TP No. 266).

Mr. Jenkins proposed that the word "previously" in Section 4 be deleted and this was adopted without objection (See TP No. 267).

Mr. Jenkins then proposed that the following be deleted from Section 4, "nor shall the intangible assets of any business enterprise be taken. Unattached movable property shall not be expropriated except when necessary in emergencies to save lives or property." The proposal was adopted 6-1 (See TP No. 268).

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Dr. Weiss proposed adding the words and punctuation "physically handicapped," after "ancestry," in Section 7. Freedom from Discrimination. The committee rejected the proposal 1-6 (See TP No. 269).

There was objection to retaining Section 9 as proposed by the committee. Mr. Jenkins nevertheless moved its adoption as is and it was readopted 6-1 (See TP No. 270).

Mr. Jenkins proposed a technical change in Section 13 deleting the words "where there is a mistrial or" and inserting in lieu thereof "when a mistrial is declared or a". The change was adopted unanimously (See TP No. 271).

In Section 14, Mr. Roy proposed adding the words and punctuation "if permitted to testify," after the word "accused" and to change the words "any transcribed" to "transcribed" these changes were adopted 6-1 (See TP No. 272).

Mr. Vick suggested that the words "resident or domiciliary" in Section 19 be changed to "citizen and resident" and without objection the proposal was adopted (See TP No. 273).

Mr. Vick proposed that in Section 20, the sentence "a well-reguisted militia is necessary to the security of the state" be deleted, that the word "person" be changed to "citizen", and that the word "ammunition" be deleted. These changes were adopted without objection (See TP No. 274).

Mr. Roy proposed that the words "and liability" be included at the end of Section 22 after the word "suit" and before the period. The proposal was adopted without objection (See TP No. 275).

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Mr. Jenkins proposed that Section 24 be revised to read as follows "no law shall impair the right of each person to engage in commerce by controlling the production, distribution, or price of goods, except when necessary to protect public health and safety." The change was adopted without objection (See TP No. 276).

Mr. Vick proposed that the words "each person" in Section 25 be changed to "the individual citizens of the state." The section was adopted without objection (See TP No. 277).

Dr. Weiss then proposed that Section 18 be reconsidered to include a prohibition against euthanasia. His proposal was adopted 6-0 with one abstention (See TP No. 278).

The committee then recessed until August 22, 1973, to hear additional witnesses on Section 19. Right to Vote.

August 22, 1973

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Mrs. Novyse E. Sonist
Dr. Gerald N. Weiss

Absent

Anthony J. Guarisco, Jr.
Chris J. Roy
Ford E. Stinson
Rep. Shady Wall

The committee secretary called the roll. A quorum was present.

The following witnesses testified on Section 19. Right to Vote, MS. MABLE PALMER representing the Louisiana Association for Mental Health, MS. FRAN BUSSIE representing the Louisiana Association for Mental Health, and MR. JOHN P. NELSON representing Louisiana Association for Mental Health.

Following their testimony, the committee on motion of

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Mrs. Soniat voted to change the words "judicially committed and institutionalized" in Section 19 to "interdicted and judicially declared mentally incompetent". The proposal was adopted 6-1 (See TP No. 279).

There being no further business, the meeting adjourned at 9:30 a.m.

Rep. Alphonse Jackson, Jr., Chairman

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice in accordance with the rules of the Convention

State Capitol Building, Committee Room No. 9

Monday, August 27, 1973 (8:30 a.m. - 9:30 a.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Kendall Vick
Dr. Gerald N. Weiss

Absent

Ford E. Stinson
Rep. Shady Wall

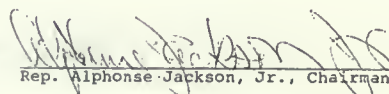
Mr. Jackson called the meeting to order and stated that the purpose of the meeting was to discuss individual assignment of particular sections of the declaration of rights with regard to floor managing and speaking for these sections on the floor of the convention.

The staff had prepared a suggested list of assignments based on interest shown by committee members during committee debates. After discussion the list was revised and the following assignments were made:

- Preamble - - - - - Delegates Jackson and Vick
- Origin and Purpose of Government - - - Delegates Dunlap and Jackson
- Right to Individual Dignity - - - - - Delegate Roy
- Right to Property - - - - - Delegate Jenkins
- Right to Privacy - - - - - Delegate Vick
- Freedom of Intrusion - - - - - Delegate Dunlap
- Freedom from Discrimination - - - Delegates Roy and Soniat
- Trial by Jury in Civil Cases - - - - - Delegate Guarisco
- Freedom of Expression - - - - - Delegate Jenkins
- Freedom of Religion - - - - - Delegate Weiss
- Freedom of Assembly and Movement - - - Delegate Jenkins
- Rights of the Accused - - - - - Delegate Stinson
- Initiation of Prosecution - - - - - Delegate Guarisco
- Grand Jury Proceedings - - - - - Delegate Roy
- Fair Trial - - - - - Delegate Stinson
- Trial by Jury in Criminal Cases - - - - Delegate Roy
- Right to Bail - - - - - Delegate Stinson
- Right to Humane Treatment - - - - - Delegate Weiss
- Right to Vote - - - - - Delegates Wall and Jackson
- Right to Keep and Bear Arms - - - - - Delegate Stinson
- Writ of Habeas Corpus - - - - - Delegate Vick
- Access to Courts - - - - - Delegate Guarisco
- Prohibited Laws - - - - - Delegate Vick
- Freedom of Commerce - - - - - Delegate Jenkins
- Unenumerated Rights - - - - - Delegate Roy

The chairman and various members of the committee expressed gratitude that the committee in general was united behind the declaration of rights proposal. The maintenance of this unity was stressed for adoption of the various sections without substantial changes.

There being no further business, the committee adjourned to appear at the convention for the beginning of debate on "Declaration of Rights".


Rep. Alphonse Jackson, Jr., Chairman

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice in accordance with the rules of the Convention

White House Inn, Independence Hall

on

Convention Floor

Friday, August 31, 1973 (2:30 p.m. - 2:40 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss

Absent

Rep. Shady Wall

The meeting was called to order by Chairman Jackson. There was discussion of Section 7. Freedom from Discrimination. Chairman Jackson and others expressed concern that amendments were being added to it which tended to make the section unworkable and that the committee was beginning to lose control to a certain extent with regard to its original purpose in proposing the section. Consideration was given with regard to withdrawing the section altogether or revising it to make it generally acceptable. The staff was instructed to prepare alternatives and the committee withheld a final decision on its strategy with regard to Section 7. It was agreed that the meeting would stand in recess until 10:00 a.m. on September 5, 1973 at which time the committee would meet on the convention floor.

There being no further business, the meeting adjourned at 2:40 p.m.


Rep. Alphonse Jackson, Jr., Chairman

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice in accordance with the rules of the Convention

State Capitol Building, Committee Room No. 1

Thursday, September 13, 1973 (9:00 a.m. - 12:00 noon)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Absent

Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Kendall Vick
Rep. Shady Wall
Dr. Gerald N. Weiss

Ford E. Stinson

Hold pursuant to notice by the Secretary

in accordance with convention rules

State Capitol Building, Committee Room No. 9

Thursday, September 20, 1973 (10:00 - 12:00 noon)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Absent

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Mrs. Judy Dunlap
Kendall Vick
Rep. Shady Wall

Ford E. Stinson
Dr. Gerald N. Weiss

The meeting was called to order by the chairman. Roll call was taken. A quorum was present. The meeting recessed until September 5, 1973 had been rescheduled to this time so that persons interested in testifying before the committee would have an opportunity to do so. The chairman welcomed the witnesses to appear before the committee on the proposed section on freedom from discrimination that had been withdrawn temporarily from the convention debate on the Declaration of Rights.

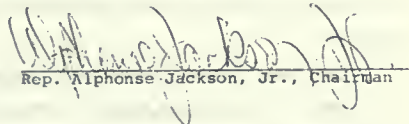
The witnesses that appeared before the committee were as follows:

<u>NAME</u>	<u>ORGANIZATION</u>
MRS. REBECCA PETERS	STATE LEAGUE OF WOMEN VOTERS
MISS LOUISE McLAUGHLIN	LOCAL LEAGUE OF WOMEN VOTERS
MRS. FELICIA KAHN	LEAGUE OF WOMEN VOTERS OF NEW ORLEANS
MH. JASON STEPHENS	DISABLED VETERANS FROM JACKSON, LOUISIANA
MRS. KARLINE TIERNEY	NATIONAL ASSOCIATION OF UNIVERSITY WOMEN
MR. LAWLER PEYROUX	NEW ORLEANS REHABILITATION BOARD
MR. RON MORA	HANDICAPPED COMMITTEE OF NEW ORLEANS
MR. ROGER BATZ	COMMON CAUSE IN LOUISIANA
MR. BURT HONSTMANN, JR.	P.L.A.C.E.
MRS. JEAN SMITANA	COUNCIL FOR A NEW STATE CONSTITUTION
MR. TERRENCE LEACH	P.L.A.C.E.

After the witnesses finished their testimony the committee began debate on revising the section on "Freedom from Discrimination". Delegate Roy proposed a revised section (See TP No. 280).

Dr. Weiss suggested changes which the committee did not agree to and after further discussion the Roy proposal was adopted unanimously.

There being no further business, the meeting adjourned at 12:00 noon.


Rep. Alphonse Jackson, Jr., Chairman

MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

The meeting was called to order by the chairman. Roll call was taken. A quorum was present.

Chairman Jackson welcomed observers attending the meeting and invited those interested to testify before the committee with respect to any changes that they might wish to propose to the elections article. The following persons testified at this time or during the course of committee debate on individual sections of the article:

<u>NAME</u>	<u>ORGANIZATION</u>
MR. NORMAN DAVID	LOUISIANA PRESS ASSOCIATION
DELEGATE AMBROISE LANDRY	(LAFORCHE PARISH CLERK OF COURT) - REPRESENTING HIMSELF
<u>NAME</u>	<u>ORGANIZATION</u>
MR. RUSSEL GASPARD	BOARD OF REGISTRATION (VOTER)
MR. MELVIN BELLAR	REPRESENTING THE SECRETARY OF STATE
MH. ROGER BATZ	COMMON CAUSE IN LOUISIANA
MRS. STEPHEN LICHTBLAU	LEAGUE OF WOMEN VOTERS OF LOUISIANA
MR. JAY STONE	REPRESENTING THE REPUBLICAN PARTY

Following initial testimony, the committee began consideration of the sections of the article as proposed (See Committee Proposal No. 20).

Based on the testimony of MRS. LICHTBLAU, Delegate Roy discussed a revision of the section on secret ballot to provide for absentee voting. Delegate Jenkins wished to prohibit proxy voting. After further discussion the section was revised (See TP No. 281).

There was discussion of other sections with Delegate Jenkins proposing that a comma be inserted before the word "except" in several sections. This was adopted without objection (See TP No. 282).


Based on a suggestion by Delegate AMBROISE LANDRY, Mr. Roy proposed a revision of Section 13 to include uniformity in reporting returns. Mr. Jenkins wanted to include a provision insuring promulgation. After discussion the section was revised (See TP No. 283).

There was no objection to the remaining sections except that Mr. Roy suggested including a provision on registration of

voters in the section on code of elections. Mr. Guarisco moved instead for a separate section on registration of voters which motion was adopted after a motion by Mrs. Dunlap to delete the section entirely was rejected (See TP No. 284).

Mr. Jenkins then moved to rearrange the sections with registration of voters being inserted as new Section 2 and to adopt the entire article as amended. The action was taken without objection (See TP No. 285).

There being no further business, the meeting adjourned at 12:00 noon.


Rep. Alphonse Jackson, Jr., Chairman

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with convention rules

State Capitol Building, Committee Room No. 205

Thursday, October 11, 1973 (9:00 a.m. - 10:40 a.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present

Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Mrs. Novyse E. Soniat
Mrs. Judy Dunlap
Kendall Vick
Ford E. Stinson
Dr. Gerald N. Weiss

Absent

Chris J. Roy
Rep. Shady Wall

The meeting was called to order by the chairman. Roll call was taken by the committee secretary. A quorum was present.

The chairman moved that the minutes be adopted.

Chairman Jackson welcomed the delegates that appeared before the committee to speak on their individual proposals pertaining to the bill of rights and elections committee

The first speaker, Delegate Wellborn Jack, speaking on behalf of Delegate Proposal No. 20, stated that the necessity of his proposal was to limit constitutional amendments. There was considerable discussion concerning the problem of inadvertently eliminating some important amendments, while the total number was being reduced.

Delegate John Thistlethwaite said it might be useful to have a brief form of the bill of rights available. Delegate Thistlethwaite asked the committee to accept the recommendation of deferring action on the Delegate Proposal No. 50. Delegate Jenkins moved that action be deferred on Delegate Proposal No. 50.

Chairman Jackson said that Delegate Mack Abraham's pro-

posals 69, 70, 73, and 81 would be reported without action.

Delegate Proposal No. 74 by Delegates Gravel and Berry was reported without action.

Delegate Proposal No. 59 by Delegate J. K. Haynes was reported without action.

Delegate Proposal No. 6 by Delegate Weiss was reported without action.

Delegate Errol D. Deshotel spoke on behalf of Delegate Proposal No. 79. Delegate Guarisco moved to defer action on Delegate Proposal No. 79.

Delegate Proposal Nos. 2, 25, 75, 76, 93, 47, 48, 78, and 50 were deferred without action.

There being no further business, the meeting adjourned at 10:40 a.m.


Rep. Alphonse Jackson, Jr., Chairman

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with the Rules of the Convention

Committee Room 1, State Capitol,
Baton Rouge, Louisiana, Thursday,

December 13, 1973 (12 noon to
2:00 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present: Anthony J. Guarisco, Jr.
Rep. Louis "Woody" Jenkins
Rep. Alphonse Jackson, Jr.
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss
Chris J. Roy

Absent: Mrs. Judy Dunlap
Rep. Shady Wall

The meeting was called to order by the chairman. Roll call was taken by the committee secretary. A quorum was present.

Chairman Jackson stated that the meeting was called to hear persons wishing to speak on the article on general governmental provisions and to report out the article to the convention.

Mr. ED REED, of the Ed Reed Public Relations Organization, spoke in opposition to the initiative provisions of the article. He stated that he represented the Louisiana Retailers Association and pointed out that our traditional form of government is representative democracy and that it has worked

well. The provision on initiative would move us in the direction of direct democracy, which he considered cumbersome, expensive, and not very feasible.

Mr. JIM HUGHES, representing the Louisiana Press Association, urged that the proposed section entitled "Right to Direct Participation" be deleted entirely. This was the preferred position. If the section is to be retained, he urged that the exception clause be deleted or that it be limited simply to cases established by law. He urged that there be no reference to the demands of privacy because he felt that this might open the door to abuse.

Delegate MOISE DENNERY and Professor GERALD LE VAN of the Louisiana State University Law School, spoke with reference to Delegate Dennery's Proposal No. 31 on trusts and forced heirship. Delegate Dennery suggested that there should be some reference to trusts and forced heirship in the constitution but that he was not wedded to any particular language. He believed that the legislature should have wide discretion in the matter. Professor Le Van generally agreed with Delegate Dennery but suggested the constitution could even be silent on the question of forced heirship.

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Delegates DEWEY HAYES and E. J. CHATELAIN recommended that the committee adopt an additional section to the general governmental provisions entitled "Advanced Vehicular Financial Responsibility." (See attachment for text).

Mr. PAUL KINLEY, president of Nub-City Bank of Lafayette, and representing an independent bankers association, and Mr. EMBREE K. EASTERLY, representing an independent bankers association, spoke in favor of a proposal by Mr. Roy to have limitations on banking. They were opposed to state-wide branch banking and multi-bank holding companies.

Delegate ERROL DESHOTEL offered to speak again on his proposal on the right to privacy, but in view of the time factor the committee said it was not necessary to repeat his testimony.

Following the appearance of the witnesses the committee commenced consideration of Committee Proposal No. 1, Article II, General Governmental Provisions. Mr. Vick moved to delete all provisions on the initiative (See Tentative Proposal No. 286), which was adopted by a vote of 5 to 2.

Mr. Roy then moved to delete Section 11 Right to Direct Participation. As a substitute, Mr. Jenkins moved to delete the references to privacy and this was adopted after attempts to substitute other references to privacy were rejected. (See Tentative Proposal Nos. 287 through 290).

Mr. Roy then moved to adopt a new section on Limitations on Banking, which was adopted by a vote of 5 to 0. (See Tentative Proposal No. 291).

The meeting recessed until Friday, December 14, 1973.

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12/13/73

Proposed Section for Inclusion in

ARTICLE II. General Governmental Provisions

Section _____. Advance Vehicular Financial Responsibility

Section _____. The legislature shall require a showing of financial responsibility or insurance as a condition for registering specified vehicles and for obtaining specified licenses to drive on the public highways. In setting rates for such insurance, actual accidents but not recorded traffic tickets may be used as a criteria.

December 14, 1973

The meeting reconvened on Friday, December 14, 1973.

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present: Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Chris J. Roy
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss

Absent: Rep. Shady Wall

The chairman called the meeting to order and roll call was taken by the committee secretary. A quorum was present.

Dr. Weiss moved to table Section 11 Right to Direct Participation, which had previously been adopted. The motion was rejected by a vote of 2 to 6 (See Tentative Proposal No. 292). Mr. Roy then moved to reaffirm adoption of Section 11 and this was adopted by a vote of 6 to 0 (See Tentative Proposal No. 293).

Dr. Weiss moved to reconsider the section on Limitations on Banking, after an attorney representing the Nibernia National Bank and Delegate Mary Zervigon appeared before the committee asking that additional witnesses be given an opportunity to testify on the section. Dr. Weiss's motion to reconsider was rejected by a vote of 3 to 5 (See Tentative Proposal No. 294).

Mr. Stinson moved to suspend the regular order of business to take up Delegate Proposal No. 20 by Delegate Jack. This was adopted, and Delegate Jack asked that an amendment to his

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proposal, increasing the number of amendments that may be submitted to the electors from six to ten, be accepted. After debate, the committee adopted the amendment, then rejected a motion to defer action, rejected a motion to report the proposal favorably, and accepted a motion to report the Jack Delegate Proposal No. 20 unfavorably (See Tentative Proposal No. 295 through 299).

Mr. Roy moved to include a new section on forced heirship and trusts which was adopted by a vote of 7 to 1, with one abstention (See Tentative Proposal No. 300).

Mr. Jenkins moved to adopt a new section entitled Protection of Vested Rights, which was adopted by a vote of 8 to 0, with one abstention (See Tentative Proposal No. 301).

Mr. Roy moved to defer action on the section suggested to the committee by Delegates Chatelain and Hayes and this was adopted by a vote of 8 to 0 (See Tentative Proposal No. 302).

The meeting then recessed until Monday, December 17, 1973.

December 17, 1973

The meeting reconvened on Monday, December 17, 1973.

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present: Mrs. Judy Dunlap
 Anthony J. Guarisco, Jr.
 Rep. Alphonse Jackson, Jr.
 Rep. Louis "Woody" Jenkins
 Chris J. Roy
 Mrs. Novyse E. Soniat
 Kendall Vick

Absent: Rep. Shady Wall
 Dr. Gerald N. Weiss

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The chairman called the meeting to order and roll call was taken by the committee secretary. A quorum was present.

Mr. ARTHUR BROUSSARD, president of the Louisiana Bankers Association; Mr. HERMAN MOYSE, JR., chairman of the Louisiana Bankers Association Legislative Study Committee; and Mr. WILL W. WHITMORE, president of the Louisiana Independent Bankers Association, appeared before the committee and urged that the committee not include the proposed section on limitations on banking. The bankers association agreed with the intent of the proposal but contended that it would limit flexibility if it was nailed down in the constitution. After hearing the witnesses, Delegate Roy moved to amend his proposal to permit changes by a two-thirds vote of the legislature, and the proposal, as amended, was accepted by a vote of 4 to 2 (See Tentative Proposal Nos. 303 and 304).


Mr. Roy then moved to report out Article II General Governmental Provisions, with amendments, by substitute. This motion was adopted by a vote of 5 to 1 (See Tentative Proposal No. 305) after technical amendments suggested by Mr. Guarisco were adopted without objection (See Tentative Proposal No. 306).

The committee then considered Style and Drafting changes in the Declaration of Rights Proposal. Mr. Jenkins moved to accept all recommendations made to Chairman Jackson by Senior Researcher Walter Landry in accordance with his letter of December 11, 1973, attached. (See Tentative Proposal No. 307). Mr. Jenkins then moved to include additional style and drafting changes which, combined with the Landry recommendations, are included in the attached memorandum from Chairman Jackson to

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Judge Tate, chairman of the Committee on Style and Drafting, dated December 18, 1973 (See Tentative Proposal No. 308). There was no objection to the motion.

There being no further business the meeting adjourned after Chairman Alphonse Jackson announced that another meeting would be called on Tuesday, December 18, 1973, to consider the article on constitutional revision.


 Rep. Alphonse Jackson, Jr., Chairman

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RECORD VOTES ON TENTATIVE PROPOSAL NOS. 286 THROUGH 293 ON DECEMBER 13, 1973, OF THE ARTICLE ON GENERAL GOVERNMENTAL PROVISIONS (DISTRIBUTION OF POWERS AND GENERAL PROVISIONS).

COMMITTEE ON BILL OF RIGHTS AND ELECTIONS

ROLL CALL

	286	287	288	289	290	291	292	293
Dunlap	-		-	-	-	-	-	-
Guarisco	Y		Y	Y	N	Y	N	Y
Jackson	Y		Y	N	N	Y	N	Y
Jenkins	N		Y	Y	N	-	Y	-
Roy	Y		Y	N	N	Y	N	Y
Soniat	Y		Y	N	N	Y	N	Y
Stinson	N		Y	Y	Y	Y	N	Y
Vick	-		Y	N	N	ABS	N	Y
Wall	-		-	-	-	-	-	-
Weiss	Y		N	Y	Y	-	Y	-

Y = For

N = Against

- = Absent

ABS = Abstention

December 13, 1973

CBRE Tentative Proposal No. 286 by Mr. Vick

Background: A motion to delete Sections 4 through 10 dealing with "Initiative" from Committee Proposal No. 1.

Disposition: Adopted 5-2.

December 13, 1973

CBRE Tentative Proposal No. 287 by Mr. Roy

Background: A motion to delete Section 11. Right to Direct Participation from Committee Proposal No. 1.

Disposition: Replaced by a substitute motion by Mr. Jenkins (See TP No. 288) accepted by Mr. Roy.

December 13, 1973

December 14, 1973

CBRE Tentative Proposal No. 292 by Dr. Weiss

CBRE Tentative Proposal No. 288 by Mr. Jenkins, accepted
by Mr. Roy

Background: A motion to table Section 11. Right to Direct
Participation as proposed in TP No. 288.

Background: A substitute motion to amend Section 11 to
have it read as follows:

Disposition: Rejected 2-6.

Section 11. Right to Direct Participation

No person shall be denied the right to observe the
deliberations of public bodies and examine public documents,
except in cases established by law.

December 14, 1973

CBRE Tentative Proposal No. 293 by Mr. Roy

Disposition: Adopted 7-1 after additional amendments (TP
Nos. 289 and 290) were rejected.

Background: A motion to reaffirm adoption of Section 11.
Right to Direct Participation as proposed in
TP No. 288.

Disposition: Adopted 6-0.

December 13, 1973

CBRE Tentative Proposal No. 289 by Mr. Jenkins

Background: A motion to amend Section 11 to read as follows:

RECORD VOTES ON TENTATIVE PROPOSAL NOS. 294 THROUGH 308 OF THE
ARTICLE ON GENERAL GOVERNMENTAL PROVISIONS AND STYLE AND DRAFTING
CHANGES IN THE DECLARATION OF RIGHTS.

Section 11. Right to Direct Participation

No person shall be denied the right to observe the
deliberations of public bodies and examine public documents,
except in cases established by law to protect the privacy
of individual citizens.

Disposition: Rejected 4-4.

COMMITTEE ON BILL OF RIGHTS AND ELECTIONS

ROLL CALL

	December 14, 1973										December 17, 1973				
	294	295	296	297	298	299	300	301	302	303	304	305	306	307	308
Dunlap	N	-	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	*	*	*
Guarisco	Y	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y			
Jackson	N	Y	Y	N	Y	Y	Y	Y	Y	Y	Y	Y			
Jenkins	Y	N	Y	Y	N	N	N	Y	Y	N	N	N			
Roy	N	Y	Y	ABS	N	N	Y	Y	Y	Y	Y	Y			
Soniat	N	Y	N	Y	N	N	Y	Y	Y	N	N	Y			
Stinson	N	Y	Y	N	N	Y	Y	Y	Y	-	-	-			
Vick	-	-	-	-	Y	Y	Y	Y	Y	ABS	ABS	Y			
Wall	-	-	-	-	-	-	-	-	-	-	-	-			
Weiss	Y	ABS	ABS	ABS	N	Y	ABS	ABS	ABS	-	-	-			

Y= For

N= Against

-= Absent

ABS= Abstention

*= Adopted without objection

December 13, 1973

CBRE Tentative Proposal No. 290 by Dr. Weiss

Background: A motion to amend Section 11 to read as follows:

Section 11. Right to Direct Participation

No person shall be denied the right to observe the
deliberations of public bodies and examine public documents,
except to protect the privacy of individual citizens or in
other cases established by law.

Disposition: Rejected 2-6.

December 13, 1973

CBRE Tentative Proposal No. 291 by Mr. Roy

December 14, 1973

Background: A proposed new section to General Governmental
Provisions on limitations on banking.

CBRE Tentative Proposal No. 294 by Dr. Weiss

Section _____. Limitations on Banking

No law shall permit multi-branch holding companies or
statewide branch banking.

Background: A motion to reconsider the Section on
Limitations on Banking previously adopted
(See TP No. 291).

Disposition: Adopted 5-0 with one abstention after TP No. 192
was rejected.

Disposition: Rejected 3-5.

December 14, 1973

CBRE Tentative Proposal No. 295 by Mr. Stinson

Background: A motion to suspend the regular order of business to take up Delegate Proposal No. 20 by Delegate Jack.

Disposition: Adopted 5-1 with one abstention.

December 14, 1973

CBRE Tentative Proposal No. 296 by Mr. Guarisco

Background: A motion to accept an amendment suggested by Mr. Jack to amend his Delegate Proposal No. 20 to read as follows:

Section _____. Constitutional Amendments; Limit on Number

No more than ten proposed amendments shall be submitted to the electors of the state at any one election.

Disposition: Adopted 6-1 with one abstention.

December 14, 1973

CBRE Tentative Proposal No. 297 by Mr. Jenkins

Background: A motion by Mr. Jenkins to defer action on the Jack Delegate Proposal.

Disposition: Rejected 3-3 with two abstentions.

December 14, 1973

CBRE Tentative Proposal No. 298 by Mr. Guarisco

Background: A motion to report the Jack Delegate Proposal No. 20 favorably to the convention as amended.

Disposition: Rejected 4-5.

December 14, 1973

CBRE Tentative Proposal No. 299 by Mr. Stinson

Background: A motion to report the Jack Delegate Proposal No. 20 unfavorably to the convention.

Disposition: Adopted 5-4.

December 14, 1973

CBRE Tentative Proposal No. 300 by Mr. Roy

Background: A motion to add a new section to "General Governmental Provisions" or forced heirship and trusts as follows:

Section _____. Forced Heirship and Trusts

No law shall abolish forced heirship. The determination of forced heirship, the amount of the forced portion, and the grounds for disinheritance shall be provided by law. Trusts may be authorized by law for any purpose and a legitimate may be placed in trust.

Disposition: Adopted 7-1 with one abstention.

December 14, 1973

CBRE Tentative Proposal No. 301 by Mr. Jenkins

Background: A motion to add a new section to "General Governmental Provisions" on vested rights as follows:

Section _____. Protection of Vested Rights

Vested rights shall not be divested, except for the proposed and in accordance with the substantive and procedural safeguards established in this constitution for the taking or damaging of property.

Disposition: Adopted 8-0 with one abstention.

December 14, 1973

CBRE Tentative Proposal No. 302 by Mr. Roy

Background: A motion to defer action on the section suggested to the committee by Delegates Chatelain and Mayes which read as follows:

Section _____. Advance Vehicular Financial Responsibility

Section _____. The legislature shall require a showing of financial responsibility or insurance as a condition for registering specified vehicles and for obtaining specified licenses to drive on the public highways. In setting rates for such insurance, actual accidents but not recorded traffic tickets may be used as a criteria.

Disposition: Adopted 8-0 with one abstention.

December 17, 1973

December 17, 1973

CBRE Tentative Proposal No. 303 by Mr. Roy

CBRE Tentative Proposal No. 307 by Mr. Jenkins

Background: A motion to amend the section on Limitations on Banking to read as follows:

Background: A motion to accept all recommendations made to Chairman Jackson by Senior Researcher Walter Landry relative to style and drafting changes in the "Declaration of Rights" in the attached memo dated December 11, 1973.

Section ____ - Limitations on Banking

No law shall permit multi-branch holding companies, metropolitan banking, or statewide branch banking, except by a favorable vote of two-thirds of each house of the legislature.

Disposition: Adopted without objection.

December 17, 1973

Disposition: Adopted 4-2 with one abstention.

CBRE Tentative Proposal No. 308 by Mr. Jenkins

Background: A motion to add additional style and drafting changes to the "Declaration of Rights".

For text of all changes, see memo attached from Chairman Jackson to Judge Tate, Chairman of the Committee on Style and Drafting, dated December 18, 1973.

Disposition: Adopted without objection.

December 17, 1973

CBRE Tentative Proposal No. 304 by Mr. Roy

Background: A motion to adopt the section on Limitations on Banking as amended (See TP No. 303).

Disposition: Adopted 4-2 with one abstention.

December 17, 1973

CBRE Tentative Proposal No. 305 by Mr. Roy

Background: A motion to report out Article II General Governmental Provisions with amendments by substitute (For text see Committee Proposal No. 35).

Disposition: Adopted 5-1 after TP No. 306 was adopted.

December 17, 1973

CBRE Tentative Proposal No. 306 by Mr. Guariso

Background: A motion to change "departments" to "branches" in Sections 1 and 2 of General Governmental Provisions so that the sections would read as follows:

Section 1. Three Branches

The powers of government of the State of Louisiana are divided into three distinct branches--legislative, executive, and judicial.

Section 2. Limitations on Each Branch

No one of these branches, nor any person holding office in one of them, shall exercise power belonging to either of the others, except as otherwise provided in this constitution.



STATE OF LOUISIANA CONSTITUTIONAL CONVENTION OF 1973 P. O. BOX 17740-A BATON ROUGE, LOUISIANA 70801 TELEPHONE 389-5034

E. L. HENRY
Chairman
NORMA M. DUNCAN
Director of Research

December 18, 1973

MEMO TO: JUDGE TATE, CHAIRMAN, COMMITTEE ON STYLE AND DRAFTING

FROM: REP. ALPHONSE JACKSON, CHAIRMAN, COMMITTEE ON BILL OF RIGHTS AND ELECTIONS

The Committee on Bill of Rights and Elections has agreed to accept the recommendations of your committee dated 11/21/73 with respect to style and drafting changes of the "Preamble" and "Declaration of Rights" with the following modifications:

A. The sections should be arranged in the following order with the following titles:

PREAMBLE

Article I. Declaration of Rights

- Section 1. Origin and Purpose of Government
- Section 2. Due Process of Law
- Section 3. Right to Individual Dignity
- Section 4. Right to Property
- Section 5. Right to Privacy
- Section 6. Freedom from Intrusion
- Section 7. Freedom of Expression
- Section 8. Freedom of Religion
- Section 9. Right of Assembly and Petition
- Section 10. Rights of the Accused
- Section 11. Right to Preliminary Examination
- Section 12. Initiation of Prosecution
- Section 13. Right to a Fair Trial
- Section 14. Jury Trial in Criminal Cases
- Section 15. Right to Bail
- Section 16. Right to Judicial Review
- Section 17. Right to Humane Treatment
- Section 18. Writ of Habeas Corpus
- Section 19. Access of Courts
- Section 20. Right to Vote
- Section 21. Right to Keep and Bear Arms
- Section 22. Freedom from Discrimination
- Section 23. Prohibited Laws
- Section 24. Unenumerated Rights

B. Changes in Particular Sections.

Section 4. Right to Property

On page 9, line 5, after the words "right to", delete the words "acquire, control, own" and insert in lieu thereof the words "acquire, own, control"

On page 10, at the beginning of line 7, delete "completion" and insert in lieu thereof the word "competition"

On pages 9 and 10, delete all subtitles and subparagraphs in the "Right to Property" Section.

Section 5. Right to Privacy

On page 12, line 18, after the word "seizure" delete the words "which violates" on lines 18 and 19 and insert in lieu thereof the words "conducted in violation of"

Section 7. Freedom of Expression

On page 5, line 6, after the word and punctuation "press." delete the word "Any" and insert in lieu thereof "Every"

Section 9. Right of Assembly and Petition

On page 6, line 19, after the word "of" delete the word "every" and insert in lieu thereof the word "any"

Section 10. Rights of the Accused

On page 16, delete lines 3 through 7 and insert in lieu thereof "Section 10. When any person has been arrested or detained in connection with the investigation or commission of any offense, he shall be advised fully"

On page 16, line 14, before the word "to" add the words "his right"

On page 16, delete lines 28, 29 and 30 and insert in lieu thereof the words "and compensating qualified counsel for indigents."

Note: The Committee may also wish to shift the last sentence of this section to a more appropriate article.

Section 11. Right to Preliminary Examination

On page 18, line 6, add a comma after the word "cases"

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Section 12. Initiation of Prosecution

On page 19, line 9, add a comma after the word "imprisonment"

Section 13. Right to a Fair Trial

On page 20, line 4, after the word "until" delete the word "proved" and insert in lieu thereof the word "proven"

Section 15. Right to Bail

On page 23, line 8, after the word "proof" delete the word "is" and delete all of line 9.

On page 23, line 16, after the word "less" delete the comma and insert in lieu thereof the punctuation and word "; and"

On page 23, line 24, after the word "less" delete the comma and insert in lieu thereof the punctuation and word "; and"

Section 16. Right to Judicial Review

Note: The Committee may wish to shift the last sentence of this section to a more appropriate article.

Section 17. Right to Humane Treatment

On page 8, line 9, after the word "state" delete the word "and"

Section 20. Right to Vote

On page 7, delete line 7 and insert in lieu thereof "vote, except that this right may be sus-"

Section 22. Freedom from Discrimination

On page 13, line 5, add a comma after the word "facilities"

C. Presentation of this Report.

Delegate Woody Jenkins will appear before your committee and explain the changes proposed above by the Committee on Bill of Rights and Elections.

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December 11, 1973

E. L. HENRY
Chairman
NORMA M. DUNCAN
Director of Research

MEMO TO: Alphonse Jackson, Chairman
Committee on Bill of Rights and Elections
FROM: Walter J. Landry, Senior Researcher
RE: Your request for an analysis of changes proposed by the Committee on Style and Drafting to the "Declaration of Rights."

A. Order of Sections

The staff arrangement of Sections (Document VIII of 11/13/73) proposed to the Committee on Style and Drafting was based on the following rationale:

Introductory and General Provisions

1. Origin and Purpose of Government
2. Due Process of Law

Dignity and Status of the Individual (Passive Civil Rights)

3. Right to Individual Dignity
4. Right to Property
5. Right to Privacy
6. Freedom from Intrusion

Liberty of the Individual (Active Civil Rights)

7. Freedom of Expression
8. Freedom of Religion
9. Freedom of Assembly and Petition

Criminal Procedure Rights (from accusation to termination of supervision)

10. Rights of the Accused
11. Right to Preliminary Examination
12. Initiation of Prosecution
13. Fair Trial
14. Jury Trial in Criminal Cases
15. Right to Bail
16. Right to Judicial Review
17. Right to Humane Treatment

Rights of Redress

18. Writ of Habeas Corpus
19. Access to Courts

Political Rights

20. Right to Vote
21. Right to Keep and Bear Arms

Prohibitions and Miscellaneous Provisions

22. Freedom from Discrimination
23. Prohibited Laws
24. Unenumerated Rights

The Committee on Style and Drafting rearranged the above Sections in what appears to me to be a less orderly arrangement. For example, the political right to vote is placed inbetween various civil rights. The right to humane treatment, which deals mainly with treatment in prison and restoration of rights after release, is placed between the right to vote and property rights rather than at the end of the criminal procedure rights. In general, I believe the arrangement of sections proposed by the staff is a more orderly and logical arrangement than that proposed by the Committee on Style and Drafting.

The arrangement proposed by the Committee on Style and Drafting is as follows:

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Preamble

1. Origin & Purpose of Government
2. Due Process of Law
3. Right to Individual Dignity
4. Freedom of Expression
5. Freedom of Religion
6. Freedom of Assembly & Petition
7. Right to Vote
8. Right to Humane Treatment
9. Property Rights
10. Right to Keep & Bear Arms
11. Right to Privacy
12. Freedom from Intrusion
13. Freedom from Discrimination
14. Prohibited Laws
15. Access to Courts
16. Writ of Habeas Corpus
17. Rights of the Accused
18. Right to Preliminary Examination
19. Initiation of Prosecution
20. Fair Trial
21. Jury Trial in Criminal Cases
22. Right to Bail
23. Right to Judicial Review
24. Unenumerated Rights

B. Other Drafting Changes

In general, the drafting changes proposed by the Committee on Style and Drafting are excellent. I have only the following suggestions to make to their proposed changes.

Right to Vote

change "vote. This" to "vote, except that this"

Comment: The ideas in the Section are related and the Section is slightly stronger as a single sentence.

Property Rights

change the title from "Property Rights" back to "Right to Property". Eliminate all subparagraphs and subtitles.

Comment: Having only one section in the entire Article with subparagraphs and subtitles tends to weaken the basic unity of the Article. The main title of the section should remain "Right to Property" to emphasize that this is a right of the individual and not of property itself.

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Right to Privacy

change "which violates" back to "conducted in violation of".

Comment: The new words could result in a slight change of meaning.

Rights of Accused

change the title back to "Rights of the Accused". Shift the last sentence of the Section to another Article as it is not appropriate in the "Declaration of Rights".

Comment: Leaving the "the" out of the title makes it sound somewhat awkward.

Right to Preliminary Examination

Add a comma after "cases" on line 6.

Comment: See the next comment.

Initiation of Prosecution

Add a comma after "imprisonment" on line 9.

Comment: This is consistent with the commas in the sections on "Due Process of Law" and "Right to Individual Dignity".

Right to Bail

Add the word "and" after the semicolons on lines 16 and 24.

Comment: This is parallel treatment which makes for smoother reading.

Right to Judicial Review

Shift the last sentence of the Section to another Article as it is not appropriate in the "Declaration of Rights".

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MINUTES

Minutes of the meeting of the Bill of Rights and Elections Committee of the Constitutional Convention of 1973
Held pursuant to notice by the Secretary in accordance with the Rules of the Convention

Committee Room 1, State Capitol,
Baton Rouge, Louisiana, Tuesday,
December 18, 1973, (12 noon to
1:50 p.m.)

Presiding: Rep. Alphonse Jackson, Jr., Chairman

Present: Mrs. Judy Dunlap
Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Chris J. Roy
Mrs. Novyse E. Soniat
Kendall Vick

Absent: Rep. Shady Wall
Dr. Gerald N. Weiss
Ford E. Stinson

The meeting was called to order by the chairman. Roll call was taken by the committee secretary. A quorum was present.

The committee began consideration of Committee Proposal No. 24 on Constitutional Revision.

Mr. Jenkins moved to require pre-publication of proposed amendments before the legislature meets and this was adopted by a vote of 6 to 1 (See Tentative Proposal No. 309). Mr. Vick moved a technical amendment with regard to Section 1 (A) which was adopted without objection (See Tentative Proposal No. 310).

Mr. Vick then moved to delete from Section 2 the provision spelling out how new delegates are to be elected, and how a proposed new constitution is to be approved by the people. The proposal was adopted by a vote of 4 to 3 (See Tentative Proposal No. 311).

Mr. Jenkins moved to reinsert in Section 2 the provision on how a proposed new constitution is to be approved by the people and this was adopted by a vote of 4 to 3 (See Tentative Proposal No. 312).

Mr. Roy then moved, without objection, to adopt Sections 1 and 2, as amended (See Tentative Proposal No. 313).

Mr. Jackson moved, without objection, a technical amendment to change the title of Section 3 (See Tentative Proposal No. 314).

Mr. Jenkins moved to amend Section 3 involving a convention called by the people, to spell out how the delegates are to be elected and to limit the number that may be appointed by the governor to fifteen. This was adopted by a vote of 4 to 3 (See Tentative Proposal No. 315).

Mr. Vick moved to delete the provision on the number of delegates that may be appointed by the governor, which motion was adopted by a vote of 4 to 3 (See Tentative Proposal No. 316).

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December 18, 1973

CBRE Tentative Proposal No. 309 by Mr. Jenkins

Mr. Jenkins moved to reinsert the provision with a maximum of twenty-seven delegates to be appointed by the governor, which motion was adopted by a vote of 4 to 3 (See Tentative Proposal No. 317).

Mr. Roy moved, without objection, to adopt Section 3, as amended (See Tentative Proposal No. 318).

Mr. Roy moved, without objection, to adopt Section 4 on laws effectuating amendments (See Tentative Proposal No. 319).

Mr. Roy then moved to adopt the entire article on constitutional revision, as amended, and report it by substitute, which motion was adopted by a vote of 7 to 0 (See Tentative Proposal No. 320).

Mr. Roy moved to defer action on all pending delegate proposals not previously acted upon by the committee, which motion was adopted by a vote of 7 to 0 (See Tentative Proposal No. 321).

There being no further business the meeting adjourned at 1:50 p.m.


Rep. Alphonse Jackson, Jr., Chairman

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RECORD VOTES ON TENTATIVE PROPOSAL NOS. 309 THROUGH 321 OF THE ARTICLE ON CONSTITUTIONAL REVISION.

COMMITTEE ON BILL OF RIGHTS AND ELECTIONS

ROLL CALL

December 18, 1973

	309	310	311	312	313	314	315	316	317	318	319	320	321
Dunlap	Y	*	N	Y	*	*	Y	Y	Y	*	*	Y	Y
Guarisco	Y		Y	N			N	Y	N			Y	Y
Jackson	Y		Y	N			N	Y	N			Y	Y
Jenkins	Y		N	Y			Y	N	Y			Y	Y
Roy	N		N	Y			Y	N	Y			Y	Y
Soniat	Y		Y	Y			Y	N	Y			Y	Y
Stinson	-		-	-			-	-	-			-	-
Vick			Y	N			N	Y	N			Y	Y
Wall	-		-	-			-	-	-			-	-
Weiss	-		-	-			-	-	-			-	-

- Y = For
- N = Against
- = Absent
- ABS = Abstention
- * = Adopted without objection

Background: A motion to amend Committee Proposal No. 24 (Article XIII. Constitutional Revision) by amending the first sentence of Section 1, amendments to read as follows:

An amendment to this constitution may be proposed by joint resolution at any session of the legislature, provided that notice of intention to introduce any such joint resolution and a summary thereof shall have been published in the official journal of the state at least ten days before the beginning of the session.

Disposition: Adopted 6-1.

December 18, 1973

CBRE Tentative Proposal No. 310 by Mr. Vick

Background: A motion to amend the second sentence of Section 1. amendments to read as follows:

If two-thirds of the members elected to each house concur in the resolution, pursuant to all the procedures and formalities required for passage of a bill except submission to the governor, the secretary of state shall cause the proposed amendment to be published in the official journal of each parish once within not less than thirty nor more than sixty days preceding the election at which the proposed amendment is submitted to the electorate.

Disposition: Adopted without objection.

December 18, 1973

CBRE Tentative Proposal No. 311 by Mr. Vick

Background: Motion to delete the following from Section 2. Convention called by Legislature of Committee Proposal No. 24:

The convention shall consist of delegates elected from the same districts and having the same qualifications as state representatives. The legislature may also provide for not more than fifteen delegates to be appointed by the governor. At a special election called for that purpose, the proposed constitution and any alternative propositions agreed upon by the convention shall be submitted to the people for their ratification or rejection. If the proposal is approved by a majority of the electors voting thereon, the governor shall proclaim it to be the Constitution of the State of Louisiana.

Disposition: Adopted 4-3.

December 18, 1973

CBRE Tentative Proposal No. 312 by Mr. Jenkins

Background: A motion to retain the following in Section 2. Convention Called by Legislature of Committee Proposal No. 24 which had been deleted by TP No. 311.

At a special election called for that purpose, the proposed constitution and any alternative propositions agreed upon by the convention shall be submitted to the people for their ratification or rejection. If the proposal is approved by a majority of the electors voting thereon, the governor shall proclaim it to be the Constitution of the State of Louisiana.

Disposition: Adopted 4-3.

December 18, 1973

CBRE Tentative Proposal No. 313 by Mr. Roy

Background: A motion to adopt Sections 1 and 2 as amended. (For text see Committee Proposal No. 36)

Disposition: Adopted without objection.

December 18, 1973

CBRE Tentative Proposal No. 314 by Mr. Jackson

Background: A technical amendment by Chairman Jackson to change the title of Section 3 of Committee Proposal No. 24 to read as follows:

Section 3. Convention Called by People

Disposition: Adopted without objection.

December 18, 1973

CBRE Tentative Proposal No. 315 by Mr. Jenkins

Background: A motion to amend Section 3 of Committee Proposal No. 24 by adding the following sentences at the end of the section.

The convention shall consist of delegates elected from the same districts and having the same qualifications as state representatives. The legislature may also provide for not more than fifteen delegates to be appointed by the governor.

Disposition: Adopted 4-3.

December 18, 1973

CBRE Tentative Proposal No. 316 by Mr. Vick

Background: A motion to delete the following from Section 3 of Committee Proposal No. 24 which had been added by TP No. 315.

The legislature may also provide for not more than fifteen delegates to be appointed by the governor.

Disposition: Adopted 4-3.

December 18, 1973

CBRE Tentative Proposal No. 317 by Mr. Jenkins

Background: A motion to replace the sentence deleted from Section 3 by TP No. 316 with the following:

The legislature may also provide for not more than twenty-seven delegates to be appointed by the governor.

Disposition: Adopted 4-3.

December 18, 1973

CBRE Tentative Proposal No. 318 by Mr. Roy

Background: A motion to adopt Section 3 as amended. (For text see Committee Proposal No. 36).

Disposition: Adopted without objection.

December 18, 1973

CBRE Tentative Proposal No. 319 by Mr. Roy

Background: A motion to adopt Section 4 of Committee Proposal No. 4 without change. (For text see Committee Proposal No. 36).

Disposition: Adopted without objection.

December 18, 1973

CBRE Tentative Proposal No. 320 by Mr. Roy

Background: A motion to adopt the entire article on constitutional revision as amended, and to report it by substitute. (For text, see Committee Proposal No. 36).

Disposition: Adopted 7-0.

December 18, 1973

CBRE Tentative Proposal No. 321 by Mr. Roy

Background: A motion to defer action on all pending delegate proposals not previously acted upon by the committee.

Disposition: Adopted 7-0.

MINUTES

Minutes of the meeting of the Committee on
Bill of Rights and Elections of the Consti-
tutional Convention of 1973

Held pursuant to notice given in accordance
with the Rules of the Convention

Convention Floor, White House Inn,
Baton Rouge, Louisiana, Friday,
January 11, 1974, 10:00 a.m.

Presiding: Alphonse Jackson, Jr., Chairman of the Committee

Present: Anthony J. Guarisco, Jr.
Rep. Alphonse Jackson, Jr.
Rep. Louis "Woody" Jenkins
Mrs. Novyse E. Soniat
Ford E. Stinson
Kendall Vick
Dr. Gerald N. Weiss

Absent: Mrs. Judy Dunlap
Chris J. Roy
Rep. Shady Wall

Sgt. at Arms: Edward Cailleteau, Jr.

The meeting was called to order by the chairman and after the
roll was taken the secretary reported a quorum. The previous
minutes were adopted.

The committee began discussion of Committee Proposal No. 35,
First Enrollment, with the suggested changes by the Committee
on Style and Drafting [Document XXXII]. All style and

drafting changes were accepted with the exception of Section 3,
in which three dots ". . ." were inserted in lieu of "(A B)"
as is shown on line 10 of the same section. There were no
objections to this change.

On page 7, lines 11 and 15, change the word "Origin" from
the singular to the plural "Origins" in both places.

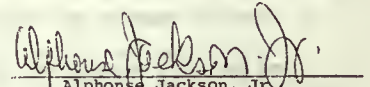
The committee made changes in Delegate Proposal No. 17,
First Enrollment, concerning Article XII General Provisions,
whereby Section 12 was changed to read "State Lottery; Gambling"
and on line 15, after the word "defined" the word "by" was
deleted.

The committee then arranged the sections of Article XII
of Committee Proposal No. 35, First Enrollment, to read as
follows:

- 1) State Capitol
- 2) Oath of Office
- 3) Civilian-Military Relations
- 4) Right to Direct Participation
- 5) Preservation of Linguistic and Cultural Origins
- 6) Forced Heirship and Trusts
- 7) State Lottery; Gambling
- 8) Administrative and Quasi-Judicial Agency Code
- 9) Limitations on Banking

The committee then acted on all delegate proposals referred
to the committee and reported each proposal unfavorably. Those
proposals are as follows: DP 2, 5, 25, 31, 47, 48, 50, 75, 76,
78, 79 and 93.

There being no further business the meeting adjourned at
11:30 a.m.


Alphonse Jackson, Jr.
Chairman

II. Tentative Proposals

NOTES

Tentative Proposals Nos. 286-321 are not included in the following Table of Contents or Index prepared by the Committee on Bill of Rights and Elections.

Constitutional Convention of the State of Louisiana of 1973
Tentative Proposals Introduced in the Committee on Bill of Rights
and Elections (CBRE) by its Individual Members

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CBRE Tentative Proposal (TP) No. & Title	Date (1973)
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CBRE Tentative Proposal (TP) No. & Title	Date (1973)	CBRE Tentative Proposal (TP) No. & Title	Date (1973)
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67. Civil Service Rights.	April 17	107. A substitute for TP No. 106. (Right to Vote)	May 19
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69. A substitute to TP No. 68. (Right to Keep and Bear Arms)	April 17	109. An amendment to TP No. 109. (Right to Vote)	May 19
70. A substitute for TP No. 68. (Right to Keep and Bear Arms)	April 17	110. An amendment to TP No. 110. (Right to Vote)	May 19
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146. Freedom from Discrimination.	June 14
147. Freedom of Expression.	June 14
148. Freedom of Religion.	June 14
149. A substitute for Freedom of Religion.	June 14
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CBRE Tentative Proposal (TP) No. & Title	Date (1973)
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158. Right to Vote.	June 14
159. An amendment. (Right to Vote)	June 14
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CBRE Tentative Proposal (TP) No. & Title	Date (1973)
179. An amendment. (Right to Keep and Bear Arms.)	June 22
180. An amendment. (Right to Keep and Bear Arms.)	June 22
181. An amendment. (Right to Keep and Bear Arms.)	June 22
182. An amendment. (Right to Keep and Bear Arms.)	June 22
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184. An amendment. (Right to Keep and Bear Arms.)	June 22
185. Right to Keep and Bear Arms.	June 22
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188. A motion to delete a section on "Right to Vote".	July 12
189. A proposal on "Free Elections".	July 12
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191. An amendment to TP No. 189 (Free Elections)	July 12
192. A substitute proposal for TP No. 189 as amended.	July 12
193. Amendment to TP No. 189 as amended.	July 12
194. A motion to delete a proposal on personal application and identity.	July 12
195. A proposal on residence for voting purposes.	July 12
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216. A substitute proposal for two sections on commissioners and poll watchers.	July 19
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CBRE Tentative Proposal (TP) No. & Title	Date (1973)
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226. An amendment to TP No. 224 (Election Fraud).	July 27
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CBRE Tentative Proposal (TP) No. & Title	Date (1973)
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251. Registrars of Voters.	August 7
252. An amendment to TP No. 251 (Registrars of Voters).	August 7
253. Consideration of Sections 11, 12, 13, 14 and 15.	August 8
254. Election Code.	August 8
255. An amendment to the section on constitutional amendments (TP No. 233).	August 8
256. A motion that Delegate Proposal No. 14 by Mr. Bergeron be reported unfavorably.	August 8
257. An amendment to "Section 4. Political Activities".	August 8

258. An amendment to "Section 10. Registrars of Voters".	August 8
259. An amendment to "Section 12. Election Returns".	August 8
260. A motion to adopt the entire elections article.	August 8

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261. A proposed section on constitutional conventions called by the people with suggested staff changes.	August 17
262. Laws Effectuating Constitutional Amendments with suggested staff changes.	August 17
263. A motion to adopt the entire article on constitutional revision (Committee Proposal 24).	August 17
264. An amendment to the "Preamble" in Committee Proposal No. 2.	August 22
265. An amendment to "Section 3. Right to Individual Dignity" in CP2.	August 22
266. An amendment to "Section 3. Right to Individual Dignity" in CP2.	August 22
267. An amendment to "Section 4. Right to Property" in CP2.	August 22
268. An amendment to "Section 4. Right to Property" in CP2.	August 22
269. An amendment to "Section 7. Freedom from Discrimination" in CP2.	August 22
270. A motion to readopt "Section 9. Freedom of Expression" in CP2.	August 22
271. An amendment to "Section 9. Initiation of Prosecution" in CP2.	August 22
272. An amendment to "Section 14. Grand Jury Proceedings" in CP2.	August 22
273. An amendment to "Section 19. Right to Vote" in CP2.	August 22
274. An amendment to "Section 20. Right to Keep and Bear Arms" in CP2.	August 22
275. An amendment to "Section 22. Access to Courts" in CP2.	August 22
276. An amendment to "Section 24. Freedom of Commerce" in CP2.	August 22
277. An amendment to "Section 25. Unenumerated Rights" in CP2.	August 22

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CBRE Tentative Proposal (TP) No. & Title	Date (1973)
278. An amendment to "Section 18. Right to Humane Treatment".	August 22
279. An amendment to "Section 19. Right to Vote" in CP2.	August 22
280. Revision of proposal "Freedom from Discrimination".	September 13
281. A revision of the section on secret ballot.	September 20
282. An amendment to each section on political activities, privilege from arrest, candidacy for public office, and limitation on term of office.	September 20
283. A revision of the section on election returns.	September 20
284. Registration of Voters (new).	September 20
285. A motion to rearrange the sections of the Elections Article.	September 20

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LEGISLATIVE HISTORY OF THE
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March 17, 1973

CBRE Tentative Proposal No. 1 By Mr. Roy

Background: New Preamble based on 1970 Illinois Constitution

PREAMBLE

We, the People of the State of Louisiana, grateful to Almighty God for the civil, political and religious liberties we enjoy, and desiring to secure the continuance of these blessings, in order to provide for the health, safety and welfare of the People; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom, liberty and justice to ourselves and our posterity, do ordain and establish this Constitution.

Disposition: Amended and tentatively adopted March 17, 1973.

March 17, 1973

CBRE Tentative Proposal No. 2 By Mr. Jenkins

Background: Amendment to TP No. 1

PREAMBLE

We, the people of the State of Louisiana, grateful to Almighty God for the civil, political and religious liberties which we enjoy, in order to protect individual rights to life, liberty and property; to provide for the health, safety and welfare of the people; to maintain a representative and orderly government, to eliminate inequality of rights; to provide opportunity for the fullest development of the individual; to insure domestic tranquility; to provide for the common defense; and to secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this Constitution.

Disposition: Accepted as an amendment by Mr. Roy.

March 17, 1973

CBRE Tentative Proposal No. 3 By Mr. Stinson

Background: Amendment to TP No. 2.

delete "eliminate inequality of rights" and insert in lieu thereof -assure equality of rights-.

Disposition: Accepted as an amendment by Messrs. Jenkins and Roy.

March 17, 1973

CBRE Tentative Proposal No. 4 By Dr. Weiss

Background: Substitute proposal for TP No. 1 as amended by TP No.'s 2 and 3.

PREAMBLE

We, the people of the State of Louisiana, grateful to Almighty God for this great land, do ordain and establish this constitution as a form of Government of the People, by the People and for the People of this state.

Disposition: Rejected.

March 17, 1973

CBRE Tentative Proposal No. 5 By Mr. Jenkins

Background: Amendment to TP No. 1 as amended consisting of the rearranging of phrases.

PREAMBLE

We, the people of the State of Louisiana, grateful to Almighty God for the civil, political and religious liberties which we enjoy, in order to protect individual rights to life, liberty and property; to assure equality of rights; to provide opportunity for the fullest development of the individual; to provide for the health, safety and welfare of the people; to maintain a representative and orderly government; to insure domestic tranquility; to provide for the common defense; and to secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this Constitution.

Disposition: Accepted as an amendment to TP No. 1 and adopted by the Committee as the tentative Preamble to the Constitution.

April 16, 1973

CBRE Tentative Proposal No. 6 By Mr. Roy

Background: First section of a new rights article based on the Louisiana Law Institute Project with the addition of the words "general welfare."

Section _____.

All government, of right, originates with the people, is founded on their will alone, and is instituted solely for the good of the whole. Its only legitimate end is to secure justice to all, preserve peace, and promote and protect the interest, happiness, and general welfare of the people.

Disposition: Amended and tentatively adopted April 16, 1973.

April 16, 1973

CBRE Tentative Proposal No. 7 By Dr. Weiss

Background: Substitute proposal for TP No. 6.

Inalienable Rights

Government of the people, by the people and for the people is instituted to protect rights reserved to the people. We proclaim these inalienable rights and assert that free government and the blessings of liberty are instituted to secure justice to all, preserve peace, and promote and protect the interest and happiness of the people.

Disposition: Rejected 4-3.

April 16, 1973

CBRE Tentative Proposal No. 8 By Mr. Jenkins

Background: Substitute proposal for TP No. 6 in the nature of an amendment to TP No. 7

§ 1. Inalienable Rights

Government of the people, by the people and for the people is instituted to protect rights of each individual. We proclaim these inalienable rights and assert that free government and the blessings of liberty are instituted to secure justice to all, preserve peace, and promote and protect the interest and happiness of each individual.

Disposition: Rejected.

April 16, 1973

CBRE Tentative Proposal No. 9 By Mr. Vick

Background: Amendment to TP No. 6

All government, of right, originates with the people, is founded on their will alone, and is instituted for the good of the whole. Its only legitimate end is to secure justice to all, preserve peace, and promote and protect the rights, happiness, and general welfare of the people. The rights enumerated in this article are inalienable and shall be preserved inviolate.

Disposition: Accepted as an amendment by Mr. Roy.

April 16, 1973

CBRE Tentative Proposal No. 10 By Messrs. Stinson and Weiss

Background: Amendment to TP No. 9

delete "rights, happiness, and general welfare" and insert in lieu thereof "rights and happiness."

Disposition: Rejected.

April 16, 1973

CBRE Tentative Proposal No. 11 By Mr. Jenkins

Background: Amendment to TP No. 9.

delete "for the good of the whole " and insert in lieu thereof "to protect the rights of each person."

Disposition: Rejected.

April 16, 1973

CBRE Tentative Proposal No. 12 by Mr. Jenkins

Background: Amendment to TP No. 9.

delete "for the good of the whole " and insert in lieu thereof "to protect the rights of the individual and the good of the whole."

Disposition: Accepted as an amendment by Messrs. Roy and Vick.

April 16, 1973

CBRE Tentative Proposal No. 13 by Mr. Jenkins

Background: Amendment to TP No. 12.

In the first sentence, delete "of right," and insert "just" after "all."

Disposition: Rejected 2-5.

April 16, 1973

CBRE Tentative Proposal No. 14 by Mr. Roy

Background: Amendment to TP No. 12.

After the words "individual and" in the first sentence, add the word "for."

Disposition: Accepted as an amendment by Messrs. Jenkins and Vick.

April 16, 1973

CBRE Tentative Proposal No. 15 by Mr. Stinson

Background: Amendment to TP No. 14.

Add as a title the following: Section _____, Origin and Purpose of Government.

Disposition: Accepted by Messrs. Roy, Vick and Jenkins

April 16, 1973

CBRE Tentative Proposal No. 16 by Mr. Roy

Background: The original TP No. 6 as amended by TP Nos. 9, 12, 14, and 15.

Section _____, Origin and Purpose of Government.

All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate end is to secure justice to all, preserve peace, and promote and protect the rights, happiness, and general welfare of the people. The rights enumerated in this article are inalienable and shall be preserved inviolate.

Disposition: Tentatively adopted as a section of the rights article, April 16, 1973.

April 16, 1973

CBRE Tentative Proposal No. 17 by Mr. Jenkins

Background: An original proposal by Mr. Jenkins.

Section _____. Nature of Rights

Rights are noncontradictory, and no person's rights shall ever be construed so as to infringe the rights of any other person.

Disposition: Tabled.

April 16, 1973

CBRE Tentative Proposal No. 18 by Dr. Weiss

Background: An original proposal by Dr. Weiss.

Section _____. Right to Life

(A) Every person has the right to have his life respected. No one shall be arbitrarily deprived of life.

(B) The death penalty may only be imposed as a preventive measure for the most serious crimes.

Disposition: Proponent agreed to defer action on the proposal.

April 16, 1973

CBRE Tentative Proposal No. 19 by Dr. Weiss

Background: An original proposal by Dr. Weiss.

Section _____. Rights of the Family

(A) The right of marriage between a man and woman of marriageable age and their right to have a family is recognized. No marriage shall be valid if entered into without the free and full consent of the spouses.

(B) The paramount right of parents to rear their children in accordance with their own convictions is recognized. Parents and children have mutual duties and responsibilities.

Disposition: Amended and then referred to the research staff.

April 16, 1973

CBRE Tentative Proposal No. 20 by Mr. Jenkins

Background: Amendment to TP No. 19.

Section _____. Rights of the Family

No law shall abridge the right of marriage between

a man and woman of marriageable age and their right to have a family. Nor shall any law deny the right of parents to rear their children in accordance with their own convictions. Parents and children have mutual duties and responsibilities.

Disposition: Referred to the research staff.

April 16, 1973

CBRE Tentative Proposal No. 21 by Mr. Jenkins

Background: An original proposal of Mr. Jenkins based on traditional prohibitions found in the U.S. Constitution and previous Louisiana Constitutions.

Section ____.

No bill of attainder, ex post facto law, or law impairing the obligations of contracts shall be passed.

Disposition: Tentatively adopted April 16, 1973. See TP No. 22 for title.

April 16, 1973

CBRE Tentative Proposal No. 22 by Mr. Jenkins

Background: Amendment to TP No. 21.

Insert as a title to TP No. 21 the following: "Prohibited Laws"

Disposition: Tentatively adopted, April 16, 1973.

April 16, 1973

CBRE Tentative Proposal No. 23 by Messrs. Roy and Weiss

Background: An original proposal based on an adoption of Article I, Section 4. Individual Dignity of the 1972 Montana Constitution. See also CBRE Staff Memo No. 12.

Section ____ . Right to Individual Dignity

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas. Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted.

Disposition: Amended and tentatively adopted, April 16, 1973.

April 16, 1973

CBRE Tentative Proposal No. 24 by Mr. Vick

Background: An amendment to TP No. 23.

delete the first sentence of TP No. 23.

Disposition: Accepted by Messrs. Roy and Weiss.

April 16, 1973

CBRE Tentative Proposal No. 25 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

delete the words "social origin or condition, or political or religious ideas," and insert the words "religion or social origin."

Disposition: Rejected 2-5.

April 16, 1973

CBRE Tentative Proposal No. 26 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

delete the words ",or political or religious ideas."

Disposition: Rejected 3-6.

April 16, 1973

CBRE Tentative Proposal No. 27 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

After the words, "nor shall any law," add the word "unreasonably."

Disposition: Rejected by a roll call vote 4-5.

The Roll Call

	Yes	No	
Dunlap	Yes	No	(Corrected in accordance with the minutes of the meeting of May 4 and 5, 1973.)
Guarisco	Yes		
Jackson	No		
Jenkins	Yes		
Roy	No		
Soniat	No		
Stinson	Yes		
Vick	No		
Wall	Absent		
Weiss	Yes		

April 16, 1973

CBRE Tentative Proposal No. 28 by Mr. Jenkins

Background: An amendment to TP No. 23 as amended by TP No. 24.

After the words, "equal protection of the laws," delete the words -nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas-.

Disposition: Rejected by a roll call vote 2-7.

The Roll Call

Dunlap	No
Guarisco	No
Jackson	No
Jenkins	Yes
Roy	No
Soniet	No
Stinson	Yes
Vick	No
Wall	Absent
Weiss	No

April 16, 1973

CBRE Tentative Proposal No. 29 by Messrs. Roy, Weiss and Vick

Background: Text of TP No. 23 as amended by TP No. 24.

Section _____. Right to Individual Dignity

No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas. Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted.

Disposition: Tentatively adopted, April 16, 1973 by a roll call vote 7-2. The comment is to explain that the committee does not intend to endorse the concept of racial or other quotas and is inconsistent with the proposal.

The Roll Call

Dunlap	Yes	(Corrected in accordance with the Minutes of the meeting of May 4 and 5, 1973.)
Guarisco	Yes	
Jackson	Yes	
Jenkins	No	
Roy	Yes	
Soniet	Yes	
Stinson	No	
Vick	Yes	
Wall	Absent	
Weiss	Yes	

April 16, 1973

CBRE Tentative Proposal No. 30 by Dr. Weiss

Background: Proposed section based on Louisiana Law Institute Project Article I, Section 3.

Section _____.

No law shall be passed to curtail or restrain the liberty

of speech or of the press; any person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty. In all proceedings or prosecutions for libel, slander, or defamation, the truth thereof may be given in evidence.

Disposition: Substitute proposal adopted in its place but to be made the subject of a minority report.

April 16, 1973

CBRE Tentative Proposal No. 31 by Mr. Jenkins

Background: An original substitute proposal for TP No. 30.

Section _____. Freedom of Expression

No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate or broadcast on any subject or to gather, receive and transmit knowledge and information, nor shall such activities ever be subject to censorship, licensure, registration, control or special taxation.

Disposition: Tentatively adopted April 16, 1973 with the understanding that the comment to the proposal will explain that one may still sue for libel and slander and that truth is always a defense. The roll call vote was 6-3. Several attempted amendments, were rejected.

The Roll Call

Dunlap	No
Guarisco	Yes
Jackson	Yes
Jenkins	Yes
Roy	Yes
Soniet	Yes
Stinson	No
Vick	Yes
Wall	Absent
Weiss	No

April 16, 1973

CBRE Tentative Proposal No. 32 by Mr. Stinson

Background: Amendment to TP No. 31

After the words "special taxation," add the words ", provided that every person shall be responsible for the abuse of that freedom. In all proceedings or prosecutions for libel, slander, or defamation, the truth thereof may be given in evidence."

Disposition: Rejected.

April 16, 1973

CBRE Tentative Proposal No. 33 By Dr. Weiss

Background: Amendment to TP No. 31.

Add the following sentence, "Everyone has the right to liberty of speech and expression, being responsible for the abuse of this liberty.", at the beginning of the section.

Disposition: Rejected.

April 16, 1973

CBRE Tentative Proposal No. 34 By Mr. Stinson

Background: Amendment to TP No. 31.

After the words "or broadcast", add the words "the truth"

Disposition: Rejected 2-6.

April 16, 1973

CBRE Tentative Proposal No. 35 By Mr. Guarisco

Background: A proposal based on Louisiana Law Institute Project Article I, Section 4 with the first sentence deleted. After reflection, the first sentence was added at the end of the section.

Section ____.

No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof; nor shall any preference ever be given to, or any discrimination made against, any church, sect, or creed of religion or any form of religious faith or worship. Every person has the natural right to worship God according to the dictates of his own conscience.

Disposition: Adopted with the title Freedom of Religion. See TP No. 36.

April 16, 1973

CBRE Tentative Proposal No. 36 By Mr. Stinson

Background: Amendment to TP No. 35 giving it a title.

Section ____ . Freedom of Religion

No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof; nor shall any preference ever be given to, or any discrimination made against, any church, sect, or creed of religion or any form of religious faith or worship. Every person has the natural right to worship God according to the dictates of his own conscience.

Disposition: Tentatively adopted, April 16, 1973.

April 16, 1973

CBRE Tentative Proposal No. 37 By Mr. Jenkins

Background: An original proposal.

Section ____ . Administering of Oaths

The method of administering an oath or affirmation shall be such as shall be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered.

Disposition: Withdrawn by the proponent.

April 16, 1973

CBRE Tentative Proposal No. 38 By Mr. Jenkins

Background: An original proposal.

Section ____ . Freedom of Movement

No law shall prohibit the freedom of each person to live and work at a place of his choosing, to travel freely within the state, to enter and leave the state, and to assemble peaceably with others.

Disposition: Tabled.

April 16, 1973

CBRE Tentative Proposal No. 39 By Mr. Jenkins

Background: An original proposal.

Section ____ . Freedom to Dissent

No law shall impair the freedom to petition government officials for a redress of grievances or the freedom to protest governmental action in peaceable ways not violative of other laws.

Disposition: Withdrawn by the proponent.

April 16, 1973

CBRE Tentative Proposal No. 40 By Dr. Weiss

Background: A proposal based on Louisiana Law Institute Project Article I, Section 5.

Section ____ .

The people have the right peaceably to assemble and to apply to those vested with the powers of government for a redress of grievances by petition or remonstrance.

Disposition: Amended and tentatively adopted. See TP No. 43.

April 16, 1973

CBRE Tentative Proposal No. 41 By Mr. Jenkins

Background: Amendment to TP No. 40.

Amend TP 40 to read as follows:

Section ____.

No law shall prohibit the right of each person to assemble peaceably, to petition government officials for a redress of grievances, to travel freely within the state and to enter and leave the state.

Disposition: Accepted as an amendment by Dr. Weiss. See TP No. 43.

April 16, 1973

CBRE Tentative Proposal No. 42 By Mr. Vick

Background: Amendment to TP No. 40 as amended by TP No. 41.

delete the word "officials".

Disposition: Accepted as an amendment by Messrs. Weiss and Jenkins. See TP No. 43.

April 16, 1973

CBRE Tentative Proposal No. 43 By Dr. Weiss

Background: Amendment to TP No. 40 as amended by TP No. 41 and TP No. 42.

Section ____ . Right of Assembly and Freedom of Movement

No law shall prohibit the right of each person to assemble peaceably, to petition government for a redress of grievances, to travel freely within the state and to enter and leave the state.

Disposition: Accepted as amendment by Messrs. Vick and Jenkins and tentatively adopted, April 16, 1973.

April 16, 1973

CBRE Tentative Proposal No. 44 By Mr. Jenkins

Background: An original proposal.

Section ____ . Freedom of Commerce

No law shall impair the free and voluntary exchange of goods and services within the state by limiting the practice of any occupation to a certain class of persons, by controlling the production or distribution of goods and services, by

dictating the price and terms of contracts, or by prohibiting any enterprise from conducting transactions at any time or place, except that just laws may regulate commerce to the extent necessary to protect the health and safety of persons.

Disposition: Rejected 1-6.

April 16, 1973

CBRE Tentative Proposal No. 45 by Mr. Jenkins

Background: An original proposal.

Section ____ . Prohibition of Government Competition and Monopolies

No law shall permit the operation of any government enterprise not already in existence if such enterprise competes directly and substantially with a private, tax-paying enterprise, has secured its capital assets by expropriation of private property, depends on tax revenues to meet its operating expenses or has been granted a legal monopoly.

Disposition: Referred to research staff.

April 16, 1973

CBRE Tentative Proposal No. 46 By Mr. Roy

Background: An original proposal.

Section ____ . Freedom from Discrimination

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the sale or rental of property.

Disposition: Amended and tentatively adopted. See TP No. 48.

April 17, 1973

CBRE Tentative Proposal No. 47 By Mrs. Soniat

Background: Amendment to TP No. 46.

After the words "and sex" in TP No. 46, add the words "in access to public accommodations or"

Disposition: Adopted 5-4.

April 17, 1973

CBRE Tentative Proposal No. 48 By Mr. Jenkins

Background: Amendment to TP No. 46 as amended by TP No. 47.

Amend the section to read as follows:

Section ____ Freedom from Discrimination

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry, and sex in access to public accommodations or in the sale or rental of property. Nothing herein shall be construed to prohibit freedom of association.

Disposition: Accepted as an amendment by Mr. Roy and Mrs. Soniat. The section, as amended, was then tentatively adopted by a roll call vote 5-4 on April 17, 1973. A minority report to delete the section was adopted by Messrs. Jenkins, Dunlap, Stinson and Weiss.

The Roll Call

Dunlap	No
Guarisco	Yes
Jackson	Yes
Jenkins	No
Roy	Yes
Soniat	Yes
Stinson	No
Vick	Yes
Wall	Absent
Weiss	No

April 17, 1973

CBRE Tentative Proposal No. 49 By Dr. Weiss

Background: Three original proposal sections.

Section ____ Right of Redress

Everyone has the right to sue the state, its political subdivisions, or any person or legal entity that violates any of his recognized rights and to obtain compensation or other appropriate redress of his injury.

Section ____ Rights of the Child

Persons below the age of majority may exercise all recognized rights unless specifically precluded by laws which enhance the protection of such persons.

Section ____ Right to Due Process of Law

No person shall be deprived of any of his rights without due process of law.

Disposition: Substitutes were adopted for "Right of Redress" and "Right to Due Process of Law" and "Rights of the Child" was referred to the research staff.

April 17, 1973

CBRE Tentative Proposal No. 50 By Mr. Roy

Background: Substitute proposal for the section in TP No. 49 entitled "Right of Redress". The substitute is based on Louisiana Law Institute Project Article I, Section 6.

Section ____ Access to Courts

All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay for actual or threatened injury done him in his person, property, reputation, or other rights. Neither the state nor any person shall be immune from suit.

Disposition: Tentatively adopted 8-1 on April 17, 1973. The comment is to say that "state" includes "any political subdivisions and corporations". The historical concept of sovereign immunity is to be included in the comment with the question of whether one may seize state property being left to the courts. The comment is also to state that every person shall have standing to challenge the constitutionality of any law enacted pursuant to this Constitution if he has a direct interest in the validity of the law in question.

April 17, 1973

CBRE Tentative Proposal No. 51 By Mr. Jenkins

Background: Amendment for the section in TP No. 49 entitled "Right to Due Process of Law".

Amend the section in TP No. 49 entitled "Right to Due Process of Law" to read as follows:

Section ____ Due Process of Law

No person shall be deprived of life, liberty, or property, without due process of law.

Disposition: Replaced by a substitute proposal. See TP No. 52.

April 17, 1973

CBRE Tentative Proposal No. 52 By Mr. Vick

Background: An original substitute proposal to replace the section in TP No. 49 entitled "Right to Due Process of Law" as amended by TP No. 51.

Section ____ Due Process of Law

No person shall be deprived of life, liberty, property, or other rights without substantive and procedural due process of law.

Disposition: Tentatively adopted 9-0 on April 17, 1973.

April 17, 1973

CBRE Tentative Proposal No. 53 By Mr. Jenkins

Background: An original proposal.

Section ____ . Availability of Rights

Every person shall have standing to challenge the constitutionality of any law enacted pursuant to this constitution if he has a direct interest, however small, in the validity of the law in question.

Disposition: Withdrawn with the understanding that it would be included in the comment to TP No. 50 except for the words "however small,". See TP No. 50.

April 17, 1973

CBRE Tentative Proposal No. 54 By Mr. Guarisco

Background: An original proposal based on the Seventh Amendment to the United States Constitution.

Section ____ .

In civil law suits, the right to trial by jury shall not be abridged, and no fact tried by a jury shall be otherwise reexamined on appeal.

Disposition: Motion to table rejected 3-4. Proposal amended and passed unanimously. See TP No. 56.

April 17, 1973

CBRE Tentative Proposal No. 55 By Mr. Roy

Background: Amendment to TP No. 54.

delete the word "law" and add in lieu thereof the word "damage".

Disposition: Accepted as an amendment by Mr. Guarisco.

April 17, 1973

CBRE Tentative Proposal No. 56 By Mr. Jenkins

Background: Amendment to TP No. 54 as amended by TP No. 55.

Amend the sections to read as follows:

Section ____ . Trial by Jury in Civil Cases

The right to trial by jury shall not be abridged. In civil damage suits, no fact tried by a jury shall be reexamined on appeal. The determination of facts in any other

case before any court or administrative body shall be subject to review.

Disposition: Accepted as an amendment by Messrs. Guarisco and Roy and tentatively adopted unanimously (eight members present) on April 17, 1973.

April 17, 1973

CBRE Tentative Proposal No. 57 By Mr. Jenkins

Background: An original proposal.

Section ____ . Searches and Seizures

Every person shall be secure in his person against unreasonable searches and seizures, and no such search or seizure shall be undertaken except upon warrant therefor issued upon probable cause supported by an oath or affidavit specifically describing the person to be searched or seized.

Disposition: Replaced by a substitute proposal.

April 16, 1973

CBRE Tentative Proposal No. 58 by Mr. Roy

Background: Substitute proposal for TP No. 57, adopted from Louisiana Law Institute.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no search or seizure shall be made except upon warrant therefor issued upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized and the purpose or reason for the search.

Disposition: Amended and tentatively adopted. See TP No. 60

April 16, 1973

CBRE Tentative Proposal No. 59 by Mr. Vick

Background: Amendment to TP No. 58.

Section ____ . Searches and Seizures

Every person shall be secure in his person, houses, papers, and other possessions against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause, supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law.

Disposition: Accepted by Mr. Roy; subsequently amended and tentatively adopted. See TP No. 60

April 16, 1973

CBRE Tentative Proposal No. 60 by Mr. Jenkins

Background: Amendment to TP No. 58; namely, adding a sentence at the end thereof.

Section _____. Searches and Seizures

Every person shall be secure in his person, houses, papers, and other possessions against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause, supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law. No law shall permit the interception or inspection of any private communication or message.

Disposition: Accepted by Messrs. Roy and Vick, and tentatively adopted April 17, 1973, by unanimous vote.

April 16, 1973

CBRE Tentative Proposal No. 61 by Dr. Weiss

Background: An original proposal.

Section _____. Right to Property

(A) Everyone has the right to the use and enjoyment of his lawfully acquired property. The disposition of property may be subject to reasonable laws to protect the family.

(B) No one shall be deprived of his property except upon payment of just compensation for reasons of public utility and in accordance with law. In the event of litigation, just compensation includes necessary expenses of litigation when the private property owner prevails.

Disposition: Substitute proposed and then entire matter was referred to the research staff.

April 17, 1973

CBRE Tentative Proposal No. 62 By Mr. Jenkins

Background: Substitute for TP No. 61 based on an original proposal.

Section _____. Right to Property

Every person has the right to acquire by voluntary means, to own, to control, to enjoy and to dispose of private property. No law shall ever allow the taking of the property of any person, except for rights of way for public streets and roads

flood prevention and control, public defense in case of rebellion or foreign invasion or other cases of public necessity. No law shall permit the expropriation of a business enterprise. Property shall not be taken or damaged without just compensation having been made, paid into court for the owner or secured by bond as may be fixed by the court. The legality of the taking and the amount of compensation shall be determined by a jury, unless a jury be waived. Property taken in this manner shall be retained by the state only so long as it may be used for the purpose for which it was taken. Otherwise, it must be offered to the person from whom it was taken and sold to him upon payment to the state of just compensation.

Disposition: Referred with TP No. 61 to research staff.

April 17, 1973

CBRE Tentative Proposal No. 63 by Dr. Weiss

Background: A proposal adopted from the 1972 Montana Constitution, Article II, Section 32.

Section _____. Freedom from Military Intrusion

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Disposition: Amended and tentatively adopted. See TP No. 64.

April 17, 1973

CBRE Tentative Proposal No. 64 by Mr. Roy

Background: An amendment to TP No. 63 to broaden the protection against intrusion.

Amend TP No. 63 to read as follows:

Section _____. Freedom from Military Intrusion

No person shall in time of peace be quartered in any house without the consent of the owner or lawful occupant, nor in time of war, except in the manner provided by law.

Disposition: Accepted by Dr. Weiss and tentatively adopted 7-1 on April 17, 1973.

April 17, 1973

CBRE Tentative Proposal No. 65 by Dr. Weiss

Background: An original proposal adopted from the 1972 Montana Constitution, Article IV, Section 2; and the 1970 Illinois Constitution, Article III, Section 2.

Section _____. Right to Vote

Every citizen who is at least eighteen years old, has registered at least fifty days before an election, and is re-

siding in this state shall have the right to vote. This right may be suspended temporarily only while a person is judicially declared to be of unsound mind or is under an order of imprisonment for conviction of a felony.

Disposition: Action deferred.

April 17, 1973

CBRE Tentative Proposal No. 66 by Dr. Weiss

Background: An original proposal adopted from the 1972 Montana Constitution, Article II, Sections 8 and 9.

Section _____. Right to Direct Participation in Government

(A) Everyone has the right to expect governmental agencies to afford reasonable opportunity for citizen participation before making major decisions as may be provided by law.

(B) No person shall be denied the right to examine public documents or to observe the deliberations of public bodies except in cases in which the demand of privacy clearly exceeds the merits of public disclosure.

Disposition: Referred to research staff.

April 17, 1972

CBRE Tentative Proposal No. 67 by Dr. Weiss

Background: An original proposal. See CBRE Staff Memo No. 16.

Section _____. Civil Service Rights

Everyone shall have an equal opportunity to apply for civil service employment. Selection shall be based on merit without unreasonable qualifications of age or sex. Civil service employees, subject to dismissal for cause, have the right to a hearing.

Disposition: Action deferred.

April 17, 1973

CBRE Tentative Proposal No. 68 by Mr. Jenkins

Background: An original proposal.

Section _____. Freedom to Keep and Bear Arms

The freedom of each person to keep and bear arms shall not be abridged nor shall this right every be subject to licensure, registration, control or taxation.

Disposition: Replaced by a substitute proposal. See TP No. 70.

April 17, 1973

CBRE Tentative Proposal No. 69 by Mr. Vick

Background: A substitute to TP No. 68 based on the 1970 Illinois Constitution, Article I, Section 22.

Section _____. Right to Arms

Subject only to the police power, the right of the individual citizen to keep and bear arms shall not be infringed.

Disposition: Rejected.

April 17, 1973

CBRE Tentative Proposal No. 70 by Dr. Weiss

Background: A substitute for TP No. 68 based on the Law Institute Project, Article I, Section 9.

Section _____. Right to Keep and Bear Arms

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons or otherwise to regulate reasonably the keeping and bearing of arms.

Disposition: Amended and tentatively adopted. See TP No. 71.

April 17, 1973

CBRE Tentative Proposal No. 71 by Mr. Jenkins

Background: An amendment to TP No. 70.

Amend TP No. 70 by adding a sentence at the end thereof so that the section would read as follows:

Section _____. Right to Keep and Bear Arms

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons or otherwise to regulate reasonably the keeping and bearing of arms. Nothing contained herein shall allow the confiscation or special taxation of arms.

Disposition: Amendment accepted by Dr. Weiss and the proposal as amended was tentatively adopted 6-1 with 1 abstention on April 17, 1973. A motion to reconsider was defeated.

May 4, 1973

CBRE Tentative Proposal No. 72 by Mr. Jenkins

Background: An original proposal on the right to property.

Section ____ . Right to Property

Every person has the right to acquire by voluntary means, to own, to control, to enjoy, to protect, and to dispose of private property. Private property shall not be taken or damaged for public use without just compensation; adequate to maintain the owner in equivalent financial circumstances, having been made to, or paid into court for, the owner. No law shall permit the taking of private property unless the public exigencies require it. Under no circumstances shall any business enterprise or any of its assets be taken for the purpose of halting competition with government enterprises. No law shall permit the taking or damaging of equipment or supplies used in the dissemination of ideas nor shall the intangible assets of any business enterprise be taken. Movable property shall not be taken except when necessary in dire emergencies to save lives, and personal effects, money, stocks, bonds, objects of art, books, papers, essential tools of trade, and clothing shall never be taken. Whenever an attempt is made to take private property for a use alleged to be public, the question of whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public. The right to trial by jury shall be reserved to the parties.

TP No. 72 - cont.

Disposition: Amended extensively in the course of committee debate. Mr. Jenkins proposed some amendments himself and agreed to other proposed changes. Tentatively adopted with amendments. See TP No. 73.

May 4, 1973

CBRE Tentative Proposal No. 73 by Mr. Jenkins

Background: An amended version of Tentative Proposal No. 72.

Section ____ . Right to Property

Every person has the right to acquire by voluntary means, to own, to control, to enjoy, to protect, and to dispose of private property. This right is subject to the law of forced heirship. Private property shall not be taken or damaged for public use without just compensation previously paid to the owner for the full extent of the loss. No law shall permit the taking of private property unless required by public necessity, nor shall any business enterprise or any of its assets be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprises, nor shall the intangible assets of any business enterprise be taken. Movable property shall not be expropriated except when necessary in emergencies to

save lives or property, and personal effects shall never be expropriated. The issue of whether the contemplated use be public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public. The right to trial by jury shall be reserved to the parties.

Disposition: Tentatively adopted as a section of the rights article, May 4, 1973. The comment is to state that personal effects include money,

TP No. 73 - cont.

stocks, bonds, objects of art, books, papers, essential tools of trade and clothing. The comment is also to state that contraband is an exception to the prohibition against taking movable property. In addition the reservations of trial by jury is not intended to interfere with the "quick-taking" statute in that court action would take place after the expropriation as in the present situation. Finally, the use of the term "taking" is intended to apply to both "expropriation" and "appropriation" so that "appropriation" would no longer have a special status in Louisiana law.

May 4, 1973

CBRE Tentative Proposal No. 74 by Mr. Roy

Background: A proposal based on a modification of Project Article I, Section 11.

Section ____ .

In all criminal prosecutions the accused shall be precisely informed of the nature and cause of the accusation against him and when tried by jury shall have the right to voir dire and to challenge jurors peremptorily, the number of jurors and challenges to be fixed by law.

Disposition: Replaced by a substitute proposal, TP No. 75.

May 4, 1973

CBRE Tentative Proposal No. 75 by Mr. Jenkins

Background: A substitute proposal for TP No. 74.

Section ____ . Arrest

When a person has been arrested, he shall immediately be advised of his legal rights and shall soon thereafter be informed of the nature and cause of the accusation against him. Every person shall be entitled to assistance of counsel at each stage of the prosecution, if he is charged with a serious offense.

Disposition: Amended in committee debate by Messrs. Roy, Weiss, and Jenkins and tentatively adopted. See TP No. 76.

May 4, 1973

CBRE Tentative Proposal No. 76 by Messrs. Jenkins, Roy, Weiss

Background: An amended version of TP No. 75.

Section _____. Rights of the Accused

When a person has been detained, he shall immediately be advised of his legal rights. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with a serious offense.

Disposition: Tentatively adopted as a section of the rights article, May 4, 1973.

May 4, 1973

CBRE Tentative Proposal No. 77 by Mr. Roy

Background: A proposal based on a modification of the last three sentences of Project Article I, Section 10.

Section _____.

Prosecution shall be by indictment or information, but the legislature may provide for the prosecution of misdemeanors on affidavits. No person shall be held to answer for capital crime, or felonies requiring punishment at hard labor unless on a presentment or indictment by a Grand Jury, except in cases arising in the militia when in actual service in time of war or public danger or where he specifically waives the necessity of the presentment or indictment. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Disposition: Amended by Mr. Jenkins; amendments accepted by Mr. Roy; and tentatively adopted. See TP No. 78.

May 4, 1973

CBRE Tentative Proposal No. 78 by Messrs. Jenkins and Roy

Background: An amended version of TP No. 77 accepted by Mr. Roy.

Section _____. Initiation of Prosecution

Prosecution shall be initiated by indictment or information, but the prosecution of misdemeanors may be initiated by affidavits. No person shall be held to answer for capital crime, or felonies necessarily punishable by hard labor except on indictment by a grand jury, unless he specifically waives the necessity of the indictment. No person shall be twice put in jeopardy of life or liberty for the same offense,

except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Disposition: Tentatively adopted as a section of the rights article, May 4, 1973 after an amended version, TP No. 79, was rejected and an attempt to refer the matter to the research staff was also rejected.

May 4, 1973

CBRE Tentative Proposal No. 79 by Mr. Jenkins

Background: An amended version of TP No. 78 which was not accepted by Mr. Roy.

Section _____. Initiation of Prosecution

Prosecution shall be initiated by indictment or information, but the prosecution of misdemeanors may be initiated by affidavit. However, no person shall be held to answer for a capital crime unless upon indictment by a grand jury. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Disposition: Rejected.

May 5, 1973

CBRE Tentative Proposal No. 80 by Mr. Roy

Background: A proposal based on a modification of the first three sentences of Project Article I, Section 10.

Section _____.

At all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury in the parish in which the offense was committed, unless the venue be changed by law or consent of the accused. At all stages of the criminal proceedings including those of the Grand Jury, he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. The accused in every instance shall have the right to be confronted with the witnesses against him and shall have the right to present his witnesses to the Grand Jury for interrogation; furthermore, the accused shall have the right to the transcribed testimony of these witnesses appearing before the Grand Jury in his case.

Disposition: Amended during the course of committee debate by Mr. Roy and others. Mr. Roy accepted all amendments.

May 5, 1973

CBRE Tentative Proposal No. 81 by Mr. Roy

Background: An amended version of TP No. 80 but limited to grand jury proceedings.

Section _____. Grand Jury Proceedings

At all stages of the grand jury proceedings, after arrest, the accused shall have the right to the assistance

of counsel while testifying; to compulsory process for presenting witnesses to the grand jury for interrogation, and to any transcribed testimony of any witnesses appearing before the grand jury in his case.

Disposition: Tentatively adopted as a section of the rights article, May 5, 1973, after an amendment, TP No. 82, was rejected.

May 5, 1973

CBRE Tentative Proposal No. 82 by Dr. Weiss

Background: An amendment to TP No. 81.

add the following sentence at the end, "Witnesses before the grand juries have the right to have or not have their testimony recorded or transcribed."

Disposition: Rejected

May 5, 1973

CBRE Tentative Proposal No. 83 by Mr. Jenkins

Background: An original proposal regarding fair trial.

Section 14. Fair Trial

Every person charged with a crime shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed on motion of the defendant.

No person shall be compelled to give evidence against himself and no confession shall be used unless given voluntarily. All evidence presented shall be competent, relevant, and material, unless the accused waives this right. The accused shall be entitled to confront and cross-examine the witnesses against him, to present a defense, and to take the stand in his own behalf.

Disposition: Amended in the course of committee debate and tentatively adopted. See TP No. 84.

May 5, 1973

CBRE Tentative Proposal No. 84 by Mr. Jenkins

Background: An amended version of TP No. 83 resulting from committee debate.

Section ____ . Fair Trial

Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue

be changed in accordance with law. No person shall be compelled to give evidence against himself and all evidence presented shall be competent, relevant, and material. The accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to take the stand in his own behalf.

Disposition: Tentatively adopted as a section of the rights article, May 4, 1973.

May 5, 1973

CBRE Tentative Proposal No. 85 by Mr. Jenkins

Background: An original proposal on trial by jury in criminal cases.

Section ____ . Trial by Jury

Any person charged with an offense or set of offenses punishable by imprisonment of six months or more may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons capable of rendering a fair and impartial verdict. All of these jurors must concur to render a verdict in capital cases, and nine must agree in others. In cases not necessarily punishable at hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict.

Disposition: Amended and tentatively adopted. See TP No. 87.

May 5, 1973

CBRE Tentative Proposal No. 86 by Mr. Roy

Background: Amendment to TP No. 85 not accepted by Mr. Jenkins.

after the words "capital cases" add the words "or cases in which no parole or probation is permitted"

Disposition: Adopted 4-3. See TP No. 87 regarding a minority report.

May 5, 1973

CBRE Tentative Proposal No. 87 by Messrs. Roy and Jenkins

Background: Various technical amendments to TP No. 85 including the addition of the last sentence proposed by Mr. Roy and accepted by Mr. Jenkins.

Section ____ . Trial by Jury

Any person charged with an offense or set of offenses punishable by imprisonment of six months or more may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons,

all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and nine of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily, the number of challenges to be fixed by law.

Disposition: Tentatively adopted as a section of the rights article, May 5, 1973. A minority report is to urge deletion of the words "or cases in which no parole or probation is permitted".

May 5, 1973

CBRE Tentative Proposal No. 88 by Dr. Weiss

Background: A proposal by Dr. Weiss based on the American Convention on Human Rights, Article V and the 1972 Montana Constitution, Article II, Section 23.

Section _____. Right to Humane Treatment

(A) Every person has the right to have his physical, mental, and moral integrity respected.

(B) No one shall be subjected to torture or to cruel and unusual punishments or treatments.

(C) Accused persons shall, save in exceptional circumstances, be separated from convicted persons.

(D) Minors, while subject to criminal proceedings, shall be separated from adults.

(E) Laws for the punishment of crime shall be founded on the principles of reform and prevention. Full rights are restored by termination of state supervision for any offense against the state.

Disposition: Amended and tentatively adopted. See TP No. 90.

May 5, 1973

CBRE Tentative Proposal No. 89 by Messrs. Vick and Roy

Background: Amendments to TP No. 88.

delete Paragraphs A, C, D, and part of E and modify paragraph B so that the section would read as follows:

Section _____. Right to Humane Treatment

No person shall be subjected to torture or to cruel, unusual, or excessive punishments or treatments, and full rights are restored by termination of state supervision for any offense against the state.

Disposition: Tentatively adopted 5-2.

May 5, 1973

CBRE Tentative Proposal No. 90 by Messrs. Weiss and Jenkins

Background: Amendments to TP No. 88 to broaden the restoration of rights and to improve the language. Accepted by Dr. Weiss.

Section _____. Right to Humane Treatment

No person shall be subjected to torture or to cruel, or excessive punishments or treatments, and full rights shall be restored by termination of state or federal supervision for any offense.

Disposition: Tentatively adopted 7-1 as a section of the rights article, May 5, 1973.

May 5, 1973

CBRE Tentative Proposal No. 91 by Mr. Roy

Background: A proposal on the right to bail based on a modification of Project Article I, Section 14.

Section _____. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. All persons shall be bailable by sufficient sureties, except the following: Persons charged with a capital offense where the proof is evident or the presumption great; persons convicted of felonies, provided that where than a maximum sentence at hard labor is actually imposed, bail shall be allowed pending appeal until final judgment, at the discretion of the judge.

Disposition: Replaced by a substitute proposal. See TP No. 92.

May 5, 1973

CBRE Tentative Proposal No. 92 by Mr. Jenkins and Roy

Background: A substitute proposal for TP No. 91

Section _____. Right to Bail

Excessive bail shall not be required. Before and during trial, all persons shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption is great. After conviction and before sentencing, persons shall be bailable if the maximum sentence which may be imposed is less than five years and may be bailable in the discretion of the judge if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years and may be bailable in the discretion of the judge if the sentence actually imposed is greater.

Disposition: Tentatively adopted as a section of the rights article, May 5, 1973.

May 5, 1973

CBRE Tentative Proposal No. 93 by Mr. Roy

Background: A proposal on treason based on Project Article I, Section 15.

Section _____. Treason

Treason against the state shall consist only in levying war against it or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on his confession in open court.

Disposition: Amended and then rejected. See TP No. 94.

May 5, 1973

CBRE Tentative Proposal No. 94 by Mr. Jenkins

Background: An amendment to TP No. 93 accepted by Mr. Roy.

delete "or adhering to its enemies, giving them aid and comfort" so that the section would read as follows:

Section _____. Treason

Treason against the state shall consist only in levying war against it. No person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on his confession in open court.

Disposition: A motion to strike the entire section as amended was defeated 3-5. A motion to approve the section was then defeated 3-4. It was then announced that Messrs. Stinson, Roy, and Weiss would propose inclusion of the section as amended in the rights article as a minority report.

May 5, 1973

CBRE Tentative Proposal No. 95 by Dr. Weiss

Background: A proposal on habeas corpus.

Section _____. Habeas Corpus

The privilege of the writ of habeas corpus shall never be suspended except by the Legislature in the case of rebellion, insurrection, or invasion, when the public safety may require it.

Disposition: Replaced by a substitute proposal. See TP No. 96.

May 5, 1973

CBRE Tentative Proposal No. 96 by Mr. Jenkins

Background: A substitute proposal on habeas corpus.

Section _____. Writ of Habeas Corpus

Sec. 9. The writ of habeas corpus shall not be suspended.

Disposition: Tentatively adopted 6-2 as a section of the rights article, May 5, 1973.

May 5, 1973

CBRE Tentative Proposal No. 97 by Mrs. Soniata

Background: A proposal based on Project Article I, Section 17.

Section _____. Right to Civilian Government

The military shall be subordinate to the civil power.

Disposition: Tentatively adopted May 5, 1973, with the understanding that it would be included elsewhere in the constitution but not in the rights article.

May 5, 1973

CBRE Tentative Proposal No. 98 by Dr. Weiss

Background: A proposal on cultural rights.

Section: _____. Cultural Rights

People within the state having a distinct language or culture have the right to conserve the same. This includes the right of the people of a political subdivision to use the language or languages of their choice in their local schools and other public institutions. Private schools are free to teach in any language.

Disposition: Amended during debate and adopted. See TP No. 99.

May 5, 1973

CBRE Tentative Proposal No. 99 by Mrs. Dunlap

Background: An amendment to TP No. 98, accepted by Dr. Weiss.

strike the last two sentences so that the section reads as follows:

Section _____. Cultural Rights

People within the state having a distinct language or culture have the right to conserve the same.

Disposition: Tentatively adopted as amended 4-3 on May 5, 1973, for inclusion as a section of the rights article.

May 5, 1973

CBRE Tentative Proposal No. 100 by Mr. Jenkins

Background: A proposal on unenumerated rights.

Section _____. Unenumerated Rights

The enumeration in this Constitution or certain rights shall not be construed to deny or disparage other rights retained by each person.

Disposition: Tentatively adopted 5-2 as a section of the rights article after a substitute proposal was rejected 2-4. See TP No. 101.

May 5, 1973

CBRE Tentative Proposal No. 101 by Mr. Roy

Background: A substitute proposal for TP No. 100.

Section _____. Unenumerated Rights

This enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed.

Disposition: Rejected 2-4.

May 5, 1973

CBRE Tentative Proposal No. 102 by Dr. Weiss

Background: An original proposal on family rights; see CBRE Staff Memo No. 34.

Section _____. Rights of the Family

Laws restricting the right of an unmarried man and woman to marry shall be limited to reasonable requirements as to health, full consent, waiting period, registration,

minimum age and parental consent in the case of minors, and restrictions on the marriage or relatives.

Subject to reasonable minimum standards of health, education, and welfare of the child established by law, parents have the paramount right to rear their children in accordance with their own convictions.

Disposition: Tentatively adopted 4-2 as a section of the rights article on May 5, 1973.

May 5, 1973

CBRE Tentative Proposal No. 103 by Dr. Weiss

Background: A proposal on rights of the child based on the 1972 Montana Constitution, Article II, Section 15; see also CBRE Staff Memo No. 33.

Section _____. Rights of the Child

Persons below the age of majority may exercise all recognized rights unless specifically precluded by laws which enhance the protection of such persons.

Disposition: Rejected 1-5.

May 19, 1973

CBRE Tentative Proposal No. 104 by Dr. Weiss

Background: A proposal on the title to the rights article. Motion to designate the title of the rights article as "Declaration of Rights".

Disposition: Tentatively adopted, May 19, 1973.

May 19, 1973

CBRE Tentative Proposal No. 105 by Dr. Weiss

Background: A proposal regarding the format of the rights article. Motion to accept format proposed in CBRE Staff Memo No. 40 for Article I including proposed changes in four titles of sections.

Disposition: Tentatively adopted May 19, 1973.

May 19, 1973

CBRE Tentative Proposal No. 106 by Mr. Roy

Background: A proposal on the right to vote.

Section 20. Right to Vote

Every citizen who is eighteen years of age and a resident of the state and of the political subdivision in which he

desires to qualify as an elector, shall have the right to register and vote in that subdivision. This right may be suspended while a person is judicially declared to be of unsound mind or is under an order of imprisonment for conviction of a felony.

Disposition: Debated and then replaced by a substitute proposal.

May 19, 1973

CBRE Tentative Proposal No. 107 by Mr. Vick

Background: A substitute proposal on the right to vote.

Section 20. Right to Vote

No person eighteen years of age or older who is a resident of the state shall be denied the right to vote except that this right may be suspended while a person is judicially declared to be of unsound mind or is under an order of imprisonment for conviction of a felony.

Disposition: Accepted by Mr. Roy, debated and adopted in amended form. See TP No. 111.

May 19, 1973

CBRE Tentative Proposal No. 108 by Mr. Roy

Background: An amendment to TP No. 107.

Section 20. Right to Vote

No person eighteen years of age or older who is a resident of the state shall be denied the right to vote except that this right may be suspended while a person is interdicted or under an order of imprisonment for conviction of a felony. The legislature shall enact laws providing for the registration of voters embodying the principle of permanent registration.

Disposition: Accepted by Mr. Vick, amended further, and adopted. See TP No. 111.

May 19, 1973

CBRE Tentative Proposal No. 109 by Mr. Stinson

Background: An amendment to TP No. 108.

After the word "imprisonment", add the words "or is serving a probation sentence".

Disposition: Rejected 3-5.

May 19, 1973

CBRE Tentative Proposal No. 110 by Dr. Weiss

Background: An amendment to TP. No. 108.

After the word "resident", add the words "or domiciliary".

Disposition: Accepted by Messrs. Vick and Roy and adopted. See TP No. 111.

May 19, 1973

CBRE Tentative Proposal No. 111 by Messrs. Vick, Roy and Weiss

Background: TP No. 107 as amended by TP Nos. 108 and 110.

Section 20. Right to Vote

No person eighteen years of age or older who is a resident or domiciliary of the state shall be denied the right to vote except that this right may be suspended while a person is interdicted or under an order of imprisonment for conviction of a felony. The legislature shall enact laws providing for the registration of voters embodying the principle of permanent registration.

Disposition: Tentatively adopted as a section of Article I. Declaration of Rights on May 19, 1973.

May 19, 1973

CBRE Tentative Proposal No. 112 by Dr. Weiss

Background: A proposal regarding direct participation in government.

Section _____. Right to Direct Participation in Government

Everyone has the right to expect governmental agencies to afford reasonable opportunity for citizen participation before making major decisions as may be provided by law. No person shall be denied the right to examine public documents or to observe the deliberations of public bodies except in cases in which the demand of privacy clearly exceeds the merits of public disclosure.

Disposition: Rejected 2-6.

May 19, 1973

CBRE Tentative Proposal No. 113 by Mr. Roy

Background: A proposal regarding government competition and monopolies introduced for Mr. Jenkins who was absent.

Section _____. Prohibition of Government Competition and Monopolies

No law shall permit the operation of any government enterprise

not already in existence if such enterprise competes directly and substantially with a private, tax-paying enterprise, has secured its capital assets by expropriation of private property, depends on tax revenues to meet its operating expenses or has been granted a legal monopoly.

Disposition: Rejected 3-3 by a roll call vote.

THE ROLL CALL

Dunlap	No
Guarisco	Abstain
Jackson	Absent
Jenkins	Absent
Roy	No
Soniat	Abstain
Stinson	Yes
Vick	No
Wall	Yes
Weiss	Yes

May 19, 1973

CBRE Tentative Proposal No. 114 by Dr. Weiss

Background: A proposal regarding civil service rights.

Section . Civil Service Rights

Everyone shall have an equal opportunity to apply for civil service employment. Selection shall be based on merit without unreasonable qualifications of age or sex. Civil service employees, subject to dismissal for cause, have the right to a hearing.

Disposition: Rejected 3-5. Some of those voting against were inclined to favor the proposal but believed that it should originate with the Committee on Education and Welfare. Messrs. Weiss, Roy, and Soniat are to file a minority report.

May 19, 1973

CBRE Tentative Proposal No. 115 by Mr. Roy

Background: A proposal to amend Section 4, Right to Privacy by deleting the last sentence and including the word "communications", after "persons", in the first sentence.

Section 6 . Right to Privacy

Every person shall be secure in his person, communications, papers, and other possessions against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause, supported by oath or affirmation particularly describing the place to be searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law.

Disposition: Tentatively adopted without objection on May 19, 1973.

May 19, 1973

CBRE Tentative Proposal No. 116 by Mr. Roy

Background: A proposal to amend the right to property section by substituting the word "purpose" for the word "use" as it appears in three places in the section.

Section 5 . Right to Property

Every person has the right to acquire by voluntary means, to own, to control, to enjoy, to protect, and to dispose of private property. This right is subject to the law of forced heirship. Private property shall not be taken or damaged for public purpose without just compensation previously paid to the owner for the full extent of the loss. No law shall permit the taking of private property unless required by public necessity, nor shall any business enterprise or any of its assets be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprises, nor shall the intangible assets of any business enterprise be taken. Movable property shall not be expropriated except when necessary in emergencies to save lives or property, and personal effects shall never be expropriated. The issue of whether the contemplated purpose be public shall be a judicial question, and determined as such without regard to any legislative assertion that the purpose is public. The right to trial by jury shall be reserved to the parties.

Disposition: Tentatively adopted without objection on May 19, 1973.

May 19, 1973

CBRE Tentative Proposal No. 117 by Mr. Roy

Background: A proposal to amend the section on grand jury proceedings by deleting the word "assistance" and inserting the word "advice" in lieu thereof.

Section 15 . Grand Jury Proceedings

At all stages of the grand jury proceedings, after arrest, the accused shall have the right to the advice of counsel while testifying; to compulsory process for presenting witnesses to the grand jury for interrogation, and to any transcribed testimony of any witnesses appearing before the grand jury in his case.

Disposition: Tentatively adopted without objection on May 19, 1973.

May 19, 1973

CBRE Tentative Proposal No. 118 by Mr. Roy

Background: A proposal to amend the section on the right to keep and bear arms.

Section 21 . Right to Keep and Bear Arms

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall

not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

June 9, 1973

CBRE Tentative Proposal No. 122 by Mr. Roy

Disposition: Tentatively adopted with one abstention on May 19, 1973.

Background: A proposal for a section entitled "Limitations of Each Department" with staff-suggested changes and with the exception clause at the end (for inclusion in Article II).

May 19, 1973

Section 2. Limitations of Each Department

No one of these departments, nor any person holding office in one of them, shall exercise power belonging to either of the others, except as otherwise provided in this constitution.

Disposition: Adopted without objection.

CBRE Tentative Proposal No. 119 by Mr. Roy

Background: A proposal regarding two sections on distribution of powers.

Section ____ . Three Departments

The powers of government of the State of Louisiana shall be divided into three distinct departments--legislative, executive, and judicial.

Section ____ . Limitations on Each Department

No one of these departments, nor any person holding office in one of them, shall exercise power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

Disposition: Tentatively adopted on May 19, 1973.

June 9, 1973

CBRE Tentative Proposal No. 123 by Mr. Roy

Background: A proposal for a section entitled "Civilian-Military Relations" regarding distribution of powers (for inclusion in Article II).

Section 3. Civilian-Military Relations

The military shall be subordinate to the civil power.

Disposition: Adopted without objection.

May 19, 1973

CBRE Tentative Proposal No. 120 by Mr. Roy

Background: A proposal regarding general election provisions in the constitution.

Motion that the constitution be silent on general election provisions other than the right to vote in the "Declaration of Rights." Details of elections are to be left to the legislature.

Disposition: Tentatively adopted on May 19, 1973.

June 9, 1973

CBRE Tentative Proposal No. 124 by Mr. Roy

Background: A proposal for a section entitled "Oath of Office" regarding miscellaneous provisions (for inclusion in Article II).

Section ____ . Oath of Office

All officers before entering upon the duties of their respective offices shall take the following oath or affirmation; "I, (A B), do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the constitution and laws of this state and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as _____ according to the best of my ability and understanding, so help me God."

Disposition: Adopted without objection.

June 9, 1973

CBRE Tentative Proposal No. 121 by Mr. Roy

Background: A proposal for a section entitled "Three Departments" regarding distribution of power with staff-suggested changes (for inclusion in Article II).

Section 1. Three Departments

The powers of government of the State of Louisiana are divided into three distinct departments--legislative, executive, and judicial.

Disposition: Adopted without objection.

June 9, 1973

CBRE Tentative Proposal No. 125 by Mrs. Dunlap

Background: A proposal for a section entitled "State Capital" regarding miscellaneous provisions (for inclusion in Article II).

Section ____ State Capital

The capital of Louisiana is the city of Baton Rouge.

Disposition: Adopted without objection.

June 9, 1973

CBRE Tentative Proposal No. 126 by Mrs. Dunlap

Background: A proposal for a section entitled "State Symbols", a miscellaneous provision for a state flower (for inclusion in Article II).

Section ____ State Symbols

Unless otherwise provided by law, state symbols include the native flower of Louisiana known as the Louisiana Native Iris (Iris Giganticaerulea, Blue Form).

Disposition: Initially adopted by a roll call vote 3-2 with 1 abstention and 4 absent. On reconsideration the proposal failed 3-3 with 1 abstention and 3 absent. The first and second votes were as follows:

First Vote		Second Vote
Dunlap	Yes	Yes
Guarisco	Absent	No
Jackson	No	No
Jenkins	Absent	Absent
Roy	No	No
Soniat	Yes	Yes
Stinson	Abstention	Abstention
Vick	Yes	Yes
Wall	Absent	Absent
Weiss	Absent	Absent

June 9, 1973

CBRE Tentative Proposal No. 127 by Mr. Roy

Background: Motion by Mr. Roy to be silent in the new constitution on Article XIX, Sections 12 and 13 of the 1921 Constitution on bribes.

Disposition: Adopted without objection.

June 9, 1973

CBRE Tentative Proposal No. 128 by Mr. Roy

Background: Motion by Mr. Roy to delete from the new constitution Article XIX, Section 21 which prohibits certain aliens from owning land.

Disposition: Adopted.

June 9, 1973

CBRE Tentative Proposal No. 129 by Mr. Guarisco

Background: Motion by Mr. Guarisco to delete from the new constitution Article XIX, Section 22 which designates Huey Long's birthday as a legal holiday.

Disposition: Adopted without objection.

June 9, 1973

CBRE Tentative Proposal No. 130 by Mr. Vick

Background: Motion by Mr. Vick to delete from the new constitution Article XIX, Sections 23 and 24 which name certain bridges after Huey Long and O. K. Allen.

Disposition: Adopted with objection.

June 9, 1973

CBRE Tentative Proposal No. 131 by Mr. Jenkins

Background: A proposal regarding property tax elections for inclusion under general governmental provisions.

Section ____ Property Tax Elections

No new property taxes may be levied or bonds based on such new taxes issued unless a majority of the resident property owners, both in number and assessed value of the property to be taxed, approve the tax or bond issue in an election. If the foregoing is held to be invalid for any reason, then no new property taxes may be levied or bonds based on such new taxes issued.

Disposition: Adopted 5-2.

June 9, 1973

CBRE Tentative Proposal No. 132 by Mr. Roy

Background: "Origin and Purposes of Government" with technical changes proposed by the staff (for inclusion in the Declaration of Rights).

Section 1. Origin and Purposes of Government

All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, and promote and protect the rights, happiness, and general welfare of the people. The rights enumerated in this article are inalienable and shall be preserved inviolate.

Disposition: Adopted without objection.

June 9, 1973

CBRE Tentative Proposal No. 133 by Mr. Jenkins

Background: "Right to Individual Dignity" with amendments regarding freedom of association and quotas and staff-suggested technical amendments.

Section 3. Right to Individual Dignity

No person shall be denied the equal protection of the laws nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin, or condition, or political or religious ideas. Nothing herein shall prohibit freedom of association or permit the imposition of quotas. Slavery and involuntary servitude are prohibited, except in the latter case as a punishment for crime.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 134 by Mr. Roy

Background: An addition to the Preamble previously adopted.

After the word "safety", insert "education" in the Preamble.

Disposition: Adopted 6-3 after a substitute proposal was rejected.

June 14, 1973

CBRE Tentative Proposal No. 135 by Dr. Weiss

Background: A deletion from the Preamble previously adopted.

Delete the words "health, safety, and" from the Preamble.

Disposition: Rejected 3-6.

June 14, 1973

CBRE Tentative Proposal No. 136 by Mr. Jenkins

Background: An addition to the Preamble previously adopted.

After the word "political," insert "economic," in the Preamble.

Disposition: Adopted without objection.

June 14, 1973

CBRE Tentative Proposal No. 137 by Dr. Weiss

Background: Adoption of the Preamble with substantive and other technical amendments.

We, the people of Louisiana, grateful to Almighty God for the civil, political, economic, and religious liberties we enjoy, and desiring to protect individual rights to life, liberty, and property; afford opportunity for the fullest development of the individual; assure equality of rights; provide for the health, safety, education, and welfare of the people; maintain a representative and orderly government; ensure domestic tranquility; provide for the common defense; and secure the blessings of freedom and justice to ourselves and our posterity, do ordain and establish this constitution.

Disposition: Adopted without objection.

June 14, 1973

CBRE Tentative Proposal No. 137a by Mr. Roy

Background: Adoption of the section on origin and purpose of government with certain technical amendments.

Section 1. Origin and Purpose of Government

All government, of right, originates with the people, is founded on their will alone, and is instituted to protect the rights of the individual and for the good of the whole. Its only legitimate ends are to secure justice for all, preserve peace, and promote and protect the rights, happiness, and general welfare of the people. The rights enumerated in this article are inalienable and shall be preserved inviolate.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 138 by Dr. Weiss

Background: A new section on the Right to Life.

Section ____ Right to Life

No human being shall be deprived of life intentionally, except in execution of a judicial sentence for a capital crime established by law.

Disposition: Rejected 2-7.

June 14, 1973

CBRE Tentative Proposal No. 139 by Mr. Jenkins

Background: A deletion from the section on right to individual dignity.

Delete "Nothing herein shall prohibit freedom of association or permit the imposition of quotas".

Disposition: Accepted.

June 14, 1973

CBRE Tentative Proposal No. 140 by Mr. Stinson

Background: An amendment to the section on right to individual dignity.

Substitute the word "beliefs" for "ideas" in the section entitled "Right to Individual Dignity".

Disposition: Rejected 1-6.

June 14, 1973

CBRE Tentative Proposal No. 141 by Mr. Jenkins

Background: An amendment to the title of the section on rights of the family.

Change the title from "Rights of the Family" to "Right to Marry and Rear Children".

Disposition: Replaced by a substitute proposal.

June 14, 1973

CBRE Tentative Proposal No. 142 by Mr. Vick

Background: A substitute proposal to delete the section on Rights of the Family entirely.

Disposition: Adopted 6-3. Delegates Jenkins, Stinson, and Weiss are to make the section the subject of a minority report.

June 14, 1973

CBRE Tentative Proposal No. 143 by Mr. Jenkins

Background: A revision to the section on right to property previously adopted.

Section 4. Right to Property

Every person has the right to acquire by voluntary means, to own, to control, to enjoy, to protect, and to dispose of private property. This right is subject to the reasonable exercise of the police power and to the law of forced heirship. Property shall not be taken or damaged except for a public and necessary purpose and with just compensation previously paid to the owner or into court for his benefit. The owner shall be compensated to the full extent of his loss and has the right to a trial by jury to determine such compensation. No business enterprise or any of its assets shall be taken for the purpose of operating that enterprise or for the purpose of halting competition with government enterprises, nor shall the intangible assets of any business enterprise be taken. Unattached movable property shall not be expropriated except when necessary in emergencies to save lives or property, and personal effects, other than contraband, shall never be taken. The issue of

whether the contemplated purpose be public and necessary shall be a judicial question, and determined as such without regard to any legislative assertion.

Disposition: Adopted 9-0.

June 14, 1973

CBRE Tentative Proposal No. 144 by Mr. Jenkins

Background: An amendment to the section on the right to privacy.

Delete "person, communications, houses, papers, and other possessions" and insert in lieu thereof "person, property, communications, houses, papers, and effects".

June 14, 1973

CBRE Tentative Proposal No. 145 by Mr. Jenkins

Background: A revision of the section of freedom from military intrusion.

Section 6. Freedom from Intrusion

No person shall be quartered in any house without the consent of the owner or lawful occupant.

Disposition: Adopted 4-2 with 1 abstention.

June 14, 1973

CBRE Tentative Proposal No. 146 by Mr. Jenkins

Background: An amendment to the section on freedom from discrimination.

Delete "prohibit" and insert in lieu thereof "impair".

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 147 by Mr. Jenkins

Background: An amendment to the section on freedom of expression.

After the word "information" insert the following phrase ", being responsible for the abuse of that liberty".

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 148 by Mr. Vick

Background: A revision of the section on freedom of religion.

Section 10. Freedom of Religion

No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.

Disposition: Adopted 6-3 after a substitute proposal was defeated.

June 14, 1973

CBRE Tentative Proposal No. 149 by Mr. Jenkins

Background: A substitute proposal for TP No. 148.

Section 10. Freedom of Religion

Every person has the natural right to worship God according to the dictates of his own conscience. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof; and no preference shall be given to, or any discrimination made against any church, sect, or creed of religion or any form of religious faith or worship.

June 14, 1973

CBRE Tentative Proposal No. 150 by Mr. Jenkins

Background: A revision of the section on freedom of assembly and movement.

Section 11. Freedom of Assembly and Movement

No law shall impair the right of every person to assemble peaceably, to petition government for a redress of grievances, to travel freely within the state, and to enter and leave the state. Nothing herein shall prohibit quarantine or restrict the authority of the state to supervise persons subject to parole or probation.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 151 by Mr. Jenkins

Background: A slight revision of the section on rights of the accused.

Section 12. Rights of the Accused

When a person has been detained, he shall immediately be advised of his legal rights and the reason for his detention. In all criminal prosecutions, the accused shall be precisely informed of the nature and cause of the accusation against him. At all stages of the proceedings, every person shall be entitled to assistance of counsel of his choice, or appointed by the court in indigent cases if charged with a serious offense.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 152 by Mr. Jenkins

Background: A revision of the section on initiation of prosecution.

Section 13. Initiation of Prosecution

Prosecution of felonies shall be initiated by indictment or information, provided that no person shall be held to answer for a capital crime or a felony necessarily punishable

by hard labor, except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 153 by Mr. Roy

Background: Adoption of the section on grand jury proceedings without change but as Section 14 instead of Section 15.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 154 by Mr. Roy

Background: A revision of the section on fair trial.

Section 15. Fair Trial

Every person charged with a crime shall be presumed innocent until proven guilty, and shall be entitled to a speedy, public, and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed in accordance with law. No person shall be compelled to give evidence against himself. An accused shall be entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to take the stand in his own behalf.

June 14, 1973

CBRE Tentative Proposal No. 155 by Mr. Roy

Background: A revision of the section on trial by jury in criminal cases.

Section 16. Trial by Jury in Criminal Cases

Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable by hard labor, the jury shall consist of twelve persons, all of whom must concur to render a verdict in capital cases or cases in which no parole or probation is permitted, and ten of whom must agree in others. In cases not necessarily punishable by hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict. The accused shall have the right to voir dire and to challenge jurors peremptorily.

Disposition: Adopted with objection.

June 14, 1973

CBRE Tentative Proposal No. 156 by Mr. Jenkins

Background: A revision of the section on right to bail.

Section 17. Right to Bail

Excessive bail shall not be required. Before and during trial, a person shall be bailable by sufficient sureties, unless charged with a capital offense and the proof is evident and the presumption great. After conviction and before sentencing, a person shall be bailable if the maximum sentence which may be imposed is less than five years and, the judge may grant bail if the maximum sentence which may be imposed is greater. After sentencing and until final judgment, persons shall be bailable if the sentence actually imposed is less than five years, and the judge may grant bail if the sentence actually imposed is greater.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 157 by Mr. Jenkins

Background: Adoption of the section on right to humane treatment without change but as Section 18 instead of Section 19.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 158 by Mr. Roy

Background: An amendment to the section on the right to vote.

Delete the word "interdicted" and insert in lieu thereof the words "judicially committed".

Disposition: Adopted 7-1.

June 14, 1973

CBRE Tentative Proposal No. 159 by Mr. Wall

Background: An amendment to the section on the right to vote.

After the words "judicially committed" add the words "and institutionalized,".

Disposition: Adopted 8-1.

June 14, 1973

CBRE Tentative Proposal No. 160 by Mr. Roy

Background: Adoption of the section on right to vote.

Section 19. Right to Vote

No person eighteen years of age or older who is a resident or domiciliary of the state shall be denied the right to register and to vote, except that this right may be suspended while a person is judicially committed and institutionalized, or under an order of imprisonment for conviction of a felony.

Disposition: Adopted 8-1.

June 14, 1973

CBRE Tentative Proposal No. 161 by Mr. Jenkins

Background: A revision of the section on the right to keep and bear arms.

Section 20. Right to Keep and Bear Arms

The right to keep and bear arms and ammunition shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons, but in other cases, personal arms shall not be subject to confiscation or special taxation.

Disposition: Adopted 6-3 after an amendment, TP No. 162 was added to it.

June 14, 1973

CBRE Tentative Proposal No. 162 by Mr. Vick

Background: An amendment to TP NO. 161 on bearing arms.

Delete the word "The" at the beginning of the section on bearing arms and add ,in lieu thereof, the words, "Subject to the police power, the".

Disposition: Adopted 5-4 after a substitute proposal by Mr. Roy (See TP No. 163) was defeated.

June 14, 1973

CBRE Tentative Proposal No. 163 by Mr. Roy

Background: A substitute proposal to TP No. 161 to keep the section on bearing arms as originally drafted.

Section 20. Right to Keep and Bear Arms

A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

Disposition: Defeated 4-4. The section is to be made the subject of a minority report.

June 14, 1973

CBRE Tentative Proposal No. 164 by Mr. Vick

Background: A proposal to delete the section on cultural rights.

Disposition: Adopted 6-3.

June 14, 1973

CBRE Tentative Proposal No. 165 by Mr. Jenkins

Background: A proposal to adopt the section on habeas corpus.

Section 21. Writ of Habeas Corpus

The writ of habeas corpus shall not be suspended.

June 14, 1973

CBRE Tentative Proposal No. 166 by Mr. Jenkins

Background: A proposal to adopt the section on access to courts with certain technical amendments.

Section 22. Access to Courts

All courts shall be open, and every person shall have an adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay for actual or threatened injury to him in his person, property, reputation, or other rights. Neither the state, its political subdivisions, nor any private person shall be immune from suit or liability.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 167 by Mr. Jenkins

Background: A proposal to adopt the section on prohibited laws without change.

Section 23. Prohibited Laws

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be enacted.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 168 by Dr. Weiss

Background: A proposal to adopt a section on right to direct participation for inclusion in the "Declaration of Rights".

Section ___. Right to Direct Participation

No person shall be denied the right to observe the deliberations of public bodies and examine public documents except in cases established by law in which the demands of privacy exceed the merits of public disclosure.

Disposition: Defeated 3-5.

June 14, 1973

CBRE Tentative Proposal No. 169 by Messrs. Roy and Guarisco

Background: A proposal to revise the section on trial by jury in civil cases.

Section 8. Trial by Jury in Civil Cases

In all civil cases, except summary, domestic, and adoption cases, the right to trial by jury shall not be abridged. No fact determined by a judge or jury shall be reexamined on appeal. Determination of facts by an administrative body shall be subject to review.

Disposition: Adopted 5-2 with 2 abstentions after a motion to defer action was defeated 3-6.

June 14, 1973

CBRE Tentative Proposal No. 170 by Mr. Jenkins

Background: A proposal to adopt the section on unenumerated rights.

Section 24. Unenumerated Rights

The enumeration in this constitution of certain rights shall not be construed to deny or disparage other rights retained by each person.

Disposition: Adopted.

June 14, 1973

CBRE Tentative Proposal No. 171 by Mr. Jenkins

Background: A proposal to add a new "Section 24. Freedom of Commerce" and renumber the previous section as "Section 25. Unenumerated Rights".

Section 24. Freedom of Commerce

No law shall impair freedom of commerce by arbitrarily limiting the practice of any occupation to a certain class of persons, by controlling the production or distribution of goods, by dictating the quality or price of products, or by requiring any business to open or close at a given time, except that the legislature may enact reasonable laws regulating commerce when necessary to protect the public health and safety.

Disposition: Adopted 5-2 with 1 abstention.

June 14, 1973

CBRE Tentative Proposal No. 172 by Mr. Roy

Background: A proposal to adopt TP No. 168 but for inclusion in general governmental provisions rather than in the declaration of rights.

Disposition: Adopted unanimously.

June 14, 1973

CBRE Tentative Proposal No. 173 by Mr. Jenkins

Background: A proposal to adopt a series of sections on the initiative for inclusion under general governmental provisions.

Disposition: Adopted in principle with the understanding that the proposal would be reviewed with the secretary of state and redrafted before final approval.

June 22, 1973

CBRE Tentative Proposal No. 174 by Mr. Jenkins

Background: A proposal to adopt Sections 4 through 10 on the initiative in the proposed committee proposal entitled "Article II. General Governmental Provisions" and identified as CC-1012 with Sources and Comments.

Disposition: Adopted without change.

June 22, 1973

CBRE Tentative Proposal No. 175 by Mr. Jenkins

Background: A proposal to adopt the entire committee proposal entitled "Article II. General Governmental Provisions" identified as CC-1012 with Sources and Comments.

Disposition: Adopted without change.

June 22, 1973

CBRE Tentative Proposal No. 176 by Mr. Jenkins

Background: A proposal to adopt the section on freedom of expression and freedom of commerce with technical amendments as follows:

Section 9. Freedom of Expression

No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate, or broadcast on any subject or to gather, receive, or transmit knowledge or information, but each person shall be responsible for the abuse of that liberty; nor shall such activities ever be subject to censorship, licensure, registration, control, or special taxation.

Section 24. Freedom of Commerce

No law shall impair the right of every person to engage in commerce by arbitrarily limiting the practice of any occupation to a certain class of persons, by controlling the production or distribution of goods, by dictating the quality or price of products, or by requiring any business to open or close at a given time, except that the legislature may enact reasonable laws regulating commerce when necessary to protect the public health and safety.

Disposition: Adopted.

June 22, 1973

CBRE Tentative Proposal No. 177 by Dr. Weiss

Background: A proposal to include a section on cultural rights as a minority proposal as follows:

Section ____ . Cultural Rights

People within the state having a distinct language or culture have the right to conserve the same.

Disposition: Delegates Weiss, Stinson, and Dunlap are to propose the above as a minority report.

June 22, 1973

CBRE Tentative Proposal No. 178 by Mr. Roy

Background: After a motion to reconsider the section on the right to keep arms was adopted, Mr. Roy proposed the following as a substitute section.

Section 20. Right to Keep and Bear Arms

A well-regulated militia is necessary to the security of a free state. The right of the people to keep and bear arms shall not be abridged but this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

Disposition: Adopted with amendments. See TP No. 185.

June 22, 1973

CBRE Tentative Proposal No. 179 by Mr. Jenkins

Background: An amendment to TP No. 178.

Delete the first sentence in TP No. 178.

Disposition: Rejected 4-4.

June 22, 1973

CBRE Tentative Proposal No. 180 by Mr. Jenkins

Background: An amendment to TP No. 178.

Delete the words "of the people" in the second sentence of TP No. 178.

Disposition: Rejected 4-4.

June 22, 1973

CBRE Tentative Proposal No. 181 by Mr. Jenkins

Background: Amendments to TP No. 178.

Delete "the people" in the second sentence of TP No. 178 and insert in lieu thereof "each person".

After the word "arms" in the second sentence of TP No. 178, add the words "and ammunition".

Disposition: Accepted by Mr. Roy.

June 22, 1973

CBRE Tentative Proposal No. 182 by Mr. Jenkins

Background: An amendment to TP No. 178.

Delete the period at the end of the second sentence of TP No. 178 and insert in lieu thereof ", but in other cases, personal arms and ammunition shall not be subject to confiscation or special taxation."

Disposition: Rejected 4-4.

June 22, 1973

CBRE Tentative Proposal No. 183 by Mr. Jenkins

Background: An amendment to TP No. 178.

Delete the period at the end of the second sentence of TP No. 178 and insert in lieu thereof ", but in other cases, handguns and rifles shall not be subject to confiscation or special taxation."

Disposition: Rejected 2-7 by a roll call vote.

THE ROLL CALL

Dunlap	No
Guarisco	Yes
Jackson	No
Jenkins	Yea
Roy	No
Soniat	No
Stinson	No
Vick	No
Wall	Absent
Weisa	No

June 22, 1973

CBRE Tentative Proposal No. 184 by Mr. Vick

Background: An amendment to TP No. 178.

Delete the word "The" from the second sentence of TP No. 178 and insert the words "Subject to the police power, the

Disposition: Rejected 2-7 by a roll call vote.

THE ROLL CALL

Dunlap	No
Guarisco	No
Jackson	No
Jenkins	No
Roy	No
Soniat	Yea
Stinson	No
Vick	Yes
Wall	Absent
Weiss	No

June 22, 1973

CBRE Tentative Proposal No. 185 by Mr. Roy

Background: The original TP No. 178 as amended.

Section 20. Right to Keep and Bear Arms

A well-regulated militia is necessary to the security of

a free state. The right of each person to keep and bear arms and ammunition shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons.

Disposition: Adopted 6-1.

June 22, 1973

CBRE Tentative Proposal No. 186 by Mr. Jenkins

Background: A proposal to adopt the "Preamble" and "Article I. Declaration of Rights" identified as CC-1011 with Sources and Comments.

Disposition: Originally adopted 8-1 with one absent. After a motion to suspend the rules to permit Mr. Stinson to submit a minority report of one urging deletion of the word "sex," from "Section 3. Right to Individual Dignity" was adopted, and an absent member approved the proposal, the proposal was adopted unanimously 10-0 and every member of the committee signed a letter transmitting the "Preamble", "Article I. Declaration of Rights" and "Article II. General Governmental Provisions" to all delegates to CC-73.

June 22, 1973

CBRE Tentative Proposal No. 187 by Mrs. Dunlap

Background: A proposal to include a section on state symbols under general governmental provisions.

Section __. State Symbols

Unless otherwise provided by law, state symbols include the native flower of Louisiana known as the Louisiana Native Iris (Iris Giganticaerulea, Blue Form).

Disposition: Rejected 4-5. To be the subject of a minority report by Delegates Dunlap, Soniat, and Roy.

July 12, 1973

CBRE Tentative Proposal No. 188 by Mr. Vick

Background: A motion to delete a section on the right to register and vote in the elections article proposed by Mr. Jenkins.

Section __. Right to Register and Vote

The right to vote in Louisiana shall not exist except pursuant to this constitution. Every person who is a citizen of the United States and of the State of Louisiana shall be entitled to register and vote if he is eighteen years of age and has been an actual bona fide resident of the state, parish, municipality, and precinct in which he offers to register for such periods as may be determined by the legislature. However, no person shall be permitted to exercise these rights while confined to any jail or prison or while of unsound mind. No person shall ever be required to register or vote nor shall any person be subjected to penalties for failing to exercise this right.

Disposition: Motion carried unanimously and the section was deleted as being a repetition of the Right to Vote in the "Declaration of Rights".

July 12, 1973

CBRE Tentative Proposal No. 189 by Mr. Jenkins

Background: A proposal on free elections for an elections article.

Section ___. Free Elections

Elections shall be free and fairly conducted.

No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage.

Disposition: Adopted with amendments.

July 12, 1973

CBRE Tentative Proposal No. 190 by Mr. Roy

Background: An amendment to TP No. 189.

Delete "free" and insert in lieu thereof "freely" and delete "Power, civil or military" and insert in lieu thereof "law".

Disposition: Adopted 6-1.

July 12, 1973

CBRE Tentative Proposal No. 191 by Mr. Guarisco

Background: An amendment to TP No. 189.

Delete "to prevent" and insert in lieu thereof "with".

Disposition: Adopted without objection.

July 12, 1973

CBRE Tentative Proposal No. 192 by Dr. Weiss

Background: A substitute proposal for TP No. 189 as amended.

Section ___. Election Laws

The legislature shall establish procedures for the conduct of elections, including provisions to facilitate registration and voting, protect the integrity of the voting process, preserve secrecy of voting, and permit absentee voting.

Disposition: Rejected 1-7.

July 12, 1973

CBRE Tentative Proposal No. 193 by Mr. Jenkins

Background: TP No. 189 as amended on free elections.

Section ___. Free Elections

Elections shall be freely and fairly conducted.

No law shall ever interfere with the free exercise of the right of suffrage.

Disposition: Adopted 7-1.

July 12, 1973

CBRE Tentative Proposal No. 194 by Mr. Vick

Background: A motion to delete a proposal on personal application and identity.

Section ___. Personal Application and Identity

Every person must personally appear and be able to establish that he is the identical person whom he represents himself to be when applying for registration, when presenting himself at the polls for the purpose of voting, and when qualifying to run for any office. There shall be no voting by proxy, nor shall any person be allowed to vote in any elections who has not registered at least thirty days prior thereto.

Disposition: Proposal was deleted by a vote of 6-2.

July 12, 1973

CBRE Tentative Proposal No. 195 by Mr. Jenkins

Background: A proposal on residence for voting purposes.

Section ___. Residence

No person shall be deemed to have gained a residence by reason of his presence or to have lost it by reason of his absence while employed in the service of the United States or of the State of Louisiana or while engaged in the navigation of any body of water or while a student of any institution of learning.

Disposition: Replaced by a substitute proposal.

July 12, 1973

CBRE Tentative Proposal No. 196 by Mr. Roy

Background: A substitute proposal on residence for voting purposes.

Section ___. Residence for Voting Purposes

For the purpose of voting, no person shall be deemed to have lost a bona fide residence by his absence while engaged in any employment, either civil or military, or while studying or visiting away from his voting district. Spouses, children, and dependents living with or accompanying these persons shall have the same status.

Disposition: Amended and subsequently adopted.

July 12, 1973

CBRE Tentative Proposal No. 197 by Mr. Vick

Background: An amendment to TP No. 196.

Delete the last sentence.

Disposition: Amendment accepted by Mr. Roy.

July 12, 1973

CBRE Tentative Proposal No. 198 by Mr. Stinson

Background: An amendment to TP No. 196.

After the words "or military," add the words
"or as a member of the armed forces of the United States".

Disposition: Rejected 3-5.

July 12, 1973

CBRE Tentative Proposal No. 199 by Mr. Guarisco

Background: An amendment to TP No. 196.

Delete "For the purpose of voting, no person"
and insert in lieu thereof "no elector" so that the
section would read:

Section 2. Residence for Voting Purposes

No elector shall be deemed to have lost a bona
fide residence by his absence while engaged in any
employment, either civil or military, or while study-
ing or visiting away from his voting district.

Disposition: Section adopted as amended.

July 12, 1973

CBRE Tentative Proposal No. 200 by Mr. Jenkins

Background: A proposal on denial of registration and
removal of names.

Section ____ Denial of Registration and Removal of
Names

Any person who may be denied registration shall have
the right to apply for relief to the district court, which
shall try the cause before a jury, giving it preference
over all other cases. The verdict shall be final, except
in case of a mistrial, and no court shall exercise the
right of review. Any elector shall also have the authority
to apply to the district court to have stricken from the
registration rolls any names placed or standing thereon
illegally. This cause shall be tried as in the case of
denial of registration. All applications authorized herein
shall be without cost.

Disposition: Replaced by a substitute proposal.

July 12, 1973

CBRE Tentative Proposal No. 201 by Mr. Roy

Background: A substitute proposal for TP No. 200.

Section ____ Denial of Registration and Removal of
Names

A person denied registration shall have the right
to apply for relief to the district court, which case
shall have preference over all other cases. Any elector
may challenge the registration roll and have stricken

from it any names placed or standing thereon illegally.
This cause shall be tried as in the case of denial of
registration.

Disposition: Adopted 5-3 after an amendment to delete
the last two sentences was rejected.
See TP No. 202.

July 12, 1973

CBRE Tentative Proposal No. 202 by Mr. Vick

Background: An amendment to TP No. 201.

Delete the last two sentences.

Disposition: Rejected 3-4.

July 12, 1973

CBRE Tentative Proposal No. 203 by Messrs Jenkins and Roy

Background: A proposal on registrars of voters.

Section ____ Registrars of Voters

There shall be a registrar of voters for each parish
in the state who shall be appointed by the governing
authority of the parish for a fixed term, commissioned by
the governor, and provide such bond and receive such com-
pensation as may be determined by the legislature. No
person shall serve as registrar of voters after having
qualified for any elective office.

Disposition: Adopted without opposition.

July 18, 1973

CBRE Tentative Proposal No. 204 by Mr. Jenkins

Background: A proposal on political parties.

Section 5. Political Parties

No law shall impair the right of each person to organize,
join, support, or oppose any political party or political
organization, or to support or oppose any candidate or proposition.

Disposition: Adopted without opposition and subsequently amended by
changing the word "impair" to "deny". See TP No.
205.

July 18, 1973

CBRE Tentative Proposal No. 205 by Mr. Roy

Background: An amendment to TP No. 204.

change the word "impair" to "deny"

Disposition: Adopted without opposition.

July 18, 1973

CBRE Tentative Proposal No. 206 by Mr. Jenkins

Background: A proposal on Residency of Officeholders.

Section 6. Residency of Officeholders

No person shall be eligible to any office who is not a duly qualified elector of the state and of the election district wherein the functions of said office are to be performed. Whenever any officer may change his residence from the election district, the office shall thereby be vacated, any declaration of retention of residency notwithstanding.

Disposition: Replaced by a substitute motion to delete. See TP No. 207.

July 18, 1973

CBRE Tentative Proposal No. 207 by Mr. Guarisco

Background: A motion to delete the Jenkins' proposal on Residency of Officeholders.

Disposition: Adopted 6-2.

July 18, 1973

CBRE Tentative Proposal No. 208 by Mr. Roy

Background: A new proposal on Residency of Officeholders.

Section 6. Residency of Officeholders

No person may seek or hold office who is not an elector of the election district where the functions of the office are performed.

Disposition: Rejected 2-6.

July 18, 1973

CBRE Tentative Proposal No. 209 by Mr. Roy

Background: A proposal on qualifications for holding office.

Section 6. Qualifications for Holding Office

No qualified elector who may vote for a legislative office shall be denied the right to be a candidate for such office.

Disposition: Rejected 3-5 after an amendment (See TP No. 210) was also rejected.

July 18, 1973

CBRE Tentative Proposal No. 210 by Mr. Jenkins

Background: An amendment to TP No. 209.

Section 6. Qualifications for Holding Office

No qualified elector shall be denied the right to run as a candidate for any public office within the election district in which he is registered except as otherwise provided by this constitution.

Disposition: Rejected 3-5.

July 18, 1973

CBRE Tentative Proposal No. 211 by Mr. Guarisco

Background: A motion to delete the section on qualifications for holding office.

Disposition: Adopted without opposition.

July 18, 1973

CBRE Tentative Proposal No. 212 by Mr. Jenkins

Background: A proposal on Secret Ballot.

Section 6. Secret Ballot

All voting shall be by secret ballot, and the ballots cast shall be publicly counted and preserved inviolate until any election contests have been settled.

Disposition: Adopted without opposition.

July 19, 1973

CBRE Tentative Proposal No. 213 by Mr. Jenkins

Background: A proposal on Vote Required for Election.

Section 7. Vote Required for Election

No person shall be elected to any public office unless he has received the highest number of votes cast for that office.

Disposition: Adopted without opposition.

July 19, 1973

CBRE Tentative Proposal No. 214 by Mr. Jenkins

Background: A proposal on Privilege from Arrest.

Section 8. Privilege from Arrest

Qualified electors shall be privileged from arrest during their attendance at elections and in going to and returning from the same, in all cases except felony, breach of the peace, or election fraud.

Disposition: Adopted 6-3.

July 19, 1973

CBRE Tentative Proposal No. 215 by Mr. Jenkins

Background: A proposal on voting commissioners.

Section 9. Commissioners

Every candidate for public office shall be entitled to nominate any elector to serve as a commissioner for each precinct within the election district. The commissioners in each precinct shall be chosen by lot and in public by the clerk of court from among those nominated, in a manner provided by law. The legislature shall provide a plan to insure fairness in the selection of commissioners for any election in which there are no candidates for office. No person shall serve as a commissioner who holds any public office or is a candidate for same.

Disposition: Replaced by a substitute proposal. See TP No. 216.

July 19, 1973

CBRE Tentative Proposal No. 216 by Delegates Vick and Dunlap

Background: A proposal on commissioners and poll watchers in substitution of two sections from the Jenkins draft.

Section 9. Commissioners and Poll Watchers

The legislature shall provide for the selection of commissioners and poll watchers at every election.

Disposition: Adopted 7-2.

July 19, 1973

CBRE Tentative Proposal No. 217 by Mr. Jenkins

Background: A proposal on Interference in Elections.

Section _____. Interference in Elections

No public funds shall be expended to urge any elector to vote for or against any candidate for office or to vote for or against any proposition on an election ballot, nor shall public funds be appropriated to any candidate, political party, or political organization.

Disposition: Replaced by a motion to delete. See TP No. 218.

July 19, 1973

CBRE Tentative Proposal No. 218 by Mr. Vick

Background: A motion to delete the Jenkins proposal on Interference in Elections.

Disposition: Adopted 5-4 with one abstention.

July 26, 1973

CBRE Tentative Proposal No. 219 by Mr. Jenkins

Background: A revision of a section previously adopted on privilege from arrest.

Section _____. Privilege from Arrest

Every qualified elector shall be privileged from arrest in going to and returning from voting and while exercising the right to vote in all cases except felony or breach of the peace.

Disposition: Adopted unanimously.

July 26, 1973

CBRE Tentative Proposal No. 220 by Mr. Jenkins

Background: A proposal on property tax elections.

Section _____. Property Tax Elections

No new ad valorem property taxes may be levied or bonds issued based on such new taxes unless a majority of the electors who pay ad valorem property taxes and who vote in an election approve the tax or bond issue in both number and assessed valuation. If the foregoing is held invalid for any reason, then no new ad valorem property taxes may be levied or bonds issued based on such new taxes.

Disposition: Rejected by a motion to delete. See TP No. 221.

July 26, 1973

CBRE Tentative Proposal No. 221 by Mr. Roy

Background: A motion to delete the section on property tax elections proposed in TP No. 220.

Disposition: Motion approved 5-3.

July 26, 1973

CBRE Tentative Proposal No. 222 by Mr. Jenkins

Background: A substitute proposal for property tax elections.

Section ____ . Property Tax Elections

No new ad valorem property taxes may be levied or bonds issued on such new taxes unless two-thirds of those who vote in an election approve the tax or bond issue.

Disposition: Rejected 4-4. Delegates Jenkins, Dunlap and Stinson agreed to propose it as a minority report.

July 26, 1973

CBRE Tentative Proposal No. 223 by Mr. Jenkins

Background: A proposal on election returns.

Section ____ . Election Returns

Returns of elections for all civil officers who are to be commissioned by the governor shall be made to the secretary of state unless otherwise provided in this constitution.

Disposition: Adopted unanimously.

July 27, 1973

CBRE Tentative Proposal No. 224 by Mr. Jenkins

Background: A proposal on election fraud.

Section 11. Election Fraud

No person shall register or vote in more than one place nor offer or receive anything of value in exchange for a vote nor engage in any other form of election fraud. The legislature shall enact laws to suppress such activities, and penalties in such cases may include disfranchisement of violators and the prohibition against holding office for a period not to exceed five years.

Disposition: Adopted in amended form. See TP No. 228.

July 27, 1973

CBRE Tentative Proposal No. 225 by Mr. Roy

Background: An amendment to TP No. 224.

delete ", and penalties in such cases may include disfranchisement of violators and the prohibition against holding office for a period not to exceed five years"

Disposition: Rejected 3-4.

July 27, 1973

CBRE Tentative Proposal No. 226 by Mr. Roy

Background: An amendment to TP No. 224.

after the word "register" delete the word "or" and insert lieu thereof the word "and"

Disposition: Adopted 4-3.

July 27, 1973

CBRE Tentative Proposal No. 227 by Mr. Jenkins

Background: An amendment to TP No. 224 as amended by TP No. 226.

delete the words "register and vote" and insert in lieu thereof the words "vote or register with the specific intent to vote"

Disposition: Rejected 3-4.

July 27, 1973

CBRE Tentative Proposal No. 228 by Mr. Roy

Background: Motion to adopt the section on election fraud as amended.

Section ____ . Election Fraud

No person shall register and vote in more than one place nor offer or receive anything of value in exchange for a vote nor engage in any other form of election fraud. The legislature shall enact laws to suppress such activities, and penalties in such cases may include disfranchisement of violators and the prohibition against holding office for a period not to exceed five years.

Disposition: Adopted 4-2.

July 27, 1973

CBRE Tentative Proposal No. 229 by Mr. Jenkins

Background: A proposal on election contests.

Section ____ . Election Contests

The legislature shall provide by law for the judicial determination of contested elections of all public officers.

Disposition: Adopted 7-1.

July 27, 1973

CBRE Tentative Proposal No. 230 by Mr. Jenkins

Background: A proposal on interference in elections.

Section _____. Interference in Elections

No public funds shall be expended to urge any elector to vote for or against any candidate for office, nor shall public funds be appropriated to any candidate or political organization.

Disposition: Adopted unanimously.

July 27, 1973

CBRE Tentative Proposal No. 231 by Messrs. Jenkins and Roy

Background: A proposal on candidacy for public office.

Section _____. Candidacy for Public Office

No qualified elector shall be denied the right to seek public office within an election district in which he is registered except as otherwise provided in this constitution.

Disposition: Adopted unanimously.

July 27, 1973

CBRE Tentative Proposal No. 232 by Dr. Weiss

Background: A proposal on periodic elections.

Section _____. Periodic Elections

Elections shall be held periodically as provided by law. No state or local official other than as provided in this constitution shall be elected for a term exceeding four years.

Disposition: After sentiment was expressed in favor of the section in principle, the research staff was directed to provide a better text as well as background on such a provision.

August 7, 1973

CBRE Tentative Proposal No. 233 by Mr. Jenkins

Background: A proposed paragraph (A) for a section on constitutional amendments.

Section 1. Amendments

(A) Propositions for amending this constitution may be introduced by joint resolution at any session of the legislature. If two-thirds of the members elected to each house shall have concurred therein, pursuant to all the procedures and formalities required for passage of a bill except submission to the governor,

the secretary of state shall cause the same to be published in the official journal of each parish once within not less than thirty nor more than sixty days preceding the next election for representatives in the legislature or congress. If a majority of the electors voting thereon shall vote for the proposed amendment, then it shall become a part of this constitution, effective twenty days after the issuance of the governor's proclamation.

Disposition: Adopted unanimously.

August 7, 1973

CBRE Tentative Proposal No. 234 by Mr. Jenkins

Background: A proposed paragraph (B) for a section on constitutional amendments.

(B) However, no proposed amendment affecting five or fewer parishes, municipalities or special districts shall be adopted and become a part of this constitution unless a majority of the electors voting thereon in the state and also a majority, in the aggregate, of the electors in the affected areas shall vote in favor of the adoption of the proposed amendment.

Disposition: Adopted unanimously.

August 7, 1973

CBRE Tentative Proposal No. 235 by Mr. Roy

Background: A revision of paragraph (A) after the committee agreed to reconsider its vote on TP No. 233.

Section 1. Amendments

(A) Propositions for amending this constitution may be introduced by joint resolution at any session of the legislature. If two-thirds of the members elected to each house shall have concurred therein, pursuant to all the procedures and formalities required for passage of a bill except submission to the governor, the secretary of state shall cause the same to be published in the official journal of each parish once within not less than thirty nor more than sixty days preceding the next election for representatives in the legislature or Congress. The results of the election shall be promulgated by the secretary of state.

Disposition: Adopted unanimously.

August 7, 1973

CBRE Tentative Proposal No. 236 by Mr. Roy

Background: A revision of paragraph (B) after the committee agreed to reconsider its vote on TP No. 234.

(B) If a majority of the electors voting thereon shall vote for the proposed amendment, then it shall become a part

of this constitution, effective twenty days after the issuance of the governor's proclamation; unless the amendment otherwise provides. However, no proposed amendment affecting five or fewer parishes, municipalities, or special districts shall be adopted and become a part of this constitution unless a majority of the electors voting thereon in the state and also a majority, in the aggregate, of the electors in the affected areas shall vote in favor of the adoption of the proposed amendment.

Disposition: Adopted without objection.

August 7, 1973

CBRE Tentative Proposal No. 237 by Mr. Jenkins

Background: A proposed paragraph (C) for a section on constitutional amendments.

(C) When more than one amendment is submitted at the same election, each of them shall be submitted so as to enable the electors to vote on them separately. The proposal shall be confined to one object and may set forth the entire article or articles to be revised or only the sections or other subdivisions which are to be added or in which a change is to be made; provided that a section or other subdivision may be repealed by reference. The proposition shall have a title containing a brief summary of the changes proposed.

Disposition: Adopted without objection.

August 7, 1973

CBRE Tentative Proposal No. 238 by Mr. Jenkins

Background: A proposed section on constitutional conventions called by the legislature.

Section 2. Convention Called by Legislature

Whenever two-thirds of the members elected to each house shall deem it necessary to revise this constitution, they shall recommend to the electors to vote at the next election for representatives to the legislature or Congress for or against a convention for that purpose. If a majority of the electors voting at such election shall vote in favor thereof, the legislature shall at its next session provide for the calling of same. The convention shall consist of delegates who shall be elected from the same districts and shall have the same qualifications as state representatives. At a special election called for that purpose, the constitution and any alternative propositions agreed upon by the convention shall be submitted to the people for their ratification or rejection. The returns of the election shall be promulgated by the secretary of state. If the proposal has been approved by a majority of the electors voting thereon, the governor shall proclaim it to be the Constitution of the State of Louisiana.

Disposition: Adopted without objection after one amendment was added and one rejected. See TP Nos. 239 and 240.

August 7, 1973

CBRE Tentative Proposal No. 239 by Messrs Roy and Weiss

Background: An amendment to TP No. 238.

after the words "as state representatives." and before the words "at a special election" insert the following: "The legislature shall also provide for not more than fifteen delegates to be appointed by the governor."

Disposition: Adopted 5-1.

August 7, 1973

CBRE Tentative Proposal No. 240 by Mr. Jenkins

Background: An amendment to TP No. 238 as amended by TP No. 239.

after the words "to be appointed by the governor" and before the period add the words "from the various regions of the state"

Disposition: Rejected 1-6.

August 7, 1973

CBRE Tentative Proposal No. 241 by Mr. Jenkins

Background: A proposed section on constitutional conventions called by the people.

Section 3. Convention Called by People

At the election for representatives to Congress to be held in the year one thousand nine hundred eighty-six and in every tenth year thereafter, the question "Shall there be a convention to revise, alter, or amend the Constitution of the State of Louisiana" shall be submitted to the electors of the state. If a majority of the electors who vote on the proposition shall decide in favor of a convention, the legislature shall at its next session provide for calling a convention, according to the same procedures mentioned in the previous section.

Disposition: Adopted unanimously.

August 7, 1973

CBRE Tentative Proposal No. 242 by Mr. Jenkins

Background: A proposed section on laws effectuating constitutional amendments.

Section 4. Laws Effectuating Amendments

Whenever the legislature shall submit amendments to this constitution, it may at the same session pass laws to carry them into effect, to become operative when the proposed amendments have been ratified.

Disposition: Adopted unanimously.

August 7, 1973

CBRE Tentative Proposal No. 243 by Mr. Jenkins

Background: A proposed revision of "Section 1. Free Elections" of the elections article.

Section 1. Free Elections

Elections shall be freely and fairly conducted on a periodic basis. No law shall interfere with the free exercise of the right to vote.

Disposition: Adopted unanimously after a substitute proposal was rejected. See TP No. 244.

August 7, 1973

CBRE Tentative Proposal No. 244 by Dr. Weiss

Background: A substitute proposal for TP No. 243.

Section 1. Election Laws

The legislature shall establish procedures for the conduct of elections on a periodic basis, including provisions to expedite and facilitate registration and voting, protect the integrity of the voting process, preserve secrecy of voting, and permit absentee registration and voting.

Disposition: Rejected 1-5.

August 7, 1973

CBRE Tentative Proposal No. 245 by Delegates Jenkins and Dunlap

Background: A proposed revision of "Section 2. Secret Ballot".

Section 2. Secret Ballot

Voting shall be by secret ballot, and all ballots cast shall be counted publicly and preserved inviolate until any election contests have been settled.

Disposition: Adopted unanimously.

August 7, 1973

CBRE Tentative Proposal No. 246 by Delegates Jenkins and Roy

Background: A proposed revision of "Section 3. Residence of Electors".

Section 3. Residence of Electors

No elector shall lose a bona fide residence by temporary absence due to any employment, including military service, or while studying or visiting away from his voting district.

Disposition: Adopted unanimously.

August 7, 1973

CBRE Tentative Proposal No. 247 by Delegates Roy and Jenkins

Background: A proposed revision of "Section 4. Political Activities".

Section 4. Political Activities

No law shall deny the right of each person to organize, join, support, or oppose any political party or organization, or to support or oppose any candidate or proposition.

Disposition: Adopted unanimously.

August 7, 1973

CBRE Tentative Proposal No. 248 by Dr. Weiss

Background: A proposed revision of "Section 5. Privilege from Arrest".

Section 5. Privilege from Arrest

Except for felony, every qualified elector shall be privileged from arrest in going to and returning from voting and while exercising the right to vote.

Disposition: Replaced by a substitute proposal.

August 7, 1973

CBRE Tentative Proposal No. 249 by Mr. Roy

Background: A substitute proposal for TP No. 248.

Section 5. Privilege from Arrest

Every qualified elector shall be privileged from arrest in going to and returning from voting and while exercising the right to vote in all cases except felony or breach of the peace.

Disposition: Adopted unanimously.

August 7, 1973

CBRE Tentative Proposal No. 250 by

Background: Consideration of Sections 6, 7, 8, and 9.

Section 6. Candidacy for Public Office

No qualified elector shall be denied the right to seek public office in the election district in which he is registered except as otherwise provided in this constitution.

Section 7. Vote Required for Election

No person shall be elected to any public office unless he has received the highest number of votes cast for that office. The legislature shall provide a method for breaking ties.

Section 8. Limitation on Term of Office

No term for any public office elected by the people shall exceed four years except as otherwise provided in this constitution.

Section 9. Prohibited Use of Public Funds

No public funds shall be used to urge any elector to vote for or against any candidate, nor appropriated to any candidate or political organization.

Disposition: All of the above sections were adopted without objection.

August 7, 1973

CBRE Tentative Proposal No. 251 by Mr. Roy

Background: A proposal on registrars of voters.

Section 10. Registrars of Voters

The governing authority of each parish shall appoint a parish registrar of voters who shall provide such bond and receive such compensation as may be determined by law. No person shall serve as registrar of voters after qualifying as a candidate for any elective office.

Disposition: Adopted without objection after an amendment was rejected. See TP No. 252.

August 7, 1973

CBRE Tentative Proposal No. 252 by Mr. Jenkins

Background: An amendment to TP No. 251.

after the words "registrar of voters" delete the words "who shall" and insert in lieu thereof the words "for a fixed term who shall be commissioned by the governor and shall"

Disposition: Rejected 2-4.

August 8, 1973

CBRE Tentative Proposal No. 253 by Mr. Jenkins

Background: Consideration of Sections 11, 12, 13, 14 and 15.

Section 11. Commissioners and Poll Watchers

The legislature shall provide for the selection of commissioners and poll watchers at every election.

Section 12. Election Returns

Returns of elections for public officials shall be made to the secretary of state unless otherwise provided in this constitution.

Section 13. Registration Challenges

A person may contest in the district court his denial of

registration, or denial of his request to have removed from the rolls any names placed or standing thereon illegally, which cases shall have preference over all others.

Section 14. Election Contests

The legislature shall provide by law for the judicial determination of contested elections.

Section 15. Election Fraud

No person shall register and vote in more than one place, nor offer or receive anything of value in exchange for a vote, nor engage in any other form of election fraud. The legislature shall enact laws to suppress such activities, and penalties in such cases may include suspension of the right to vote and hold office for a period not to exceed five years.

Disposition: All of the above sections were adopted without objection.

August 8, 1973

CBRE Tentative Proposal No. 254 by Delegates Roy and Dunlap

Background: A new proposal for an elections code.

Section 16. Code of Elections

The legislature shall provide for a code of elections.

Disposition: Adopted without objection.

August 8, 1973

CBRE Tentative Proposal No. 255 by Dr. Weiss

Background: An amendment to the section on constitutional amendments (See TP No. 233).

after the words "elected to each house" in paragraph (A) insert the words "in two successive regular sessions"

Disposition: Rejected 1-7.

August 8, 1973

CBRE Tentative Proposal No. 256 by Mr. Roy

Background: A motion that Delegate Proposal No. 14 by Mr. Bergeron be reported unfavorably.

Disposition: Unfavorable report adopted 7-1.

August 8, 1973

CBRE Tentative Proposal No. 257 by Mr. Roy

Background: A proposed amendment to "Section 4. Political Activities" of the elections article so that the section would read as follows:

Section 4. Political Activities

No law shall deny the right of each person to organize, join, support, or oppose any political party or organization, or to support or oppose any candidate or proposition except as otherwise provided in this constitution.

Disposition: Adopted without objection.

August 8, 1973

CBRE Tentative Proposal No. 258 by Mr. Roy

Background: A proposed amendment to "Section 10. Registrars of Voters" so that the section would read as follows:

Section 10. Registrars of Voters

The governing authority of each parish shall appoint a parish registrar of voters who shall provide such bond and receive such compensation as may be determined by law. No person shall serve as registrar of voters while a qualified candidate for any elective office.

Disposition: Adopted without objection.

August 8, 1973

CBRE Tentative Proposal No. 259 by Mr. Jenkins

Background: A proposed amendment to "Section 12. Election Returns" so that the section would read as follows:

Section 12. Election Returns

Returns of elections for public officials shall be made to the secretary of state.

Disposition: Adopted without objection.

August 8, 1973

CBRE Tentative Proposal No. 260 by Mr. Roy

Background: A motion to adopt the entire elections article.

Disposition: Adopted without objection. Subsequently, Dr. Weiss withdrew his separate election proposal and every member of the committee endorsed the proposal and agreed to cosponsor it.

August 17, 1973

CBRE Tentative Proposal No. 261 by Mr. Roy

Background: A proposed section on constitutional conventions called by the people with suggested staff changes.

Section 3. Convention Called by People

At the election for representatives to Congress to be held in the year one thousand nine hundred eighty-six and in every tenth year thereafter, the question "Shall there be a convention to revise the Constitution of the State of Louisiana"

shall be submitted to the electors of the state. If a majority of the electors who vote on the question favor it, the legislature shall at its next session provide for calling a convention, according to the same procedures mentioned in the previous section.

Disposition: Adopted unanimously.

August 17, 1973

CBRE Tentative Proposal No. 262 by Mr. Roy

Background: A proposed section on laws effectuating constitutional amendments with suggested staff changes.

Section 4. Laws Effectuating Amendments

Whenever the legislature shall submit amendments to this constitution, it may at the same session enact laws to carry them into effect, to become operative when the proposed amendments have been ratified.

Disposition: Adopted without objection.

August 17, 1973

CBRE Tentative Proposal No. 263 by Mr. Roy

Background: A motion to adopt the entire article on constitutional revision (subsequently introduced as Committee Proposal 24).

Disposition: Adopted unanimously.

August 22, 1973

CBRE Tentative Proposal No. 264 by Mr. Jenkins

Background: An amendment to the Preamble in Committee Proposal No. 2 (CP2).

change "provide for the health, safety, education, and welfare of the people" to "promote the health, safety, education, and welfare of the people"

Disposition: Adopted without objection.

August 22, 1973

CBRE Tentative Proposal No. 265 by Mr. Roy

Background: An amendment to Section 3. Right to Individual Dignity in CP2.

after "race," add "age,"

Disposition: Adopted 4-2.

August 22, 1973

CBRE Tentative Proposal No. 266 by Mr. Roy

Background: An amendment to Section 3. Right to Individual Dignity in CP2.

change "social origin or condition" to "social origin, physical condition"

Disposition: Adopted 5-2.

August 22, 1973

CBRE Tentative Proposal No. 267 by Mr. Jenkins

Background: An amendment to Section 4. Right to Property in CP2.

delete "previously" before "paid to the owner"

Disposition: Adopted without objection.

August 22, 1973

CBRE Tentative Proposal No. 268 by Mr. Jenkins

Background: An amendment to Section 4. Right to Property in CP2.

delete the words "nor shall the intangible assets of any business enterprise be taken. Unattached movable property shall not be expropriated except when necessary in emergencies to save lives or property"

Disposition: Adopted 6-1.

August 22, 1973

CBRE Tentative Proposal No. 269 by Dr. Weiss

Background: An amendment to Section 7. Freedom from Discrimination in CP2.

after "ancestry," add "physically handicapped"

Disposition: Rejected 1-6.

August 22, 1973

CBRE Tentative Proposal No. 270 by Mr. Jenkins

Background: A motion to readopt Section 9. Freedom of Expression in CP2.

Disposition: Adopted 6-1.

August 22, 1973

CBRE Tentative Proposal No. 271 by Mr. Jenkins

Background: An amendment to Section 9. Initiation of Prosecution in CP2.

delete "where there is a mistrial or" and insert in lieu thereof "when a mistrial is declared or a"

Disposition: Adopted unanimously.

August 22, 1973

CBRE Tentative Proposal No. 272 by Mr. Roy

Background: An amendment to Section 14. Grand Jury Proceedings in CP2.

add "if permitted to testify," after the word "accused" and change "any transcribed" to "transcribed"

Disposition: Adopted 6-1.

August 22, 1973

CBRE Tentative Proposal No. 273 by Mr. Vick

Background: An amendment to Section 19. Right to Vote in CP2.

change "residence or domiciliary" to "citizen and resident"

Disposition: Adopted without objection.

August 22, 1973

CBRE Tentative Proposal No. 274 by Mr. Vick

Background: An amendment to Section 20. Right to Keep and Bear Arms in CP2.

delete the sentence "A well-regulated militia is necessary to the security of a free state", change the word "person" to "citizen" and delete the words "and ammunition"

Disposition: Adopted without objection.

August 22, 1973

CBRE Tentative Proposal No. 275 by Mr. Roy

Background: An amendment to Section 22. Access to Courts in CP2.

add the words "and liability" after the words "immune from suit"

Disposition: Adopted without objection.

August 22, 1973

CBRE Tentative Proposal No. 276 by Mr. Jenkins

Background: An amendment to Section 24. Freedom of Commerce in CP2.

revise the section to read as follows:

"No law shall impair the right of each person to engage in commerce by controlling the production, distribution, or price of goods except when necessary to protect health and safety."

Disposition: Adopted without objection.

August 22, 1973

CBRE Tentative Proposal No. 277 by Mr. Vick

Background: An amendment to Section 25. Unenumerated Rights in CP2.

delete "each person" and insert in lieu thereof "the individual citizens of the state"

Disposition: Adopted without objection.

August 22, 1973

CBRE Tentative Proposal No. 278 by Dr. Weiss

Background: An amendment to Section 18. Right to Humane Treatment.

after the words "subjected to" add "euthanasia,"

Disposition: Adopted 6-0 with one abstention.

August 22, 1973

CBRE Tentative Proposal No. 279 by Mrs. Soniat

Background: An amendment to Section 19. Right to Vote in CP2.

delete the words "judicially committed and institutionalized" and insert in lieu thereof "interdicted and judicially declared mentally incompetent"

Disposition: Adopted 6-1.

September 13, 1973

CBRE Tentative Proposal No. 280 by Mr. Roy

Background: A proposal for a revised version of the section on "Freedom from Discrimination" which had been withdrawn temporarily from the convention.

Article I, Section _____. Freedom from Discrimination

All persons shall be free from arbitrary, capricious, or unreasonable discrimination in access to public accommodations and to employment. Exceptions and special implementation may be provided by law. Nothing herein shall be construed to impair freedom of association.

Disposition: Adopted 7-0 with one abstention.

September 20, 1973

CBRE Tentative Proposal No. 281 by Messrs. Roy and Jenkins

Background: A revision of the section on secret ballot of the Elections Article.

Section 2. Secret Ballot

Voting shall be by secret ballot, and the legislature shall provide a method for absentee voting. Proxy voting shall be prohibited. All ballots cast shall be counted publicly and preserved inviolate until any election contests have been settled.

Disposition: Adopted without objection.

September 20, 1973

CBRE Tentative Proposal No. 282 by Mr. Jenkins

Background: An amendment to each of the sections on political activities, privilege from arrest, candidacy for public office, and limitation on term of office.

In each section, add a comma before the word "except".

Disposition: Adopted without objection.

September 20, 1973

CBRE Tentative Proposal No. 283 by Messrs. Roy and Jenkins

Background: A revision of the section on election returns.

Section 12. Election Returns

Returns of elections shall be made in a uniform manner and promulgated by the secretary of state.

Disposition: Adopted without objection.

September 20, 1973

CBRE Tentative Proposal No. 284 by Mr. Guarisco

Background: A proposed new section on registration of voters.

Section 17. Registration of Voters

The legislature shall provide for registration of voters, embodying the principle of permanent registration.

Disposition: Adopted 5-3.

Section 5. Political Activities
Section 6. Privilege from Arrest
Section 7. Candidacy for Public Office
Section 8. Vote Required for Election
Section 9. Limitation on Term of Office
Section 10. Prohibited Use of Public Funds
Section 11. Registrars of Voters
Section 12. Commissioners and Poll Watchers
Section 13. Election Returns
Section 14. Registration Challenges
Section 15. Election Contests
Section 16. Election Fraud
Section 17. Code of Elections

Disposition: Adopted without objection. (For complete text of the Article as adopted see Committee Proposal No. 33).

September 20, 1973

CBRE Tentative Proposal No. 285 by Mr. Jenkins

Background: A motion to rearrange the sections of the Elections Article as follows and adopt the entire article as amended:

ARTICLE X. ELECTIONS

Section 1. Free Elections
Section 2. Registration of Voters
Section 3. Secret Ballot
Section 4. Residence of Electors

NOTES

Tentative Proposals Nos. 286-308 are found in the Addenda to Minutes of December 13, 14, 17, 1973.

Tentative Proposals Nos. 309-321 are found in the Addenda to Minutes of December 18, 1973.

III. Staff Documents and Memoranda

Background Materials for the Committee on Bill of Rights and Elections of the 1973 Louisiana Constitutional Convention

TABLE OF CONTENTS

1. Potential Subject Matter of the Committee
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 - B. Bill of Rights and Human Rights
 - C. Distribution of Powers
 - D. Obligations of Citizenship
 - E. Suffrage and Elections
 - F. Amendment Process and Future Constitutional Conventions
3. The Bill of Rights: Representative State Documents
4. Representative Documents in the Field of Suffrage and Elections

Committee on Bill of Rights and Elections (CBRE)

POTENTIAL SUBJECT MATTER

Rule 49 of the standing rules of the Constitutional Convention in Paragraph A(1) provides for the area of responsibility of the Committee on Bill of Rights and Elections (CBRE) as follows:

1. Committee on Bill of Rights and Elections, which shall consider the Preamble, Bill of Rights, Human Rights, Obligations of Citizenship, distribution of powers, suffrage and elections, the amendment process, and future constitutional conventions;

What follows is an initial staff effort to outline the potential subject matter that CBRE may wish to consider. The outline below is intended as a fairly exhaustive list from which the committee may delete material as it sees fit. The subject matter is broken down into six broad areas and the present constitutional provisions that relate to each area are attached in six packets for the convenience of committee members.

Outline of Potential Subject Matter

A. Preamble. A constitution usually begins with a preamble which is not considered to have legal effect. It sets the tone of the constitution and often expresses the philosophic premises and intentions of the drafters in framing it.

B. Bill of Rights and Human Rights. The term "Bill of Rights" has generally been utilized to describe certain inalienable rights which the people reserve unto themselves in framing a constitution. In the past, these "Reserved Rights" have been largely civil and political and may be grouped under such broad concepts as life, personal liberty, dignity, redress, and participation in government. During and since World War II, the expression "Human Rights" has been increasingly utilized to refer both to the civil and political rights proclaimed in earlier constitutions and also to economic, social, and cultural rights which are being included in constitutions with increasing frequency in recent times. Economic and social rights may be grouped under such broad concepts as employment, education, economic security and the environment. Cultural rights refer to the right to participate in cultural life generally as well as the rights of a local majority group to maintain and cultivate its language, customs and traditions within its local governmental framework even though its culture is somewhat distinct from the culture of the majority in the overall political entity. It may include respect for both local government diversity and the individual's right to maintain his cultural identity.

1. Civil and Political Rights

a. Life. This could include the extent of a basic right to life, questions of marriage and rearing a family as one sees fit, as well as any rights of the child.

b. Personal Liberty. This could include freedoms of speech, religion, assembly, movement, and association; rights of trial by jury, habeas corpus and other criminal procedure rights; and the prohibition of ex post facto laws.

c. Dignity. This could include prohibitions of cruel and unusual punishment and involuntary servitude, rights to privacy, to a name, to equal protection without discrimination, to property, and to recognition as a person.

d. Participation in Government. This could include the right to vote, to take part in public affairs, and to have the opportunity for public service. Coordination desirable with Committee on Education and Welfare which has jurisdiction over "civil service".

e. Redress. This could include access to courts to sue the state and other persons for wrongs committed, the right to compensation, and the right of reply.

2. Economic and Social Rights

a. Employment. This could include the right to a free choice of employment, right to join trade unions, and questions of working conditions, equal pay for equal work, etc. Coordination desirable with Committee on Education and Welfare (CEW).

b. Education. This could include a basic right to education, and rights of parents to choose the kind of education that shall be given to their children. Coordination desirable with CEW.

c. Economic Security. This could include questions of medical care, unemployment, disability, and old age. Coordination desirable with CEW.

d. Environment. This could include the extent of one's rights to a healthful environment. Coordination desirable with Committee on Natural Resources and Environment.

3. Cultural Rights. This could include cultural life generally and the extent to which a local group may maintain and cultivate its language, customs and traditions in its local area.

-2-

C. Distribution of Powers. This usually includes a statement of how powers are distributed within state government. It may also include a statement on distribution of powers between state and local government as well as aspects of federal-state relations. Coordination desirable with other appropriate committees.

D. Obligations of Citizenship. This refers to duties such as obeying laws, paying taxes, respecting the rights of others, etc. Such duties are often implied by virtue of the powers of government but they may be explicitly stated.

E. Suffrage and Elections. Rights involving suffrage and elections may be included under reserved rights or bill of rights above or they could be included here. General guidelines for elections may be included here as well as any additional details desired.

F. Amendment Process and Future Constitutional Conventions. These topics could be combined under a general theme such as "Constitutional Revision" or they could be treated separately.

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NOTES

Omitted from the foregoing document are attachments which recite the provisions of the Louisiana Constitution of 1921 providing for a Preamble, Declaration of Rights, Distribution of Powers Suffrage and Elections, Constitutional Amendment and selected provisions of various state constitutions relative to Declarations of Rights.

NOTES

Document No. 2 omitted here is: U.S.S.R. Constitution, 1936, Text of Chapter X, Fundamental Rights.

Concepts That May Be Included in the Preamble to the Constitution

We, the people of Louisiana,

Religious Themes

Acknowledging the goodness of the Great Legislator of the Universe
Invoking the guidance of Almighty God
With reverence for the Supreme Ruler of the Universe
Grateful to Almighty God forliberty.

Individualist Themes

Recognizing that political power originates with the people
Recognizing that individual rights are not derived from the state but are based on attributes of the human personality
With respect for the dignity and worth of the individual

Goals

- to assure
 - insure
 - maintain
 - promote
 - protect
 - provide
 - secure
1. liberty
personal liberty
individual liberty
civil and political liberty
religious liberty
 2. rights
rights to life, liberty, and the pursuit of happiness
rights to life, liberty and property
 3. government
government of the people, by the people, and for the people
representative democracy
representative and orderly government
 4. welfare of the people
general welfare
mutual welfare and happiness
legal, social and economic justice
better standards of life
domestic tranquility
economic and social progress
 5. the individual
opportunity for the fullest development of the individual

..... do ordain and establish this Constitution.

NOTES

Document No. 4 omitted here reproduces in whole or in part the Preamble and Declaration of Rights of other states including Alaska, California, Nevada, Montana, North Carolina, Hawaii, Connecticut, Mississippi and Washington

NOTES

Document No. 5 omitted here is La. R.S. 45: 1451-1453 [Act, 1964, No. 211] in re Reporter's Privilege.

NOTES

Document No. 6 omitted here reproduces "Representative National Documents" of the United States [Bill of Rights], France [Declaration of the Rights of Man and of the Citizen], German Federal Republic [Basic Rights, 1949], Canada [Bill of Rights, 1960].

NOTES

Document No. 7 omitted here reproduces "The Bill of Rights and Human Rights: Representative International Documents": United Nations, "Universal Declaration of Human Rights" [1948]; Council of Europe, "European Convention of Human Rights[1953] and "European Social Charter" [1961] and Organization of American States, "American Convention on Human Rights" [1969].

NOTES

Document No. 8 omitted here reproduces Robert LeFevre, Initial Provisions and Fundamental Rights in the Soviet Constitution, with Annotations, pp.19-68.

CC/73 Research Staff

Committee on Bill of Rights and Elections

March 28, 1973

Staff Memo No. 9

RE: Request by Delegate Novyse Soniat for information on the possibility of including in the rights article of the Constitution a provision for automatically restoring political rights for one who has committed a felony after he has completed his sentence.

Under the present Constitution (Article VIII, § 6) a person convicted of a felony is denied the right to vote unless he has been pardoned with express restoration of the franchise.

Some of the more recent state constitutions have provided for the automatic restoration of political rights after completion of sentences.

The Illinois Constitution provides for it as follows:

Art. III, § 2. VOTING DISQUALIFICATIONS

A person convicted of a felony, or otherwise under sentence in a correctional institution or jail, shall lose the right to vote, which right shall be restored not later than upon completion of his sentence.

The Montana Constitution (1972) provides as follows:

Art. 1 § 28. RIGHTS OF THE CONVICTED

Laws for the punishment of crime shall be founded on the principles of prevention and reformation. Full rights are restored by termination of state supervision for any offense against the state.

The above are representative provisions providing for automatic restoration of political rights. The Illinois provision would restore political rights as soon as the convicted person is released from confinement, while the Montana provision would wait until his supervised parole is terminated, which may be much later.

From a technical standpoint, a general section on the right to vote could be included with provision for its temporary suspension for persons under sentence. Such temporary suspension could also be extended to persons judged to be of unsound mind.

Such a section in the Constitution might read as follows:

Article 1, § ____ . Right to Vote

Every citizen who is at least eighteen years old, has registered at least thirty days before an election and is residing in this state shall have the right to vote. This right may be suspended temporarily only while a person is judicially declared to be of unsound mind or is under an order of imprisonment for conviction of a felony.

NOTES

Document No. 10 omitted here reproduces "Recent Proposed 'Rights Articles'" both accepted and rejected including:

- Montana [1973]
- North Carolina [1971]
- California [proposed revision, 1971]
- Arkansas [proposed and rejected, 1969]
- New Mexico [proposed and rejected, 1969]
- Hawaii [1968]
- Connecticut [1965]
- Alaska [1956]
- Mississippi [1890, as amended to 1968]
- Washington [1889, as amended to 1968]
- Maryland [rejected, 1968]

no provision for such rights and the newer ones are only beginning to include them.

The present Louisiana Constitution has no such provision in its Bill of Rights. Scattered throughout the Constitution, however, are a number of provisions relating to economic and social rights. Article IV, Section 7 has a provision on conditions of employment. Article IV, Section 12 recognizes relief for destitute persons. Article VI, Section 11 calls for the creation of parish and municipal Boards of Health. Article XII, Section 1 provides for a system of public education; and Article XVIII, Section 7 provides for the establishment of a system of economic security and public welfare.

The 1972 Montana Constitution contains the following:

Section 3. INALIENABLE RIGHTS

All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

The 1970 Illinois Constitution in its Preamble included the goals of providing "for the health, safety and welfare of the people", eliminating "poverty and inequality", and assuring "legal, social and economic justice".

The proposed 1967 New York Constitution had similar language in its Preamble and its Bill of Rights included the following Sections 10 and 12:

§ 10. a. It shall be the policy of the state to foster and promote the general welfare and to establish a firm basis of economic security for the people of the state. Labor of human beings is not a commodity nor an article of commerce and shall never be so considered or construed. The state shall secure the right of employees to organize and to bargain collectively through representatives of their own choosing. No person shall be denied employment or the right to join a labor organization of his choice on the grounds of race, color, creed or national origin.

b. To implement the state's commitment to the economic security and the dignity of the people, the legislature may provide a system of workmen's compensation and protection against the hazards of unemployment and disability against loss or inadequacy of income and employment opportunities.

§ 12. The protection and education of the people of the state against unfair, inequitable or dishonest sales, marketing and financing practices are and shall continue to be state concerns. Any person who purchases goods or service in this state shall be fully informed in a reasonable manner of the precise quantity, the total purchase price including all credit, service or other fees, and all other material conditions of such sale. The legislature shall provide for the implementation of this section.

From a technical standpoint, a general section on economic and social rights could be included in the proposed rights with environmental and social amenities listed.

Such a section in the Constitution might read as follows:

Article 1, Section ____ . Economic and Social Rights

Every person has the right:

- (A) to a healthful environment;
- (B) to a basic education and an opportunity to develop further his potential abilities;
- (C) to reasonably safe conditions of employment; and
- (D) to an opportunity to obtain medical care and social insurance protection for unemployment, disability, and old age.

CC/73 Research Staff
Committee on Bill of Rights and Elections (CBRE)
March 28, 1973
Staff Memo No. 11

RE: Environmental and Social Amenities. CBRE request (by Delegate Chris J. Roy) for information on the possibility of including a right to "environmental and social amenities" in the rights article of the Louisiana Constitution.

In modern parlance, environmental and social amenities would be included under economic and social rights. While the notion of natural or fundamental rights has been firmly established in constitutional theory since the writings of Hobbes and Locke in the 17th Century, these rights were usually limited to civil and political rights. The practice of including economic and social rights in constitutionally protected rights is a much more recent development.

The Universal Declaration of Human Rights of 1948 included economic and social rights among its provisions. Inclusion of such rights in newly written national constitutions has been popular since that time.

In the United States, the older state constitutions have

Rights without remedies, however, tend to be meaningless. To prevent the above and other recognized rights from becoming merely constitutional sermons, a general right of redress and the extension of due process protection to include all recognized rights might be useful.

Such proposed sections might read as follows:

Article 1, Section _____. Right of Redress

Everyone has the right to sue the state, its political subdivisions, or any person or legal entity for violation of his recognized rights and to obtain compensation or other appropriate redress for his injury.

Article 1, Section _____. Right to Due Process of Law

No person shall be deprived of any of his rights without due process of law.

CC/73 Research Staff

Committee on Bill of Rights and Elections

March 29, 1973

Staff Memo No. 12

RE: Equal Rights Amendment. CBRE request for information on how the rights protected by the proposed federal equal rights amendment prohibiting discrimination on the basis of sex might be included in the rights article of the Louisiana Constitution.

Historically, women have tended to be treated as inferior to men or entitled by law to greater protection as a weaker sex. With industrialization, many work tasks may be performed by women as well as by men. With growing economic power, demands by women for equal legal rights has grown on a worldwide basis. In the United States it has resulted in adoption by Congress of a proposed Equal Rights Amendment and the submission of this Amendment to the states for ratification. The proposed Amendment reads as follows:

- Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
- Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
- Section 3. This amendment takes effect two years after the date of ratification.

As of March 26, 1973, some thirty states have ratified the amendment. One state has withdrawn ratification but the effect of this is uncertain. A total of thirty-eight states are required to ratify the amendment before it may become a part of the U. S. Constitution.

Some states have added a similar provision for equal rights in the rights articles of their constitutions in recent years.

For example, the 1970 Illinois Constitution provides the following:

Article 1. Section 18. NO DISCRIMINATION ON THE BASIS OF SEX

The equal protection of the laws shall not be denied or abridged on account of sex by the State or its units of local government and school districts.

Other states, however, have included a nondiscrimination-on-account-of-sex clause in a more general provision on equal protection or the right to individual dignity.

The 1968 Hawaii constitutional provision is as follows:

Article 1, Section 4. DUE PROCESS AND EQUAL PROTECTION

No person shall be deprived of life liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.

The 1972 Montana Constitution provides as follows:

Article 1, Section 4. INDIVIDUAL DIGNITY

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws. Neither the state nor any person, firm, corporation, or institution shall discriminate against any person in the exercise of his civil or political rights on account of race, color, sex, culture, social origin or condition, or political or religious ideas.

The Montana provision is a very sweeping one. From a technical standpoint, its format is to be preferred to the more specific and narrow provision in the Illinois Constitution which necessitates additional sections to recognize other aspects of equality.

A more moderate rephrasing of the Montana provision as a proposed section of the Louisiana Constitution might read as follows:

Article 1, Section _____ Right to Individual Dignity

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws, nor shall any law discriminate against a person on account of race, sex, culture, social origin or condition or political or religious ideas.

Innumerable unanswered and probably unanswerable questions have arisen concerning the effect of such a provision forbidding sex discrimination. In the absence of definitive court decisions, these questions cannot be answered, but a tentative prediction can reasonably be made:

It is likely that an equal rights for women provision would be subject to the same type of analysis as that used in other provisions providing for equality.

Under an equal protection analysis, not all classification and discrimination by government is forbidden. What is forbidden, in most cases, is discrimination and classification of persons that does not have a rational basis. "Rational basis" is a fluid concept which basically implies that the state must be furthering an interest or policy which is permissible in the unequal treatment it provides. In a few areas, those where fundamental rights are at issue (voting, for example), or suspect criteria (race, for example), the state has to show a stronger interest---a compelling state interest, before its classification will be upheld. (See Appendix A)

As stated, one can expect the courts to adopt a similar analysis when confronted with a case alleging denial of equality because of sex. The inquiry would be whether the classification or discrimination has a rational basis, and whether it furthers a legitimate state interest. (See Appendix B for a study by the Wisconsin Legislative Council which singles out in detail laws that could be affected by an equal rights amendment in Wisconsin. It is illustrative of the problem.)

NOTES

Research Staff Memo No. 12 contained the following Appendices which have been deleted:

Schwartz, Constitutional Law (1971), 286-295.

[Special Committee on Equal Rights [Wisconsin] Report to the Legislature, 1973.

CC/73 Research Staff

Committee on Bill of Rights and Election

March 30, 1973

Staff Memo No. 13

RE: CBRE Request for information on bail bonds, how long a person may be kept in jail without bond, and the possibility of greater protection in the Constitution in this area.

The present Constitution (Article 1, Section 12) provides the following:

Section 12. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. All persons shall be bailable by sufficient sureties, except the following: (1) Persons charged with a capital offense, where the proof is evident or the presumption great. (2) Persons convicted of felonies, provided that where a minimum sentence of less than five years at hard labor is actually imposed, bail shall be allowed pending appeal until final judgment. (As amended Acts 1936, No. 189, adopted Nov. 3, 1936)

The Eighth Amendment to the U. S. Constitution provides that excessive bail shall not be required.

"Bail" in its common usage is money or other security de-

deposited with the court to assure that an arrested person will appear for trial at the proper time.

In federal court, a defendant has a right to bail in non-capital cases under Rule 46 of the Federal Rules of Criminal Procedure. The Supreme Court has denied that the Eighth Amendment grants an absolute right to bail in noncapital cases (Carlson v. Landon, 342 U.S. 524, 545 (1952)). Federal courts have generally held that bail cannot be higher than that reasonably calculated to insure the presence of the accused. The inability of the accused to afford bail in the amount set, however, does not make it "excessive" if it is otherwise reasonable (Stack v. Doyle, 342 U.S. 1,10 (1951)), i.e., an average amount for a particular charge. In those cases where bail is set at an amount higher than the average, the burden apparently is on the government to show that the background of the individual and the circumstances of the particular case warrant the higher figure.

The bail provisions in the Louisiana Constitution have been held not to violate the Eighth or Fourteenth Amendments to the U.S. Constitution (U.S. ex rel Fink v. Heyd, (D.C. 1962), 287 F. Supp. 716, affirmed 408 F. 2d 7, cert. denied 396 U.S. 895).

Judges in state courts have large discretion in fixing bail, but bail bonds must be reasonable in amount since the public policy of the state favors bail.

The question of how long a person may be held in jail pending trial if he has not deposited bail involves a consideration of Article 1, Section 9, of the Constitution which provides a right to "a speedy, public and impartial trial". Generally the courts have narrowly construed the provision and have held that unless the defendant asks for an early trial he is not entitled to one. (State v. Banks, 111 La. 22 (1904)). In State v. Ducre, 256 La. 61 (1970), a defendant in a 1963 offense of escape was not denied a speedy trial with respect to a 1969 trial of the offense where he made no demand for an early

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trial. A similar result occurred in State v. Raymond, 258 La. 1 (1971), cert. denied 404 U.S. 805, where more than a year elapsed between indictment and trial and the defendant made no motion for an earlier trial.

The effect of the Louisiana court decisions is that a person in jail for failure to post a bail bond can remain there indefinitely if he does not formally ask for an early trial.

To prevent potential abuse under present constitutional provisions, a provision could be included requiring the release of persons in jail because of inability to raise bail if they are not brought to trial within a specified period.

The Constitution of Puerto Rico has such a provision in its Bill of Rights. Section 11, Paragraph 6 provides:

Incarceration prior to trial shall not exceed six months nor shall bails or fines be excessive. No person shall be imprisoned for debt.

Such a provision for the Louisiana Constitution might read as follows:

Section . . . Right to Bail.

Every person shall be bailable by sufficient surety except for capital offenses, when the proof is evident or the presumption great. Excessive bail shall not be required. Except if he request a delay, an accused person unable to raise bail for a noncapital offense shall be released without bail if not brought to trial within six months of indictment or information.

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CC/73 Research Staff
Committee on Bill of Rights and Elections
March 29, 1973
Staff Memo No. 14

RE: CBRE Request for information on how a provision to provide for equal housing might suitably be included in the Bill of Rights.

The term "equal housing" usually refers to a provision prohibiting discrimination in the sale or rental of housing, particularly on the basis of race.

The present Louisiana Constitution has no such provision.

In Shelley v. Kraemer, 324 US 1 (1948), the Supreme Court held that a state could not enforce a restrictive racial covenant in the sale of housing. In Reitman v. Mulkey, 387 US 369 (1967), the Court by a five to four majority held that the state could not take positive steps to promote private discrimination, but the court did not prohibit private discrimination itself.

In Jones v. Alfred H. Mayer Co., 392 US 409 (1968), however, the Court ruled that Congress could by statute prohibit private discrimination in the sale or rental of property, that Congress so intended in an 1866 statute and that this was a valid exercise of the power of Congress to enforce the Thirteenth Amendment. The 1866 statute in question provides as follows:

42 USC, §1982

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

In the 1968 Civil Rights Act, Congress specifically prohibited private discrimination on account of race, color, religion or national origin in the sale or rental of housing (42 USC § 3604) except in the case of a single family house sold without advertising and in the case of rooms or apartments in an owner's own home (42 USC § 3603).

Thus equal housing is already the law for most purposes in Louisiana and throughout the United States.

A few states have begun to include prohibitions against private discrimination in housing in their constitutions.

The Illinois Constitution provides for it as follows:

Art. I, § 17. NO DISCRIMINATION IN EMPLOYMENT AND THE SALE OR RENTAL OF PROPERTY

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

The proposed 1967 New York Constitution provided:

Art 1, § 3.a. No person shall be denied the equal protection of the laws.

Art 1, § 3.b. No person shall, because of race, color, creed, religion, national origin, age, sex, or physical or mental handicap, be subjected to any discrimination in his civil rights by the state or any subdivision, agency or instrumentality thereof or by any person, corporation, or unincorporated association, public or private. The legislature shall provide that no public money shall be given or loaned to or invested with any person or entity, public or private, violating this provision.

A prohibition against discrimination in housing in the Louisiana Constitution might be accomplished by a section in the rights article along the following lines:

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Article _____, § _____. Equal Housing Rights

Everyone has a right to equal access to housing. No one may be discriminated against in the sale or rental of property on the basis of race, sex, social origin or condition, or political or religious ideas.

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CC/73 Research Staff
Committee on Bill of Rights and Elections
March 23, 1973
Staff Memo No. 15

RE: Newsmen's Shield Provision. CBRE request for information on the question of including in the rights article provision for shielding a newsmen from disclosing his sources of information in court proceedings.

In Bronzburg v. Hayes, 408 U.S. 620 (1972), the Supreme Court held that requiring newsmen to appear and testify before state and federal grand juries does not abridge the freedom of speech and press guaranteed by the First Amendment and that a newsmen's agreement to conceal criminal conduct of his news sources, does not give him a privilege of refusing to testify.

The above and related cases have caused newsmen to urge that Congress enact a law to give newsmen the privilege of refusing to divulge confidential information or sources of information utilized in the course of their newsgathering activities. A number of states have passed such shield laws in various forms including Louisiana. (See R.S. 45:1451 et seq., already furnished to the committee.)

The question arises whether such a provision should be included in a rights article to the Constitution. Research fails to reveal a shield provision in the constitution of any other state.

Advocates of shield provisions maintain that the press must be able to protect its sources so as to continue to expose corruption and lawlessness. They argue that today's in-depth interpretive reporters make frequent use of confidential information to help them verify and evaluate the "on the record" news they get from official sources. Much of this "news" is said to be superficial, sometimes deliberately misleading, and almost always self-serving. The claim is made that confidential sources would soon dry up if their confidentiality cannot be guaranteed.

Opponents of shield laws argue that newsmen should not be given special status as to the confidentiality of their sources. Such a result would require the defining of a "newsmen" with potentially dangerous consequences for freedom of the press. Such definition could lead to registration of newsmen, to examinations to become a bona fide newsmen, and to the creation of a licensed profession like doctors or lawyers in an area when there is no substantial public interest in protecting the public from "unqualified" newsmen.

In lieu of shield laws, opponents argue that the courts are best situated to balance the opposing interests of a free press and the disclosure of information relating to crime. They point out that newsmen are rarely subpoenaed to testify in such cases and that in most instances newsmen voluntarily comply as a act of good citizenship.

The present Louisiana shield law leaves it to the court to decide whether a newsmen must disclose his sources of information in the public interest.

A constitutional provision to go beyond the present Louisiana shield law might be developed as an additional sentence in a traditional section on freedom of the press. The sentence might read: "No newsmen may be compelled to disclose his confidential sources of information".

CC/73 Research Staff

Committee on Bill of Rights and Elections

March 29, 1973

Memo No. 16

RE: Civil Service Rights. CBRE Request for information on the question of dismissal of public employees and a right to a hearing before dismissal.

Civil service protection is provided in the Louisiana Constitution under Article 14, § 15. Under the application of these provisions, an employee dismissed for cause must be informed in writing of the reasons, before he is dismissed, but no specific time period is required. The employee has no right to a hearing before dismissal, but he does have a right of appeal.

Under the federal civil service system, an employee must be notified in writing that he is to be dismissed for cause thirty days before the dismissal is to take place. He has an opportunity to file a written answer to the charges against him and the agency dismissing him must consider his answer and, in doing so, prepare a written decision that the employee is nevertheless to be dismissed before the dismissal takes place. The employee has no right to a hearing before dismissal but, he does have a right of appeal.

The Index Digest of State Constitutions indicates that only Colorado provides in its Constitution for a hearing before dismissal of public employees for cause. The Colorado provision is as follows:

Art. XII, § 13, Par. 4

Persons in the classified service shall hold their respective positions during efficient service and shall be graded and compensated according to standards of efficient service which shall be the same for all persons having like duties. They shall be removed or disciplined only upon written charges, which may be filed by the head of a department or by any citizen of the state, for failure to comply with such standards, or for the good of the service, to be finally and promptly determined by the commission upon inquiry and after an opportunity to be heard. No person shall be discharged for a political or a religious reason. In cases of emergency or for employment of an essentially temporary character, the commission may authorize temporary employment without a competitive test.

Although a right to a hearing in public employee dismissal cases is not found in the rights article of any state constitution at present, such a provision could be considered in the nature of a political right involving participation in government. The provision could be included in the Bill of Rights with the following suggested language:

Article 1, § _____. Civil Service Rights

Everyone shall have an equal opportunity to apply for civil service employment. Selection shall be based on merit without unreasonable qualifications of age or sex. No civil service employee may be dismissed for cause without the opportunity for a prior hearing.

Age and sex are specifically mentioned in the suggested text because of the number of age and sex qualifications often included in civil service criteria. Discrimination based on race would presumably be considered unreasonable in almost every situation.

CC/73

Committee on Bill of
Rights and Elections

Merch 30, 1973

Staff Memo No. 17

RE: Grand Juries. CBRE Request for a review of recent legal periodicals on the work of grand juries and whether grand juries should be retained.

In response to the request, four recent articles in legal periodicals dealing with grand juries were reviewed. The four were as follows: Seymour Gelber, "The Grand Jury Looks at Itself", Florida Bar Journal 45:576 (1971); Michael Tigar and Madeline R. Levy, "The Grand Jury as the New Inquisition", Michigan State Bar Journal 50:693 (1971); David L. Forter, "Grand Jury Practice in the 1970's", Ohio State Law Journal 32:701 (1971); David J. Fine, "Federal Grand Jury Investigation of Political Dissidents", Harvard Civil Rights Law Review 7:432 (1972).

All except Gelber were very critical of the present use of the grand jury in state and federal practice.

Forter and Tigar traced the history of the grand jury. Tigar pointed out that it was designed to counterpose the power of the Executive and the Judiciary for the protection of the citizen, but at present it fails, in fact, to perform this function. Like the petit jury, it was once regarded as a bulwark of liberty but not any more.

Forter points out that England, the home of the grand jury, abolished it except in a very few cases, in 1933. He noted that as the centuries rolled by, the petit jury became a highly refined tool; virtually the entirety of the law of evidence was shaped to take advantage of the strengths and weaknesses inherent in the petit jury system. The grand jury, however, changed less. It remained and remains a blunt, crude instrument of brute power. Its unparalleled investigatorial powers are admittedly of vast importance to the Government. But it has lost the counterbalancing characteristics which made those tolerable--the protection of the innocent accused against unfounded accusations.

Forter says a case can be made for abolishing the grand jury altogether on the basis that it rarely fails to indict. He cites a recent ABA Foundation survey of the decision to charge a suspect with a crime in American criminal justice. There is almost no reference to grand juries, which theoretically are supposed to sift the evidence and decide whether or not to indict.

Forter does suggest there may be some cases in which the grand jury has a legitimate function to perform. Motor vehicle homicide cases present such a situation, in that the grand jury, by applying the standard of the general morals of society, is best able to decide whether a particular fatal accident, out of the countless numbers that occur, involves conduct sufficiently below societal norms to justify criminal prosecution.

Tigar points out that the Fifth Amendment requires all felony prosecutions in federal court to begin with a grand jury

indictment. With its broad investigatory powers, however, it has been converted into a vehicle for suppressing dissent.

Tigar says the grand jury performs its historic function of examining evidence to determine whether a crime has been committed in very few cases. Most district attorneys send only controversial cases to the grand jury--for example, cases involving alleged police misconduct, in which the D.A. can present a less-than-credible case for indictment; the grand jury can return "no bill" and the decision has an air of impartiality nonetheless. The D.A. can get an indictment almost at will, and the grand jury's institutional disinterest can be used to insulate him from criticism for indicting or failing to indict.

Tigar points out that witnesses refusing to answer questions of a grand jury can be jailed for up to three years, with great difficulty in obtaining release by bail while testing the refusal by an appeal. In grand jury investigations, he points out that there is no notice of the scope of the investigation, no confrontation of witnesses, no right or possibility to cross-examine, no right of counsel in the hearing room. The investigation, Tigar claims, destroys freedom of association by an assault on a person's political privacy.

Fine covers much the same ground as Tigar, concentrating on three criticisms: 1) the doctrine of the grand jury's unrestricted investigatory power, 2) the absence of standards regulating the government investigators' use of the resources of the grand jury, and 3) the policy of grand jury secrecy and the exclusion of the witness's attorney. On the latter point, Fine urges several reforms. He says that the only justification

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for secrecy in the grand jury room is to protect the witness; hence it should be secret only if the witness wants it secret. The witness should be entitled to a transcript of his testimony and to the presence of his attorney in the room.

Gelber presents the results of a survey of former grand jurors serving during the period 1964-70 in Florida. The jurors urge that the empaneling judge provide much more training for grand jurors, that the grand jurors be empowered to hire their own investigators rather than rely almost entirely on the public prosecutor, and that higher caliber jurors in general be selected. In contrast to Tigar's article, the survey finds that the grand jurors do not believe that the D.A. exercised an undue influence over them.

Gelber concludes his survey with a defense of the grand jury system. While results suggest that repairs may be necessary, he says it is a vital citizen function. It serves not only as a check and balance in our criminal justice system, but also enables citizens to see the machinery at work and to oversee its production.

March 30, 1973

Staff Memo No. 18

RE: Eminent Domain. CBRE Request (by Delegate Anthony J. Guarisco, Jr.) for a memo on the question of eminent domain, and assuring fair market value for the property owner in expropriation cases.

"Eminent domain" is the power of the state to expropriate privately owned property for the use of the public without the owner's consent upon payment of compensation.

The main Louisiana provision on eminent domain provides:

Article 1, § 2. No person shall be deprived of life, liberty, or property, except by due process of law. Except as otherwise provided in this Constitution, private property shall not be taken or damaged except for public purposes and after just and adequate compensation is paid.

More specific provisions on eminent domain are contained in the Louisiana Constitution with reference to airport uses (Art. 16, § 16), levee or highway uses (Art. 6, § 19 and Art. 16, § 6), public utility purposes (Art. 4, § 15), and the case of riparian owners (Art. 14, § 30).

The right to authorize the exercise of the power of eminent domain is customarily vested in the legislature, subject to the restrictions and limitations stated in the constitution. Hence constitutional restrictions on the exercise of the power are significant. The legislature may exercise the power itself, but the normal practice is for it to delegate the function to public officers or agencies or in some states to private corporations vested with the power of eminent domain.

Related to "expropriation" is what is technically termed "appropriation" under Louisiana law, whereby the government can use private property for river road construction under the Civil Code's river road servitude (Art. 665) without any compensation, and can use private property for levee construction purposes upon paying the assessed valuation of the land actually used or destroyed (Const. Art. 16 § 6 and Civil Code, Art. 665).

This is permitted by the exception clause in Art. 1 § 2 of the Constitution. The servitude applies to land that is presently a riparian tract or was part of a riparian tract when the land left the domain of the sovereign. (Jeanerette Lumber v. Bd. of Cmrs., 249 La. 508, 187 So. 2d 715 (1965)). Before the Committee is the question, therefore, of whether this type of use for less than market value should continue.

Eminent domain is distinguished from police and taxing power in that the state uses it to acquire property while police power only regulates, and the taxing power acts on groups or classes of people as a whole as a means of acquiring funds.

Prior to 1948, a jury trial was permissible in expropriation suits but could be waived by the consent of both parties (See RS 19:4).

Two views have been expressed on the requirement of necessity before an expropriation may take place. One is the concept of actual public use of the property. The other broader view is

mere public benefit. The present Louisiana provision of "public purpose" has been interpreted generally to mean mere public benefit.

The requirement that "fair compensation" be paid has generally been interpreted to mean market value but this rule is abandoned when there is no available evidence of market value. Other approaches to fair compensation include the reproduction cost approach and

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the capitalization income approach.

A owner in expropriation cases is subject to additional expenses and deprivations. Upon notice that the property is sought by a taker, the owner is restricted in his use of the property. He is generally not paid for subsequent improvements. The taker must pay the costs of trial unless he has made a prior tender of true value to the owner, but this rule does not apply if the owner demands an exorbitant sum or refuses to negotiate.

State constitutions have included various protections to the property in expropriation in addition to simply "just compensation". Montana provides that just compensation "shall include necessary expenses of litigation to be awarded by the court when the private property owner prevails". California (Proposed Revision 1971) prohibits taking private property unless just compensation "ascertained by a jury unless waived, has first been paid to, or into court for, the owner". Mississippi and Washington provide that the question of whether the use for which the property is taken is "public" is to be determined in court without regard to any legislative assertion to that effect. Puerto Rico has a novel provision flatly prohibiting the condemnation of printing presses and requiring that an adequate substitute site be placed at the disposition of a printer or publisher before his land or buildings may be taken. The proposed 1967 Constitution of New York had a provision that just compensation includes "the fair value, at the time of taking, of good will of retail businesses, as

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defined by the legislature".

Since Louisiana presently provides generally for fair market value in expropriation cases, the main way of strengthening this would perhaps be to reinstitute jury trials. This could be accomplished along the following lines:

Article 1, § Right to Property

- (A) Every person has the right to the use, enjoyment and disposition of his lawfully acquired property.
- (B) No one shall be deprived of his property except for public purposes and after just compensation, ascertained by a jury unless waived, is paid.

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April 2, 1973

Staff Memo No. 19

RE: Eminent Domain (Supplementary Memo). CBRE Request for a memo on the question of eminent domain and assuring fair market value for the property owner in expropriation cases.

This supplementary memo discusses the question of expropriation for highway uses in Louisiana under the present Constitution and statutes. (This was only briefly referred to in Staff Memo No. 18).

One of the reasons for abandoning jury trials in expropriation cases in 1948 was the delays caused by such trials. These delays were felt especially by the highway department which sought and obtained passage in 1948 of a special constitutional amendment (Art. 6, § 19.1) to provide for the taking of property by orders rendered ex parte prior to judgment and the deposit of the estimated compensation in the registry of the appropriate court. The legislature also adopted in 1948 an enabling act (RS 19:51-66) which provided for taking property upon deposit of its value as determined by three appraisers appointed by the court after the filing of the expropriation suit. In practice, the new legislation, while shortening the delays in expropriation proceedings, did not satisfy the highway department in its desire to reduce such delays.

The highway department then proposed a "quick-taking" statute, which the legislature adopted (RS 48:441-460) in 1954. In the 1954 procedure, the highway department appoints the appraisers and obtains title simultaneously with the filing of the suit, the signing of the ex parte order and the deposit of the estimated compensation in the registry of the court. The Louisiana Supreme Court ruled this procedure to be constitutional in State v. Macaluso, 235 La. 1019, 106 So. 2d 455 (1958).

In a later case, the same court ruled that the property owner could not challenge the necessity or expediency of the taking once it was established that the taking was for a public purpose (State v. Guldry, 240 La. 516, 124 So. 2d 511 (1960)). The courts have subsequently ruled that the highway department could utilize the "quick taking" statute indirectly as well (i.e., to relocate a pipeline occasioned by highway construction rather than utilize the regular expropriation procedure for this purpose. See State v. A. Moresi Co., 248 So. 2d 5, writ denied 259 La. 742, 252 So. 2d 449 (1971)).

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NOTES

Staff Memo No. 20 reproduces various articles from the Objectivist Newsletter and the Freeman (by request of Delegate Jenkins).

April 4, 1973

Staff Memo No. 21

RE: CBRE Request (by Delegate Anthony J. Guarisco, Jr.) for information on the possibility of including in the Bill of Rights a provision that there should be no review of facts in civil cases on appeal, and that jury trials and fair judgments should be facilitated.

Article 7, Sections 10 and 29 provide that appellate courts have a right to review both the facts and the law on appeal. In all other states of the United States and in the federal courts, only the law generally may be reviewed on appeal. The Federal Bill of Rights provides the following in Article VII:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States than according to the rules of the common law.

The dollar figure in the federal constitution has been criticized as not desirable to put in a constitution since the value of the dollar varies with inflation, etc. However, some state constitutions have followed the practice using a higher dollar figure. The Constitution of Alaska (1965) has a \$250 figure; that of Hawaii (1968) has \$100; and many states provide as Illinois does that the right of trial by jury "as heretofore enjoyed shall remain inviolate".

In Louisiana, jury trials are recognized in civil cases under the provisions of the Code of Civil Procedure, Section 1733 which provides numerous exceptions in which jury trials are not permitted. In practice, jury trials are permitted in suits where potential damages for injury exceed \$1,000.

One of the main reasons plaintiffs seek jury trials is because they believe a jury will be more realistic about the damages suffered and will award more adequate compensation based on the facts of the case. Two main factors, however, deter plaintiffs in seeking to exercise their rights to a jury trial. One is that the amount of the award granted by the jury may be reduced on appeal because the appellate judge has a right to review the facts on record in the case and come to a different conclusion about the amount of the award. A second deterrent to jury trials is that court costs in jury trials run about an additional \$1,000 a day in court costs with the amount varying from jurisdiction to jurisdiction in the state. Unless the plaintiff is a pauper, he must advance these costs to have a jury trial. If he loses his case, he does not recover these costs which are substantial for the average working men. The result of these two factors is that there is comparatively little use of jury trials in Louisiana compared to other states.

To facilitate the right to jury trials in Louisiana, the following language is suggested as a section of the rights article to the new constitution:

Art. 1, § _____. Right to Trial by Jury

In civil suits, where potential damages for injury

exceed the official value of a pound of gold, the right of trial by jury without additional cost is recognized, and no fact tried by a jury shall be otherwise re-examined on appeal.

Note that gold was for many years and until recently valued at \$35 an ounce or \$550 a pound. Its dollar value can be expected to increase with inflation so that an amount stated in terms of gold can be expected to remain more realistic over several decades than one stated in dollars.

A subsidiary reason for permitting trial by jury in civil cases is the effect juries have in mitigating the harshness of the rule of contributory negligence in personal injury cases. This rule provides that when either party to a suit is contributorily negligent, no matter how slightly, neither party may collect damages from the other. The alternative rule which is not presently the law in Louisiana is that of comparative negligence, which provides that a party may collect for his injury with the amount diminished only by the degree of his own fault in causing the injury. In most proposals to allow administrative tribunals to handle personal injury cases arising from automobile accidents, it is recommended that the doctrine of comparative negligence should replace that of contributory negligence. See 35 Tulane Law Review 521 (1961).

A provision to substitute the rule of comparative negligence could be included in the rights article under a general right of redress for violation of rights. Such a provision might read as follows:

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Article I, § _____ . Right of Redress

Everyone has the right to sue the state, its political subdivisions, or any person or legal entity that violates any of his recognized rights and to obtain just compensation or other appropriate redress for his injury, diminished only by the degree of his own fault in causing his injury.

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CC/73 Research Staff
Committee on Bill of Rights and Elections
April 5, 1973
Staff Memorandum No. 22

RE: CBRE Request (by Delegate Anthony J. Guarisco, Jr.) on the possibility of including a mini-tenth amendment or Fordham Plan provision in the Distribution of Powers Article of the new Constitution.

The distribution of powers article in state constitutions traditionally has dealt primarily with the separation of powers of government at the state level. Local governments have traditionally been considered to be mere creatures of state government with little or no constitutional status.

This classic or McBain theory of local government conceived of a local government charter or authority as an instrument of grant, which spelled out specific home rule powers (See Howard Lee McBain, The Law and Practice of Municipal Home Rule, New York, 1916). If a specific power was not granted, the local government had to petition the legislature for an enabling act whenever it needed such power as the result of a new local situation. This has resulted in repeated requests for legislative authorizations by local governments.

Jefferson B. Fordham, Dean of the University of Pennsylvania Law School and an advisor to the American Municipal Association, has proposed that the powers of certain local governments should be strengthened by giving them constitutional status and broad powers. Dean Fordham proposes that these powers be limited to local governments that adopt home rule charters. Dean Fordham's proposal, as adopted by the American Municipal Association for inclusion as an amendment in state constitutions, is as follows:

A municipal corporation which adopts a home rule charter may exercise any power or perform any function which the legislature has power to devolve upon a non-home rule charter municipal corporation and which is not denied to that municipal corporation by its home rule charter, is not denied to all home rule charter municipal corporations by statute and is within such limitations as may be established by statute.

Under the system as envisioned, the home rule charter would be an instrument of limitation, for under it the adoption of a charter would automatically make available to a municipality the full sweep of municipal powers which would be possible under the constitution of a state by legislative delegation, except as might be limited by statute or the charter.

The approach reverses the old strict-constructionist presumption against the existence of municipal power, and, so long as the legislature does not expressly deny a particular power, renders unnecessary petitioning the legislature for enabling legislation.

A provision of such limited application as that of Dean Fordham would probably not be appropriate in a distribution of powers article which is generally limited to broad principles. The Fordham proposal could be broadened, however, to include any local government that exercises general governmental powers provided it met certain criteria of being representative of the

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people in the local government area. To enhance their freedom of action, all local governments of a general nature would seek to meet such a test of being representative. A provision along these lines would involve broad principles of state-local relations and as such would be quite appropriate as a section in the Distribution of Powers Article.

Such a provision might read as follows:

Article II, § ____ . State and Local Government Relations

Any local government of a general nature, having a governing council, jury, or other board composed of members, a majority of which are elected from single member districts, may exercise any governmental power or perform any function which is

not denied by this Constitution or its own charter, or which the legislature does not, by general laws, deny to all local governments or to local governments of its particular class.

Document 23

CBRE WORKING DOCUMENT FOR DRAFTING A RIGHTS ARTICLE

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A. RIGHTS IN GENERAL

Projekt 1

BILL OF RIGHTS

PROJECT ARTICLE I, SECTION 1

All government, of right, originates with the people, is founded on their will alone, and is instituted solely for the good of the whole. Its only legitimate end is to secure justice to all, preserve peace, and promote the interest and happiness of the people.

Jenkins 1, 2, 3, 4

Purpose of Government

Sec. 1. The purpose of every just government is to protect the rights of each person within its territorial jurisdiction.

Nature of Rights

Sec. 2. Rights are non-contradictory, and no person's rights shall ever be construed so as to infringe the rights of any other person.

Basic Right

Sec. 3. The basic right of every person is the authority to acquire by voluntary means, to own, to control, to enjoy and to dispose of private property.

Types of Private Property

Sec. 4. Private property rights are of three classes:

- (1) Original rights, which consist of the rights which each person has to his body;
- (2) Intellectual rights, which consist of the rights which he has to his thoughts and ideas; and
- (3) Secondary rights, which consist of the rights which he has to his possessions, whether tangible or intangible.

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Weiss 1

§ 1. Inalienable Rights

Government of the people, by the people and for the people is instituted to protect rights reserved to the people. We proclaim these inalienable rights and assert that no free government, or the blessings of liberty, can be preserved except by a firm adherence to justice and virtue, and by frequent recurrence to fundamental principles.

All government, of right, originates with the people, is founded on their will alone, and is instituted solely for the good of the whole. Its only legitimate end is to secure justice to all, preserve peace, and promote and protect the interest, happiness and general welfare of the people.

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B. LIFE AND ITS PERPETUATION

Weiss 2 and 3

§ 2. Right to Life

- (A) Every person has the right to have his life respected. No one shall be arbitrarily deprived of life.
- (B) The death penalty may only be imposed as a preventive measure for the most serious crimes.

§ 3. Rights of the Family

- (A) The family is the most effective means of perpetuating an orderly and sound society.
- (B) The right of marriage between a man and woman of marriageable age and their right to have a family is recognized. No marriage shall be valid if entered into without the free and full consent of the spouses.
- (C) The paramount right of parents to rear their children in accordance with their own convictions is recognized. Parents and children have mutual duties and responsibilities.

Jenkins 11

Deprivation of Original Property

Sec. 11. No person shall be deprived of the right to original property except as punishment for crime.

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C. DIGNITY (IN GENERAL)

Projet 2

PROJET ARTICLE 1, SECTION 2

No ex post facto law or law impairing the obligations of contracts shall be passed; and no person shall be deprived of life, liberty, or property, except by due process of law. Except as otherwise provided in this constitution, private property shall not be taken or damaged nor shall vested rights be divested except for public purposes and after just and adequate compensation is paid.

Roy 10 and Weiss 4
(Identical provision)

Right to Individual Dignity

The dignity of the human being is inviolable. No person shall be denied the equal protection of the laws nor shall any

law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas. Neither slavery nor involuntary servitude shall exist except in the latter case as a punishment for crime after the accused has been duly convicted.

Jenkins 5

Guarantee of Rights

Sec. 5. Rights shall not be denied to any person because of race, sex, religion, culture, or social origin.

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D. PERSONAL LIBERTY (IN GENERAL)

a. Speech

Projet 3

PROJET ARTICLE 1, SECTION 3

No law shall be passed to curtail or restrain the liberty of speech or of the press; any person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that liberty. In all proceedings or prosecutions for libel, slander, or defamation, the truth thereof may be given in evidence.

Weiss 8

§ 8. Liberty of Speech and Expression

- (A) Everyone has the right to liberty of speech and expression, being responsible for the abuse of this liberty. No law shall impair the right to seek, receive, and impart information and ideas either orally, in writing, in the form of art or through any other medium of one's choice.
- (B) The exercise of this right may not be subject to prior censorship except in the case of public entertainments to which unaccompanied minors have access.

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Jenkins 21

Freedom of Expression

Sec. 21. No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate or broadcast on any subject or to gather, receive and transmit knowledge and information, nor shall such activities ever be subject to censorship, licensure, registration, control or special taxation.

No law shall be passed nor state action taken to curtail or restrain the liberty of speech or of the press; nor shall any person be compelled to divulge the product and/or the source of any information, material or activity, unless he be an eye witness thereto; any person may speak, write, and public his sentiments on all subjects, being responsible for the abuse of that liberty. In all proceedings or prosecutions for libel, slander, or defamation, the truth thereof may be given in evidence.

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b. Religion

Projet 4

PROJET ARTICLE I, SECTION 4

Every person has the natural right to worship God according to the dictates of his own conscience. No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof; nor shall any preference ever be given to, or any discrimination made against, any church, sect, or creed of religion or any form of religious faith or worship.

Weiss 9

§ 9. Freedom of Religion

(A) Religion, or the duty we owe our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence. It is the mutual duty of all to practice understanding, respect and charity toward one another.

(B) Since everyone has the natural right to worship according to the dictates of his own conscience, no law shall be passed respecting an establishment of religion nor prohibiting the free exercise thereof.

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Jenkins 24, 25

Freedom of Conscience

Sec. 24. No law shall be approved respecting an establishment of religion or prohibiting the free exercise thereof.

Administering of Oaths

Sec. 25. The method of administering an oath or affirmation shall be such as shall be most consistent with and binding upon the conscience of the person to whom such oath or affirmation may be administered.

Every person has the natural right to worship God according to the dictates of his own conscience. No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof; nor shall any preference ever be given to, or any discrimination made against, any church, sect, or creed of religion or any form of religious faith or worship.

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c. Movement

Jenkins 10

Freedom of Movement

Sec. 10. No law shall prohibit the freedom of each person to live and work at a place of his choosing, to travel freely within the state, to enter and leave the state, and to assemble peaceably with others.

d. Association

Weiss 11

§ 11. Freedom of Association

Everyone has the right to associate freely with others.

e. Petition

Jenkins 22

Freedom to Dissent

Sec. 22. No law shall impair the freedom to petition government officials for a redress of grievances or the freedom to protest governmental action in peaceable ways not violative of other laws.

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f. Assembly

Projet 5

PROJET ARTICLE I, SECTION 5

The people have the right peaceably to assemble and to apply to those vested with the powers of government for a redress of grievances by petition or remonstrance.

Roy 5

The people have the right peaceably to assemble and to apply to those vested with the powers of government for a redress of grievances by petition or remonstrance.

§ 10. Freedom of Assembly

Everyone has the right peaceably to assemble, petition for redress, or protest governmental action.

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G. Commerce

Jenkins 29 and 30

Freedom of Commerce

Sec. 29. No law shall impair the free and voluntary exchange of goods and services within the state by limiting the practice of any occupation to a certain class of persons, by controlling the production or distribution of goods and services, by dictating the price and terms of contracts, or by prohibiting any enterprise from conducting transactions at any time or ^{place,} day, except that just laws ^{Commerce} may regulate, to the extent necessary to protect the health and safety of persons.

Prohibition of Government Competition and Monopolies

Sec. 30. No law shall permit the operation of any government enterprise not already in existence if such enterprise competes directly and substantially with a private, tax-paying enterprise, has secured its capital assets by expropriation of private property, depends on tax revenues to meet its operating expenses or has been granted a legal monopoly.

Roy 15

All persons shall have the right to be free from discrimination on the basis of race, color, creed, national ancestry and sex in the hiring and promotion practices of any employer or in the sale or rental of property.

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E. REDRESS

Projet 6

PROJET ARTICLE I, SECTION 6

All courts shall be open, and every person for injury done him in his rights, lands, goods, person, or reputation shall have adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay.

Weiss 26, 27, and 28

§ 26 Right of Redress

Everyone has the right to sue the state, its political subdivisions, or any person or legal entity that violates any of his recognized rights and to obtain compensation or other appropriate redress of his injury.

§ 27. Rights of the Child

Persons below the age of majority may exercise all recognized rights unless specifically precluded by laws which enhance the protection of such persons.

§ 28. Right to Due Process of Law

No person shall be deprived of any of his rights without due process of law.

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Roy 6

All courts shall be open, and every person for actual or threatened injury done him in his rights, lands, goods, person or reputation shall have adequate remedy by due process of law and justice, administered without denial, partiality, or unreasonable delay.

Roy 21

Everyone has the right to sue the state, its political subdivisions, or any person or legal entity for violation of his recognized rights and to obtain compensation or other appropriate redress for his injury.

Jenkins 6

Redress of Grievances

Sec. 6. Every person shall have access to the courts of the state for redress of injuries to his rights. No person shall be denied an adequate remedy by due process of law nor denied justice administered without partiality or unreasonable delay. Neither the state nor any person shall be immune from suit.

Jenkins 34

Availability of Rights

Sec. 34. Every person shall have standing to challenge the constitutionality of any law enacted pursuant to this Constitution if he has a direct interest, however small, in the validity of the law in question.

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F. DIGNITY (OTHER)

A. Privacy

Projet 7

PROJET ARTICLE I, SECTION 7

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no search or seizure shall be made except upon warrant therefor issued upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Weiss 5

§ 5. Right to Privacy

(A) Everyone has the right to privacy. No law shall authorize arbitrary or abusive interference with one's

private life, family, home or communications.

(B) No warrant shall be issued without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

Jenkins 8

Searches and Seizures

Sec. 8. Every person shall be secure in his person against unreasonable searches and seizures, and no such search or seizure shall be undertaken except upon warrant therefor issued upon probable cause supported by an oath or affidavit specifically describing the person to be searched or seized.

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Jenkins 23

Inviolability of Communications

Sec. 23. No law shall permit the interception or inspection of any private communication or message.

Jenkins 26

Deprivation of Intellectual Property

Sec. 26. No person shall be deprived of the right to intellectual property for any reason, except that just laws may permit the interception and inspection of communications to and from persons lawfully incarcerated in jails or prisons to the extent necessary to maintain the security of the institution.

Jenkins 28

Searches and Seizures

Sec. 28. Every person shall be secure in his possessions, whether tangible or intangible, against unreasonable searches and seizures, and no such search or seizure shall be undertaken except upon warrant therefor issued upon probable cause supported by an oath or affidavit specifically describing the place or things to be searched or seized.

Roy 7

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures shall not be violated, and no search or seizure shall be made except upon warrant therefor issued upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized and the purpose or reason for the search.

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b. Property

Weiss 6

§ 6. Right to Property

(A) Everyone has the right to the use and enjoyment of his lawfully acquired property. The disposition of property may be subject to reasonable laws to protect the family.

(B) No one shall be deprived of his property except upon payment of just compensation for reasons of public utility and in accordance with law. In the event of litigation, just compensation includes necessary expenses of litigation when the private property owner prevails.

Jenkins 3 and 4

Basic Right

Sec. 3. The basic right of every person is the authority to acquire by voluntary means, to own, to control, to enjoy and to dispose of private property.

Types of Private Property

Sec. 4. Private property rights are of three classes:

(1) Original rights, which consist of the rights which each person has to his body;

(2) Intellectual rights, which consist of the rights which he has to his thoughts and ideas; and

(3) Secondary rights, which consist of the rights which he has to his possessions, whether tangible or intangible.

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Jenkins 20

Sanctions for Protection

Sec. 20. In furtherance of the right to intellectual property, the state may enact just laws to prohibit and punish crimes which infringe this right.

Jenkins 27

Sanctions for Protection

Sec. 27. In furtherance of the right to secondary property, the state shall enact reasonable laws to prohibit and punish the crimes of armed robbery, theft, trespass, fraud and other similar offenses.

Jenkins 33

Deprivation of Secondary Property

Sec. 33. No law shall ever allow the expropriation of the secondary property of any person, except for rights of way for public streets and roads, flood

prevention and control, or public defense in case of rebellion or foreign invasion. Property shall not be taken or damaged without just compensation having been made, paid into court for the owner or secured by bond as may be fixed by the court. The legality of the taking and the amount of compensation shall be determined by a jury, unless a jury be waived. Property taken in this manner shall be retained by the state only so long as it may be used for the purpose for which it was taken. Otherwise, it must be offered to the person from whom it was taken and sold to him upon payment to the state of just compensation.

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Roy 2

No ex post facto law or law impairing the obligations of contracts shall be passed; and no person shall be deprived of life, liberty, or property, except by due process of law. Except as otherwise provided in this constitution, private property shall not be taken or damaged nor shall vested rights be divested except for public purposes and after just and adequate compensation is paid.

c. Civil Jury Trials and Appeals

Roy 23

On appeal, in civil matters, the appellate courts shall review both errors of law and fact; provided that, on appeal, where the appellate courts sits in panels, and there is a dissent to the proposed reversal or modification of the judgment or verdict of the District Court, ipso facto, the entire court will grant a reargument, en banc, at which time, the vote to reverse or modify the District Court judgment or verdict, shall be a majority of the Court.

Roy 24

In civil damage suits, the right of trial by jury shall not be abridged, and no fact tried by a jury shall be otherwise re-examined on appeal.

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Weiss 7

§ 7. Right to Trial by Jury

In civil suits, where the value in controversy shall exceed the cost of service by a jury for one day, the right of trial by jury without additional cost is recognized, and no fact tried by a jury shall be otherwise reexamined on appeal.

G. PERSONAL LIBERTY (MILITARY INTRUSION)

Projet 8

PROJET ARTICLE I, SECTION 8

No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or lawful occupant.

Weiss 13

§ 13. Freedom from Military Intrusion

No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war, except in the manner provided by law.

Jenkins 32

Quartering of Soldiers

Sec. 32. No soldier shall be quartered in any residence without the consent of the owner or other lawful occupant.

Roy 8

No member of the armed forces shall in time of peace be quartered in any house without the consent of the owner or lawful occupant.

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H. PARTICIPATION IN GOVERNMENT (IN GENERAL)

a. Voting

Weiss 19

§ 19. Right to Vote

Every citizen who is at least eighteen years old, has registered at least fifty days before an election, and is residing in this state shall have the right to vote. This right may be suspended temporarily only while a person is judicially declared to be of unsound mind or is under an order of imprisonment for conviction of a felony.

b. Direct Participation

Weiss 20

§ 20. Right to Direct Participation in Government

(A) Everyone has the right to expect governmental agencies to afford reasonable opportunity for citizen participation before making major decisions as may be provided by law.

(B) No person shall be denied the right to examine public documents or to observe the deliberations of public bodies except in cases in which the demand of privacy clearly exceeds the merits of public disclosure.

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c. Civil Service

Weiss 21

§ 21. Civil Service Rights

Everyone shall have an equal opportunity to apply for civil service employment. Selection shall be based on merit without unreasonable qualifications of age or sex. Civil service employees, subject to dismissal for cause, have the right to a hearing.

d. Bearing Arms

Projet 9

PROJET ARTICLE I, SECTION 9

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons or otherwise to regulate reasonably the keeping and bearing of arms.

Weiss 23

§ 23. Right to Bear Arms

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This shall not prevent the passage of laws to punish those who carry weapons concealed.

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Jenkins 31

Freedom to Keep and Bear Arms

Sec. 31. The freedom of each person to keep and bear arms shall not be abridged nor shall this right ever be subject to licensure, registration, control or taxation.

Roy 9

A well regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons or otherwise to regulate reasonably the keeping and bearing of arms.

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I. PERSONAL LIBERTY (PROCEDURAL RIGHTS)

Projet 10

PROJET ARTICLE I, SECTION 10

In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury. All trials shall take place in the parish in which the offense was committed, unless the venue be changed. The accused in every instance shall have the right to be confronted with the witnesses against him; he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. Prosecution shall be by indictment or information, but the legislature may provide for the prosecution of misdemeanors on affidavits. No person shall be held to answer for capital crime unless on a presentment or indictment by a grand jury, except in cases arising in the militia when in actual service in time of war or public danger. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Projet 11

PROJET ARTICLE I, SECTION 11

In all criminal prosecutions the accused shall be informed of the nature and cause of the accusation against him and when tried by jury shall have the right to challenge jurors peremptorily, the number of challenges to be fixed by law.

Projet 12

PROJET ARTICLE I, SECTION 12

No person shall be compelled to give evidence against himself in a criminal case or in any proceeding that may subject him to criminal prosecution except as otherwise provided for in this section. In the trial of contested elections, in proceedings for the investigations of elections, in all criminal trials under the election laws, and in any lawful proceeding against any one charged with having committed the offense of bribery, any person may be compelled to testify and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding except for perjury in giving such testimony.

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Weiss 12

§ 12. Freedom from Arbitrary Detention

- (A) Anyone who is detained shall be informed of the reasons for his detention.
- (B) No person shall be detained for the purpose of securing his testimony in any criminal proceeding longer than may be necessary for his deposition.
- (C) A person detained for a criminal offense shall be promptly notified of the charge against him.

Weiss 15

§ 15. Rights of the Accused

Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. The accused is entitled:

- (A) to defend himself personally or to be assisted by counsel of his own choosing, or assigned by the court,

and to communicate freely and privately with his counsel;

(B) to meet the witnesses against him face to face;

(C) to have process to compel the attendance of witnesses in his behalf;

(D) to be assisted without charge by an interpreter if he does not speak the language of the court; and

(E) to a speedy public trial by an impartial jury of the parish in which the offense is alleged to have been committed unless the venue be changed.

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Weiss 16

§ 16. Freedom from Self-incrimination, Double Jeopardy, and Ex Post Facto Laws

No person shall be compelled to testify against himself in a criminal proceeding nor shall he be again put in jeopardy for the same offense previously tried in any jurisdiction. No ex post facto law shall be passed.

Jenkins 12, 13 and 14

Arrest

Sec. 12. When a person has been arrested, he shall immediately be advised of his legal rights and shall soon thereafter be informed of the nature and cause of the accusation against him. Every person shall be entitled to assistance of counsel at each stage of the prosecution, if he is charged with a serious offense.

Initiation of Prosecution

Sec. 13. In all criminal cases, prosecution shall be initiated by information or indictment, except that misdemeanors may be initiated by affidavit. However, no person shall be held to answer for a capital crime unless upon a presentment or indictment by a grand jury.

Fair Trial

Sec. 14. Every person charged with a crime shall be entitled to a speedy, public and impartial trial in the parish where the offense or an element of the offense occurred, unless venue be changed on motion of the defendant.

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Jenkins 15, 16, and 17

Trial by Jury

Sec. 15. Any person charged with an offense or set of offenses punishable by imprisonment of more than six months may demand a trial by jury. In cases involving a crime necessarily punishable at hard labor, the jury shall consist of twelve persons capable of rendering a fair and impartial verdict. All of these jurors must concur to render a verdict in capital cases, and nine must agree in others. In cases not necessarily punishable at hard labor, the jury may consist of a smaller number of persons, all of whom must concur to render a verdict.

Evidence

Sec. 16. No person shall be compelled to give evidence against himself and no confession shall be used unless given voluntarily. All evidence presented shall be competent, relevant and material, unless the accused waives this right. The accused shall be entitled to confront and cross-examine the witnesses against him, to present a defense, and to take the stand in his own behalf.

Double Jeopardy

Sec. 17. No person shall be put in jeopardy twice for the same offense, except on his own motion for a new trial or when there is a mistrial or when a motion in arrest of judgment is sustained.

Jenkins 35

Prohibited Laws

Sec. 35. No bill of attainder, ex post facto law or law impairing the obligation of contracts shall be approved.

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Roy 11

In all criminal prosecutions the accused shall be precisely informed of the nature and cause of the accusation against him and when tried by jury shall have the right to voir dire and to challenge jurors peremptorily, the number of jurors and challenges to be fixed by law.

Roy 12

In all criminal prosecutions the accused shall have the right to a speedy public trial by an impartial jury in the parish in which the offense was committed, unless the venue be changed by law or consent of the accused. At all stages of the criminal proceedings including those of the Grand Jury, he shall have the right to defend himself, to have the assistance of counsel, and to have compulsory process for obtaining witnesses in his favor. The accused in every instance shall have the right to be confronted with the witnesses against him and shall have the right to present his witnesses to the Grand Jury for interrogation; furthermore, the accused shall have the right to the transcribed testimony of these witnesses appearing before the Grand Jury in his case.

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Roy 12 (Cont.)

Prosecution shall be by indictment or information, but the legislature may provide for the prosecution of misdemeanors on affidavits. No person shall be held to answer for capital crime, or felonies requiring punishment at hard labor unless on a pre-

sentment or indictment by a Grand Jury, except in cases arising in the militia when in actual service in time of war or public danger or where he specifically waives the necessity of the presentment or indictment. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

Roy 13

No person shall be compelled to give evidence whether oral or written against himself in a criminal case or in any proceeding that may subject him to criminal prosecution except as otherwise provided for in this section. In the trial of contested elections in all criminal trials under the election laws, and in any lawful proceeding against any one charged with having committed the offense of bribery, any person may be compelled to testify and shall not be permitted to withhold his testimony upon the ground that it may incriminate him or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceeding except for perjury in giving such testimony.

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Roy 14

No person under arrest shall be subjected to or promised any treatment designed by effect on body or mind to compel confession of crime, nor shall any confession unless freely and voluntarily made be used against any person accused of crime.

J. DIGNITY (HUMANE TREATMENT)

Projet 13

PROJET ARTICLE I, SECTION 13

No person under arrest shall be subjected to any treatment designed by effect on body or mind to compel confession of crime, nor shall any confession unless freely and voluntarily made be used against any person accused of crime.

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Weiss 18

§ 18. Right to Humane Treatment

- (A) Every person has the right to have his physical, mental and moral integrity respected.
- (B) No one shall be subjected to torture or to cruel and unusual punishments or treatments.
- (C) Accused persons shall, save in exceptional cir-

cumstances, be separated from convicted persons.

(D) Minors, while subject to criminal proceedings, shall be separated from adults.

(E) Laws for the punishment of crime shall be founded on the principles of reform and prevention. Full rights are restored by termination of state supervision for any offense against the state.

Jenkins 18

Punishments

Sec. 18. Cruel, unusual or excessive punishments shall not be inflicted.

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K. PERSONAL LIBERTY (BAIL)

Projet 14

PROJET ARTICLE I, SECTION 14

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. All persons shall be bailable by sufficient sureties, except the following: persons charged with a capital offense where the proof is evident or the presumption great; persons convicted of felonies, provided that where a minimum sentence of less than five years at hard labor is actually imposed, bail shall be allowed pending appeal until final judgment.

Weiss 17

§ 17. Right to Bail

Every person shall be bailable by sufficient surety except for capital offenses when the proof is evident or the presumption great. In noncapital cases, incarceration prior to trial shall not exceed six months nor shall bail be excessive.

Jenkins 19

Bail

Sec. 19. All persons shall be entitled to bail both before and during trial, except that persons charged with a capital offense shall not be entitled to post bail if the proof is evident or the presumption is great. Pending appeal, bail shall be allowed until final judgment, if the minimum sentence actually imposed is less than five years at hard labor. Excessive bail shall not be required.

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Roy 22

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted. All persons

shall be bailable by sufficient sureties, except the following: Persons charged with a capital offense where the proof is evident or the presumption great; persons convicted of felonies, provided that where than a maximum sentence at hard labor is actually imposed, bail shall be allowed pending appeal until final judgment, at the discretion of the judge.

L. PERSONAL LIBERTY (TREASON)

Projet 15

PROJET ARTICLE I, SECTION 15

Treason against the state shall consist only in levying war against it or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on his confession in open court.

Roy 19

Treason against the state shall consist only in levying war against it or adhering to its enemies, giving them aid and comfort. No person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on his confession in open court.

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M. PERSONAL LIBERTY (HABEAS CORPUS)

Projet 16

PROJET ARTICLE I, SECTION 16

The privilege of the writ of habeas corpus shall not be suspended except in the event of rebellion or invasion when the public safety may require it.

Weiss 14

§ 14. Habeas Corpus

The privilege of the writ of habeas corpus shall never be suspended except by the Legislature in the case of rebellion, insurrection or invasion, when the public safety may require it.

Jenkins 9

Writ of Habeas Corpus

Sec. 9. The writ of habeas corpus shall not be suspended.

Roy 18

The privilege of the writ of habeas corpus shall not be suspended except in the event of rebellion or invasion when the public safety may require it.

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N. PARTICIPATION IN GOVERNMENT (CIVILIAN GOVERNMENT)

Projet 17

PROJET ARTICLE I, SECTION 17

The military shall be subordinate to the civil power.

Roy 17

The military shall be subordinate to the civil power.

Weiss 22

§ 22. Right to Civilian Government

The military shall be subordinate to the civil power.

O. ECONOMIC AND SOCIAL RIGHTS

Weiss 22

§ 22. Right to Civilian Government

The military shall be subordinate to the civil power.

Roy 20

Economic and Social Rights

Every person has the right to a healthful environment; to a basic education and an opportunity to develop further his potential abilities; to reasonably safe conditions of employment; and to an opportunity to obtain medical care and social insurance protection for unemployment, disability, and old age.

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P. CULTURAL RIGHTS

Weiss 25

§ 25. Cultural Rights

People within the state having a distinct language or culture have the right to conserve the same. This includes the right of the people of a political subdivision to use the language or languages of their choice in their local schools and other public institutions. Private schools are free to teach in any language.

Q. UNENUMERATED RIGHTS

Projet 18

PROJET ARTICLE I, SECTION 18

This enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed.

Weiss 29

§ 29. Unenumerated Rights

The enumeration in this Constitution of certain rights shall not be construed to deny, impair, or disparage other rights retained by the people.

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Enumerated Rights

Sec. 36. The enumeration in this Constitution of certain rights shall not be construed to deny or disparage other rights retained by each person.

Roy 16

This enumeration of rights shall not be construed to deny or impair other rights of the people not herein expressed.

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NOTES

Documents Nos. 24, 25, 26, 27 omitted. They are compiled and presented as one single document [No. 23, supra].

Document No. 24 is taken from project for a Constitution for the State of Louisiana, Vol. 2, 5-41.

Document No. 25 is a Proposal by Delegate Jenkins.

Document No. 26 is a Proposal by Delegate Weiss

Document No. 27 is a Proposal by Delegate Roy

Document 28 is also omitted but may be found supra in information showing dispositions of Tentative Proposals for the meeting of April 17, 1973.

CC/73 Research Staff
Committee on Bill of Rights and Elections
April 30, 1973
Staff Memorandum No. 29

RE: CBRE Request (by Delegate Kendall Vick) for information on the requirements of the U.S. Constitution and laws in the area of voting. In addition, the memo analyzes the pending proposal by Dr. Weiss entitled Right to Vote in light of the case.

A number of recent U.S. Supreme Court decisions affect voting rights. Past decisions have generally held that an individual may not be denied access to the ballot because of some extraneous condition such as race, e. g., Gomillion v. Lightfoot, 364 US 339 (1960), wealth, e. g., Harper v. Virginia Board of Elections, 383 US 663 (1966), or military status, e. g., Carrington v. Rash, 380 US 89 (1965). The Harper case ruled

poll taxes unconstitutional as a denial of equal protection.

In Cipriano v. City of Houma, 395 US 701 (1969), the Supreme Court held that one generally cannot limit the right to vote to "property taxpayers" in a revenue bond election. However, if no special class is singled out, a state may require a 60% vote to pass a bond issue, Dunn v. Blumstein, 405 US 330 (1972). In addition, where a special district exists for a very limited purpose, i. e., a water district for acquiring, storing, and distributing water for farming, the court has permitted only landowners to vote (for the board to govern the water district) with votes based on assessed valuation of lands, Salzer Land Co. v. Tulane Lake Basin Water Storage District, 93 S. Ct. 1224 (1973).

The court has held that durational residence laws are unconstitutional unless the state can demonstrate that such laws are necessary to promote a compelling governmental interest. It rejected arguments by Tennessee that such laws were necessary to insure the purity of the ballot box from "colonization" or "dual voting." It also rejected the knowledgeable voter argument on the basis that most campaigning is done in the last month of the election. While suggesting a 30-day residence requirement limit, the court did allow a 50-day limit in New Mexico where the state showed a need for this period of time to compile accurate voter lists, Marston v. Lewis, 93 S. Ct. 1211 (1973). Where a similar need was shown in Georgia, the court also allowed a 50-day limit but cautioned that this was approaching the outer constitutional limit, Burns v. Fortson, 93 S. Ct. 1209 (1973).

In O'Brien v. Skinner, 93 S. Ct. 79 (1972), the court indicated that a state must provide an opportunity for one in jail awaiting trial to vote although it denied relief in the case in question because the plaintiff had failed to raise the question early enough.

State literacy tests to vote have been the subject of considerable controversy. Although generally permitted, they have been denied to a state with a past practice of racially segregated inferior schools on the basis that blacks that attended such schools in the past would be denied the equal protection of the laws, Gaston County v. United States, 395 US 285 (1969).

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The Gaston case was based on the 1965 Voting Rights Act which suspended literacy tests for voting in states and political subdivisions that had used literacy tests to discriminate against a minority group in the past. The act also provided that a political subdivision could resume literacy tests after it had stopped using them for such discriminations for five years. However, the court said in Gaston that it still could not resume them if the potential voters subject to such literacy tests had been subjected to racially segregated inferior schools.

The 1965 Voting Rights Act also provided that any change in voting procedures and districts in a state with a previous history of discrimination would have to be the subject of a

declaratory court judgment that the change was not discriminatory or a negative report from the U.S. attorney general on whether the change was discriminatory. Recently, the U.S. attorney general ruled that the change in Louisiana to running by divisions in municipal at large elections tended to be discriminatory. This in effect, voided the 1972 act of the Louisiana Legislature which provided for such a change. (See Annex A.)

The 1970 Voting Rights Act completely abolished durational residency requirements for voting for president and vice president and required states to register potential voters up to thirty days before the election.

In the recent case of San Antonio Ind. School District v. Rodriguez, 93 S. Ct. 1278 (1973), the court indicated that while education was not a fundamental right, some identifiable quantum of education is necessary to make meaningful the exercise of other constitutional rights, such as the right to vote. It held, in effect, that Texas was supplying this amount of education in its

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poorer school districts.

In Rosario v. Rockefeller, 93 S. Ct. 1245 (1973), the court held that a state could require a person to register with the party of his choice 30 days before a general election in order to vote in the next party primary.

The courts have generally had stricter tests with regard to the right to vote than with the right to be a candidate. In the latter situation, however, the court has held that a \$1,000 filing fee is excessive and violates the equal protection clause where a candidate has no other alternative such as the filing of a petition with a requisite number of signatures. Nevertheless, the court indicated that a "reasonable" filing fee was permissible, Bullock v. Carter, 92 S. Ct. 849 (1972).

Multimember districts, while under considerable attack, are still permissible. In Whitcomb v. Chavis, 403 US 124 (1971), blacks in an Indiana multimember district had been split into single-member districts. Rejecting the argument, the court said it was not prepared to hold that district-based elections decided by plurality vote are unconstitutional in either single-member or multimember districts simply because supporters of losing candidates have no legislative seats assigned to them.

The proposal by Dr. Weiss reads as follows:

Section _____. Right to Vote

Every citizen who is at least eighteen years old, has registered at least fifty days before an election, and is residing in this state shall have the right to vote. This right may be suspended temporarily only while a person is judicially declared to be of unsound mind or is under an order of imprisonment for conviction of a felony.

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The above section would appear to satisfy all of the requirements of equal protection laid down in the recent court cases with the possible exception of the time limit for registering to vote. Director Gaspard of the Board of Registration informed the Committee on Bill of Rights and Elections that a

30-day time limit before an election for terminating registration was adequate at the present time. In view of this, the Supreme Court might very well hold that 50 days was an unnecessarily long period for cutting off registration before an election in Louisiana. In addition, since Louisiana must register potential voters for up to 30 days before a presidential election, it would be administratively easier to have only one set of books and stop all registration at the same time.

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ASSISTANT ATTORNEY GENERAL

ANNEX A

Department of Justice
Washington, D.C. 20530

APR 20 1973

RECEIVED

APR 24 1973

OFFICE OF
ATTORNEY GENERAL
BATON ROUGE

Honorable William J. Guste, Jr.
Attorney General
State of Louisiana
Department of Justice
Baton Rouge, Louisiana 70804

Dear Mr. Attorney General:

This is in reference to Act 106 submitted by you to the Attorney General pursuant to Section 5 of the Voting Rights Act of 1965, as amended. We received your submission on February 19, 1973. Act 106 provides for the use of divisions or numbered posts for all multi-member bodies in districts, parishes, municipalities, and wards in the state.

Our analysis of this matter reveals that Act 106 would impose a numbered-post requirement on present Louisiana election procedures for multi-member offices. In our view the electoral system as modified by Act 106 significantly reduces the potential for minority candidates to win representation in multi-member offices in jurisdictions such as Louisiana where there has been a pattern of racial bloc voting. The Attorney General has interposed objections under Section 5 of the Voting Rights Act to similar numbered-post systems in a number of other jurisdictions. We are accordingly unable to conclude, as we must under the Voting Rights Act, that implementation of 106 will not have a discriminatory racial effect and therefore I must, on behalf of the Attorney General, interpose an objection under Section 5. As the law provides, Act 106 may be brought

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before the District Court for the District of Columbia notwithstanding this objection and may be implemented should that Court grant a declaratory judgment that the Act will have neither the purpose nor effect of discrimination on the basis of race.

While we accept and appreciate the fact that the legislative purpose in passing this statute was to simplify and expedite the election process, Section 5 requires us to examine the effect as well as the purpose of such changes. Should the legislature choose to make other revisions of this type we would be pleased to give the matter prompt consideration.

Inasmuch as the United States District Court for the Western District of Louisiana has deferred proceeding in Lada v. City Council of Lake Charles (CA No. 18,275) involving Act 106 until the Attorney General completed his review, and Reine v. Town of Sorrento Municipal Democratic Committee (CA No. 73-120), challenging an election held pursuant to Act 106, has been recently filed in the United States District Court for the Middle District of Louisiana, I am taking the liberty of furnish


ing a copy of this letter to both Courts. However, nothing contained herein should be construed in any way as addressing the constitutional issues pending before those Courts.

In view of your opinion of February 19, 1973, suspending the application of Act 106 to 63 municipal primaries held March 24, 1973, and the statement of Mr. Kenneth C. DeJean of your office in his telephone conversation with departmental attorney Joshua R. Treem

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on March 12, 1973, that the suspension would be effective through all runoffs necessitated by the results of the March 24 primaries, we would appreciate being notified whether you will extend the prohibition on the use of Act 106 to any other election, including the municipal general elections to be held this year.

Sincerely,


STANLEY POTTINGER
Assistant Attorney General
Civil Rights Division

CC/73 Research Staff
Committee on Bill of
Rights and Elections
May 2, 1973
Staff Memorandum No. 30

RE: CBRE Request (by Delegate Vick) for information on the right to personal liberty (criminal procedure rights) recognized by the U. S. Constitution and the extent to which proposed sections of the rights article meet or surpass these rights.

Section 'I. Personal Liberty (Procedural Rights) in Document 23 includes Sections 10, 11, and 12 of Article I of the Law Institute Project; Delegate Weiss's proposed Sections 12, 15, and 16; Delegate Jenkins' proposed Sections 12, 13, 14, 15, 16, 17, and 35; and Delegate Roy's proposed Sections 11, 12, and 13.

The comparable provisions are the Fifth and Sixth Amendments to the U. S. Constitution, particularly as they are made obligatory on the states by virtue of the due process clause of the Fourteenth Amendment.

The U. S. Supreme Court has held that the following provisions are binding on the states no matter how minor the offense involved because they are fundamental rights and hence protected by the due process clause:

1. To a speedy public trial, In re Oliver, 333 US 257, 272 (1948),
2. To be informed of the nature and cause of the accusation, Smith V. O'Grady, 312 US 329 (1941),
3. To confront the witnesses against him, Pointer v. Texas, 380 US 400 (1965),
4. To compulsory process for obtaining witnesses in one's favor, Washington v. Texas, 388 US 14 (1967),
5. Not to be subject to double jeopardy, Benton v. Maryland, 395 US 784 (1969),

6. To remain silent, absent a grant of immunity from prosecution, Malloy v. Hogan, 378 US 1 (1964) and Murphy v. Waterfront Commission, 378 US 76 (1964).

The Supreme Court has recently held that an accused in any criminal proceeding has the right to be represented by his retained counsel at all critical stages. Indigents who cannot afford to retain counsel have the right to counsel provided by the state in any case in which imprisonment is imposed as a penalty. "We hold, therefore, that absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he is represented by counsel at his trial," Argersinger v. Hamlin, Sheriff, 92 S. Ct. 2006 (1972). Under the ruling, only fines or other penalties not involving imprisonment may be imposed for even minor traffic offenses without the defendant being granted the right to counsel.

The right to trial by jury is more limited. Under the ruling in Duncan v. Louisiana, 391 US 145, 159 (1968), the right to a jury trial for a criminal offense is limited to cases in which the potential punishment is imprisonment for six months or more or a fine of \$500.00 or more. In addition, the jury need not consist of twelve persons but may be as few as six.

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Finally, the federal requirement that felonies must be prosecuted by grand jury indictment does not apply to the states.

The Project 10, 11, and 12 tend to recognize only the minimum guarantees of the federal constitution and, as interpreted in the past, less than the minimum.

The Weiss proposal adds two rights not included in the federal guarantees, the right to be informed of the reasons for any detention and the right to an interpreter free of charge if the accused does not speak the language of the court. The latter is recognized in the 1970 Illinois Constitution. It is silent on the method of bringing an accused to trial in criminal cases.

The Jenkins proposal is silent on obtaining compulsory process. Jenkins 15 should probably read "six months or more" in lieu of "more than six months" to conform to the Duncan case.

In sum, the minimum guarantees of citizens against state action already provided for by virtue of the Fourteenth Amendment of the U. S. Constitution in this area of criminal procedural rights could be stated as follows:

Section _____. Rights of Every Accused Person

A person accused of any offense has the right to a speedy public trial, to be informed of the nature and cause of the accusation, to confront witnesses against him, to compulsory process for obtaining witnesses in his favor, to remain silent without a grant of immunity from prosecution, and to be free from double jeopardy for the same offense.

Section _____. Right to Counsel

No one may be imprisoned for any offense unless he is represented by counsel at his trial.

Section _____. Additional Guarantees

Every person accused of an offense punishable by imprisonment for six months or more has the right to a trial by

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jury in the parish in which the offense was committed unless the venue be changed.

The \$500.00 for the Duncan case is not included in the latter section because it may not stand in the future with inflation, etc. The committee may wish to recognize additional criminal procedural rights in the Louisiana Constitution which are over and above those already recognized in the U. S. Constitution. Mr. Roy's proposals on the grand jury, for example, are apparently intended to provide such additional guarantees.

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CC/73 Research Staff
Committee on Bill of
Rights and Elections
May 2, 1973
Staff Memo No. 31

RE: CBRE Request (by Delegate Weiss) for background information on the inclusion of a section on cultural rights in the rights article of the Louisiana Constitution.

Cultural rights have not been included traditionally in American constitutions. In recent years, however, some of the newer state constitutions have made reference to cultural rights. The 1972 Montana Constitution provides for the protection of the cultural rights of American Indians as follows:

"The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity."

The New Mexico Constitution has a provision which prohibits discrimination against children of Spanish descent and provides for teachers to learn both English and Spanish but falls short of recognizing cultural rights as such for persons of Spanish descent.

Cultural rights are recognized in the Universal Declaration of Human Rights (1948) and in the constitutions of some sovereign states.

Louisiana is one of the few states in the Union with a substantial native population speaking a language other than English, namely the French Acadians. In addition, among blacks, there is a sense of distinct cultural identity. Throughout the United States, in recent years, a growing ethnic awareness has led to a tendency to reject the melting pot theory in favor of variety. President Kennedy once said it in a major speech in which he expressed an American desire to make the world safe for diversity.

Any section in the rights article on cultural rights should probably meet two tests; it should be based on a universal rather than a narrow ethnic appeal and it should be practicable.

The proposal by Dr. Weiss appears to meet this criteria.

It reads as follows:

Section _____. Cultural Rights

People within the state having a distinct language or culture have the right to conserve the same. This includes the right of the people of a political sub-

division to use the language or languages of their choice in their local schools and other public institutions. Private schools are free to teach in any language.

As Judge Allen Babineaux of Lafayette stated in his letter of April 16, 1973, to committee members in support of the proposed section, its adoption would not mean the wholesale replacing of English by French in the parishes of Acadiana. It would only mean that some courses might be taught in French in some parishes depending upon the wishes of the people as expressed through their local school boards. As a practical matter, English will continue to be the dominant language of the state. It would merely provide greater freedom in the use of other languages. The 1921 Louisiana Constitution, Article XII, Section 12, prohibits this.

In addition, smaller ethnic groups could preserve their language and culture through the use of private schools. With greater freedom for cultural rights, Louisiana might obtain a number of foreign language institutions which could not help but benefit its people in terms of the development of international trade and understanding.

The Weiss proposal is stated in more universal terms than either the Montana or New Mexico provisions. At the same time, it does suggest a practical method for preserving the cultural variety of this state.

From a technical standpoint, the first sentence of the Weiss proposal might be shortened to read as follows, "People with a distinct language or culture have the right to conserve them."

CC/73 Research Staff
Committee on Bill of
Rights and Elections
May 3, 1973
Staff Memorandum No. 32

RE: CBRE Request to review the proposals on the right to property by Delegates Jenkins and Weiss and to prepare suggested language for such a section that might be acceptable to the committee.

Dr. Weiss expressed concern that there be just and adequate compensation in expropriation situations. Mr. Jenkins wanted something in the section to prevent the expropriation of entire businesses and industries as well as greater freedom to enjoy and dispose of property. Mr. Roy expressed an interest in not unduly hampering the state in cases where expropriation is necessary for a public purpose. Mr. Guarisco expressed interest in providing adequate compensation in cases of "appropriation" (See CBRE Staff Memo No. 18).

The committee has already adopted tentatively the following section:

Section _____. Due Process of Law

No person shall be deprived of life, liberty, pro-

erty, or other rights without substantive and procedural due process of law.

The Fourteenth Amendment to the U. S. Constitution provides in part as follows:

"...nor shall any State deprive any person of life, liberty, or property without due process of law..."

The Supreme Court under a long line of decisions has held that, by virtue of the due process clause of the Fourteenth Amendment, a state may not take or damage private property except for public purposes and upon payment of just compensation (See e.g., Griggs v. Allegheny County, 369 US 84 (1962)).

Hence, it is not necessary to have a special provision in the Louisiana Constitution to protect private property from expropriation without payment of just compensation unless there is a desire to restrict further the state's power to expropriate.

However, for reasons of tradition and sensibility, such a provision could be included as follows:

Section _____. Right to Property

No property shall be taken except for public purposes and upon payment of just compensation.

The use of the word "taken" could be explained in a comment to include either "appropriation" or "expropriation" of property which could meet the concern of Mr. Guarisco with regard to the special meaning in Louisiana of "appropriation." "Taken" is understood to include the concept of "damaged."

To restrict further the expropriation power of the state or to expand further the right to property concept tends to lead to problems involving zoning laws, private building restrictions, pollution control laws, court-created nuisance concepts, forced heirship, donations and collation, anti-discrimination laws, and the seizure of contraband.

-2-

Since it appears that the committee does wish to expand further the right to property despite these problems, the following language is suggested as a basis for discussion. Some of the problems with language of this type are discussed below in the proposed section:

Section _____. Right to Property

No one shall be denied the right to acquire private property by voluntary means, and to own, enjoy, and dispose of it subject only to the police and taxing powers. No property may be taken except for a public purpose and upon payment of just compensation. No law shall authorize the taking of intangible assets or of movable property except for contraband or in dire emergencies to save lives.

No property may be taken unless the probable amount of just compensation has first been paid to the owner or into court for his benefit. When an owner has received less than just compensation as subsequently ascertained

by a jury unless waived, he shall be entitled to the additional compensation plus reasonable interest and attorneys fees as well as such penalties as the legislature may provide.

In Lynch v. Household Finance Corp., 92 S. Ct 113 (1972), the U. S. Supreme Court stated that there was no real dichotomy between personal liberties and property rights. Holding that rights in property are basic civil rights, it stated, "It cannot be doubted that among the civil rights intended to be

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protected from discriminatory state action by the Fourteenth Amendment are the rights to acquire, enjoy, own, and dispose of property" (See also Shelley v. Kraemer, 334 US 1, 10 (1947)). The first sentence of the proposed section has language similar to that used by the court in the above-cited cases. Making the right subject only to the police and taxing powers would make it clear that these powers would only be limited by due process as at present. This would permit the due process test to continue to be the standard in determining the constitutionality of zoning laws, private building restrictions, pollution control laws, and nuisance concepts developed by the courts in the past.

The above language would, however, have the effect of abolishing the concept of forced heirship and certain interpretations in Louisiana law involving donations and collation. These provisions at present have the effect of forcing a person to leave his property to his children whether he wants to or not. Since under the above section, one could freely "dispose" of property, the state could no longer "force" property to be left to children against the wishes of the property owner unless, of course, the children were still minors and there were no other provisions made by the responsible parent for their rearing and education.

The third sentence in the proposed section would prohibit the seizure of intangible assets; this would presumably serve as a deterrent to action such as occurred with President Truman's seizure of the steel industry [See Youngstown Co. v. Sawyer, 343 US 579 (1952)]. In addition the sentence would

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prohibit the seizure of movable property except for contraband and in dire emergencies to save lives. Confiscation of contraband, such as goods smuggled into the country or other property associated with a crime, has long been recognized as an exception to the general right to property.

The second paragraph of the proposed section takes into account the present quick-taking statute in Louisiana (See CBRE Staff Memo No. 18) which facilitates the construction of highways. At the same time it would provide for a subsequent jury trial to insure that just compensation has actually been paid.

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CC/73 Research Staff
Committee on Bill of
Rights and Elections
May 3, 1973
Staff Memorandum No. 33

RE: Rights of the Child. CBRE Request (by Delegate Weiss) for background information on including in the rights article of the Louisiana Constitution, a section on rights of the child.

Children, or persons below the age of majority (i.e., in Louisiana, the age of majority since July 26, 1972, has been declared to be eighteen years of age), have generally not been accorded the same rights as adults. The assumption is that minors need special treatment at the hands of parents, courts, police, the state, schools, and other institutions. The theory is that a case involving a youth in violation of the law is not the same type of case as one involving an adult. Accordingly, juvenile courts often operate on a more flexible set of standards and procedures than are used in adult courts. More stress is often placed on rehabilitation. However, when minors are not considered criminal defendants, they generally have not been protected by standards of fairness and due process, such as the right of counsel, trial by jury, and the right to be informed of the nature and cause of the accusation.

In 1967, the U. S. Supreme Court held that detention of a minor in a juvenile home was tantamount to punishment in prison. While acknowledging that special treatment for juvenile offenders was necessary, the court held that a minor was a "person" under the Fourteenth Amendment and hence entitled to due process protection, including notice to prepare a defense, right to counsel, right to remain silent, right of confrontation, and cross-examination.

In a subsequent case involving the wearing of armbands in school, the court stated:

In our system, state-operated schools may not be enclaves of totalitarianism. School officials do not possess absolute authority over their students. Students in school as well as out of school are "persons" under our Constitution. They are possessed of fundamental rights which the state must respect, just as they themselves must respect their obligations to the state. (Tinker v. Des Moines School District, 393 US 503 (1969))

The general direction of Supreme Court decisions in this area of child rights in general, has been toward recognizing that minors have many of the procedural safeguards possessed by adults. At the same time, the court has recognized the special needs of juvenile court proceedings, In re Winship, 397 US 358, 359 (1970).

Nevertheless, there are still many unresolved questions in the area of child rights. See Annex A entitled, "Do We Need a Bill of Rights for Children?"

The 1972 Montana Constitution established constitutional protection for the child in a section as follows:

Section 15. Rights of Persons Not Adults

The rights of persons under 18 years of age shall include, but not be limited to, all the fundamental rights of this Article (i.e., the Bill of Rights) unless specifically precluded by laws which enhance the protection of such persons.

The proposal by Dr. Weiss is patterned after the Montana provision and reads as follows:

Section _____. Rights of the Child

Persons below the age of majority may exercise all recognized rights unless specifically precluded by laws which enhance the protection of such persons.

The Weiss proposal, as does the Montana proposal, creates a presumption that a child has rights which the state may modify by law to enhance the protection of the child.

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NOTES

Staff Memo No. 33, Appendix A, is omitted. See L. Richette, "Do we need a Bill of Rights for Children?" Britannica Book of the Year, 1973, 408-409.

CC/73 Research Staff

Committee on Bill of
Rights and Elections

May 3, 1973

Staff Memo No. 34

RE: Rights of the Family. CBRE Request for staff study of Tentative Proposals No. 19 and 20 on the rights of the family with a view to suggesting language which might be acceptable to the committee.

Tentative Proposal No. 19 by Dr. Weiss was as follows:

Section _____. Rights of the Family

- (A) The right of marriage between a man and woman of marriageable age and their right to have a family is recognized. No marriage shall be valid if entered into without the free and full consent of the spouses.
- (B) The paramount right of parents to rear their children in accordance with their own convictions is recognized. Parents and children have mutual duties and responsibilities.

An amendment to Tentative Proposal No. 19 made by Mr. Jenkins (Tentative Proposal No. 20) is as follows:

Section _____. Rights of the Family

No law shall abridge the right of marriage between a man and woman of marriageable age and their right to have a family. Nor shall any law deny the right of parents to rear their children in accordance with their own convictions. Parents and children have mutual duties and responsibilities.

May 3, 1973

Staff Memo No. 35

The apparent intent of the proposals is to recognize the freedom to marry and to recognize further that parents have rights with regard to the rearing of their children with which the state should not interfere.

There are comparatively few restrictions on the freedom to marry in Louisiana. The prohibition against miscegenous marriages, which had been previously held to be unconstitutional by the federal courts, was abolished by Act 256 of the 1972 Louisiana Legislature along with other "Jim Crow" laws (See La. Civil Code, Art. 94). The minimum age requirements for marriage are not regarded as objectionable. Prohibitions against close blood relatives marrying are generally regarded as reasonable. While adultery is not a crime in Louisiana, a person guilty of it was nevertheless prohibited from subsequently marrying his mistress after a divorce was obtained on account of adultery. This restriction on marriage, which caused a number of problems, was also repealed by Act 625 of the 1972 Louisiana Legislature. (See La. Civil Code, Art. 161). Hence, the present restrictions on marriage in Louisiana are quite minimal and it is an open question as to whether the freedom to marry needs constitutional protection.

The other concern regarding the paramount right of parents to rear their children in accordance with their own convictions has tended to run into conflict with the compulsory education laws of the states. In Wisconsin v. Yoder, 92 S. Ct. 1526 (1972), the United States Supreme Court held that family rights predominate over state interests in requiring a child to attend school until age 16 and that (Amish) parents for religious reasons may have

(2)

their child stop attending school at the eighth grade. In the case, the Amish were granted an exception to the requirement of keeping their children in school to age 16, but the court implied that the compulsory education law was valid to the extent that it tended to insure the child in question a basic education. Other state-parent conflicts revolve around the health and welfare of the child in such matters as necessary blood transfusions and child abuse.

In view of all of the above, if the committee considers that family rights should be the subject of special constitutional protection, the following language is suggested as a basis for discussion:

Section ____ . Rights of the Family

Laws restricting the right of a man and woman to marry shall be limited to reasonable requirements as to health, full consent, waiting period, registration, minimum age and parental consent in the case of minors, and restrictions on the marriage of relatives.

Subject to reasonable minimum standards of health, education, and welfare of the child established by law, parents have the paramount right to rear their children in accordance with their own convictions.

(3)

RE: Right to Direct Participation in Government. CBRE Request for a staff review of the proposal by Dr. Weiss for a section in the rights article on the right to direct participation in government with a view to suggesting language which might be acceptable to the committee.

The proposal by Dr. Weiss is as follows:

Right to Direct Participation in Government

(A) Everyone has the right to expect governmental agencies to afford reasonable opportunity for citizen participation before making major decisions as may be provided by law.

(B) No person shall be denied the right to examine public documents or to observe the deliberations of public bodies except in cases in which the demand of privacy clearly exceeds the merits of public disclosure.

The proposal is apparently adopted from the 1972 Montana Constitution which provides for the following:

Section 8. Right of Participation

The public has the right to expect governmental agencies to afford such reasonable opportunity for citizen participation in the operation of the agencies prior to the final decision as may be provided by law.

Section 9. Right to Know

No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

Local and state public bodies in Louisiana have frequently met in executive session to thrash out controversial issues before their open public sessions begin. At the latter sessions, agreements reached in executive session are publicly approved often with little debate. The public is thus not involved in the final decision-making process. Often no minutes are taken of the executive session. This, apparently, is the typical situation which this proposal seeks to discourage.

A number of problems arise in connection with opening up public records and the decision-making process. What is a public document? Is an internal staff memo a public document? If so, would this tend to hamper a staff in giving frank and blunt advice to a public body? What about issues which a public body wants investigated? Would disclosure hamper the investigation? What documents, other than personnel records, should be regarded as confidential?

The balancing of the demands of privacy versus the merits of public disclosure can be the subject of considerable controversy. It is suggested, if a right to participation section is to be adopted, that there be a requirement that those cases involving privacy should be provided for by law to minimize litigation. This change could be accomplished by a revision of the second paragraph of the Weiss proposal to read as follows:

No person shall be denied the right to examine public documents or to observe the deliberations of public bodies except in cases in which the demands of privacy clearly exceed the merits of public disclosure.

The section would obviously be intended to apply to both state agencies and political subdivisions and this could be stated in the comment to accompany the proposal.

For the convenience of the committee, U.S. and Louisiana public information acts are attached as Annexes A and B respectively.

NOTES

Staff Memo No. 35, Appendix A & B, are omitted. See 5 U.S.C. §552 and La. R.S. 49:952 [Public Information].

CC/73 Research Staff
Committee on Bill of Rights and Elections
May 16, 1973
Staff Memorandum No. 36

RE: Abolition of Sovereign Immunity

Under the proposed section entitled "Access to Courts," the committee has provided the following. "Neither the state nor any person shall be immune from suit." A question arises as to what extent a public officer, i.e., an executive officer, legislator, or judge would lose immunity from suit in connection with his official acts. This memo examines that issue.

The doctrine of sovereign immunity is based on the common-law concept that the king can do no wrong. In recent years, the rationale behind the concept has come under increasing attack as it is discovered that the king (i.e., the government) can, and on occasion, does do wrong.

Although based on the common law, thirty-one state constitutions have a provision on the subject. Such provisions are of four basic types:

1. Twenty-one state constitutions (including that of La.) have a provision authorizing the legislature to waive state immunity;
2. Four state constitutions (e.g., North Carolina, Idaho, Nevada, and Utah) set forth a specific procedure for claims against the state;
3. Three state constitutions (e.g., Alabama, Arkansas, and West Virginia) specifically prohibit suits against the state, and
4. Three states (Nebraska, Illinois, and Montana) specifically waive sovereign immunity.

The provisions for the three latter states are as follows:
1875 Nebraska Const. (as amended), Article V, Section 22.

The state may sue and be sued, and the Legislature shall provide by law in what manner and in what courts suits shall be brought.

1970 Illinois Const., Article 13, Section 4.

Except as the General Assembly may provide by law, sovereign immunity in this State is abolished.

1972 Montana Const., Article II, Section 18.

The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Of the three states specifically waiving sovereign immunity, the Montana provision comes closest to the proposal for the Louisiana Constitution. It is to be noted, however, that the

Montana provision does not provide for abolishing the immunity of governmental officials. Only the immunity of the governmental entity itself is abolished.

The Montana provision is included in its rights article, whereas the more conditional waivers of immunity in the Illinois and Nebraska Constitutions are not in their respective rights articles.

While there can be no certainty as to how courts might interpret the proposed Louisiana provision, on its face it appears to abolish immunity for governmental officials acting in their official capacities. This would go beyond the waivers of immunity of any other state.

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Besides abolition of sovereign immunity by constitutional provision or statute, immunity is also being abolished by court decision. In Krause v. State of Ohio, 28 Ohio App. 2d 1 (1971), a plaintiff sued the State of Ohio for the recovery of damages from the state for the wrongful death of plaintiff's decedent, alleged to have been caused by the activity of the Ohio National Guard on the campus of Kent State University in May of 1970. Reversing previous decisions, the court summarized its decision as follows:

1. The State of Ohio is responsible under the doctrine of respondeat superior for the tortious acts of its authorized agents. A complaint alleging the tortious conduct of an agent while engaged in authorized activity on behalf of the state states a cause of action.

2. The doctrine of sovereign immunity cannot be supported in Ohio in the light of the history of Section 16, Article I of the Ohio Constitution, as amended in the Convention of 1912, and the legislative policy reflected in the general procedural statutes governing suability in Ohio. Moreover, a special shield for the state against responsibility for its tortious acts is unjust, arbitrary, and unreasonable and results in discrimination prohibited by the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution.

3. If the doctrine of sovereign immunity had any vitality in Ohio after the amendment of Section 16, Article I, in the Convention of 1912, it was derived from judicial interpretation. As a creation of the courts, the doctrine can be removed by the judiciary.

4. The possibility that the removal of sovereign immunity may impede or inhibit agents of the state in the proper performance of necessary, authorized functions on behalf of the state can be obviated by the retention of immunity from civil liability for individual agents of the state when performing in an authorized capacity on the state's behalf while at the same time imposing liability on the state when the activity is tortious.

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The interesting aspect of the Krause case is that the court, while abolishing sovereign immunity in Ohio, abolished it only for the government as such and not for its agents on the basis that it might impede or inhibit its agents in performing their governmental functions. The court also attempted to abolish the immunity on the basis that a special shield for the state results in unreasonable discrimination prohibited by the Fourteenth Amendment.

In Louisiana, sovereign immunity is also under court attack, the courts tending whenever possible, to construe statutes as waiving the immunity of state agencies. Normally, the courts construe a grant of power to "sue and be sued" as a waiver of immunity. See Reynold v. State Department of Highways, 255 La. 425, 231 So.2d. 375 (1970) (Appendix A).

Just this year, the Louisiana Supreme Court went even further, holding in Board of Cmrs. of the Port of New Orleans v. Splendours S. & E. Co., 273 So.2d 19 (1973), that the Port of New Orleans was not immune and adding in dictum that "other such boards and agencies are not immune from suit in tort."

In the opinion, the court stated that the "doctrine of sovereign immunity in Louisiana did not have its origin in our State Constitution, but in the jurisprudence," indicating that since this was the case, the courts could overrule the doctrine which granted immunity to state agencies. (See Appendix B.)

Another possible problem with the proposed Louisiana provision is that it only refers to the state and not to its political subdivisions. If the provision is intended to cover political subdivisions as well, it may be best to so state in the provision itself. Under the old Illinois Constitution, for

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example, the courts did not extend the term "state" to include units of local government.

If the committee wishes to retain immunity for governmental officials in the performance of their official functions while abolishing sovereign immunity for the state and its political subdivisions, the following language is suggested in lieu of that now proposed: "Neither the state, its political subdivisions, nor any private person shall be immune from suit." Under this language, a governmental official would presumably still be immune from suit for his official acts but in his private actions he would be liable like any other private person. The above would parallel and yet be slightly broader than the comparable Montana provision.

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NOTES

Staff Memo No. 36, Appendix A&B are omitted. See the following:
Reymond v. Dept. of Highways, 231 So.2d 375 (La. 1970).
Board of Comm. of Port of New Orleans v. Splendour, 273 So.2d 19 (La. 1973).
Decisions set out in full in Appendices.

CC/73 Research Staff

Committee on Bill of Rights
and Elections

May 16, 1973

Staff Memorandum No. 37

RE: Searches and Seizures

"Section 4--Searches and Seizures" of the proposed rights article reads:

Every person shall be secure in his person, houses, papers, and other possessions against unreasonable searches, seizures, or invasions of privacy. No warrant shall issue without probable cause, supported by oath or affirmation particularly describing the place to be

searched, the persons or things to be seized, and the lawful purpose or reason for the search. Any person adversely affected by a search or seizure conducted in violation of this section shall have standing to raise the illegality of that search or seizure in the appropriate court of law. No law shall permit the interception or inspection of any private communication or message.

This section is directly related to the Fourth Amendment to the U. S. Constitution, which reads:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment has been held to make the Fourth Amendment applicable to the states, so Section 4 of the proposed rights article can in no way limit or diminish the guaranties provided by the Fourth Amendment; but can only enlarge or add to those rights and protections.

On this point Section 4 of the proposed rights article presents several questions. (1) Does the provision granting standing to challenge an unlawful search to "any person adversely affected" thereby make any significant change in the present status of the standing question? (2) What effect, if any, will the new section have on searches for and seizures of records and other papers held by third parties? (3) Does the new provision bar the interception of communications with the consent of one of the parties thereto? (4) Can the proposed section "cement" the exclusionary rule of Mapp v. Ohio, 367 U.S. 463 (1960), into Louisiana law? (5) Would the new section affect civil liability for its violation?

(1) Does the provision granting standing to challenge an unlawful search to "any person adversely affected" thereby make any significant change in the present status of the standing question?

At present, the test for standing to object to an unlawful search and seizure and to suppress evidence gained through an unlawful search and seizure as stated in Jones v. U. S., 362 U.S. 257,261 (1959), and quoted as the rule in Alderman v. U.S., 394 U.S. 165,173 (1968), see also U. S. v. Nix 465 F 2d 90 (1972), is:

"In order to qualify as a 'person aggrieved by an unlawful search and seizure' one must have been a victim of a search and seizure, one against whom the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search and seizure directed at someone else. . ."

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The defendant must allege that he is a victim of an invasion of privacy to challenge the legality of a search. Alderman (supra) specifically states that evidence obtained through an unlawful search is objectionable only as to that person whose right of privacy was unlawfully disturbed.

The new language in Section 4 providing that "any person adversely affected" has standing to challenge the legality of a search probably extends the protection against unreasonable searches and seizures to defendants against whom evidence

gathered as a result of an unlawful search is offered, whether or not his right to be secure in his person, house, papers, and effects were violated, effecting a substantial change in the status of the law.

(2) What effect, if any, will the new section have on searches for and seizures of records and other papers held by third parties?

The proposed section makes no special provision for protection of records of bank accounts and other similar records usually held by third parties. It does protect private communications or messages (see the last sentence of the section), which should include bank statements sent to the party accused or being investigated. However, records in the hands of banks or other fiduciaries seem not to be affected by the new proposal.

Records, papers, etc. are protected by the Fourth Amendment from unreasonable searches and seizures as effects of the individual, and as an invasion of privacy. Mancusi v. De Forte, 392 U.S. 364 (1968). Records should still be covered by the new provision, the present standards being applicable.

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(3) Does the new provision bar the interception of communications with the consent of one of the parties thereto?

The Supreme Court has not ruled on the constitutionality of 18 USC 2511 (2) (c), a federal statute allowing interception by one acting under color of law of a wire or oral communication when he is a party to the communication or when he has the prior consent of one of the parties to the communication.

A similar, but broader statute, enacted by New York (N.Y. Code Crim. Proc. §813-a), which allowed eavesdropping by ex parte order upon showing probable cause and allowing a 60-day period of surveillance, was declared unconstitutional by the Supreme Court. Berger v. N.Y., 388 U.S. 41 (1967). The rationale of the decision was that the failure of the statute to require a description of the communications sought to be "seized," allowing a blanket authorization to the law enforcement agencies to "seize" miscellaneous communications, and that the 60-day surveillance period, which could be extended without a second showing of probable cause, was an unreasonable duration, authorizing the officer to continue surveillance beyond a reasonable time at his own discretion. This case does not necessarily affect the one-sided consent authorization provided by 18 USC 2511 (2) (c). It does, however, change the test for coverage by the Fourth Amendment from the rule of Olmstead v. U.S., 277 U.S. 438 (1928), and On Lee v. U.S., 343 U.S. 747 (1951), requiring a physical trespass of some sort before a "search" can be said to have been effected. Berger held that the use of electronic devices to "capture" a conversation is a "search," covered by the Fourth Amendment; and is limited by the same standards of reasonableness and probable

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cause as a conventional search.

One lower court has ruled on the constitutionality of 2511 (2) (c), holding that the chapter on its face is constitutional. U.S. v. Becker, 334 F. Supp. 546 (D.C. N.Y. 1971). Other lower courts have cited Becker, applying the same standards to interceptions as they would conventional searches and seizures. U. S. v. Fiorella, 468 F. 2d. 688, (2nd Cir. 1972); U. S. v. Tortorello, 342 F. Supp. 1029 (D.C. N.Y. 1972); U.S. v. Mainello, 345 F. Supp. 863 (D. C. N. Y. 1972). These cases deal with warrant taps, and it seems from the cases that an interception with one-sided consent would not be declared to be an unconstitutional infringement on Fourth Amendment rights.

The new blanket prohibition of interception of private communications would seem to prohibit even one-sided consent interceptions, makes quite an innovation in this area, prohibiting any interception of a private communication.

(4) Can the proposed section "cement" the exclusionary rule of Mapp v. Ohio, 367 U. S. 463 (1960), into Louisiana law?

The rule of Mapp v. Ohio (evidence obtained in violation of the Fourth Amendment is not admissible) is not incorporated into the proposed section any more than it is in the Fourth or Fourteenth Amendments of the U. S. Constitution. The exclusionary rule is a means of enforcing the Fourth Amendment and is not technically required by that amendment. The proposed language is almost identical to that of the Fourth Amendment and it is a fair assumption that should Mapp v. Ohio be overruled or the rule of Weeks v. U. S., 232 U.S. 383 (1914), altered, this section's interpretation would float on the tides of the Fourth Amendment and that the rules of

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evidence would be cut free should the Fourteenth Amendment be held not to make the exclusionary rule applicable to the states.

Thus while the proposed section on searches and seizures makes several major innovations area, it does not bolt down the present interpretations or methods of application.

(5) Would the new section affect civil liability for its violation?

Civil liability for unreasonable search and seizure in Louisiana is based on general tort law, and comes out of a combination of rights granted by the Fourth Amendment and duties imposed by Civil Code Article 2315. Wilde v. City of New Orleans, 12 La. Ann. 15 (1857); McGary v. Lafayette, 4 La. Ann. 440 (1849); Larhet v. Forgay, 2 La. Ann. 524 (1847). A later case indicates that the basis for recovery remains the same. Banks v. Food Town, 98 So. 2d 719 (1st Cir., 1957). Recovery is not dependent upon a special constitutional provision or special statute, as is the case federally. Because the new section expands the rights of the individual, and these rights would be protected by CC 2315, the tort would be expanded to cover the larger area of protection. No additional provisions need be made to preserve the action for damages because of its independent basis.

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CC/73 Research Staff
Committee on Bill of
Rights and Elections
May 16, 1973
Staff Memorandum No. 38

RE: Federal-State Double Jeopardy

"Section 13 - Initiation of Prosecution" of the proposed rights article reads:

Section 13. Initiation of Prosecution

Prosecution shall be initiated by indictment or information, but the prosecution of misdemeanors may be initiated by affidavits. No person shall be held to answer for capital crime, or felonies necessarily punishable by hard labor except on indictment by a grand jury, unless he specifically waives the necessity of the indictment. No person shall be twice put in jeopardy of life or liberty for the same offense, except on his own application for a new trial or where there is a mistrial or a motion in arrest of judgment is sustained.

This language recites the general double jeopardy protection provided by the Fifth Amendment to the U.S. Constitution, which is binding on the states by virtue of the Fourteenth Amendment.

This section leaves the double jeopardy protection unchanged, including the "separate sovereignty" rule with respect to double jeopardy. The separate sovereignty rule allows prosecution for an act or offense even if the defendant has been convicted or acquitted by another sovereignty for the same or similar offense. This rule operates between the state and any other sovereignty, including the United States, other states, and other countries. It thus allows state prosecution after a federal conviction or acquittal for the same offense.

Although Waller v. Florida, 397 U.S. 387 (1969), touched on the problem by holding that the rule did not apply between a state and its subdivisions, it left the application of the rule with respect to federal and state prosecutions untouched.

This problem can be alleviated as to state prosecutions after federal conviction or acquittal by state statute or constitutional provision.

California enacted such a statute in 1872 and it was held to bar state prosecution of a defendant who had been convicted by a foreign sovereignty for the same offense. Coumas v. Superior Court of California, 31 Cal 2d 682 (1948). A copy of the California provisions relating to this question are attached as Annex A.

An incorporation of such a provision into Section 13 of the proposed rights article would protect an accused from double jeopardy by state prosecution after federal conviction or acquittal.

Such an amendment could be provided for by substituting the following sentence for the last sentence of the proposed section:

"No person shall be twice put in jeopardy of life or liberty for the same offense even if convicted or acquitted by a court of competent jurisdiction of another sovereignty."

Such an amendment would result in the protection of an accused from being placed in jeopardy by Louisiana when he

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has either been convicted or acquitted for the same offense by a court of another sovereignty, i. e. the United States, another state, or a foreign country.

Louisiana could not, of course, prevent trial in federal court once an accused was tried in a state court for the same or a similar offense. Only federal action could achieve this. If the policy of preventing double convictions were to be strongly urged in this area, it would be possible for the state to adopt a provision that a subsequent federal conviction for an offense would result in an extinguishment of the earlier Louisiana conviction for the same or similar offense.

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NOTES

Appendix setting out the text of Calif. Penal Code, §§ 656, 687 and 793 is omitted.

CC/73 Research Staff
Committee on Bill of
Rights and Elections
May 14, 1973
Staff Memo. No. 39

RE: Judicial Construction of the freedom of speech guarantee of the First Amendment to the United States Constitution

The First Amendment to the United States Constitution provides:

Congress shall make no law...abridging the freedom of speech, or of the press;...

This memorandum enumerates the major propositions established by Supreme Court decisions construing this provision.

1. The guarantee of the First Amendment is not to newspapers or to the "press" alone; it protects all citizens. The press has no greater rights in this regard than any other person.

2. The First Amendment, though stated as a prohibition on Congress alone, restricts the states with the same rigor it restricts Congress, through incorporation in the due process clause of the Fourteenth Amendment, Fiske v. Kansas, 274 US 380 (1927).

3. The First Amendment prevents any system of licensing the press; everyone has the freedom to publish without any license, Lovell v. Griffin, 303 US 451 (1938). The same cannot be true for radio and television broadcasting, where licenses are required because of the scarcity of available frequencies, National Broadcasting Co. v. United States, 319 US 190 (1943).

4. The amendment forbids previous restraints on publication, i.e. censorship of the press, Near v. Minn., 283 US 697 (1931). A slight exception may have arisen in the Pentagon Papers

case in which the Court said in dictum that a serious threat to national security might allow the government to prohibit publication of certain materials. However, that exception is a narrow one, for the Court held in the same case that the threat to national security from publishing stolen classified information relating to the history of United States involvement in the Vietnam War was not sufficient to justify enjoining publication, New York Times Co. v. United States, 403 US 713 (1971). Motion pictures are within the protection of the First Amendment, but not to as great an extent as the printed media. The Court has held there is no absolute constitutional right to exhibit any and all motion pictures without censorship, Times Film Corp. v. Chicago, 365 US 43 (1961).

5. A tax based on gross receipts on the privilege of engaging in the business of selling advertising in a newspaper or periodical is impermissible as a device to limit circulation of information. Grosjean v. American Press Co., 297 US 233 (1936) (attempt by Huey Long to tax large-circulation newspapers).

6. Despite the absolute language of the First Amendment, the Court has held that obscenity is not within the area of protected speech. The states may regulate obscene matter, including imposing criminal penalties for its distribution. Roth v. United States, 354 US 476 (1957). Material is obscene if "to the average person, applying contemporary community standards,

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the dominant theme of the material taken as a whole appeals to prurient interest." The justification for removing obscenity from the realm of protected speech, despite the absolute language of the First Amendment, rests primarily on practices at the time of the adoption of the Constitution. At that time, regulation of obscene matters was permitted, and the regulation continued after the adoption of the constitution, supporting a determination that the drafters must not have intended to protect obscenity.

7. Government may prohibit distribution to children of material deemed harmful to them. Such laws to protect children are upheld even if the material they prohibit might not be obscene for adults under the Roth test, Ginsberg v. New York, 390 US 629 (1968).

8. Not protected by the First Amendment is speech directed to inciting imminent lawless action that is likely to produce such action, Brandenburg v. Ohio, 395 US 444 (1969). Mere advocacy is not enough to justify state action; inciting to violence is not enough if there is no substantial danger that the action will result.

9. The law of defamation constitutes an exception to the freedom of expression protected by the First Amendment. Loss of reputation caused by libel or slander is a compensable loss under tort law, and criminal libel prosecutions by the state are allowed. However, since New York Times Co. v. Sullivan, 376 US 254

(1964), the types of defamatory statement which the state can regulate has been narrowed. The rule as stated in that case is that with

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respect to "public figures," one is not liable to a suit for damages if the speaker does not make a statement maliciously, even if that statement is untrue and damage is caused. One is liable, with respect to public figures, only if there was actual malice, (knowledge that the information was false or with reckless disregard of whether it was false or not). Garrison v. Louisiana, 379 US 64 (1964), extends this same protection in criminal libel prosecution.

Because of the difficulties in determining what a "public figure" is, the Court is tending to a position which extends the New York Times rule to all areas of "public interest," Rosenbloom v. Metromedia 403 US 29 (1971). In that case, a "private" citizen was prevented from recovering damages, for a false statement because he was discussed with respect to breaking the law, a matter of "public interest." The Court, in other words, seems to be sanctioning the development of a different obscenity definition for minors and allowing the state to regulate the publication and distribution of matter that is not obscene according to the adult test but may nevertheless be harmful to minors. Such a state statute, however, must be limited to controlling access of minors to the material and must not be so broad as to limit the distribution of such material to adults.

10. The freedom of expression protected by the First Amendment extends beyond words and includes "symbolic speech", some types of action that are a means of conveying expression or belief. Protected has been display of a red flag as symbol of opposition to organized government, Stromberg v. California, 283 US 359

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(1931). A flag salute is a form of utterance within the protection of the amendment, W.Va. Bd. of Ed. v. Barnette, 319 US 624 (1943). Wearing black armbands by students as a protest against the Vietnam war was protected, Tinker v. Des Moines School District, 393 US 503 (1969).

Protection for sit-ins and demonstrations in public places is less strong. Time, place and circumstance may be regulated, but not in a manner that gives government such discretion that it may allow expression of some views and not others, Cox v. Louisiana, 379 US 536 (1965).

The committee's tentative provision protecting freedom of expression provides:

No law shall abridge the freedom of every person to speak, write, publish, photograph, illustrate, or broadcast on any subject or together, receive, and transmit knowledge and information, nor shall such activities ever be subject to censorship, licensure, registration, control, or special taxation.

Whether this proposal would be construed by the courts as an absolute protection, or whether the courts would carve out exceptions for defamation, obscenity and minors is open to question and cannot be accurately predicted.

Under this article, it would seem:

- 1/ No prior restraints or censorship are possible under any circumstances.
- 2/ No licensing or special taxation of any freedom of expression media is possible.
- 3/ The prohibition of "control" on "such activities" is one without prior judicial definition, so there is little guide to future development. It might be argued that this language

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would prohibit laws regulating defamation and obscenity, for this is a type of "control" on those activities. On the other hand, the court might use a historical argument and draw analogy from the federal developments to say the intent of the constitution was to allow such control by government in those areas.

4/ The provision would seem to seriously inhibit a person's action for invasion of his privacy by some media.

If actions for defamatory matter and the regulation of obscenity for all or for minors is to be clearly allowed, these are among the alternatives that are available:

- 1/ Use the exact language of the federal provision.
- 2/ Use the exact language of the present Louisiana provision;
- 3/ "No law shall abridge the freedom to speak, write, publish, photograph, illustrate, or broadcast on any subject, or to gather, receive, and transmit knowledge and information, nor shall such activities be subject to censorship, licensing, registration, or special taxation.
- 4/ After "information" in the tentative proposal add: "except to provide civil remedies and punishment for malicious defamation, to regulate the dissemination of obscenity, and to regulate publications harmful to minors in a manner that does not infringe on the rights of adults.
- 5/ After "information" in the tentative proposal add: "except to provide civil remedies for malicious defamation and to regulate the dissemination of obscenity in publications and public entertainments to which unaccompanied minors have access."

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NOTES

Staff Memo No. 40 setting out the "Format and Title of Rights Article" is omitted. See C.P. No. 2, Printed in Vol. 4, supra.

CC/73 Research Staff

Committee on Bill of Rights and Elections

May 15, 1973

Staff Memorandum No. 41

RE: Additional Subject Matter

The Committee on Bill of Rights and Elections has under its jurisdiction, in addition to the preamble and rights article already considered, the following subject matter:

1. Distribution of Powers
2. Obligations of Citizenship
3. Elections
4. General Government
5. Constitutional Amendment Process
6. Future Constitutional Conventions

Each one of the above matters could be put into a separate article if desired. If the committee wished to reduce the number of articles in the constitution, it would be quite feasible to combine the first four matters above under an "Article II. General Governmental Provisions" and to combine the last two matters under an article toward the end of the constitution entitled "Article ____ . Constitutional Revision."

The following analysis of the subject matter now before the committee is based on utilizing the latter approach. If more articles are desired, matters included within a more general article may be detached as a separate article.

What follows is a detailed outline suggesting the potential subject matter by topics that may be included. The topics listed are intended to be fairly exhaustive and it is suggested that the committee may want to delete a number of the topics altogether.

Article II. General Governmental Provisions

Part A. Distribution of Governmental Powers

1. Federal-State Relations
2. Separation of Powers in State Government
3. State-Local Relations
4. Civilian-Military Relations

Part B. Reserved Governmental Powers

1. Initiative, State and Local
2. Referendum, State and Local
3. Arbitration Agreements (Mr. Jenkins)

Part C. Elections

1. In General (this may be sufficient)
2. Election Procedures (detail, if any)
3. Candidates for Office (detail, if any)
4. Bond Elections (detail, if any)
5. Other Election Issues (detail, if any)
6. Political Parties (detail, if any)
7. Other

Part D. Miscellaneous Provisions

1. Continuity of Government (could also come under Distribution of Powers)
2. Oath of Office
3. Seat of Government
4. Boundaries
5. Governmental Ethics
6. Obligations of Citizenship
7. State Historic Trust (Mr. Vick)
8. State Symbols (including a state flower, etc., Mrs. Dunlap)
9. Other

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Article _____. Constitutional Revision (to be subject of later memo.)

Under distribution of governmental powers, an attempt has been made to assemble all provisions dealing with how power is divided, not only within state government, but also among federal, state, and local governments.

Regarding federal-state relations, some states, i.e. California, 1971 Revision and Hawaii 1968, explicitly recognize or adopt the U.S. Constitution and say that the state is a part of the federal union. Montana, 1972, recognizes its compact with the United States. The relations could also be stated in classic federal terms, i.e., that the federal government has certain exclusive powers, that there are concurrent powers exercised by both the state and federal government and that certain powers are reserved to the state or its people.

Separation of powers within state government is a traditional section in most state constitutions. It is usually expressed in rather extreme terms prohibiting a person charged with the exercise of powers properly belonging to one branch to exercise any power of another branch. In practice, of course, the governor is very much a part of the legislative process. Of the three branches, the judiciary is the most nearly independent of the others even though it is dependent on the legislature for its appropriations. Some thought may wish to be given to providing in this section of the constitution what is actually intended in practice.

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State-local relations refer to the power relationships between the state government on the one hand and municipal, parish, and other local governments on the other. The traditional theory is that all government power is in the state and that municipalities and parishes are mere creatures of the state that may be created or abolished at will. Local governments have only such power as the state deigns to give them. More recently, local governments have been given constitutional status and even broad grants of power under what has come to be known as a mini-tenth amendment or Fordham plan provision. See CBRE Staff Memo No. 22. The Coordinating Committee gave responsibility for this type of provision to the Committee on Local and Parochial Government.

Civilian-military relations or the subordination of the military to the civil power has already been adopted by the committee under the section entitled "Right to Civilian Government."

Reserved governmental powers refers to those actual or potential governmental powers which the people also reserve unto themselves. Thus initiative refers to the power of the people by petition to call for the enactment of a policy, ordinance, or law at the local or state level to be decided by a vote of the people. Referendum refers to a similar power by means of petition to call for an election to revoke a policy, ordinance, or law which has been passed by a local

governing body or the state legislature. Some of the questions involved in initiative and referendum are the percent of people

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required to sign a petition, limitations on the questions that may be the subject of initiative and referendum time limits for putting the question on the ballot, and the time lapse required, if any, before the governing body may change an ordinance or law enacted by initiative.

Arbitration agreements refer to means by which persons may avoid the use of government in settling disputes which government is normally called upon to solve.

Provisions involving elections may vary from a single section to a number of rather detailed sections. Some of the potential matters that may be treated separately are listed in the outline.

Part D is designed as a catchall, a place to put matters that do not fit very well anywhere else in the constitution.

With the development of nuclear warfare, more and more state constitutions have provided a section dealing with continuity of government in the event of a war or other catastrophe. What happens if a large part of state government is wiped out by a nuclear weapon? Most such sections provide for the legislature to act, but there is usually no provision for the situation in which the legislature itself is wiped out. The Coordinating Committee gave responsibility for this type of provision to the Committee on Legislative Powers and Functions.

Some of the more common miscellaneous provisions found in state constitutions include oath of office, seat of government, boundaries, and governmental ethics. The Coordinating Committee gave responsibility for "governmental ethica" to the Committee on the Executive Department. While obligations of citizenship

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is seldom included, this subject matter was specifically assigned to the Bill of Rights Committee by the Rules Committee.

A type of state trust in which Committee Member Vick is interested, is provided for in the Constitutions of Hawaii (Article XI), and New Mexico (Proposed 1969, Article 10), among others.

The Index of State Constitutions contains no reference to "flower" or "state flower" although there are such provisions involving other state symbols such as a state flag. A provision in the constitution for a state flower might best be included in a section relating to state symbols generally if it is to be included at all.

Numerous other provisions could be included under this part. Certain legal holidays, for example, are presently included. See CBRE Document No. 42 for provisions included in this part by other state constitutions.

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NOTES

Staff Memo No.42 containing "General Governmental Provisions Contained in Recent State Constitutions . . ." is omitted. See the following:

- Alaska, 1956
- California, (Proposed revision,1971)
- Hawaii, 1968
- Illinois, 1970
- Maryland,(Proposed 1968 and rejected)
- Model State Constitution (Proposed by National Municipal League, 1968)
- Montana, 1972
- New Mexico, (Proposed and rejected , 1969)
- New York, (Proposed and rejected 1967)
- Puerto Rico, 1952 (with annotations)

[All references are to published constitutions or proposals if cited as "proposed and rejected."]

NOTES

Document No.43 containing provisions on "Constitutional Revision . . . in Recent Constitutions Including Provision Dealing with Constitutional Amendment Process and Future Constitutional Conventions" is omitted. See Document No. 42, supra, for states, etc. included.

June 1, 1973

MEMORANDUM

CBRE STAFF MEMORANDUM NO. 44

E. L. HENNEY
Chairman
NORMA M. DUNCAN
Director of Research

TO: MEMBERS OF THE COMMITTEE ON BILL OF RIGHTS AND ELECTIONS

FROM: LEE HARGRAVE

RE: Comments to Proposed Sections

The Louisiana State Law Institute's use of official comments to proposed codes has led to these comments being accepted by the courts as a means of providing an insight into legislative intent. While the courts are not bound by them, they do use the comments as a guide in construing legislation. It is my understanding that the Style and Drafting Committee drew on this experience in suggesting that the new constitution use this device of explanatory comments.

I write this, however, to caution against excessive reliance on comments as a means of indicating that exceptions to the text of sections of the constitution are to continue in effect. While the courts often use the comments, they are not bound by them; they are bound only by the text of the law itself. In Hinchey v. Hinchey, 203 So.2d 409 (La. App. 2d Cir. 1967), writ refused, 251 La. 403, 204 So.2d 578 (1967), the court said:

When an article is unambiguous, complete in meaning and without need for interpretation, as is LSA-R.S. 9:301, the comments thereunder are of no legal significance.

In that case, the court construed the statute as reworded, despite a comment that there was no intent to change the substance of the prior statute.

To avoid the possibility that comments will be ignored, to deter unnecessary litigation, and to avoid the possibility of misunderstanding on the convention floor, the committee might consider using the comments sparingly as a device to indicate that exceptions are to be allowed to a general rule stated in the text of a section. Another possible danger

is that courts will construe a list of exceptions in a comment as exclusive and allow no others, even though historically sanctioned.

FOR EXAMPLE: SECTION 10 and the comment: It seems inconsistent to say in a comment that the unqualified language of the section forbids controls over obscene matter, but allows regulation of defamation. That comment could be ineffective. Changes in the language of the section itself would be a more certain way of accomplishing the policy chosen by the committee.

SECTION 5 and the comment: To say in the text that no movables can be taken, while adding in comment that contraband is excepted, may be an attempt to give the comment the same status as the text. It would be more certain to make the exception in the text itself.

SECTION 12 and the comment: To say without qualification in the text that there is freedom of movement and then to say in comment that quarantines are an exception may also be subject to the same problems.

CC/73 Research Staff

Committee on Bill of Rights and Elections

June 1, 1973

Staff Memorandum No. 45

RE: Analysis of Second Draft Proposal on the "Declaration of Rights".

This memo examines the staff changes proposed for the "Declaration of Rights" that are contained in the Second Draft Proposal. These changes are primarily ones of style and drafting but, in addition, substantive changes of a generally minor nature are proposed in an attempt to assist the committee in drafting language to carry out its intentions.

Staff Memo No. 44 by Lee Hargrave calls attention to the problems involved in attempting to carry out the committee's intentions through the use of comments. Some of the proposed changes are suggested with this in mind. The changes proposed are stylistic for the most part and are suggested in an attempt to have the Preamble read more smoothly.

Section 1. Origin and Purpose of Government

The words, "of right," might be deleted in line 12 since "rights" are mentioned in line 14. The words "legitimate end is" should be made plural for grammatical reasons. Other changes are mainly stylistic. The committee may want to consider distinguishing this Section more clearly from the Preamble.

Section 2. Due Process of Law

No comment.

Section 3. Right to Individual Dignity

It is recommended that sentences be in positive form where practicable and hence the slavery sentence is rearranged. The words "after the accused has been duly convicted" are really unnecessary and could be deleted.

Section 4. Rights of the Family

It has been suggested that the section be divided into (A) and (B) paragraphs so that if one part is rejected by the convention, the remaining part could be salvageable. It is recommended that "are" be used in-

atead of "shall be" wherever feasible. The first sentence is rearranged for purposes of style. In the second sentence, the words "of the child" may be considered implicit and hence unnecessary. The word "paramount" might be deleted since it tends to weaken the word "right" and to imply that the state has "rights" as well.

Section 5. Right to Property

It is suggested that this section be extensively reworded to accomplish more closely the intent of the committee. Such rewording necessarily involves some substantive change. It is suggested that the section be broken into lettered paragraphs to facilitate debate on it on the floor of the convention. As presently worded, it is not clear whether "public purpose" or "public necessity" is required for expropriation. The

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committee added "public purpose" in lieu of "public use" at the last meeting. It is suggested that "public necessity" be deleted to avoid confusion and uncertainty. The trial by jury is limited to the determination of just compensation for the full extent of the loss. Otherwise, despite the comment, it would appear that the "quick-taking" statute could no longer be used. Because of the problems raised by the representative of the highway department, "movable property" might be changed to "unattached movable property" so that attached highway signs on a third party's immovable property could be taken.

Even as reworded, the committee may want to consider deleting one or more of the last three sentences as unduly cumbersome. This, of course, would involve significant substantive change.

Section 6. Right to Privacy

It is suggested that the words, "and property", replace "houses, papers, and other possessions" to broaden the protection slightly and to shorten the section at the same time. The phrases, "lawful purpose or", "conducted in violation of this section", and "in the appropriate court of law" might be deleted as unnecessary.

Section 7. Freedom from Military Intrusion

The proposed changes are for purposes of style.

Section 8. Freedom from Discrimination

The word "color" might be deleted as included in the word "race" and the word "and" before "sex" should be

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changed to "or" to insure that discrimination is prohibited based on each classification rather than on the combination of all of them only. It has been suggested that the committee may wish to place this Section im-

mediately after the Section on the Right to Individual Dignity.

Section 9. Trial by Jury in Civil Cases

The suggested changes are for purposes of style and clarity.

Section 10. Freedom of Expression

For purposes of clarity and added protection, "every" in line 1 might be replaced by "any". The words "and" that appear on lines 32 and 33 might similarly be replaced by "or". If it is the committee's intention, all or part of the suggested additional sentence might be added at the end to carry out the committee's intention more effectively than by inclusion of words in the comments.

Section 11. Freedom of Religion

It is suggested that the last sentence be placed first as it is in the present constitution and that the indicated stylistic changes be made.

Section 12. Freedom of Assembly and Movement

For purposes of style, it is suggested that the sentence be phrased positively instead of negatively.

Section 13. Rights of the Accused

The phrase "his legal rights" is vague and might be replaced by "the reason for his detention". Other proposed changes are mainly of style.

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Section 14. Initiation of Prosecution

The first sentence might be deleted since it does not provide any effective protection. The last sentence has been revised to provide federal-state double jeopardy if that is the wish of the committee. Other changes are of style only.

Section 15. Grand Jury Proceedings

There are technical problems with the use of the term "accused" in this section. It is suggested that we are talking first about a "witness", secondly about a "person under investigation" and only at the end about an "accused".

Section 16. Fair Trial

Other than the single word changes, it is suggested that the phrase "and all evidence presented shall be competent, relevant, and material" is not necessary and affords little or no additional protection.

Section 17. Trial by Jury in Criminal Cases

While the Duncan case called for trial by jury in all cases of potential imprisonment of six months or more, it has not been specifically so applied. District Attorney Richardson's recommendation to change the wording to "more than six months" is well taken.

Section 18. Right to Bail

Other than minor style changes, it is suggested that the long phrase "may be bailable in the discretion of the

judge" be changed to "the judge may grant bail" in the two places it occurs.

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Section 19. Right to Humane Treatment

Only minor style changes are recommended.

Section 20. Right to Vote

The first sentence might best be phrased positively rather than negatively. The last sentence seems out of place as presently written since mandates to the legislature do not normally appear in a declaration of rights. If it is to be retained, see the suggested language. As an alternative it might be included in the article on general governmental provisions together with a mandate on the conduct of elections along the following lines:

Section ____ . Election Procedures

The legislature shall provide equitable procedures for the conduct of elections and may require advance registration of voters under a system of permanent registration.

Section 21. Right to Keep and Bear Arms

While the changes suggested are for purposes of style, they may have some slight substantive content.

Section 22. Right to Conserve One's Culture

The suggested change is to provide more effective protection for the right.

Section 23. Writ of Habeas Corpus

The language is clear and concise and no further comment is necessary.

Section 24. Access to Courts

The words "and justice" might be deleted as superfluous. The additions to the last sentence are suggested to ensure

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that political subdivisions are not immune from suit but that persons acting in an official public capacity are. The words "and liability" should be added because of court interpretations that distinguish between "suit" and "liability".

Section 25. Prohibited Laws

No comment.

Section 26. Unenumerated Rights

No comment.

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June 7, 1973

CBRE Staff Memo No. 46

E. L. HENRY
Chairman
NORMA M. DUNCAN
Director of Research

TO: Committee on Bill of Rights and Elections

FROM: Lee Hargrave

RE: Comments and observations on the first working draft of the Declaration of Rights

Section 1.

1. Article I has no substantive provisions which limit government. It is basically a second preamble. Elimination of the section entirely would not decrease the enforceable rights of citizens.

2. I think it can be said that all rights guaranteed in the declaration of rights must be enforced by the courts and must be protected. That is the purpose and effect of a constitutional Declaration of Rights. Since this would be the case in any event, it is not necessary to state "the rights enumerated in this article are inalienable and shall be preserved inviolate."

Section 2.

1. Section 2 adds the words "substantive and procedural" to modify due process of law. This is no significant change, since the Louisiana courts under existing provisions of the constitution have embraced the concept of substantive due process. If the quoted phrase were omitted to meet some objections, no change in the breadth of court review would probably result.

Section 3.

1. Section 3 prohibits discrimination based on "birth, race, sex, social origin or condition, or political or religious ideas". Section 8 prohibits discrimination on the basis of "race, color, creed, national ancestry, and sex." If it is the committee's policy goal to prohibit the same types of discrimination under both articles, one or the other section might be changed so that the same types of discrimination would be prohibited by both. Use of different standards in the different articles could result in different court construction of the standards for each article.

2. As the section is constructed (a. no person denied equal protection, b. no discrimination in the exercise of rights based on certain characteristics) the second clause could be construed by a court as limiting the first, so that only those stated grounds of discrimination and no others would be prohibited. If it is the committee's desire to give the courts as broad as possible a basis to prevent discrimination, this could be done by simply providing, as does the federal constitution, "no person shall be denied the equal protection of the laws."

Section 4.

1. Section 4 recognizes so many possible exceptions to the right to marry that the right is a very limited one. If a right to marry is to be included in the constitution, subject to many legislative exceptions, one might provide:

No unreasonable restrictions shall prevent a man and woman from marrying.

2. The right of parents to rear their children in accordance with their own convictions is also "subject to reasonable minimum standards of health, education, and welfare." Again, the right created is such a limited right that the protection it offers is quite small. But, enlarging the right may not be in accord with the policy advocated by the committee. In such a case, it may be just as effective to eliminate this provision, or to simply provide:

Except as reasonably restricted by law, parents have the right to rear their children in accordance with their own convictions.

3. As stated, the right to rear children is granted to "parents". What is a situation when the parents disagree? What is the situation when parents are separated or divorced? Obviously, the answer to these questions is that the legislature must provide some solution and provide which parent shall have the right to rear the child, and what the rights of the other parent will be with respect to that child. Again, the matter goes to the legislature, and the meaning of the right established in the section is limited.

Section 5.

1. Does the right "to control" property and "to enjoy" property establish a limitation on the power of government to enact zoning legislation and to provide, as does Civil Code Article 667, limitations on the use and enjoyment of property to prevent damage to neighbors.

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2. It is possible that the right to "protect" private property may be arguably construed as giving a wider grant of authority to a land owner to use force in ejecting uninvited persons from his property.

3. The right to "dispose" of private property may conflict with Section 8 and its provision against discrimination of the sale or rental of property. In such a case, it would appear to me that the more specific provision, Section 8, would probably prevail. The exception of Section 8, then would be added to the stated exception recognizing laws of forced heirship.

4. Since some billboard advertising may be movable property, a desire to continue receiving federal funds for intrastate highways may require recognition that they can be taken. But putting such an exception, and perhaps others, would seriously complicate an already complex article. The committee might consider eliminating this sentence providing that movable property shall not be expropriated. By the terms of the other parts of Section 5, movable property is protected as is immovable property, and this section on movables may provide little additional protection.

5. To state the issue of whether the contemplated use is public is a judicial question adds little to the existing situation, for that is already the case. Even with the admonition that the court is to proceed without regard to any legislative assertion that the purpose is public, existing case law defining public uses will continue in effect and this will be a small limitation.

Section 6.

1. This section does not adopt an exclusionary rule; that question is left to the legislature and the courts. If the intent is to adopt the exclusionary rule, it might be provided:

Evidence obtained in violation of this section shall be inadmissible in any judicial proceeding.

2. The grant of standing is just that -- it provides no substantive right on which judgment would rest. If the remedy is an exclusionary rule, then persons without a proprietary interest would have standing under the terms of this article. But, if no exclusionary rule is required, the evidence would be admissible and the grant of standing would presumably apply to whatever mechanism is adopted to replace the exclusionary rule as a means of enforcing this section.

3. The proposed section does not repeat the present requirement that no search or seizure shall be made without a warrant. Though the courts have allowed warrantless searches and seizures under the present law, the change in this article would or course clearly recognize that judicial construction and allow warrantless searches and seizures.

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Section 7.

No comments

Section 8.

1. The comment to Section 3 applies here, suggesting using the same standard for both sections.

2. Of course, the term "public accommodations" is not defined and it would be up to the courts to provide a definition of what constitutes public accommodations.

3. Of course, left to court decision would be the determination of what constitutes substantial income from the activity of sale or rental of property.

Section 9.

1. Perhaps too broad is the statement, "the right to trial by jury shall not be abridged." As written, it might apply to criminal cases, to divorce litigation where no jury trial is now provided, to workmen's compensation cases in which there is no jury trial, to summary proceedings, to adoption proceedings, to injunction proceedings, and to many other proceedings where no jury trial is provided. One possible means of expressing this more clearly is to paraphrase the Seventh Amendment to the United States Constitution, where the civil jury trial guarantee is "according to the rules of the common law," thus providing an exception for nonjury trials in cases that had their origin in equity or common law. But doing this in Louisiana poses some difficulty, since we do not have a common law tradition which is the basis of the

federal provision. If the policy objective of the committee is to prevent changes in jury verdicts in civil damage cases, that objective would be met with keeping the remaining language in tentative Section 9 even though the first sentence is omitted.

2. Again, if a policy objective is to prevent review of facts in civil damage suits, the third sentence of proposed Section 9 is not necessary. Even without that sentence, the legislature has the power to provide for appellate review of facts in other cases.

Section 10.

1. A number of newsmen and representatives of Sigma Delta Chi, an organization of journalists, have indicated that they would prefer a freedom of press and speech provision that would track the language of the existing First Amendment:

No law shall abridge the freedom of speech or freedom of the press.

I think this would have the practical effect of borrowing the case law under the federal First Amendment which recognizes exceptions

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from the absolute language of the First Amendment for obscene material, defamatory material, action likely to incite violence, and laws to protect minors.

It is possible, of course, to continue with the language of Section 10 as stated in the tentative draft, but providing specific exceptions for defamation or pornography.

Section 11.

1. No comments

Section 12.

1. The right to "enter and leave the state" is protected by the Federal Constitution (Commerce Clause and First Amendment) and the state constitution could do nothing to take away from this right. Accordingly, it may seem to some members of the committee that this expression is not necessary and may be a means of shortening the declaration of rights.

2. I think that no explicit exception is needed to insure the power of the government to limit this right in the case of persons on probation or parole. Conviction for an offense subjects one to loss of many rights, including this one.

Section 13.

1. The phrase "advised of his legal rights" is somewhat vague, and there may be some difficulty with what rights are encompassed in this statement. The difficulty might arise in the context of whether a person who waives certain rights has intelligently and knowingly waived them. Under existing case law, one cannot intelligently waive a right unless that right is made known to him and he fully understands that he has this right. If the intent of the committee is to acknowledge the ruling in *Miranda v. Arizona*, the section could be reworded to recognize advising of the right to remain silent, the right to counsel, and that anything a person under detention says may be used against him. Also to arise is the question of what sanction will be imposed for failure to advise of this right. Does the committee intend that an exclusionary rule be used to enforce this provision? If not, is there an effective means of enforcing?

Section 14.

1. In the first sentence, it is provided that prosecution shall be initiated "by indictment or information"; since this is followed by allowing misdemeanors to be prosecuted by affidavit, the first section presumably means that in the case of felonies, prosecution may be by indictment or information. However, the provision continues in the next sentence that indictment is needed in all major felonies. In light of this, it seems that

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the first sentence provides little guarantee to the citizen. If that first sentence were omitted, there would be little change in the effect of the article. Or, perhaps it could be said that:

"prosecution of felonies shall be initiated by indictment or information, but no person shall be held to answer for a capital crime, or a felony necessarily punishable by hard labor except on indictment by a grand jury."

Section 15.

1. The use of the term "accused" in this article may present some problems. It could be argued that an individual is

not accused in a technical legal sense until there is an indictment or information pending against him. Part of the problem might be handled by indicating that the right to have the advice of counsel for testifying applies to all witnesses before the grand jury who desire counsel.

2. Use of "accused" with respect to a right to transcribe testimony does not present the same difficulty, since the main necessity for a transcript would come after one has been indicted or informed against -- after one is an accused -- as a means of assisting in preparation for trial.

3. With respect to the right to present witnesses to the grand jury, there may be a difficulty with the term "accused." Perhaps, for clarity, it might be best to define some kind of "focus for suspicion" test to indicate who has the right to process of presenting witness to the grand jury. One device might be to require the grand jury to inform an individual that he is under suspicion and there is a likelihood that an indictment will be returned against him. Another device may be to provide that an arrested person whose case is under investigation would have this right, but this may be too narrow since many persons who are not arrested can be investigated by the grand jury. Perhaps one could simply say that "a person under investigation by a grand jury" has a right to present witnesses, allowing the courts to flesh out the meaning of such a provision. But this would be a disadvantage of perhaps overturning many grand juries and the process of securing a final court construction of such a phrase.

Fair Trial

1. The requirement that "all evidence presented shall be competent, relevant, and material" is somewhat vague. This restates the law of evidence on the point, the development of which is characterized by a great deal of judicial discretion and flexibility in determining relevance. Under the law of evidence as it exists now, the requirement is not a strongly-enforced or particularly effective one, and I think that the

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construction of the proposed section would be along the same lines.

Section 17.

1. The right to challenge jurors peremptorily, "the number of challenges to be fixed by law" is a rather hollow right, since the legislature has so much flexibility here. Little would be taken away from a citizen by omitting this statement of this right in the constitution. On the other hand, if the right is thought to be basic enough, perhaps some statement should be made about the number of peremptory challenges. Of course, this has the disadvantage of freezing in the constitutional law something that is now flexible and which has worked reasonably well.

2. The right to "voir dire" as stated in this section leaves much flexibility to the courts in determining the ambit of the right. That situation, however, seems to be unavoidable and the possibility of a more explicit statement is remote, unless a great deal of language is used.

Section 18.

1. If the committee is interested in protecting release on recognizance without bail more than it is now, a provision to that effect might be inserted in the constitution. For example:

A person arrested shall have the right to be released without payment of monetary security but rather on their promise to appear, in default of which he will be liable a stated sum of money, except if the likelihood of his nonappearance is so great that bail is required. In such a case, excessive bail shall not be required.

Section 19.

1. No comments

Section 20.

1. If the desire of the committee is to equate the voting age with the age of majority, the provision might be changed to provide that no person who has reached the age of majority shall be denied the right to vote. This would give the legislature the power to establish the voting age by determining the age of majority.

2. If nothing more were said after the first sentence of this section, the legislature would not be prevented from requiring registration prior to voting. Accordingly, the effect of the last sentence is not so much to allow registration, but

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to direct the legislature to pass laws "embodying the principle of permanent registration." Some vagueness is inherent in the phrase "principle of permanent registration". Does this mean truly permanent registration, or registration that continues if a voter votes regularly, as is now the case? Truly permanent registration might aid some individuals in the perpetration of voting frauds. The difficulties inherent in rephrasing this section to clearly indicate what is meant by "permanent registration" may be so great that it might be better to omit this sentence.

Section 21.

1. No comments

Section 22.

1. The inherent ambiguity in the terms "distinct language or culture" would leave so much flexibility to court construction that the right guaranteed here may indeed be a hollow one.

Section 23.

1. No comments

Section 24.

1. No comments

Section 25.

1. No comments

Section 26.

1. In a government which has only enumerated powers, as in the United States government, an indication of the rights of the people enumerated shall not constitute a denial of other rights retained by each person is logical. However, when one is dealing with government that has a reservoir of sovereignty as the State of Louisiana has, inclusion of such a provision has the effect of saying (a) the legislature can do what it is not prevented from doing, while saying at the same time (b) there are other limitations on the government in the form of these retained rights of the people. A reconciliation of these two statements requires court determination of what other rights are retained by the people that serve as a check on government. This involves a court in a natural law-due process exercise in determining individual rights. The invitation to a Louisiana court to exercise this kind of judicial standard-making already exists in the due process clause of Section 2. If this is true, Section 26 serves no real purpose in the constitution other than to repeat that which is provided in Section 2.

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CC/73 Research Staff

Committee on Bill of Rights and Elections

June 7, 1973

Staff Memorandum No. 47

RE: Attorney's comments on the Right to Property

In their comments of June 6, 1973, on "Section 5, Right to Property" of the proposed "Declaration of Rights," Attorney Joseph Keogh and others proposed the following language:

"Except as otherwise provided in this Constitution, property shall not be taken or damaged except for public purposes and without just compensation having been paid to the owner or an estimate thereof deposited into Court for his benefit pursuant to judicial court rendered ex parte prior to judgment therein."

"The right to trial by jury for the determination of just compensation shall be reserved to the parties provided that provision be made for the taking of possession by the expropriating authority by ex parte order of the court of original jurisdiction entered prior to the jury's determination of just compensation."

With reference to Article III, Section 37 of the 1921 Constitution, dealing with private rights of way of necessity, the staff pointed out that such rights of way could be considered a public purpose. Mr. Banister suggested they should nevertheless be distinguished in the constitution so that the legislature could more easily treat them differently with respect to a "quick-taking" statute.

Mr. Cousin in a separate letter dated June 6, called attention to a defect in the proposed Keogh language with reference to an "estimate" in lieu of "just compensation."

Mr. Keogh's proposal would tie trial by jury to those situations in which a "quick-taking" situation is actually used. It is the staff's understanding that the committee wished to reserve a right of trial by jury to determine compensation generally.

Taking into consideration the Keogh comments, the letter and comments of Messrs. Cousin and Banister and the views of the committee, the following language might be considered for Paragraph B:

B. Property shall not be taken or damaged except for public purposes or private rights of way of necessity and then only with just compensation for the full extent of the loss. The probable amount of such compensation must be paid to the owner of into court for his benefit prior to the taking. The right of trial by jury for the determination of the compensation is reserved to the parties.

Mr. Banister pointed out to the staff that the language of Paragraph D does not solve the problem of the expropriation of highway signs six hundred feet from the highway on property that is not to be taken but only restricted as to use. The following language might therefore be considered to carry out the committee's intentions.

D. Unattached movable property and personal effects other than contraband shall not be taken unless the owner declines to remove them from affected immovable property, or when necessary to save lives or property.

Attachments:

- Letter and comments from Joseph Keogh, June 6, 1973
- Letter from Jack Cousin, June 6, 1973
- Letter from Ross Banister, June 6, 1973

CC/73 Research Staff
Committee on Bill of Rights and Elections
August 1, 1973
Staff Memorandum No. 48

RE: Tentatively Proposed Elections Article, Staff Comments

It is suggested that "Section 1. Free Elections" and "Section 2. Secret Ballot" be combined into one section. The principle of periodic elections is also included here.

The technical change in "Section. 3. Residence for Voting Purposes" is not substantive but may satisfy a previous objection.

It is suggested that "Section 4. Political Parties" be changed to "Political Activities" as being more substantively descriptive. The words "political party or" may be deleted as superfluous. The exception clause may be desirable to have the section conform to restrictions placed on civil servants.

The title "Interference in Elections" in Section 5 might be changed to "Influencing Elections with Public Funds Prohibited" as being more descriptive.

The wording of "Section 10. Registrars of Voters" could be greatly simplified without change of substance as suggested.

"Section 11. Commissioners and Poll Watchers" could well be deleted since no constitutional mandate is necessary for the legislature to so provide.

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"Section 12. Election Returns" could also be deleted since the secretary of state's duties with respect to the election laws are already spelled out, though not in as great detail, in the article on the executive branch.

The title "Denial or Registration and Removal of Names" in Section 13 might be simplified to "Registration Challenges". The section could be shortened considerably without change of substance as suggested.

"Section 14. Election Contests" might well be deleted in view of the due process provisions of the "Declaration of Rights" and the first section of the elections article which provides that elections shall be "fairly conducted". These provisions would require an opportunity for judicial review of election contests.

"Section 15. Election Fraud" might well be changed to provide that the right to vote and hold office is only suspended in line with the previous language adopted by the committee.

STAFF SUGGESTED CHANGES

August 1, 1973

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- 1 Constitutional Convention of Louisiana of 1973
- 2 COMMITTEE PROPOSAL NUMBER
- 3 Introduced by Delegate A. Jackson, Chairman, on behalf of the
- 4 Committee on Bill of Rights and Elections and
- 5 Delegates
- 6

A PROPOSAL

- 7
- 8
- 9 Making general provisions for elections.
- 10 Be it adopted by the Constitutional Convention of Louisiana
- 11 of 1973:
- 12

ARTICLE X. ELECTIONS

- 13
- 14 Section 1. Free Elections by the people
- 15 Section 1. Elections shall be freely and fairly con-
- 16 ducted/ No law shall ever interfere with the free exercise
- 17 of the right of suffrage to vote. Ballots or other records
- 18 of the votes
- 19 Section 2:--Secret Ballot
- 20 Section 2:--All voting shall be by secret ballot, and
- 21 the ballots cast shall be publicly counted and reserved
- 22 inviolate until any election contests have been settled.
- 23 Section 3/ 2. Residence for Voting Purposes
- 24 Section 3/ 2. No elector shall lose his voting
- 25 bona-fide residence by his absence while engaged in any employ-
- 26 ment, either civil or military, or while studying or visiting
- 27 away from his voting district.
- 28 Section 4/ 3. Political Parties Activities
- 29 Section 4/ 3. Except as otherwise provided in this constitution, no
- 30 No law shall deny the right of each person
- 31 to organize, join, support, or oppose any political party
- 32 or political organization, or to support or oppose any
- 33 candidate or proposition.
- 34 Section 5/ 4. Privilege from Arrest
- 35 Section 5/ Every qualified elector shall be privileged
- 36 Except for felony or breach of the peace, a qualified elector is privileged
- 37 from arrest in going to and returning from voting and while
- 38 exercising the right to vote.

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CC/73 Research Staff

Committee on Bill of Rights and Elections

August 1, 1973

Staff Memorandum No. 49

1 ~~franchise of the people.~~
2 Section 5. Candidacy for Public Office
3 Except as otherwise provided in this constitution, no
4 Section 6. No qualified elector shall be denied the
5 right to seek public office within an election district in
6 which he is registered except as otherwise provided in this
7 constitution.
8 Section 7. Vote Required for Election
9 Section 7. No person shall be elected to any public
10 office unless he has received the highest number of votes
11 cast for that office.
12 Section 7. Limitation of Term of Office
13 Section 7. Except as otherwise provided in this con-
14 stitution, no term for any public office elected by the people
15 shall exceed four years.
16 Section 8. Influencing Elections with Public Funds Prohibited
17 Section 8. / Interference in Elections -
18 Section 9. No public funds shall be used
19 any elector to vote for or against any candidate for office,
20 nor shall public funds be appropriated to any candidate or
21 political organization.
22 Section 10. Registrars of Voters
23 The governing authority of each parish shall appoint
24 Section 10. / There shall be a registrar of voters for
25 a parish in the state who shall be appointed by the gov-
26 erning authority of the parish for a fixed term, commissioned
27 by the governor, and provide such bond and receive such com-
28 pensation as may be determined by the legislature. No person
29 shall serve as registrar of voters after qualifying as a candidate
30 for any elective office.
31 Section 11. Commissioners and Poll Watchers
32 Section 11. The legislature shall provide for the
33 selection of commissioners and poll watchers at every election.
34 Section 12. Election Returns
35 Except as otherwise provided in this constitution, election
36 returns for officers
37 who are to be commissioned by the governor shall be made to
38 the secretary of state under the provisions provided in this con-
39 stitution.

Deletion suggested

Deletion suggested, if not, see suggested changes

Page 2

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1 Section 10. Registration Challenges
2 Denial of Registration and Removal of Names -
3 Section 10. may contest in
4 Section 11. A person/denied registration shall have the
5 right to apply for relief to the district court, which case
6 registration, or denial of his request to have removed from the roll:
7 shall have preference over all other cases. Any elector may
8 challenge the registration roll and have stricken from it
9 improperly there, which cases shall have preference over
10 any names/placed or standing thereon illegally. This clause
11 shall be tried in the case of denial of registration.
12 Section 14. Election Contests
13 Section 14. The legislature shall provide by law for the
14 judicial determination of contested elections of all public
15 officers.
16 Section 11. Election Fraud
17 Section 15. No person shall register and vote in more
18 than one place nor offer or receive anything of value in
19 exchange for a vote nor engage in any other form of election
20 fraud. The legislature shall enact laws to suppress such
21 activities; and penalties in such cases may include dis-
22 suspension of the right to vote and hold office
23 franchise of violators and the prohibition against
24 holding office for a period not to exceed five years.

Deletion suggested, if not, see suggested changes

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RE: Provision for a Maximum Term for Elected Officials

A number of states provide constitutional limitations on the length of terms of elected officials. The following are representative:

Ind. Const. Art. XV, Sec. 2 (1851) and Ore. Const. Art XV, Sec. 2 (1859) (Identical provision)

Section 2. When the duration of any office is not provided for by this constitution, it may be declared by law; and, if not so declared, such office shall be held during the pleasure of the authority making the appointment. But the general assembly shall not create any office, the tenure of which shall be longer than four years.

Ky. Const., Sec. 93 (1891)

....Inferior state officers, not specifically provided for in this constitution, may be appointed or elected, in such manner as may be prescribed by law, for a term not exceeding four years.

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Miss. Const., Art. XII, Sec. 252 (1890)

Section 252. The term of office of all elective officers under this constitution shall be four years except as otherwise provided herein....;

Texas Const., Art. XVI, Sec. 30 (1876)

Section 30. The duration of all offices not fixed by this constitution shall never exceed two years....(exceptions listed).

Louisiana does not at present have such a provision in its present constitution. To have one or not is a policy question; should the length of terms of new elective offices created in the future be left to the legislature or restricted by the constitution? If the committee wishes to include such a restriction in the constitution, the following language is suggested if it is to be a separate section of the elections article:

Section _____. Limitation on Term of Office

Section _____. Except as otherwise provided in this constitution, no term for any public office elected by the people shall exceed four years.

The original proposal on term limitations adopted in principle by the committee included a statement on periodic elections. This might be best added to the section on free elections as suggested in the staff memorandum on the elections article.

NOTES

Staff Memo No.50 "Re: Constitutional Revision" is omitted. It reproduces legislative requirements for the adoption of constitutional amendments and popular vote requirements. [Information is reproduced from tables set out in The Book of the States, 1972-1973, at 22-23.]

- (7) Aggravated Arson
- (8) Aggravated Burglary
- (9) Simple Burglary
- (10) Armed Robbery
- (11) Theft of cattle, horses, mules, sheep, hogs, or goats
- (12) Incest (if between brother and sister or ascendant and descendant)
- (13) Aggravated crime against nature
- (14) Aggravated obstruction of a highway of commerce
- (15) DWI - 4th conviction
- (16) Aggravated Escape
- (17) Jumping Bail
- (18) Treason
- (19) Misprision of Treason
- (20) Criminal Anarchy

CC/73 Research Staff
 Committee on Bill of Rights and Elections
 August 6, 1973
 Staff Memorandum No. 51

RE: Privilege from arrest, use of the term "breach of peace"

In Williamson v. U.S. 207 U.S. 425, 445, the U.S. Supreme Court states that the term "breach of the peace" could be interpreted to extend to "all indictable offenses" and not just those involving force and violence. This means, as a term of art, "breach of the peace" could include any misdemeanor.

In view of this Supreme Court case, the Committee on Legislative Powers and Functions in its section on privilege from arrest dropped the expression "breach of the peace" so that the section now reads as follows:

"Section 7. Privileges and Immunities

"Section 7. The members of the legislature shall in all cases, except felony, be privileged from arrest during their attendance at the sessions and committee meetings of their respective houses and in going to and returning from the same. No member shall be questioned in any other place for any speech or debate in either house."

The Committee on Bill of Rights and Elections may wish to adopt a similar tack and drop "breach of the peace" from its section on privilege from arrest since the effect of that phrase is to cause the section in effect to state that privilege from arrest exists in cases involving both misdemeanors and felonies.

Committee on Bill of Rights and Elections
 August 24, 1973
 Staff Memorandum No. 52

RE: List of crimes necessarily punishable by hard labor and crimes for which no parole may be granted.

(A) The following is the list of crimes which according to Louisiana Statutes are necessarily punishable at hard labor:

- (1) Abortion
- (2) Manslaughter
- (3) Murder
- (4) Aggravated Rape
- (5) Simple Rape
- (6) Aggravated Kidnapping

(B) The governor has power to grant reprieves for all offenses against the state except impeachment and treason. The Board of Parole may release or parole any person who has been convicted of a felony, sentenced to imprisonment, confined in the state, and who has served at least one-third of sentence with good behavior. However, no parole can be granted to a prisoner serving a life sentence, unless such sentence is commuted by the governor. If the offense is armed robbery, at least five years of the sentence must have been served.

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Committee on Bill of Rights and Elections
 August 24, 1973
 Staff Memorandum No. 53

RE: State Laws Which May Be Affected by Adoption of a Provision in the Louisiana Constitution Calling For Equal Protection on the Basis of Sex

This memo enumerates specific provisions of Louisiana law which may be inconsistent with a provision calling for equal protection on the basis of sex.

The list includes the primary laws which apply to one sex and which, generally, either confer some benefits or place some restriction on one sex or another. It is not intended to be a complete list of every law that might be affected by adoption of the equal protection provision.

No attempt is made to suggest the type of changes that may be necessary because specific determinations as to the changes necessary would, as already stated, in all probability be made by the courts.

<u>CITATION</u>	<u>PROVISION</u>
C.C. Art. 35	- Reference to <u>paternal</u> authority.
C.C. Art. 36	- Age of puberty for <u>males</u> established at fourteen and twelve for <u>females</u> .
C.C. Art. 39	- A <u>married woman</u> has no other domicile than that of her husband. (In the case of <u>Bush vs. Bush</u> , 95 So. 2d 295, (1957) the court held that a wife may establish her separate domicile if she is abandoned or is compelled to leave due to ill treatment).

- C.C. Art. 81 et seq. - Maternal authority upon disappearance of father.
- C.C. Art. 82 - Requires mother who contracts a second marriage to have consent of family meeting to preserve superintendence of her children. (But see C.C. Art. 254 relative to remarriage of mother who is tutrix was repealed on recommendation of the Louisiana State Law Institute by Act 30 of 1960.)
- C.C. Art. 92 - Prohibits a minister to marry a male under eighteen or a female under sixteen.
- C.C. Art. 120 - The wife is bound to live with her husband and to follow him wherever he chooses to reside; the husband is obliged to receive her and to furnish her with whatever is required for the convenience of life, in proportion to his means and condition.
- C.C. Art. 121 - The wife cannot appear in court without the authority of her husband, although she may be a public merchant, or possess her property separate from her husband. (but see R.S. 9:102)
- C.C. Art. 122 - The wife, even when she is separate in estate from her husband, cannot alienate, grant, mortgage acquire, either by gratuitous or incumbered title, unless her husband concurs or consents. (Note that under C.C. Art. 123, a woman separated from bed and board has no need in any case of authorization of her husband.) (But see R.S. 9:101, 9:103)

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CITATION

PROVISION

- C.C. Art. 124 - If the husband refuses to empower his wife to appear in court, the judge may give such authority. (But see R.S. 9:102)
- C.C. Art. 125 - If the husband refuses, the judge may authorize a wife to contract. (But see R.S. 9:101)
- C.C. Art. 126 - A married woman over 21 years of age has authority to borrow money, contract debts for her separate benefit and to grant mortgages on her separate property when duly authorized by her husband. (But see R.S. 9:101-9:105)
- C.C. Art. 127 - In carrying out the power to contract debts to bind her paraphernal or dotal property the wife must have judicial examination regarding the purpose of the indebtedness. (But see R.S. 9:101-9:105)
- C.C. Art. 128 - Judge to issue certificate of judicial authority if examination shows contract of wife is for separate advantage, or benefit of paraphernal or dotal property. (But see R.S. 9:101-9:105)
- C.C. Art. 129 - Married women above age twenty-one shall have the right with consent of their husbands to renounce their matrimonial, dotal, paraphernal, and other rights. (But see R.S. 9:101-9:105)
- C.C. Art. 132 - If the husband is interdicted or absent, the judge may authorize the wife to sue and be sued or make contracts. (But see R.S. 9:101-9:105)
- C.C. Art. 133 - Every general authority, even though stipulated for in the marriage contract, is void, except so far as it respects the administration of the property of the wife. (But see R.S. 9:101-9:105)
- C.C. Art. 134 - Annulment of married woman's unauthorized acts.
- C.C. Art. 146 - Custody of children pending litigation shall be granted to the wife, unless strong reasons against her custody.
- C.C. Art. 148 - If the wife has not a sufficient income for her maintenance pending the suit for separation from bed and board or for divorce, the judge shall allow her, whether she appears as plaintiff or defendant, a sum for her support, proportioned to her needs and to the means of her husband.

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CITATION

PROVISION

- C.C. Art. 149 - During the suit for separation, the wife may, for the preservation of her rights, require an inventory and appraisement to be made for the movables and immovables which are in possession of her husband, and an injunction restraining him from disposing of any part thereof in any manner.

- C.C. Art. 150 - From the day on which the action of separation shall be brought, it shall not be lawful for the husband to contract any debt on account of the community, nor to dispose of the immovables belonging to the same, and any alienation by him made after that time, shall be null, if it be proved that such alienation was made with the fraudulent view of injuring the rights of the wife.
- C.C. Art. 160 - When the wife has not been at fault, and she has not sufficient means for her support, the court may allow her, out of the property and earnings of the husband, alimony which shall not exceed one-third of his income when:
 1. The wife obtains a divorce;
 2. The husband obtains a divorce on the ground that he and his wife have been living separate and apart, or on the ground that there has been no reconciliation between the spouses after a judgment of separation from bed and board, for a specified period of time; or
 3. The husband obtained a valid divorce from his wife in a court of another state or country which has no jurisdiction over her person.

This alimony shall be revoked if it becomes unnecessary, and terminates if the wife remarries.

- C.C. Art. 216 - A child remains under authority of his father and mother until his majority or emancipation. In case of difference between the parents, the authority of the father prevails.
- C.C. Art. 221 - During the marriage, the father is administrator of the estate of his minor children and the mother in the case of his interdiction or absence.
- C.C. Art. 253 - The mother is not compelled to accept the tutorship of her minor children.

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CITATION

PROVISION

- C.C. Art. 256 - The mother is of right the tutrix of her natural child not acknowledged by the father, or acknowledged by him alone without her concurrence. The natural child, acknowledged by both, has for tutor, first the father, in default of him, the mother.
- C.C. Art. 264 - In case there are more than one ascendant in the same degree, in the direct line, but of different sexes, the tutorship shall be given to the male.
- C.C. Art. 298 - The person who is appointed to two tutorships has a legal excuse for not accepting a third. He who, being a husband or father, shall have already been appointed to one tutorship, shall not be compelled to accept a second tutorship, except it be that of his own children.
- C.C. Art. 301 - The causes herein expressed, or any other, can not excuse the father from the obligation of accepting the tutorship of his children.
- C.C. Art. 309 - Minor relations and women who are excluded from the tutorship, are not included in the provisions contained in Art. 308, which requires all relations living in the same parish as a minor for whom a tutor is to be appointed to apply for the tutorship.
- C.C. Art. 366 - The minor may be emancipated by his father or, if he has no father, by his mother, when he shall have reached the age of 15.
- C.C. Art. 380 - The husband who is a minor can authorize his wife to appear in court whether she is a minor or of full age. (But see R.S. 9:101-9:105)
- C.C. Art. 731 - Minors, married women, and persons interdicted can not establish servitudes, except according to the forms of alienation of their property. (But see R.S. 9:101-9:105)

- C.C. Art. 759 - Those who can establish servitudes on their lands can also acquire servitudes. There are some persons who can not establish servitudes, who nevertheless can acquire them; such as those who can not exercise their rights, minors, women not authorized, administrators, tutors, husbands; for the acquisition of a

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<u>CITATION</u>	<u>PROVISION</u>
C.C. Art. 759 (Cont'd)	- servitude augments the value and convenience of an estate. (But see R.S. 9:101-9:105)
C.C. Art. 918	- Natural children are called to the legal succession of their natural mother, when they have been duly acknowledged by her, if she has left no lawful children or descendants, to the exclusion of her father and mother and other ascendants or collaterals of lawful kindred.
C.C. Art. 919	- Natural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor <u>surviving wife</u> , and to the exclusion only of the State.
C.C. Art. 924	- If a married man has left no lawful descendants nor ascendants, nor any collateral relations, but a surviving wife not separated from bed and board from him, the <u>wife</u> shall inherit from him to the exclusion of any natural child or children duly acknowledged. If, on the contrary, it is the wife who died without leaving any lawful descendants, ascendants, or collateral relations, her <u>surviving husband</u> not separated from bed and board from her, shall not inherit from her, except in case she should leave no natural child or children by her duly acknowledged.
C.C. Art. 926	- If the succession be that of the <u>natural mother deceased</u> without legitimate children, the putting into possession of the natural children shall not be pronounced without calling the relations of the deceased, who would have inherited in the default of the natural children, if they are present or represented in the State; or without appointing a person to defend them, if they are absent.
C.C. Art. 927	- If the succession be that of the <u>natural father</u> , the natural children by him acknowledged can not be put into possession of the succession which they claim until a <u>faithful inventory</u> has been made of the same by a notary appointed for that purpose by the judge, in the presence of a person appointed to defend the interest of the absent heirs of the deceased, and on giving good and sufficient security, as is prescribed in the following article. (C.C. Art. 928 provides with respect to security.)
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<u>CITATION</u>	<u>PROVISION</u>
C.C. Art. 937	- In the absence of circumstances of the fact, the presumption of survivorship must be determined by the probabilities resulting from the strength, age and difference of <u>sex</u> .
C.C. Art. 939	- If those who perished together were 15 years of age or older and under 60 years, the <u>male</u> shall be presumed to have survived, where there are an equality of age or a difference of less than one year, otherwise the younger must be presumed to have survived the elder, whether male or female.
C.C. Art. 1005	- The acceptance of a succession by a <u>married woman</u> , without the authorization of her husband or of the judge, is not valid. (But see R.S. 9:101-9:105)
C.C. Art. 1006	- If the wife should refuse to accept an inheritance her husband may do so.
C.C. Art. 1480	- A <u>married woman</u> cannot make donation inter vivos without the concurrence of consent of her husband unless she is authorized by the judge. (But see R.S. 9:101-9:105)
C.C. Art. 1484	- When the <u>natural mother</u> has not left any legitimate children or descendants, natural children may acquire from her by donation inter vivos or mortis causa, to the whole amount of her succession.
C.C. Art. 1485	- But if she has left them only a part, and has disposed of the rest in favor of other persons, her natural children have no action against her heirs for any thing more than so much as is wanting to supply the maintenance that is secured to them by law in case what she has left them be not sufficient for their support.
C.C. Art. 1486	- When the <u>natural father</u> has not left legitimate

children or descendants, the natural child or children acknowledged by him may receive from him, by donation inter vivos or mortis causa to the amount of the following proportions, to wit One-fourth of his property, if he leaves legitimate ascendants or legitimate brothers or sisters or descendants from such brothers and sisters; one-third, if he leaves only more remote collateral relations.

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<u>CITATION</u>	<u>PROVISION</u>
C.C. Art. 1487	- In all cases in which the <u>father</u> disposes, in favor of his natural children, of the portion permitted him by law to dispose of, he is <u>bound to dispose of the rest of his property in favor of his legitimate relations</u> ; every other disposition shall be null, except those which he may make in favor of some public institution.
C.C. Art. 1545	- A <u>married woman</u> cannot accept a donation without her husband's consent or in the event of his refusal, without the consent of the judge. (But see R.S. 9:101-9:105)
C.C. Art. 1555	- Recordation of a donation inter vivos to a married woman shall be made by the husband, if he does not comply the wife may without authorization. (But see R.S. 9:101-9:105)
C.C. Art. 1558	- Minors, persons under interdiction, or <u>married women</u> , are not entitled to relief for the want of acceptance or registry of donations; but they have in such case their recourse against their tutors, curators or husbands; and even in case of the insolvency of such tutors, curators or husbands, they shall not be entitled to relief by way of restitution. (But see R.S. 9:101-9:105)
C.C. Art. 1591	- <u>Married women</u> are absolutely incapable of being witnesses to wills of their husbands.
C.C. Art. 1664	- A <u>married woman</u> can not accept a testamentary executorship without the consent of her husband. If there is between them a separation of property she may accept it with the consent of her husband or, on his refusal, she may be authorized by the court, conformably to what is prescribed by the title: Of Husband and Wife. (But see R.S. 9:51-9:101-9:105)
C.C. Art. 1786	- The incapacity of a <u>wife</u> to contract is removed by the authorization of the husband or, as provided by law, by that of the judge. (But see R.S. 9:101-9:105)
C.C. Art. 1787	- A <u>married woman</u> may act as a mandatary; she may also act as a mandatary for her husband or the community when authorized by her husband. (But see R.S. 9:101-9:105)
C.C. Art. 2327	- Neither can husband and wife derogate by their matrimonial agreement from the rights resulting from the <u>power of the husband over the person of</u>

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<u>CITATION</u>	<u>PROVISION</u>
C.C. Art. 2327 (Cont'd)	- <u>his wife and children</u> , or which belong to the husband as the head of the family, nor from the rights granted to the surviving husband or wife by the title: Of Father and Child, and by the title: Of Minors, of their Tutorship and Emancipation, nor from the prohibitory dispositions of this Code.
C.C. Art. 2349	- The income from the dowry belong to the husband and are intended to help him support charges of the marriage and other expenses which the husband deems proper.
C.C. Art. 2350	- The <u>husband</u> has administration of the dowry. (But see R.S. 9:101-9:105)
C.C. Art. 2351	- The <u>wife</u> may sue for dotal effects, with the authority of the judge, when the husband neglects to do so. (But see R.S. 9:101-9:105)
C.C. Art. 2358	- The <u>wife</u> may, with authorization of her husband or on his refusal the judge, take her dotal effects for the enjoyment of children of a former marriage (But see R.S. 9:101-9:105)

- C.C. Art. 2359 - The wife, with the authorization of her husband, may give her dotal effects for the establishment of their common children. (But see R.S. 9:101-9:105)
- C.C. Art. 2362 - The wife may also mortgage or otherwise encumber her dotal property by complying with the formalities otherwise contained in the civil code. (But see R.S. 9:101-9:105)
- C.C. Art. 2385 - The paraphernal property which is not administered by the wife is considered to be under the management of her husband.
- C.C. Art. 2386 - The income from paraphernal property of the wife remains separate if she executes an authentic act to that effect. (Note: that no similar provision exists in favor of husband.)
- C.C. Art. 2390 - The wife may alienate her paraphernal property with authorization of her husband or, upon his refusal, the consent of the judge. (But see R.S. 9:101-9:105)

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CITATION PROVISION

- C.C. Art. 2397 - The wife cannot, except with authorization of her husband or upon his refusal, the consent of the judge, alienate her immovable effects except in cases where alienation of the dotal immovable is permitted. (But see R.S. 9:103)
- C.C. Art. 2398 - The wife cannot bind herself for the debts of her husband. (But see R.S. 9:103)
- C.C. Art. 2402 - This partnership or community consists of the profits of all the effects of which the husband has the administration and enjoyment, either of right or in fact, of the produce of the reciprocal industry and labor of both husband and wife, and of the estate which they may acquire during the marriage, either by donations made jointly to them both, or by purchase, or in any other similar way, even although the purchase be only in the name of one of the two or not of both, because in that case the period of time when the purchase is made is alone attended to, and not the person who made the purchase. But damages resulting from personal injuries to the wife shall not form part of this community, but shall always be and remain the separate property of the wife and recoverable by herself alone; "provided where the injuries sustained by the wife result in her death, the right to recover damages shall be as now provided for by existing laws."
- C.C. Art. 2404 - The husband is head and master of the community with certain rights and restrictions. He administers the effects, disposes of revenues and disposes of movables.
- C.C. Art. 2410 et seq. - Wife and her heirs may exonerate themselves from debts contracted during marriage by renouncing the community.
- C.C. Art. 2436 - A wife separated in property from her husband cannot alienate her immovables without being authorized by her husband or the judge.
- C.C. Art. 2806 - A community of property does not of itself create a partnership, however that property may be acquired, whether by purchase, donation, accession, inheritance or prescription.

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CITATION PROVISION

- C.C. Art. 2807 - The community of property, created by marriage is not a partnership; it is the effect of a contract governed by rules prescribed for that purpose in this Code.
- C.C. Art. 3001 - Women may be granted powers of attorney, but if she accepts the power without authority of her husband she can be sued only as specifically provided in the law. (But see R.S. 9:101-9:105)
- C.C. Art. 3101 - A married woman may not make a submission without the authority of her husband. (But see R.S. 9:101-9:105)

- C.C. Art. 3108 - Women who on account of their sex cannot be judges are likewise incapable of being named arbitrators. (Note: Although this provision remains in the Civil Code, R.S. 9:51 grants equality to women with respect to acting as arbitrator.)
- C.C. Art. 3252 - Privilege to extent of \$1,000 in favor of widow and children in necessitous circumstances from succession of deceased husband or father.
* * *
- C.C.P. Art. 683 - The father is the proper plaintiff to sue to enforce a right of an unemancipated minor who is the legitimate issue of living parents not divorced or judicially separated. The mother, as the administratrix of the estate of her minor child, is proper plaintiff in such action when the father is a mental incompetent or absentee.
- C.C.P. Art. 686 - The husband is the proper plaintiff, during the existence of the marital community, to sue to enforce a right of the community.
- C.C.P. Art. 695 - The wife as the agent of her husband may sue to enforce a right of his separate estate or the marital community when specially authorized to do so by her husband.
- C.C.P. Art. 732 - The father is the proper defendant in an action to enforce an obligation against an unemancipated minor who is the legitimate issue of living parents not divorced or judicially separated. The mother, as administratrix of the estate of her minor child, is the proper defendant in such action if the father is a mental incompetent or absentee.

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CITATION PROVISION

- C.C.P. Art. 735 - The husband is the proper defendant in an action to enforce an obligation against the marital community.
- C.C.P. Art. 4501 - When both parents are alive, not divorced or judicially separated, property of the minor is under administration of the father.
- C.C.P. Art. 4502 - When the father is a mental incompetent or an absentee, the mother instead of the father has the power of the tutor.
* * *
- R.S. 9:291 - As long as the marriage continues and the spouses are not separated judicially a married woman may not sue her husband except for: (1) a separation of property; (2) restitution and enjoyment of her paraphernal property; (3) a separation from bed and board; (4) a divorce.
- R.S. 9:2656 - Insolvency; inability of wife as a creditor to vote in deliberations between creditors without existence of partition or judgment for separation of goods.
- R.S. 9:2801 et seq. - If the husband neglects for a period of six months after the acquisition of a home to file the declaration that he desires to designate the property as a family home, as provided in 9:2601, the wife may do so, but only as to community property occupied as a home.
- R.S. 9:2821 - At the dissolution of the marriage community, the wife may accept the community under benefit of inventory.
* * *

- La. Const. Art. VII, §41 - No woman shall be drawn for jury service unless she shall have previously filed with the clerk of the district court a written declaration of her desire to be subject to such service. (But see Act 523 of 1972 amending R.S. 13:3056, repealing R.S. 13:3055 and amending Art. 403 of the Code of Criminal Procedure) (Note that Act 777 of 1972 which would have repealed La. Const. Art. VII, §41 was rejected by the people at the polls in November, 1972)

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- La. Const. Art. IV, §7 - No law shall be passed fixing the price of manual labor, but the legislature may establish minimum wages for and regulate the hours and working conditions of women and girls.
* * *

- R.S. 23:118 - Investigation of employer by employment agency before sending out female applicant.
- R.S. 23:164 - No boy under 16 or girl under 18 years of age shall be employed to work in delivery of goods or messages.
- R.S. 23:165 - No boy under 14 or girl under 15 years of age shall be employed in any street trade.
- R.S. 23:169 - No person shall furnish any girl under 18 years any newspapers, magazines, periodicals, advertising matter, etc. for selling, distributing or delivering.
- R.S. 23:215 - No boy under 16 years of age or girl under 17 years of age shall be employed or permitted to work before six o'clock in the morning or after 7 o'clock at night, except that girls after their 17th birthday may work until ten o'clock at night if they attend school.
- R.S. 23:292 - Seats for females to be furnished by employer.
- R.S. 23:293 - Seats for female elevator operator required to be furnished.
- R.S. 23:311 - No female shall be employed in any mine, packing house, bowling alley, etc. for more than nine hours in any one day or 54 hours per week.
- R.S. 23:312 - Minimum of thirty minutes per day required for lunch for females in certain kinds of employment.
- R.S. 23:313 - Females employed to work in packing or canning plants and certain factories may be employed for not more than 10 hours per day or 60 hours per week in emergencies.
- R.S. 23:314 - Penal provisions for violation of R.S. 23:311-23:318, relating to working hours for females.

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- R.S. 23:332 - In cities, towns and villages having a population of 6,000 or more, no female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel, theatre, etc. for more than eight hours in any one day and not more than 48 hours or six days in any consecutive seven day period.
- R.S. 23:333 - Requires recreation period of thirty minutes after six hours of work in types of employment enumerated in R.S. 23:332.
- R.S. 23:334 - Requires the employer of any female employed in any occupation enumerated in R.S. 23:332 to keep a record of each such employee.
- R.S. 23:335 - Commissioner of labor's duty to inspect and report violations of above laws.
- R.S. 23:336 - Penal provisions for violation of R.S. 23:332-23:335 (maximum working hours for females covered by R.S. 23:332 above).
- R.S. 23:337 - Exempts certain types of employment from the provisions of R.S. 23:332-23:336.
- R.S. 23:352 - Employer to keep a record of names of women and girls.
- R.S. 23:353 - No person shall employ women or girls in any industry or occupation if working conditions are detrimental to health or morals or if wages are inadequate.
- R.S. 23:354 - Minimum wage division of department of labor to establish reasonable standards of wages and working conditions for women and girls.
- R.S. 23:355 et seq. - Authorizes the minimum wage division of the State Department of Labor to examine books, etc., of employers to ascertain wages and working conditions of women and girls.
- R.S. 23:1030 - Employee's agreement as to workman's compensation binding on widow.
* * *
- R.S. 25:3 - Two women required to be on board of commissioners of the Louisiana State Library.
* * *
- R.S. 47:396 - Exemption of widows of blind persons as to occupational license taxes.

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CC/73 Research Staff

Committee on Bill of Rights and Elections

September 4, 1973

Staff Memorandum No. 54

RE: Alternatives with Respect to Section 7. Freedom from Discrimination. (The alternatives are arranged in order from the mildest action, i.e., deleting the section to the strongest action of a broadly-worded section on freedom from discrimination)

Alternative No. 1

Delete the section.

Comment: Inclusion of the section, even in mild form, could be used by persons opposed to a new constitution as the means of inflaming existing prejudices against a new constitution. If adopted only in a mild form, the protection afforded by the section would be no more than protections already afforded by federal law. Hence, adoption of the section could serve to endanger the strong Section 3. Right to Individual Dignity and the entire proposed new constitution.

Alternative No. 2

Each person shall be free from arbitrary, capricious or unreasonable discrimination on the basis of race, religion, national ancestry, or sex in access to necessary public accommodations. Nothing herein shall be construed to impair freedom of association.

Comment: The above section would be a very mild provision which is well within present protection of federal law. The words "arbitrary, capricious, or unreasonable" seem to have a good effect on the delegates in calming fears. The word "necessary" before "public accommodations" could be construed to include only restaurants and hotels as opposed to bars which is the situation under present federal statutes, but the word "necessary" would invite litigation as to its meaning.

Alternative No. 3

Alternative No. 2 could be broadened by eliminating the words "arbitrary, capricious, or unreasonable" or by eliminating the word "necessary" before accommodations. It could also be expanded by including additional categories such as the physically handicapped. The latter provision, however, might make it necessary to limit public accommodations to those that are newly constructed. The word "unreasonable", however, might be construed as sufficient to eliminate the requirement that existing public accommodations must be modified for the physically handicapped.

Alternative No. 4

Each person shall be free from arbitrary, capricious, or unreasonable discrimination on the basis of race, religion, national ancestry, or sex in access to necessary public accommodations or in access to goods and services of private monopolies. Nothing herein shall

be construed to impair freedom of association.

Comment: This alternative is similar to the previous but adds access to the goods and services of private monopolies.

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This provision could be reasonably justified on the basis that where a private monopoly exists without competition, no person should be denied access on an arbitrary, capricious, or unreasonable basis. This would include utilities, common carriers, and the like.

Alternative No. 5

Each person shall be free from arbitrary, capricious, or unreasonable discrimination on the basis of race, religion, national ancestry, sex, or physical handicap in access to public accommodations or in the hiring and promotion practices of employers with fifteen or more employees. Nothing herein shall be construed to impair freedom of association.

Comment: These are essentially the substantive provisions which the convention had before it at adjournment on Friday, August 31, 1973. It is to be noted that some delegates objected to including freedom from discrimination by private employers on the basis that private employers have rights and obligations with respect to their private businesses and that enforcement of a prohibition against discrimination in hiring might work an unreasonable hardship on them to the detriment of their businesses and property rights. A prohibition against discrimination in hiring could be utilized by opponents of the new constitution to defeat it at the polls by securing the opposition of many small businesses and their lobbying organizations.

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Alternative No. 6

Each person shall be free from discrimination on the basis of race, religion, national ancestry, or sex in the hiring and promotion practices of any employer or in access to public accommodations. These provisions are self-executing, but reasonable exemptions as well as special remedies for violations may be provided by law.

Comment: The above is essentially a restatement of the proposed Dennis amendment.

Alternative No. 7

Each person shall be free from discrimination on the basis of race, religion, national ancestry, sex, or physical handicap in access to public accommodations, in the hiring or promotion practices of employers, or in the sale or rental of property.

Comment: The above would be the broadest prohibition against discrimination covering the subject matters presently

under discussion. Prior arguments that such provisions could be used to defeat the constitution would apply and it is, of course, questionable whether the delegates themselves would vote for broad provisions.

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Committee on Bill of Rights
and Elections

October 5, 1973

Staff Memorandum No. 55

RE: Comparison of Committee Proposal No. 33 (Article X. Elections) with provisions in other state constitutions.

Section 1. Free Elections

A similar provision in the South Carolina Constitution provides (Art. I, §9) that laws regulating elections are to protect the right of suffrage.

Section 2. Registration of Voters

Alaska (Art. V, §4) and Alabama (Art. VIII, §187) provide for permanent registration. New York (Art. II, §2), Rhode Island (Amend. XXIX, 1, 4-7), South Carolina (Art. II, §4), and Virginia (Art. II, §19) provide for permanent registration in certain situations.

Section 3. Secret Ballot

Provisions for a secret ballot are common to many states, i.e. Alaska (Art. V, §3), Arizona (Art. VII, §1) and California (Art. II, §5). Absentee voting provisions are very common with 20 states having a constitution provision including California (Art. II, §1), Connecticut (Art. VI, §6), and Maryland (Art. I, §1-A).

Although the present Louisiana Constitution prohibits proxy voting (Art. VIII, §3) in taxpayer election, no other state was found with such a provision.

Public counting of votes is provided for by South Carolina (Art. II, §1).

Section 4. Residence of Electors

Similar to Art. VIII, §11 of the present constitution some states have deleted provisions requiring loss of residence in certain cases, i.e. Michigan (Amend. 6, deletes Art. III, §2) and Pennsylvania (Amend. 16, deletes Art. VIII, §13).

Section 5. Political Activities

No similar provision was found in the election article of any other state constitution.

Section 6. Privilege from Arrest

This provision is commonly found in many state constitutions.

Section 7. Candidacy for Public Office

Nine states have adopted a provision on the right to seek office including Minnesota (Art. VII, §7), Montana (Art. IX, §11), New Mexico (Art. VII, §2) and North Carolina (Art. VI, §6).

Section 8. Vote Required for Election

Four states have a similar or related provision Arizona (Art.VII, §7), California (Art. XX, §13), Montana (Art. IV, §5) and Oregon (Art. II, §16).

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CC/73 Research Staff
July 31, 1973
Staff Memorandum No.

RE: Forced Heirship in Louisiana Constitutional and Statutory Law.

CONTENTS

- 1. Introduction
 - 2. Civil Code of Louisiana
 - 3. Constitution of 1921
 - 4. Recent Developments Restricting Forced Heirship
 - 5. Policy Considerations
- Appendix A - History

1. Introduction

This memorandum proposes to supply background information relevant to deciding whether to continue in the new constitution a provision like Article IV, Section 16 of the 1921 Constitution which provides, in part:

No law shall be passed abolishing forced heirship; but the legitime may be placed in trust to the extent authorized by the Legislature.

Since ancient times, governments have used forced heirship to protect social mores, to ensure political stability, and even--at the end of the eighteenth century--to encourage democracy. The patriarch of the Roman family was almost omnipotent, and when laws were enacted to guarantee his survivors portions of his estate, they were meant to protect the family as institution, rather than to benefit the heirs. In primitive Germany, ownership of immovables was communal, and family inheritance of lands at the death of an adult male was the natural outgrowth of common ownership. Prerevolutionary France allowed succession laws which supported the interests of the landed aristocracy in keeping large estates intact. But revolutionary France, imbued with a democratic spirit, strengthened the forced heirship provisions which spelled doom to feudal estates. And it was the philosophy of the French Revolution which Louisiana incorporated into its civil code in 1808 and, finally, into its constitution in 1921. [See Appendix A for an expanded discussion of the history of forced heirship.]

2. Civil Code of Louisiana

The Louisiana Civil Code establishes the forced portion, or legitime, which restricts an individual's power of disposition by will or by donation of the property he owns. Article 1496 provides that if one were survived by neither parents nor descendants, he is free to dispose of his property as he wishes. But the power of disposition is limited if one is survived by parents or descendants.

Under Article 1493, the forced portion is one-third if one is survived by one child, one-half if there are two children and two-thirds if there are three or more children. Or, as the code puts it:

Donations inter vivos or mortis causa [by donation or by will] can not exceed two-thirds of the property of the disposer, if he leaves, at his decease, a legitimate child; one-half, if he leaves two children; and one-third, if he leaves three or a greater number.

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If there are no descendants, but there are ascendants, the parent or parents are forced heirs for one-third or one-fourth depending on the circumstances. Article 1494 provides:

Donations inter vivos or mortis causa cannot exceed two-thirds of the property, if the disposer, having no children, leaves a father or mother, or both, provided that where the legal portion of the surviving father or mother or both is less than one-third the forced portion shall not be increased to one-third but shall remain at the legal portion.

Not strictly part of forced heirship, but related to it are the laws governing collation and reduction of donations. Under these laws, attempts to defeat the forced heirships regime are subject to legal actions by the forced heirs to gain the share to which they are entitled by law.

Forced heirs may be deprived of their legitime or forced portion for the causes established by law, but only for those causes. Civil Code Article 1621 recognizes ten grounds for disinheritance.

- 1. striking the parent, or raising one's hand to do so.
- 2. if the child has been guilty, to the parent, of "cruelty, of a crime or grievous injury."
- 3. if the child has attempted to take the life of either parent.
- 4. if the child has accused a parent of any capital crime, except high treason.
- 5. failure to give sustenance.
- 6. neglect to care for an insane parent.
- 7. "if the child has refused to ransom them, when detained in captivity."
- 8. if the child used an act of violence or coercion to hinder the parent in making a will.

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- 9. refusal to give security for a parent in order to release him from prison.
- 10. if a minor child marries without the consent of the parents.

To take advantage of the above, the testator must make a will indicating his intention to disinherit. Art. 966, however, creates a category of "unworthy heirs" who do not have the right to inherit even if no will disinherits them. Unworthy heirs are persons convicted of killing or attempting to kill the deceased; who have accused the deceased of "some accusation found calumnious, which tended to subject the deceased to an infamous or capital punishment"; and those who, knowing of the murder of the deceased, have not taken measures to bring the murderer to justice.

Other developments have extended forced heirship provisions

to include children adopted by the deceased. Amendments in the 1940's and 1950's to Article IV, Section 16 and Article 214 of the Civil Code have granted adopted children all the rights of natural legitimate children in successions. At the same time, they continue the adopted child's status as heir to his blood parents. Illegitimate children, however, are not forced heirs.

On the North American continent, Louisiana, Texas, and the province of Quebec all adopted forced heirship. When Texas came into the union in 1846, however, Spanish legal traditions bowed to the invading common law. And in 1856, Texas abolished forced heirship. In Quebec, the struggle between the common law and the civil law resulted in civilian victory. But on the issue of testamentary disposition, common law ideas prevailed and forced heirship was abandoned to allow the testator's complete freedom.

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3. Constitution of 1921

Though forced heirship has been part of Louisiana's law from colonial days, it was not until 1921 that constitutional status was granted to the institution.

Article IV, Section 16 does not freeze the existing civil code provisions relating to forced heirship and does not prevent the legislature from making changes in the categories of forced heirs or in the portion of the deceased's estate which constitutes the legitime, Succ. of Earhart, 220 La. 817, 57 So. 2d 95 (1952):

To construe the provisions of this article of the constitution otherwise would be tantamount to accusing them of folly. The words, "No law shall be passed abolishing forced heirship", mean exactly what they say; in other words, that forced heirship cannot be done away with wholly, wiped out or destroyed. This provision does not prohibit the legislature from regulating or restricting the rights of forced heirs.

The legislature could, for example, amend the civil code to remove ascendants as forced heirs and could reduce the portion of a forced heir.

As stated in Comment, 37 Tul. Law Rev. 723:

Although the legislature is constitutionally prohibited from abolishing forced heirship, the supreme court has said that nothing proscribes it from "regulating or restricting the rights of forced heirs." Thus it can authorize dispositions of the legitime in forms unknown to the Civil Code, for instance, in trust. Therefore, from a constitutional standpoint, nothing prevents the legislature from reducing the present fractions of the forced portion to negligible amounts, or from limiting the rules of collation and reduction so severely they are rendered nugatory as remedies for enforcing the forced heir's rights.

Thus Article IV, Section 16 permits the legislature to make numerous changes in forced heirship should it desire to do so.

As has been said, Comment, 37 Tul. L. Rev. 723:

That nothing along these lines [changes] is even remotely foreseeable, barring certain proposed changes with respect to the parent's share of

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community property in a childless marriage, is due more to an almost emotional attachment of Louisiana law makers to the institution of forced heirship than to constitutional restrictions.

4. Recent Developments

In recent times, various statutory and jurisprudential developments have lessened the strictures of forced heirship and removed some of the limitations on the testator's freedom

to dispose of his property: the usufruct of a surviving spouse, life insurance and bonds, and the trust estates law.

Under the Civil Code, the spouse of the deceased is not a forced heir. (More recent codes did recognize the societal trend toward more rights for the spouse and made the wife a forced heir -- Spanish Civil Code of 1889; German Civil Code of 1900; Swiss Civil Code of 1907.) However, amendments to the Louisiana code over the years have increased the rights of a spouse in a deceased's property in other ways -- at the expense of the rights of forced heirs.

Article 916 establishes the surviving spouse's usufruct, allowing the surviving spouse the right to use and to own the fruits produced by that part of the community inherited by the children of the marriage. Though this usufruct is not obligatory, it exists if a will does not provide otherwise, and it allows property inherited by children of the marriage (forced heirs) to continue to be enjoyed by the surviving spouse until her remarriage. In this case, the forced heirs have what is termed naked ownership, a reversionary right that entitles them to full ownership of the property once the usufruct ends, either upon the death or remarriage of the spouse who survived.

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Historically, the forced heir was entitled to full ownership. As just discussed, the institution evolved to where a naked ownership interest satisfied the legitime when the surviving spouse had a usufruct over the property. A further development lessening the interest of the forced heir comes through the trust laws, whereby the property of a deceased, even a forced heir's portion, may be placed in trust.

Article IV, Section 16 as incorporated into the 1921 Constitution severely limited trusts. The article as amended in 1962, however, grants the legislature power to "authorize the creation of express trusts for any purpose," and it specifically allows the legitime to "be placed in trust to the extent authorized by the Legislature." In such a situation, the forced heir does not have ownership or control of the property; his interest is satisfied if the net income accruing from the property is payable to the forced heir not less than once each year; the term of the trust does not exceed the forced heir's life, and the property principal is delivered to the forced heir or his heirs, legatees or assignees free of trust upon the termination of the trust. (Louisiana Revised Statutes 9:1841)

Developments in case law have also narrowed the interest of the forced heir and correspondingly expanded the testator's freedom to dispose of his property. The Louisiana Supreme Court has ruled that the proceeds of life insurance policies are sui generis and not subject to the civil code rules on heirship, Sherwood v. N.Y. Life Ins. Co. 166 La. 829, 118 So. 35 (1928). One is entitled to name any person as beneficiary of a life insurance policy, without regard to the forced heirs. See Comment, 37 Tul.

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Somewhat unclear and still in dispute is the status of United States government bonds; indications are they can devolve free of restrictions of forced heirship. See Notes, 14 Loyola Law Review 275 (1967-68)

5. Policy Considerations

Concentration of Wealth. Breaking up feudal estates was one of the goals of the French law of forced heirship. Proponents of the institution argue that forced heirship still has that policy effect; it keeps a wealthy person from keeping the property in the hands of one person for another generation and (along with the laws of collation) requires him to distribute it among all his children. In that sense, it is seen as a democratic measure. Opponents argue that the institution may have too far-reaching effects in this regard; it may require continued subdivision of land, over many generations, into small plots that are not economically productive.

Economic Interests of Children. Proponents of the institution claim that requiring a parent to distribute his property among his children is a means by which he fulfills his obligation to support those children, and tends to prevent such persons from becoming public charges. It is argued that without forced heirship, one could favor one child to the elimination and subjugation into poverty of his other children. The contrary argument is that this consideration is no longer important in view of the change from familial responsibility for those in need to societal responsibility through various governmental welfare programs. A further elaboration of this argument would concede the necessity to provide

for the care of minor or retarded children, but would argue the inadvisability of forced heirship for adult children who should be able to support themselves.

Family Unit. As in ancient Rome, proponents argue that forced heirship continues to reflect and to encourage family solidarity. By requiring property to be left primarily within the family, there is encouragement to continue the greater family as a unit in some type of spirit of cooperation, which effect might not exist if the property were distributed to third persons or to one child only.

Opponents argue that with industrialization of society, the status of the family has changed. There has been a breakdown of the extended family and there is a movement away from the solidity of the immediate family. Forced heirship, they say, has not prevented this from happening. Now that the position of the family has changed, the law should also change.

Related here is the fact that at the time of the adoption of the civil code, wealth was primarily in land, and was easily manageable within a family unit. Now that wealth is in other forms of property in many cases, and is manageable separately, there is less closeness within the family even when the wealth is distributed among all the children.

Individual Freedom. Opponents point out that forced heirship

restricts the freedom of an individual to dispose of the property he has earned as he wishes. They argue that this limitation on testamentary freedom is a violation of basic rights. While there may have been grounds for saying in the past that most wealth

(usually land) was itself inherited and thus should be passed on in the family, most wealth now held was not inherited and there is not the corresponding obligation to pass it on to succeeding generations.

Proponents of forced heirship argue to the contrary; that individual freedom should cease to exist upon the death of a person and that once one dies, he should have no control over what he once owned. They would say the interest of society expressed through the state would predominate here.

Tax Considerations. A primary argument advanced by those who wish to abolish forced heirship is that such laws prevent a testator from obtaining maximum advantage of legal devices that allow him to avoid paying inheritance and estate taxes. Through freer use of trusts, the marital deduction, and donations to charity -- which are limited somewhat by the legitime -- estate planning would be made easier and savings on inheritance and estate taxes would be gained.

Tradition. Another consideration in Louisiana is that a sizeable part of the legal community is dedicated to preserving Louisiana's unique civil law tradition, a tradition of which forced heirship and community property play an important part.

APPENDIX A
ORIGINS OF FORCED HEIRSHIPS

Roman Law

Two institutions were central to Roman society: the family and the family worship of household gods. At first, the paterfamilias could dispose of his property as he pleased. Wills were introduced, probably as late as the second century B.C., more to preserve the family tradition than to dispose of property. The naming of an heir "was not only the primary function of the will but furthermore...without it no will was valid."¹ When naming his heir, a Roman testator could provide for substitutes: the substitutio vulgaris, an alternate heir should the first-named heir be unable to inherit at the time of the succession; and the substitutio pupillaris, an heir provided for the testator's minor son should the son die before reaching the age to make a valid will.

But early Roman succession laws did not always insure the continuance of the family as institution. Sometimes beneficiaries willed individual legacies received more of the family property than did the named heir. Accordingly, a law was imposed to penalize an outsider who accepted such a legacy. In 168 B.C. lex Voconis attempted to right possible imbalance between the

property willed an heir and the property bestowed upon a beneficiary outside the family, but not until 40 B.C. did Roman law solve the problem by reserving one-fourth (falcidian portion) of an estate for the testator's heir.

Early in the empire, the establishment of fidei commissa created other problems for the continuance of the Roman family and the family cult. Through fidei commissa, the testator could charge (or trust) his heir to transfer portions of the estate to persons not otherwise capable of inheriting from the testator. The Romans thus imposed the same restrictions upon fidei commissa as they had upon legacies. In 73 A.D., a law specifically permitted the entrusted heir to retain one-fourth of the estate. Finally, in the sixth century, Justinian assimilated legacies and fidei commissa, governing both by the same rules.

Before the sixth century, the original purpose of the will, to perpetuate the family and the family cult, became increasingly less important to heads of families, and the continuance of that purpose became the responsibility of the state. Only then did the Romans begin to consider the moral responsibility of the testator to his children. One law made it difficult for a parent to disinherit his children, for disinherison became valid only when the disowned descendant was explicitly mentioned in the will. A second law assured a portion of the estate to members of the immediate family legally, though unjustly, disinherited. So small at first that it could be meaningless, this rightful portion of the testator's estate was increased by Justinian reform.

Under Justinian, the forced portion for the testator's children was one-third of the estate if there were four or fewer surviving children and one-half if five or more survived. Parents, either one or both, who survived a child received one-third of the child's estate. And finally Justinian compiled the first complete list of the causes for disinherison.² The Justinian reforms of forced heirship and the rules that governed it

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"constituted a material basis for the development of the legitime in mediæval laws and customs and of the forced heirship in modern codes."³

German and French Developments

In primitive Germany, group organization served as the basis of society, and the extended family was the primary group. The land was owned collectively. Only personal possessions like weaponry and foodstuffs were subject to private ownership. The extended German family was based upon common descent from a tribal male ancestor. Unlike the Roman family, the German family had no all-powerful patriarch; the family was instead governed by a union of all male members, themselves heads of households, equally united. Because of these circumstances, ancient Germany had no sophisticated system of inheritance: "the death of one member of a group caused no change in the collective ownership; the association had the perpetual personateness of a modern corporation."⁴ By the end of the fifteenth century, however, Roman law had become common to the whole of the empire. Never-

theless, German society remained unindividualistic and "intestacy was the rule rather than the exception."⁵

In France, succession laws developed differently in the North and in the South. The Southern part of the country was Romanized, and in this "country of the written law" there existed by the eleventh century a basically uniform written law which was, naturally, Roman. The North of France, the "country of the customary law," had been influenced by Germanic legal tradition and accepted the German concept of collective ownership. And the customary institution which limited the testator's freedom

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to dispose of his property was called the réserve, usually four-fifths of the ancestral property. The testator had absolute freedom over the disposition of one-fifth of the ancestral property, all property which he had acquired through his own efforts or from a nonfamilial source, and all of his movable property. If he had no ancestral property, customary law forced a portion of either the movable property or the acquired property upon the testator's heirs--ascendants, descendants, and collaterals.

By the thirteenth century, the Justinian concept of the testator's moral duty to provide for his children began to influence customary law.⁶ Thus developed in the Custom of Paris the custom which later ruled Louisiana as a French colony, the légitime coutumier, the customary legitime:

When the réserve was insufficient to ensure the children's welfare adequately, they were entitled to the légitime coutumier. In its earliest stage of development, the amount of the legitime was set by the judge at a figure designed to allow the heir to live reasonably. By the fourteenth century, the standard légitime coutumier, where it was recognized, was fixed at one-half of the acquets [acquired property] and movables of the deceased.⁷

The légitime coutumier, unlike the réserve, was established to benefit only the descendants of the deceased. It introduced into customary law the means for a descendant to reduce inter vivos donations which threatened his legitime on acquired or movable property. Furthermore, it added to customary law, Justinian's provisions for disinherison. If the réserve was less valuable than the légitime,

the difference between its value and that of the legitime was imposed on the acquets [acquired property] and movables to satisfy the demands of the legitime. For example, consider an estate with acquets [acquired property] and movables worth two thousand francs, and inherited immovable property worth five hundred francs. The réserve of four-fifths of the propres [inherited

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immovables] would be worth four hundred francs. The legitime, on the other hand, would be one thousand francs. Because the réserve in these circumstances is inadequate, to its four hundred francs must be added six hundred francs from the acquets [acquired property] and movables to create a forced portion of one thousand francs, the value of the légitime coutumier.⁸

Spanish Law

Spanish law, too, recognized forced heirship, at least as early as the writing of Las Siete Partidas (1265) which set the legitime at the one-third and one-half portions established by Justinian. During and after the Middle Ages, Spanish law was written and rewritten, but no code was ever repealed. When

Spain governed the Louisiana colony, the provisions governing forced heirship were existent but confusing. Thus some students of Louisiana legal history believe that the redactors of the Louisiana Civil Code of 1808 utilized the Code Napoleon more heavily than the Spanish Codes which had prevailed in Louisiana under recent Spanish colonialism, even though the Louisianans adopted the Justinian fractions.⁹

Louisiana Developments

Among the provisions of the Code Napoleon adopted in the Louisiana Civil Code of 1808 is a prohibition against substitutions. Though fidei commissa had been restricted since Roman times, such substitutions were permitted under Spanish law and in prerevolutionary France. For a time they were prohibited in some customary French regions, but they were valid in the southern part of the country after the introduction of Roman law there in the twelfth century. In 1747, an ordinance regulated substitutions fidei commissaire uniformly throughout the country. And the limitations

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upon the testator's disposition of his property remained similar to those established by Justinian.

The French fidei commissa became

for the nobility the means of conserving the integrity of their fortunes, generation after generation, and of assuring its (sic) transmission to the eldest son who bore the title of the family and was representative of the name.... At a time when landed property constituted the chief source of wealth, and noble families were being destituted slowly but surely through the effects of the partition of estates and the prodigality of heirs, the institution of fideicommissa, or substitutions fideicommissaire, became the means of preserving a rich and numerous nobility around the throne. An aristocracy, it has been said, can only maintain itself by use of substitutions.¹⁰

Revolutionary France abolished fidei commissa, for "while political liberty and individual equality were among the major objectives of the revolution against the old régime, the all-devouring interest of the state took exclusive precedence whenever possible."¹¹ The Revolutionaries therefore abolished feudal privileges and, with them, much of the testator's freedom to dispose of his property. As the ancient Romans had worked to protect the family as institution (giving individuals who belonged to the family only secondary consideration), so the revolutionary Frenchmen worked to institute middle-class democracy in a nation of peasants and aristocrats. By abolishing fidei commissa, they could force the parcellation of large estates, prevent future growth of such estates, foster a nation of small landowners, and thus, they believed, encourage a large middle-class population able to support itself and to produce self-sufficient future generations.

Article 1520 of the Louisiana Civil Code and Article 896 of the French Civil Code prohibit substitutions. Translated,

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Article 896 of the French Civil Code reads as follows:

Substitutions are prohibited.

Every disposition by which the donee, the instituted heir or the legatee will be charged to preserve for and deliver to a third person will be null even with regard to the donee, the instituted heir or the legatee.¹²

Article 1520 of the Louisiana Civil Code as amended in 1962 reads as follows:

Substitutions are and remain prohibited, except as permitted by the laws relating to trusts.

Every disposition not in trust by which the donee, the heir, or legatee is charged to preserve for and to return a thing to a third person is null, even with regard to the donee, the instituted heir or the legatee.

Article IV, Section 16 of the Louisiana Constitution of 1921 as amended in 1962 reads in part as follows:

Substitutions not in trust are and remain prohibited; but trusts may contain substitutions to the extent authorized by the Legislature. No law shall be passed abolishing forced heirship; but the legitime may be placed in trust to the extent authorized by the legislature.

Prior to the amending of both the Louisiana Code and the constitution in 1962, both articles prohibited fidei commissa as well as substitutions. One commentator, however, suggests that the use of both terms was a redundant prohibition against the same kind of substitution: fidei commissa. For both Article 896 of the French Civil Code and Article 1520 of the Louisiana Civil Code describe the fidei commissa as the prohibited substitution. And both the French Civil Code (Article 898) and the Louisiana Civil Code (Article 1521) authorize another kind of substitution, the Roman substitutio vulgaris. Furthermore, if "substitution" is interpreted to mean other than "fidei commissa," then, according to Article IV, Section 16, the vulgar substitution

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is unconstitutional.¹³

The adoption of Article IV, Section 16, it has been argued, came as a reaction against the introduction of trusts into Louisiana law in 1920. The "sanctification" of forced heirship in that provision is of secondary importance. The sponsors of the provision resented the 1920 trust law as "the infiltration of common law doctrines and the displacement of civil law principles" in Louisiana. And the redactors of Article IV, Section 16 intended the prohibition against trusts combined with the safeguard of forced heirship to perpetuate the democratic spirit of the French Revolution: "to prevent the accumulation of excessively large fortunes."¹⁴

NOTE: On the North American continent, Louisiana, Texas, and the province of Quebec all adopted forced heirship. When Texas came into the union in 1846, however, Spanish legal traditions bowed to the invading common law. And in 1856, Texas abolished forced heirship. In Quebec, the struggle between the common law and the civil law resulted in civilian victory. But on the issue of testamentary disposition, common law ideas prevailed and forced heirship was abandoned to allow the testator's complete freedom.

¹Joseph Dainow, "The Early Sources of Forced Heirship; Its History in Texas and Louisiana," Louisiana Law Review, Vol. IV, p. 44.

²Michael Porter, "Forced Heirs, the Legitime and Loss of the Legitime in Louisiana," Tulane Law Review, Vol. XXXVII, p. 713.

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³Dainow, "Sources of Forced Heirship," p. 49.

⁴Ibid., p. 50.

⁵Ibid., p. 54.

⁶Joseph Dainow, "Forced Heirship in French Law," Louisiana Law Review, Vol. II, pp. 673-675.

⁷Porter, "Forced Heirs," pp. 714-715.

⁸Ibid., pp. 715-716.

⁹John H. Tucker, Jr., "Substitutions, Fideicommissa and Trusts in Louisiana Law: A Semantical Reappraisal," Louisiana Law Review, Vol. XXIV, p. 460.

¹⁰Ibid., pp. 451-452.

¹¹Dainow, "French Law," p. 675.

¹²Tucker, "Semantical Reappraisal," p. 440.

¹³Ibid., p. 476.

¹⁴Dainow, "Sources of Forced Heirship," p. 67.

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CC/73 Research Staff

August 6, 1973

RE: A. Provisions of the United States Bill of Rights applied to the states through the 14th Amendment.

1st Amendment

Speech and Press: Fiske v. Kan., 274 US 380 (1927)

Religion: Engel v. Vitale, 370 US 421 (1962);
Sherbert v. Verner, 374 US 398 (1963)

4th Amendment

Searches & Seizures: Wolf v. Colo., 338 US 25 (1949)
Exclusionary Rule: Mapp v. Ohio, 367 US 643 (1961)

5th Amendment

Double Jeopardy: Benton v. Maryland, 395 US 784 (1969)

Self-Incrimination: Malloy v. Hogan, 378 US 1 (1964)

Just Compensation: Chicago, B. & Q. R. Co. v. Chicago, 166 US 226 (1897)

6th Amendment

Speedy Trial: Klopfer v. North Carolina, 386 US 213 (1967)

Public Trial: In Re Oliver, 333 US 257 (1948)

Criminal Jury Trial: Duncan v. La., 391 US 145 (1968)

Right of Confrontation: Pointer v. Tex., 380 US 400 (1965)

Compulsory Process: Washington v. Tex., 388 US 14 (1967)

Right to Counsel: Gideon v. Wainwright, 372 US 335 (1963)

8th Amendment

Cruel and Unusual Punishment: Furman v. Georgia, 408 US 238 (1972)

B. Provisions of the Bill of Rights not applied to the states:

2d Amendment

Right to Bear Arms: See U.S. v. Miller, 307 US 174 (1939). Also Cody v. U.S., 460 F.2d 34 (1972) which tends to limit the right.

3d Amendment

Quartering Soldiers: But see Katz v. U.S., 389 US 374 (1967) for discussion of the amendment as reflecting the privacy protected also by the 4th Amendment.

5th Amendment

Grand Jury Indictment: Hurtado v. Calif., 110 US 516 (1884)

7th Amendment

Civil Jury Trial: See Maxwell v. Dow, 176 US 581 (1900)
Appellate Review of Facts

8th Amendment

Excessive Bail and Fines: But see US ex rel. Fink v. Heyd, 285 F. Supp. 716 (1968), cert. den. 396 US 895 (1968) and Whitney Stores Inc. v. Summerford, 280 F. Supp. 406, aff'd. 393 US 9 (1968).

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Mr. Ed Ware: Ladies and Gentlemen, thank you for the opportunity of coming; I apologize for not having been before your committee before or by not having seen to it the district attorney didn't appear before you before to give you our views in the position the district attorneys take in connection with the important things that are contained in the Bill of Rights. I don't see that it would serve any purpose for me to make a long speech following Mr. Richardson, about 99% of what Mr. Richardson says, I and the other district attorneys in the state agree wholeheartedly with. You know the district attorney is in a different position altogether from the defense attorney. We are charged with a two-fold obligation of prosecuting those who are guilty and protecting the rights of those who are innocent, whereas the defense attorneys have but one charge, and that is to acquit that person whether he is guilty or not and it makes a bad difference in what your attitude is towards a criminal case as is to which side of the fence you're on. Now those of us who are conscientious district attorneys of Mr. Stinson come under a considerable amount or pressure from the public as a result of those newspaper articles who feel that criminals are being mollycoddled and as a result of a great deal of pressure is put upon people who bear these responsibilities towards innocent people to cut corners and to sluff edges and to do things that you shouldn't oughta do. But I submit to you that if you put these things in the constitution, that Mr. Richardson discussed particularly with respect to search and seizures, with trial before grand jury, that's what I call it, a trial before grand jury if you're going to bring the defense attorney in give them the right to compulsory process, then you are hamstringing the district attorneys. Now you know one thing that causes a tremendously long constitution is a complete distrust for public officials, for members of the legislature, for judges, for district attorneys, for everybody, there is a complete distrust. Now we are either as a group of people, going to have to start electing officials that we trust or we're going to have to start trusting the officials that we elect. One of the two. We cannot build a document based on fear and expect to govern ourselves very successfully, and that's why I am opposed to the Bill of Rights becoming a code of criminal procedure. I think that certain things should be put in the Bill of Rights to protect the innocent people without trying to nail down each and every detail. I think that we must trust our legislature and give them the obligation of drawing the line. You know our present code of criminal procedure wasn't just something that happened overnight that was years and years of hammering and we're coming down here just a few weeks and try to undo a whole of a lot of effort that was done by very knowledgeable people for a number of years and I think we should proceed very, very cautiously. There's one thing Mr. Richardson didn't touch on that perhaps doesn't concern D. A.'s so much and I would like to speak personally, and that is to the section dealing with the right to bear arms. I would be in favor in leaving completely the words following concealed weapons which says otherwise to regulate reasonably the keeping and bearing of arms. I think the people should have the right to keep and bear arms, I think that the legislature should be authorized to pass laws against the carrying of concealed weapons, but I would not want to open the door to legislation regulating the keeping and bearing of arms. Now I noticed you put the word reasonably in there, but that one word has caused more law suits than any other word we've got in all of our criminal code, civil code, anything else. What is reasonable? The reasonable-man test is one of the most difficult things to arrive at and apply I've ever seen. What is reasonable to one man is completely unreasonable to another.

Question by: Mr. Ware, may I interrupt? I'm glad you're on that article because it bothers me. First of all, since you've studied it, do you think we need to address ourselves to militia, the question of militia?

Mr. Ware: Yes, I do.

Question by: Okay, let me ask you this, how would proposal sound to you? Subject only to the police power of the state the right of people to keep and bear arms shall not be abridged.

Mr. Ware: Just right off the top of my head that's even worse than what you've got. I don't even know what the police power of the state is, the supreme court interprets it differently in every case. You know you come up and you say would we, the police jury or the city council, say we want to do this, there is no specific legislative or constitutional grant of authority in this field but this is part of our police power.

Question by: The reason I asked this, I'm the only one that abstained on this article. The reason I abstained because I don't think it is strong enough. You know, you have the statistics, you see them every day, I suppose. The statistics on violence caused by access and the accessibility of firearms. Now I would like you very much to tell us what to do to give you more power to control firearms in this constitution and the excessibility of firearms.

Mr. Ware: I can tell you where I want to end up, I can't tell you how to get there. I want the criminals to not have them and the other people to have them. Now what you put in there though ends up with only the criminals having them and the other people not having them. I don't say it would, it could.

See, that's what I'm worried about, and we're going to have a situation where we know people who have no respect for the laws are going to get them and that's what's happened. I was reading an article in the Chicago paper, the statistics on deaths and offenses committed with weapons in every state that has abolished the right to keep weapons or regulated the right to keep 'em and register 'em has gone up all other states

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where they have moved that kind of legislation those offenses have gone down considerably and the statistics were rather large. It was, assuming the guy knew what he was talking about and I don't say that he does, it was astounding to me that this supposed gun legislation would be as ineffective as it was; but if you're going to have people with guns let's let everybody have them not just the bad, Bad as that might be.

Chris Roy: You and Woody would be exactly alike, Woody doesn't want any reference to well-regulated militia because he feels that that presupposes the right to bear arms in some way condition or some type of militia service, but I want to call your attention to the fact that this provision and that's why Kendall didn't vote for it, it's not at all as strong against gun limits as the previous 1921 provision, because we say that nothing herein shall allow the confiscation or special taxation, that was not in the prior constitution. And we added that because Woody felt so strongly about it. But the point I want to make with you is, if we strike or otherwise regulate reasonably the keeping and bearing of arms than I can have a machine gun in my house. Is that alright in your opinion?

Mr. Ware: No.

Chris Roy: Well, where do we regulate machine guns, sawed-off shot-guns, M-79 grenade launchers, anything else that we can I know what you're talking about, you're trying to.....

Mr. Ware: If you delete that there's nothing to prevent the legislature from saying you shall not keep a fully automatic weapon, you don't have to put that in here in order for the legislature to do that.

Chris Roy: Cause then the legislature could only deal with carrying concealed weapons. You see what you don't keep the legislature from doing under the theory of state constitutional government, the legislature may do.

Mr. Ware: Sure.

Chris Roy: All right, so if we strike out or otherwise to regulate the keeping and bearing of arms, then any arm that is not concealed, a person may possess and use.

Mr. Ware: Under this same language we now constitutionally prohibit sawed-off shot guns. We prohibit fully automatic weapons. Under this same language, in other words we're not relying on this otherwise regulated reason for the keeping and bearing of arms.

Chris Roy: Well, when you say we you talking about the state or-----

Mr. Ware: Talking about the state. And see really Chris what I'm getting at, I don't want the supreme court to come along and say O.K. look this language was not in the 1921 Constitution, it is in the present constitution, therefore they

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are enlarging the right of the legislature in this regard.

Chris Roy: Your logic there is exactly the logic I was thinking about on the Freedom of Expression Article when it said we had not done away with right to sue for libel and slander because we always had it irrespective of the fact that it was never mentioned. But Mr. Richardson says that you've got to put something in the constitution that says that the abuse of this freedom will not be tolerated. You commented by adding this we don't need this otherwise regulate reasonably because as a matter of fact the legislature is already doing it.

Mr. Ware: And the courts are interpreting it that way.

Chris Roy: But by the same reasoning, irrespective of the constitutional provision in the U. S. Constitution by Freedom of Speech we have always had pornography laws, obscenity laws, and the right to sue for libel and slander. And yet we're now told we have to put something in it to make sure that the fact that we've left it out, the truth is that the defense, is, the part about the abuse of it, will imply that we allow it. You know that we can't allow it.

Mr. Ware: When I read the defamation cases out of the Louisiana the New York Times case, the football coach case, Wallach, Butz, all of those cases, I can't agree with you that we have laws authorizing defamation suits or suits for libel and slander. And I think we should have, and I think the decision of the supreme court in State v. Snyder and defamation case was totally wrong. And the U. S. Supreme Court in the same identical fact situation in Snyder v. Ware said the very article, the very statute that our supreme court said is unconstitutional; they said it's constitutional. That's why I think it's very important that

the language stay in here that people be responsible. Let's not make this freedom become license and, unfortunately, that's what's happening. People are beginning to say we are entitled to freedom's without any obligation, and that's bad. You cannot give one man a freedom without giving somebody a corresponding obligation, it just won't work.

Chris Roy: Then why don't we just do away with the rest of the sentence altogether? What I'm talking about is why do we need a provision saying that the legislature may pass laws regulating a kind of concealed weapon if the legislature----

Mr. Ware: Well, I would like to see you leave the last sentence out too, because the courts are confiscated weapons constantly and every person that comes in and he is convicted of certain offenses, his weapon is confiscated-----

And we do confiscate people's arms all the time, you get caught deer hunting out of season, shooting a doe, they take your gun, and I think they should.

Chris Roy: Well, they can take it because it's evidence in a case, isn't that right?

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Mr. Ware: Oh no, no, they take it as part of penalty.

Chris Roy: We discussed what I thought and came to the conclusion when a person uses a particular object and commits a crime that he can't claim against the confiscation of guns.

Mr. Landry: It comes from the old common law theory of contraband that when you use a weapon illegally it becomes contraband and then it's subject to confiscation by the state and it can be taken by the state. So that in other words we had this under the right of property, contraband it can be confiscated by the state under the old English law with the exception to the general right of property which we recognized-----

Mr. Ware: I think if you're going to put something in there it should be reworded to where it's clearly indicated what you mean.

Chris Roy: I agree with you, I think they ought to be able to confiscate a man's weapon or the object he uses to commit a crime whether it's a felony or not.

Mr. Stinson: What other instances are there in confiscate or do you foresee that there could be?

Mr. Ware: Well, see what I'm getting at Mr. Stinson, suppose you put down you've got this language that this shall not prohibit the passage of laws to regulate reasonably the keeping and bearing of arms so the legislature says all right it's reasonable for everybody to register their guns and all unregistered guns should be confiscated.

Question by: We have a state law and a federal law, and there's a difference in the length of a barrel on a sawed-off shotgun of one inch.

Mr. Roy: That's what I was asking, Ed, how in the world----- how do we have a constitutional law on that, with the present language of the constitution?

Mr. Ware: Because the court says it's constitutional.

Mr. Landry: It's in the Law Institute Project, Ed, that's where that language come from, the Law Institute Project. One of the delegates proposed it on the basis of it being in the Law Institute Project; otherwise recently regulated some doubt of the Law Institute Project, and it's not in the present constitution, in you're right.

Mr. Roy: You believe, and it may be true that by adding these extra words which we intended to constitutionalize, do you think we have the right to start confiscating weapons?

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Mr. Ware: Well, no, I think the legislature could pass a law under this saying all right everybody is going to have to register their guns, and all unregistered guns will be confiscated.

Mr. Roy: Woody wanted something as broad as the NRA would like and I felt that the weapons some way or another can be regulated, but the whole point as I see it, is why should we pass something which lets people infer that the Constitution of Louisiana allows you to do something that the federal law is going to regulate anyway? Even if we put something in, no law will ever be passed regulating registering of firearms and what have you. The fact of the matter is I bought myself a little 22 single-shot rifle at Steinberg's and at the same time I bought a box of 22 bullets I had to sign for. So why should we pass something giving our citizens the impression that here we are fighting for their rights when they're found by federal regulation in law, because to me it fools the people and it just causes trouble.

Mr. Stinson: Is the main objection state registration of guns?

Mr. Ware: I just don't want to put the people in the same position that they were in in Germany when the government came in and confiscated all of the weapons. Now we put in that you can't confiscate, but it didn't keep them from doing it. We also have a law in the books saying you can't kill anybody either, but it happens every day.

Mr. Roy: We can't keep people from disobeying the law. We can keep the state from doing certain things.

Mr. Ware: How?

Mr. Roy: Why have any laws at all?

Mr. Ware: Yea, well, no, I think you should have laws, but what I'm saying is how are you going to keep the state, once you register everybody's guns and they have the right to regulate the keeping and bearing of the arms. What's to keep them from going one step further?

Question by: Roy Let me ask you this, as the law presently is, if everybody could start walking on the streets with loaded shotguns as long as they didn't conceal them?

Mr. Ware: Well, when I was in law school Dale Bennett taught us that if you walk down the street with a pistol, with a piece of thread tied around the finger guard and you carried it down the street by the thread that the thread would conceal enough of the pistol for it to be a concealed weapon. Now that's what I was taught. There are a number of cases since that time ---holding it that that's not true if any portion of the weapon is shown it's not concealed, which means that you could walk down the street with a gun in your belt. The carrying of concealed weapons and really there's not very many

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cases on what constitutes a concealed weapon. Actually what it amounts to if you carry it on your person then it is a concealed weapon. Now that doesn't stand up, Chris, because you because there's no way to go hunting out in the woods without carrying a gun on your person, a shotgun. The situation just requires some common sense.

Chris: Well, let me ask you this, you know when this thing happened in New Orleans at the Howard Johnson's, they're all kinds of people, vigilantes came out with shotguns and what have you and rifles and all, other than policemen. Now would you think as long as the state would say that the citizens can just not be allowed to walk around New Orleans, Baton Rouge, Shreveport, Alexandria with fully-loaded shotguns, not concealed, so we got a right to carry these things.

Ware: No, I think that the legislature should be permitted to pass laws regulating the carrying of weapons on one's person. That's what we presently consider the concealed weapon, but but technically speaking in some courts it have held, if any portion of it's exposed, it's not a concealed weapon but I think the vast majority of the jurisdictions hold that if your carrying in on your person you're violating the law. If you got it on the seat of your car, in the glove compartment on the floor it's not a concealed weapon because it's not on your person.

Mr. Roy: You were worried about registration, the legislature is starting to make people register their arms.

Ware: Right, registration which would lead ultimately to deprivation of people keeping arms, frankly if we could get to the situation where nobody had guns, I'd be tickled to death, personally, but there's no way that we have developed yet to keep the undesirable element from arming themselves. And until we reach that utopia, I think that the good folks ought to be allowed to have them, too.

Do any of you have any questions about the criminal part of it, the trial by jury, trial by grand jury? I think Mr. Richardson covered it very well and I'm in wholehearted agreement with him. Incidentally, Mr. Roy, we do provide to defense attorneys the names and addresses of witnesses that are favorable when we come across them, but it just doesn't happen very often.

Mr. Roy: Maybe you don't look hard enough.

Ware: Well, see we don't do our own investigating. I've only got one, he's part-time and he's really a police advisor rather than an investigator and we are dependent solely on what the police turn over to us. Our experience is that they don't turn over everything that's favorable to the state, much less what's favorable to the accused, but when we do have it we turn it over to them, and not only do we turn it over to them, I like to think that we go ahead and present it to the jury ourselves.

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Mr. Jenkins: Mr. Ware, I have one question. We have a number of learned scholars appear before us early in the game from all over the country, many of these scholars participated in the conventions of Maryland, Illinois. They said as best I can recall, the Bill of Rights should perhaps go no further

than the federal. That is your state bill of rights should go no further than the federal bill of rights as interpreted by United States Supreme Court. Now would you concur as a practical matter now I'm not asking you an academic question would you concur in that sort of practicality?

Mr. Ware: That's really the approach that I would take would be a very limited bill of rights, no greater or if any greater, not much greater than the federal bill of rights, and really I don't find a whole lot wrong with the bill of rights we presently have. I think I'm correct when I say it has not been amended since 1921.

Mr. Landry: There have been a few amendments, criminal prosecutions, right to bail.

Mr. Ware: There are few amendments, and really the bill of rights should kind of put the fence around the place and not try to draw the partitions for the room. And once you really try to make it as I have seen it referred to before, make the bill of rights into the code of criminal procedure then I think were making a mistake, I really do.

Mr. Jenkins: I want to repeat the question so I have your answer clear in my mind. If you do then concur with what these scholars told us that as a practical matter you should not go beyond the federal bill of rights as presently interpreted.

Ware: Well, without giving it a little bit more study than I have already, I'd have to say that is my trend of thinking. I'm for the bill of rights being very, very limited.

Mr. Stinson: On Section 7, the right bail

Ware: Mr. Gravel, worked many hours trying to draft a language identical to it not very similar---(tape failure) I failed everytime.

Mr. Stinson: In the past the district attorneys and the judges have all said well if a man is going to have presentence investigation and we feel that he will be placed on probation, why hold him in jail for the first time if he's out on bail or bond hold him in jail for approximately 3 or 4 weeks while they make it discretionary with the judge, you have no objection to that.

Mr. Ware: No, I certainly have no objection. I am positively in favor of it, yes we have discussed this at the (tape failure) assoc. board meeting the other day and the board is in favor of it? We think it's good. It should be in there.

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Ware: Some of the penalties aren't even 5 years, they couldn't possibly get 5 years if they got the maximum, and yet under our present law they cannot make bail between the finding of guilt or the plea of guilt in a sentence.

I'm not nearly as concerned with the Miranda decision the Escobedo case, as I am the Mapp decision, I just think the Mapp decision is basically wrong and is a travesty on the rights of the decent law-abiding citizens. And I think that what the courts are trying to get at can be gotten at much better and more effectively another way. In other words what they're saying is we have a policeman here who violates a man's constitutional rights and goes out and illegally obtains evidence. Now we're going to reward that criminal because his rights have been violated and say o.k. you go walk the streets guilty, son of a gun you, your rights have been violated, we're going to give you some sort of a medal. What do we do to this policeman, absolutely nothing.

Question by ____? Did you have the opportunity to see about a month or so ago the editorial where the federal agents without a warrant broke into two innocent persons' houses?

Ware: But what I'm saying is I'm for the evidence, if a man is guilty and we have evidence of his guilt, use it. Why would he go scott-free because somebody else violated the law. Do two wrongs make it right?

Question by ____? No, I think what you want to do, you want to obviate policemen kicking down doors.

Ware: Yes, and you know the best way to do it?

Mr. Wall How?

Ware: If he does it, put him in jail, make him pay a fine.

Mr. Wall Ed, have you ever had a case like that in your court where a policeman illegally got evidence, violated the law?

Ware: Yes.

Mr. Wall What did you do with the policeman?

Ware: What can I do with him?

Mr. Wall If he violated the law you can prosecute him, you can charge him.

Ware: Show me the statute, Shady where it says if you violate somebody's constitutional rights; then you pay a fine and you go to jail.

Shady: If he violated the law, there's plenty of laws on the book. I'm not the criminal lawyer or lawyer, but there's plenty of laws on the book if a policeman violates a law that you could prosecute him, I'm confident of that.

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Mr. ____? What about breaking and entering, he doesn't have the right to break and enter.

Shady: If he's violating the law there's got to be some way that you can prosecute him for the violation.

Ware: You think it's right to freeze the Mapp decision in to the Louisiana Constitution and permit the criminals to walk the street and put the cops in jail.

Mr. ____? I'd like to freeze the Mapp decision in there, if it's possible, yes, but secondly you reached the conclusion of the criminals walking the streets, that's not my intention.

Chris: Why don't we just do away with kicking doors and when the guy comes out, let the policeman beat him up and torture a confession out of him if he's guilty. If he's guilty and the policeman commit the wrong act of torturing a true confession from him, what's the difference. Torture and true confession from a guilty man or kicking down a door.

Ware: How are you going to know its true, but when you walk into a man's house, Chris, and you find the contraband right there. You don't have to go any further.

Chris: But he may not have been the one to put it there. If we assume academically that the man is guilty, in my opinion, what you're saying almost is that as long as you have gotten the guilty person no matter how you do it or prove the guilt. If he is in fact guilty its perfectly all right. And I keep saying that the purpose of a constitution is to protect innocent people's doors from being kicked down, innocent people from being tortured and there's no way for us to make bad people good. And people are going to commit crimes no matter what we got in the constitution.

Ware: They sure would, but it would be easier to apprehend them and convict them.

Ware: I'm for protecting the innocent.

Chris: The innocent protects if policemen can feel that they have a right to kick down doors to search out contraband.

Ware: Well, where is this innocent person whose contraband was found?

Chris: I'm saying that there's many innocent people and that if law enforcement officers think that if they break into a place and if they get contraband that they can use it to convict that person. Then they're going to be breaking into a lot more places where there are innocent people and accomplishing nothing but making people feel that their homes don't amount to anything. I'm for protecting the individual and his home.

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Ware: Well, I'm not condoning the situations where the policemen just go blatantly run over somebody, that I'm not interested in protecting, but what I am interested in protecting is the situation where the policeman comes to my office, sits down at my desk, he gives me what he has and I tell him look, that's more than sufficient cause to go search. Now lets draw up the affidavit, and we take it to the judge and the judge says my goodness there's no question about it, and it goes down to the supreme court and you people have got to be (tape failure) you're crazy, theres no probable cause here, now turn that guilty son of a gun loose and give him back all of his evidence.

Chris: The concept is what we have to protect, and you can't go into a man's home without probable cause.

Shady: Today police officers, this is my opinion. Under the situation where race problems arise, we've been building ourselves into a police state from top to bottom. This to me doesn't suppress that evidence. If a person is adversely affected, it gives him standing to raise the illegality of that search or seizure.

Ware: I don't think that when we adopt the constitution that that's going to repeal our code of criminal procedure and we'll have to start all over and it does provide for a motion to suppress. The point that I'm making is that under the present Louisiana jurisprudence and under the present U. S. Supreme Court jurisprudence, only a person whose privacy has been invaded has standing to object to the illegality or unconstitutionality of the search or seizure.

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Mr. ___? Now they think you did something wrong, the police, they have no reasonable cause to arrest you or anything else but they go and they kick down your door, and they find some contraband in your place, under the fourth amendment of the U. S. Constitution and the Mapp says that they cannot use that evidence to convict you because they had no reasonable basis and no warrant to search your place. If the fourth amendment means anything, if we're going to protect innocent people, from doors being kicked down, then I ought to be able to say the fact's that the evidence can't be used against me at all.

Ware: What I'm saying if you don't want that done you better go after the fellow that's kicking the door down and not go after the fellow that's been feeding him.

Wall: Would you support a statute we don't want, the criminal to go free, a statute where the law enforcement officer illegally got this evidence, that he would automatically get the same sentence as the defendant and would not turn anybody free.

Ware: No sir.

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MEMORANDUM TO CONSTITUTIONAL
COMMITTEE CHAIRMEN FROM
CADDO PARISH DISTRICT ATTORNEY'S OFFICE

NOTE: For the most part, this memorandum will be related to the field of Criminal Law in a general way with some possible reference to Courts and District Attorneys. The first portion will be keyed to the proposed preamble and bill of rights as published in the local press and as related to the 1921 Constitution Articles and Sections.

At the outset it is felt that the Constitutional Committee on Bill of Rights is to be congratulated on doing a fine job and also in updating the 1921 Bill of Rights, which itself was a comprehensive one. It is only in certain very close and technical areas of criminal law that we have any suggestions to make.

For example, as published in the newspaper, we feel that the paragraphs headed PREAMBLE, ORIGIN AND PURPOSE, PROHIBITED LAWS and INDIVIDUAL DIGNITY are very good and very thorough. We have no suggestions to make in regard to them.

FREEDOM OF EXPRESSION:

As indicated by its title, this paragraph covers freedom of speech, freedom of press and other forms of freedom of expression. We simply wish to point out to the Committee Chairmen that because this paragraph is so very broad and comprehensive, it does not provide adequate protections in the field of obscenity, pornography, defamation, threats including peace bond remedies, as well as libel and slander actions, both civil and criminal. Obscenity will no longer be a crime.

There is also a possibility that this paragraph eliminates occupational licenses or any regulation whatsoever because of the last clause of the paragraph.

While this new paragraph certainly recognizes the rights of people to express themselves, there is no balance as to the rights of others to be protected against the abuse of such liberties as was provided in the 1921 Constitution.

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FREEDOM OF RELIGION:

This paragraph is excellent and we have no suggestions thereto.

RIGHT OF ASSEMBLY AND FREEDOM OF MOVEMENT:

There is a strong possibility that this paragraph con-

cerning a right to enter and leave the state might restrict and even prevent the granting of probation, suspended sentence and paroles in meritorious cases if the authority granting such clemency could not place conditions on leaving the state or the jurisdiction of the authority.

FREEDOM FROM DISCRIMINATION:

This is a concise statement on this subject and we have no suggestions as to it.

ACCESS TO COURTS:

This also is an excellent summary statement and we have only two comments to make as to it.

- (1) The last sentence completely eliminates the sovereign immunity of the State of Louisiana, which presently exists inherently in most areas but would be abolished by this provision. It is presumed that the Committee desired that result.
- (2) It is respectfully suggested that the last sentence be rewritten to read, "The State shall not be immune from suit." This would remove the exclusion as to individuals. It is submitted that, to the extent that it presently exists, the immunity afforded to the members of the Legislature, the Governor, Lt. Governor, Judges of Courts of Record and District Attorneys (and their assistants) for acts done in the performance of their official duties, should be retained. Otherwise, it is conceivable that this provision would be in violation of the privileges of immunities clause of the Fourteenth Amendment which is in favor of all citizens of the United States.

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TRIAL BY JURY IN CIVIL CASES:

While we feel sure that the Committee intended to restrict this matter to civil cases, the third sentence in using the word "determination of facts in any other case before any court", could be construed to mean criminal and quasi-criminal cases. It is respectfully suggested that the last sentence might better read, "the determination of facts in any other civil (or non-criminal) case before any court or administrative body shall be subject to review".

DUE PROCESS OF LAW:

Our only comment in this connection is that it omits the portion prohibiting the taking of private property except for public purposes and then upon just compensation being paid therefor. Possibly the Committee considered that this was included in the broad language of the paragraph.

SEARCHES AND SEIZURES:

Because of certain U.S. Supreme Court decisions, notably Mapp vs. Ohio and its progeny, the exclusionary rule formerly

binding only upon the Federal system and some states, is now binding upon all states. As a result, a whole new field of law has been thrust upon the State of Louisiana which has been forced to borrow piecemeal from the Federal system and occasionally from other states. It must not be enlarged in any way.

First, there is always a possibility that Mapp vs. Ohio may be overruled. Also, the system of criminal law now has become devoted so much to technical matters explaining how evidence was obtained, why it was obtained and for what purpose it is being used, that the question of guilt and innocence of the accused has become sublimated to all other preliminary motions and technicalities. (Canada has abolished the rule entirely)

This one area of law has called for many more separate and preliminary trials and has caused the need for adding more prosecution officers, courtrooms and judges than any other area of law. Witnesses are repeatedly brought back and

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forth to court on numerous occasions for the trial of various motions, such as motions to suppress evidence, long before the actual final trial on the merits as to the guilt or innocence of the accused. As a result, the witnesses begin to feel that they are on trial instead of the accused person.

(1) It is thought that the phrase, "any person adversely affected by a search or seizure....shall have standing to raise the illegality of that search or seizure" is too broad, it extends that defense unnecessarily and adds one more unnecessary burden upon the prosecution.

In other words, the rule or test should be as to whether or not there was an unconstitutional search from the person or the house of the accused. Often there is perfectly valid and relevant evidence which is obtained through a search by permission of a spouse or the owner or lessee of the house or apartment where the contraband or murder weapon has been found and the search was properly authorized.

Under those circumstances, the owner of the murder weapon, narcotics or other contraband would be a "person adversely affected", but if he was not the only person who had authority to give permission for the search, then he should have no standing to make the challenge. For example, in the area of narcotics, many people live together, some married and some unmarried, and some stay in apartments by sufferance or temporarily and the true authorized person has given consent to the search and seizure.

Moreover, allowing any person "adversely affected" to challenge the legality of a search and seizure is a departure from the present jurisprudence of United States courts, this state and most states in the Union. Not all searches and seizures are unreasonable under the Federal Constitution. Not

all illegal searches and seizures are unreasonable under the Federal Constitution. It is only an unconstitutional search which has been held to be in violation of the Federal Constitution.

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For example, searches of automobiles without warrants under certain conditions have been held to be not unconstitutional, because of the mobility of automobiles. The same has been held by the U.S. Supreme Court in connection with the obtaining of blood samples from the very person of an accused, even over his objection and over the protest of his attorney, because the blood alcohol content in drunk drivers diminishes with the passage of time. In fact, the alcoholic content would in many cases have completely disappeared by the time a search warrant could be obtained so as to make the search and seizure technically legal. It is well-known fact that many drunk drivers cause deaths upon the highways.

Therefore, the only searches and seizures which are illegal are the searches and seizures of houses and possessions in such an unreasonable manner as to be unconstitutional.

As another example, if a murder weapon was found in the house of Mr. "A", but it belonged to and was used by Mr. "B" in the commission of a murder or armed robbery or aggravated battery, there is no valid reason why "B" should be allowed to claim that the search of "A's" house was unconstitutional.

(2) Another serious objection to the phrasing of this paragraph, is the sentence, "No law shall permit the interception or inspection of any private communication or message." There is no definition of the word "private". If this were ever to be held to include face-to-face communication, or conversation between an accused person and his confederate, or between an accused person and an arresting officer, then society would lose the benefit of the use of certain testimony, certain recorded statements, certain phone conversations consented to by the other party, and even letters and other written documents which would establish the guilt of the accused.

This language would undoubtedly eliminate any form of electronic surveillance, including court-supervised wire-tap

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information as is available to Federal officials. It could eliminate all oral, written and telephonic communications from an accused person unless such communication was done out in the open public for all people to see and to hear. We do not believe that the Committee intended this result to follow, but nevertheless, we feel that this is a result which could follow the use of this language.

It should be pointed out that every court in the country that has considered the problem of the recording of a conversation or oral statement of any type by a consenting party, either by telephone recordings, wire, tape or disc recordings or by video-tape recordings, has pointed out that the playing back of that recording is the best evidence of that oral statement or conversation. It is certainly better evidence than the memory of an individual party as to such statement or conversation.

Moreover, this language would eliminate the giving of consent by one party to a telephone or other type of conversation, it could prevent the tracing or recording of threatening phone calls and obscene phone calls or the placing of mechanical means of detecting the source of such threatening phone calls. (The proposed sentence should be deleted.)

RIGHT TO KEEP AND BEAR ARMS:

This is a good paragraph but we feel that it should be pointed out that, as written, it would very likely prohibit the confiscation of firearms and other weapons used in the commission of crimes. At present, upon a plea of guilty or upon a conviction, the weapon used in the commission of any crime can be confiscated and ordered destroyed by the proper court. We doubt seriously that the Committee intends to allow convicted murderers and robbers to reclaim and obtain possession of the weapons which they used in the commission of their crimes, but this provision would allow that to be done.

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CRIMINAL LAW - GENERAL:

The above items are presently encompassed in Sections 1-8 of Article 1 of the 1921 Constitution. Some of the remaining Articles of the Bill of Rights in the former Constitution, particularly in the field of criminal law, are not covered in the above matters and probably will be covered somewhere else such as in the Article related to Courts or Judiciary.

However, we should like to mention some of them at this time. For example, Sections 9 through 15 of Article 1 of the former Constitution contain very valuable rights in criminal law, valuable both to the accused and to society.

We feel all of these rights should be retained somewhere in the new Constitution because they relate to such matters as affidavits, informations, indictments, grand juries, speedy public trial, venue, witnesses, counsel, double jeopardy, peremptory challenges, self-incrimination, confessions, bail and other matters. All of those items are still important and they were very comprehensively included and should be retained.

The only suggestion we will make as to them will be the possibility that the appropriate Committee might wish to allow bail, at the discretion of the Court, in felonies where a pre-sentence investigation has been ordered by the Court.

Under the present law, if a person pleads guilty to a felony and the Court might be planning to place that person on probation but wishes to obtain full information through a pre-sentence investigation, nevertheless the person must go to jail until the probation officer makes his report, some few weeks later. On the other hand, if the Court felt that the person should stay in jail a few weeks even though in certain felony cases, it did intend to grant probation, the option would still be with the Court.

However, we do feel that the present law forbidding bail of a convicted felon where he has received a sentence of

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5 years or more is still a good constitutional provision and should be retained.

PARDON AND COMMUTATION:

While the Governor should always have the power to grant reprieves and to grant pardons upon the recommendation in writing of two-thirds of the members of the Pardon Board, we would suggest that the Constitution should authorize the Legislature to place some limitation upon the power of the Governor in the field of commutation. For example, the Legislature should have authority to restrict the power of commutation, uniformly, either as to a specific crime such as armed robbery, or as to certain multiple offenders, or in the field of responsive verdicts which juries may render. (In this connection, you are referred to Article 5, Section 10 of the 1921 Constitution.)

COURTS AND JUDICIARY:

While Article 7 of the 1921 Constitution contained many detailed provisions, almost all of which are unobjectionable, many of them could be statutory material.

However, it is felt that the Constitution should allow for juries of less than 12 as is now authorized by the U.S. Supreme Court. Also except in capital cases and in cases which authorize sentences of life imprisonment, the Constitution should not require a unanimous verdict. This matter should be left to the Legislature which would then have freedom to make requirements as to two-thirds or three-fourths affirmative votes to reach a verdict or even to require 5 out of 6. But to require a unanimous verdict (in cases other than capital or life imprisonment verdicts) would result in many mistrials.

It is also felt that the Grand Jury system should be retained in the Constitution as it presently exists. Grand Juries still serve useful purposes in many ways.

It is also felt that much latitude should be allowed for more bench trials such as in misdemeanor cases, by allowing

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the defendant to waive jury trials in more cases than is allowed under the present Constitution.

The present system of 6-year terms for District Judge

and District Attorneys has worked satisfactorily and should be continued. In the matter of Assistant District Attorneys, it is suggested that the requirement of three years practice of law before becoming an Assistant District Attorney should be restricted to the First Assistant District Attorney in a particular judicial district rather than being applicable to all Assistants.

In this way, more young attorneys could get invaluable training and also more career officers could be developed. Frequently the three-year rule presently in existence for all Assistants means that after a three-year delay, an industrious and talented young attorney would advance far enough in the private sector that he would not be interested in being an Assistant District Attorney.

APPEALS IN CRIMINAL CASES:

The present system of appeals to the State Supreme Court is workable and should not be changed. We also feel that all criminal appeals should go to the State Supreme Court and not to some other intermediate court, either presently in existence or newly created. The reason for this is that criminal matters are very important and they should be uniform throughout the state. If there were an intermediate court of criminal appeals or if there were separate intermediate courts hearing criminal appeals, conflicts and uncertainty would result and the need for uniformity is so great that the Supreme Court should handle the matter in the first instance.

Under the Federal Constitution as interpreted by the U.S. Supreme Court, every criminal defendant is entitled to a jury trial if the penalty is more than six months. We have no objection to that. But since the decision of the trial jury on questions of fact is final as against the state in

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the event of an acquittal, we feel that the decision of the trial jury should also be final on questions of fact in the event of a conviction.

Therefore, the present system of bills of exception and review of trial court rulings, on questions of law only, by the Supreme Court should be retained. Otherwise, there would be a unilateral system in which the Supreme Court would be reviewing questions of fact and granting reversals if the verdict was in favor of society but it could not review questions of fact if the jury verdict was in favor of the accused and acquitted him.

In other words, the Supreme Court should not have authority to review questions of fact in a criminal case just as the proposed paragraph provides that in civil damage suits, no fact tried by a jury shall be re-examined on appeal.

John A. Richardson
District Attorney

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YALE UNIVERSITY
LAW SCHOOL
NEW HAVEN, CONNECTICUT

THOMAS I. EMERSON

July 3, 1973

Christopher J. Roy, Esquire
Gravel, Roy & Burnes
611 Murray Street
Post Office Box 1792
Alexandria, Louisiana 71301

Dear Mr. Roy:

This is in reply to your letter to the Editor of the Yale Law Journal concerning the Equal Rights Amendment. I understand that the Journal has sent you a copy of our article. As you will see from reading the article, our views have been seriously misrepresented throughout the country. The fact is that we are strongly in support of the Equal Rights Amendment and feel that the adjustment of state laws after passage of the amendment can be readily made.

If there is any further information about specific matters that I can give you, please do not hesitate to let me know.

Sincerely,

Thomas I. Emerson

TIE/llp

Authorized by
Chris J. Roy

Distribution Requested:

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LAW SCHOOL
NEW HAVEN, CONNECTICUT

Judy Dunlop
George Souist

February 16, 1973

THOMAS I. EMERSON

Editor
Louisville Courier-Journal
Louisville, Kentucky

Dear Sir:

It has been brought to my attention that an article in the Yale Law Journal, of which I was co-author, has been used as the basis for scare stories about the effect of the Equal Rights Amendments upon various State laws and practices. I would like to set the record straight.

The Yale article has been quoted, for example, as saying that the Equal Rights Amendment "would require invalidation of laws specially designed to protect women from being forced into prostitution". This quotation is part of a sentence referring to the Federal Mann Act. The article, in the same paragraph, goes on to say: "Congress could easily bring the Mann Act into conformity with the Equal Rights Amendment by substituting the word 'person' for words 'woman or girl' in the statute".

This is just one example, out of 25 or 30 I have seen in print, where the Yale article has been completely misrepresented.

The Equal Rights Amendment is based upon a simple but deeply just principle. It requires that the legal rights and obligations of each citizen shall be determined upon the basis of his or her own individual qualifications, not upon the basis of being male or female. The Amendment does not, of course, eliminate sex from American life. What it does is to guarantee "equality of rights under the law".

Furthermore, even within the area of legal rights and obligations the Equal Rights Amendment does not preclude different treatment between the sexes where the law is concerned with a physical characteristic that is unique to one sex or the other. Thus forcible rape laws would be unaffected. Nor does the Equal Rights Amendment override the constitutional right to privacy. Hence the fuss about the sexes sharing rest rooms is sheer red herring.

The Equal Rights Amendment is a moral and social reform in the best traditions of American society. It is long overdue. Moreover the wording of the Amendment represents a carefully considered, responsible, and thoroughly workmanlike way of embodying that reform in our constitutional law. I hope that the State legislatures and the public generally will consider the Equal Rights Amendment on its merits, and not be misled by the horror stories that are currently being circulated.

Sincerely,

Thomas I. Emerson

TIE/llp

To the Louisiana Constitutional Convention of 1973 (Committee on Bill of Rights and Elections)

Subject: Bill of Rights and Human Rights - Differentiation of rights and obligations on basis of sex.

1. Proposals for the unqualified rejection of sex as a practical basis for differentiating the non-political legal rights and obligations of persons should be rejected.

2. The unqualified rejection of sex as a basis for differentiating the rights and obligations of persons would be especially detrimental in the law relating to marriage and other family concerns. Laws do differentiate between men and women, but of necessity, according to the very roles of marriage and family.

3. Marriage and family are not mere conventions. They are societal institutions having their foundations in the facts of nature and their existential forms in cultural patterns reflecting an appreciation of these facts of nature and their implications for the common good in the particular circumstances of time and place.

4. The law may and should provide practical measures for fostering and protecting the permanence and health of marriage and the family, but prudence indicates that changes in their structures should be, at any one time, marginal and particular. The updating and renovation of the laws on these subjects should, therefore, be left to the legislative process. A sweeping, radical constitutional provision, the implications of which can not be appreciated in advance, can only hamper the intelligent improvement of the laws on this subject.

5. Practical action in matters pertaining to marriage and parentage would be impeded unless one spouse is allowed authority to make decisions for both in instances of difference of judgment. The requirement of mutual agreement for action in associations of two persons (like the requirement of unanimous agreement in associations of larger numbers of persons) is never practical. In matters of common concerns, therefore, one spouse or parent must be allowed the authority of decision in the spirit of service to the group. The abuse of authority, the use of the power of decision otherwise than in service of the good of the spouses or the children must give rise to adequate remedies; but the authority of one of the spouses or parents must be possible under law.

6. This authority, moreover, must be settled by law rather than agreement of the parties in the interest of society at large. The lack of uniformity in this respect would tend to create such discontent from family to family as to threaten even more the already seriously endangered family structure.

7. Under our habitual cultural patterns - and experience teaches that the law may never ignore deeply rooted cultural patterns effectively - it would be unthinkable to decide that the wife and mother, rather than the husband, should have the ultimate legal power of decision in the common concerns of the spouses and the children. Moreover, it is not likely that such a pattern of married and family life would accord with the present sentiments of most spouses and parents. The agitation of the very vocal few and of the inadequately informed must not be allowed to obscure that fact.

8. None of what has been said above is in any way intended to deny that many of our "imperative" (non-waivable) laws and "suppletive" laws (those which apply only if the spouses do not contract otherwise) on the common concerns of spouses and parents require some improvement. A system of law can never be completely current. But this is a matter which addresses itself to the vigilance of the legislature rather than to a constitutional convention.

9. It is suggested that much of the present day agitation for radical constitutional provisions, state and federal, on "equal rights" for men and women is based in large measure on the inadequacy of accurate information - and the dissemination of much inaccurate information by "interest" groups - on the actualities of the laws and the reasons which underlie them. [The Constitutional Convention might very well address itself to the tremendous need for state supported dissemination of the essential features of those areas of law of interest to all. Indeed the Convention might very well consider the actual need in our time of publicly supported legal advice. In our extremely complex society, laws are necessarily complex, and the fullness of their import cannot be made known without legal advice often prohibitive in cost to those who need it.]

10. Finally, it is suggested that it would be unnecessary to adopt a general provision rejecting sex as a basis for differentiating the rights and obligations of persons if the proposed Equal Rights Amendment to the U.S. Constitution is adopted. And if that proposed Amendment is not adopted, it would be unwise for Louisiana to hamper its legislature by a State constitutional provision on the subject.

STATEMENT TO CC 73 BILL OF RIGHTS COMMITTEE - August 21, 1973

Thank you for the opportunity to offer a critique on the Bill of Rights proposed by your committee.

PREAMBLE Beginning with the Preamble, I request that the words "afford opportunity for the fullest development of the individual; assure equality of rights;" and "provide for the health, safety, education, and welfare of the people" be deleted.

Though the Preamble is not legally binding, it does indicate the general purposes for which the constitution is ordained and established. In a free society, it is not the business of government to afford opportunity for the fullest development of the people; rather, government should leave the people alone so they can develop as they desire whether it be to their fullest or not.

The insertion in the Preamble that the purpose of the constitution is to assure equality of rights, which means SAMENESS of rights, is the assertion that the state of Louisiana is totally committed to a Marxist, egalitarian, socialistic society. Government can only insure equality of rights by forcibly denying the citizenry the right to be free and unequal. As are all civilized, Christian soci-

ties, this country and state were founded on God's law of natural order and the inequality of the people, within the group or class to which they belong. A society that fails to classify its citizens under the law and according race, sex, age, physical or mental ability, is a society that ignores nature, and one in which chaos and turmoil invariably ensue. (Example: The United States today)

By stating that the purpose of the Constitution is to provide for the health, safety, education, and welfare of the people, you are stating that the purpose of the new document is to establish a totally socialistic society. Government, which produces nothing, cannot give ANYTHING to any citizen that it does not first take away from another citizen, either through taxation, confiscation or inflation. A government that has the power to provide for all the needs of the people, also has the power to decide whose needs will be met and whose will not. The traditional American way is for the people to provide for their own health, welfare and safety, according to their ability, and for the government to allow them to keep for their own use and benefit that which they have labored to earn.

Section 1 In Article I, Section 1, line 11, the words "general welfare" should be deleted, as this is another indicator that the new Bill of Rights is dedicated to the proposition that the philosophy of socialism is replacing that of freedom. It is in the guise of the "general welfare" that individual rights have been and are being destroyed.

Section 3 Section 3, the so-called "Right to Individual Dignity" section should be deleted in its entirety. This section; "no person shall be denied the equal protection of the laws, nor shall any law discriminate against a person in the exercise of his rights on account of birth, race, sex, social origin or condition, or political or religious ideas," is an expansion of the equal protection clauses of the never legally ratified 14th Amendment to the U. S. Constitution which millions of Americans are working to repeal. Americans want this clause repealed because it has been responsible for most of the judicial tyranny to which we have been subjected, such as forced busing, property tax equalization, and the like. Supreme Court Justice, William O. Douglas, who is currently touring Communist China, has stated that the 14th Amendment is the wild card in the U. S. Constitution which many Americans still fail to recognize. Louisiana citizens are not going to buy a constitution with a wild card in it.

The Supreme Court recently indicated it would use its Trump Joker, the 14th Amendment, to force sexual equality as it has forced racial equality, if the required 38 states fail to ratify the Equal Rights Amendment. In a decision of May 14, 1973 Justice Powell said it would be premature to make the same sweeping decisions based on sex that the courts made on race until AFTER the states have an opportunity to ratify ERA. However, four justices were ready in this decision to accomplish by judicial decree that which has not and cannot be accomplished by the legislative process. The court, when dealing with matters of race (Brown vs Board of Education - Topeka, Kansas) has ruled that SEPARATE CANNOT BE EQUAL, so it is logical that the same illogical thinking will prevail when the court deals with the sexual equality issue.

Section 3 and 7

Section 7, the so-called "Freedom from Discrimination" section states that all persons shall be free from discrimination on the basis of race, sex etc. in access to public accommodations or in the sale or rental of property by persons or agents who derive a substantial income from such business activity, but that nothing herein shall be construed to impair freedom of association. This contradictory section should be deleted in toto. Sex integration of restrooms, prisons, dormitories, mental institutions and hospitals will bring anarchy to this state. Section 7 clearly conflicts with your "Right to Individual Dignity" Section 3. There is no way decent people can maintain their individual dignity while sharing restrooms or living quarters with members of the opposite sex.

Page 2 - Statement to CC 73 Bill of Rights Committee - August 21, 1973

Maryland recently passed a state ERA, and the Maryland Attorney General prepared a list of laws that will have to be changed to bring that state into compliance with the amendment. A total of 227 laws in Maryland will be affected in order to eliminate laws which distinguish between the sexes. Have you any idea how many Louisiana laws will be affected and what the social and economic ramifications will be should ERA become a part of the Louisiana Constitution?

U. S. District Judge Alvin Rubin has stated of sexual equality before the law: "As we move toward equality before the law, not only with respect to employment but with respect to other legal rights, there will be changes more profound, more significant and with greater impact than Vietnam, or school desegregation, or Watergate - more than the coming of the automobile and television. The basic social and working patterns of our homes and jobs will change."

Rather than changing the basic social and working patterns of our homes and jobs with Sections 3 and 7, I suggest that you replace them with the following Sections:

1. The State recognizes the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law.
2. The State, therefore, guarantees to protect the Family in its constitution and authority, as the necessary basis of social order and so indispensable to the welfare of the Nation and the State.
3. In particular, the State recognizes that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.
4. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity caused by high taxation to engage in labour to the neglect of their duties in the home.
5. The State pledges itself to guard with special care the institution of Marriage, on which the Family is founded, and to protect it against attack.

Section 3 The portion of Section 3 which forbids discrimination based on political ideas will probably negate state laws prohibiting treason and sedition. To allow political groups advocating the violent overthrow of the state government to operate within the state is to invite such an overthrow. Cicero stated that "a nation can survive its fools and even the ambitious, but it cannot survive treason from within." This is another reason that Section 3 should be deleted.

Section 4 and 7

Section 7 conflicts with Section 4, the "Right to Property" section.

Section 7 states that one must NOT discriminate (choose) in the sale or rental of property, but Section 4 grants the absolute right to the individual to do so. Section 4 is certainly preferable to Section 7, for if one is not allowed to control his own property, it does not belong to him. In Section 4, it is stated that land shall not be taken or damaged except for a public and necessary purpose and with just compensation. It would be in the public interest to define "public" and "necessary," as we have some local bureaucrats and politicians who think taking one man's property for the erection of a public park is necessary and in the public good. Since the value of the dollar diminishes daily, persons whose land is appropriated should have the option of being paid either in paper dollars or gold, silver or other land.

Section 20 In Section 20, "The Right to Keep and Bear Arms", the words "this provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons" should be deleted. The U. S. Constitution states that the right to keep and bear arms SHALL NOT BE INFRINGED. Section 20 infringes upon this right. The robbers, murderers and rapists all carry concealed weapons, so why shouldn't the law abiding citizen, upon whom they prey, be allowed the right to legally defend himself?

Thank you for your attention. I hope you make the changes necessary to change your proposed Bill of Rights from one that will socialize and enslave our people to one that will protect them. If you do not I and many, many others will expend all the energy we possess into defeating CC 73. This statement is not a threat; it is a promise.

Babs Minihmette
National Chairman
Females Opposed to Equality

FREE WOMEN ARE NOT EQUAL -- -- EQUAL WOMEN ARE NOT FREE

"Your republic will be as fearfully plundered and laid waste by barbarians in the 20th century as the Roman Empire was in the 5th with this difference, that the Huns and Vandals who ravaged the Roman Empire came from WITHOUT, and that your Huns and Vandals will have been engendered within your own country by your own institutions." (Lord Macaulay, noted British historian's prediction for U. S. 100 years ago. Will CC 73 make his prediction a reality?)

J. Alvin Badaux
STATEMENT BEFORE THE COMMITTEE ON THE
BILL OF RIGHTS AND
ELECTIONS

OF THE LOUISIANA CONSTITUTIONAL CONVENTION (CC-73)

My name is J. Alvin Badaux. I was born and raised and lived my entire life in Thibodaux. I am presently a member of the Executive Committee of the National Rifle Association, President of the Thibodaux Rifle Ass'n, Vice-president of The Bayou Junior Rifles, and an active member of The Louisiana Shooting Ass'n. I wish to speak on Section 8 of Article I of the Bill of Rights of the Louisiana Constitution and the proposed changes to that Section.

Our present Louisiana Constitution reads: A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be abridged. This shall not prevent the passage of laws to punish those who carry concealed weapons.

The proposed change to this section of the Louisiana Constitution reads: A well-regulated militia being necessary to the security of a free state, the right of the people to keep and bear arms shall not be abridged. This provision shall not prevent the passage of laws to prohibit the carrying of concealed weapons or otherwise to regulate reasonably the keeping and bearing of arms. Nothing contained herein shall allow the confiscation or special taxation of arms.

We believe the proposed constitution should read: The right of the people to keep and bear arms and ammunition, and components thereof, shall not be abridged or infringed. This provision shall not prevent the passage of laws to punish those who carry weapons concealed.

We consider the proposed language, as noted in third paragraph above, to be inadequate and confusing. The words "or otherwise to regulate reasonably the keeping and bearing of arms," bring great uncertainty to the right and weakens it. What is reasonable to one may be totally unreasonable to another
(more)

There is nothing new or novel in this right of the citizens to keep and bear arms. Plato, in 360 BC observed that "no man can be perfectly secure against wrong - and cities are like individuals in this," and then he counseled citizens to be prepared for these possibilities by diligence in training with the weapons of that day.

In 1688 the English Bill of Rights stoutly declared: That subjects which are protestants, may have arms for their defense suitable to their conditions, and as allowed by law."

The Second Amendment to our Federal Constitution was adopted without argument. There was no controversy on this right. Our Founding Fathers recognized this basic and fundamental right and Article II of our Bill of Rights reads: A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

That right to keep and bear arms was so strongly supported that only one other right was considered above it. The First Amendment to our Federal Constitution guarantees freedom of religion, of speech and of the press, of the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

Thirty-five states have incorporated in their Constitutions the right of their people to keep and bear arms, and twenty-five of these States make the right a personal one. Arizona's Constitution says "the right of the individual citizen to bear arms in defense of himself or the State shall not be infringed." Michigan's says, "every person has a right to keep and bear arms for the defense of himself and the State." Pennsylvania's is emphatic: "The right of the citizens to bear arms in defense of themselves and the State shall not be questioned."

(more)

Our Louisiana Constitution should provide our citizens with this basic right in clear and unmistakable language, therefore, we respectfully offer the language as contained in the fourth paragraph above: The right of the people to keep and bear arms and ammunition, and components thereof, shall not be abridged or infringed. This provision shall not prevent the passage of laws to punish those who carry weapons concealed.

END

Citizens Initiative Committee
"The People's Lobby"

5768 Linden Street
Baton Rouge, LA. 70805
May 18, 1973

Presented to: Committee on Bill of Rights and Elections
Constitutional Convention of Louisiana, 1973

By : M. G. (Marc) Anseman, Chairman
Citizens Initiative Committee

Mr. Chairman; Members of the Committee:

I have before me a letter from the Honorable Hale Boggs. It reads, in part, as follows:

"You certainly have a noteworthy project. I applaud you for devoting so much of your time in an attempt to bring government closer to the people."

The letter is dated May 15, 1969. It defines the purposes underlying creation of the Citizens Initiative Committee. I am confident that Hale Boggs, recognizing that democracy is based on trust and confidence, realized little was left of either toward government in Louisiana.

I am therefore pleased to appear before this Committee to project our vision with respect to instituting on a permanent basis the responsible kind of government which our forefathers lived and died to secure.

Our fathers founded government in order to secure for the people -- all the people -- the blessings of life, liberty and happiness. They devised institutions and machinery to that end. Today, combinations of power have grown up under these institutions requiring us to modernize their work in accordance with their ideals....the ideals so impressively reaffirmed by Lincoln at Gettysburg.

It is not too late to supplement their legislative ^{machinery} with better. Our law-making is entrusted to a representative body and the make-up of this body is, nominally at least, under public control, but the output (except amendments to the state constitution) is not even nominally under public control, except as such control may be exerted through pressure upon individual representatives.

When we consider the extent to which such pressure is made effective today by the greedy and highly organized few, rather than by the unorganized many, a legislative system which may have been safe once comes to look decidedly defective.

Citizens Initiative Committee
"The People's Lobby"

The Citizens Initiative Committee is convinced that this lack of adequate popular control of results is not only a defect but is the fundamental defect in our legislative mechanism and is directly related to the great public apathy toward government in Louisiana.

Its correction is therefore essential, and is logically the first step in the modernization of our political machinery. We want to emphasize to this Committee the importance of concentrating attention upon this issue and giving it high priority consideration.

How shall the public get adequate control of results? The answer is, we must assert our natural right to revise the work of our elected representatives. To do it we must supplement the existing legislative machinery with a workable, orderly, and properly guarded contrivance to enable us to enact laws, to veto them, to amend them or to repeal them by direct popular vote over the head of our legislature and city councils, in the instances when these bodies fail to meet the public will. In other words, we must considerably extend the practice of direct legislation by the people, already familiar to us in the popular ratification of amendments to the state constitution.

Fortunately the way to do this has been devised and tested and has met expectations on a city-wide and state-wide scale. It involves two devices developed many years ago... the Initiative and the Referendum, now included under the single term Direct Legislation.

The Citizens Initiative Committee is advocating reservation of the powers of the Initiative and Referendum to the people as formal auxiliaries in the governing process on the state, parish and municipal levels of government.

A discussion of initiative and referendum must almost necessarily begin with definition of the terms because these words are often confused and used interchangeably. There is a difference between this initiative and the referendum — a vast difference. Each word has its own precise meaning.

Initiative

The initiative enables the people to enact amendments to the Constitution or desirable laws when such measures have been or are likely to be ignored, pigeonholed, amended out of shape, or defeated by the Legislature. The process involves the circulation of a petition asking for the measure and then an election on the question of whether the proposition shall become law. The initiative may be indirect or direct. Let me explain the difference.

Indirect Initiative: The indirect initiative provides that after verification of the signature requirements, the proposal is submitted to the Legislature before it can be referred to the voters. If the legislative body thinks it can produce a better enactment to the same effect, it may draw it up and send it to the people, along with the other, as a competing measure. The voters then choose between them, or reject both.

- 2 -

Citizens Initiative Committee
"The People's Lobby"

Direct Initiative: The direct initiative provides that after verification of the signature requirements, the proposal is submitted directly to the voters.

The Citizens Initiative Committee recommends adoption of the "Direct" initiative and that this power may be invoked by presenting to the Secretary of State a petition certified to have been signed by electors equal in number to five (5) percent in the case of a statute, and eight (8) percent in the case of an amendment to the Constitution, based on the whole number of votes cast for all candidates for Governor at the last gubernatorial election.

The formula we propose would then require the Secretary of State to submit the measure at the next general election held not less than four (4) months after it qualifies or at any special statewide election held prior to that general election.

Referendum

The referendum, likewise upon petition, brings newly passed legislation to the popular vote for veto or confirmation.

Mr. Chairman, it is not reasonable to assume that a legislative body can act capably on hundreds of bills within the span of a short session. The

referendum will serve as a check and balance by enabling the people to reject any measure which may have obtained approval of lawmakers through ignorance, oversight, or other means. The referendum is intended to counteract the sins of commission of our lawmakers.

The Citizens Initiative Committee advocates adoption of the Referendum as the power of the electors to suspend the operation of any measure, or item, section or part of statutes except an emergency statute, statutes calling elections, and statutes providing for tax levies of appropriations for usual current expenses of the State.

We propose that a referendum measure may be invoked by presenting to the Secretary of State within ninety (90) days after adjournment of the regular or special session at which the statute was passed, a petition certified to have been signed by electors equal in number to five (5) percent of the whole number of votes cast for all candidates for Governor at the last gubernatorial election, asking that the statute or part of it be submitted to the electors.

This proposal further provides that the Secretary of State shall then submit the measure at the next general election held not less than thirty-one (31) days after it qualifies or at a special statewide election held prior to that general election.

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Citizens Initiative Committee
"The People's Lobby"

Initiative and Referendum - General

Implementation of the initiative and referendum are matters that could best be left to statutory law. The highlights of general provisions should necessarily include:

1. Compulsory and gratuitous legislative reference services for initiative proposals.
2. Prior to circulation of an initiative or referendum petition for signatures, a copy shall be submitted to the Attorney General who shall prepare a title and summary of the measure as provided by law.
3. The veto power of the Governor shall not extend to measures referred to the people.
4. No measure enacted or approved by a vote of the people shall be repealed or amended by the legislature, except upon a yeas and may vote upon roll call of three-quarters of all the members elected to each house, nor within three years after its adoption.

Initiative and Referendum - Towns, Cities and Parishes

We are also recommending Constitutional reservation of the initiative and referendum powers to the qualified voters of each town, city and parish as to amendments to their plan of government and as to all local, special and municipal legislation of every character in and for their municipality.

In this connection we note that the Shreveport Charter provides for the initiative and referendum with respect to amendments to the plan of government and ordinances, both requiring 10% of the registered voters to exercise these powers.

The Plan of Government of the Parish of East Baton Rouge and City of Baton Rouge provides for the initiative only and then only with respect to amendments to the Plan. Somewhat less restrictive than Shreveport, the requirement for petition is 10% of all votes cast for Sheriff in the previous election.

In New Orleans, 10,000 electors at large may initiate a petition to amend that Home Rule Charter. Whether or not any powers are reserved to the people with respect to Ordinances is presently under study by the New Orleans City Attorney.

In addition, Revised Statutes 33 dealing with the parish commission form of government and the commission plan of government, grants these powers, however requirements to exercise them are so rigid they are more theoretical than real.

I am asking this Committee to carefully consider these inequities and draft reasonable and uniform reservation of these democratic powers to the people in the towns, cities and parishes of Louisiana.

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Citizens Initiative Committee
"The People's Lobby"

Initiative and Referendum - School Boards

I should mention that within the past week or so a proposal was made to additionally reserve these powers to the citizens in each school board district as to the establishment of policies, rules, and regulations respecting school boards to the extent of the rights and authority conferred upon such boards by the Constitution and the laws of the State.

This phase has not had benefit of consideration by the Citizens Initiative Committee, however in my personal view the subject is worthy of consideration.

- -

Mr. Chairman, probably unlike any other state in the Union, the political scene in Louisiana due to distrust and disregard in departments of our government and the acts of political leaders in high places have been viewed with ridicule throughout the nation and this situation persists even as I stand here before you today. Certainly this image has served to weaken public trust in government.

The causes which led to adoption of the initiative and referendum in other states have clearly been in evidence in Louisiana. The people felt the government was getting away from them and they desired a more direct control than they previously enjoyed in the making of laws. Boss-ridden legislatures and councils were the rule rather than the exception, more solicitous for the special than for the public interests and the people wanted to secure some effective and direct method of making their influence felt and their wishes respected.

Senator Claude Duval stated recently to the Committee on Legislative Powers and Procedures, quote: "to not have trust in the legislature is to not trust the representative form of government." In this regard we should take note that the people in 25 of the states have faith in the representative form of government, nevertheless believe in keeping the gun behind the door as in the old settler days...just in case. They reserved to themselves the power of initiative to counteract the sins of omission of their legislatures and/or the referendum to counteract the sins of commission of their legislatures.

Ed Stagg of the Council for a Better Louisiana who addressed the same committee, expressed concern as to whether the Legislature could be trusted to reapportion itself. For the record I might mention that reapportionment was the subject of initiative petitions in California, Oregon, Michigan, Oklahoma and twice in the state of Washington. I might add, a constitutional initiative gave Nebraska its Unicameral Legislature.

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Citizens Initiative Committee
"The People's Lobby"

In these modern times the states of Alaska, Florida and Illinois joined the ranks of their sister states in returning government to the source of its strength. Montana's new constitution effective July 1st of this year extended the initiative to include amendments to their constitution as well as an initiative petition to call a convention -- so did Florida -- and California reduced the petition requirements to exercise the initiative statute.

The Citizens Initiative Committee emphasizes to this Convention and to the citizens of Louisiana, the importance of providing a means of direct control of government by reserving to themselves the powers of initiative and referendum. We are confident that adoption of these democratic principles will create a positive means of arousing interest among the people and turn the tide in restoring trust and confidence in the representative system.

Many of the delegates to this Convention are receptive to our proposal and will support it. Various state convention groups have regarded these principles essential to fundamental law and these studies are being made available to your Committee.

I urge the political powers within this Convention, and the self-interest pressures from without (who are already quietly at work to undermine this effort of ours) to very carefully consider the advantages to be gained by adoption of the initiative and the referendum, especially with a view of selling a new constitution to the people at the polls.

In closing, Mr. Chairman, I want to thank this Committee for the opportunity afforded me to participate in the establishment of a true and pure form of democracy for the people of Louisiana and to assure you of my continued cooperation in this interest.

6 - Final

Statement by Ed Reed to the Committee on Bill of Rights and Elections, Thursday, June 14, 1973.

I am here today in opposition to the proposal you have before you which provides for direct legislation by the people through the use of the initiative petition and the referendum. I speak only for myself. I am representing no one else.

The most attractive feature of the initiative is the slogan usually attached to it. When you say "Let's let the people decide" it intimidates many people because nobody wants to be against the people. But in my mind the initiative is far removed from the democratic principle and instead is a dangerous tool whereby well financed special interests can enforce their will upon others. It is a device for minority government.

The proposal you have under study provides that 10% of the number of people who voted in the most recent gubernatorial election can sign a petition and place on item on the ballot. If it is approved by a majority vote then it becomes law. In 1960, 4.5% of the voters of the state could have signed a petition and placed a proposition on the ballot, since the total vote cast in the election of that year was around 45% of the total registered vote.

Past experience with constitutional amendments shows that it is possible for as little as 15% of the registered vote to exercise their franchise at the polls. Thus it is possible for as little as 8% of the registered voters to pass a law that will be binding on the other 92% of the voters. When considered in terms of the total population, which is now about twice the number of the voter registration rolls we have a situation where laws are passed by 4% of the population of the state.

statement, Ed Reed
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As a result of this minority rule consequence of the initiative the experience of those states who have used this provision is replete with glaring examples of governmental abuse. Let me quote what one author, writing more than half a century ago, had to say about the state of Oregon, where the initiative got started in this country.

"How would you like to live in a state where the people can and do amend their constitution in the most radical fashion by a minority vote, where one-third of the voters decides the fate of laws affecting the other two-thirds, where one-twentieth of the voters can and do cripple the state educational institutions by holding up their funds; where special interests hire citizens to circulate petitions asking for the recall of judges who have found them guilty; where men representing themselves as for the people, buy signatures with drinks, forge dead men's names, practice blackmail by buying and selling, for so much per name, signatures for petitions needed to refer certain measures to the people, a state where the demagogue thrives and the energetic crank with money through the Initiative and the Referendum, can legislate to his heart's content; a state of whose system of government Mr. Frederick V. Holeman, a prominent lawyer and writer says: 'It is hoped that the time is not far distant when the legal voters of the state will invoke the Initiative to abolish it?' Oregon is such a state."

Recently in Union City, a suburb south of Oakland, California, there was demonstrated a more timely example of how dangerous the initiative can be in this day and age. The City Council of Union City had worked for about a year to improve the living conditions of a severely deprived minority group. The Council and the Southern Alameda Spanish Speaking Organization worked out the details for construction of a 279 unit apartment complex for the city's poor

statement, Ed Reed
Page 3.

Mexican-American families who were, for the most part, living in condemned housing.

A group of residents who strongly opposed the project got enough signatures to force the issue into a referendum. On July 29, 1969, 1,149 persons disapproved the project and 845 approved. Thus petition signers representing 21% and anti voters representing 30%, respectively, of the electorate were able to frustrate the well thought out plans of the City Council and only added further to the tensions existing in the community.

In the state of Washington an initiative was approved which provided for a limit of 12% interest per year on revolving credit and contract purchases. It was sold to the

voters as a device to punish the large banks and department stores, but the chief victim of the new credit law is the consumer. Merchants have raised prices. Credit card underwriters have started assessing a service charge to replace lost interest and in most cases the credit card holder is paying more in service charges than he previously paid in interest.

These are just two of a number of examples where the consequences of the initiative have been far less than desirable. There are many others.

The outcome of any referendum can easily be influenced by well organized and well financed special interest groups. There are no committee hearings. There are no discussions, no study, no attempt to analyze the merits or shortcomings of a proposal. But there is the advertising media to be used to bombard the voting public with catch phrases, pat slogans and emotional appeals.

I am very much for the principle of representative government. It has made this country great and it has kept it strong. But it is interesting to note that the United States Constitution makes no provision for the initiative. Instead, it provides for the election of men and women to represent the people themselves.

statement, Ed Reed
Page 4.

Most of the provisions of the various states for initiative legislation came into being around the turn of the century when admittedly our government - national and local - seemed to be more responsive to vested interests than in the people. But the system of "one man, one vote" and the single member districts in Louisiana have effectively returned government to the people. I think the people today are being heard, listened to and represented in a fashion that is vastly better than anything we have ever had before.

To place in our constitution a device that must necessarily presuppose the opposite is to place an intolerable burden on every public official who must make day-to-day decisions in the public interest. If a public official were to concern himself with doing only those things that were popular at the moment our government would be in sad shape. But the initiative could easily bring this circumstance to pass and public officials, fearing the emotional reaction for an unpopular act would surely hesitate to do anything in the least manner controversial.

I hope that this committee will conduct an exhaustive study of the pros and cons of this matter before it takes action. Perhaps you have already done this. But if not I would make a recommendation that it take no action on the proposal before it.



STATE OF LOUISIANA
SECRETARY OF STATE

388-6181
P. O. Box 44125
BATON ROUGE, LA
70804

August 6, 1973

WADE O. MARTIN, JR.
SECRETARY OF STATE

MEMORANDUM

TO: The Delegates to the Constitutional Convention

Louisiana, the United States and the free world must depend on the election process to survive.

In our State of Louisiana, therefore, maintenance of the integrity of this electoral process, and the confidence of our citizens in it, is in my opinion one of the most vital subjects for consideration in the preparation of Louisiana's proposed new Constitution.

This subject is obviously important to all Americans at all time in history, but its careful treatment is even more critical today, because registration and election laws are undergoing the greatest change in the history of this country.

Formerly election regulation was the sole prerogative of the states. But in recent years, and particularly in recent months, there have entered this field of regulation Federal court decisions, acts of Congress, and for Louisiana and some other states the U.S. Attorney General (in the matter of approving or disapproving all state laws and regulations), and rulings from various Federal agencies.

The end result is that it has taken all the diligence, expertise, experience and knowledge of many trained employees in the Secretary of State's office, in addition to myself, to meet ever increasing deadlines and successfully conduct elections and promulgate returns. A partial list of the functions performed by my office in connection with elections is enclosed.

Inasmuch as the welfare of all the people of Louisiana is so deeply involved in this issue, I am, of course, myself going to remain involved in it. On last Saturday afternoon I mailed to you a statement which I hope you will carefully consider along with this memorandum and enclosure.

As to procedure for consideration of this matter, the Convention last Saturday voted to hear my remarks and listen to my position. Then, with extraordinary parliamentary procedure, this was changed. As of now, I am scheduled to appear only before the Committee on the Executive Department, which already has recommended to the Convention that the Secretary of State remain Louisiana's chief election officer, and continue in his office all present election functions - the most important of which are listed on the enclosed memorandum.

In conclusion, if you, either individually or as a Convention group, would like to hear a discussion of this all-important subject, I am ready and willing to appear before you.

Respectfully,

Wade O. Martin, Jr.
Secretary of State

Enclosure
WOMJr/1-cie

TO: The "Bill of Rights" Committee of the Constitutional Convention

Dear Committee Members:

It is our recommendation that the Constitutional Convention employ the draft of the Constitutional provisions concerned with registration, voting, and election laws as proposed by the Secretary of State, Wade O. Martin (with one change as indicated) in the drafting of the article on "Elections and Suffrage." The recommendation has been made after careful consideration of other model drafts.

As we interpret the Secretary's draft, it accomplishes the following:

- 1) Properly minimizes election and registration provisions within the Constitution.
- 2) Proposes uniform registration and election laws to be written by the Legislature.
- 3) Provides the "door" through which registration may be pursued aggressively by registrars and others. Wade O. Martin's draft speaks of registration as a "right" in the same sentence as voting and candidate qualification, leaving, however, to the Legislature to define the procedure for exercising those rights. Therefore, the stage is set to finish the job in the Legislature without any impediments to liberalization existing in the Constitution.

We have tried, but can find no better way of phrasing the concept of simplified registration procedure than by using Martin's language to show that registration is a "right" co-equal to the right of voting.

We cannot overemphasize the importance of the inclusion of a section similar to Wade O. Martin's offered section in the Constitution. Through this section, registering to vote is no longer a "privilege", but a "right." This section would also give added strength to the courts in the enforcement of fair and equal registration procedures.

- 4) The right to vote is one of our most precious rights and should not be taken away except in the gravest circumstances. Wade O. Martin's proposal respects this important right. While the Secretary's draft still denies the right to vote to incarcerated persons and the interdicted, this is not unrealistic. The draft would seem, however, not to deprive a convicted felon of the right to vote once he is released. This would be a step forward.

However, it is felt that for the sake of clarification one change is suggested here. The words "lawfully imprisoned, interdicted or notoriously insane" are changed to "convicted of a felony and presently undergoing or presently judicially committed to a mental health facility." The purpose of this change is to allow people who are imprisoned but not convicted to vote. Remember a man is innocent until proven guilty. Also, we felt that this change would clear up the ambiguity of the term "notoriously insane."

Finally, we have found that any attempt so far to make his draft more specific results in writing legislation, not a Constitution.

Respectfully Submitted,

Gideon Stanton
Dennis C. Driscoll

Wade O. Martin's Proposal as Amended

No citizen of this state shall be denied the right to vote if he or she is at least 18 years of age, and is a bona fide resident of the state, district, parish, municipality or ward wherein the election is held; and if he or she has been a registered voter for at least 30 days pre-

ceding the election, or for such shorter period as the Legislature may provide, unless such person is convicted of a felony and presently under sentence or presently judicially committed to a mental health facility.*

The Legislature shall enact an Elections Code which shall provide an orderly system for the registration of voters, the qualifying of candidates, and the conduct of elections, including the imposition of appropriate criminal penalties for violation thereof.

Any citizen who is unlawfully denied the right to register, vote or be a candidate shall have the right to petition the Courts in a summary manner in order to obtain such rights; and if the petition shows that such right has been violated, the Court shall sign an order allowing the suit to be prosecuted without cost; and, if the petition is sustained, the litigant shall be awarded reasonable attorney's fees.

* Note: Partin's original words were "unlawfully imprisoned, interdicted or notoriously insane."

Testimony of Russell E. Gaspard, Director, State Board of Registration, as supported by the Louisiana Registrars of Voters' Association:

Mr. Chairman, I am pleased to have the opportunity to appear before the Bill of Rights Committee this morning, to testify at these significant hearings on the subject of the right to vote.

I commend the skill and excellent work and effective leadership you and the Bill of Rights Committee are bringing to this long neglected area of the Constitution.

In recent years a number of the amendments to the United States Constitution have been concerned with extending the right to vote. There has been a series of landmark decisions by the Supreme Court and far-reaching laws enacted by Congress, in the continuing effort to insure the broadest possible exercise of the right to vote.

Today, in spite of the progress we have made in so many other areas of public life, we are still using voter registration methods which were, perhaps, sophisticated 20 years ago, but which are a generation out of date today. These methods tend to deny the vote to hundreds of thousands of our citizens.

This committee now has the opportunity and duty to take a step capable of expanding the franchise and achieving a major milestone in our democracy that will include many thousands of our citizens. I am sure that you will be equal to the challenge.

After careful study, the Louisiana Registrars of Voters' Association submits the following proposal, which we feel should be included in the Bill of Rights, under the Article "Right to Vote":

ARTICLE

Every citizen of this state and of the United States, native born or naturalized, not less than 18 years of age; who is an actual bona fide resident and who has registered 30 days prior to any election, shall be an elector and shall be entitled to vote at any election held in the precinct in which he is registered.

Gentlemen, this Constitutional Convention Committee has the opportunity to breathe new life into the political process in Louisiana. Thanks to your leadership, Mr. Chairman, this committee has an excellent chance to compile an outstanding record of bipartisan support for this kind of reform.

The Louisiana Registrars of Voters' Association Constitutional Convention Committee has taken the liberty to include suggested changes to certain sections of Article VIII of the present Constitution, in hopes that it will be of some help to you later, should you desire to include an Article on Suffrage and Elections; also, in hopes that you might recommend our findings to the Joint Legislative Committee, who will be responsible for changes to the Louisiana Revised Statutes. (Proposed list of changes attached)

Thank you, Gentlemen, for your kind and considerate attention and for allowing us the opportunity to appear before you to present our views.

CHANGES PROPOSED BY LOUISIANA REGISTRARS OF VOTERS' ASSOCIATION (CONSTITUTIONAL CONVENTION COMMITTEE)

TO

ARTICLE VIII

LOUISIANA CONSTITUTION

(PROVISIONS ON REGISTRARS AND REGISTRATION OF VOTERS ONLY)

§ 1. Right to vote; qualifications of electors; registration

Section 1. Right to vote. The right to vote in Louisiana shall not exist except under the provisions of this Constitution.

Citizenship and age. Every Citizen of this State and of the United States, native born or naturalized, not less than eighteen years of age, and possessing the following qualifications, shall be an elector, and shall be entitled to vote at any election in the state by the people.

(a) Residence. He shall be an actual bona fide resident of the state, the parish, the municipality in municipal elections and the precinct in which he offers to vote; provided that removal from one precinct to another in the same parish shall not operate to deprive any person of the right to vote in the precinct from which he has removed if the removal took place within thirty days before an election, provided that removal from one parish to another parish shall not deprive any person of the right to vote in the parish from which he has removed if the removal took place during a period when registration was closed in the parish to which he has removed but in no event for more than thirty days.

(b) Registration.

(1) The Legislature shall provide for the registration of voters throughout the state and shall prescribe the application for registration, unless otherwise provided by law.

(2) The elector shall be, at the time he offers to vote, legally enrolled as a registered voter on his own personal application, which application shall be written by the applicant, or by the registrar or deputy registrar from applicant's dictation, without assistance or supervision from any other person. The application shall contain the essential facts necessary to show that he is entitled to register and vote. Provided, however, that if the applicant be unable to write his application in the English language, he shall have the right, if he so demands, to write the same in his mother tongue from the dictation of an interpreter; and if the applicant is unable to write his application by reason of illiteracy or physical disability, the same shall be written at his dictation by the registration officer or his deputy.

(c) Identity. He must in all cases be able to establish that he is the identical person whom he represents himself to be when applying for registration, and when presenting himself at the polls for the purpose of voting in any election or primary election.

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COMMENTS

§ 1. Citizenship and age. Age limit changed to correspond with proposed right to vote on Bill of Rights.

(a) Residence. Changed residence requirements to 30 days to correspond with proposed right to vote on Bill of Rights.

(b) Registration.

(1) Replaces Section 17 of Article 8 of present constitution.

(2) Incorporated Subsection 1 (B) and Subsection 1 (c.7) of Article 8 of present constitution and have re-worded same.

(c) No change.

All other wording deleted.

§ 2. Delete

COMMENTS

We do not believe, in this day and age, that we should still be talking about poll taxes and poll certificates.

§ 3. No changes

§ 4. Pertains to Primary Elections. No comment.

§ 5. No changes

§ 6. Delete

COMMENTS

Once a person has paid his debt to society and is released, if he can go to work, teach school, or be employed under Civil Service regulations, then he is entitled to register. He can commit felony after he has applied in another parish. Difficult to police.

§ 7. Pertains to Voting; ballot; machines, etc. No comment.

§ 8. Pertains to Electors; privilege from arrest. No comment.

§ 9. Pertains to General Elections. No comment.

§ 10. Pertains to Parochial elections. No comment.

§ 11. Bona fide residence; state or federal service; seamen;

students; instructors and professors; overseas, out-of-state and out-of-parish employees; overseas, out-of-state and out-of-parish visitors; spouses and children or dependents.

Section 11. For the purpose of voting, no person shall be deemed to have acquired a bona fide residence by reason of his presence or deemed to have lost it by reason of his absence, while employed in the service, either civil or military, of this State or of the United States or of the high seas; or while a student, instructor, or professor of any institution of learning; or while engaged in any overseas, out-of-state or out-of-parish employment; or while a visitor overseas, out of state, or out of parish. Spouses, children, and dependents living with or accompanying these persons shall have the same status when unable to establish a separate bona fide residence.

-2-

COMMENTS

This section expanded to include all bona fide residents of this state, temporarily cojourning in another state and vice versa. In other words, all bona fide residents who can now register and vote for President and Vice President by mail and absentee ballot should be able to do the same for state and local elections.

- § 12. Pertains to Election contests; trials. No comment.
- § 13. Pertains to Office holders; residence requirements. No comment.
- § 14. Pertains to Election returns, officers, etc. No comment.
- § 15. Pertains to Ballots; methods of voting; etc. No comment.

§ 16. Closes of registration before election; transfers and changes; new voters

Section 16. Electors shall not be registered within thirty days next preceding any election at which they may offer to vote, but application to the courts, and appeals, provided for in this Constitution, may be heard and determined and cancellations and errors, as required, may be made during this period. However, new registrations, transfers, change of name and party affiliation may be accepted for subsequent elections, provided such changes do not seriously interfere with the registrar's duties in preparing for the election at hand. No person, who in respect to age and residence would become entitled to vote within the said thirty days, shall be excluded from registration on account of his want of such qualifications at the time of his application for registration.

COMMENTS

The changes here are made to clarify conflicts in constitutional law and the statutes.

§ 17. Delete (added to Section 1 (1) (b-1))

COMMENTS

The title of this section duplicates the title of Subsection (b) of Section 1 (1).

§ 18. Registrars of Voters; board of registration

Section 18. A. There shall be a registrar of voters for the Parish of Orleans who shall be appointed by the City Council of New Orleans. There shall also be a registrar of voters for each other parish in the state, who shall be appointed by the police jury or other governing authority of such parish.

B. The governor shall issue a commission to each registrar who shall thereupon make such bond, subscribe to such oath, and receive such compensation as the legislature may prescribe; provided that the state shall pay such compensation.

C. The governor, lieutenant governor, and speaker of the house of representatives shall compose the board of registration and any two members of the same shall have power to remove, for cause, any registrar in this state.

-3-

D. The board shall engage in promotion of voter registration and prescribe general rules and regulations to provide uniform and reasonable voter registration procedures in the state; shall control voter registration records by prescribing the character of and preserving forms, affidavits, statistical reports, and other documents relative to the registration of voters; and shall act as liaison between registrars of voters and the public by assisting the registrars in working closely with public officials (City, Parish, State and Federal) and special interest groups to solve problems that arise concerning voter registration.

E. If a vacancy should occur in the registrar of voters' office and that vacancy is not filled within thirty days after its occurrence by the above constituted authority, a majority of the members of the board of registration shall appoint and the governor shall commission a registrar of voters in each parish which has none.

F. No other officer or person shall exercise any of the powers or duties of the registrar of voters, except that, when a vacancy occurs, an authorized deputy shall perform the duties of the registrar until the vacancy is filled, in accordance with Subsection (E) of this section. This shall not be construed to forbid the legislature to authorize the appointment by the registrar, of deputy registrars.

COMMENTS

- A. No changes
- B. Major change provides that the state shall pay full compensation in lieu of the state and parish each paying one-half.
- C. Provides that removal of registrar shall be (for cause) in lieu of (at will).
- D. Deletions made to coincide with Federal Voting Rights Act of 1965 concerning citizenship tests and administration of same. This section has been re-written to re-describe purpose of the Board of Registration.
- E. Deleted
- F. (Now "E") Reworded; eliminates date and deletes last sentence. This section has been reassigned to letter "E".
- G. (Now "F") Reworded to eliminate date and include additional provisions. This section has been reassigned to letter "F".
- § 19. Refers to Trials under election laws; witnesses, etc. No comment.
- § 20. Refers to Right to serve as commissioner. No comment.

§ 21. Delete

COMMENTS

Deals with periodic registration. All parishes are now under permanent registration.

- § 22. Refers to Absentee Voting. No comment.
- § 23. No changes

-4-

STATEMENT BY

H. ASHTON THOMAS, M.D., SECRETARY-TREASURER

AND

PAUL PERRET, ASSOCIATE SECRETARY-TREASURER

OF THE

LOUISIANA STATE MEDICAL SOCIETY

TO

COMMITTEE ON BILL OF RIGHTS AND ELECTIONS
OF THE CONSTITUTIONAL CONVENTION

ARTICLE 1 - Declaration of Rights

SECTION 24 - Freedom of Commerce and

SECTION 5 - Right to Privacy

STATEMENT OF H. ASHTON THOMAS, M.D.

Mr. Chairman, Members of the Committee on Bill of Rights and Elections, I am Dr. Ashton Thomas, Secretary-Treasurer of the Louisiana State Medical Society and I have with me Mr. Paul Perrett, Associate Secretary-Treasurer of the Louisiana State Medical Society. Our Society comprises about 3,300 physicians.

We have been invited to express our views on Section 5, Right to Privacy, Section 24 Freedom of Commerce.

I would like to speak first on Section 24, the Freedom of Commerce provision. The proposal reads:

"No law shall impair freedom of commerce by arbitrarily limiting the practice of any occupation to a certain class of persons, by controlling the production or distribution of goods, by dictating the quality or price of products or by requiring any business to open or close at a given time, except that the Legislature may enact reasonable laws regulating commerce when necessary to protect the public health and safety."

This could be interpreted to prohibit the state, through its police power, from licensing or regulating the practice of any occupation, including medicine, law, engineering, dentistry, accounting, etc. It is not clear what the last phrase in savings clause intends to except from its provisions, but persons affected thereby could certainly question the licensing requirements now in effect.

The Louisiana State Medical Society does oppose the adoption of the freedom of commerce provision in its present form, and recommends that the phrase beginning with "by" and ending with "persons" and reading "by arbitrarily limiting the practice of any occupation to a certain class of persons" be deleted or stricken. The Medical Society would not have any objection if this deletion were made.

This concludes the statement which I was authorized to make on behalf of the Medical Society. Since appearing at the hearing, I have been advised that I may have in some way inferred during the questioning by the delegates that if I was assured by the Committee that the savings clause which reads "except that the Legislature may enact reasonable laws regulating commerce when necessary to protect the public health and safety" would exempt the practice of medicine or surgery or physicians that I would not have any objection to this Section. I did not intend nor was I authorized to make this statement on behalf of the Medical Society and I apologize to the Committee if such was inferred by my answers to your questions or my statements.

The Society's position is that it is opposed to Section 24, unless the recommended deletion referred to hereinabove, is made by the Committee or by the Convention, as the Section's savings clause does certainly not expressly exempt from its provisions the practice of medicine, surgery, midwifery or physicians as a profession and it would be subject to court interpretation as to its application and cause unnecessary risk or harm to the public, physicians and the Medical Society if not applicable.

It also might prevent professions from regulating their own professions for the protection of the public.

I apologize for any confusion my statement may have caused members of the Committee and I or another representative will be glad to again appear before the Committee to clarify the Medical Society's position on this important matter.

H. Ashton Thomas, M.D.
H. ASHTON THOMAS, M.D.

STATEMENT OF MR. PAUL PERRETT

On the matter of the Right to Privacy, we can not urge you too strongly to adopt language in the proposed new Constitution that will guarantee this right not only to the individual, but to communicate between physicians and patients; individuals and the clergy; and clients and attorneys. I will address myself only to the physician-patient relationship and the importance of keeping this a confidential relationship.

Physicians have sworn from the time of Hippocrates (377 B.C.) to uphold the confidentiality of information contained in medical records. The Oath of Hippocrates contains the following wording guarding the confidentiality of the patient-physician relationship:

"WHATEVER, IN THE CONNECTION WITH MY PROFESSIONAL PRACTICE, OR NOT IN CONNECTION WITH IT, I SEE OR HEAR, IN THE LIFE OF MEN, WHICH OUGHT NOT TO BE SPOKEN OF ABROAD, I WILL NOT DIVULGE, AS RECKONING THAT ALL SUCH SHOULD BE KEPT SECRET."

This safeguard has been carried over to the present Principles of Medical Ethics that now govern physicians. Section 9 of the Principles of Medical Ethics states:

"A PHYSICIAN MAY NOT REVEAL THE CONFIDENCES ENTRUSTED TO HIM IN THE COURSE OF MEDICAL ATTENDANCE, OR THE DEFICIENCIES HE MAY OBSERVE IN THE CHARACTER OF PATIENTS, UNLESS HE IS REQUIRED TO DO SO BY LAW OR UNLESS IT BECOMES NECESSARY IN ORDER TO PROTECT THE WELFARE OF THE INDIVIDUAL OR OF THE COMMUNITY."

Now more than ever it is necessary to preserve this right to privacy. I need not remind this Committee that the illegal search for a patient's medical records is a major facet of the Watergate affair. There is even some evidence that this right to the privacy of medical information may have been abused by some newsmen following the nomination of Senator Thomas Eagleton for the

Vice-Presidency of the United States. Attempts were made to use Senator Barry Goldwater's medical history against him when he was a candidate for the Presidency of the United States.

Even more alarming is the recently enacted Professional Standards Review Section (249F) of Public Law 92-603 that will not only allow, but require, confidential medical records to be seen, copied and distributed to non-physicians for review and comment. We believe this to be a gross violation of the right to privacy.

Section 5 on the Right to Privacy as written is excellent with one exception. We would like to see added to the wording specific language including medical records in this section of the proposed new Constitution.

Thank you for allowing us to present the views of the Louisiana State Medical Society on these most important subjects and if the Committee would like, we will submit appropriate language for the above amendment.

Paul Perrett
PAUL PERRETT

V. Miscellaneous Committee Documents

Committee on Bill of Rights and Elections

TABLE OF OBSCURE PROVISIONS, PROVISIONS REPEATED IN SUBSTANCE

IN THE STATUTES, AND PROVISIONS REPEATED VERBATIM IN THE STATUTES.

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- § 9 Criminal Prosecutions; Speedy Public Trial; Jury; Venue; Witnesses; Counsel; Indictment and Information; Double Jeopardy. Substance, C.Cr.P. Arts. 294, 382, 511, 592, 611, 701.
- § 10 Criminal Prosecutions: Information as to Accusation; Peremptory Challenges. Substance, C.Cr.P. Arts. 464, 480, 484, 799.
- § 11 Self-incrimination; Confessions. Substance, RS 15:451
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- § 1 Departments of Government. Substance, RS 42:31.
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- § 16 Trusts; forced heirship; abolition prohibited; adopted children. Substance, CC, Art. 1467 et seq. and RS 9:1791 et seq.

ARTICLE VI. ADMINISTRATIVE OFFICERS AND BOARDS

- § 19 State Highways and Bridges; Construction and Maintenance; Traffic Regulation; Rights of Parishes, Municipalities and Political Subdivisions. Substance, RS 19:15 et seq. and 48:218 et seq.
- § 19.1 Expropriation; Highway Purposes. Substance, RS 19:15 et seq. and 48:218 et seq.

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- § 4 Primary Elections; Conventions; Fairness; Qualifications of Voters and Delegates. Substance, RS 18:281-484.
- § 5 Denial of Registration; Remedy; Illegal Registration; Removal of Names; Prosecution. Substance, RS 18:138.
- § 6 Disqualification from Voting or Holding Office. Substance, RS 18:42.
- § 7 Voting; Ballot; Machines; Viva-Voce Ratification of Acts 1940. Substance, RS 18:560, RS 18:739, RS 18:671-74, RS 1161-1196.

- § 9 General Election; Time; Presidential and Congressional Elections. Substance, RS 18:544, RS 18:1411.
- § 11 Residence; State or Federal Service; Seamen; Students. Substance, RS 18:1071 et seq.
- § 12 Election Contests; Trials. Substance, RS 18:1251-52.
- § 13 Office Holders; Residence Requirements. Substance, RS 18:42.
- (2)
- § 14 Election Returns, Officers Commissioned by Governor. Substance, RS 18:570, RS 18:567(D).
- § 15 Ballots; methods of voting; secrecy; independent candidates; statements of candidacy. Substance, RS 18:671 et seq.
- § 16 Close of Registration before Election; Transfers; New Voters; Changes of Address in Orleans Parish Between First and Second Primaries. Substance, RS 18:73, 18:170.
- § 17 Registration. Substance, RS 18:1-261.
- § 20 Right to Serve as Commissioner at Polls. Substance, RS 18:555.
- § 21 Registration after Moving to Another Precinct. Substance, RS 18:136.
- § 22 Absentee Voting. Substance, RS 18:1071 et seq.

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- § 13 No appropriation of public funds for private or sectarian schools. Substance, (Part), RS 17:153.

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- § 3 Treason. Substance, RS 14:113.
- § 8 Gambling; Futures of Agricultural Products; Lotteries. Substance, RS 14:90.
- § 9 Libel; Defense; Jury as Judges of Law and Facts. Substance, RS 14:47-50.
- § 12 Bribes; Offering or Receiving; Disqualification from Office. Substance, RS 14:120.
- § 13 Bribes; Self Incrimination; Immunity. Substance, RS 14:121.
- § 14 Monopolies, Trusts, Combinations or Conspiracies in Restraint of Trade. Substance, RS 51:121-152.
- § 17 Contempt of Court. Substance, RS 13:4611 and numerous other references.
- § 21 Alien Land Ownership. Obsolete, SEE 25 Tulane L. Rev. 117 (1950).
- § 22 Huey P. Long; Birthday a Legal Holiday. Substance, RS 1:55.

-3-

July 5, 1973

TO: All Delegates to the Constitutional Convention of Louisiana of 1973

FROM: Committee on Bill of Rights and Elections

RE: Minority Positions with Respect to "Article I. Declaration of Rights"

The following minority reports to the committee proposal on "Article I. Declaration of Rights" are submitted by members of the committee.

Minority Report No. 1 by Delegates Stinson, Jenkins, and Weiss would include an additional section in the "Declaration of Rights" as follows:

Section ____ Rights of the Family

Laws restricting the right of an unmarried man and woman to marry shall be limited to reasonable requirements as to health, full consent, waiting period, regis-

tration, marriage of relatives, and, in the case of minors, minimum age and parental consent. Subject to reasonable minimal standards of health, education, and welfare of the child established by law, parents have the paramount right to rear their children in accordance with their own convictions.

Minority Report No. 2 by Delegatea Dunlap, Jenkins, Stinson, and Weiss would delete the "Section 8. Freedom from Discrimination" in its entirety from the "Declaration of Rights".

Minority Report No. 3 by Delegates Jenkins, Dunlap, and Weiss would delete the words "or cases in which no parole or probation ia permitted" from "Section 16. Trial by Jury in Criminal Cases" in the "Declaration of Rights".

Minority Report No. 4 by Delegates Weiss, Roy, and Stinson would include an additional section in the "Declaration of Rights" as follows:

Section ____ . Treason

Treason against the state shall consist only in levying war against it. No person shall be convicted of treason except on the testimony of two witnesses to the same overt act or on his confession in open court.

Minority Report No. 5 by Delegates Roy, Soniat, and Weiss would include an additional section in the "Declaration of Rights" as follows:

Section ____ . Civil Service Rights

Everyone shall have an equal opportunity to apply for civil service employment. Selection shall be based on merit without unreasonable qualifications of age and sex. Civil service employees, subject to dismissal for cause, have the right to a hearing.

Minority Report No. 6 by Delegates Weiss, Dunlap, and Stinson would include an additional section in the "Declaration of Rights" as follows:

Section ____ . Cultural Rights

People within the state having a distinct language or culture have the right to conserve the same.

Minority Report No. 7 by Delegate Stinson would delete from "Section 3. Right to Individual Dignity" of the "Declaration of Rights" the word "sex,".

CC-

1 Constitutional Convention of Louisiana of 1973

2 DELEGATE PROPOSAL NUMBER

3 Introduced by Delegate Weiss

4 A PROPOSAL

5 To provide a section on the right to life in the "Declaration of Rights".

7 PROPOSED SECTION:

8 Article I. Declaration of Rights

9 Section ____ . Right to Life

10 Section ____ . No human being shall be deprived of his life intentionally, except in execution of a judicial sentence of punishment for a capital crime established by law. A person shall not be regarded as having been deprived of his right to life if his death results from reasonably justifiable force in defending any person from violence, in defending property, in effecting a lawful arrest, in preventing the escape of a person lawfully in custody, in suppressing a riot or insurrection, or in preventing the commission by that person of a criminal act.

22 Source: New; see, however, Piji Const. Chap. II, Art. IV (1970).

24

25 Comment: A right to life may be considered the most fundamental of all human rights and a condition precedent to the exercise of other rights. British civil servants, preparing constitutions for their former colonies, have included a right to life provision in these constitutions. The provision in the Fiji Constitution, on which the above section is based, is representative of similar provisions in the constitutions of other former British colonies.

STAFF DRAFT FOR DR. WEISS
June 13, 1973

CC

1 Constitutional Convention of Louisiana of 1973

2 DELEGATE PROPOSAL NUMBER

3 Introduced by Delegate Weiss

4 A PROPOSAL

5 To provide a section on the right to life in the "Declaration of Rights".

7 PROPOSED SECTION:

8 Article I. Declzration of Rights

9 Section ____ . Right to Life

10 Section ____ . No human being shall be deprived of life intentionally, except in execution of a judicial sentence for a capital crime established by law.

15 Source: New; see, however, Fiji Const. Chap. II, Art. IV (1970).

18 Comment: A right to life may be considered the most fundamental of all human rights and a condition precedent to the exercise of other rights. British civil servants, preparing constitutions for their former colonies, have included a right to life provision in these constitutions. The provision in the recent Fiji Constitution, on which the above section is based, is representative of similar provisions in the constitutions of other former British colonies. The word "intentionally" is used to distinguish those cases in which death inadvertently results from the use of reasonably justifiable force in defending any person from violence, in defending property, in effecting a lawful arrest, in preventing the escape of a person lawfully in custody, in suppressing a riot or insurrection, or in preventing a person from committing a criminal act. The judicial sentence is intended solely as a deterrent to future capital crimes.

**COMMITTEE ON
LEGISLATIVE POWERS
AND FUNCTIONS**

COMMITTEE ON
LEGISLATIVE POWERS
AND FUNCTIONS

I. Minutes

MINUTES

Minutes of the organizational meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held, pursuant to the call of the Chairman of the Convention in accordance with the rules.

Independence Hall, Baton Rouge, La.

Tuesday, January 30, 1973, 4:30 P.M.

Presiding:

Present

Dr. Emmett Asseff
Sen. Cecil Blair
Rep. Thomas Casey
Calvin Fayard
Frank Fulco
P. David Ginn
Patrick Juneau
Rev. Louis Landrum
Rep. Edward LeBreton
Sen. K. D. Kilpatrick
Gary O'Neill

Absent

None

The Committee met for the purpose of electing committee officers and organizing.

A motion was made that nominations for Chairman be opened.

Senator K. D. Kilpatrick nominated Senator Cecil Blair as Chairman. A motion was made and carried that nominations be closed. Senator Cecil Blair was made Chairman by acclamation.

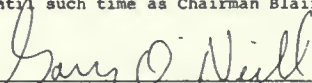
Nominations for Vice-Chairman were opened. Gary O'Neill nominated Calvin Fayard as Vice-Chairman. A motion was made and carried that nominations be closed. Calvin Fayard was elected by acclamation.


Nominations for Secretary were opened. Dr. Emmett Asseff, P. David Ginn, and Gary O'Neill were nominated. On a secret ballot, O'Neill polled six votes, Ginn three, and Asseff two. O'Neill was elected Secretary.

Dr. Emmett Asseff, upon announcement of the vote of Secretary, resigned from the Committee and left. After a brief discussion, it was decided that Chairman Blair should discuss the resignation with Dr. Asseff. All committee members agreed.

The Committee then discussed which days of the week would be most convenient for Committee members. After prolonged discussion, members decided to schedule meetings on Mondays and Tuesdays or Thursdays and Fridays. It was agreed that no meetings would be held on weekends if at all possible to avoid.

Without further business, the Committee adjourned at 5:00 P.M. until such time as Chairman Blair schedules a meeting.


Gary O'Neill, Secretary


Sen. Cecil Blair, Chairman

MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on March 1, 1973
State Capitol, Room 205, Baton Rouge, Louisiana
Friday, March 9, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions

Present

Sen. Cecil Blair
Rep. Thomas Casey
Frank Fulco
P. David Ginn
Patrick Juneau
Sen. K. D. Kilpatrick
Louis Landrum
Rep. Edward LeBreton
Gary O'Neill

Absent

Calvin Fayard

Chairman Cecil Blair called the meeting to order and asked Secretary Gary O'Neill to call the roll. A quorum was present. Mr. O'Neill read the minutes of the last meeting.

2

Mr. Juneau moved that the minutes be adopted as read. With no objections, the motion carried.

Chairman Blair reported that Dr. Emmett Asseff has been placed on the Committee on the Executive Department. He then introduced J. Reginald Coco, Jr., senior research assistant, and Connie McManus, secretary, members of the research staff of the Convention. Wilson Chaney is the sergeant-at-arms serving the Committee.

Senator Blair read the agenda as set forth in the notice and proceeded with the meeting. Dates for the next meeting of the Committee were discussed with the Committee agreeing to meet on March 23 and March 24. April 6 and April 7 were mentioned as tentative dates for the following meeting.

Mr. Fulco suggested that the Committee meet at a later hour on the first day of two-day meetings to accomodate those delegates from out-of-town. A motion was made by Mr. O'Neill to meet at 11:00 a.m. on March 23 and 9:00 a.m. on March 24. There were no objections, the motion carried.

Mr. Juneau moved that the first day of the two-day meetings be devoted to an orientation program to give the public a chance to be heard. Senator Blair ammended that to include that speakers be required to submit a written report. There was much discuseion on the subject, but no action was taken by the Committee.

Mr. Coco talked briefly to the Committee pointing out that the responsibility of the Committee as set forth by the rules of the Convention is to consider the Legislative

Department, apportionment, qualifications, regular and special sessions. He suggested that for discusion purposes this can be divided into three headings. They are (1) composition, (2) power and limitations, and (3) functions and procedures.

Chairman Blair introduced Bill Roberts, Secretary of the Senate. Mr. Roberts spoke to the Committee on the mechanics and limitations of the legislature. He suggested that the Committee consider each section of the present Constitution dealing with the Legislative Department and commented briefly on each section dealing with the mechanics and limitations of the legialature.

The Committee recessed for lunch at 12:15 p.m. to reconvene at 1:30 p.m.

Senator Blair called the meeting to order at 1:30 p.m. and introduced Mrs. Norma Duncan, Director of Research. Mrs. Duncan gave each membar of the Committee a copy of a time table prepared by the staff as a guide for the Committee and discused the deadlines which must be met. She also felt that the responsibilities of the Committee could be divided into three categories, (1) organization-composition, (2) powers-limitations, and (3) procedures-mechanics. Mrs. Duncan talked to the Committee about material in the present Constitution that might be considered statutory and how that material should be disapoed of.

Chairman Blair introduced David Poynter, Clerk of the House, and Chief Clerk of the Convention. Mr. Poynter stated

that he will make himself available to the Committee. He made the following general observations about the responsibilities of the Committee:

1. The real restrictions on the legislature are not in Articles III and IV, but the entire Constitution.
2. Statutory and constitutional material must be separated.
3. The Legislative Department must be a strong, co-equal branch of the government.

Delegate Landrum made a motion to consider each section of the present Constitution dealing with the legislative branch of government and at the next meeting to place each in one of the following categories:

1. Organization--Composition
2. Powers--Limitations
3. Procedures--Mechanics

There were no objections to the motion, the motion carried.

The notice of the Committee meeting stated that the meeting would start at 10:00 a.m. on Saturday, however, the Committee agreed to meet at 9:00 a.m.

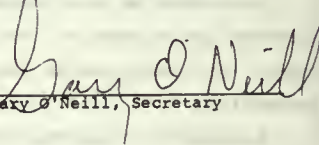
Delegate O'Neill gave each member of the Committee a copy of Initiative and Referendum in the United States, compiled for the Constitutional Convention of the State of Louisiana 1973 by Citizens Initiative Committee, "the people's lobby", M. G. Anseman, Chairman.

Ann Cole, Common Cause of Louisiana, asked that the Committee consider unicameralism.

The meeting was adjourned at 3:50 p.m.



Senator Cecil Blair, Chairman



Gary O'Neill, Secretary

MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on March 1, 1973
State Capitol, Room 205, Baton Rouge, Louisiana
Saturday, March 10, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions

Present

Sen. Cecil Blair
Rep. Thomas Casey
Frank Fulco
P. David Ginn
Patrick Junesu
Sen. K. D. Kilpatrick
Louis Landrum
Rep. Edward LeBreton
Gary O'Neill

Absent

Calvin Fayard

Chairman Blair called the meeting to order and asked Secretary O'Neill to call the roll. A quorum was present.

2

The Committee considered each provision in the present Constitution dealing with the legislature and placed each in one of the three categories adopted by the Committee at the last meeting. The following categorization was adopted by the Committee: (see Appendix A)

The Committee asked Mrs. Duncan, Director of Research, to discuss with the Coordinating Committee provisions which should be taken up by other committees.

Chairman Blair asked for comments on the categories as to which one should be considered first. The majority of the members felt that Category 1 should be the first one to be considered.

The Committee decided to consider Category 1 at the next meeting and asked for extensive research in the following areas:

1. Unicameralism in Nebraska
2. Apportionment - Reapportionment - size, including quorum
- 3. Sessions - length, kind
4. Qualifications - age, residence
5. Conflict of Interest
 - a. Personal interest in bills
 - b. Dual office holding - legislators serving on other boards
6. Lieutenant Governor as Presiding Officer of Senate
7. Legislative Review of Expenditures
 - a. Legislative auditor
 - b. Legislative fiscal officer - fiscal note
8. Continuance in Office of Elected Public Officials
9. Oath of Office - recent court decisions

3

Mr. Ginn asked for information on the cost of recent constitutional conventions, including information about their budgets. The Committee also asked Mrs. Duncan to make recommendations of what sections in the present Constitution are

constitutional and which are statutory and of those statutory which ones should be retained.

Speakers for the next meeting were discussed and the Committee agreed to invite Ed Stagg, Council for A Better Louisiana; Ed Steimel, Public Affairs Research Council; Representative Gregson; Senator Mouton; someone from Common Cause and someone from the Citizens Conference on State Legislatures.

Mr. Landrum asked if the Committee should perhaps plan to meet in other areas of the state. It was decided that since the Composite Committee will be traveling throughout the state in April, there was no need at this time for the Committee on Legislative Powers and Functions to do so.

Senator DeBlieux spoke to the Committee and expressed his views on the subject. He felt that the public should have a chance to be heard and to help put the Constitution together.

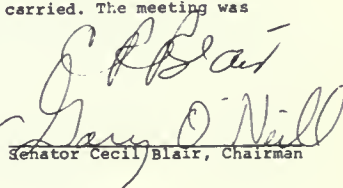
Tom Schwertfeger, State Legislative Leaders Foundation, spoke briefly to the Committee about the Foundation and its purpose. He offered any information concerning comparisons which their program can provide for the use of the Committee. The Sometime Governments, a book by the Citizens Conference on State Legislatures, is a study of the legislatures of each state.

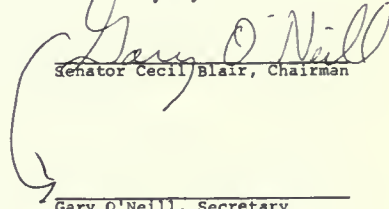
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He felt that this would be informative and possibly helpful to the members and will try to secure a copy for each member of the Committee.

David Soileau, Common Cause, thanked the Committee for the invitation and told them that Blake Jones would speak to the Committee about unicameralism and other interests of Common Cause.

Delegate O'Neill moved that the meeting be adjourned. With no objections, the motion carried. The meeting was adjourned at 11:55 a.m.


Senator Cecil Blair, Chairman


Gary O'Neill, Secretary

APPENDIX A

CATEGORY I

ARTICLE III

Legislative Department

1. Bicameral legislature

2. House of representatives; representation; apportionment; number
3. Senatorial districts; new parishes; number of senators
4. Senatorial districts; number of senators for each district
5. House of representatives; number; apportionment
6. Reapportionment; restriction; new parishes
8. Annual sessions; general, budgetary and special sessions; duration; bills and joint resolutions; vacancies
9. Qualifications; residence requirements; term
10. Judging qualifications, election, and returns; officers; procedural rules; discipline
13. Privileges and immunities
14. Compensation and mileage
19. Quorum; adjournments from day to day; compulsory attendance
20. Adjournments; consent of other house
29. Personal interest in bill; disclosure; vote
30. Sale or trade of votes; purchase of supplies on bids; contracts, personal interest, approval

ARTICLE V

Executive Department

8. Lieutenant Governor; president of senate; vote; president pro tempore
9. Lieutenant Governor; vacancy in office
11. Appointment of officers
14. Governor; execution of laws; extraordinary sessions of legislature; restriction on power to legislate; limitation on time; proclamation and notice

ARTICLE VI

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26. Department of Revenue; legislative auditor; state printing board

ARTICLE XIX

General Provisions

1. Oath of office
4. State offices; ineligibility of federal officers or officers of other states; dual office holding
6. Performance of duties until successor inducted
11. Fiscal officers; discharge prerequisites to other office; suspension
12. Bribes; offering or receiving; disqualification from office
13. Bribes; self incrimination; immunity
15. Passes, franking privileges or discriminatory rates for public officials; penalties; testimony

CATEGORY II

ARTICLE II

Distribution of Powers

3. Continuity of governmental operations upon enemy attack

ARTICLE III

Legislative Department

32. Merger or consolidation of similar executive and administrative offices
33. Convict labor; public works; leases
34. Salaries of public officers; change
35. Suits against the state, its agencies or political subdivisions
36. Arbitration laws
37. Rights of way; roads of necessity; drainage
39. Code of Criminal Procedure
44. Milk manufacturers, pasteurizers and distributors; bond

ARTICLE IV

Limitations

1. Appropriations; quarterly accounting
- 1(a) Board of liquidation of the state debt
2. Public debt; alienation of public lands; reservation of mineral rights; mineral leases
- 2(a) Board of liquidation of state debt; bonds; public works
3. Extra compensation; claims against state, parish or municipality; unauthorized contracts
4. Local or special laws; prohibited subjects
5. Local or special laws; indirect enactment; repeal
6. Local or special laws; notice of intention; publication
7. Price of manual labor; wages, hours, and working conditions of women

8. Public funds; prohibited expenditure for sectarian, private, charitable or benevolent purposes; state charities; religious discrimination
12. Loan or pledge of public credit; relief of destitute; donations; transfers of property; bonds; leasing of health institutions; donation to U.S. for Veterans Hospital
- 12(a) Bonds; state indebtedness; Confederate veterans' pensions; reimbursement of general highway fund
- 12(b) State market commission; guaranteed loans; agricultural facilities
- 12(c) Commissioner of agriculture and immigration; guaranteed loans; farm youth organizations
13. Release of obligation of state, parish or municipal corporation; taxes on confiscated property
15. Ex post facto laws; impairment of contracts; vested rights; just compensation
16. Trusts; forced heirship; abolition prohibited; adopted children
17. Legislative approval of bond issuance and appropriation by the Board of Liquidation; procedure; nullity of issue for failure to observe
18. Legislation to enable compliance with federal laws and regulations to secure federal aid in capital improvement projects.

ARTICLE V

Executive Department

1. Executive officers; consolidation of offices
2. Governor; Lieutenant Governor; executive power; term; election
4. Commencement of term of Governor and Lieutenant Governor
12. Appointment of officers; recess appointments
18. Constitutional officers; elections; terms; vacancies; assistants
20. Salaries of constitutional officers; fees; expenses

ARTICLE VI

Administrative Officers and Boards

- 19.4 Board of highways; regulation and control of annual budget
22. General highway fund
31. Greater Ouachita Port Commission

ARTICLE VII

Judiciary Department

Jurisdiction

17. Decisions of supreme court and courts of appeal, reporting and publication; stenographers

Courts of Appeal

21. Circuit courts of appeal; domicile; number of judges, initial terms

District Courts

34. Rearrangement of districts; change in number of judges

Juvenile Courts

52. Creation; judges; jurisdiction

Clerks

66. Establishment of office; election; powers and duties

Vacancies

69. Vacancies; appointments; special elections; notices

Criminal District Court for the Parish of Orleans

87. Change of provisions relating to criminal courts

The Juvenile Court

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ARTICLE VIII

Suffrage and Elections

6. Disqualification from voting or holding office; employment
7. Voting; ballot; machines; viva voce; ratification of Acts 1940

13. Office holders; residence requirements
18. Registrars of voters; board of directors

ARTICLE IX

Impeachment and Removal from Office

2. Impeachment; trial; effect of conviction; other prosecutions; suspension
3. Removal on address by legislature
6. Removal by suit; officers subject; commencement of suit
7. Removal by suit; citation; appeals; effect; costs and attorney fee
9. Recall

ARTICLE X

Revenue and Taxation

- 1 a. State tax, levy or increase in rate; approval by two-thirds of legislature
- 3. Rate of state taxation; limitation
- 11. Collection of taxes; tax sales; quieting tax titles; postponement of taxes; loans to parish

ARTICLE XII

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- 7. Colleges and universities; supervision; coordinating council
- 13. Public funds for private or sectarian schools; cooperative regional education

ARTICLE XIII

Corporations and Corporate Rights

- 7. Perpetual franchises or privileges

ARTICLE XIV

Parochial and Municipal Affairs

- 2. Change of parish lines or removal of seat; election
- 15. Civil service system; state; cities
- 15.2 Financial security for surviving spouses and children of law enforcement officers in certain cases
- 29. Zoning ordinances
- 30. Improvements by riparian owners in cities over 5,000 or within port of New Orleans; expropriation; just compensation
- 30.2 Lake Charles Harbor and Terminal District; ratification; Board of Commissioners; members, officers, agents and employees
- 40. Municipalities; charters and powers; home rule

ARTICLE XVI

Levees

- 1. Levee system; maintenance; board membership; fiscal affairs
- 6. Compensation for property used or destroyed; tax

ARTICLE XVII

Militia

- 3. Adjutant general

ARTICLE XIX

General Provisions

- 16. Prescription against state
- 25. Retirement systems; notice of intention to propose amendment or change; publication
- 26. Special agencies of state; withdrawal of consent to suits
- 27. Governmental Ethics

CATEGORY III

ARTICLE III

Legislative Department

- 7. Style of laws; enacting clause
- 8.1 Passage of bills and joint resolutions, limitations
- 8.2 Veto sessions
- 11. Disrespect, disorderly or contemptuous behavior of nonmember
- 15. Journals of proceedings
- 16. Statutes; single object; title; revision or codification
- 17. Revival or amendment of law
- 18. System or code of laws; adoption
- 21. Yeas and nays; entry in journal
- 22. Revenue bills; origin; amendments
- 23. Rejected matters; resubmission; consent
- 24. Bills and codes; procedure for enactment
- 25. Amendments to bills; concurrence; conference
- 25.1 Tax measures; amendments; conference committee reports; vote required
- 26. Signing of bills; delivery to Governor
- 27. Effective date of laws; publication
- 28. Clerical officers; contingent expense committee records, audit; unexpended balances
- 31. Legislative bureaus; membership; duties

ARTICLE IV

Limitations

- 9. Appropriation bills; form and contents
- 10. Appropriations; purpose and amount; contingencies
- 11. Appropriations; last five days of session; formalities; extraordinary session

ARTICLE V

Executive Department

- 13. Reports to Governor; information and recommendations to legislature
- 15. Signature of bills; veto; passage over veto; failure to act
- 16. Appropriation bills; veto of items
- 17. Acts not requiring Governor's signature; legislative investigations

ARTICLE XIX

General Provisions

- 5. Suspension of laws; vote required for

ARTICLE XXI

Amendments to the Constitution

- (a) Special elections
- 2. Laws effectuating amendments

MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on March 14, 1973
State Capitol, Room 205, Baton Rouge, Louisiana
Friday, March 23, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions

Present

- Sen. Cecil Blair
- Rep. Thomas Casey
- Calvin Fayard
- P. David Ginn
- Patrick Juneau
- Louisa Landrum
- Gary O'Neill

Absent

- Frank Fulco
- Sen. K. D. Kilpatrick
- Rep. Edward LeBreton

Chairman Blair called the meeting to order and asked Secretary O'Neill to call the roll. With a quorum present, the meeting proceeded. Senator Blair asked the members to examine the minutes of the last two meetings. Mr. Juneau moved to adopt the minutes with no changes. With no objections, the motion carried.

Secretary O'Neill read the agenda as set forth in the notice mailed by the Secretary of the Convention. Mr. Coco, senior research assistant assigned to the committee, gave each member a copy of The Sometime Governments, compliments of Tom Schwertfeger, State Legislative Leaders Foundation, who spoke to the committee at the last meeting.

Mary Day, League of Women Voters, was in the audience and asked to be permitted to speak to the committee. She was scheduled to address the committee at 4:00 p.m.

Senator Blair set the dates for the next two-day meeting to be April 6 and April 7. It was agreed to meet at 11:00 a.m. on Friday, April 6 and at 9:00 a.m. on Saturday, April 7.

Mr. Coco told the members that the studies which were ready covered sessions - length and kind, qualifications of members and a report on the unicameral legislatura of Nebraska.

Mrs. Duncan suggested that at the next meeting the committee could consider unicameralism, size of legislatura, then age and qualifications of members. She indicated that if the committee wished, the staff could prepare a study on size of legislature and length of terms of legislatura for the next day's discussion. The committee asked her to do so.

Mrs. Duncan mentioned that perhaps the committee would like to invite other speakers to appear before the committee on April 6. The committee agreed to schadule Mr. Ed Steimel, PAR. Delegate Landrum asked Mrs. Duncan to check with the Lieutenant Governor about speaking to the committee.

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Rep. Casey moved that the members of the legisistura be advised of the method of consideration that is being given to the legislative department, namely, the three cetegories that the committee will consider under the legislative department and that they be advised of the meeting dates and that the committee would like to give them an opportunity to make their recommendations, preferably in writing to the committee. With no objections, the motion carried.

Delegate Juneau asked for additional information on staggered terms. The committee recessed for lunch at 11:45 a.m. to return at 1:30 p.m.

At 1:30 p.m., Chairman Blair called the meeting to order and introduced Rep. Vernon J. Gregson, Chairman, House Executive Committee. Rep. Gregson addressed the committee and asked Rep. Robert L. Freeman, Chairman, Constitution Subcommittee, to elaborate on their joint report. Their written report is attached hereto and made a part of these minutes as Appendix A.

The next speaker, Mr. Edward W. Stagg, Executive Director, Council for A Better Louisiana, was introduced by Chairman Blair. A letter from Mr. Stagg is attached as Appendix B which expresses his views and the position of Council for A Better Louisiana on several topics.

At 2:30 Mack Abraham, Delegate, District 35, spoke to the committee and presented several proposals regarding the legislative functions which he felt should be included in the new constitution. His report is attached hereto and made a part of these minutes as Appendix C.

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Chairman Blair introduced the next speaker, Senator Claude B. Duval. Senator Duval's comments are attached hereto and made a part of these minutes as Appendix D.

Anne Cole, Common Cause of Louisiana, spoke to the committee on positions taken by the organization. A statement of those positions is attached as Appendix E.

Blake Jones, also of Common Cause of Louisiana, expressed the views of the organization supporting unicameralism for the state of Louisiana.

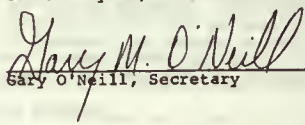
The last speaker scheduled to speak to the committee was Mary Day, League of Women Voters of Louisiana. The statement presented to the committee is attached hereto and made a part of these minutes as Appendix F.

The meeting was adjourned at 5:00 p.m.



Senator Cecil Blair, Chairman

Calvin Fayard, Vice Chairman



Gary O'Neill, Secretary

Appendix A

MEMORANDUM

March 23, 1973

TO: Committee on Legislative Powers and Functions of the Constitutional Convention

FROM: Representative Vernon J. Gregson, Chairman, House Executive Committee; Robert L. Freeman, Chairman, Constitution Subcommittee

RE: Recommendations for Constitutional Revision as It Affects the Legislative Branch

I. Introduction - Summary of Work of House Executive Committee

The House Executive Committee, during the past year, has undertaken a consideration of constitutional provisions concerning the legislature. This has been in conjunction with other related studies by the committee of other areas of legislative improvement including House rules, facilities for the House of Representatives and its committees and proper and effective staffing of committees. The committee has kept constantly in mind the concept that legislative improvement is a "package deal" involving not only constitutional change but changes in these other areas as well. The committee and its subcommittees have met three to four days per month and much of this time has been devoted to consideration of just what provisions relative to the legislature should ideally be contained in the constitution. I want to make very clear that at this time the committee has not completed its final draft proposal. A subcommittee has examined every constitutional provision concerning the legislature and made recommendations to the Legislative Council staff assistant. The full committee has considered that portion of the first draft, based on subcommittee comment, which the staff assistant has been able to complete. The committee has directed redrafts and new approaches to certain sections. We anticipate completion of a final draft for final committee consideration in about a week and a half. Additional committee consideration and study will take place at that time in hopes of arriving at a final proposal. Thus, I ask

that you keep in mind that my remarks today reflect the thrust of committee discussion and present status of recommendations which at this time remain subject to change.

II. Basic philosophy - The legislature as an independent branch of government with power and authority commensurate with its responsibility.

Let me say at the outset that the committee has evolved what may be characterized as a basic philosophy with respect to constitutional provisions concerning the legislature. Essentially, the committee believes that constitutional revision in Louisiana revolves around the legislature in that so many of the myriad provisions of the present document are actually intended as restrictions on the legislature. Thus, any real constitutional revision involves a new concept of not only the constitution, but of the legislature. The committee has concluded that the legislature must be given authority to legislate and at the same time these restrictions on that authority must be removed.

Following this line of reasoning the committee has arrived at this foundation concept: The legislature must be an independent and co-equal branch of government established for the purpose of the making of laws by the elected representatives of the people. If the legislature is to perform the law-making functions in the tripartite system of government, it must be given authority and tools to do so commensurate with its responsibility.

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Broadening its philosophy from this basis the committee has concluded that this must affect the constitution in two ways:

A. Provisions throughout the constitution concerning various aspects of government which restrict the content of legislation in particular areas must be removed; and,

B. Provisions of the constitution directly affecting the legislature must be such as to provide a flexible legislative timetable and the procedures and tools which will facilitate, rather than hamper, the enactment of legislation in response to needs in all areas of government.

Let us explore each of these points in a bit more detail:

A. Much of what is contained in the present constitution has been placed there as a restriction on the legislature's power to enact laws relative to particular facets of government. The local government provisions, for example, are full of restrictions on the content of legislation on everything from drainage districts and recreation districts to levee districts and hospital service districts, not to mention mosquito abatement districts. These provisions instruct the legislature as to how it may legislate in these areas.

Perhaps even more restrictive are provisions of the constitution which do not direct the legislature how it may legislate, but which actually legislate in the constitution. Such statutory provisions include creation of many government entities in the constitution requiring no statutory implementation.

If the legislature is to legislate and bear the responsibility these restrictions must be removed in order that the legislature may have the authority to carry out its responsibility.

B. The primary concern of the House Executive Committee has been the provisions concerning the legislative branch. It has been the total

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consensus of the committee that these provisions should be broad and should provide a flexible timetable for legislative action, while granting the legislature the tools and procedural mechanisms to inform itself to the fullest extent prior to enactment of laws. In this regard the committee has agreed that:

1) Provisions governing organizational matters, such as the structure of sessions, should be broadly worded to allow maximum legislative flexibility in responding to governmental needs that arise throughout the year and to permit careful consideration and hearing of legislation prior to final passage.

2) Such procedural requirements as shall be determined to be of such a basic and necessary part of legislative procedure as to warrant inclusion in the constitution should be clearly and carefully worded so as to avoid questions of constitutionality of legislation on procedural grounds.

3) Certain provisions regarding the legislature such as those concerning composition, qualifications and privileges should be included in the constitution but couched in broad terms.

Given this background philosophy, I would like to review for you specific recommendations which the committee is considering.

III. Specific recommendations being considered by the House Executive Committee

A. Sessions

The primary concern of the House Executive Committee in constitutional revision as it affects the legislature has been the structure of legislative sessions. The committee has considered several draft proposals and has yet to finalize its recommendation. This is not to say that the committee is not in agreement as to the organization and structure of sessions; rather, the committee is at present debating the specific language which the section should contain.

Let me first state generally what the committee feels this section should contain and then permit me to outline the session structure the committee envisions would be operative under such a section. At the present

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time the committee is considering a section on sessions which would be based on Section 4.08 of the Model State Constitution which reads:

"The legislature shall be a continuous body during the term for which members of the assembly are elected. The legislature shall meet in regular sessions annually as provided by law. It may be convened at other times by the governor or, at the written request of a majority of the members of each house, by the presiding officers of both houses."

To this section would be added a specific provision authorizing the introduction and consideration of bills by committee when the legislature is not in session.

Within such a general provision the committee envisions the following session arrangement:

1) An organization session of the legislature, of no more than ten days in length, would be held in each year following the general election for members of the legislature. Such a session would probably convene about thirty days following the election. The purpose of the organization session would be the judging of the qualifications, election and returns of members of the legislature; the taking of the oath of office by the members; the election of officers and appointment or election of committee members; and the examination and tabulation of the returns of the election of elected statewide officials. The only legislation adopted at such a session would be that for the expenses of the legislature.

2) In years other than election years, provision would be made for introduction of bills by filing with the chief clerical officer of either house, in advance of the session.

3) The legislature would meet in annual regular sessions beginning in May of each year. There would be no constitutional limit as to the length of these sessions. The committee believes, however, that given pre-session consideration of legislation and proper legislative staffing, that the regular session would probably approximate the present length of general sessions.

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4) Bills introduced prior to the convening of the regular session would be referred to committee as provided by the rules of the two houses. The committees would thus be able to consider and hold hearings on legislation prior to the convening of the session itself.

5) The legislature would provide a means for recess and reconvening should this be necessary at any time during the year between sessions, though the legislature might adjourn sine die at such time as it saw fit.

6) The legislature could thus provide for consideration of bills vetoed by the governor. The governor would be required to return vetoed bills with veto messages to the house of origin whether or not the legislature is in session.

7) Elected state officials would take office on the second day of the organization session, thus permitting the governor to prepare legislation for the regular session and to prepare his own budget.

In conjunction with this recommendation the committee will propose to the legislature recommendations for permanent staffing of standing committees and the elimination of interim committees as they are presently structured. Standing committees, however, would be authorized to meet at any time throughout the year for the purpose of study, investigation or the consideration of legislation. Only with such a flexible session timetable, the committee believes, can the legislature be an independent branch of government, co-equal with the executive branch, and prepared to deal with problems in all areas of government as they arise.

B. Procedure

In its consideration of constitutional requirements for the passage of bills and other measures, the committee has concluded that the constitution should contain those procedural requirements which are found to be necessary to assure and to facilitate proper consideration of legislation

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by the legislature. The committee has been well aware that the constitution is in fact the only vehicle for such procedural requirements if they are to be binding. Statutory laws cannot provide the procedure whereby a law is enacted, since obviously each law, as it is enacted, is the latest expression of legislative will and would therefore take precedence over any such statutory requirements. The rules of the two houses, though perhaps a more proper place for procedural requirements, do not provide the same safeguard as with the constitution, since they are more easily changed.

For these reasons the committee has sought to determine those procedural requirements which it believes should always be followed by the legislature in the enactment of legislation. Permit me to review a few of these requirements:

- 1) The committee has recommended retaining of the requirement of the enacting clause for the purpose of identifying statutory law as distinguished from other items of legislation or resolutions.
- 2) The committee recommends provisions requiring that statutes be confined to one subject and have a title indicative of their objects and that amendments be germane.
- 3) The committee believes that a provision prohibiting revival or amendment of law by reference should be included in the constitution.
- 4) After considerable discussion and examination of a draft which eliminated such provision, the committee has determined to retain a provision requiring that bills be read by title on three separate days in each house. Members of the committee believe that this procedure serves to keep members informed of the progress of legislation.
- 5) The committee feels that a provision requiring a record vote on final passage of bills and joint resolutions is necessary, as well as a requirement of majority vote for adoption.

6) The committee finds that a provision for the effective date of acts sixty days after receipt by the governor would be necessary if the unlimited session proposal is adopted. Together with this requirement should be included a provision

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that laws shall be published and distributed prior to the expiration of such sixty days.

The above is not an exhaustive list of such procedural requirements, merely the more important ones. It is only after considerable discussion that the committee has determined to retain many of these provisions, first seeking to determine whether they hamper the legislative process or, rather, serve to increase legislative effectiveness.

C. Apportionment

After examining several drafts of an apportionment provision and after further consideration in conjunction with the Senate and Governmental Affairs Committee, the committee has determined that an apportionment provision should require that the state be divided into 39 Senate districts and 105 House districts and that each district be composed of compact and contiguous territory. The apportionment provision should also contain a requirement that the legislature be reapportioned after each decennial federal census.

IV. Conclusion.

I have here tried to touch on only what the committee has considered to be the more important aspects of constitutional provisions concerning the legislature. The final recommendations of the committee will cover all such provisions. The final report of the committee will be made available to you at the earliest possible time.

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Appendix B

*Council for
A
Better
Louisiana*

HEADQUARTERS FIDELITY NATIONAL BANK BUILDING
P. O. BOX 2078, BATON ROUGE, LOUISIANA 70821

March 28, 1973

TELEPHONE
342 9229

Senator Cecil R. Blair, Chairman
Committee on Legislative Powers
Lecompte, Louisiana 71346

Dear Senator Blair,

Please accept my thanks for the opportunity to appear before your Committee on Legislative Powers and to file my comments with you.

The Council for A Better Louisiana (CABL) has previously taken positions which I re-stated to the Committee. In addition, I offered some personal comments based on some years of observation of and participation in state government. These views are summarized below.

CABL has supported legislation to provide a stricter limitation on dual office holding. We believe that there should be a clear separation between the three branches of government in their administration.

On several occasions, CABL has sponsored or supported legislation to establish the present method of issuing bonds. We believe the essential element to be retained is the authority of the legislature to issue general obligation bonds since these will bear lower interest rates. The Committee may wish to review procedures in other states for possible improvements. CABL does not believe the present legislation should be weakened.

In the past, CABL has supported legislation restricting use of tidelands funds for debt retirement or capital purposes. Experience may dictate the need for more flexibility in the matter of using funds for debt retirement. Consideration might be given to establish a trust fund with the interest earnings to be used for capital purposes or debt retirement. It is not wise to recall low interest bonds when higher debt costs may be incurred for present capital needs.

Senator Cecil R. Blair

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March 28, 1973

The above comments reflect positions taken by CABL. Comments offered below are from personal experience and do not constitute formal positions taken by CABL.

Out of experience in service on the reapportionment commission of 1966, I believe there should be vested in the Secretary of State, or in a commission established in his office, the authority to reapportion the Legislature. This is an issue which is very divisive in the legislative operations. Reapportionment should be automatic after each ten-year census.

Persons elected to vacancies in the Legislature should be allowed to take office when elected.

Consideration should be given to having standing committees of the Legislature conduct interim committee work without establishing special interim committees.

The constitution might provide that each bill be "considered" on three separate days rather than having the present requirement to "read" the bills.

Where legislation requires more than a majority vote for initial passage, there should be a corresponding requirement for approval of a conference committee report on the subject.

Presiding officers should be allowed to sign bills other than during an open session of each chamber. A time limit might be stipulated in which to sign a bill, but there should not be a requirement to sign in open session.

It is doubtful that the present requirement for legislators to disclose a personal interest and excuse themselves from voting on legislation in such situations does not seem workable.

Suits against the state require a mass of legislative work without good reason. Either state immunity from suits should be repealed, or all bills for such suits should be consolidated into one omnibus bill.

Consideration should be given to the language banning loans to private corporations. There is need to be very cautious on this, but there should be, even so, authority to make investments in bonds and corporate stocks by retirement systems and perhaps by the treasurer. Any relaxation should be carefully done, but we may be allowing retirement system investments contrary to the strict language of the constitution.

Senator Cecil R. Blair

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March 28, 1973

Present prohibitions against appropriations to private organizations should be maintained.

I appreciate the opportunity to offer these views. I will be glad to discuss them with you if this is needed.

Sincerely yours,

Edward W. Stegg
Executive Director

EWS:ld

Mack Abraham
1620 Legion Street
Lake Charles, La. 70601

Appendix C

March 12, 1973

To: Committee on Legislative Powers and Functions

From: Mack Abraham, CC/73 Delegate, District 35

During the last two months I have spoken with many individuals, groups, civic clubs, etc. about the work at the Constitution Convention. Out of all the discussion has emerged a

feeling of the people that the making of the laws should be in the hands of the Legislature, rather than in the Constitution, that the Legislature needs to be more responsible and responsive to the people. That there should be a more distinct separation of the powers of the Legislative, Executive, and Judicial Departments, and that the Legislature assume its responsibility and assert its authority as the representatives of the people. I have made several proposals regarding the legislative functions, which I felt should be included in the new Constitution. Among these are:

1. Single member districts should be retained, and should apply to all elections.
2. The number of Legislators should be fixed, (possibly at 105 in the House, and 39 in the Senate). The Legislature should be reapportioned, or redistricted after every decennial census. Redistricting should be done by a neutral party, possibly the Supreme Court. Due consideration must be given to setting up districts with as compact a geographical layout as possible, and which do not cross parish lines or divide up a parish any more than absolutely necessary.
3. The Legislature should take office immediately after the general election, probably on the first Monday in December, but no later than January 1.
4. The Legislature should meet in general session every six months for thirty day sessions, sometime either in April or May, and in October or November. All legislative matters will be dealt with in those sessions.
5. All bills must be filed thirty days in advance of each session. (Provision may be made for filing emergency bills during the first ten days by approval of 2/3 of the Legislature, if this is deemed necessary.)
6. Committee meetings should be held during the two week period prior to the sessions.
7. Legislators should be paid an annual salary commensurate to the office, with no per diem (\$12,000 or \$15,000 possibly).
8. The Senate should elect its own Presiding Officer, rather than the Lt. Governor presiding.

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With the pre-filing of all bills, copies of the bills would be mailed to all Legislators so that these may be studied at home. This gives the Legislator an opportunity to study the bills without the pressure of committee meetings and Legislative sessions being held at the same time. It also affords the Legislator an opportunity of speaking with his constituents, and the electors an opportunity to speak with their Legislators. Everyone would know in advance the matters to be dealt with in the general session.

By having the committee meetings in advance of the Legislative session more systematic, orderly hearings can be held without having to squeeze the meetings in on a "catch-as-catch-can" basis. Thus, when the general session begins, the Legislature is in a position to spend full time on its deliberations.

By having sessions each six months, if work is not completed in thirty days, it can be taken up again in six months instead of waiting two years. By the same token, if an error is made, or if a bill is defective, it can be corrected in six months.

In discontinuing per diem payments, the work load of the committees could be distributed equitably among the Legislators, so that interim committee meetings will not work a harassment on some while others do little.

By meeting each six months, there probably would be less need for interim committee meetings, and the entire Legislature would be over-seeing the affairs of state rather than a few committees.

By handling our Legislative affairs in this manner, this is about as close as one can come to a full time Legislature without actually having one. Actually, this system has advantages over a full time Legislature in that it puts the Legislator back home most of the year where he is in daily contact with his constituents. Some lobbyists may say that this would be a hardship on them, but I see it as being easier, because the lobbying would be done at home where the atmosphere would be better than during the heat of a legislative session.

The response to these proposals from those I have spoken with has been, without exception, very favorably received.

Please consider these proposals in your committee deliberations, and I would appreciate the opportunity to appear before your committee to discuss them. I realize we all have our own

committee work to do, but we should not hesitate to present proposals to other committees.

Sincerely,

Mack Abraham

Appendix D

March 23, 1973

To: Chairman and Members of Legislative Committee of Constitutional Convention
From: Senator Claude B. Duval

Mr. Chairman and Members of the Committee:

Representative government is the cornerstone of our democratic system. It is epitomized by the legislative branch. If representative government - our democratic system - is to be effective, then provision must be made in our constitution for a strong and workable legislative branch. If you will accept this premise as your rule and guide, and I urge you to do so, then the product of your labor will result in better government for the people.

It has been generally conceded for many years that in Louisiana the legislative branch has been weak, inefficient, and generally subservient to the executive branch. There has been disregard of the separation of powers doctrine as legislators have submitted to appointment by the executive branch to committees, agencies, and boards in the executive branch. Moreover, the acts of the legislature are subject to veto by the executive without any realistic or reasonable method for the legislature to override such veto.

Our present constitution unduly restricts the legislature and inhibits reasonable legislative solutions to problems through amendment, revision or enactment of needed laws. Constitutional "time restriction" for public hearing and deliberation by the legislature results in the enactment of laws ill conceived and hastily considered. The legislature legislates without the necessary facts and information. All of this because our present Constitution restricts and unduly limits the time for the legislature to reasonably and adequately address itself to an effective process of lawmaking.

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Approximately 35% of the state revenue is dedicated in our Constitution. Another 40% is dedicated by statute and the legislature has been reluctant to remove this dedication. In my opinion, these dedications hamstring the legislature and prevent the allocation of funds as needs and priorities change. While it may not be your direct function on this committee, I nevertheless urge that you consider the removal of the constitutional dedication of revenue.

I fear that even the people do not realize that the restrictions placed upon the legislature in our present Constitution prohibit thoughtful and informed action by the legislature.

Then, too, there has existed a distrust of the legislature. I remember some 14 or 15 years ago, when I was President of the Louisiana Chamber of Commerce, many business men would say that they distrusted the legislature. They would also say that they would rather deal with just one man, namely the Governor, than to have to deal with 144 legislators. I do not believe that such an approach is in the interest of the people

as a whole. I do believe the distrust of the legislature is engendered, in a large measure, by the constitutional restrictions placed upon it by our present Constitution. We must place our trust in the principle of representative government by including in our Constitution at the very least, the framework for a strong legislative branch. If this is taking a chance - then it is a chance we must take if representative government is to be meaningful.

I therefore urge you to sweep away the restrictions that hinder and hobble the legislature. I urge you to give the legislative branch broad powers. Under our system, the people, who retain the ultimate power, will then have a right to expect responsible and effective action from their legislators, and, when it is not forthcoming, they may change those legislators.

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While I believe in a strong legislative branch, conversely, I believe in a strong executive branch. The executive should have the power to administer the affairs of government. The check on a strong executive is a strong legislative.

Your committee on the executive branch is considering changes that will consolidate agencies and strengthen the power of the executive to manage the affairs of government within the laws and guidelines enacted by the legislature. They are considering a cabinet type government - some top officials elected - others to be appointed by the Governor. This will result in an even stronger executive than we now have. I am for it - if at the same time we provide for a strong legislature. This would be the check - the check and balance - one on the other. We cannot have one - we must have both.

I, therefore, recommend a revision of Article III so as

(1) to provide for the convening of the legislature the third Monday in March of each year for a period of 15 days during which time legislation may be introduced and committees may formulate agendas and plans for public hearings and even begin public hearings;

(2) all legislation must be introduced during this 15 day period except as hereinafter provided;

(3) thereafter, until the first Monday in May, committees of the legislature may hold public hearings on the legislation introduced;

(4) Beginning the first Monday in May, the legislature shall meet for a period of 45 days for the purpose of acting on legislation;

(5) no bills shall be introduced during this 45 day session unless it receives a 2/3 vote for introduction;

(6) the legislature may by a 2/3 vote extend the 45 day session to 60 days, but not for the year in which such extension is adopted.

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The foregoing would allow for greater opportunity for the public to be heard on legislation, greater time for public hearings, for information, for facts, for deliberation, for amendments to be considered and allow a needed flexibility to the whole legislative process.

(7) Ten days after the sine die adjournment of the legislature, a 5 day veto session will automatically be held unless 48 hours prior thereto a majority of both houses should indicate in writing that they do not wish a veto session.

(8) As an alternative I would recommend, at the very least, a revision of the Constitution so as to provide for regular sessions each year for a period of 60 days,

but not more than 120 days. The Legislature by law would fix the length of the sessions within this range and would not be changed except by 2/3 vote of the members of each house.

* * * * *

I do not have a draft of the proposal suggested under Items (1) through (6), but would be glad to prepare one if the Committee should desire. I do have copy of the proposal mentioned in Item (7) relating to veto sessions and the proposal in Item (8) above. They are attached for your consideration.

§8.2. Veto Sessions

Section 8.2. A. The legislature shall meet in veto session at the seat of government at twelve o'clock noon on the eleventh day following the sine die adjournment of the most recent session of the legislature for the purpose of considering all measures vetoed by the governor, except when such day falls on a Sunday, in which event the session shall convene at noon on the Monday next following. No such veto session shall exceed five days in length, and any veto session may be adjourned sine die prior to the end of the fifth day upon the vote of two-thirds of the elected members of each house.

B. The necessity for any veto session may be eliminated and such session not held by written authorization or signed petition of a simple majority of the elected members of each house. Such written authorization or petition must be delivered to the secretary of state at least forty-eight hours before the time herein fixed for the veto session to convene.

C. All reconsideration of vetoed measures shall be in accordance with the provisions of Article V, Section 15 of this Constitution.

lutions; vacancies

Section 8. A. The legislature shall meet in regular session at the seat of government at twelve o'clock noon on the second Monday in May, 1973 and at twelve o'clock noon on the second Monday in May of each year thereafter.

B. The length of the sessions thereof shall be no less than sixty days nor more than one hundred twenty days. The legislature by law shall fix the length of the sessions and once fixed by an act of the legislature, the length of sessions of the legislature shall not again be changed except by an act passed by the legislature by a record vote of two-thirds of the members elected to each house.

C. The legislature by law shall fix the time within which new matter intended to have the effect of law may be introduced and once fixed by an act of the legislature, the time within which new matter may be introduced shall not be extended except by a record vote of two-thirds of the members elected to each house.

D. Notwithstanding any contrary provision of this Constitution, and particularly the provisions of Section 1 of Article XXI thereof, no proposition for amending the constitution shall be considered unless introduced in the legislature within the first thirty days of its session.

E. All regular sessions of the legislature shall be general sessions.

F. Should a vacancy occur in either house, the governor shall order an election to fill such vacancy for the remainder of the term.

Appendix E



common cause
OF LOUISIANA
P.O. BOX 51242 NEW ORLEANS, LA. 70150

OPEN MEETINGS - That the formation of public policy is public business and may not be conducted in secret. Adequate notice of meeting schedules and the keeping of a journal of all business and voting which will be open to the public is required.

LOBBYING DISCLOSURE - To preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to persuade members of the legislature or the executive branch to take specific actions, either by direct communication to such officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed.

CONFLICT OF INTEREST - That elective office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust. No person shall serve as a member or employee of a state regulatory commission that regulates any business with which he is associated. Creation of a state Ethics Commission on which no public official will serve and which will oversee all state officials including legislators. That each candidate for public office shall file a statement of economic interests at the office of the state Ethics Commission.

Anne Cole

NATIONAL HEADQUARTERS: 2030 M STREET, NW • WASHINGTON, D.C. 20036 • (202) 833-1200

Appendix F



League of Women Voters of Louisiana
Municipal Auditorium - Shreveport, Louisiana 71101

March 23, 1973

STATEMENT TO C/C 73 COMMITTEE ON LEGISLATIVE POWERS AND FUNCTIONS

I. The members of the League of Women Voters of Louisiana believe that the Louisiana Legislature, to act responsibly and responsibly to the citizens, should meet in yearly sessions unrestricted as to subject matter. With the vast and changing problems the state faces, there is a need for the legislature to meet annually. Many questions cannot wait two years, and necessity requires consideration of diverse subjects not limited to fiscal matters. Meeting annually would make the legislature a more independent body, more effectively responding to the complexity of governmental problems.

II. For the past 25 years the League of Women Voters has advocated fair and equitable reapportionment. We believe that the right to equal representation is basic to a democratic form of government and that the Constitution should contain a mandate to the legislature to reapportion itself after each federal census. The Constitution should also outline an alternate method by which reapportionment will be carried out should the legislature fail to reapportion itself.

MINUTES

Minutes of the meeting of the Committee on
Legislative Powers and Functions of the
Constitutional Convention of 1973

Held pursuant to notice mailed by the
Secretary of the Convention on March 14, 1973
State Capitol, Room 205, Baton Rouge, Louisiana
Saturday, March 24, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on
Legislative Powers and Functions

<u>Present</u>	<u>Absent</u>
Sen. Cecil Blair	Frank Fulco
Rep. Thomas Casey	Sen. K. D. Kilpatrick
Calvin Fayard	
P. David Ginn	
Patrick Juneau	
Louis Landrum	
Rep. Edward LeBreton	
Gary O'Neill	

Chairman Blair called the meeting to order and asked for a roll call by the secretary, Gary O'Neill. With a quorum present, the meeting proceeded.

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The committee decided that the procedure for considering issues would be to try to agree on what the content should be and then to put it in writing. The committee could then look at the section, make any desired changes and forward it to the Committee on Style and Drafting. When the proposals come back from that committee, a final vote would be taken in the Committee on Legislative Powers and Functions.

The first question to be answered by the committee is what shall the legislative body of the state be called. After a discussion of the definition of legislative power, the committee agreed to retain the wording of Article III, Section 1, of the present constitution. Mrs. Duncan noted that to comply

with the rules adopted by the Committee on Style and Drafting, the initial letter of "State" and "Legislature" should be lower case. The committee asked her to make necessary changes now and in the future so that the drafts would conform to rules set forth by that committee.

The title of Section 1 was changed to read: Legislative Power of state; vesting.

As the committee began its deliberations on the size of the legislature, Mrs. Duncan pointed out that other states have from fifty to four hundred members in the legislature. After lengthy discussion, the majority of the members voted for a provision that the number of members of the House of Representatives shall not exceed 111 and the number of members of the Senate shall not exceed 41. Mr. Casey, Mr. Fayard, and Mr. LeBreton went on record as opposed to it.

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Delegate Juneau asked that reapportionment be put on the agenda for the next meeting and asked the research staff to provide additional information on it. There was some discussion about scheduling speakers to appear before the committee at the next meeting to discuss reapportionment. Senators Mouton and Bauer were suggested as knowledgeable in this area. The committee asked Mr. Juneau to put extra emphasis on reapportionment as chairman of public information.

The committee discussed the age and qualifications of members. Mr. Casey suggested as residency requirements, two years in the state and one year in the district. The large majority of the members were in favor of the suggestion, with only Delegate O'Neill opposed to it, his feeling being that this was too long. These residency requirements must be met by the time of the general election.

The age requirements were determined as follows: every elector under this constitution who has reached the age of eighteen shall be eligible to a seat in the House of Representatives, and every elector who has reached the age of twenty-one years shall be eligible to a seat in the Senate.

The committee discussed what constitutes a vacancy. Mrs. Duncan was asked to prepare some alternate suggestions to present to the committee on questions of domicile and residency as affecting vacancies.

The term of office for legislators was determined to be for four years. Staggered terms were discussed by the committee, with all members against the proposal.

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The committee asked for additional information on the subject of reapportionment before the next meeting. Senator Blair asked Mrs. Duncan to prepare the initial draft of the decisions tentatively made by the committee.

The committee adopted the first clause of Article III, Section 10, as it appears in the present constitution deleting

the word "returns". Mrs. Duncan described the judging of qualifications to the committee.

The committee briefly discussed filling of vacancies, but took no action at that time, requesting a comparative study on the filling of legislative vacancies.

The meeting was adjourned at 1:00 p.m.

Cecil Blair

Senator Cecil Blair, Chairman

Calvin Fayard, Vice Chairman

Gary O'Neill

Gary O'Neill, Secretary

MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on March 30, 1973
State Capitol, Room 205, Baton Rouge, Louisiana
Friday, April 6, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions

<u>Present</u>	<u>Absent</u>
Sen. Cecil Blair	None
Rep. Thomas Casey	
Calvin Fayard	
Frank Fulco	
David Ginn	
Patrick Juneau	
Sen. K. D. Kilpatrick	
Louis Landrum	
Rep. Edward LeBreton	
Gary O'Neill	

The meeting was called to order by Chairman Blair and Secretary O'Neill called the roll. With a quorum present,

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the meeting proceeded. After reading over the minutes of the last two meetings, the committee adopted the minutes with no changes.

Delegate O'Neill read the agenda as set forth in the notice mailed by the Secretary of the Convention. Mrs. Duncan told the committee that tentative dates approved for meetings of the Committee on Legislative Powers and Functions by the Coordinating Committee are April 20 and 21, May 4 and 5, and May 18 and 19. The committee agreed to next meet on April 20 and 21.

There was much discussion concerning the time the committee should meet. Delegate Juneau moved to change the time to 8:00 a.m. on the second day of two-day meetings. With no objections, the motion carried.

The committee asked Mrs. Duncan to review the provisions the Committee tentatively adopted at its last meeting. The first one read:

Legislative power of state; vesting

The legislative power of the state shall be vested in a legislature, which shall consist of a Senate and a House of Representatives.

The committee made no changes in the tentative provision.

The second tentative provision reviewed by Mrs. Duncan read as follows:

The number of members of the House of Representatives shall be prescribed by law but shall not exceed one hundred eleven.

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The number of members of the Senate shall be prescribed by law but shall not exceed forty-one.

Mrs. Duncan brought to the attention of the Committee the request of the Coordinating Committee to determine the following:

1. Those specific subjects or provisions which the committee definitely plans to consider as part of their responsibility;
2. Those specific or general subjects included within the compilation of constitutional provisions prepared for the committee which they do not plan to consider as part of their responsibility; and
3. Those provisions of the present constitution contained in their compilation which the committee believes have not been specifically assigned to any substantive committee.

After some discussion regarding the office of legislative auditor, Delegate Juneau moved that this Committee go on record stating that it deems absolutely essential that the Committee on Legislative Powers and Functions consider, as part of its responsibility, provisions relating to the legislative auditor. The motion was passed unanimously.

Mr. Ginn, after some discussion on the matter, moved that this Committee retain the consideration of who should

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preside over the Senate. There was no opposition; the motion carried.

It became apparent that there would be many areas of overlapping responsibility. Mr. Juneau moved to form subcommittees composed of delegates from the two or more committees with overlapping responsibilities to consider these areas. The motion was adopted unanimously.

Six speakers were scheduled to speak to the Committee in the afternoon, the first being Mr. John W. Patton, Director of Operations, Citizens Conference on State Legislatures. Mr. Patton's statement is attached to and made a part of these minutes as Appendix A.

Senator Carl Bauer was introduced by Chairman Blair and spoke to the Committee on the subject of reapportionment. He recommended strongly that the legislature should reapportion itself. He cited the past experience of the legislature as evidence that the legislature could and would reapportion itself if given the opportunity.

Mr. Edward Steimel, Public Affairs Research Council of Louisiana, Inc., presented the views and positions of that group to the Committee. That written statement is attached to and made a part of these minutes as Appendix B.

Senator Edgar Mouton spoke to the Committee in support of the legislature reapportioning itself and various other aspects of legislative powers and functions. He recommended that local and municipal affairs be removed from the constitution. He also advocated granting the legislature more time


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in which to deal with and effectively handle the affairs of the state. Senator Mouton urged the Committee to consider the concept of split sessions the first of which would be utilized to introduce bills followed by a week or ten day break for committee hearings and the second part of the session to be spent in more serious consideration of bills.


Kenneth DeJean, Assistant Attorney General in charge of the Baton Rouge office, Civil Division, stressed the fact that the courts are viewing each state's reapportionment efforts singly and that certain deviations allowed or allowable in other states might not be allowed in Louisiana's case.

David Poynter reiterated most of the points covered by prior speakers, stressing the fact that by strengthening the legislature, it would be more responsive and responsible.

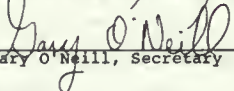
The meeting was adjourned at 5:15 p.m.



Senator Cecil Blair, Chairman



Calvin Fayard, Vice Chairman



Gary O'Neill, Secretary

Appendix A

STATEMENT TO THE COMMITTEE ON LEGISLATIVE POWERS AND
FUNCTIONS OF THE LOUISIANA CONSTITUTIONAL CONVENTION OF 1973

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Friday, April 6, 1973
Baton Rouge, Louisiana
by: JOHN W. PATTON
Director of Operations
Citizens Conference on State Legislatures

(This is the text of the statement concerning the legislative article delivered to the Committee on Legislative Powers and Functions of the Louisiana Constitutional Convention by John W. Patton, Director of Operations, Citizens Conference on State Legislatures. Mr. Patton's testimony is specifically directed to the needs of the present and proposed state constitution of Louisiana, but his statement represents the approach to legislative reform which is the general policy of the Citizens Conference on State Legislatures. It is presented here for informational purposes.)

(Prior to assuming his present position with the Citizens Conference on State Legislatures in January of this year, Mr. Patton served in the Wyoming Legislature for nearly 10 years, two terms as a Representative and two terms as a Senator.)

(The Citizens Conference on State Legislatures is a national, non-partisan, non-profit organization based in Kansas City, Missouri. It was formed in 1965 as a response from the private sector to requests for educational and services assistance to modernization of the state legislatures.)

Published By:
THE CITIZENS CONFERENCE ON STATE LEGISLATURES
4722 Broadway
Kansas City, Missouri 64112

Mr. Chairman and Members of the Committee:

I appreciate this opportunity to appear before you today to discuss the crucial role of the legislature in the Louisiana State governmental system and the importance of strengthening that role through the efforts of the Constitutional Convention now in progress and of which this committee is a part. It is my genuine hope that I, and the Citizens Conference on State Legislatures which I represent, can be of assistance to you in building a legislative article as part of your basic instrument of government, which will enable the Legislature to function effectively as an equal partner in your system of state government, and which will meet with acceptance both by the convention delegates and the citizens of Louisiana to whom it will ultimately be referred and whose well being it is intended to serve.

In sixteen years we will be celebrating the bicentennial of the ratification of the United States Constitution. The significance of your mission is like that of our founding fathers: to design a system by which free people can govern themselves, facilitating action when it is in the interests of the community, while preserving the maximum degree of personal liberty to the individual citizen. It is not my intention to overawe you with this comparison. Part of the genius of the founding fathers was that they avoided nailing down details, preferring to trust implementation of basic

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values and goals to the intelligence and good will of other free men. The Constitution guaranteed the expression of values and goals and provided for their implementation. But the document itself invited change within the broad guidelines and it placed this invitation in the hands of the people, (free elections, initiative and referendum, etc.).

That federal system that was ratified in 1789 has undergone continuous development since then. It is a system of government devised to diffuse authority not only among the three branches but also -- and most importantly -- among separate and different but cooperating levels of government.

The 50 states occupy the pivotal role in the federal system. The 10th amendment to the Constitution of the United States provides that, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." Thus, the capacity of the states to meet is virtually unlimited. However, due to many and varied factors, the states have not chosen, or they have been prevented from exerting their full constitutional powers.

Most of the fifty states are capable of matching the scale of many of our problems, and they are close enough to the source of these problems to be aware of the regional and local variations which shape them. Effective state government must possess the

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capacity to counterbalance the federal government and to operate as a check against the overwhelming accumulation and centralization of power at a single level. There is much evidence, as John E. Bebout, the Program Director, Institute for Urban Studies, states "that the kind of good the American people will be getting out of their government in the years ahead will depend more and more heavily on the competence and performance of the states in what has been variously called creative, new or partnership federalism."

The success of the states' participation in any form of federalism is dependent, to a major degree, on the legislatures of those states; for at the heart of state government is the state legislature. How well the state government is equipped to meet its responsibilities depends upon the legislature's capacity to understand the needs of its constituents and its willingness to provide for the solutions to those problems. Ultimately, the legislature must at least ratify, if not determine, the state's policies through the enactment of authorizing legislation, and the state's programs cannot go forward without the funding afforded by legislative appropriation.

The legislature is often referred to as the "people's voice in government", or in part "a mirror of the cross section of the people." But the legislature is much more than this. Through district representation and frequent exposure to the electorate,

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and through casework, members of the legislature afford access for the individual citizen into the process of state government. In addition, the legislator performs the closest thing we have

to the role of the translator of politics through his need to justify his actions to his constituents and to maintain reciprocity with them. In essence, the legislature is the people in action. It is a policy maker, an overseer, and a planner; truly, the peoples' branch of the Government.

Properly executed, the activity of the legislature poses the questions and choices concerning public policy, focuses the attention of the public on important issues and determines the answers to the question as to how public resources will be allocated. Thus, the legislature is both a deliberative body and an arena for the resolution of conflict. The quality of the legislature's performance of these varied duties determines how well the state government does its job of responding to the needs of the people and maintaining the balance which is vital to the health of our federal system.

How well have our state legislatures provided the capacity for our state governments to competently and effectively occupy their role in the federal system?

When many of our states came into the Union, there was not sufficient talent and ability to man the governmental enterprise

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competently and efficiently. Government, in all but a few of the oldest states, was weak and ineffective and no match for those people who set the smallest private gain above the largest public good in their hierarchy of priorities. Due to incompetence and corruption, the states fell into irreversible debt and ultimate bankruptcy. The citizens reacted with progressive reforms which swept the country. State constitutions were rewritten and the powers of state government were sharply restricted. In many states, these restrictions curtailed the legislature's ability to meet, compensate its members, incur debt, levy taxes or appropriate funds. The theory was that the legislature had performed so badly, its opportunity to perform at all would henceforth be severely limited.

As a result of these events, state government fell into another kind of decline -- that of inaction and unresponsiveness. As our society changed and our problems arising out of the advancement of industrialization, urbanization and population growth intensified, we found that our local governmental institutions were ill-equipped to respond. As we have seen in recent years, when the legally constituted decision making instruments of government fail to function adequately, the result is community discord. Responsibility is abdicated and problems are referred to other levels of government. In addition, the actions of state government become irrelevant to the citizens and when attempts are made to propose solutions to problems at the state and local

level, they are frequently rejected by the voters. The problems deepen, and the trend toward centralization accelerates. Federal solutions prove unworkable, and the social fabric begins to tear. If this condition persists, the public apathy regarding their governmental institutions grows and soon becomes entrenched. Such a situation warrants the remembrance of Montesquieu's warning, that,

"The tyranny of a prince in an oligarchy is not so dangerous to the public welfare as the apathy of a citizen in a democracy."

What, then, are the aims of constitutional reform as it applies to the legislative article?

The constitutional "reforms" of the late 19th century and the progressive "reforms" of the first two decades of the twentieth century show there are great hazards involved in the attempt to change governmental institutions. Someone has said that today's reforms are tomorrow's tyrannies. It is an interesting irony that the seniority system in Congress, which is widely regarded today as the key source of congressional malfunction, was itself the product of what was then called a "liberal" reform in the early years of this century. The seniority system was installed in Congress as the result of a rebellion on the part of progressives against the enormous powers of Speakers Reed and Cannon who based their control of the House of Representatives on the power to appoint committee chairmen and committee members.

The Citizens Conference on State Legislatures tends not to recommend specific and detailed proposals as a means of achieving reform, but rather we exert our efforts toward finding ways to create a condition which will permit continuous reform as a given state legislature responds to the changing times and their requirements in a future day. Larry Marqolis, the Executive Director of the Citizens Conference, in testimony given before the Legislative Committee of the Illinois Constitutional Convention in February, 1970, spelled out three criteria against which we tend to evaluate proposed changes in the legislative system:

Will the proposed change bring greater visibility to the legislature?

Will it strengthen the legislature's independence?

Will it provide a capacity within the system for its members to exercise competence?

If these three tests are met by proposed changes, then the changes, in our opinion, are worth making. If the legislature is able to achieve a high degree of visibility, can reach independent decisions, and has the capacity for competence, then the demands of the citizens of the state will determine what that legislature does.

Throughout the United States considerable progress has been made toward improving, strengthening, and modernizing state

legislatures. California, Florida and Hawaii are outstanding examples, but many other states are moving rapidly in this direction.

In our work with legislatures and civic groups throughout the United States we find that proposed changes in the way the legislatures operate tend to fall into three categories:

Stage one concerns the removal of restrictions, usually constitutional in nature. These restrictions may curtail the frequency or length of the legislature's sessions, they may restrict the pay of the members of the legislature, or they may limit the subject matter on which the legislature may take action. The removal of these restrictions does not, in and of itself, constitute an improvement in the legislature. It simply paves the way for further action.

The second stage of legislative improvement includes those actions which are taken to implement the opportunities afforded by the removal of the restrictions. The organization of the legislature's sessions, the amount and types of legislative staffing employed and the kinds of facilities provided for members and committees are among the considerations which apply to this stage.

The third stage of modernization is one which has barely been explored by any legislature and is not easily defined. It

has to do with providing the means and creating the opportunities for continuous, creative decision making on the part of the legislature. This stage is represented by innovative means of organizing public policy research in ways which have maximum impact on decision making -- by equipping the legislature to address problems which are five to ten years away from their critical peak, and by programs which compel the federal government to follow the state's lead, rather than the reverse.

There are a number of issues contained in the legislative article of your constitution which have an important bearing on the ability of the legislature to fulfill its role and discharge its responsibilities effectively. I urge you to give consideration to these issues and to weigh the pros and cons of each of them, in order to determine what kind of legislature you want to see Louisiana have for the purpose of dealing competently with the problems of the 70's and beyond.

Over the past two decades there has been a concerted movement from biennial sessions of the legislature to annual sessions. At

the end of World War II, the legislatures of only four states met in annual session. Today, the legislatures in thirty-nine states meet annually. From our experience we agree with the arguments in favor of annual sessions that the problems of the state are of growing importance and immediacy, and require attention as they arise; thus limits on time or subject matter should be deleted. We further agree that the legislature itself should determine how

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frequently and how long it needs to meet in order to conduct its business and should be allowed to call itself into special session and set or expand its agenda.

Compensation for the members of the legislature ought to reflect the high purpose and responsibility of the office. Salaries should not be restricted by the constitution, but should be annually based and paid in regular installments, rather than related to the session. Most states are moving in this direction.

Although there has been a rapid increase in legislative salaries throughout the country -- they have more than doubled in the last four years -- they are still entirely too low. They range from a low of \$100 a year in New Hampshire to a high of \$19,200 a year in California. The average is around \$7,000, but that includes expense reimbursement in some of the states.

The least restricted way to handle the question of compensation in the constitution is illustrated by the provision in the National Municipal League's model legislative article. It states simply that compensation and expense reimbursement for members of the legislature shall be set by statute and the only restriction is that one legislature may not increase its own salary. This is accomplished by requiring that the increase take effect with the beginning of the subsequent session.

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Among the arguments in favor of higher compensation for legislators are these: In our society we regard the services we really value and extend recognition to them by the amount of income we provide. The amount of time, attention and talent devoted by the members of the legislature to public problems will tend to reflect the compensation they are receiving for their services. This does not ignore the fact that most members of the legislature devote more time and attention to their public duties than we pay for on a comparative basis, but over the long haul there will be a positive correlation.

We submit it is a greater waste of tax money to underpay able members than to overpay incompetent ones. Compensation has a bearing, though not an exclusive one, on our ability to keep able representatives and senators in the legislature. Over time,

it does contribute to our ability to attract able people to serve in the legislature; the more we pay members of the legislature, the broader the base of people who can afford to serve in the legislature. The level of compensation also has a direct effect on our ability to demand more exacting regulation of conflicts of interest.

One means of raising the compensation of legislators is through the establishment of a compensation commission. Recent years have seen a movement toward establishing commissions on compensation both for the legislature and for other public officials. Some of these commissions are constitutionally created with the

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authority to establish salaries; others are created by statute and act in an advisory capacity to the legislature. In the latter case, the commission will make a recommendation, but action by the legislature is required to make it effective. In a few cases the commission makes its recommendation; and unless the legislature takes action to suspend it within a certain period of time, the recommendation becomes effective.

Practices for filling legislative vacancies vary widely throughout the states. Some provide for gubernatorial appointment, some for special election, some for appointment by an agency of the political party represented by the departed member.

The Louisiana Constitution should provide for the calling by the governor of a special election to fill vacancies promptly or immediately. It could be left to the courts to decide, as a matter of fact, what constitutes "immediate" or "prompt" action and to the legislature to establish by statute the procedures for such special elections -- i.e., whether primaries, run-offs or other special features are added.

This convention should further consider the elimination of the present constitutional provision relating to debt limitation on the following grounds: The debt limitation is an infringement of the legislative authority; the appropriate level of debt is as much a political decision as any other action taken by the legislature; public resistance is a sufficient curb against the

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increase of debt; limitations cause mischief, as bonding authorities are established to circumvent them which serves only to incur higher interest costs. Furthermore, limits which may be set constitutionally to deal with the situation at the present time may not be appropriate for dealing with the problems of "tomorrow."

These are the major policy issues which confront this committee as it addresses the provision of the legislative article of the

Louisiana State Constitution. There are a number of comparative smaller issues of importance which deserve your attention and of which I urge your consideration, but at the present, I would like to return to a subject which I touched on only briefly; namely, the removal of limitations on the legislature and the importance of an independent legislative branch. As John Bebout has pointed out:

"For the most part, the overelaboration of checks and balances, the built-in weaknesses in all branches of government, and the proliferation of "thou shalt nots" on the one hand and of essentially statutory declarations of public policy in the guise of constitutional provisions on the other stem from disillusionment with representative institutions and the desire either to prevent sin or to enforce the good (as seen by those making the constitutions)."

Unfortunately, such is the case in Louisiana. But neither Louisiana nor any other state can effectively function and adequately represent the desires of its constituents when placed

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under such restrictions.

A constitution should embody the more basic and enduring principles of government. Matters of less importance should be left to the statutory discretion of the legislature so that immediate problems can be handled flexibly within the broad framework of the constitution. A healthy check and balance system must rely on vigorous and independent branches of government instead of checks within the branches themselves. The endless lists of restrictions imposed on the legislatures originally to prevent legislative abuses of power, have become roadblocks to the effective functioning of that body. Hemmed in by elaborate financial restrictions that make the enactment of a sound budget difficult, the financial needs of the state cannot adequately be met.

The present Louisiana Constitution embodies unnecessary legislative restrictions and provisions which should properly be contained in statutes. We believe that by the removal of such restrictions and provisions, the legislature of Louisiana will be better equipped to handle the problems of a growing state in the 1970's and that the interests of the people of Louisiana will be better served by such changes.

Thus, we recommend the following:

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- 1) The restrictions relating to the length of the legislative sessions and the limitations imposed on the agenda to be considered by the legislature should be eliminated.
- 2) The provision on compensation and mileage of legislators should be amended to allow that legislative compensation, expenses, and reimbursement be set by statute.
- 3) The Constitution should provide for only the date of the convening of the organizational session of the legislature.

- 4) The provision regarding vacancies should be altered to provide that such procedure be prescribed by statutory law.
- 5) The provision relating to the behavior of non-members and punishment by the Houses of the Legislature thereof should be eliminated and the purpose of the provision accomplished through appropriate statutes.
- 6) The Constitutional provisions regarding clerical officers, contingent expense committee records, audit; and unexpended balances should be deleted and covered by statute or rule.
- 7) The conflict of interest provisions now contained in the Constitution should properly be covered by statute.
- 8) The provisions relating to the sale or trade of votes; the purchase of supplies on bids; and contracts, should again be covered statutorily and not by the Constitution.
- 9) The provision relative to the prohibition of the establishment of educational or charitable institutions should be deleted and made statutory.
- 10) Finally, the lengthy provisions relative to debt limitations should be deleted.

The case for brevity and simplicity in state constitutions is, basically, an argument for confidence in representative democracy and for the healthy functioning of representative government in a federal system. There is far more reason to

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have confidence that state government can now operate with minimum restraints than to have assumed in 1215, that the British parliamentary system might operate for centuries without a written constitution; or, in 1789, that the United States could maintain a viable democracy with a very short and very general constitution.

The founding fathers, by the document they formulated, embraced a faith and confidence in representative government. One hundred and eighty-four years later, the State of Louisiana and this Constitutional Convention is faced with a similar choice. We believe that the time is right, that indeed, the times demand, that Louisiana follow the example set by the founding fathers and draft a constitution placing confidence in the democratic institutions, and giving those institutions the tools and means necessary to respond to the needs of the people of Louisiana.

This Convention faces a difficult task and must make many decisions which will be of major impact on the future of this State's governmental system. I appreciate this opportunity to meet with you and to share with you such knowledge as the Citizens Conference on State Legislatures and I have been able to gain through our work with many legislatures throughout the United States. In my opinion, there is no more urgent task confronting

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citizens of the United States than that of helping their state legislatures become truly effective instruments of public policy decision making. I commend your efforts to achieve that objective for the State of Louisiana.

STATEMENT BEFORE COMMITTEE ON LEGISLATIVE
POWERS AND FUNCTIONS, CC73

by
Public Affairs Research Council of Louisiana, Inc.
April 6, 1973 -- 2:30 p.m.

As with prior presentations to other committees of the Constitutional Convention, we do not propose the phrasing of the legislative article, rather we will suggest what we believe are the important substantive provisions to be included in the Constitution. We believe there is considerably more verbiage in the present Article III than is necessary, but nevertheless we shall refrain from attempting to spell out the exact wording that should appear in any of the sections of that article. It is more important now to concentrate on the subject matter that should be covered in the Constitution.

Since one of the most important functions of a state constitution is the creation and then the limiting of the legislature, the provisions on the legislature's powers and functions must be more detailed than most. This is true because of the doctrine of inherent powers of state legislatures which holds that legislatures have the power to do whatever they are not prohibited from doing by the U. S. or state constitutions.

1. Bicameral Legislature

We have seen no arguments that are convincing enough to warrant changing this article in anyway.

2. Representation: Apportionment: Number

We recommend that the Constitution provide for single-member

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districts and that the districts of each house be as nearly equal in representation as possible. Each district should be compact and contiguous. The legislature should be mandated to reapportion itself after each decennial census.

Some states do provide that reapportionment to be carried out by a commission in the event the legislature fails to reapportion itself. Such commissions, however, are no less subject to political pressure than are legislatures and would not necessarily guarantee a better result. Since the citizens have access to the courts regardless of who draws the plan, that should be sufficient protection in the event the legislature fails to reapportion itself satisfactorily.

As to size, both houses of the Louisiana Legislature approximate the current median for all states. Many authorities seem to feel the legislative bodies are getting too large. We see no overriding justification for either increasing or decreasing the size of the legislature and would, therefore, suggest that the maximum number of each house be established at the present number.

3. Annual sessions; special sessions.

The legislature should adopt annual 60-day sessions, unlimited as to subject matter. This should reduce gubernatorial influence on fiscal sessions and give the legislature the time it needs. This has been a growing trend throughout the country, and most states now have general annual sessions. The sessions should be limited to 60 days until it is

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determined that the workload is too great to be handled in this time period. We seriously doubt the public would concur with a proposal that did not provide a 60-day limitation.

We should retain the procedure for allowing the legislature to call itself into special session.

Limitations on special sessions, contained in several articles, are generally sound and should be retained.

4. Qualification; Election; Term

House members should be qualified voters of any age, and Senate members should be qualified voters and a minimum of 25 years of age. We know of no good reason to recommend any change in the existing requirement that a person be a resident of the state for five years and of the district for two years.

We recommend continuation of a four-year term for house and senate members.

The term of each member should begin about March 1, assuming the present election and legislative session dates.

5. Vacancies

The present provision for filling all legislative vacancies by election should be retained.

6. Compensation

The constitution should provide that the legislature shall receive an annual salary and vouchered expenses, but that any increase in the

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amount thereof should not apply to the legislature which enacted the change.

Although the detail should not be in the Constitution, the legislature should get out of the practice of paying itself on a per diem basis, both for sessions and committee assignments. This has resulted in some legislators getting unusually large amounts while others get only small sums depending entirely too much upon whether or not they are in the favor of certain other elected officials. Not only is this unfair to members of the legislature, but it reduces their independence and thus weakens the legislative branch.

The proper remedy for this is an annual salary sufficiently large to compensate legislators adequately. If they are not to be paid per diems for committee meetings, more than likely committee responsibilities will be more properly divided among legislators and fewer meetings for meetings' sake will be held. The result could be an improvement in the public attitude toward the legislature.

7. Qualifications; Officers; Organization; Discipline

We see no serious reasons why any change need to be made in the present provisions of having each house judge the qualifications of its members and to punish its members and nonmembers for disorderly conduct. Each house should elect its own presiding officer by secret ballot, and they should likewise select their clerical officers.

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8. Legislative Immunity

Privilege from arrest during sessions and immunity from being questioned about speeches made before the legislature is normally granted.

The traditional immunity from arrest while in session should be retained.

9. Transaction of Business

Present provisions calling for the journal, the composition of statutes, revision, codification, amendments, conflict of interest revelation, quorum and attendance all seem to be the proper kinds of safeguards.

The traditional provision that revenue bills should originate in the house should be continued.

10. Committees

There is nothing presently in the Constitution about committees. Nothing needs to be in the Constitution in view of the power of the legislature to do anything it is not prohibited from doing, but some states do contain provisions on committees and committee hearings, particularly that they be open to the public.

11. Passage of Bills

It is questionable that it is any longer necessary or desirable to require the reading of bills on three different days. The sort of reading bills receive mean nothing anyway. There is a move away from having the bills read in full since legislators have printed copies anyway.

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Only one known illiterate has served in the legislature during the past 25 years, and, therefore, reading the bills aloud seems less significant than it might once have been. Bills should, of course, be considered on three separate days and proceed through the legislative process in an orderly manner and be announced at each step along the way.

The same vote should be required on amendments and on conference committee reports as for final passage of the bills. As presently provided, such votes should be recorded in the journal.

The functions of the legislative bureau should be continued as an integral part of the legislative process, but there seems to be no good reason why it needs to be in the Constitution.

12. Super Majorities

The requirement of two-thirds of the elected membership of both houses to pass taxes should be continued as should the two-thirds requirement for the issuance of bonds, addressing persons out of office, impeaching the governor, creating educational or charitable institutions, passing constitutional amendments, and a host of other unusually significant decisions the legislature is called upon to make.

These provisions are contained in several articles of the Constitution.

Super majorities of two-thirds, three-fourths, or other varieties are widely used throughout all levels of government in America. They are used not only in legislative decision making, but they are used widely in jury decision making.

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The super majority is normally used to assure that in grave matters, a substantial consensus is reached, rather than half the people plus one. Super majorities, thus, provide a semblance of stability.

Super majorities obviously, therefore, often serve as a protection of minorities.

If the philosophy that one-third of the people can thwart decisions by the remaining two-thirds by means of the two-thirds law, then how much more iniquitous is the Bill of Rights, which is found as the first article of all state constitutions, for in each case it gives precedence to a minority of one over the total of all others in a series of important matters.

Perhaps some of the two-thirds rules are bad. They should, in fact, be reviewed from time to time to see if they are any longer useful. Nevertheless we would offer as a guess that the people would not want many of the super majorities changed. It should not be forgotten that the super majorities were established by a simple majority of the people as a restriction which they wanted to place in their constitution.

13. Executive Veto; Veto Sessions

The present right of the governor to veto bills within ten days after receiving them from the legislature, and the right of the legislature to override the executive veto with a two-thirds vote of both houses, should be preserved. It may be desirable, however, to allow the governor a longer time to sign bills after adjournment of the legislature, perhaps as much as 15 days instead of the present 10. A majority of the states allow more than 10 days for the governor to sign or veto bills following adjournment of the legislature. However, during the sessions, only four states allow more than 10 days.

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The present provision for a veto session in Louisiana appears adequate. The fact that it has not been used should not be construed

as a criticism of the system since only a simple majority vote to recon- sider one or more bills is all that is necessary to convene the session. The legislature's general penchant to "go along with the governor" seems to be the reason the session has not been used, rather than any weakness in the system. Passage of laws or constitutional provisions cannot be used as a substitute for legislative backbone.

14. Legislative Auditor

The present constitutional provisions for a legislative auditor to be appointed by the legislature and to serve at the pleasure of the legis- lature should be continued. The Constitution should specify that the legislative auditor shall conduct post-audits as prescribed by law and report to the legislature and also to make his reports available to the governor and to the public.

The move toward placing post-audits under legislative control has been particularly marked in the last 20 years as legislatures have worked to become stronger and more dynamic bodies. Legislative auditors having sole post-audit responsibility have increased to 25 today. In addition eight states place the auditing responsibility in two officials,

one of whom is the legislative auditor. Thus, 33 states have legislative auditors with sole or coequal responsibility for post-audit. In only 13 states do elected auditors have sole post-audit responsibility.

Other functions of the legislative auditor to provide the legislature with financial information should be continued.

15. Miscellaneous Provisions

There are a number of other miscellaneous provisions in Article III which, while not insignificant, are matters on which we have done no particular research on which to base any recommendations.

ARTICLE IV. LIMITATIONS

Several provisions are contained in Article IV which deal with the legislature; and there are, of course, many other sections of the Consti- tution which deal primarily with other departments, agencies and subjects but which also place certain limitations on the legislature. This presen- tation today cannot be considered as a thorough effort at reviewing all those provisions. Rather we have dealt primarily with Article III, and to some extent we will cover some of the more significant provisions of Article IV as follows:

1. Appropriation

We should retain essentially the present requirements for appropria- tion of money and continue the two-year limit. The requirement for quarterly reporting is no longer needed in the Constitution.

The provisions generally contained in section 9 and 10 relating to the form of appropriation bills should generally be retained.

2. Board of Liquidation

We question the need for placing the Board of Liquidation in the Constitution, and we further question the need to continue the present cumbersome method of obtaining legislative approval. It hasn't worked anyway; the governor is and almost always has been in complete charge of this fund; and if it does not violate the legislative power of appropria- tion to remove it from the Constitution, then the Board of Liquidation should be created in the statutes.

3. Debt

The present limitations on the manner and purposes for incurring debt should be retained.

4. Local or Special Legislation

The several sections dealing with the authority of the legislature to pass special and local laws should be consolidated and simplified. The legislature should be prohibited from passing local or special acts when general acts could be made applicable.

5. Claims Against the State

Unless there is some reason, of which we are not aware, to include a prohibition against paying such claims, we would suggest this provision be transferred to the statutes and that instead of having to pass a law each time a claim is authorized, this function be turned over to a claims commission as has been done in many states.

6. Fixing Price of Labor

This should be repealed since federal legislation has superseded it.

7. Limiting Use of Public Money for Public Purposes

Provisions should be continued in the Constitution prohibiting the use of public money for churches, private, charitable, or benevolent purposes or to persons. The same provision should cover the use of public property.

8. Five-Day Provision on Appropriation Bill

There is no longer any need to require that appropriation bills be on the governor's desk five days before adjournment of the session. This made sense when the governor had five days to veto; now he has ten, and it is completely useless. Besides, we have a provision for a veto session. By removing this five-day provision, the legislature will gain five days in which to consider money matters, and special sessions could be reduced by five needless days.

COMMENT

The legislature of Louisiana has made significant improvements in legislative procedures which have improved its operations and increased its stature and independence:

- It now elects its principal officers by secret ballot.
- It has markedly improved organization and functioning of committee system.
- It has improved its rules for operating the sessions so that the procedure is more orderly.

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- Decorum has improved through restrictions on admittance to the floor.
- Electronic equipment is used to keep track of the status of bills.
- A fiscal note has been added.
- Senate rules even require written records of committee proceedings.

All of these are proper steps in the direction of a proper functioning legislature. But it is by no means enough. In fact, it is only a beginning. If the legislature is to become truly independent of the executive, then it must have an information system that will permit it to function in an atmosphere of knowledge that is far superior to the present. No matter how well educated, no matter how experienced, no matter how well intentioned the members may be, they cannot function under present conditions without making an unusual number of inadequate decisions.

One of the most critical needs is for the staffing on a full-time basis of all key standing committees with competent research personnel. These standing committees should then serve as the interim committees for any subjects that may fall within their legislative purview. Most of this staff perhaps should be housed in the Legislative Council.

The legislative auditor should be provided adequate staff so that he can perform the function of program and performance audit. The legislature needs not just an assurance that the financial transactions of the executive branch and of local governments have been conducted without misuse of public funds--which admittedly is most important--but it also

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needs to have a follow-up through the auditor to determine whether the purposes it wished to have achieved through appropriations have in fact been achieved, or whether the agencies simply functioned for a year within the law and accomplished nothing. The legislative auditor should probably house the research staff that would serve the financial committees of the legislature, such as senate finance, house appropriations, and joint legislative budget committee.

The legislature needs far more adequate facilities, especially for committee hearings. Members also need legislative office space, perhaps on a shared basis.

Legislators must have more time in which to make decisions. And it is for this reason that we have recommended an extension to annual 60-day sessions.

The joint legislative budget committee should receive its authority from the legislature and not the executive branch. It should be appointed by the legislature and be made up from the membership of the house appropriations and senate finance committees. It should not be appointed by the governor, and, thus, tend to be beholden to him because of the power and compensation provided each member by the governor. This diminishes the power of the legislature and enhances the power of the governor, and should be discontinued. The legislative budget committee can serve a very useful function by becoming knowledgeable about the executive budget and then in helping the legislature in making expenditure decisions, but it must be freed of the governor. The legislature should take no part in formulating the executive budget.

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The legislature should also make greater use of electronic equipment than it now does. Such equipment in other states has been extended far beyond the uses to which it is put in Louisiana--bill drafting, printing, statutory retrieval and in compiling legislators' voting records.

We further recommend the consent calendar be adopted in the senate as it has been in the house; that committee meetings be open to the public rather than leaving this to the discretion of the committee; that all committee meetings follow a fixed schedule and post notification of time, place, and agenda of meetings in advance; that pre-session drafting and filing of bills be used more extensively; that all bills be printed prior to public hearings; that proposed amendments to existing statutes be indicated through such devices as underscoring, brackets or italics; that minutes and recorded votes of committee meetings be published as a part of the committees' reports that are submitted to the legislature; especially that legislators be given more time to study lengthy, complex, or controversial floor amendments to bills. On the last matter, a procedure should be instituted whereby one-third of the legislators could hold a bill over until the next legislative day for final passage.

Power of Governor

While the legislature has made improvements in recent years and more seem destined to come, the imbalance of power between the legislature and governor seems to continue with too much of an advantage on the side of the governor.

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The unusual or inordinate power in the hands of the chief executive in Louisiana does not come from a grant of power to the governor to run the executive branch. That is his purpose, and he should be left unfettered to do it. Inordinate power in the chief executive comes primarily from direct delegation of legislative powers to the governor or nonassertion of power by the legislature including the following:

1. Legislative acquiescence in gubernatorial meddling in the selection of legislative officers and committees.

2. Direct grants to the governor of the power to appoint legislators in more than 50 cases to executive branch boards and commissions.

3. Grants by the legislature to the governor of the power to increase the compensation of legislators through interim committee appointments.

4. Unusually large appointive power in the hands of the governor that results solely from the horrendous number of agencies. The normal four appointments per agency when multiplied by nearly 300 agencies adds up to a lot of patronage. If reduced to 20 agencies, these 1,200 appointments would reduce to about 80. The ability of the governor to manage the state would be greatly enhanced by such a move, but his ability to influence the legislature with 80 appointments would be drastically reduced from the present situation.

5. Failure to develop and execute a true long-range highway

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budget that minimizes, or hopefully eliminates, what for years and years has been the largest source of political patronage available to governors to dangle before legislators who too frequently swap legislative power and independence for a road or bridge which the traffic count won't justify.

6. Failure to adopt a long-range capital budget for all other state construction which produces the same compromises of power between the branches.

7. Lack of independence of the legislature for the source of most of its information. It is too dependent on the executive branch agencies.

8. Perhaps the largest source of the governor's power is our tradition and the tradition of the legislature in looking to the governor as king. The governor's power is not so much established in law, certainly not in the constitution, as it is in our traditions.

The legislature has been weak for generations. In recent years it has recovered some of its lost strength, but it can never hope to be an equal partner in running Louisiana state government until it asserts its power, asserts its independence and stops running to the governor to find out how he feels about every issue before it moves ahead. But it can never do any of these things until it first has adequate staff, time, and facilities to gain the knowledge it needs to understand the problems it faces. And more importantly, to find and understand the answers. Thomas Jefferson said, "If a nation expects to be ignorant and free, in a state of civilization, it expects what never was and never will be."

The same applies to the legislature or to any other group. Ignorance and freedom are incompatible. Knowledge is the freeing agent.

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MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on March 30, 1973
State Capitol, Room 205, Baton Rouge, Louisiana
Saturday, April 7, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions

<u>Present</u>	<u>Absent</u>
Sen. Cecil Blair	None
Rep. Thomas Casey	
Calvin Fayard	
Frank Fulco	
David Ginn	
Patrick Juneau	
Sen. K. D. Kilpatrick	
Louis Landrum	
Rep. Edward LeBreton	
Gary O'Neill	

Chairman Blair called the meeting to order and asked the secretary to call the roll. The Committee, in response

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to the Coordinating Committee's request, reviewed those provisions relative to the legislature which are contained in the compilation and made a determination of those which it would consider, those which it would not consider and those which the Committee felt had not been assigned to any specific committee. The Committee began its consideration and determined that: (See Appendix A). The Committee further determined which provisions to be considered by it were obsolete. (See Appendix B).

The Committee asked the research staff to prepare a study to show all provisions in the constitution which place restrictions on the legislature.

There was much discussion concerning the next meeting date of the Committee. Rep. LeBreton wished to go on record as being opposed to meeting on Good Friday, April 20, 1973.

Senator Blair set the time for future meetings to be 9:00 a.m. on the first day of two-day meetings and 8:00 a.m. on the second day.

The Committee heard from staff personnel relative to the filling of vacancies in the legislature. After some discussion, Mr. Casey moved that the Committee tentatively adopt a provision for the filling of legislative vacancies as follows:

Any vacancy occurring in either house of the legislature shall be filled only by election, as provided by law.

There were no objections. The motion carried.

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Mr. Coco reported to the Committee on questions relating to change of residency from one district to another and the resulting loss or vacation of office. The staff also discussed various aspects of domicile and residence.

After lengthy discussion, Delegate Juneau moved that the Committee tentatively adopt the following:

The seat of any member who may change his domicile from the legislative district which he represents shall thereby be vacated, any declaration of a retention of domicile to the contrary notwithstanding.

The vote was six in favor of and three against. The motion carried. Those opposing the motion were Ginn, Kilpatrick and Landrum.

Mr. Casey moved that qualifications for office be changed to read as follows:

No person shall be eligible to the legislature unless at the time of his election he has been a citizen of the state for two years and an actual domiciliary of the legislative district from which he may be elected for one year immediately preceding his election.

The vote on the motion was seven for and two against. Those voting against the motion were Kilpatrick and Landrum.

The Committee began its consideration of reapportionment with the following motion being made by Delegate O'Neill:

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That at its first regular session after the population of this state is reported to the president of the United States for each decennial federal census, the legislature shall apportion representation in both houses of the legislature on the basis of the total population as shown by such census.

There being no objections, the motion carried.

Mr. Juneau moved that the Committee vote on whether or not an alternative provision shall be considered if the legislature fails to reapportion itself.

The vote was five in favor of the motion and four against it. Voting in opposition were Casey, Fulco, Ginn and LeBreton.

Mr. O'Neill moved to direct the research staff to come up with suggestions for alternatives. There were no objections.

Mrs. Duncan suggested that if any member of the Committee wished to submit alternative proposals for inclusion in the memorandum, to please do so.

Mr. Casey recommended to provide that the legislature would be required or mandated to adopt alternative methods of reapportionment.

The Committee adjourned at 1:30 p.m.

C. Blair

Cecil Blair, Chairman

Gary O'Neill

Calvin Fayard, Vice Chairman
Gary O'Neill, Secretary

Appendix A

April 13, 1973

TO: Norma M. Duncan, Director of Research
FROM: Committee on Legislative Powers and Functions

In response to your memorandum dated March 28, 1973, the committee has asked that the following reply be made.

The committee reviewed those provisions relative to the legislature which were contained in their compilation and made a determination of the following:

- 1) Those specific subjects or provisions which the committee definitely plans to consider as part of their responsibility (See attachment A).
- 2) Those specific or general subjects included within the compilation of constitutional provisions prepared for the committee which they do not plan to consider as part of their responsibility (See attachment B).
- 3) Those provisions of the present constitution contained in their compilation which the committee believes have not been specifically assigned to any substantive committee are restricted to the provisions of Article XIII dealing with corporations which the committee respectfully requests be assigned to it by the Coordinating Committee.
- 4) Those provisions which the committee feels may well overlap with the responsibilities of other committees and which they believe should be coordinated with those other committees through the establishment of subcommittees composed of delegates from the two or more substantive committees with overlapping responsibilities (See attachment C).

Attachment A

PROVISIONS THAT WILL BE CONSIDERED

	Organization - Composition
Article III	Legislative Department
§ 1	Bicameral legislature
§ 2	House of representatives; representation; apportionment; number
§ 3	Senatorial districts; new parishes; number of senators
§ 4	Senatorial districts; number of senators for each district
§ 5	House of representatives; number; apportionment
§ 6	Reapportionment; restriction; new parishes

- § 8 Annual sessions; general, budgetary and special sessions; duration; bills and joint resolutions; vacancies
- § 8.2 Veto sessions
- § 9 Qualifications; residence requirements; term
- § 10 Judging qualifications, election, and returns; officers; procedural rules; discipline
- § 13 Privileges and immunities
- § 14 Compensation and mileage
- § 19 Quorum; adjournments from day to day; compulsory attendance
- § 20 Adjournments; consent of other house
- § 29 Personal interest in bill; disclosure; vote
- § 30 Sale or trade of votes; purchase of supplies on bids; contracts, personal interest, approval

Article V - Executive Department

- § 8 Lieutenant Governor; president of senate; vote; president pro tempore
- § 9 Lieutenant Governor; vacancy in office
- § 11 Appointment of officers
- § 14 Governor; execution of laws; extraordinary sessions of legislature; restriction on power to legislate; limitation on time; proclamation and notice

Article VI - Administrative Officer and Boards

- § 26(2) Legislative auditor

Article XIX - General Provisions

- § 11 Fiscal officers; discharge prerequisite to other office; suspension
- § 12 Bribes; offering or receiving; disqualification from office
- § 13 Bribes; self incrimination; immunity
- § 15 Passes, franking privileges or discriminatory rates for public officials; penalties; testimony

Powers - Limitations

Article II - Distribution of Powers

- § 3 Continuity of governmental operations upon enemy attack

Article III - Legislative Department

- § 32 Merger or consolidation of similar executive and administrative offices
- § 34 Salaries of public officers; change
- § 35 Suits against the state, its agencies or political subdivisions
- § 44 Milk manufacturers, pasteurizers and distributors; bond

Article IV - Limitations

- § 1 Appropriations; quarterly accounting
- § 1(a) Board of liquidation of the state debt
- § 2 Public debt; alienation of public lands; reservation of mineral rights; mineral leases
- § 4 Local or special laws; prohibited subjects (Only those paragraphs dealing with corporations)
- § 6 Local or special laws; notice of intention; publication

Article IX - Impeachment and Removal from Office

- § 1 State and district officers; grounds for impeachment
- § 2 Impeachment; trial; effect of conviction; other prosecutions; suspension
- § 3 Removal on address by legislature

- § 4 Judiciary Commission; removal or involuntary retirement of judges and justices
- § 6 Removal by suit; officers subject; commencement of suit
- § 7 Removal by suit; citation; appeals; effect; costs and attorney's fee
- § 8 Fiscal officers; suspension
- § 9 Recall

Article XIII - Corporations and Corporate Rights

- § 2 Stock or bond issues; consideration; fictitious issues
- § 3 Railroads; public highways; crossing; traffic interchange
- § 5 Creation and regulation by general laws; monopolies
- § 6 Canal and hydro-electric developments; use of state waters; state ownership
- § 7 Perpetual franchises or privileges
- § 8 Definition

Article XIX - General Provisions

- § 25 Retirement systems; notice of intention to propose amendment or change; publication
- § 26 Special agencies of state; withdrawal of consent to suits
- § 27 Governmental Ethics

Procedure - Mechanics

Article III - Legislative Department

- § 7 Style of laws; enacting clause
- § 8.1 Passage of bills and joint resolutions, limitations
- § 11 Disrespect, disorderly or contemptuous behavior

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of nonmember

- § 15 Journals of proceedings
- § 16 Statutes; single object; title; revision or codification
- § 17 Revival or amendment of law
- § 18 System or code of laws; adoption
- § 21 Yeas and nays; entry in journal
- § 22 Revenue bills; origin; amendments
- § 23 Rejected matters; resubmission; consent
- § 24 Bills and codes; procedure for enactment
- § 25 Amendments to bills; concurrence; conference committees; voting
- § 25.1 Tax measures; amendments; conference committee reports; vote required
- § 26 Signing of bills; delivery to Governor
- § 27 Effective date of laws; publication
- § 28 Clerical officers; contingent expense committee records, audit; unexpended balances
- § 31 Legislative bureau; membership; duties

Article IV - Limitations

- § 9 Appropriation bills; form and contents
- § 10 Appropriations; purpose and amount; contingencies
- § 11 Appropriations; last five days of session; formalities; extraordinary session

Article V - Executive Department

- § 15 Signature of bills; veto; passage over veto; failure to act

- § 16 Appropriation bills; veto of items
 - § 17 Acts not requiring Governor's signature; legislative investigations
- Article XIX - General Provisions
- § 5 Suspension of laws; vote required for

Attachment B

PROVISIONS THAT WILL NOT BE CONSIDERED

- Article III - Legislative Department
- § 33 Convict labor; public works; leases
 - § 37 Rights of way; roads of necessity; drainage
 - § 39 Code of Criminal Procedure
- Article IV - Limitations
- § 2(a) Board of liquidation of state debt; bonds; public works
 - § 3 Extra compensation; claims against state, parish or municipality; unauthorized contracts
 - § 4 Local or special laws; prohibited subjects (Except for those paragraphs dealing with corporations)
 - § 5 Local or special laws; indirect enactment; repeal
 - § 7 Price of manual labor; wages, hours, and working conditions of women
 - § 8 Public funds; prohibited expenditure for sectarian, private, charitable or benevolent purposes; state charities; religious discrimination
 - § 12 Loan or pledge of public credit; relief of destitute; donations; transfers of property; bonds; leasing or health institutions; donation to U.S. for Veterans Hospital
 - § 12(a) Bonds; state indebtedness; Confederate veterans' pensions; reimbursement of general highway fund
 - § 12(b) State market commission; guaranteed loans; agricultural facilities
 - § 12(c) Commissioner of agriculture and immigration; guaranteed loans; farm youth organizations
 - § 13 Release of obligation of state, parish or municipal corporation; taxes on confiscated property
 - § 16 Trusts; force heirship; abolition prohibited; adopted children
 - § 18 Legislation to enable compliance with federal laws and regulations to secure federal aid in capital improvement projects
- Article V - Executive Department
- § 18 Constitutional officers; elections; terms; vacancies; assistants
 - § 20 Salaries of constitutional officers; fees; expenses
- Article VI - Administrative Officers and Boards
- § 19.4 Board of highways; regulation and control of annual budget
 - § 22 General highway fund
 - § 26(1) Department of Revenue
 - § 31 Greater Ouachita Port Commission
- Article VII - Judiciary Department
- § 17 Decisions of supreme court and courts of appeal, reporting and publication; stenographers
 - § 69 Vacancies; appointments; special elections; notices
- Article VII - Suffrage and Elections.
- § 6 Disqualification from voting or holding office; employment
 - § 13 Office holders; residence requirements
 - § 18 Registrars of voters; board of directors
- Article X - Revenue and Taxation
- § 3 Rate of state taxation; limitation

- § 11 Collection of taxes; tax sales; quieting tax titles; postponement of taxes; loans to parishes

Article XII - Public Education

- § 13 Public funds for private or sectarian schools; cooperative regional education

Article XIV - Parochial and Municipal Affairs

- § 1 New parishes
- § 2 Change of parish lines or removal of seat; election
- § 3 Optional plans of parochial government
- § 3(b) East Baton Rouge Parish; recreation and park commission
- § 3(c) Jefferson Parish; charter commission; plan of government

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- § 3(d) Acquisition and financing of sewerage improvements
- § 3(d) Parish Charter Commission
- § 3(e) St. Bernard Parish; home rule powers; plan of government
- § 3(f) St. Charles Parish; charter commission; plan of government
- § 3(g) Parish charter commission; its duties, powers, functions and limitations
- § 15 Civil service systems; state; cities
- § 15.2 Financial security for surviving spouses and children of law enforcement officers in certain cases
- § 29 Zoning ordinances
- § 30 Improvements by riparian owners in cities over 5,000 or within port of New Orleans; expropriation; just compensation
- § 30.2 Lake Charles Harbor and Terminal District; ratification; Board of Commissioners; members, officers, agents and employees
- § 40 Municipalities; charters and powers; home rule

Article XVI - Levees

- § 1 Levee system; maintenance; board membership; fiscal affairs
- § 6 Compensation for property used or destroyed; tax

Article XIX - General Provisions

- § 1 Oath of office
- § 4 State offices; ineligibility of federal officers or officers of other states; dual office holding
- § 6 Performance of duties until successor inducted
- § 16 Prescription against state

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Attachment C

PROVISIONS RECOMMENDED FOR SUBCOMMITTEE CONSIDERATION

Article III - Legislative Department

- § 36 Arbitration laws (Coordinate with Education and Welfare)

Article IV - Limitations

- § 14 State educational or charitable institutions; establishment; vote (Coordinate with Education and Welfare)
- § 15 Ex post facto laws; impairment of contracts; vested rights; just compensation (Coordinate with Bill of Rights)
- § 17 Legislative approval of bond issuance and appropriation by the Board of Liquidation; procedure; nullity of issue for failure to observe (Coordinate with Revenue and Taxation)

Article V - Executive Department(Coordinate the following sections with Executive)

- § 1 Executive officers; consolidation of offices
- § 2 Governor; Lieutenant Governor; executive power; term; election
- § 4 Commencement of term of Governor and Lieutenant Governor
- § 12 Appointment of officers; recess appointments
- § 13 Reports to Governor; information and recommendations to legislature

Article VII - Judiciary Department(Coordinate the following sections with Judiciary)

- § 21 Circuit courts of appeal; domicile; number of judges; initial terms
- § 34 Rearrangement of districts; change in number of judges
- § 52 Juvenile courts; creation; judges; jurisdiction
- § 66 Clerks; establishment of office; election; powers and duties
- § 87 Criminal District Court for the Parish of Orleans; change of provisions relating to criminal courts
- § 96 The Juvenile Court for the Parish of Orleans; establishment; jurisdiction; appeals; procedure; judges

Article VIII - Suffrage and Elections

- § 7 Voting; ballot; machines; viva voce; ratification; of Acts 1940(Coordinate with Bill of Rights)

Article X - Revenue and Taxation

- § 1(a) State tax, levy or increase in rate; approval by two-thirds of legislature(Coordinate with Revenue and Taxation)

Article XII - Public Education

- § 7 Colleges and universities; supervision; coordinating council(Coordinate with Education and Welfare)

Article XVII - Militia

- § 3 Adjutant general(Coordinate with Executive)

Article XXI - Amendments to the Constitution(Coordinate the following sections with Bill of Rights)

- § 1 Proposals; procedure; approval; proclamation; multiple amendments; numbering
- § 1(a) Special elections
- § 2 Laws effectuating amendments

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Appendix B

April 13, 1973

TO: Norma M. Duncan, Research Director
FROM: Committee on Legislative Powers and Functions

As per the request of Delegate Kean and the Subcommittee on Alternatives of the Coordinating Committee we have examined the 1921 constitution on those areas to be considered by the Committee on Legislative Powers and Functions.

I. We have determined that the following provisions are obsolete.

A. Those provisions in Article III dealing with reapportionment (Sections 2, 3, and 6) which are based on other than "one-man, one-vote" standards are obsolete because of the Reynolds v. Sims decision.

B. Those provisions in Article III which apportioned the Senate and the House of Representatives (Sections 4 and 5) are obsolete because of the Bannister v. Davis decision which declared them unconstitutional and subsequently the legislature has enacted statutory apportionment. (R.S. 24:35 and 35.1)

C. The provision in Article III dealing with legislative compensation and mileage (Section 14) is obsolete because the legislature has under authority of Article III, Section 34 increased both the per diem and mileage allowable. (R.S. 24:31)

D. The provision in Article III dealing with the accrual of prescription or peremption prior to January 1, 1962 (Section 35) is obsolete since that section also provides that suit must have been brought prior to January 1, 1962.

E. The provision in Article III dealing with the drafting of a Code of Criminal Procedure is obsolete since the Code of Criminal Procedure was adopted in 1966.

F. The provision in Article IV dealing with the board of liquidation of state debt found in Section 2(a) is obsolete since a later amendment to the constitution now contained in Article IV, Section 1(a) transferred all power and authority formerly vested in the board of liquidation under Section 2(a) to the board of liquidation created under Section 1(a).

G. The provisions in Article IV dealing with the funding of bonds for the purpose of erecting the state capitol building and to pay the outstanding indebtedness of the state, and L.S.U., to pay the Confederate veterans' pensions and to reimburse the General Highway Fund (Sections 12 and 12-a) are obsolete since the bonds have been paid off.

H. The provision in Article X dealing with the rate of state taxation on property (Section 3) is obsolete since that section was repealed effective January 1, 1973 by the passage of Article X-A, Sections 1-5 which repealed all state ad valorem taxes.

II. We have determined that only one provision to be considered by the Committee on Legislative Powers and Functions is repeated verbatim in the statutes.

The provision in Article XIX dealing with governmental ethics which recites in a preamble a policy and purpose (Section 27, paragraph 1 A, B, and C) is repeated verbatim in the statutes. (R.S. 42:1101)

III. We have determined that the following provisions are repeated in the statutes in substance.

A. The provisions in Article IX dealing with the suspension of a fiscal officer when he is in arrears (Section 8) are repeated in substance in the statutes. (R.S. 42:301)

B. The provisions in Article XVII dealing with the appointment of the adjutant general (Section 3) are repeated in substance in the statutes. (R.S. 29:5)

C. The provisions in Article XIX dealing with eligibility of a fiscal officer for another office (Section 11) are repeated in substance in the statutes. (R.S. 42:34)

D. The provisions of Article XIX dealing with bribes (Section 12) are repeated in substance in the statutes (R.S. 14:118 and 120)

E. The provisions of Article XIX dealing with the immunity granted to an individual who may be compelled to testify involving bribery (Section 13) are repeated in substance in the statutes. (R.S. 14:121)

F. The provisions of Article XIX dealing with appeals of decisions involving governmental ethics (Section 27, paragraph 3C) are repeated in substance in the statutes. (R.S. 42:1121E)

MINUTES

Minutes of the meeting of the Committee on
Legislative Powers and Functions of the
Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on April 12, 1973

State Capitol, Room 205
Baton Rouge, Louisiana
Friday, April 20, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee
Legislative Powers and Functions.

Present

Sen. Cecil Blair
Rep. Thomas Casey
Calvin Fayard
Frank Fulco
David Ginn
Patrick Juneau
Louis Landrum
Rep. Edward LeBreton
Gary O'Neill

Absent

Sen. K. D. Kilpatrick

The meeting was called to order by Chairman Blair.
Secretary O'Neill called the roll and a quorum being established, the meeting proceeded.

Secretary O'Neill read the agenda as set forth in the notice mailed by the secretary of the convention. The committee agreed that the next committee meetings would be held on May 4 and May 5, 1973 as previously decided.

Mr. Coco discussed two alternative proposals the staff had prepared in regard to reapportionment. Mr. O'Neill moved to adopt alternative proposal number one, which is a part of Staff Memorandum No. 9. The memorandum is attached hereto and made a part of these minutes as Appendix A. After some discussion, Mr. Juneau offered a substitute motion that there be included in the new constitution an apportionment provision based on the provision in the Florida Constitution, but adding thereto necessary changes in the language to make the provision conform to Louisiana's needs and requirements. Mr. Juneau requested that a tentative draft of the provisions be prepared by the staff for further review thereof

by the committee on Saturday. There being no objections, the motion was adopted.

Mrs. Duncan informed the committee that the lieutenant governor could not be at the meeting as had been scheduled. The committee requested that she ascertain if he could be present at the Saturday meeting.

Mr. Coco presented the committee with a study, which dealt with the lieutenant governor as presiding officer of the Senate. After much discussion, the committee decided to hold off discussion of the study and delay voting on proposals concerning the lieutenant governor until it had heard

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from someone in the Senate, preferably the lieutenant governor. Mrs. Duncan returned and informed the committee that the lieutenant governor would speak to the committee on the following morning, Saturday, April 24, 1973 at 11:00 a.m. ??

The committee discussed problems facing candidates whose districts are changed as a result of reapportionment. After reviewing Staff Memorandum No. 7, which is attached hereto and made a part of these minutes as Appendix B, Mr. Casey suggested it would be more consistent with other previously agreed upon proposals to use the word "domiciled" instead of the word "resided." Mr. Ginn offered a motion to accept alternative proposal number one with the change suggested by Mr. Casey. There being no objections, the motion was adopted. The proposal reads as follows:

At the first election, only, following the reapportionment of the legislature, a person may qualify for election from any district created in whole or in part from the district existing prior to the reapportionment, in which such person was domiciled, if such person was domiciled in that prior district for at least one year immediately preceding his election.

Mr. Coco next presented to the committee for its review a tentative proposal dealing with qualifications for membership in the legislature. Mr. Fulco moved that the language be changed to require that an individual be twenty-one years of age at the time of qualifying in order to be eligible to

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a seat in the House of Representatives. Mr. Fayard offered a substitute motion to table Mr. Fulco's motion. The substitute motion passed with six for and one against. Mr. Fulco voted against the motion. Mr. Fayard offered an additional motion that the committee pass consideration of all tentative drafts until such time as the committee has the opportunity to review each of the provisions that they are to consider. Only then should they review the tentative proposals in an orderly fashion at one time. There being no objections, the motion was adopted.

Following a lunch break, the committee began discussion of questions dealing with the length and kind of legislative sessions. Mr. O'Neill moved for adoption of the concept of regular general annual sessions as opposed to fiscal and general sessions. There being no objections, the motion was adopted.

Mrs. Duncan read from the recommendations of the House Executive Committee report on revision of the legislative article, which was a part of the March 23, 1973 minutes. Mr. Juneau offered a motion to endorse the concept expressed by the House Executive Committee, that the legislature be a continuous body, open-end sessions, and with detail to be implemented by the legislature. With no objections, the motion was adopted.

There was discussion as to the need of veto sessions in light of the continuous body concept in the plan of the House Executive Committee. Mrs. Duncan pointed out that there would be a need for provisions for a veto session in

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cases where the legislature had adjourned sine die. Mr. Casey offered a motion to provide for the overriding of the governor's veto, with the vote to override to be the same vote as that required for final passage of the bill. Mr. Juneau offered a substitute motion to make it necessary to have a two-thirds majority vote of the elected members to override a veto. Mr. Casey had no objection to adding the two-thirds majority rule. With no objections, the motion was adopted.

There was discussion on Article III, Section 10 of the present constitution, dealing with the judging of the qualifications and elections of legislators and certain other officials. Debate centered on the provision giving the legislature the right to expel a member. Mr. Juneau pointed out that the two-thirds majority rule protected the members. Mr. Juneau moved adoption of the provision contained in the present Section 10, excluding the word "returns," and holding consideration of the provision of the presiding officer of the Senate until after the lieutenant governor spoke to the committee. With no objections, the motion carried and reads as follows:

Each house shall be the judge of the qualifications and elections of its own members, determine the rules of its procedure not inconsistent with the provisions of this constitution, and may punish its members for disorderly conduct and contempt, and, with the concurrence of two-thirds of all its members elected, may expel a member.

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Mr. Ginn offered a motion to adopt Article III, Section 13 as it is. Mr. Fulco offered a substitute motion to include committee meetings in the provisions of Section 13.

With no objections, Mr. Fulco's substitute motion passed and reads as follows:

The members of the legislature shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at the committee meetings and sessions of their respective houses, and in going to and returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

Mr. Fayard asked the staff to look into the phrase "breach of peace," and Mr. O'Neill asked the staff to check on immunity for convention delegates.

Mr. Juneau moved to delete Article III, Section 14, dealing with compensation and mileage from the constitution. With no objections, the motion was adopted.

Debate on Article III, Section 19 centered on the question of the kind of majority needed to create a quorum. Mr. Fayard moved to adopt Section 19, with the addition that a quorum consist of a majority of elected members. With no objections, the motion carried and reads as follows:

Not less than a majority of the elected members of each house of the legislature shall form a quorum to transact business, but a smaller

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number may adjourn from day to day and shall have power to compel the attendance of absent members.

Mr. Fulco offered a motion to delete Article III, Section 29 from the constitution. Mr. Jay Hakes, a member of Common Cause, stated that they felt that disclosure was the most important part of the section, and that a provision for disclosure need not include the loss of voting privileges. Mr. Casey suggested setting up a code of ethics or some kind of code of conduct. Mr. Fulco felt that this section makes liars out of legislators and is an unnecessary section, but withdrew his motion. Mr. LeBraton then moved that the committee invite Common Cause to submit a written recommendation to the committee. He also asked the staff to do the same. With no objections, the motion passed. The committee asked that the staff include in its study Article III, Sections 29 and 30, Article XIX, Sections 12, 13, and 15, and any other provisions on the same subject. The committee will review these after the staff makes its recommendation.

The committee decided to review Article V, Sections 8, 9, and 11 after the lieutenant governor speaks on Saturday.

The committee discussed the possibility of deleting the word "extraordinary" from Article V, Section 14. After some discussion, Mrs. Duncan read from the provisions of the Montana Constitution dealing with extraordinary sessions. Mr. Juneau moved that Article V, Section 14 be so written as to be consistent with the sessions provision previously adopted and along the lines of the Montana Constitution. With

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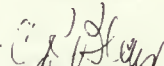
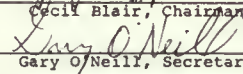
no objections, the motion was adopted.

In relation to Article VI, Section 26, it was decided to invite Mr. Joe Burris, the legislative auditor, to speak to the committee on Saturday. Mr. Fayard offered a motion to draft a provision in accordance with the Model State Constitution, Section 4.17, but to provide that the auditor be a legislative auditor. The committee delayed action on the motion until Mr. Burris speaks to the committee on Saturday.

Article XIX, Section 11, concerning the eligibility of a person entrusted with public money to be a legislator, was discussed briefly. Mr. LeBreton moved that this section be deleted completely from the constitution, since basically the same provision is contained in the statutes. With no objections, the motion was adopted.

The committee began discussing Category II of the compilation. Article II, Section 3, dealing with continuity of government during emergencies, was discussed. Mrs. Duncan read provisions from the proposed Arkansas Constitution. Mr. Casey moved that consideration be given to a provision similar to the proposed Arkansas provision, but with the provision that it be for a temporary period and only until the normal processes of government can be established under the constitution and laws of the state. With no objections, the motion was adopted.

Chairman Blair adjourned the meeting at 5:00 p.m., to reconvene Saturday, April 21, 1973 at 8:00 a.m.


Cecil Blair, Chairman

Gary O'Neill, Secretary

APPENDIX A

CC/73 Research Staff
Committee on Legislative Powers
and Functions
April 19, 1973
Staff Memorandum No. 9

RE: Alternative proposals on reapportionment

This study will present various alternative proposals relating to apportionment. It will basically consist of proposals offering various alternative methods for reapportioning the legislature in the event the legislature fails to exercise its responsibility to reapportion itself.

SUGGESTED ALTERNATIVE PROPOSALS

1. § _____. Legislative reapportionment
Section _____. If no reapportionment plan becomes effective by _____, a Board of Apportionment shall be constituted not later than _____. This board shall

consist of the governor, who shall be chairman, the attorney general, the secretary of state, and two persons not members of the legislature, one named by the speaker of the House of Representatives and one by the president of the Senate. The Board of Apportionment shall apportion representation in both houses of the legislature on the basis of total population as shown by the census.

Not later than _____, the board shall file with the speaker of the House of Representatives and the president of the Senate a reapportionment plan approved by at least three members.

An approved reapportionment plan filed with the speaker of the House of Representatives and the president of the Senate shall be presumed valid, shall be signed by the speaker of the House of Representatives and the president of the Senate and shall be forwarded to the secretary of state for publication and promulgation.

Following such publication and promulgation the reapportionment plan shall have the force and effect of law.

Comment: This proposal provides for a board to be established in the event the legislature does not reapportion itself by a stipulated time following the decennial census. This board is under a mandatory duty to reapportion the legislature.

2. § _____. Legislative reapportionment
Section _____. If no reapportionment plan becomes effective by _____, the legislature shall be reapportioned as provided by law.

Comment: This proposal provides that in the event the legislature fails to reapportion itself, it shall be reapportioned in a manner that the legislature itself has chosen.

CC/73 Research Staff
Committee on Legislative
Powers and Functions
April 5, 1973
Staff Memorandum No. 7

RE: Problems facing candidates whose districts have been changed following reapportionment

One of the problems created by periodic reapportionment is the problem facing both incumbents and others as a result of their district boundaries being changed. This has become a significant problem especially since the Reynolds v. Sims "one-man, one-vote" decisions. Compliance with the equal population standard sometimes results in a prospective candidate finding that because his

former district gained or lost population he might be districted in an area in which he cannot run. This might be so because he had recently moved, and although he had moved within the boundaries of his former district, his new home and his former home after redistricting are in different districts.

One of the solutions is to allow persons, for the first election after reapportionment, to run in any district composed in whole or part from the district existing prior to redistricting. Another solution is to waive the period of residency for that first election. Another might be to allow an individual to run in either his present district or the present district in which he formerly lived.

SUGGESTED ALTERNATIVE PROPOSALS

1. §___. Eligibility to hold office

Section___. At the first election only following the reapportionment of the legislature, a person may qualify for election from any district created in whole or in part from the district existing prior to the reapportionment, in which such person resided, if such person resided in that prior district for one year immediately preceding his election.

Comment: There is no presently existing provision in the constitution. This language is essentially the language proposed by both the Constitutional Revision Commission and the House Executive Committee.

2. §___. Eligibility to hold office

Section___. In the general election following legislative reapportionment, a candidate for the legislature may be elected from any district which contains a part of the district in which he resided at the time of the reapportionment.

Comment: See above, except based on Illinois provision.

3. §___. Eligibility to hold office

Section___. In the general election following a legislature reapportionment, a candidate for the legislature may be elected from either the district in which he is presently residing or that district from which he may have moved within a year immediately preceding such general election.

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Comment: See above; this proposal takes care of the individual who has moved his residence within a year preceding the general election for legislators but does not provide for the individual who has not moved but who is cut off from an area in his former district where his vote, drawing power or constituency interests lie.

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MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on April 12, 1973

State Capitol, Room 205

Baton Rouge, Louisiana

Saturday, April 21, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions.

Present

Sen. Cecil Blair

Rep. Thomas Casey

Calvin Fayard

Frank Fulco

David Ginn

Patrick Juneau

Louis Landrum

Rep. Edward LeBreton

Gary O'Neill

Absent

Sen. K. D. Kilpatrick

The meeting was called to order by Chairman Blair. Secretary O'Neill called the roll and a quorum being established, the meeting proceeded. Chairman Blair introduced Mr. Joe Burris, legislative auditor. Mr. Burris presented a report on the post-auditing functions of the legislative auditor which he had prepared previously for the Committee on the Executive Department, and a draft of a proposed constitutional provision. His written report is attached hereto and made a part of these minutes as Appendix A.

Chairman Blair asked the committee members to read over the minutes of the April 6 and April 7, 1973 meetings. Upon a motion by Mr. LeBreton, the minutes were approved.

After some discussion regarding the office of legislative auditor, Mr. Juneau moved that the committee accept a proposal based on the draft given to the committee by Mr. Burris. As a substitute motion, Mr. Casey moved that the proposal include language to require that the legislative auditor be elected by the legislature "as provided by law." Mr. Juneau had no objection to this amendment. There being no objections, the motion carried and reads as follows:

The legislature shall provide for a legislative auditor. The election, removal, and filling of vacancies in the office of legislative auditor shall be as provided by law.

The legislative auditor shall be responsible solely to the legislature, shall serve as fiscal adviser to the legislature, and shall perform such duties and functions relating to the auditing of state and local governments as shall be provided by law.

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Mr. Coco presented the committee with a draft on reapportionment based on the Florida plan which Mrs. Duncan had read to the committee the previous day. Mr. LeBreton commented that the staff had done a good job in writing the draft. Chairman Blair recommended that the words "no later than the second year" be substituted for the words "in the second year." Mr. O'Neill moved that the committee adopt the draft with the alterations recommended by Chairman Blair. Rev. Landrum made a substitute motion that the research staff be directed to insert in the draft the single member district concept. The vote on Rev. Landrum's motion was seven against and one for. Rev. Landrum voted for the motion. The motion failed to pass. Mr. Juneau then called for a vote on Mr. O'Neill's motion to adopt the following:

(a) Legislative reapportionment. The legislature, at a regular session held not later than the second year after the population of this state is reported to the president of the United States for each decennial federal census, shall apportion the representation in each house of the legislature on the basis of the total state population as shown by the census. Representation in each house shall be equal and uniform. If that session is adjourned without adoption of such a concurrent resolution, the governor by proclamation shall convene the legislature within thirty days in a

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special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a concurrent resolution of apportionment.

(b) Failure of legislature to apportion; judicial reapportionment. If a special apportionment session of the legislature is finally adjourned without adopting a concurrent resolution of apportionment, the attorney general, within five days after such final adjournment, shall petition the state supreme court to make the apportionment. No later than the sixtieth day after the filing of the petition, the supreme court shall file with the secretary of state an order making the apportionment.

(c) Judicial review of apportionment. Within fifteen days after the adoption of the concurrent resolution of apportionment, the attorney general shall petition the state supreme court for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days after the date on which the petition was filed, shall enter its judgment.

(d) Effect of judgment in apportionment; extraordinary apportionment session. A judgment

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of the state supreme court determining the apportionment to be valid shall be binding upon all citizens of the state. Should the supreme court determine that the apportionment made by the legislature is invalid, the governor by proclamation shall reconvene the legislature within five days thereafter in extraordinary apportionment session for not to exceed fifteen days, during which the legislature shall adopt a concurrent resolution of apportionment conforming to the judgment of the supreme court.

(e) Extraordinary apportionment session; review of apportionment. Within fifteen days after adjournment of an extraordinary apportionment session, the attorney general shall file a petition in the state supreme court setting forth the apportionment resolution adopted by the legislature or, if none has been adopted, reporting that fact to the court. Consideration of the validity of a concurrent resolution of apportionment shall be had as hereinabove provided for in cases of a concurrent resolution adopted at a regular or special apportionment session.

(f) Judicial reapportionment. If an extraordinary apportionment session fails to adopt a resolution of apportionment or if the supreme court determines that the apportionment made is

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invalid, the court, not later than sixty days after the date on which the petition of the attorney general is received, shall file with the secretary of state an order making the apportionment. The motion carried, with seven for and one against it. The Rev. Landrum voted against the motion.

Chairman Blair introduced the Honorable James Fitzmorris, lieutenant governor. The lieutenant governor thanked the committee for inviting him to speak to the committee. He expressed his views in regard to the lieutenant governor's role as presiding officer of the Senate. Governor Fitzmorris felt that the role of the lieutenant governor as the presiding officer of the Senate is a very important one. He pointed out the following:

1. The lieutenant governor can serve in the position objectively by not being personally involved as a member.
2. The lieutenant governor is in a position to see the problems that exist around the state.
3. The lieutenant governor can conduct the business of a presiding officer without letting his personal feelings interfere.

4. The lieutenant governor is in a position to carry out the responsibilities and duties of the Senate that must be carried out on a twelve month basis.

Governor Fitzmorris stated that either the lieutenant governor should be given meaningful duties, or the office should be abolished. Concerning the selection of committees, Governor Fitzmorris felt that the lieutenant governor, along with the Senate and Governmental Affairs Committee, should have a role in the selection of committees. He also felt

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that standing committees should be more fully utilized and interim committees abolished.

The committee next considered Staff Memorandum No. 8, dealing with the lieutenant governor as presiding officer of the Senate. After much consideration and discussion, Mr. O'Neill moved that the committee adopt alternative proposal number four, contained in Staff Memorandum No. 8. The memorandum is attached hereto and made a part of these minutes as Appendix B. Mr. Ginn offered a substitute motion to postpone consideration of Mr. O'Neill's motion for two weeks until the committee could see what the executive department committee is doing in regard to other duties of the lieutenant governor. The committee discussed problems relating to the removal of the lieutenant governor as presiding officer of the Senate. Mrs. Duncan pointed out that Article V, Section 8 of the constitution establishes the lieutenant governor as presiding officer of the Senate; his office is created by Section 6 of that article, and that section is being considered by the Committee on the Executive Department.

Mr. Fayard called for the question. The vote on Mr. Ginn's substitute motion was four against and three for. Those voting against the motion were Messrs. Casey, Fayard, Juneau, and O'Neill. Those voting for the motion were Messrs. Ginn, Landrum, and LeBreton.

The vote on Mr. O'Neill's original motion was five for and two against, with Rev. Landrum and Mr. LeBreton voting

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against. The motion carried and the provision reads as follows:

Each house shall choose its officers, including a permanent presiding officer selected from its membership, who shall be designated in the Senate as president of the Senate and in the house as the speaker of the House of Representatives.

The committee next returned to its consideration of provisions in Category II of the compilation. Mr. Fayard moved to delete Article III, Section 32 in its entirety. Mr. Casey offered a substitute motion to adopt Article III, Section 32 with appropriate changes in the language to per-

mit merger or consolidation into one or more offices. The motion by Mrs. Casey was adopted on a vote of four for and two against, with Messrs. Fayard and Landrum voting against. Mr. LeBreton passed. The provision as adopted reads as follows:

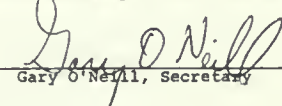
The legislature is authorized to provide for the merger or consolidation into one or more offices all executive and administrative offices, boards or commissions, whether created in this constitution or otherwise, whose duties or functions are of a similar nature or character, and in the event of any such consolidation or merger, to reduce the number of officers at the end of their current term.

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Rev. Landrum moved adjournment, and the meeting was adjourned at 12:00 noon.


Cecil Blair, Chairman

Calvin Fayard, Vice Chairman


Gary O'Neill, Secretary

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NOTES

Appendix A, "A Report by the Legislative Auditor to the Executive Committee of the Convention" has been omitted. It is reproduced below as Exhibit 0 to the Minutes of April 2 of the Committee on the Executive Department.

APPENDIX B

CC/73 Research Staff
Committee on Legislative Powers and Functions
April 16, 1973
Staff Memorandum No. 8

THE LIEUTENANT GOVERNOR AS PRESIDING OFFICER OF THE SENATE

This study will treat the question of the lieutenant governor as the presiding officer of the senate strictly from a comparative viewpoint. The present constitutional provision will be viewed in light of Louisiana's past constitutions and the present constitutions of the 50 states. An addendum has been attached which contains a comparative

study of constitutional provisions relating to the lieutenant governor as presiding officer of the senate. In addition several alternative proposals are presented for the committee's review.

In Louisiana

The present constitutional provision relating to the lieutenant governor as the presiding officer of the senate is found in Article V, Section 8:

"The Lieutenant Governor shall be ex-officio President of the Senate, but shall have a casting vote only therein. The Senate shall elect one of its members as President pro tempore of the Senate."

This provision has remained virtually unchanged since the Constitution of 1879. Prior to that time the Constitution of 1868 provided in Article 55 that:

"The Lieutenant Governor shall, by virtue of his office, be President of the Senate, but shall vote only when the Senate is equally divided. Whenever he shall administer the Government, or shall be unable to attend as President of the Senate, the Senators shall elect one of their own members as President of the Senate for the time being."

Except for the phrase "but shall have only a casting vote therein" instead of "but shall vote only when the Senate is equally divided," the constitutions of 1864, 1852, and 1845 contained the identical provision.

The office of lieutenant governor was created by the Constitution of 1845 and thus from 1812 to 1845 the president of the senate was elected from among the members of the senate. Article II, Section 9 of the Constitution of 1812 provided in part:

"The members of the Senate . . . when assembled, have the power to choose its officers annually."

The Constitution of 1812 also provided for the president of the senate to succeed to the office of Governor. Article III, Section 17 provided:

"In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, or absence from the State, the President of the Senate shall exercise all the power and authority appertaining to the office of Governor, until another be duly qualified, or the Governor absent or impeached, shall return or be acquitted."

The Projet of 1954 suggests no real change in the 1921 provision. Article V, Section 3 of the Projet provides:

"The lieutenant governor shall be the presiding officer of the senate but shall have only a casting vote therein."

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The senate is not specifically required to elect a president pro tempore but Article III, Section 11 of the Projet authorizes each house to choose its own officers except the president of the senate.

In Other States

The legislative functions of the lieutenant governor vary from state to state. The most widely held duty is that of presiding over the senate. For a long time Massachusetts was the only exception to this concept, but recently the trend has been away from giving the lieutenant governor legislative powers and toward making him strictly an executive officer.

Of the 50 states, 42 have lieutenant governors and 33 still retain him as the presiding officer of the senate. In these 33 states 12 lieutenant governors appoint members of standing committees. In Vermont he makes some individual appointments, and in North Dakota, Ohio, and South Carolina he appoints members to some committees.

In 30 states the lieutenant governor casts tie-breaking votes, however, in all but three his vote is cast only on final passage of bills. Sixteen lieutenant governors cast tie-breaking votes on organization of their senates.

Twenty-nine states allow the lieutenant governor to assign bills to committees.

In the 33 states where the lieutenant governor is the presiding officer of the senate his other duties range from hiring staff to assigning parking spaces.

The Model State Constitution (Revised 1968) provides that each

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house of the legislature is to choose its own presiding officers from among its members and in the five recently proposed constitutions chosen for comparative study (Montana, Illinois, Florida, Alaska, and Arkansas) the trend is also for each house to choose its own presiding officer.

Montana, Florida, and Alaska provide for separate "Senate Presidents" elected from the membership of the senate.

Under the new Illinois constitution the governor calls the senate to order on the opening day of session held in the odd numbered years to elect a "President of the Senate" as presiding officer.

And in the proposed Arkansas Constitution of 1970 the lieutenant governor's duty of presiding over the senate is omitted and each house is to elect its own officers.

SUGGESTED ALTERNATIVE PROPOSALS

1. § _____. Lieutenant governor; president of senate; vote; president pro tempore

Section _____. The lieutenant governor shall be ex-officio president of the Senate, but shall have a casting vote only therein. The Senate shall elect one of its members as president pro tempore of the Senate.

Comment: This proposal tracks the present provision found in Article V, Section 8 with minor grammatical changes to reflect modern usage adopted by the Committee on Style and Drafting.

2. § _____. Lieutenant governor

Section _____. The lieutenant governor shall be the presiding officer of the Senate but shall have only a casting vote therein.

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Comment: This proposal tracks the provision found in the Projet which leaves out the reference to the election of a president pro tempore of the Senate since there is authority contained in other provisions of the constitution which provide for each house to choose its own officers.

3. § ____ . Officers

Section ____ . Each house shall choose its own officers, including the president of the Senate, from among its own members.

Comment: This proposal removes from Article III, Section 10 of the present constitution the words "except the president of the Senate" and inserts the words "including the president of the Senate." This proposal would of course require a change in Article V, Section 8 which states that the lieutenant governor is ex-officio the presiding officer of the Senate.

4. § ____ . Officers

Section ____ . Each house shall choose its officers, including a permanent presiding officer selected from its membership, who shall be designated in the senate as President of the Senate and in the house as the Speaker of the House of Representatives.

Comment: "This proposal spells out how the presiding officers of both houses are chosen and specifies what their titles are. It would also require a change in Article V, Section 8.

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5. § ____ . Presiding officers

Section ____ . The House of Representatives shall choose a speaker and the Senate shall choose a president from their respective members. Each house shall choose such other officers and employees as it may provide for in its rules.

Comment: See comment to alternative number four. This alternative also provides for each house to provide in its rules for other officers and employees as each deem necessary.

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ADDENDUM

Comparative Study of State Constitutions With Respect To The Lieutenant Governor as Presiding Officer of the Senate

CONSTITUTION OF LOUISIANA, 1921: Executive Article

ARTICLE V

§8. Lieutenant Governor; president of senate; vote; president pro tempore

Section 8. The Lieutenant Governor shall be ex-officio President of the Senate, but shall have a casting vote only therein. The Senate shall elect one of its members as President pro tempore of the Senate.

PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA: Executive Article

ARTICLE V

§3. Lieutenant Governor

Section 3. "The lieutenant governor shall be the presiding officer of the senate but shall have only a casting vote therein."

MODEL STATE CONSTITUTION: Legislative Article

ARTICLE IV

§4.09

Section 4.09. . . . Each house of the legislature shall choose its presiding officer from among its members . . .

RECENTLY ADOPTED CONSTITUTIONS:

Constitution of Montana, 1972

ARTICLE V

§10. Organization and procedure

Section 10. (1) Each house shall judge the election and qualifications of its members. It may by law vest in the courts the power to try and determine contested elections. Each house shall choose its officers from among its members, keep a journal, and make rules for its proceedings. Each house may expel or punish a member for good cause shown with the concurrence of two-thirds of all its members.

Constitution of Illinois, 1970

ARTICLE IV

§6. Organization

Section 6. (a) A majority of the members elected to each house constitutes a quorum.

(b) On the first day of the January session of the General Assembly in odd-numbered years, the Secretary of State shall convene the House of Representatives to elect from its membership a Speaker of the House of Representatives as presiding officer, and the Governor shall convene the Senate to elect from its membership a President of the Senate as presiding officer.

(c) For purposes of powers of appointment conferred by this Constitution, the Minority Leader of either house is a member of the numerically strongest political party other than the party to which the Speaker or the President belongs, as the case may be.

(d) Each house shall determine the rules of its proceedings, judge the elections, returns and qualifications of its members and choose its officers. No member shall be expelled by either house, except by a vote of two-thirds of the members elected to that house. A member may be expelled only once for the same offense. Each house may punish by imprisonment any person, not a member, guilty of disrespect to the house by disorderly or contemptuous behavior in its presence. Imprisonment shall not extend beyond twenty-four hours at one time unless the person persists in disorderly or contemptuous behavior.

Constitution of Florida, 1969

ARTICLE III

§2. Members; officers

Section 2. Each house shall be the sole judge of the qualifications, elections, and returns of its members, and shall biennially choose its officers, including a permanent presiding officer selected from its membership, who shall be designated in the senate as President of the Senate, and in the house as Speaker of the House of Representatives. The senate shall designate a Secretary to serve at its pleasure, and the house of representatives shall designate a Clerk to serve at its pleasure. The legislature shall appoint an auditor to serve at its pleasure who shall audit public records and perform related duties as prescribed by law or concurrent resolution.

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§3. Sessions of the legislature

Section 3. (a) ORGANIZATION SESSIONS. On the fourteenth day following each general election the legislature shall convene for the exclusive purpose of organization and selection of officers.

Constitution of Alaska, 1959

ARTICLE II

§12. Rules

Section 12. The houses of each legislature shall adopt uniform rules of procedure. Each house may choose its officers and employees. Each is the judge of the election and qualifications of its members and may expel a member with the concurrence of two-thirds of its members. Each shall keep a journal of its proceedings. A majority of the membership of each house constitutes a quorum to do business, but a smaller number may adjourn from day to day and may compel attendance of absent members. The legislature shall regulate lobbying.

RECENTLY PROPOSED CONSTITUTIONS

Constitution of Arkansas, 1970: Not adopted

ARTICLE III

§12. Presiding officers

Section 12. (c) The House of Representatives shall choose a Speaker and the Senate shall choose a President from their respective members.

MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on April 24, 1973

State Capitol, Room 205
Baton Rouge, Louisiana
Friday, May 4, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions.

<u>Present</u>	<u>Absent</u>
Sen. Cecil Blair	Rep. Edward LeBreton
Rep. Thomas Casey	
Calvin Fayard	
Frank Fulco	
David Ginn	
Patrick Juneau	
Sen. K. D. Kilpatrick	
Louis Landrum	
Gary O'Neill	

The meeting was called to order by Chairman Blair. Secretary O'Neill called the roll and a quorum being established, the meeting proceeded.

Secretary O'Neill read the agenda as set forth in the notice mailed by the secretary of the convention. Mr. Juneau moved to adopt the minutes of the April 20 and April 21, 1973 meetings. There were no objections to the motion. The committee decided to meet again on May 18, 1973 at 9:00 a.m., and on May 19, 1973 at 8:00 a.m.

The committee began consideration of provisions in Category II of the compilation. Article III, Section 34 was discussed first. This section dealt with the salaries of public officers. Mr. Fayard moved to adopt Section 34 leaving out the words "whether fixed in this Constitution or otherwise" and adding the word "elected" members. The motion was adopted on a vote of five for and three against. Those voting against the motion were Messrs. Casey, Ginn, and Kilpatrick. Mr. O'Neill offered an amendment to the proposal to provide that no change in salaries shall become effective during the term of the public officers then serving. The motion failed to pass on a vote of six against and two for. Messrs. O'Neill and Fulco voted for the motion.

The question of suits against the state was discussed next. Article III, Section 35 contains some material that

is totally obsolete. Mr. Juneau moved that the provision read as follows:

Provisions may be made by special or general law for bringing suit against the state as to all liabilities now existing or hereafter originating. After some discussion, Mr. Juneau amended his own motion to

read as follows:

Provision may be made by special or general law for bringing suit against the state, parishes, municipalities, political subdivisions, public boards, institutions, departments, commissions, districts, corporations, agencies and authorities, and other public or governmental bodies as to all liabilities now existing or hereafter originating.

Mr. O'Neill made a substitute motion to defer consideration of this section until after lunch. With five against and two for, the motion failed to pass. Messrs. Landrum and O'Neill voted for the motion. Mr. O'Neill offered a substitute motion as follows:

The state or any political subdivision thereof shall not be immune from suit. The legislature shall provide by law the procedure to be followed in filing suit.

The motion failed to pass with five against and two for. Messrs. Landrum and O'Neill voted for. Then Mr. Juneau again amended his own motion to read as follows:

The legislature may authorize suit to be filed against the state, its agencies, and political subdivisions, and shall provide a method of procedure and the effect of the judgments which may be rendered therein. Any law enacted for the purpose shall waive immunity from suit and from liability.

This motion passed with six for and one against. Rev. Landrum voted against the motion.

The committee next discussed Article XIX, Section 26 which withdraws the consent of the state to sue the special agencies listed in the section. Mr. O'Neill moved to delete this section. With no objections, the motion was adopted.

Mr. Juneau moved to delete Article III, Section 44. It was pointed out that the legislature has the power to do just as this section provides and so it is not necessary to have this in the constitution. With no objections, the motion was adopted.

Article IV, Section 1 dealing with appropriations was discussed. Mr. Fulco moved to accept the first sentence of the section. With no objections, the motion was adopted. After discussion as to how long a period of time money can

be appropriated, Mr. Casey moved to adopt the second sentence as it is now written. The motion was adopted with six for and one against. Mr. Fulco voted against.

Mrs. Duncan told the committee that Sections 1(a) and 2(a) of Article IV had been assigned to the Committee on Revenue, Finance, and Taxation for consideration. Mr. O'Neill moved that the committee send a memorandum to that committee expressing this committee's views on the section. There were no objections to this motion.

The committee decided to discuss the provisions in Article IV, Section 4 which dealt with corporations at the same time as it discusses Article XIII, on corporations.

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Mr. Juneau moved to delete Sections 2, 3, 5, and 8 of Article XIII from the constitution. The motion was adopted with Sen. Kilpatrick voting against it.

Article XIII, Section 7 dealing with perpetual franchise was discussed. There was some question as to whether or not you can have a corporation which has a perpetual franchise. Mr. Juneau moved to adopt Section 7. With no objections, the motion was adopted.

The provisions of Article IV, Section 4 relating to corporations was discussed next by the committee. Mr. Casey moved to adopt that language in Section 4 without a recommendation as to where it should be included in the new constitution. There were no objections to the motion. The provision would read as follows:

The legislature shall not pass any local or special law on the following specified subjects:

Creating corporations, or amending, renewing, extending, or explaining the charters thereof.

Granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

Mr. Juneau moved to delete the portion of Section 4 which reads as follows:

Legalizing the unauthorized or invalid acts of any officer, servant, or agent of the state, or of any parish or municipality thereof.

There being no objections, the motion was adopted.

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After some discussion, Mr. O'Neill moved to adopt Article IV, Section 6 with the recommendation that the research staff shorten it somewhat. Mrs. Duncan pointed out that the language used in Article XIX, Section 25 is similar. She suggested using the language in Article XIX, Section 25 to clarify Section 6, and to make both consistent. There were no objections to the motion to adopt Section 6, and to insert that language which was suggested by Mrs. Duncan, which is "on two separate days at least 30 days prior to introduction into the legislature of such a bill."

The committee next discussed Article IX, dealing with impeachment and removal from office. Mr. Juneau moved to adopt Sections 1 and 2, deleting the words "state and district officers" in Section 1, and inserting the words "public officials" in their place, and to delete "misdemeanors in office" and "favoritism" from Section 1 also, and with the word "felonies" to replace the phrase "high crimes." There was much concern over who were public officials. Mr. Juneau amended his own motion to leave in the words "state and district officials." Mr. Casey offered a substitute motion to insert the words "as may be provided by law" in place of the list of various crimes. The vote on the motion was four against and three for. Messrs. Fayard, Fulco, Juneau, and O'Neill voted against. Messrs. Casey, Ginn, and Landrum voted for. Mr. Juneau's motion was adopted without any objections.

Article IX, Section 3 dealing with removal on address by the legislature, was discussed by the committee. Mrs.

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Duncan pointed out that this type of provision is not in any other constitutions. There was discussion concerning the fact that the person who is addressed out of office does not have an opportunity to be heard. Mr. Fulco moved to adopt Section 3 inserting the wording "and after a public hearing by the committee of the whole in each house." Mr. Fayard offered a substitute motion to delete Section 3. The substitute motion was adopted on a vote of four for and two against. Messrs. Casey and O'Neill voted against. Mr. Casey moved to reconsider the deletion. There being no objections to the motion to reconsider, and after some discussion, Mr. Fayard's motion failed on a vote of five against and two for, with Mr. Landrum passing. Messrs. Casey and Juneau voted for. The question on Mr. Fulco's original motion was called. The motion passed on a vote of five for and three against. Messrs. Fayard, Juneau, and Landrum voted against.

Article IX, Sections 6 and 7 were discussed next by the committee. Mr. Casey moved to retain the concept of removal by suit, but leave the specifics to be as "provided by law." There being no objections, the motion was adopted.

Mr. Ginn moved to adopt Article IX, Section 9 with some rewording to be done by the staff. With no objections, the motion was adopted.

The committee began discussion on the articles in Category III. Article III, Section 7 was discussed first. Mr. Coco discussed the enacting clause provision. He pointed out that this same provision is contained in thirty-nine state constitutions. Mr. O'Neill moved to adopt Section 7 as it is.

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There being no objections, the motion was adopted. The staff was instructed to update the language.


Article III, Section 8.1 relating to germane amendments to bills and joint resolutions was discussed next by the


committee. Mrs. Duncan pointed out that she knew of no other state that had this provision. Some members felt that this provides excellent protection. Mr. O'Neill moved to retain Section 8.1, but asked the staff to shorten the language. Mr. Fulco offered a substitute motion to delete this section from the constitution. The vote on the substitute motion was five for and three against. Messrs. Kilpatrick, Landrum, and O'Neill voted against.

Mr. Ginn moved to adopt Article III, Section 11. Mr. O'Neill offered a substitute motion to delete that section, and place it in the statutes. The vote on Mr. O'Neill's substitute motion was six for and two against. Messrs. Ginn and Kilpatrick voted against. The motion was adopted.

Mr. Ginn moved to delete Article III, Section 15. Mrs. Duncan pointed out that most states do not have this provision in their constitutions. The motion was adopted with Sen. Kilpatrick voting against it.

Chairman Blair adjourned the meeting at 5:30 p.m.


Senator Cecil Blair, Chairman


Calvin Fayard, Vice Chairman

Gary O'Neill, Secretary

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MINUTES

Minutes of the meeting of the Committee on
Legislative Powers and Functions of the
Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on April 24, 1973

State Capitol, Room 205
Baton Rouge, Louisiana
Saturday, May 5, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on
Legislative Powers and Functions.

Present

Sen. Cecil Blair
Rep. Thomas Casey
Calvin Fayard
Frank Fulco
David Ginn
Patrick Juneau
Sen. K. D. Kilpatrick
Louis Landrum
Gary O'Neill

Absent

Rep. Edward LeBreton

The meeting was called to order by Chairman Blair. Secretary O'Neill called the roll and a quorum being established, the meeting proceeded.

The committee discussed Article III, Section 16. Mr. Fayard moved to retain Section 16 and refer it to the staff for revision as to possible conciseness and language change.

With no objections, the motion was adopted.

Mr. Fayard moved that Sections 17, 18, 21, 23, 24, 25, and 27 be considered by the staff and put into conciseness along the lines of the Illinois Constitution and the Model State Constitution. There being no objections, the motion was adopted.

Mr. Casey moved to combine and simplify Sections 22 and 25.1. After some discussion, Mr. Casey withdrew his motion, and Mr. Juneau offered a motion to retain the concept of the language in Section 25.1 and instruct the staff to include that concept when it drafts Section 25. With no objections, the motion was adopted.

The committee next discussed Section 22 dealing with revenue bills. Mr. Ginn moved to adopt Section 22 as it is. There being no objections, the motion was adopted.

After discussion on Section 26, Mr. Juneau moved to adopt a provision as follows:

When a bill is passed by the legislature and signed by the speaker of the House and president of the Senate, it shall within three days be delivered to the governor.

With no objections, the motion was adopted.

Mr. Juneau, in relation to Section 27, suggested using

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the language "legislature shall provide for the publication of all acts and no act shall become effective until publication." He asked the staff to come up with something in reference to length of time. Sen. Kilpatrick offered a motion to set the time at sixty days. Mrs. Duncan pointed out that the sixty-day provision refers to the point in time when the bill would become effective. That is, sixty days after the governor signs it. With no objections, the motion was adopted.

The committee discussed Section 28 next. Mrs. Duncan said that this could be handled by the statutes or rules of the legislature. Rev. Landrum moved to delete Section 28. With no objections, the motion was adopted.

Mr. Coco discussed questions relating to Section 31 dealing with the legislative bureau. Mr. Casey moved to delete Section 31 from the constitution. There being no objections, the motion was adopted.

Mr. Fayard moved that Article IV, Section 9 be drafted consistent with previously adopted provisions relating to singleness of object along the lines of Section 4.14 in the Model State Constitution. With no objections, the motion was adopted. Also, Mr. Juneau moved that the concept of Section 10 be maintained and also included in the redraft of Article III, Section 16.

The committee next discussed Article IV, Section 11. Mrs. Duncan talked about the pros and cons of the five-day provision in the first paragraph of this section. Mr. Casey moved to delete the first paragraph. The motion was adopted

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with Rev. Landrum voting against it. Mrs. Duncan pointed out that the second paragraph of Section 11 was placed in the constitution to be sure that the outgoing governor did not deplete the treasury. Mr. Juneau moved that this portion of the section be retained. Mr. Casey offered a substitute motion to delete this section. The substitute motion was adopted on a tie vote broken by the chairman. Those voting for the motion were Messrs. Casey, Ginn, Kilpatrick, and O'Neill. Those voting against the motion were Messrs. Fayard, Fulco, Juneau, and Landrum. Chairman Blair voted for the motion.

Mrs. Duncan told the committee that Article V, Section 15 is to be coordinated with the Executive Committee. Mr. Fayard moved that the staff be directed to present a recommendation to the Executive Committee that this section be rewritten along the lines of Section 4.16 of the Model State Constitution. With no objections, the motion was adopted.

Mr. Casey moved to adopt Article V, Section 17 dealing with acts not requiring the governor's signature. The motion was adopted with Mr. Fayard voting against the motion.

Mr. O'Neill moved to adopt Article XIX, Section 5 dealing with the suspension of laws, suggested that it be placed elsewhere, but that the same language be retained. With no objections, the motion was adopted.

Article XIX, Section 8 was next discussed by the committee. Mr. O'Neill moved to delete this section from the constitution and relegate it to other law. With no objections,

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the motion was adopted.

Concerning Article XIX, Section 10, the committee felt that the new constitution would not fix any salaries. Therefore, Mr. Ginn moved to delete this section from the constitution. There being no objections, the motion was adopted.

Mr. Ginn moved to delete Article XIX, Section 14 from the constitution. This section dealt with monopolies, trusts, combinations or conspiracies in restraint of trade. There were no objections to the motion to delete.

Chairman Blair introduced Mr. Frank Simoneaux, who spoke on conflicts of interest. Mr. Simoneaux was mainly concerned with dual office holding of legislators because he felt that it was rare that members of the executive or judicial branches serve in the legislative branch, but that it was common for members of the legislative branch to serve in the executive branch. He felt that our committee should take a stand on this. Mr. Simoneaux stated that there is a need to separate the legislative branch of government from the executive. He wants strict prohibition against dual office holding because: (1) it will encourage more people to hold office; (2) enhances acceptance of this document before the people. Mr. Simoneaux recommended adoption of the Florida provision on dual office holding with some modification.

With respect to conflict-of-interest, Mr. Simoneaux felt that the provision in the Montana Constitution was good. He felt that the disclosure provision should be rewritten

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or at least amended and strengthened. Mr. Simoneaux stated that a statutory approach to this with the legislature providing the particular detail is needed.

Mr. Coco discussed the problems relating to conflict-of-interest of state legislators. Mr. O'Neill moved to delete Section 29 from the constitution and adopt language similar to that in Section 4 of the Montana Constitution. The motion was adopted with Rev. Landrum voting against the motion.

Mr. Jay Hakes, a member of Common Cause, asked permission to speak to the committee. Common Cause supports the position that the present Section 29 is not good because legislators lose the right to vote, but suggests that the disclosure principle is important. They did not feel that the Montana provision is strong enough. Their proposal is similar to the Illinois provision. It is attached hereto and made a part of these minutes as Appendix A.

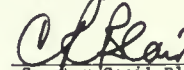
Mr. Ginn moved to delete Section 30. There was discussion as to whether or not forfeiture of office would be mandatory if this section was deleted. Mr. Ginn amended his own motion to delete Section 30 with the specifics of the forfeiture clause to be retained and placed in the impeachment and removal provisions. There being no objections, the motion was adopted.

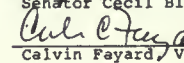
Article XIX, Section 15 of Category I was discussed next by the committee. It was pointed out that the present code

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of ethics covers this section. Mr. Ginn moved to delete this section from the constitution. With no objections, the motion was adopted.

Chairman Blair adjourned the meeting at 12:00 noon.



Senator Cecil Blair, Chairman


Calvin Fayard, Vice Chairman

Gary O'Neill, Secretary

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Natural Resources Committee Members Continued

H.C. Hardee, Jr. 405 Boatner St., Gueydan 70542 (Dis. 47)
Wellborn Jack 1625 Slettery Bldg., Shreveport 71101 (Dis. 3)
Rep. Conway LeBlau Box 266, Cameron 70631 (Dis. 36)
Thomas W. Leigh 1401 S. Grand St. Monroe 71201 (Dis. 17)
Mrs. Ruth L. Miller P.O. Drawer 1309 Jennings 70546 (App. Professionals)
Miss Lynn Parkine Hamburg 71339 (Dis. 28)
Rep. Richard S. Thompson Rt. 2 Box 22, Colfax 71417 (Dis. 25)
Thomas A. Velasquez 1772 N. Rood St., New Orleans 70119 (Dis. 97)
Mrs. George E. Warren 1836 Reynee St., New Orleans 70117 (Dis. 102)
Rep. Lantz Womack Rt. 1, Winnsboro 71293 (Dis. 20)
Chairman: Seo, Louis J. Lambert, Jr. Box 931 Gonzales 70737 (Dis. 39)
V-Chairman: Rep. Robert J. Munson Box 423 Cheneyville 71323 (App. Agriculture)
Secretary: Alvin D. Singletary 1410 Eighth St. Slidell 70458 (Dis. 76)

Legislative Powers and Functions Committee Members

Chairman: Senator Cecil Blair Box M Lecompte 71346 (Dis. 29)
V-Chairman: Calvin C. Fayard, Jr. Box 233 Livingston 70734 (Dis. 71)
Secretary: Gary O'Neill 7441 Prescott Road Baton Rouge 70812 (Dis. 64)
Dr. Robert Asseff Box 379 Mansfield 71032 (Dis. 7)
Rep. Thomas A. Casey 435 Audubon Blvd., New Orleans 70123 (Dis. 9D)
Frank Fulco 124 Atlantic Shreveport 71105 (Dis. 6)
P. David Ginn 818 S. Washington Bastrop 71220 (Dis. 14)
Patrick A. Juneau, Jr. Box 3527 Lafayette 70501 (Dis. 43)
Sen. K.D. Kilpatrick Rt. 4 Box 8 Ruston 71270 (Dis. 12)
Rev. Louis Landrum, Sr. 3024 Fourth St., New Orleans 70125 (Dis. 91)
Rep. Edward F. LeBreton, Jr. 219 Cerondelet St., New Orleans 71030 (Dis. 92)

State Government Reform

Members of the Legislative Powers and Functions Committee of the ConCon need to hear from you on the following. Testimony has already been made to the appropriate ConCon committee they now need to hear from our members across the state - this is vital if we are to succeed!

APPENDIX A

Open Meetings - That the formation of public policy is public business and may not be conducted in secret. Adequate notice of meeting schedules and the keeping of a journal of all business and voting which will be open to the public is required.

Conflict of Interest - That elective office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust. No person shall serve as a member or employee of a state regulatory commission that regulates any business with which he is associated. That each candidate for public office shall file a statement of economic interests at the office of the State Ethics Commission.

Lobbying Disclosure - To preserve and maintain the integrity of the legislative and administrative processes, it is necessary that the identity, expenditures, and activities of certain persons who engage in efforts to persuade members of the legislature or the executive branch to take specific actions, either by direct communication to such officials, or by solicitation of others to engage in such efforts, be publicly and regularly disclosed.

Right to Know - No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases specified by statute in which the demand of individual privacy clearly exceeds the merits of public disclosure. (Bill of Rights Com. only)

Right to Privacy - The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest. (Bill of Rights Committee only) Some of the Committee Members are as follows. (6 of 10)

Chairman: Rep. Alphonse Jackson, Jr. 108 Plans St. Shreveport 71103 (Dis. 2)
V-Chairman: Mrs. Judy Dunlap 3721 Floyd Dr. Baton Rouge 70808 (Public at Large)
V-Chairman: Anthony J. Guarisco, Jr. 3030 Carroll Dr. Morgan City 70360 (Dis. 51)
Ford Stinson Box 275 Benton, 71006 ** Rep. Wendy Jenkins Box 52889 Baton Rouge 70803
Rep. Shady Hall 1001 Trenton W. Monroe 71291

MINUTES

Minutes of the meeting of the Committee on
Legislative Powers and Functions of the
Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on May 10, 1973

State Capitol, Room 205
Baton Rouge, Louisiana
Friday, May 18, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on
Legislative Powers and Functions.

Present

Sen. Cecil Blair
Rep. Thomas Casey
Calvin Fayard
Frank Fulco
David Ginn
Patrick Juneau
Louis Landrum
Gary O'Neill

Absent

Sen. K. D. Kilpatrick
Rep. Edward LeBreton

The meeting was called to order by Chairman Blair.

Secretary O'Neill called the roll and a quorum being established, the meeting proceeded.

Secretary O'Neill read the agenda as set forth in the notice mailed by the secretary of the convention. Mr. Juneau moved to adopt the minutes of the May 4 and May 5, 1973, meetings. The motion was adopted unanimously.

The committee approved two memorandums which are attached hereto and made a part of these minutes as Appendix A and Appendix B.

The committee began its review of the First Preliminary Draft of the legislative article. The actions of the committee on each proposed section are as follows (reference to section, number, and page refers to the First Preliminary Draft which is attached hereto and made a part of these minutes as Appendix C):

Section 1. On motion by Mr. Fayard, adopted with an amendment to add a section (B) as contained on page 1, lines 22 and 23.

Section 2(A). On motion by Mr. Juneau, adopted as amended to provide: The legislature shall meet in regular annual sessions. In each year the regular sessions shall not extend for more than sixty legislative days within a one hundred twenty day period; however, upon the consent of a majority of the elected members of each house, the legislature may extend the regular session in any year for not to exceed fifteen legislative days within the one hundred twenty day period.

(B). The legislature may be convened at other times by the governor or, at the written request of a majority of the elected members of each house, by the presiding officers of both houses. No extraordinary session may extend for more than thirty legislative days.

Section 3. On motion by Mr. Ginn, adopted as is.

Section 4. On motion by Mr. Ginn, adopted with amendments on page 2, lines 22 and 25 replacing the words a seat with the word membership, and on page 3, line 4 inserting the phrase for terms in place of the phrase for a term.

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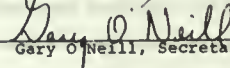
Section 5. On motion by Mr. O'Neill, adopted as amended to provide: The legislature, not later than the end of the year next succeeding the year in which the population of this state is reported to the president of the United States for each decennial federal census, shall apportion the representation in each house of the legislature on the basis of the total state population as shown by the census. The legislature shall establish a procedure of direct appellate review by the state supreme court of laws apportioning the legislature, and said court shall have the authority to apportion the legislature upon its failure to do so.

Section 6. On motion by Mr. Juneau, adopted with amendments to add on page 5, line 32 the language and expulsion shall create a vacancy in the office, and to add on page 5, section (B) a provision to provide that both houses have the power to hold in contempt in the event of noncompliance. The staff was instructed to reword the provision.

Section 7. On motion by Mr. Juneau, adopted with an amendment to delete treason and breach of the peace on page 6, line 32.

Section 8. On motion by Mr. O'Neill, adopted with an amendment to include in the section the language that elective office is a public trust, and any effort to realize personal gain through official conduct is a violation of that trust, and on page 7, line 1, to place a period after the word legislature, and give the remainder of the sentence on line 1 to the executive committee for consideration.

Chairman Blair adjourned the meeting at 4:35 p.m., to be reconvened at 8:00 a.m. the following morning.


Cecil Blair, Chairman

Calvin Fayard, Vice Chairman

Gary O'Neill, Secretary

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May 17, 1973

E. L. MENFV
Chairman
NORMA M. DUNCAN
Director of Research

MEMORANDUM:

TO: Honorable Robert H. Aertker, Chairman, Committee on Education and Welfare
FROM: Cecil R. Blair, Chairman, Legislative Powers and Functions
RE: Recommendations relative to "notice of intention"

The Committee on Legislative Powers and Functions wishes to inform you of action tentatively taken by it on Article IV, Section 6 of the present constitution. This section deals with the notice of intention required to introduce local and special laws. We have enclosed a copy of our proposed Section 14 of the legislative article for your use and information.

The committee feels that we should so inform you in light of the fact that your committee has been assigned primary responsibility for Article XIX, Section 25 of the present constitution which deals with the notice of intention to propose amendment or change in existing laws relating to any retirement system. It is our suggestion that the notice of intention clause be made consistent.

Respectfully submitted,

Cecil R. Blair
Chairman, Legislative Powers
and Functions

CRB/rf

Enclosure

(APPENDIX C?)

FIRST PRELIMINARY DRAFT

(For Consideration May 18, 19, 1973)

CC-

- 1 Constitutional Convention of Louisiana of 1973
- 2 COMMITTEE PROPOSAL NUMBER
- 3 Introduced by Cecil R. Blair on behalf of the Committee on Legislative
- 4 Powers and Functions
- 5 A PROPOSAL
- 6 Making provisions for the legislative branch of government and necessary
- 7 provisions with respect thereto.
- 8 PROPOSED SECTIONS:

- 9 Article _____, Section 1. Legislative Power of State; Vesting
- 10 Section 1. The legislative power of the state is vested in a
- 11 legislature consisting of a Senate and a House of Representatives.

13 Source: La. Const. Art. III, § 1 (1921).

15 Comment: Rewords without substantive change.

17 Section 2. Annual Sessions; Continuous Body

- 18 Section 2. (A) The legislature shall meet in regular sessions
- 19 annually as provided by law. It may be convened at other times by
- 20 the governor or, at the written request of a majority of the members
- 21 of each house, by the presiding officers of both houses.

- 22 (B) The legislature shall be a continuous body during the term
- 23 for which members of the legislature are elected.

25 Source: La. Const. Art. III, §§ 8, 8.2 (1921).

- 27 Comment: Requires the legislature to meet in regular annual session with
- 28 no restrictions as to fiscal matters in the odd-year sessions as is
- 29 now the case. The provision as worded allows the legislature to es-
- 30 tablish for itself the length of its sessions and the manner in which
- 31 it is to proceed.

- 32 Continues the existing authorization to the governor and the
- 33 legislature to call special sessions but reduces the vote necessary
- 34 for the legislature to call itself into session from two-thirds to a
- 35 majority of the elected members of each house.

- 1 Provides for a continuous legislative body. The term "contin-
- 2 uous body" does not mean that the legislature is in continuous session
- 3 but that the legislature has legal existence throughout each four-year
- 4 term and even when not actually meeting.

6 Section 3. Size

- 7 Section 3. The number of members of the legislature shall be pro-
- 8 vided by law, but the number of Senate members shall not exceed forty-
- 9 one and the number of House members shall not exceed one hundred
- 10 eleven.

12 Source: La. Const. Art. III, §§ 2, 3, 4, 5 (1921).

- 14 Comment: Establishes a maximum number of members for each house of the
- 15 legislature but permits the legislature to fix the exact size. The



APPENDIX B

June 1, 1973

E. L. MENFV
Chairman
NORMA M. DUNCAN
Director of Research

MEMORANDUM:

TO: Honorable B. B. Rayburn, Chairman of the Committee on Revenue, Finance and Taxation
FROM: Cecil R. Blair, Chairman, Legislative Powers and Functions
RE: Recommendations relative to present constitutional provisions - Board of Liquidation

The Committee on Legislative Powers and Functions wishes to express to you its views on the authority which should be granted to the Board of Liquidation. In view of the fact that the Coordinating Committee has assigned primary responsibility to your committee for consideration of Article IV, Sections 1(a) and 2(a) - Board of Liquidation - and since this committee had requested that it be assigned primary responsibility, we are forwarding our views to you.

It is the view of this committee that if the legislature has not appropriated money for an agency, board, or commission which it has created, then the Board of Liquidation should not have authority to appropriate out of its monies to fund the agency, board, or commission or its activities. The committee feels this way, because it views the primary purpose of the Board of Liquidation to be one of appropriating money in emergency situations when the legislature is not otherwise in session.

Respectfully submitted,

Cecil R. Blair
Chairman, Legislative Powers
and Functions

CRB/ma

16 maximum allowable number of senators is increased from 39 to 41 and
17 the maximum allowable number of representatives is increased from
18 105 to 111.

20 Section 4. Qualifications; Residence Requirements; Term; Vacancies

21 Section 4. (A) Every elector who at the time of his election has
22 reached the age of eighteen years shall be eligible to a seat in the
23 House of Representatives. Every elector who at the time of his
24 election has reached the age of twenty-one years shall be eligible
25 to a seat in the Senate.

26 (B) No person shall be eligible to membership in the legislature
27 unless at the time of his election he has been a resident of the state
28 for two years and actually domiciled within the legislative district
29 from which he seeks election for one year immediately preceding his
30 election. However, at the first election, only, following the re-
31 apportionment of the legislature, a person may qualify for election
32 from any district created in whole or in part from the district exist-
33 ing prior to reapportionment in which such person was domiciled, if
34 he was domiciled in that prior district for at least one year imme-
35 diately preceding his election. The seat of any member who changes

2

1 his domicile from the legislative district which he represents shall
2 be vacated thereby, any declaration of a retention of domicile to the
3 contrary notwithstanding.

4 (C) The members of the legislature shall be elected for a term of
5 four years.

6 (D) Any vacancy occurring in either house of the legislature shall
7 be filled only by election, as provided by law.

8 Source: La. Const. Art. III, §§ 8, 9 (1921).

9

10 Comment: Reduces age requirement for representatives from 21 to 18 years
11 and for senators, from 25 to 21 years.

12 Reduces residency in the state from 5 to 2 years and requires
13 one year of actual domicile in the district preceding election.
14 Present constitution requires one year residence, but makes special
15 provision for the first election following reapportionment. Provides
16 that change of domicile (rather than residence) vacates the seat.

17 Retains the four-year term of members.

18 Requires any vacancy in legislative office to be filled by
19 election as provided by law. Present provision requires the governor
20 to order elections to fill vacancies.

21

22 Section 5. Legislative Apportionment; Judicial Review of Apportionment

23 Section 5. (A) Legislative reapportionment. The legislature, at
24 a regular session held not later than the second year after the popu-
25 lation of this state is reported to the president of the United States
26 for each decennial federal census, shall apportion the representation
27 in each house of the legislature on the basis of the total state popu-
28 lation as shown by the census. Representation in each house shall
29 be equal and uniform. If no concurrent resolution is adopted for the
30 purpose by the end of said second year, the governor by proclamation
31 shall convene the legislature within thirty days in a special appor-

32 tionment session which shall not exceed thirty consecutive days,
33 during which no other business shall be transacted, and it shall be
34 the mandatory duty of the legislature to adopt a concurrent reso-
35 lution of apportionment.

3

1 (B) Failure of legislature to apportion; judicial reapportionment.
2 If a special apportionment session of the legislature is finally
3 adjourned without adopting a concurrent resolution of apportionment,
4 the attorney general, within five days, shall petition the state
5 supreme court to make the apportionment. No later than the sixtieth
6 day after the filing of the petition, the supreme court shall file
7 with the secretary of state an order making the apportionment.

8 (C) Judicial review of apportionment. Within fifteen days after
9 the adoption of the concurrent resolution of apportionment, the attor-
10 ney general shall petition the state supreme court for a declaratory
11 judgment determining the validity of the apportionment. The supreme
12 court, in accordance with its rules, shall permit adversary interests
13 to present their views and, within thirty days from the date on which
14 the petition was filed, shall enter its judgment.

15 (D) Effect of judgment in apportionment; extraordinary apportionment
16 session. A judgment of the state supreme court determining that the
17 apportionment is valid shall be binding. If the supreme court deter-
18 mines that the apportionment made by the legislature is invalid, the
19 governor by proclamation shall reconvene the legislature within five
20 days after such ruling in extraordinary apportionment session for not
21 to exceed fifteen days, and the legislature shall adopt a concurrent
22 resolution of apportionment conforming to the judgment of the supreme
23 court.

24 (E) Extraordinary apportionment session; review of apportionment.
25 Within fifteen days after final adjournment of an extraordinary appor-
26 tionment session, the attorney general shall file a petition in the
27 state supreme court setting forth the apportionment resolution adopted
28 by the legislature or, if none has been adopted, reporting that fact
29 to the court. Consideration of the validity of a concurrent resolu-
30 tion of apportionment shall be had as hereinabove provided for in the
31 case of a concurrent resolution adopted at a regular or special appor-
32 tionment session.

33 (F) Judicial reapportionment. If an extraordinary apportionment
34 session fails to adopt a resolution of apportionment or if the supreme
35 court determines that the apportionment made is invalid, the court

4

1 shall make the apportionment and, not later than sixty days after the
2 date on which the petition of the attorney general is received, shall
3 file with the secretary of state its order making the apportionment.

4 Source: La. Const. Art. III, §§ 2, 3, 4, 5, 6 (1921).

5 Comment: Replaces present provisions in the constitution relating to re-
6 apportionment of the House and Senate. Requires the legislature no

9 later than the second year following each decennial census to reapportion
10 the state on the basis of total state population. If the legislature
11 fails to reapportion during its regular session, the governor
12 is required to call a special 30-day session which has the duty to
13 reapportion. If the legislature in regular or special session adopts
14 a reapportionment plan, provision is made for the attorney general to
15 seek a review by the state supreme court. If the supreme court finds
16 that the reapportionment plan is invalid, provision is made for the
17 legislature to reconvene and attempt another apportionment. If in
18 regular or special session the legislature fails to reapportion or if
19 the court twice disapproves the reapportionment plans, provision is
20 made for the attorney general to petition the supreme court to reapportion
21 the state. The supreme court is required within sixty days
22 after receiving such petition to file with the secretary of state an
23 order reapportioning the legislature (Replaces Article III, §§ 2,3;
24 deletes Article III, 4, 5, & 6).

25
26 Section 6. Judging Qualifications and Election; Procedural Rules;
27 Discipline; Officers

28 Section 6. (A) Each house shall be the judge of the qualifications
29 and elections of its own members, determine the rules of its procedure,
30 and may punish its members for disorderly conduct or contempt and, with
31 the concurrence of two-thirds of its elected members, may expel a member.
32

33 (B) Each house shall have power to compel the attendance and testimony
34 of witnesses and the production of books and papers before such
35 house as a whole, before any committee thereof, or before joint committees
1 of the houses.

2 (C) Each house shall choose its own officers, including a permanent
3 presiding officer selected from its membership, who shall be
4 designated in the Senate as the president of the Senate and in the
5 house as the speaker of the House of Representatives.

6
7 Source: La. Const. Art. III, § 10; Art. V § 8 (1921).

8
9 Comment: Revises present provisions providing, for each house to be the
10 judge of the "qualifications, elections, and returns" of its own
11 members by deleting the word "returns". Retains provision relating
12 to compelling attendance and production of papers.

13 Removes the lieutenant governor as presiding officer of the
14 Senate and provides that each house is to choose its officers from
15 its members.

16 Deletes Article III, Section 11 of present constitution which
17 authorizes punishment of nonmembers for disrespect or disorderly or
18 contemptuous behavior by imprisonment for not over 10 days.

19
20 Section 7. Privileges and Immunities

21 Section 7. The members of the legislature shall in all cases,
22 except treason, felony, or breach of the peace, be privileged from
23 arrest during their attendance at the sessions and committee meetings
24 of their respective houses and in going to and returning from the

25 same. No member shall be questioned in any other place for any
26 speech or debate in either house.

27
28 Source: La. Const. Art. III, § 13 (1921).

29
30 Comment: Revises present provision by extending the privileges and immunities
31 granted legislators during sessions to include committee meetings.

32
33 Section 8. Conflict of Interest

34 Section 8. The legislature shall enact code of ethics prohibiting
35 conflict between a public duty and private interests of members of the

6

1 legislature and all state and local officers and employees.

2
3 Source: La. Const. Art. III, §§ 29, 30; Art. XIX, §§ 12, 13, 27 (1921).

4
5 Comment: This provision substantially replaces all provisions in the present
6 constitution relating to conflict of interest, governmental ethics,
7 and bribery. The committee may wish to consider whether it wishes
8 to retain in the legislative article of the new constitution the words
9 "and all state and local officers and employees." It is noted that
10 the Code of Ethics provisions now in the Constitution of 1921 (Art.
11 XIX, Sec. 27) will be handled by the convention's Committee on the
12 Executive Department.

13
14 Section 9. Quorum; Adjournment; Consent of Other House; Compulsory

15 Attendance

16 Section 9. Not less than a majority of the elected members of
17 each house shall form a quorum to transact business, but a smaller
18 number may adjourn from day to day and shall have power to compel
19 the attendance of absent members. Whenever the legislature is in
20 session neither house shall adjourn for more than three days or to
21 any other place than that in which it is then sitting, without the
22 consent of the other house.

23
24 Source: La. Const. Art. III, §§ 19, 20 (1921).

25
26 Comment: Retains present provision but clarifies the majority required
27 for a quorum by inserting the word "elected" before the word "mem-
28 bers."

29
30 Section 10. Legislative Auditor

31 Section 10. The legislature shall provide for a legislative
32 auditor who shall be responsible solely to the legislature and who
33 shall serve as fiscal advisor to the legislature. He shall perform
34 such duties and functions relating to the accounting of the fiscal
35 records of state and local governments as are provided by law.

7

MINUTES

Minutes of the meeting of the Committee on
Legislative Powers and Functions of the
Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on May 10, 1973

State Capitol, Room 205
Baton Rouge, Louisiana
Saturday, May 19, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on
Legislative Powers and Functions.

Present

Sen. Cecil Blair
Rep. Thomas Casey
Calvin Fayard
Frank Fulco
David Ginn
Patrick Juneau
Louis Landrum
Gary O'Neill

Absent

Sen. K. D. Kilpatrick
Rep. Edward LeBreton

The meeting was called to order by Chairman Blair.

Secretary O'Neill called the roll and a quorum being estab-
lished, the meeting proceeded.

The committee began its review of the First Preliminary
Draft of the legislative article. The actions of the commit-
tee on each proposed section are as follows (reference to
section, number, and page refers to the First Preliminary
Draft which is attached hereto and made a part of these
minutes as Appendix A):

Section 9. On motion by Mr. Juneau, adopted as
amended to include a provision providing that each
house shall keep a journal of its proceedings which
shall accurately reflect the proceedings of that
house including the entry of all record votes. A
record vote is a written vote by yeas and nays.

Section 10. On motion by Mr. Casey, amended with
an amendment to delete the sentence on page 8,
lines 1 and 2, and to add thereto that the legis-
lative auditor shall be elected by a majority vote
of the elected members of each house and shall be
subject to removal by a two-thirds vote of the
elected members of each house.

Section 11. On motion by Mr. O'Neill, adopted with
an amendment to delete the word elected on page 8,
line 15, and to insert the word electd members on
line 16 of page 8.

Section 12. On motion by Mr. Juneau, deleted.

Section 13. Passed consideration until the next
meeting.

Section 14. On motion by Mr. Juneau, amended to
delete the sentence on page 9, lines 31 and 32, and
to make line 33 the beginning of the next sentence
in the section.

Section 15. On motion by Mr. O'Neill, adopted as
is.

Section 16. On motion by Mr. Fayard, adopted as
is.

Section 17. On motion by Mr. Casey, adopted with
request for the staff to reword including in the
section a provision for the succession of public
officials.

2

Section 18. On motion by Mr. Juneau, adopted with
request for staff to reword to include a provision
to take care of persons in hiding.

Section 19. On motion by Mr. O'Neill, deleted.

Section 20. On motion by Mr. Juneau, adopted as
is.

Section 21. On motion by Mr. Ginn, adopted as is.

Section 22. On motion by Mr. Juneau, adopted as
is.

Section 23. On motion by Mr. O'Neill, adopted with
an amendment to insert the phrase to the constitution
after the word amendment on page 13, line 22, and to
delete the sentences on page 14, lines 4 and 5. The
staff was also instructed to add to the proposed
section the provision in the present Article III,
Section 8.1 relative to germane amendments.

Section 24. On motion by Mr. Juneau, adopted instruc-
ting the staff to add the provision in the present
Article IV, Section 11 relative to the vote require-
ment for appropriations made at a special session
held near the end of the outgoing governor's term.


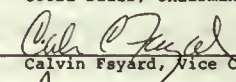
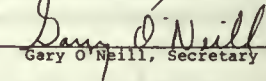
Section 25. On motion by Mr. Juneau, adopted as
is.

Section 26 and Section 27. On motion by Mr. Fayard,
requested staff to reword and possibly include a
provision for automatic veto sessions.

Section 28. On motion by Mr. Juneau, adopted as
is.

The committee decided to meet again on Friday, June 1,
1973, at 9:00 a.m., and on Saturday, June 2, 1973, at 8:00 a.m.

Chairman Blair adjourned the meeting at 11:45 a.m.


Cecil Blair, Chairman

Calvin Fayard, Vice Chairman

Gary O'Neill, Secretary

3

1 legislature and all state and local officers and employees.

2

3 Source: La. Const. Art. III, §§ 29, 30; Art. XIX, §§ 12, 13, 27 (1921).

4

5 Comment: This provision substantially replaces all provisions in the present

6 constitution relating to conflict of interest, governmental ethics,

7 and bribery. The committee may wish to consider whether it wishes

8 to retain in the legislative article of the new constitution the words

9 "and all state and local officers and employees." It is noted that

10 the Code of Ethics provisions now in the Constitution of 1921 (Art.

11 XIX, Sec. 27) will be handled by the convention's Committee on the

12 Executive Department.

13

14 Section 9. Quorum; Adjournment; Consent of Other House; Compulsory

15 Attendance

16 Section 9. Not less than a majority of the elected members of

17 each house shall form a quorum to transact business, but a smaller

18 number may adjourn from day to day and shall have power to compel

19 the attendance of absent members. Whenever the legislature is in

20 session neither house shall adjourn for more than three days or to

21 any other place than that in which it is then sitting, without the

22 consent of the other house.

23

24 Source: La. Const. Art. III, §§ 19, 20 (1921).

25

26 Comment: Retains present provision but clarifies the majority required

27 for a quorum by inserting the word "elected" before the word "mem-

28 bers."

29
30 Section 10. Legislative Auditor

31 Section 10. The legislature shall provide for a legislative
32 auditor who shall be responsible solely to the legislature and who
33 shall serve as fiscal advisor to the legislature. He shall perform
34 such duties and functions relating to the auditing of the fiscal
35 records of state and local governments as are provided by law.

7

1 The election, removal, and the filling of vacancies in the office of
2 the legislative auditor shall be provided by law.

4 Source: La. Const. Art. VI, § 26(2) (1921).

6 Comment: Rewords present provisions relating to the legislative auditor
7 to allow the legislature to establish laws for the election, removal,
8 and filling of vacancies of the legislative auditor. Deletes the
9 detail in the present constitution and relating to the existing
10 executive and legislative functions of the legislative auditor and
11 instead provides that the legislature is to spell out his duties
12 and functions.

14 Section 11. Salaries of Public Officers; Change

15 Section 11. Salaries of elected public officers may be changed
16 only by vote of two-thirds of the members of each house of the legis-
17 lature.

19 Source: La. Const. Art. III, § 34 (1921).

21 Comment: Rewords present provisions by limiting requirement for two-thirds
22 vote to change salaries to elected officials only and delete phrase
23 "whether fixed in this Constitution or otherwise."

24 The committee may wish to reconsider the use of the words "two-
25 thirds of the members" in light of the decision in Branton v. Parker,
26 1970, 233 So 2d 278 to the effect that two-thirds vote required by
27 this section means two-thirds of the quorum present and voting, but
28 this vote must equal a majority of elected members of each house.

30 Section 12. Merger or Consolidation of Similar Executive and Admin-
31 istrative Offices

32 Section 12. The legislature may provide for the merger or consoli-
33 dation into one or more offices of executive and administrative
34 offices, boards, or commissions, whether created in this constitution
35 or otherwise, whose duties or functions are of a similar nature or

11

1 character, and in the event of any such consolidation or merger may
2 reduce the number of officers at the end of their current terms.

4 Source: La. Const. Art. III, § 32 (1921).

6 Comment: Retains present provision but clarifies the authority of the
7 legislature by inserting the words "or more" after the word "one"
8 thus allowing merger or consolidation into one or more offices.

10 Section 13. Local or Special Laws; Prohibited Subjects

11 Section 13. The legislature shall not pass any local or special
12 law:

13 1) Creating corporations, or amending, renewing, extending, or
14 explaining the charters thereof;

15 2) Granting to any corporation, association, or individual any
16 special or exclusive right, privilege, or immunity.

18 Source: La. Const. Art. IV, § 4 (1921).

20 Comment: Retains concept of enumerating subjects which the legislature is
21 prohibited from passing local or special laws on. Rewords without
22 substantive change.

24 Section 14. Local or Special Laws; Notice of Intention; Publication

25 Section 14. No local or special law shall be introduced into the
26 legislature unless notice of the intention to introduce such law has
27 been published, without cost to the state, in the locality where the
28 matter or things to be affected are situated on two separate days the
29 last day of which is at least thirty days prior to the introduction
30 of such a bill into the legislature. The notice shall state the sub-
31 stance of the contemplated law. Evidence of publication of the notice
32 shall be exhibited in the legislature before the bill is passed, and
33 every such bill shall contain a recital that the notice has been given.

35 Source: La. Const. Art. IV, § 6 (1921).

9

1 Comment: Rewords the present provision relating to publication thirty
2 days prior to introduction but specifies the number of times notice
3 is to be published.

4 The committee may consider that the exhibit of evidence require-
5 ment in the last sentence serves little purpose in actuality.

7 Section 15. Corporations; Perpetual or Indefinite Duration; Disso-
8 lution; Perpetual Franchises or Privileges

9 Section 15. The legislature may authorize the organization of
10 corporations for perpetual or indefinite duration. However, every
11 corporation shall be subject to dissolution or forfeiture of its
12 charter or franchise, as may be provided by law. Neither the state
13 nor any political subdivision shall grant a perpetual franchise or
14 privilege to any person or corporation.

16 Source: La. Const. Art. XII, § 7 (1921).

18 Comment: Rewords without substantive change.

20 Section 16. Suits Against the State

21 Section 16. The legislature may authorize suit to be filed
22 against the state, its agencies, and political subdivisions, and
23 shall provide a method of procedure and the effect of the judgments
24 which may be rendered therein. Any law enacted for the purpose shall
25 waive immunity from suit and from liability.

27 Source: La. Const. Art III, § 35 (1921).

29 Comment: Rewords present provisions relating to authorization of suit
30 against the state, its agencies, and political subdivisions.
31 Deletes the great detail contained in the present constitution.
32 Also deletes the specific provision withdrawing the waiver of immu-
33 nity from suit of certain state and local boards and agencies (Art.
34 XIX, § 26).

1 The committee is apprised of the fact that the Committee on
2 Bill of Rights and Elections has tentatively adopted a provision
3 that "Neither the state nor any person shall be immune from suit."

5 Section 17. Continuity of Government

6 Section 17. The legislature shall provide for the orderly and
7 temporary continuity of government, in periods of emergency, until
8 such time as the normal processes of government can be reestablished
9 in accordance with the constitution and laws of the state.

11 Source: La. Const. Art. II, § 3 (1921).

13 Comment: This provision deletes the detail from the present constitution
14 and requires the legislature to provide for continuity of government
15 in periods of emergency within the limits set forth.

17 Section 18. State and District Officers; Impeachment; Conviction;
18 Effect

19 Section 18. (A) All state and district officers, whether elected
20 or appointed, shall be liable to impeachment for felonies, incom-
21 petency, corruption, extortion, oppression in office, gross misconduct,
22 or habitual drunkenness.

23 (B) All impeachments shall be by the House of Representatives
24 and shall be tried by the Senate. Two-thirds of the senators elec-
25 ted shall be necessary to convict. The Senate may sit for said
26 purpose whether or not the House is in session and may adjourn as it
27 thinks proper.

28 (C) Judgment of conviction in impeachment cases removes and debars
29 the accused from holding any office under the state, and disqualifies
30 any judge, district attorney, or attorney general from practicing law,
31 but neither conviction nor acquittal shall prevent prosecution and
32 punishment otherwise according to law. Any impeachment shall suspend
33 any officer except the governor or acting governor, and the office
34 shall be filled by the appointing power until decision of impeach-
35 ment.

1 Source: La. Const. Art. IX, §§ 1, 2 (1921).

3 Comment: Revises present provision relating to grounds for impeachment
4 by replacing words "high crimes" by the word "felonies" and deleting
5 "misdemeanors in office" and "favoritism."

6 It is noted that the provision in the present constitution and
7 this proposal does not apply to local officers.

9 Section 19. Removal on Address by Legislature

10 Section 19. For any reasonable cause, whether or not sufficient
11 for impeachment, upon the address of two-thirds of the members elec-
12 ted to each house of the legislature and after a public hearing by
13 the committee of the whole in each house, any officer except the
14 governor or acting governor may be removed from office. Any officer
15 so removed shall be ineligible to succeed himself. The cause or
16 causes for which such removal is made shall be stated at length in
17 the address.

19 Source: La. Const. Art. IX, § 3 (1921).

21 Comment: Revises present provision by requiring public hearings before
22 an official can be addressed out of office. Rewords other provisions
23 of existing section without substantive change.

25 Section 20. Removal by Suit; Officers Subject; Commencement of Suit

26 Section 20. The legislature may provide for the removal by suit
27 of any state, district, parochial, ward, or municipal officer except
28 the governor, lieutenant governor, and judges of the courts of record.

30 Source: La. Const. Art. IX, §§ 6, 7 (1921).

32 Comment: Replaces present provisions and provides that the legislature
33 may enact laws for removal of public officials by suit.

1 Section 21. Recall

2 Section 21. The legislature may provide for the recall of any
3 state, district, parochial, ward, or municipal officer except judges
4 of the courts of record. The sole issue at any recall election shall
5 be whether such officer shall be recalled.

7 Source: La. Const. Art. IX, § 9 (1921).

9 Comment: Rewords present provision relating to recall of public officials.

11 Section 22. Style of Laws; Enacting Clause

12 Section 22. The style of the laws of this state shall be: "Be
13 it enacted by the Legislature of Louisiana." It shall not be neces-
14 sary to repeat the enacting clause after the first section of an act.

16 Source: La. Const. Art. III, § 7 (1921).

17
18 Comment: Retains the present provision with only style changes.

19
20 Section 23. Passage of Bills

21 Section 23. (A) The legislature shall enact no law and propose
22 no amendment except by a bill. Every bill except the general appro-
23 priation bill and bills for the enactment, rearrangement, codifi-
24 cation, or revision of a system of laws shall be confined to one
25 object and shall contain a brief title indicative of its object.

26 (B) All bills enacting, amending, or reviving laws shall set forth
27 completely the provisions of the laws enacted, amended, or revived
28 and no system or code of laws shall be adopted by general reference
29 to such system or code of laws.

30 (C) Every bill shall be read at least by title on three separate
31 days in each house. No bill shall be considered for final passage
32 unless it has been reported on by a committee.

33 (D) No bill which has been rejected by either house may again be
34 proposed in the same house during the same session without the con-
35 sent of a majority of the members elected to the house which rejected it.

13

1 (E) No amendments to bills by one house shall be concurred in
2 by the other, nor shall any conference committee report be concurred
3 in by either house except by the same vote required for final passage
4 of the bill. The vote thereon is to be by record vote. A record
5 vote is a vote by yeas and nays entered on the journal.

6 (F) No bill shall become law without the concurrence of at least
7 a majority of the members elected to each house. Final passage of a
8 bill shall be by record vote. At the request of one-fifth of the
9 members elected to either house, a record vote shall be taken on any
10 other measure or for any other purpose.

11
12 Source: La. Const. Art. III, §§ 16, 17, 18, 21, 23, 24, 25, 25.1;
13 Art. IV, § 9 (1921).

14
15 Comment: Rewords present provisions requiring the enactment of laws only
16 by bill. Retains requirement that a bill be confined to one object
17 and have a title indicative of that object. Continues the exception
18 in the present provisions relating to the general appropriation bill
19 and bills to enact, rearrange, codify, or revise a system of laws.

20 Restates provisions relating to the prohibition against the
21 adoption of laws by reference.

22 Revises procedure for reading of bills in the legislature.
23 Requires reading of a bill at least by title on three separate days
24 in each house. Retains provision requiring bills to be reported on
25 before consideration for final passage but removes requirement for
26 reading in full.

27 Retains provision relating to reconsideration of rejected bills
28 without substantive change.

29 Restates present provisions relating to vote requirement for
30 concurrence in amendments of another house or conference committee
31 reports by specifying that concurrence in either case is to be by the
32 same vote required for final passage.

33 Rewords provisions relating to the vote required for passage of
34 a bill. Specifies that a bill must receive at least a majority of
35 votes in each house to pass. Retains provision relating to requirement

14

1 of one-fifth of elected members in either house for a record vote
2 on other than final passage. Defines record vote.

3
4 Section 24. Appropriations

5 Section 24. (A) No money shall be withdrawn from the state
6 treasury except through specific appropriation, and no appropriation
7 of money shall be made for longer than two years or for contingencies.

8 (B) All bills for raising revenue or appropriating money shall
9 originate in the House of Representatives, but the Senate may pro-
10 pose or concur in amendments, as in other bills.

11 (C) The general appropriation bill shall be itemized and shall
12 contain only appropriations for the ordinary operating expenses of
13 government, public charities, pensions, and the public debt and
14 interest thereon.

15 (D) All other bills for appropriating money shall be for a specific
16 purpose and for a specific amount.

17
18 Source: La. Const. Art. III, § 22; Art. IV, §§ 1, 9, 10 (1921).

19
20 Comment: Rewords present provisions relating to withdrawal of money from
21 the state treasury. Retains prohibitions against appropriations
22 being made for longer than two years or for contingencies.

23 Retains provision relating to origination of revenue or appro-
24 priation bills without substantive change.

25 Restates present provisions relating to the general appropriation
26 bill without substantive change.

27 Rewords present provisions relating to other appropriation bills
28 without substantive change.

29
30 Section 25. Signing of Bills; Delivery to Governor

31 Section 25. (A) A bill that has been passed by both houses of the
32 legislature shall be signed by the presiding officers of both
33 houses and shall be submitted to the governor for his signature or
34 other action. Delivery to the governor shall be within three days
35 after passage.

15

1 (B) No joint, concurrent, or other resolution shall require the
2 signature or other action of the governor.

3
4 Source: La. Const. Art. III, § 26; Art. V, § 17 (1921).

5
6 Comment: Revises present provisions relating to the signing of bills by
7 the presiding officers of both houses. No longer requires signing
8 in open session. Allows delivery of signed bills to governor up to
9 three days after passage instead of present requirement of delivery
10 on the same day.

Section 26. Signature of Governor on Bills; Veto

Section 26. If the governor does not sign or veto the bill within ten days after its delivery to him if the legislature is in session or within twenty days if the legislature is adjourned, it shall become law.

If the governor does not approve of a bill he may veto it and return it to the legislature, with his veto message, within twelve days after its delivery to him if the legislature is in session. If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his veto message to the legislature as provided by law. Any bill so returned by the governor and approved by two-thirds of the members elected shall become law.

Source: La. Const. Art. V, § 15 (1921).

Comment: Revises the present provision relating to the signing or vetoing of bills by the governor. Allows the governor 10 days if the legislature is in session to sign or veto a bill. Gives the governor an additional period of time in which to prepare and deliver his veto message, up to 2 days even on bills vetoed at the last minute. Allows the governor up to 20 days if the legislature has adjourned to sign or veto a bill. Allows the legislature to specify law and when the governor is to return bills vetoed when they are not in session. Returns provision relating to two-thirds vote

16

requirement to override the governor's veto.

Section 27. Effective Date of Laws

Section 27. Each law shall be published as provided by law and shall take effect on the sixtieth day following the signing of the bill by the governor. If he neither signs nor vetoes, the bill shall become effective on the sixtieth day after the last day on which he may sign or veto it. However, any bill may specify an earlier or later effective date.

Source: La. Const. Art. III, § 27 (1921).

Comment: Revises present provisions relating to effective date of laws. Changes effective date from the present twelve noon on the twentieth day after adjournment sine die. Provides for the general appropriation bill, emergency legislation, and other bills to have an earlier or later effective date.

Section 28. Suspension of Laws

Section 28. No power of suspending laws of this state shall be exercised except by the legislature and then only by the same vote required for final passage of the law proposed to be suspended. The vote thereon shall be by record vote.

Source: La. Const. Art. XIX, § 5 (1921).

Comment: Rewords present provision without substantive change.

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary of the Convention on May 24, 1973

State Capitol, Room 205

Baton Rouge, Louisiana

Friday, June 1, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions.

Present

Sen. Cecil Blair
Rep. Thomas Casey
Calvin Fayard
Frank Fulco
David Ginn
Patrick Juneau
Louis Landrum
Gary O'Neill

Absent

Sen. K. D. Kilpatrick
Rep. Edward LeBreton

The meeting was called to order by Chairman Blair. Secretary O'Neill called the roll and a quorum being established, the meeting proceeded.

Secretary O'Neill read the agenda as set forth in the notice mailed by the secretary of the convention. Mr. O'Neill moved to adopt the minutes of the May 18 and May 19, 1973, meetings. The motion was adopted unanimously.

The committee began its review of the Second Draft of the legislative article. The actions of the committee on each proposed section are as follows (reference to section, number, and page refers to the Second Draft which is attached hereto and made a part of these minutes as Appendix A):

Section 1. On page 1, line 31 inserted word manage in place of word govern.

Section 2. (A) Inserted the word and in the phrase one hundred and twenty day period on page 2, lines 8 and 12.

(B) On motion by Mr. O'Neill, inserted the phrase as the case may be, on page 2, line 17, after the word houses, and inserted the phrase object or objects in place of the phrase purpose or purposes on line 19.

On motion by Mr. Casey, on line 27, changed the phrase thirty legislative days to read thirty calendar days.

Section 3. On page 3, line 28, inserted the word and in the phrase one hundred and eleven

Section 4. (B) On motion by Mr. Casey, delete comma after the word legislature on page 4, line 19.

(D) On motion by Mr. Casey, deleted the phrase any vacancy occurring on page 4, line 31, and inserted in lieu thereof the phrase when a vacancy occurs, and inserted the phrase the remainder of the term after the word legislature, on line 32.

Section 5. (A) On motion by Mr. Fayard, deleted the last sentence of the paragraph contained on page 5, lines 23, 24, and 25, and inserted in lieu thereof: Within ten days after the legislature adopts an apportionment plan the presiding officers

of the two houses shall submit the plan to the supreme court for review.

(B) On motion by Mr. Fayard, deleted the phrase as required by Paragraph (A) of this section on page 5, lines 26 and 27, and inserted after the word therefor, the phrase by the attorney general within ten days after the close of the year above specified.

Section 6. (C) On page 6, line 31, requested the word house be capitalized.

Section 7. No change made.

Section 8. No change made.

Section 9. On motion by Mr. Juneau, added the word oral on page 8, line 20. The sentence would read: A record vote is a written, printed, or oral vote by yeas and nays.

Section 10. No change made.

Section 11. Deleted comment on page 9, lines 31, 32, and 33, and inserted in lieu thereof: Changes the vote requirement for the legislature from two-thirds of members to two-thirds of the elected members and deletes the phrase "whether fixed in this constitution or otherwise."

Section 12. On motion by Mr. O'Neill, deleted entire section and inserted in lieu thereof: The legislature shall pass no local or special law when a general law is or can be made applicable.

Section 13. No change made.

Section 14. No change made.

Section 15. No change made.

Section 16. No change made.

Section 17. (C) On page 13, line 31, deleted word purpose and inserted in lieu thereof, the word object.

(E) On motion by Mr. Fayard, added the words or considered on page 14, line 2, after the word proposed.

(F) On motion by Mr. Juneau, deleted the phrase is to be and inserted in lieu thereof the word shall.


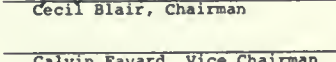
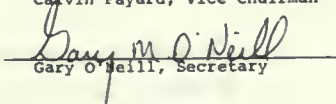
3

Section 18. No change made.

Section 19. No change made.

The committee asked the staff to rework the comments on each section.

Chairman Blair adjourned the meeting at 4:35 p.m. to be reconvened at 9:00 a.m. the following morning.


Cecil Blair, Chairman

Calvin Fayard, Vice Chairman

Gary O'Neill, Secretary

4

SECOND DRAFT

(For Consideration June 1, 2, 1973)

CC-

- 1 Constitutional Convention of Louisiana of 1973
- 2 COMMITTEE PROPOSAL NUMBER
- 3 Introduced by Cecil R. Blair on behalf of the Committee on
- 4 Legislative Powers and Functions.
- 5 A PROPOSAL
- 6 Making provisions for the legislative branch of government

7 and necessary provisions with respect thereto.

8 PROPOSED SECTIONS:

9 Article ____, Section 1. Legislative Power of State;
10 Vesting; Continuous Body

11 Section 1. (A) The legislative power of the state
12 is vested in a legislature consisting of a Senate and
13 a House of Representatives.

14 (B) The legislature shall be a continuous body
15 during the term for which its members are elected.

16
17 Source: La. Const. Art. III, §1 (1921).

18
19 Comment: Paragraph (A) rewords without substantive change
20 the present provisions. Paragraph (B) is new. Term
21 "continuous body" does not mean that the legislature is
22 in continuous session, but rather, that the legislature
23 is a legal entity for the whole of each term of its
24 members. Clarifies the authority of the legislature to
25 organize itself, select its officers and establish its
26 standing committees. Allows the legislature to operate
27 through its standing committees year round for the con-
28 tinuing study and analysis of needed or proposed legis-
29 lative action. Lessens the necessity for the appoint-
30 ment of interim committees to meet between sessions.
31 Permits the legislature to more readily govern its own
32 operations when not actually in session by allowing the
33 legislature, if it so chooses, to provide for the handling
34 of things, prefiling of bills, formal introduction of bills
35 prior to convening in regular session.

2

1 assignment of such bills to committees, and pre-session com-
2 mittee hearings and determination of reports.

3
4 Section 2. Annual Sessions; Extraordinary Sessions

5 Section 2. (A) The legislature shall meet in regular
6 annual sessions. In each year the regular session shall
7 not extend for more than sixty legislative days within
8 a one hundred twenty day period; however, upon the con-
9 sent of a majority of the elected members of each house,
10 the legislature may extend the regular session in any
11 year for not to exceed fifteen legislative days within
12 the one hundred twenty day period.

13 (B) The legislature may be convened at other times
14 by the governor or, at the written request of a majority
15 of the elected members of each house, by the presiding
16 officers of both houses. The governor or the presiding
17 officers of both houses shall issue a proclamation con-
18 vening the legislature into extraordinary session. The
19 proclamation shall state the purpose or purposes for
20 convening the legislature in extraordinary session, the
21 date on which the legislature is to be convened, and
22 the number of days for which the legislature is convened.

23 The power to legislate, under the penalty of nullity,
24 shall be limited to the objects specifically enumerated
25 in the proclamation convening the extraordinary session,
26 and the session shall be limited to the number of days
27 named therein, which shall never exceed thirty legislative
28 days.

29
30 Source: La. Const. Art. III, §8; Art. V, §14. (1921)

31
32 Comment: Requires the legislature to meet in regular annual
33 session with no restriction as to fiscal matters in the
34 odd-year sessions as is presently the case. Establishes
35 the length of the regular sessions at 60 legislative

3

1 days to be held within a 120 day period. Allows for
2 one extension of the regular session by the consent of
3 a majority of the elected members for up to 15 legis-
4 lative days within the same 120 day period. Term "legis-
5 lative days" is new and refers to the actual number of
6 days the legislature actually meets, sometimes referred
7 to as "working days."

8 Continues the existing authorization to the governor
9 and the legislature to call extraordinary sessions but
10 reduces the vote necessary for the legislature to call
11 itself into session from 2/3rds to a majority of the
12 elected members of each house. Changes the method of
13 the legislature calling itself into session by providing
14 that the presiding officers of both houses are to issue
15 the call or proclamation.

16 Rewords present provision without substantive change
17 relative to the issuance of the proclamation and the
18 enumeration of objects to be considered.

19 Retains present provision without substantive change
20 relative to the restriction on the power to legislate
21 and the limitation on the number of days of an extra-
22 ordinary session.

23 Section 3. Size

24 Section 3. The number of members of the legislature
25 shall be provided by law, but the number of Senate members
26 shall not exceed forty-one and the number of House members
27 shall not exceed one hundred eleven.

28
29
30 Source: La. Const. Art. III, §§2, 3, 4, 5 (1921).

31
32 Comment: Establishes a maximum number of members for each
33 house of the legislature but permits the legislature
34 to fix the exact size. The maximum allowable number of
35 senators is increased from 39 to 41 and the maximum

4

1 allowable number of representatives is increased from
2 105 to 111. Deletes those provisions of the constitu-
3 tion establishing specific geographic districts.

4 Section 4. Qualifications; Residence Requirements; Term, 5 Vacancies

6 Section 4. (A) Every elector who at the time of his
7 election has reached the age of eighteen years shall
8 be eligible to membership in the House of Representatives
9 Every elector who at the time of his election has reached
10 the age of twenty-one years shall be eligible to member-
11 ship in the Senate.

12
13 (B) No person shall be eligible to membership in
14 the legislature unless at the time of his election he
15 has been a resident of the state for two years and
16 actually domiciled within the legislative district from
17 which he seeks election for one year immediately pre-
18 ceding his election. However, at the first election
19 following the reapportionment of the legislature, only,
20 a person may qualify for election from any district
21 created in whole or in part from the district existing
22 prior to reapportionment in which such person was
23 domiciled, if he was domiciled in that prior district for
24 at least one year immediately preceding his election.
25 The seat of any member who changes his domicile from the
26 legislative district which he represents shall be
27 vacated thereby, any declaration of a retention of
28 domicile to the contrary notwithstanding.

29 (C) The members of the legislature shall be elected
30 for terms of four years each.

31 (D) Any vacancy occurring in either house of the
32 legislature shall be filled only by election, as provided
33 by law.

34
35 Source: La. Const. Art. III, §§8, 9 (1921).

5

1 Comment: Reduces age requirement for senators from 25 to
2 21 years. Specifies 18 years instead of "elector" for
3 age requirement for representatives.

4 Reduces residency in the state from 5 to 2 years
5 and requires one year of actual domicile in the district
6 preceding election. Present constitution requires 1-
7 year residence. Makes special provision for the first
8 election following reapportionment. Provides that change
9 of domicile (rather than residence) vacates the seat.

10 Retains the 4-year term of members.

11 Requires any vacancy in legislative office to be
12 filled only by election as provided by law. Present
13 provision requires the governor to order elections to

14 fill vacancies.

15
16 Section 5. Legislative Apportionment; Judicial Review;
17 Apportionment by Supreme Court

18 Section 5. (A) Not later than the end of the first
19 year following the year in which the population of this
20 state is reported to the president of the United States
21 for each decennial federal census, the legislature shall
22 apportion the representation in each house on the basis of
23 the total state population as shown by the census. The
24 legislature shall submit any apportionment plan adopted by
25 it to the state supreme court for review.

26 (B) If the legislature fails to apportion itself as
27 required by Paragraph (A) of this section, the supreme court
28 upon petition therefor, shall apportion each house thereof
29 as provided in Paragraph (A) of this section.

30 (C) The procedure for review and petition shall be
31 provided by law.

32 Source: La. Const. Art. III, §§2, 3, 4, 5, 6 (1921).

33 Comment: Replaces present provisions in the constitution
34 relating to reapportionment of the House and Senate.
35 Requires the legislature no later than the end of the

6

1 first year following the official promulgation of the
2 census to reapportion the state on the basis of total
3 state population. Deletes all provisions specifying the
4 geographical make-up of legislative districts.

5 Grants to the state supreme court direct appellate
6 review of legislative reapportionment as well as the
7 authority upon petition to apportion the legislature when
8 it fails to do so. The procedure for this review and
9 petition is to be established by the legislature.
10 (Replaces Article III, §§2,3; deletes Article III, §§4,
11 5, and 6 ;

12
13 Section 6. Judging Qualifications and Election; Pro-
14 cedural Rules; Discipline; Officers

15 Section 6. (A) Each house shall be the judge of the
16 qualifications and elections of its own members, deter-
17 mine the rules of its procedure, and may punish its
18 members for disorderly conduct or contempt and, with
19 the concurrence of two-thirds of its elected members, may
20 expel a member. Expulsion shall create a vacancy in the
21 office.

22 (B) Each house shall have power to compel the attend-
23 ance and testimony of witnesses and the production of
24 books and papers before such house as a whole, before
25 any committee thereof, or before joint committees of
26 the houses and shall have the power to punish for con-
27 tempt those in wilfull disobedience of its orders.

28 (C) Each house shall choose its own officers, includ-
29 ing a permanent presiding officer selected from its mem-

30 bership, who shall be designated in the Senate as the
31 president of the Senate and in the house as the speaker
32 of the House of Representatives.

33
34 Source: La. Const. Art. III, §§10, 11; Art. V, §§8, 17 (1921).

35

7

1 Comment: Revises present provisions providing for each
2 house to be the judge of the "qualifications, elections,
3 and returns" of its own members by deleting the word
4 "returns". Clarifies power to expel by stating that
5 expulsion creates a vacancy.

6 Retains provision relating to compelling attendance
7 and production of papers and authorizes legislature to
8 punish for contempt those who disobey its orders.

9 Removes the lieutenant governor as presiding officer
10 of the Senate and provides that each house is to choose
11 its officers from its members.

12
13 Section 7. Privileges and Immunities

14 Section 7. The members of the legislature shall in
15 all cases, except felony, be privileged from arrest
16 during their attendance at the sessions and committee
17 meetings of their respective houses and in going to and
18 returning from the same. No member shall be questioned
19 in any other place for any speech or debate in either
20 house.

21
22 Source: La. Const. Art. III, §13 (1921).

23
24 Comment: Revises present provision by extending the privileges
25 and immunities granted legislators during sessions to
26 include committee meetings. Extends privilege from
27 arrest in criminal matters to all offenses not felonies.

28
29 Section 8. Conflict of Interest

30 Section 8. Legislative office is a public trust and
31 every effort to realize personal gain through official
32 conduct is a violation of that trust. The legislature
33 shall enact a code of ethics prohibiting conflict be-
34 tween public duty and private interests of members of
35 the legislature.

8

1 Source: La. Const. Art. III, §§ 29, 30 (1921).

2

3 Comment: This provision substantially replaces those provisions
4 in the present constitution relating to legislative
5 conflict of interest. It deletes provisions requiring
6 individual legislators to disclose personal interests
7 in bills and refrain from voting as well as those pro-

8 visions relating to the sale or trade of votes.

9
10 Section 9. Quorum; Compulsory Attendance; Journal;
11 Adjournment; Consent of Other House

12 Section 9. (A) Not less than a majority of the
13 elected members of each house shall form a quorum to trans-
14 act business, but a smaller number may adjourn from day
15 to day and shall have power to compel the attendance of
16 absent members.

17 (B) Each house shall keep a journal of its proceed-
18 ings which shall be published from day to day and which
19 shall accurately reflect the proceedings of that house, in-
20 cluding all record votes. A record vote is a written or
21 printed vote by yeas and nays.

22 (C) Whenever the legislature is in session neither
23 house shall adjourn for more than three days or to any
24 other place than that in which it is then meeting, without
25 the consent of the other house.

26
27 Source: La. Const. Art. III, §§7, 15, 19, 20 (1921).

28
29 Comment: Clarifies present provision relative to quorum by
30 specifying that it is a majority of the elected members
31 of each house.

32 Retains requirement for each house to maintain a
33 journal and adds definition of record vote.

34 Rewords without substantive change provision re-
35 lating to adjournment of either house for more than

9

1 three days without consent of the other house.

2
3 Section 10. Legislative Auditor

4 Section 10. There shall be a legislative auditor
5 who shall be elected by the consent of a majority of the
6 elected members of each house and may be removed by the
7 consent of two-thirds of the elected members of each
8 house. The legislative auditor shall be responsible
9 solely to the legislature and shall serve as fiscal advisor
10 to the legislature. He shall perform such duties and
11 functions relating to the auditing of the fiscal records
12 of state and local governments as are provided by law.

13
14 Source: La. Const. Art. VI, §26(2) (1921).

15
16 Comment: Rewords present provisions relating to the legislative
17 auditor. Provides for his election by a simple majority
18 but requires a two-thirds majority to remove. Deletes the
19 detail in the present constitution relating to the exist-
20 ing executive and legislative functions of the legislative
21 auditor and instead provides that the legislature is to
22 spell out his duties and function.

23

24 Section 11. Salaries of Public Officers; Change

25 Section 11. Salaries of public officers may be
26 changed only by vote of two-thirds of the elected members
27 of each house of the legislature.

28
29 Source: La. Const. Art. III, §34 (1921).

30
31 Comment: Rewords present provisions without substantive change
32 but deletes phrase "whether fixed in this Constitution or
33 otherwise."

34
35 Section 12. Local or Special Laws; Prohibited Subjects

10

1 Section 12. The legislature shall not pass any local
2 or special law:

3 1) For the holding and conducting of elections, or
4 fixing or changing the place of voting.

5 2) Changing the names of persons; authorizing the
6 adoption or legitimation of children or the emancipation
7 of minors; affecting the estates of minors or persons
8 under disabilities; granting divorces; changing the law
9 of descent or succession; giving effect to informal or
10 invalid wills or deeds or to any illegal disposition of
11 property.

12 3) Concerning any civil or criminal actions, including
13 changing the venue in civil or criminal cases, or regulat-
14 ing the practice or jurisdiction of any court, or changing
15 the rules of evidence in any judicial proceeding or inquiry
16 before courts, or providing or changing methods for the
17 collection of debts or the enforcement of judgments, or
18 prescribing the effect of judicial sales.

19 4) Authorizing the laying out, opening, closing,
20 altering, or maintaining of roads, highways, streets, or
21 alleys; relating to ferries and bridges, or incorporating
22 bridge or ferry companies, except for the erection of
23 bridges crossing streams which form boundaries between
24 this and any other state; authorizing the constructing of
25 street passenger railroads in any incorporated town or
26 city.

27 5) Exempting property from taxation; extending the
28 time for the assessment or collection of taxes; for the
29 relief of any assessor or collector of taxes from the
30 performance of his official duties or of his sureties from
31 liability; remitting fines, penalties, and forfeitures; or
32 refunding moneys legally paid into the treasury.

33 6) Regulating labor, trade, manufacturing, or
34 agriculture; fixing the rate of interest.

35 7) Creating corporations, or amending, renewing,

extending, or explaining the charters thereof; granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

8) Regulating the management of public schools, the building or repairing of schoolhouses and the raising of money for such purposes, except as otherwise provided in this constitution.

Source: La. Const. Art. IV, §4 (1921).

Comment: Retains concept of enumerating subjects which the legislature is prohibited from passing local or special laws on. Present provision deletes only 1 paragraph relating to the legalization of unauthorized acts of public officers.

The committee is aware that although it has primary responsibility for Article IV, Section 4, it will coordinate the final draft with all other substantive committees having one or more paragraphs of this section assigned to it.

Section 13. Local or Special Laws; Notice of Intention;

Publication

Section 13. No local or special law shall be introduced into the legislature unless notice of the intention to introduce such law has been published, without cost to the state, in the locality where the matter or things to be affected are situated on two separate days, the last day of which is at least thirty days prior to the introduction of such a bill into the legislature. The notice shall state the substance of the contemplated law. Every such bill shall contain a recital that the notice has been given.

Source: La. Const. Art. IV, §6 (1921).

Comment: Rewords the present provision relating to publication thirty days prior to introduction but specifies the number of times notice is to be published. Deletes that part of provision requiring that evidence of publication be exhibited in the legislature.

Section 14. Suits Against the State

Section 14. The legislature may authorize suit to be filed against the state, its agencies, and political subdivisions, and shall provide a method of procedure and the effect of the judgments which may be rendered therein. Any law enacted for the purpose shall waive immunity from suit and from liability.

Source: La. Const. Art III, §35 (1921).

Comment: Rewords present provisions relating to authorization of suit against the state, its agencies, and political subdivisions.

Deletes the detail contained in the present constitution. Also deletes the specific provision withdrawing the waiver of immunity from suit of certain state and local board and agencies. (Art. XIX, §26)

Section 15. Continuity of Government

Section 15. The legislature shall provide for the orderly and temporary continuity of government, in periods of emergency, until such time as the normal processes of government can be reestablished in accordance with the constitution and laws of the state. It shall also provide for the prompt and temporary succession to the powers and duties of public offices, the incumbents of which may become unavailable to execute the functions of their offices.

Source: La. Const. Art. II, §3 (1921).

Comment: Revises the present provision by extending this power to all types of emergencies and not just to those caused by enemy attack. Requires the legislature to provide for continuity of government and succession to office in those emergencies.

Section 16. Style of Laws; Enacting Clause

Section 16. The style of the laws of this state shall be: "Be it enacted by the Legislature of Louisiana." It shall not be necessary to repeat the enacting clause after the first section of an act.

Source: La. Const. Art. III, §7 (1921).

Comment: Retains the present provision with only style changes.

Section 17. Passage of Bills

(A) The legislature shall enact no law and propose no amendment to the constitution except by a bill. Every bill, except the general appropriation bill and bills for the enactment, rearrangement, codification, or revision of a system of laws, shall be confined to one object and shall contain a brief title indicative of its object.

(B) All bills enacting, amending, or reviving laws shall set forth completely the provisions of the laws enacted, amended, or revived, and no system or code of laws shall be adopted by general reference to such system or code of laws.

(C) No bill shall be so amended in its passage through either house as to change its original purpose.

(D) Every bill shall be read at least by title on three separate days in each house. No bill shall be considered for final passage unless it has been reported on by a committee.

14

(E) No bill which has been rejected by either house may again be proposed in the same house during the same session without the consent of a majority of the members elected to the house which rejected it.

(F) No amendments to bills by one house shall be concurred in by the other, nor shall any conference committee report be concurred in by either house except by the same vote required for final passage of the bill. The vote thereon is to be by record vote.

(G) No bill shall become law without the concurrence of at least a majority of the members elected to each house. Final passage of a bill shall be by record vote. At the request of one-fifth of the members elected to either house, a record vote shall be taken on any other measure or for any other purpose.

Source: La. Const. Art. III, §§8.1, 16, 17, 18, 21, 23, 24, 25, 25.1; Art. IV, §9 (1921).

Comment: Rewords present provisions requiring the enactment of laws only by bill. Retains requirement that a bill be confined to one object and have a title indicative of that object. Continues the exception in the present provisions relating to the general appropriation bill and bills to enact, rearrange, codify, or revise a system of laws.

Restates provisions relating to the prohibition against the adoption of laws by reference.

Restates provision prohibiting amendments to bills which are not germane.

Revises procedure for reading of bills in the legislature. Requires reading of a bill at least by title on three separate days in each house. Retains provision requiring bills to be reported on before consideration for final passage but removes requirement for reading in full.

Retains provision relating to reconsideration of rejected bills without substantive change.

15

Restates present provisions relating to vote requirement for concurrence in amendments of another house or conference committee reports by specifying that concurrence in either case is to be by the same vote required for final passage.

Rewords provisions relating to the vote required for passage of a bill. Specifies that a bill must receive at

least a majority of votes in each house to pass. Retains provision relating to requirement of one-fifth of elected members in either house for a record vote on other than final passage.

Section 18. Appropriations

Section 18. (A) No money shall be withdrawn from the state treasury except through specific appropriation, and no appropriation of money shall be made for longer than two years or for contingencies.

(B) All bills for raising revenue or appropriating money shall originate in the House of Representatives, but the Senate may propose or concur in amendments, as in other bills.

(C) The general appropriation bill shall be itemized and shall contain only appropriations for the ordinary operating expenses of government, public charities, pensions, and the public debt and interest thereon.

(D) All other bills for appropriating money shall be for a specific purpose and for a specific amount.

(E) Any bill appropriating money in an extraordinary session of the legislature convened after final adjournment of the regular session held in the last year of the term of office of a governor, except for expenses of the legislature, shall require the approval of three-fourths of the elected members of each house.

Source: La. Const. Art. III, §22; Art. IV, §§1, 9, 10, 11 (1921).

16

Comment: Rewords present provisions relating to withdrawal of money from the state treasury. Retains prohibitions against appropriations being made for longer than two years or for contingencies.

Retains provision relating to origination of revenue or appropriation bills without substantive change.

Restates present provisions relating to the general appropriation bill without substantive change.

Rewords present provisions relating to other appropriation bills without substantive change.

Revises present provision relating to appropriation bills in extraordinary sessions held in the period 90 days before the primary election for governor and ending at the expiration of the governor's term to bring it into with the provision dealing with annual sessions since the 90-day period might overlap with the 120-day period if the date for the primary election were changed.

Section 19. Signing of Bills; Delivery to Governor

Section 19. (A) A bill that has been passed by both houses of the legislature shall be signed by the presiding officers of both houses and shall be submitted to the governor for his signature or other action. Delivery to the

24 governor shall be within three days after passage.
25 (B) No joint, concurrent, or other resolution shall
26 require the signature or other action of the governor.
27

28 Source: La. Const. Art. III, §26; Art. V, §17 (1921).

29
30 Comment: Revises present provisions relating to the signing
31 of bills by the presiding officers of both houses. No longer
32 requires signing in open session. Allows delivery of signed
33 bills to governor up to 3 days passage instead
34 of present requirement of delivery on the same day.
35

MINUTES

Minutes of the meeting of the Committee on
Legislative Powers and Functions of the
Constitutional Convention of 1973

Held pursuant to notice mailed by the Secretary
of the Convention on May 24, 1973
State Capitol, Room 205
Baton Rouge, Louisiana
Saturday, June 2, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on
Legislative Powers and Functions.

Present	Absent
Sen. Cecil Blair	Sen. K. D. Kilpatrick
Calvin Fayard	Rep. Edward LeBreton
Frank Fulco	Rep. Thomas Casey
David Ginn	
Patrick Juneau	
Louis Landrum	
Gary O'Neill	

The meeting was called to order by Chairman Blair.
Secretary O'Neill called the roll and a quorum being estab-
lished, the meeting proceeded.

The committee began its discussion of the Second Draft
beginning with Section 20 where the committee had left off
the day before. The actions of the committee on each pro-
posed section are as follows (reference to section, number,
and page refers to the Second Draft which is attached here-
to and made a part of these minutes as Appendix A):

Section 20. (B) On page 17, line 10 after the word
adjourned changed sentence to read: before the
governor vetoes or returns one or more bills, and
on line 13 added the word subsequently after the
word and.

(C) On page 17, changed to read as follows:
The presiding officers of both houses shall convene
the legislature in veto session upon the written
request therefor, by at least a majority of the
members elected to each house, on the thirty-fifth
day after final adjournment of each session, for
the sole purpose of reconsidering the bills vetoed
by the governor. The veto session shall not exceed
five consecutive days.

Section 21. On page 18, line 4, deleted phrase Each
law and inserted in lieu thereof the phrase All laws.

Section 22. No change made.

Section 23. No change made.

Section 24. (B) Inserted the word originated after
the word be on page 19, line 18.

(C) On line 27, inserted the word proceedings
after the word Impeachment, and on line 28 after
the word governor, inserted the language and the
office shall be filled by the governor until deci-
sion of the impeachment.

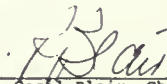
Section 25. On motion by Mr. Fayard, deleted the
word may on page 20, line 14, and inserted in lieu
thereof, the word shall.

Section 26. On motion by Mr. O'Neill, deleted the
word may on page 20, line 26, and inserted in lieu
thereof, the word shall.

Mr. Juneau moved that the committee send a copy of the
draft to all legislators and members of the convention. There
2

were no objections to the motion.

Chairman Blair adjourned the meeting at 11:00 a.m.


Cecil Blair, Chairman

Calvin Fayard, Vice Chairman


Gary O'Neill, Secretary

3

17

1 Section 20. Signature of Governor on Bills; Veto
2 Section 20. (A) A bill shall become law if the governor
3 does not sign or veto the bill within ten days after its
4 delivery to him if the legislature is in session or within
5 twenty days if the legislature is adjourned.
6 (B) If the governor does not approve of a bill he may
7 veto it and return it to the legislature, with his veto
8 message, within twelve days after its delivery to him if
9 the legislature is in session. If the legislature has ad-
10 journed when the governor vetoes a bill, he shall return
11 the bill, with his veto message, to the legislature as
12 provided by law. Any bill thus returned by the governor
13 and approved by two-thirds of the elected members of each
14 house shall become law.

15 (C) If any bill is vetoed after adjournment of the
16 legislature, the presiding officers of both houses shall
17 convene the legislature in veto session on the twenty-
18 fifth day after adjournment for the sole purpose of re-
19 considering the bill and the governor's veto message. The
20 veto session shall not exceed five consecutive days.

22 Source: La. Const. Art. V, §15 (1921).

24 Comment: Revises the present provision relating to the signing
25 or vetoing of bills by the governor. Allows the governor
26 10 days if the legislature is in session to sign or veto
27 a bill and up to 20 days if the legislature has adjourned.

28 Gives the governor an additional period of time in
29 which to prepare and deliver his veto message. Allows the
30 legislature to specify how the governor is to return
31 bills vetoed when they are not in session. Retains provision
32 relating to 2/3rds vote requirements to override the govern-
33 or's veto.

34 Revises present provisions on veto sessions and makes
35 them automatic when the governor vetoes even one bill after

18

1 the legislature has adjourned.

2
3 Section 21. Effective Date of Laws

4 Section 21. Each law shall be published as provided
5 by law and shall take effect on the sixtieth day after final
6 adjournment of the session in which they were enacted.
7 However, any bill may specify an earlier or later effective
8 date.

9
10 Source: La. Const. Art. III, §27 (1921).

11
12 Comment: Revises present provisions relating to effective date
13 of laws. Changes effective date from the present 20th day
14 after adjournment to the 60th day after adjournment.
15 Provides for the general appropriation bill, emergency
16 legislation, and other bills to have an earlier or later
17 effective date. Deletes those present provisions on cer-
18 tification of emergency legislation.

19
20 Section 22. Suspension of Laws

21 Section 22. No power of suspending laws of this state
22 shall be exercised except by the legislature and then only
23 by the same vote required for final passage of the law
24 proposed to be suspended. The vote thereon shall be by
25 record vote.

26
27 Source: La. Const. Art. XIX, §5 (1921).

28
29 Comment: Rewords present provision without substantive change.

30
31 Section 23. Corporations; Perpetual or Indefinite Duration;
32 Dissolution; Perpetual Franchises or Privileges

33 Section 23. The legislature may authorize the organiza-
34 tion of corporations for perpetual or indefinite duration.
35 However, every corporation shall be subject to dissolution

19

1 or forfeiture of its charter or franchise, as provided by
2 law. Neither the state nor any political subdivision
3 shall grant a perpetual franchise or privilege to any
4 person or corporation.

6 Source: La. Const. Art. XIII, §7 (1921).

7
8 Comment: Rewords without substantive change. Other sections in
9 Article XIII assigned to the committee (§§2, 3, 5, & 8)
10 have been deleted.

11
12 Section 24. State and District Officers; Impeachment; Con-
13 viction; Effect

14 Section 24. (A) All state and district officers, whether
15 elected or appointed, shall be liable to impeachment for
16 felonies, incompetency, corruption, extortion, oppression
17 in office, gross misconduct, or habitual drunkenness.

18 (B) All impeachments shall be by the House of Represent-
19 tatives and shall be tried by the Senate. Two-thirds of the
20 senators elected shall be necessary to convict. The Senate
21 may sit for said purpose whether or not the House is in
22 session and may adjourn as it thinks proper.

23 (C) Judgment of conviction in impeachment cases removes
24 and debars the accused from holding any office under the
25 state, but neither conviction nor acquittal shall prevent
26 prosecution and punishment otherwise according to law.
27 Impeachment shall suspend any officer except the governor
28 or acting governor, and the office shall be filled in the
29 manner provided for filling vacancies until decision of
30 impeachment.

31
32 Source: La. Const. Art. IX, §§1, 2 (1921).

33
34 Comment: Revises present provision relating to grounds for
35 impeachment by replacing words "high crimes" by the word

20

1 "felonies" and deleting "misdemeanors in office" and
2 "favoritism."

3 Deletes disqualification from practicing law if
4 judge, district attorney or attorney general is convicted.
5 Clarifies method of filling the office of a suspended
6 official.

7 The provision in the present constitution and this
8 proposed section do not apply to local officers.

9 Deletes the provision on removal by address of the
10 legislature.

11
12 Section 25. Removal by Suit; Officers Subject; Commencement
13 of Suit

14 Section 25. The legislature may provide for the re-
15 moval by suit of any state, district, parochial, ward, or
16 municipal officer except the governor, lieutenant governor,
17 and judges of the courts of record.

18
19 Source: La. Const. Art. IX, §§6, 7 (1921).

20

21 Comment: Replaces present provisions and provides that the
22 legislature may enact laws for removal of public officials
23 by suit. Removes the detail from the present constitution.

24
25 Section 26. Recall

26 Section 26. The legislature may provide for the recall
27 by election of any state, district, parochial, ward, or
28 municipal officer except judges of the courts of record.
29 The sole issue at any recall election shall be whether such
30 officer shall be recalled.

31
32 Source: La. Const. Art. IX, §9 (1921).

33
34 Comment: Rewords present provision relating to recall of public
35 officials.

MINUTES

Minutes of the meeting of the Committee on
Legislative Powers and Functions of the
Constitutional Convention of 1973

Held pursuant to notice by the Secretary in
accordance with Convention rules

State Capitol, Committee Room 3
Baton Rouge, Louisiana
Tuesday, July 10, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on
Legislative Powers and Functions

<u>Present</u>	<u>Absent</u>
Sen. Cecil Blair	Sen. K. D. Kilpatrick
Rep. Thomas Casey	Rep. Edward LeBreton
Calvin Fayard	
Frank Fulco	
David Ginn	
Patrick Juneau	
Louis Landrum	
Gary O'Neill	

The meeting was called to order by Chairman Blair.
Secretary O'Neill called the roll and a quorum being estab-
lished, the meeting proceeded.

Mr. Gordon Flory spoke to the committee regarding the
committee's proposal.

Mr. Mack Abraham also spoke to the committee on its pro-
posal. His report is attached hereto and made a part of these
minutes as Appendix A.

Mr. Max Tobias spoke to the committee and recommended
some stylistic changes.

The committee began its discussion of the legislative
article. The actions of the committee on the proposal are as
follows (reference to section, number, and page refers to the
printed copy of Committee Proposal No. 3 which is attached here-
to and made a part of these minutes as Appendix B):

Mr. Juneau submitted an amendment to Section 2 and moved
for its adoption. The amendment read "On page 1, at the end of
line 28, add the following:

'A legislative day is a calendar day on which either
house of the legislature is in session.' "

The amendment was adopted without objection.

Mr. Juneau submitted two amendments to Section 2 and moved
for their adoption. Amendment No. 1 read "On page 1, between
lines 28 and 29, insert the following:

'(B) The legislature shall convene on the second
Monday in April every year, except that in years
following the election of a governor of this
state, the legislature shall convene on the Sunday
preceding the second Monday in March.' "

Amendment No. 2 read "On page 1, at the beginning of line 29,
change '(B)' to '(C)' ". After some discussion, Mr. Juneau
withdrew his motion.

Mr. Casey submitted an amendment to Section 2 and moved
for its adoption. The amendment read "On page 1, line 22,
after the word 'sessions' delete the period '.' and add the
following:

2

'and the convening date shall be provided by law.' "

The amendment was rejected on a vote of five against and one
for. Messrs. Fayard, Fulco, Juneau, Landrum, and O'Neill
voted against. Mr. Casey voted for.

Mr. O'Neill submitted an amendment to Section 2 and moved
for its adoption. The amendment read "On page 1, line 22,
after the word 'sessions' delete the period '.' and add the
following:

'on the second Monday in March in each year.' "

The amendment was adopted on a vote of five for and one against.
Messrs. Fayard, Fulco, Juneau, O'Neill, and Blair voted for.
Mr. Casey voted against.

Mr. O'Neill submitted another amendment to Section 2(A)
and moved for its adoption. After discussion, Mr. O'Neill
withdrew the amendment. Mr. O'Neill then submitted a sub-
stitute amendment, which was rejected on a vote of four against
and two for. It is attached hereto and made a part of these minutes
as Appendix C. Messrs. Casey, Fayard, Juneau, and Landrum
voted against. Messrs. Fulco and O'Neill voted for.

Mr. Fayard submitted two amendments and moved for their
adoption. Amendment No. 1 read "On page 5, line 5, delete
'written, printed, or oral'. Amendment No. 2 read "On page 5,
line 6, after 'nays' and before the period '.' insert the
following:

'with said yeas and nays being published in the journal' "

Both amendments were adopted without objection.

3

Mr. Fayard submitted two more amendments and moved for
their adoption. Amendment read "On page 7, delete lines 7 and
8, and insert in lieu thereof:

'(C) No bill shall be amended in its passage through
either house so as to make a change not germane to the
bill as originally introduced.' "

Amendment No. 2 read "On page 8, line 23, after the word 'bill' and before the word 'shall' insert ', except joint resolutions,' Both amendments were adopted without objection.

Mr. O'Neill submitted two amendments and moved for their adoption. Mr. Fayard offered a motion to wait until the next day to take up the amendments. Mr. Fayard's motion carried without objection. Mr. O'Neill's amendments are attached hereto and made a part of these minutes as Appendix D.

Rev. Landrum submitted an amendment and moved for its adoption. The amendment read "On page 5, at the end of line 14, delete 'two-' and at the beginning of line 15, delete the word 'thirds' and insert in lieu thereof 'a majority' ". The amendment was rejected on a vote of four against and two for. Messrs. Casey, Fayard, Fulco, and O'Neill voted against. Messrs. Juneau and Landrum voted for.

Chairman Blair adjourned the meeting at 5:30 p.m.

Cecil R. Blair
Cecil R. Blair, Chairman
Calvin Fayard
Calvin Fayard, Vice Chairman
Gary O'Neill
Gary O'Neill, Secretary

4

MACK ABRAHAM

APPENDIX A

1620 LEGION STREET, LAKE CHARLES, LOUISIANA 70601
Phone - Residence 433-1970 - Business 477-5448 - 433-1809

July 7, 1973

From: MACK ABRAHAM, DELCORS, DIST. 35.

To: COMMITTEE ON LEGISLATIVE POWERS & FUNCTIONS

I would like to offer the following recommendations regarding Committee Proposal Number CC-1000 on the Legislative Branch of Government:

- 1. On page 2, line 26, after the word "sessions", add "as provided by law". Delete the words "In each year the regular" from line 26, and delete lines 27, 28, 29, 30, 31, 32, 33.

This would require the legislative to set up annual sessions by law, but would leave the legislative the flexibility of amending the law in the future if the sessions need to be revised. This also gives the legislative the flexibility of providing in the law for an organizational and orientation session of five or so days once

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every four years when they assume office. I think that the legislature recognizes that the people prefer fixed annual sessions, and I think that the members of the legislature themselves prefer this, but I suggest that this be done by statute rather than by constitution.

- 2. On page 2, section 2 (B) beginning with line 34, I respectfully call your attention to the provision in the Executive Branch proposal CC-1054, section 5 (L), page 13, line 12 which provides for the governor calling the legislature into extraordinary session. He made no mention of the presiding officer of the legislature because we knew that you all were providing for this. So I would recommend that the legislative article delete the provision for the governor. This is only a technical amendment, however. The important thing is

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that the two methods of calling the legislature into extraordinary session should be the same. I suggest that somehow or other our two committees get together on this.

- 3. On page 4, section 3, lines 29, through 34, I recommend that we fix the maximum number of legislators at the present level. Six more members in the house will not take care of the increase in population for more than 5 or 10 years, and the constitution might have better reception if we did not increase the number.
- 4. On page 5, line 23, delete the words "for one year immediately" and delete lines 24, 25, 26, 27, 28, 29, 30, and delete the word

"Section" from line 31. Because the legislative districts now cut across parish and ward lines, it would be unfair to penalize a person who might move across the street into another district by requiring him to wait a year

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before he could run for office. It would also cause less confusion during times of reorganization by simply having a person qualify in the district in which he lives, whether he be an incumbent or a new candidate.

5. On page 8, line 10, delete the word "present"; and change the word "selected" to "elected". Inclusion of the word "present" restricts the legislature in the event there needs to be a change in the presiding officer. Also, on line 11, delete the words "who shall be designated in the", and delete lines 12 and 13. This language is also too restrictive.

6. On page 9, section 8, line 13, we again have similar provisions in the legislative article and the executive article, one dealing with members of the legislature and the other with state employees and elected officials. Should not these be combined into one section and placed in the legislative article, since

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it empowers the legislature to enact and enforce a code of ethics?

7. On page 11, section 11, line 9, is another provision similar to one in the executive article, section 4, line 10 on page 5. These should be combined into one section and put in the legislative article, since the legislature

is the one empowered to fix salaries. I also am recommending to the executive article committee that Section 4 (B) lines 16, 17, 18 and 19 be deleted in its entirety.

8. On page 12, line 12, insert the words "in the official journals of the municipalities or parishes affected" after the word "state". This is more specific and in line with present publication of such notices.
9. On page 13, line 19, insert the words "Unless otherwise provided for by this constitution, by statute or by local ordinance" before the word "it".

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Phone - Residence 433-1970 - Business 477-5448 - 433-1809

This is simply to keep this section from being in conflict with provisions for succession that might already be provided for elsewhere.

10. On page 13, section 16, line 33, I recommend that this section be deleted in its entirety, since the statute should provide for the styling of laws.
11. On page 14, line 22, insert the words "and all amendments must be germane to the original subject of the bill". This is to make the language of section 17(c) more explicit.
12. On page 14, section 17 (E), line 27, I recommend that this subsection be deleted in its entirety, since this should be either statutory, or simply a house rule.
13. On page 15, line 4, delete the words "at the request of one-fifth of the members", and delete lines 5 and 6, since this should be either by statute or house rule.

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14. On page 16, line 29, add a new subsection 16(D) to read "Fiscal appropriations for the year

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shall not exceed annual revenue as anticipated by the governor in the operating budget". The proposal on the executive branch contains such a provision on page 7, lines 24 and 30, dealing with the operating budget. Also, on page 10, lines 23, 24, 25, and 26 of the executive article, the governor is required to veto items as necessary to bring the appropriations into balance with the anticipated revenue.

- 15. On page 18, section 20(A) and 20(B) we again have similar provisions in both the legislative and executive articles. Since this involves both branches of government, it should possibly be covered in both articles, but the provisions need to be consistent.
- 16. On page 20, lines 13, 14, 15, 16 and 17, would not it be more simple to say "The legislature shall enact laws for the creation and regulation of corporations"?

MACK ABRAHAM

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- 17. On page 20, section 24, line 27, we have similar provisions in the executive article on page 27, section 21. Since impeachments are within the power of the legislature, the mechanics should be in the legislative article. I recommend that the two committees get together on this and work out a provision.
- 18. On page 21, line 34 and 35, delete the words "officer except the governor, lieutenant governor" and insert the words "official except those elected statewide". I don't believe we should remove a statewide elected official such as the secretary of state or attorney general by suit.

When there is conflict or duplication between the legislative and executive articles, I will call this to the attention of the executive article committee when we meet tomorrow. Thank you. Respectfully submitted
Mack Abraham

- 19. On page 6; line 2, add the words "and shall assume office at 10:00 AM on the fourth Monday next following the election."

NOTES

Appendix B is omitted. See C.P. No.3, printed, Volume 4, supra.

MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with Convention rules

State Capitol, Committee Room 3
Baton Rouge, Louisiana
Wednesday, July 11, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions.

<u>Present</u>	<u>Absent</u>
Sen. Cecil Blair	None
Rep. Thomas Casey	
Calvin Fayard	
Frank Fulco	
David Ginn	
Patrick Juneau	
Sen. K. D. Kilpatrick	
Louis Landrum	
Rep. Edward LeBreton	
Gary O'Neill	

The meeting was called to order by Chairman Blair.

Secretary O'Neill called the roll and a quorum being established, the meeting proceeded.

Mr. Tom Stagg, chairman of the Committee on Executive Department, spoke to the committee regarding conflicts between the Executive Department Proposal and the Legislative Powers and Functions Committee Proposal. He sighted the following areas of conflict between the two proposals:

1. Signing of bills and vetoes
2. Extraordinary sessions
3. Impeachment
4. Legislative session

The committee began its discussion of the legislative article. The actions of the committee on the proposal are as follows (reference to section, number, and page refers to the

printed copy of Committee Proposal No. 3 which is attached hereto and made a part of these minutes as Appendix A):

Mr. Juneau submitted an amendment to Section 19(C) and moved for its adoption. The amendment read "On page 9, delete lines 4 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

'C. The legislature shall meet in veto session at the seat of government at twelve o'clock noon on the thirty-fifth day following the sine die adjournment of the most recent session of the legislature for the purpose of considering all measures vetoed by the governor, except that if such day falls on a Sunday the session shall convene at noon on the next succeeding Monday. No veto session shall exceed five days in length, and any veto session may be adjourned sine die prior to the end of the fifth day upon the vote of two-thirds of the elected members of each house.

No veto session shall be held if a simple majority of the elected members of each house indicate in writing that a veto session is not necessary. Such written notice must be received by the presiding officer of the respective houses at least two days prior to the day on which the veto session is to convene.' "

After discussion on the amendment, Mr. Juneau requested that the

2

staff reword the amendment. No further action was taken.

Rev. Landrum submitted two amendments and moved for their adoption. Amendment No. 1 amended Section 1 and read "On page 1, line 16, after the word 'Senate' delete the remainder of the line and delete line 17 in its entirety and insert in lieu thereof the following:

'composed of one senator elected from each senatorial district and a House of Representatives composed of one representative elected from each representative district.' "

Amendment No. 2 amended Section 5 and read "On page 3, line 16, after the words 'each house' and before the words 'into single-member districts' ". The motion was rejected on a vote of five against and one for. Messrs. Casey, Fayard, Juneau, O'Neill, and LeBreton voted against. Rev. Landrum voted for.

Rev. Landrum submitted another amendment and moved for its adoption. A copy of the amendment is attached hereto and made a part of these minutes as Appendix B. The amendment was rejected on a vote of five against and one for. Messrs. Casey, Fayard, Juneau, O'Neill, and Blair voted against. Rev. Landrum voted for.

Mr. O'Neill submitted an amendment and moved for its adoption. The amendment read "On page 7, at the end of line 11, delete the period '.' and add the following:

'after a public hearing has been held with due notice at which proponents and opponents of the measure have been allowed to express their views.' "

The motion was rejected on a vote of six against and one for. Messrs. Casey, Fayard, Fulco, Juneau, Landrum, and LeBreton voted against. Mr. O'Neill voted for.

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Mr. O'Neill submitted two amendments amending Section 2 and moved for their adoption. Amendment No. 1 read "On page 1, between lines 28 and 29, insert the following:

'(B) During regular annual sessions held in odd-numbered years, no measure of any kind shall be introduced or enacted to increase any existing or levy any new tax, fee or charge nor to authorize any political subdivision to increase any existing or levy any new tax, fee or charge.' "

Amendment No. 2 read "On page 1, at the beginning of line 29, change '(B)' to '(C)' ". The motion was rejected on a vote of five against and one for. Messrs. Casey, Fayard, Fulco, Juneau, and LeBreton voted against. Mr. O'Neill voted for.

The committee next heard from Mr. Chalin Perez, chairman of the Committee on Local and Parochial Government. Mr. Perez pointed out areas of conflict between the Local and Parochial Government Proposal and this committee's proposal. The conflicts were in the following areas:

1. Salaries of public officers
2. Local and special laws
3. Continuity of government
4. State and district officers
5. Removal by suit

Mr. Juneau submitted an amendment to Section 2 and moved for its adoption. The amendment read "On page 2, line 1, immediately after the word 'proclamation' and before the word 'convening' insert the following:

'at least five days prior to' "

The motion carried without objection.

Felicia Kahn, vice president of the Council for a New State Constitution, presented a report to the committee. The report is

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attached hereto and made a part of these minutes as Appendix C.

Mr. Juneau submitted six amendments and moved for their adoption. All six amendments were adopted without objection and are made a part of these minutes as Appendix D.

Mr. Louis Riecke spoke to the committee and submitted an amendment on the legislative session. His amendment is attached hereto and made a part of these minutes as Appendix E. No action was taken on the amendment.

Mr. O'Neill submitted an amendment and moved for its adoption. The motion carried without objection. The amendment read "On page 5, delete '.' on line 24, change the period '.' to a comma ',' and add the following:

'except as otherwise provided in this constitution.' "

Mr. Juneau submitted an amendment which read "On page 9, delete lines 4 through 10, both inclusive, in their entirety and insert in lieu thereof the following:

'C. The legislature shall meet in veto session at the seat of government at twelve o'clock noon on the thirty-fifth day following the sine die adjournment of the most recent session of the legislature for the purpose of considering all measures vetoed by the governor, except that if such day falls on a Sunday the session shall convene at noon on the next succeeding Monday. No veto session shall exceed five calendar days in length, and any veto session may be adjourned sine die prior to the end of the fifth day upon the vote of two-thirds of the elected members of each house.

No veto session shall be held if a simple majority of the elected members of either or both houses indicate in writing that a veto session is not necessary. Such written notice must be received by the presiding officer of the respective houses at least two days prior to the day on which the veto session is to convene.' "

The amendment was adopted on a vote of six for and two against. Messrs. Casey, Fayard, Fulco, Ginn, Juneau, and O'Neill voted

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for. Messrs. Kilpatrick and Landrum voted against.

Mr. Casey submitted an amendment to Section 2 which read "On page 1, at the end of line 29, strike out the word 'and' and strike out line 30 in its entirety and insert in lieu thereof the following:

'except by a bill, and shall propose no amendment to the constitution except by a joint resolution, which shall be processed as a bill.' "

The amendment was adopted without objection.

Mr. Casey moved for the adoption of an amendment to Section 24. The amendment read "On page 10, at the beginning of line 12, strike out the word 'proceedings' ". The amendment was adopted without objection.

Mr. Casey submitted an amendment adding a section on removal on address by the legislature. The amendment is attached hereto and made a part of these minutes as Appendix F. The amendment was adopted on a vote of five for and four against. Messrs. Casey, Fulco, Ginn, Kilpatrick, and LeBreton voted for. Messrs. Fayard, Juneau, Landrum, and O'Neill voted against.

Mr. Fayard submitted an amendment to Section 2. After discussion, Mr. Fayard asked that the staff reword the amendment before the committee voted on it. The amendment is attached hereto and made a part of these minutes as Appendix G.

Mr. Juneau submitted an amendment to Section 12 and moved for its adoption. After discussion, Mr. Juneau withdrew his motion. The amendment is attached hereto and made a part of these minutes as Appendix H.

Mr. Fayard submitted an amendment to Section 2 which the

staff had reworded for him. The amendment is attached hereto and made a part of these minutes as Appendix I. On a vote of eight for and one against the amendment was adopted. Messrs. Fayard, Fulco, Ginn, Juneau, Kilpatrick, Landrum, LeBreton, and O'Neill voted for. Mr. Casey voted against.

Mr. Fayard submitted two amendments and moved for their adoption. Amendment No. 1 read "On page 2, line 17, after the word 'vacancies' add the following ';Salary'. Amendment No. 2 read "On page 3, between lines 9 and 10, insert the following:

'(E). The members of the legislature shall be compensated by an annual salary which shall be fixed by a majority vote of the elected members of each house. The amount fixed may be changed only by two-thirds of the elected members of each house of the legislature, to be effective at a term other than for the members presently serving.' "

Both amendments were adopted on a vote of five for and four against. Messrs. Fayard, Fulco, Juneau, and Landrum voted for. Messrs. Casey, Ginn, Kilpatrick, and LeBreton voted against.

Mr. Kilpatrick submitted an amendment to Section 2 and moved for its adoption. The amendment read "On page 1, line 30, immediately after the words and punctuation 'Governor or,' strike out the word 'at' and insert in lieu thereof 'shall be convened upon' ". The amendment was adopted without objection.

Mr. O'Neill submitted four amendments and moved for their adoption. All four amendments were adopted without objection and are made a part of these minutes as Appendix J.

Sen. Kilpatrick submitted an amendment to Section 6 and moved for its adoption. The amendment read "On page 4, at the end of line 14, add the following:

'The clerical officers of the two houses shall be the clerk of the House of Representatives and the secretary of the Senate, each of whom shall have the power to administer oaths.' "

The amendment was adopted without objection.

Chairman Blair adjourned the meeting at 7:00 p.m. until 1:00 p.m. the following day.

Approved:
[Signature] Chairman
[Signature] Vice Chairman
[Signature] Secretary

NOTES
Appendix A is omitted. See C.P. No. 3, printed, Volume 4, supra.

COMMITTEE AMENDMENT

Amendment 8 proposed by Committee on Legislative Powers and Functions
to Committee Proposal No. 3
by Delegate Blair, et al.

Amend printed Proposal as follows:

AMENDMENT NO. 1

On page 6, delete lines 7 through 13, both inclusive, in their entirety

AMENDMENT NO. 2

On page 6, at the beginning of line 14, change "Section 15." to "Section 14."

AMENDMENT NO. 3

On page 6, at the beginning of line 15, change "Section 15." to "Section 14."

AMENDMENT NO. 4

On page 6, at the beginning of line 23, change "Section 16." to "Section 15."

AMENDMENT NO. 5

On page 6, at the beginning of line 24, change "Section 16." to "Section 15."

AMENDMENT NO. 6

On page 6, at the beginning of line 28, change "Section 17." to "Section 16."

AMENDMENT NO. 7

On page 6, at the beginning of line 29, change "Section 17." to "Section 16."

AMENDMENT NO. 8

On page 7, at the beginning of line 26, change "Section 18." to "Section 17."

AMENDMENT NO. 9

On page 7, at the beginning of line 27, change "Section 18." to "Section 17."

AMENDMENT NO. 10

On page 8, at the beginning of line 14, change "Section 19." to "Section 18."

AMENDMENT NO. 11

On page 8, at the beginning of line 15, change "Section 19." to "Section 18."

AMENDMENT NO. 12

On page 8, at the beginning of line 22, change "Section 20." to "Section 19."

AMENDMENT NO. 13

On page 8, at the beginning of line 23, change "Section 20." to "Section 19."

AMENDMENT NO. 14

On page 9, at the beginning of line 11, change "Section 21." to "Section 20."

AMENDMENT NO. 15

On page 9, at the beginning of line 12, change "Section 21." to "Section 20."

AMENDMENT NO. 16

On page 9, at the beginning of line 16, change "Section 22." to "Section 21."

AMENDMENT NO. 17

On page 9, at the beginning of line 17, change "Section 22." to "Section 21."

AMENDMENT NO. 18

On page 9, at the beginning of line 21, change "Section 23." to "Section 22."

AMENDMENT NO. 19

On page 9, at the beginning of line 23, change "Section 23." to "Section 22."

AMENDMENT NO. 20

On page 9, at the beginning of line 29, change "Section 24." to "Section 23."

AMENDMENT NO. 21

On page 9, at the beginning of line 31, change "Section 24." to "Section 23."

AMENDMENT NO. 22

On page 10, at the beginning of line 15, change "Section 25." to "Section 24."

AMENDMENT NO. 23

On page 10, at the beginning of line 17, change "Section 25." to "Section 24."

AMENDMENT NO. 24

On page 10, at the beginning of line 21, change "Section 26." to "Section 25."

AMENDMENT NO. 25

On page 10, at the beginning of line 22, change "Section 26." to "Section 25."

APPENDIX C



COUNCIL FOR A NEW STATE CONSTITUTION

6641 BELLAIRE DRIVE
NEW ORLEANS, LA. 70112

July 11, 1973

STATEMENT TO THE LEGISLATIVE POWERS AND FUNCTIONS COMMITTEE
OF CC-73

I am Felicia Kahn, vice-president of the Council for a New State Constitution. Our membership consists of 32 organizations, representing over 2000 people in the Greater N.O. area. Resolutions of support positions are adopted when at least 2/3 of the members present and voting favor a position.

We want to compliment you for an excellent committee report representing, we know, many hours of deliberation. In particular, the CNSC has passed resolutions supporting the following items that appear in your proposal: annual general sessions; candidates for the legislature who should reside in the district from which they run and who should have 4 year terms; legislators having the usual immunities and whose salaries are not in the constitution; a president pro-tem who presides in the Senate; a legislative auditor who is appointed by the legislature and serves at its pleasure; the filling of vacancies in the legislature by election; a transcript of daily business for public information; bills of a single subject and submitted in full text; a plan for reapportionment to be proposed after the decennial census report.

In spite of the excellence of your proposal, the CNSC also supports the following positions and asks that you consider them: 1) SINGLE MEMBER DISTRICTS. This concept is proposed in the Model State Constitution. Each citizen is then better able to know his legislator in a small district, and each legislator also can better know his constituency. *Such a clause could be inserted on p. 37 line 17 of your draft. It would equally divided into many districts. There shall be members.* 2) A section dealing in more detail with CONFLICT OF INTEREST. We suggest wording similar to the following: "No person shall serve as a member or employee of state regulatory commissions that regulate any business with which he is associated. Each duly elected state legislator shall file a statement of economic interest at the office of the state ethics commission." This phrasing could be added to section 8 of your proposal.

The organizations in the CNSC supporting the above positions are: Independent Women's Organization, League of Women Voters of Jefferson Parish, New Orleans Coalition, NAACP Youth Council, ACLU, Council for Democratic Action, New Orleans Jaycees, Louisiana League of Good Government, National Organization of Women, La. Chapter, National Organization of Social Workers, LSUNO Young Democrats, Alliance for Good Government, Common Cause, Hollygrove Improvement Assoc., Broadmore Improvement Assoc., Human Relations Committee of New Orleans, Metropolitan New Orleans Council on the Aging, and the Community Relations Council.

We thank you for allowing us to appear here today.

APPENDIX D

COMMITTEE AMENDMENT

CC 7323

Amendment 5 proposed by Committee on Legislative Powers and Functions
to Committee Proposal No. 3
(Delegate or Committee) (Proposal or Resolution)
by Delegate Blair, et al.

Amend printed Proposal as follows:
(Original, printed, engrossed) (Proposal or Resolution)

AMENDMENT NO. 1

On page 5, delete line 24 in its entirety and add in lieu thereof the following:

"the legislature, provided the salaries of public officers shall not be reduced during the term for which they are elected or appointed."

AMENDMENT NO. 2

On page 6, line 16, after the words "continuity of" and before the word "government" add the word "state"

AMENDMENT NO. 3

On page 10, delete lines 13 and 14, both inclusive, in their entirety and insert in lieu thereof the following:

"acting governor, and the appointing authority shall make an interim appointment until decision of impeachment."

AMENDMENT NO. 4

On page 10, delete line 17 in its entirety and insert in lieu thereof the following:

"Section 25. For the causes enumerated in Paragraph (A) of Section 24 of this Article, the legislature shall by general law provide for the removal"

AMENDMENT NO. 5

On page 10, line 22, after the word "provide" and before the word "for" add the words "by general law"

AMENDMENT NO. 6

On page 10, delete lines 3 and 4, both inclusive, in their entirety and insert in lieu thereof the following:

"(B) All impeachments shall be by the House of Representatives and shall require the favorable vote of at least a majority of the elected members thereof. Impeachments shall be tried by the Senate. Two-thirds"

APPENDIX E

COMMITTEE AMENDMENT

CC 7323

Amendment proposed by Committee on Legislative Powers and Functions
to Committee Proposal No. 3
(Delegate or Committee) (Proposal or Resolution)
by Delegate Blair, et al.
Amend printed Proposal as follows:
(original, printed, engrossed) (Proposal or Resolution)

AMENDMENT NO. 1

On page 1, delete lines 21 through 28, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 2. (A) The legislature shall meet in regular annual sessions. In each year the regular session shall extend for sixty calendar days, the first fifteen days of which shall be for the purposes of organization and introduction of bills. No bills shall be introduced in either house of the legislature after the fifteenth calendar day, except by consent of three-fourths of the members elected to each house.
On the fifteenth day of each such session, the legislature shall recess for a period of thirty calendar days, and shall reconvene at noon on the thirty-first day next following the day on which it recessed."

APPENDIX F

COMMITTEE AMENDMENT

Amendment s proposed by Committee on Legislative Powers and Functions
to Committee Proposal/Resolution No. 3
by Delegate Blair, et al.
Amend printed Proposal/Resolution as follows:
(original, printed, engrossed)

AMENDMENT NO. 1

On page 10, between lines 14 and 15, add the following new section:

"Section 25. Removal on Address by Legislature
Section 25. For any reasonable cause, whether or not sufficient for impeachment, upon the address of two-thirds of the members elected to each house of the legislature and after a public hearing by the committee of the whole in each house, any officer except the governor or acting governor may be removed from office. Any officer so removed shall be ineligible to succeed himself. The cause or causes for which such removal is made shall be stated at length in the address."

AMENDMENT NO. 2

On page 10, at the beginning of line 15, change "Section 25." to "Section 26."

AMENDMENT NO. 3

On page 10, at the beginning of line 17, change "Section 25." to "Section 26."

AMENDMENT NO. 4

On page 10, at the beginning of line 21, change "Section 26." to "Section 27."

AMENDMENT NO. 5

On page 10, at the beginning of line 22, change "Section 26." to "Section 27."

APPENDIX G

COMMITTEE AMENDMENT

CC 7323

Amendment proposed by Committee on Legislative Powers and Functions
to Committee Proposal No. 3
(Delegate or Committee) (Proposal or Resolution)
by Delegate Blair, et al.
Amend printed proposal as follows:
(original, printed, engrossed) (Proposal or Resolution)

AMENDMENT NO. 1

On page 1, delete lines 21 through 28 in their entirety and insert in lieu thereof the following:

"Section 2. (A) The legislature shall meet in regular annual sessions. In each year the regular session shall extend for not more than fifty-five legislative days. The legislature shall convene on the fourth Monday in April and shall remain in session for not in excess of five calendar days during which period no committee shall report nor shall either house adopt any bill or resolution which would have the effect of law. Not later than the end of the fifth calendar day the legislators shall adjourn and shall reconvene thereafter on the second Monday in May and shall remain in session for not more than fifty legislative days, which shall not extend in any year beyond sixty calendar days following the second Monday in May. During the interim between adjournment and reconvention, the committees of the houses may meet and hold hearing but shall take no vote with respect to any bill or resolution referred thereto. No new matter intended to have the effect of law shall be introduced during such regular session after midnight of the third Monday in May of each year.
A legislative day is a calendar day on which either house of the legislature shall convene in session."

APPENDIX H

COMMITTEE AMENDMENT

CC 7323

Amendment proposed by Committee on Legislative Powers and Functions
to Committee Proposal No. 3
(Delegate or Committee) (Proposal or Resolution)
by Delegate Blair, et al.
Amend printed Proposal as follows:
(original, printed, engrossed) (Proposal or Resolution)

AMENDMENT NO. 1

On page 5, delete lines 25, 26 and 27 in their entirety and insert in lieu thereof the following:

"Section 12. Local and Special Laws; Prohibition
Against Enactment

Section 12. The legislature shall not pass any local or special law:

- 1) For the holding and conducting of elections, or fixing or changing the place of voting.
- 2) Changing the names of persons; authorizing the adoption or legitimation of children or the emancipation of minors; affecting the estates of minors or persons under disabilities; granting divorces; changing the law of descent or succession; giving effect to informal or

invalid wills or deeds or to any illegal disposition of property.

3) Concerning any civil or criminal actions, including changing the venue in civil or criminal cases, or regulating the practice or jurisdiction of any court, or changing the rules of evidence in any judicial proceeding or inquiry before courts, or providing or changing methods for the collection of debts or the enforcement of judgments, or prescribing the effect of judicial sales.

4) Authorizing the laying out, opening, closing, altering, or maintaining of roads, highways, streets, or alleys; relating to ferries and bridges, or incorporating bridge or ferry companies, except for the erection of bridges crossing streams which form boundaries between this and any other state; authorizing the constructing of atrect passenger railroads in any incorporated town or city.

5) Exempting property from taxation; extending the time for the assessment or collection of taxes; for the relief of any assessor or collector of taxes from the performance of his official duties or of his sureties from liability; remitting fines, penalties, and forfeitures; or refunding moneys legally paid into the treasury.

6) Regulating labor, trade, manufacturing, or agriculture; fixing the rate of interest.

7) Creating corporations, or amending, renewing, extending, or explaining the charters thereof; granting to any corporation, association, or individual any special or exclusive right, privilege, or immunity.

8) Regulating the management of public schools, the building or repairing of schoolhouses and the raising of money for such purposes, except as otherwise provided in this constitution."

Page 2

APPENDIX I

COMMITTEE AMENDMENT

CC 7323

Amendment proposed by Committee on Legislative Powers and Functions to Committee Proposal No. 3 by Delegate Blair, et al. Amend printed proposal as follows:

AMENDMENT NO. 1

On page 1, delete lines 21 through 28 in their entirety and insert in lieu thereof the following:

"Section 2. (A) The legislature shall meet in regular annual sessions. In each year the regular session shall extend for not more than fifty-five legislative days. The legislature shall convene at twelve o'clock noon on the fourth Monday in April of each year for not to exceed five calendar days. During this period no committee shall report and neither house shall adopt any bill or resolution which is intended to have the effect of law. Not later than the close of the fifth calendar day the legislature shall adjourn and stand in recess until twelve o'clock noon on the second Monday in May, at which time the legislature shall reconvene for not to exceed fifty legislative days, which shall not extend in any year beyond sixty calendar days following the second Monday in May. During the interim between adjournment and reconvening, the committees

of the houses may meet and hold hearings, but shall take no vote with respect to any bill or resolution referred to them. No new matter intended to have the effect of law shall be introduced during any regular session after midnight of the third Monday in May of each year."

MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with Convention rules State Capitol, Committee Room J Baton Rouge, Louisiana Thursday, July 12, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions.

Present Absent Sen. Cecil Blair None Rep. Thomas Casey Calvin Fayard Frank Fulco David Ginn Patrick Juneau Sen. K. D. Kilpatrick Louis Landrum Rep. Edward LeBreton Gary O'Neill

The meeting was called to order by Chairman Blair. Secretary O'Neill called the roll and a quorum being established, the meeting proceeded.

The committee members were given a copy of the amendments that had been adopted on the two previous days meetings, a copy of which is attached hereto and made a part of these minutes as Appendix A. Chairman Blair asked the members to study the amendments for any further change.

Mr. Juneau offered a motion to report Committee Proposal No. 3 "with amendments." The motion carried unanimously.

Mr. Fayard moved to adopt the minutes of the meetings of June 1 and June 2. There were no objections to the motion.

Mr. Juneau moved for adjournment. There were no objections, and Chairman Blair adjourned the meeting.

Cecil R. Blair, Chairman

Calvin Fayard, Vice Chairman

Gary O'Neill, Secretary

NOTES

Appendix A is omitted. See I Journal 145-147 [Report of the Committee].

MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice by the Secretary in accordance with the Rules of the Convention

Room 205, State Capitol Building
Baton Rouge, Louisiana
September 12, 1973

Presiding: Senator Cecil Blair, Chairman of the Committee on Legislative Powers and Functions.

Present:

Cecil Blair
Thomas A. Casey
Emile Comar
Patrick Juneau
Paula Kilpatrick
Louis Landrum
Gary O'Neill

Absent:

David Ginn
Calvin Fayard
Frank Fulco

Chairman Blair called the meeting to order. The roll was called and a quorum was established.

Chairman Blair announced that the committee would consider suggestions by the Committee on Style and Drafting relating to the Legislative Article.

Mr. Juneau moved the adoption of the minutes of meetings held July 10, 11, and 12, 1973. Motion carried without objection

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Chairman Blair said that it was felt that the Committee on Style and Drafting was making substantive rather than stylistic changes on the Legislative Article and that the committee did not, under the rules, have the authority to do so.

Mr. Reggie Coco, senior research assistant, covered each of the changes suggested by the Committee on Style and Drafting. The members of the committee discussed these changes. No action was taken on any of the Sections.

Senator Blair suggested that the Proposal should be referred back to this committee after the Committee on Style and Drafting completed its consideration of it.

Representative Casey pointed out that he was going to introduce a Resolution which would have this effect. The committee also felt that Mr. Coco should attend the meeting of the Committee on Style and Drafting when the Legislative Proposal was being discussed.

Chairman Blair decided the meeting adjourned.

Cecil Blair, Chairman

Calvin Fayard, Vice-Chairman

Gary O'Neill, Secretary

MINUTES

Minutes of the Committee on Legislative Powers and Functions of the Constitutional Convention of Louisiana of 1973

Held pursuant to notice given by the Secretary in accordance with Convention rules

White House Inn - Ante Room

Baton Rouge, Louisiana

Thursday, October 18, 1973

Presiding: Senator Cecil R. Blair, Chairman of the Committee on Legislative Powers and Functions

Present

Sen. Cecil Blair

Rep. Tom Casey

Emile Comar

Calvin Fayard

Frank Fulco

David Ginn

Patrick Juneau

Paula Kilpatrick

Rev. Louis Landrum

Gary O'Neill

Absent

None

Chairman Blair called the meeting to order. Secretary O'Neill called the roll and a quorum being established, the meeting proceeded.

The committee began reviewing Document V adopted by the Committee on Style and Drafting as of October 10, 1973, which contains suggested changes to the first enrollment of Committee Proposal No. 3. A copy of Document V is attached hereto and made a part of these minutes as Appendix A. The following recommendations were made by the committee:

Section 1 (B): Mr. Fayard moved that the committee recommend that in the suggested changes on page 2, line 23, after the word "shall" delete the partial word "ex-" and delete line 24 in its entirety. The motion carried without objection.

Section 2 (B): Mr. Casey moved that the committee recommend in the suggested changes that the word "special" appearing before the word "session" in Section 2(B) and elsewhere throughout the constitution be changed to "extraordinary". Without objection the motion was adopted.

Section 18(C): Mr. Fulco moved that the committee recommend in the suggested changes that on page 35, at the beginning of line 12, delete the word "and" and insert in lieu thereof the word "or". Without objection, the motion was adopted.

Section 20(A): Mr. Comar moved that the committee recommend in the suggested changes that on page 38, at the beginning of line 7, add the words "signs it or if he". The motion was adopted without objection.

Section 20(B): Mr. O'Neill moved that the committee recommend in the suggested changes that on page 39, line 24, after the word and punctuation "session." delete the remainder of the line and delete lines 25 through 28, both inclusive, in their entirety and at the beginning of line 29 delete the word and punctuation "law." and insert in lieu thereof the following sentence: "If the governor returns or vetoes a bill after the legislature adjourns he shall return it, with his veto message, as provided by law." The motion was adopted without objection.

Section 21: Mr. O'Neill offered a motion that the committee recommend in the suggested changes that on page 42, line 13, after the word "and" and before the word "shall" delete the word "thereafter". Mr. Comar offered a substitute motion that the committee recommend in the suggested changes that on page 42, delete lines 10 through 18, both inclusive, in their entirety and insert in lieu thereof the following:

"Section 21. All laws shall take effect on the sixtieth day after final adjournment of the session in which they were enacted, and shall be published in the official journal of the state as provided by law. However, any bill may specify an earlier or later date."

The motion was adopted without objection.

Mr. Casey offered a motion that the recommendations be forwarded to the Committee on Style and Drafting. Without objection, the motion carried.

There being no further business, the meeting was adjourned.

Cecil R. Blair, Chairman

Calvin Fayard, Vice Chairman

Gary O'Neill, Secretary

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NOTES

Appendix A is omitted. See Style and Drafting Comparative Presentation C.P. No.3, Volume 14, infra.

MINUTES

Minutes of the meeting of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973

Held pursuant to notice read in open session and publicly posted as provided by the Rules of Procedure of the Convention

Senate Chambers, State Capitol

November 20, 1973

Baton Rouge, Louisiana

Presiding: Sen. Cecil R. Blair, Chairman of the Committee on Legislative Powers and Functions

Present

Sen. Cecil Blair

Rep. Tom Casey

Emile Comar

Calvin Fayard

Frank Fulco

David Ginn

Patrick Juneau

Paula Kilpatrick

Absent

Rev. Louis Landrum

Gary O'Neill

Cecil R. Blair, Chairman

Calvin Fayard, Vice Chairman

Gary O'Neill, Secretary

Chairman Blair called the meeting to order. Roll was called and a quorum being established, the meeting proceeded.

The staff presented for the committee's consideration the chart on the disposition of articles and sections (Attached hereto as Appendix A).

The committee began discussing the report on the disposition of articles and sections which was prepared by the staff. The committee asked that it be made clear that the lieutenant governor was to stay as he is until the end of his term. Mr. Fayard and Mr. Casey suggested that a comment or narrative of some form be prepared to explain the status report. Mr. Comar offered a motion to approve the report and pass it on to the Committee on Legislative Liaison and Transitional Measures. Without objection, the motion carried.

The committee next began discussing the delegate proposals which had been referred to the committee. Delegate Proposal No. 7 relative to gambling and lotteries was discussed first. Delegates Burns and Stovall spoke to the committee asking for favorable approval of the proposal. Burns asked that the committee delete lines 13 through 17 of the proposal. Delegate Ginn so moved and the motion carried without objection. Mr. Mark Lowe of the Louisiana Moral and Civic Foundation spoke to the committee also and asked that the committee report Delegate Proposal No. 7 favorably. After hearing from these speakers and after discussion on the proposal, Mr. Fulco moved to report Delegate Proposal No. 7 favorably. Mr. Casey offered a substitute motion to defer action on the proposal. The substitute motion carried on a vote of five for and two against. Messrs. Casey, Comar, Fayard, Ginn and Juneau voted for. Mr. Fulco and Miss Kilpatrick voted against.

Delegate Proposal No. 39 relative to the date for taking office for members of the legislature and filling unexpired terms was discussed next by the committee. Mr. Casey moved to defer action on the proposal. Without objection, the motion carried.

The committee next took up Delegate Proposal No. 18. Mr. Casey moved to delete on line 11 the word "three" and insert the word "two" and on line 12 delete the word "adoption" and insert the words "effective date". Without objection, the motion carried. Mr. Fulco moved to defer action on the proposal. Mr. Comar

-2-

offered a substitute motion to report Delegate Proposal No. 18 with amendments. The substitute motion carried on a vote of six for and one against. Messrs. Casey, Comar, Fayard, Ginn, Juneau and Miss Kilpatrick voted for. Mr. Fulco voted against.

Mr. Juneau moved to report Delegate Proposal No. 22 relative to local and special laws favorably. Without objection, the motion carried.

Mr. Casey moved to defer action on Delegate Proposal No. 38. Without objection, the motion carried.

There being no further business, the meeting was adjourned.

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NOTES

Appendix A is omitted. See Disposition Tables, Volume 14, infra.

II. Staff Memoranda

CC/73 Research Staff
 Committee on Legislative
 Powers and Functions
 March 22, 1973
 Staff Memo No. 1

CC/73 Research Staff
 Committee on Legislative
 Powers and Functions
 March 22, 1973
 Staff Memo No. 2

SUMMARY OF REQUIREMENTS FOR
 MEMBERSHIP IN THE LEGISLATURE

I. Age Requirements

A. House of Representatives

<u>No. of States</u>	<u>Stated Age Requirement</u>
1	18
23	21
3	24
4	25
16	Require merely the status of being an elector, voter, freeman or inhabitant for membership.
2	No age requirement could be determined.
1	Unicameral legislature--requiring status of elector for membership

B. Senate

<u>No. of States</u>	<u>Stated Age Requirement</u>
1	18
5	21
22	25
1	26
1	27
6	30
11	Require merely the status of elector, voter, freeman, or inhabitant for membership in the senate.
2	No age requirement could be determined
1	Unicameral legislature--requiring status of elector for membership.

Committee on Legislative Powers and Functions
 Memo No. 1 Cont'd.

II. Residence Requirements For Membership in the Legislature

A. Residence in the State

<u>No. of States</u>	<u>House Requirement (years)</u>
11	1
15	2
9	3
2	4
2	5

<u>No. of States</u>	<u>Senate Requirement (years)</u>
9	1
9	2
10	3
4	4
4	5
1	6
1	7

11 states require merely that a person be an elector or voter

B. Residence in the District

<u>No. of States</u>	<u>House (years)</u>	<u>Senate (years)</u>
28	1	1
3	2	2
6	60 days to 6 months	
1	1	0

Twelve states require merely that a person be an elector or voter.

III. All but two of the fifty states provide that each house shall be the judges of the qualifications of its members. The remaining two states have no provisions on the matter.

RE: LEGISLATIVE SESSIONS - LENGTH AND KIND

The primary consideration in provisions relating to the length and kind of legislative sessions is the assurance of adequate time for the elected representatives of the people to deal effectively with their responsibilities as a legislative body. These responsibilities include but are not necessarily limited to the following:

1. Identification and comprehension of the major problem areas confronting the state, its citizens, business and industrial interest, and the like.
2. Research and consultation before drafting of proposed legislation.
3. Actual drafting and preparation of bills.
4. Discussions with constituents and interested citizens.
5. Introduction and deliberation on bills.
6. Reviewing executive and administrative policies to ascertain whether laws enacted are being executed according to legislative intent sometimes called legislative oversight.
7. Educating constituents on major issues and the necessary courses of action being taken or to be taken.

The primary questions to be considered with respect to legislative sessions might be stated to include:

1. Should legislative sessions be limited or unlimited as to length?
2. If session lengths are limited, should the current number of days (60 for general sessions and 30 for fiscal sessions) be retained or changed?
3. Should the restrictions on subject matter now applicable to the fiscal session be eliminated in favor of annual general sessions?
4. Should the legislature be empowered to fix or to extend the length of any session?
5. Should provision be made for automatic veto sessions to consider overriding vetoes?
6. If not, should the present provisions (veto session called by simple majority voting to reconsider one or more special bills) be retained or changed?
7. Should the present provisions empowering the legislature to convene itself in extraordinary session (upon petition to the governor by two-thirds of the members elected to each house) be retained or changed?

Limitations on Length of Sessions

One solution to the problem of adequacy of time for the legislature to deal effectively and efficiently with its responsibilities is to provide for unlimited sessions or to extend the existing length of the session. Until the early nineteenth century the constitutions of most of the states provided unlimited annual sessions. The concept of limited sessions is said to have derived from a growing distrust and fear of state government which became pronounced during the first half of the nineteenth century. New Jersey became the first state to limit its legislative sessions and it accomplished limitation by limiting the number of days legislators could receive full pay. Louisiana, in 1845, became the first state to limit the actual number of days comprising a session by adopting the 60-day limit which is most common today among the states. (See Appendix A). Today, only seven biennial session and 14 annual session states do not include specific constitutional limitations on the length of regular sessions. Of these 21 states, seven provide indirectly for limitations on length by restricting legislators' per diem or expenses to a given number of days after which it ceases.

Since the same basic issue underlies the questions of limited or unlimited sessions as well as maintaining or changing the length of limited sessions, the arguments for alternatives can be considered together.

Arguments for Unlimited or Longer Sessions

1. It is contradictory to give legislative power to a body

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and then deny that body the right to exercise its discretion in determining the length of its own sessions.

2. By allowing the legislature a longer time in session, the likelihood of end-of-session log-jams is lessened or perhaps can be eliminated. (See Appendix B).

3. The number and complexity of bills has increased far beyond that imagined in 1845 or even 1921. (See Appendix C).

4. Important and necessary bills caught in the log-jam at the end of the session are most often given cursory and insufficient consideration.

5. A premium is placed on a legislator's knowledge and experience in voting on bills rather than on the substance of his arguments.

6. Limitations foster delaying tactics by interest groups who can use a minority of legislators to foil the will of the majority.

7. The public would have more time to make its views known to the legislature.

8. Legislators would have greater opportunity to listen to their constituents and consider recommendations.

9. Limitations result in inadequate consideration being given to policy matters and a delegation by default of much of the legislator's policy-making responsibilities to the executive branch or the courts.

10. The legislature would be strengthened by being able to convene itself, determine the length of its sessions, and continue committee study and investigation of bills during recess

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periods.

Arguments Against Unlimited or Longer Sessions

1. There is no assurance that mere allowance of additional time in session will provide a solution to the problem of inadequate time.

2. At present the legislature does not fully utilize its 60 calendar days. (See Appendix D).

3. Unlimited or lengthened sessions could lead to increased costs for the legislature.

4. Unlimited or lengthened sessions likely would result in introduction of more bills with more legislation enacted and might result in extension of government activities into new areas of daily life.

5. Limited sessions require that important policy decisions be made and not merely postponed.

6. Longer sessions would give increased opportunity to lobbyists and special interest groups to bring pressures on the legislature.

7. Unlimited or lengthened sessions would destroy the traditional concept of the legislator as a part-time citizen representative.

Alternating General and Fiscal Sessions or Annual General Sessions

The alternating fiscal session concept appears to have developed because of a need for more frequent financial planning than was possible when the legislature met only biennially. Louisiana adopted

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this concept in 1954. Today many observers of state offices feel that the fiscal session restrictions should be eliminated in favor of annual general sessions. As of January 1973 at least 33 states, including Louisiana, had annual legislative sessions. Of these, four states have annual sixty-day sessions, eight have limited sessions which are more than sixty days in duration, and 13 have sessions of unlimited length. In 1970-1971, 70 per cent of the state legislatures spent over 100 working days each in session, both regular and special. The press of legislative business has been such that in the decade 1962-1971 only two states did not have to call their legislatures into special session and one of those states has unlimited annual sessions. Since the year 1921, when the present Louisiana Constitution was adopted, there has been a tremendous increase in the number, variety and complexity of the subjects which demand legislative attention, brought about by rapid technological advances, sociological change and the growing complexity of our society. For example, 142 bills and joint resolutions were enacted in the Regular Session of 1922; a total of 815 bills and joint resolutions were enacted in the Regular Session of 1972.

Arguments for General Annual Sessions

1. The line between fiscal and non-fiscal matters is difficult to draw, and as a result, much time is spent in fiscal sessions debating what is fiscal and what is not. (See Appendix E).

2. There exists a possibility of review by the courts of measures enacted by less than a three-fourths vote in fiscal sessions since judicial determination of the fiscal or non-fiscal nature of bills

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and resolutions might be forthcoming. (See Appendix F)

3. The rapid changes in present day social and economic conditions require frequent general legislative sessions to allow legislation to keep pace with these changes.

4. One of the most frequently advanced reasons for annual general sessions rather than the present system of alternating sixty-day general sessions with thirty-day fiscal sessions is that there is a need for more time in the legislative process in order that quality legislation may be the product.

5. It is contended that the introduction of such great numbers of bills at biennial general sessions and the time required to give proper consideration to such a great quantity of bills is at least partly the cause of the tremendous log-jam at the end of these sessions, as legislators try to get their bills passed.

6. It has been pointed out that the federal government and local units of government, by frequent or virtually continuous sessions of their legislative bodies, recognize the time requirements for the passage of quality legislation that will meet the need at the time it arises.

7. Closer legislative control of the operations of state government should result from annual general sessions.

8. Annual general sessions should engender greater continuity in the business of the legislature.

9. Annual general sessions should produce fewer rather than a greater number of laws. It can be reasoned that if there were more time to study and know the contents of each bill, many bills would not be enacted into law.

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10. It has been asserted that annual general sessions would permit urgent state problems to be taken care of at the time they arise or at least with so great a delay as now is the case, and this is very important in some areas.

11. Annual general sessions as opposed to the present biennial general sessions, by giving the legislator more experience, should make him more aware of ways to correct weaknesses in legislative processes. This argument may be extended by saying that the new legislator would be able to be fully effective by his second session; his contribution therefore would be more informed, more intelligent and of greater value to the legislature and the people he serves.

12. An argument related to the argument made for annual general sessions is the contention that the job of the legislator is in fact a full-time one, whether or not the people are willing to accept the idea, for they must be available to their constituents and must involve themselves in legislative business from day to day throughout

any year and, in fact, on a 24-hour a day basis. Annual full-time legislators, it is said by many, would be a more accurate definition of what the job actually is.

13. The point can be made that annual general sessions would permit the legislature to represent the people more accurately because of the tendency of people to wait to contact their representatives immediately prior to and during sessions. Thus, the interests of the people would be better served in that all matters of concern to them could be dealt with at every session which presently is not possible due to the restrictions on what may be considered at a

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fiscal session.

14. Finally, from the point of view of those interested in strengthening the committee system, it can be argued that the schedule of committee meetings under present limitations is so crowded that legislators and the public cannot get the full benefit of committee hearings for sufficient time frequently cannot be scheduled for hearing each bill. Annual general sessions, it may be argued, would strengthen the committee system.

Arguments Against Annual General Sessions

1. It can be argued that few state problems are of such a nature as to require immediate solution and that, at any rate, a real crisis can be met by expanding the subject matter to be considered at a fiscal session or by calling a special session, which is "built in" to the fiscal session provision in the authorization to introduce non-fiscal matters (except taxes) by consent of three-fourths of the elected members.

2. The contention can be made that general sessions every two years, with only a fiscal session intervening, may result in less hasty and hence more mature action by the legislature.

3. It is possible to hold that the present session timetable has in fact been sufficient since the legislature has handled problems adequately. Akin to this argument are contentions that there is no real proof that annual general sessions tend to reduce end of session "log-jams."

4. It might be said that general sessions held every year tend to cause the legislature to concern itself more with the

minutes of administration while general sessions every other year, with the fiscal session intervening, by limiting time, tend to force the legislature to concentrate on matters of policy.

5. Some believe that annual sixty-day general sessions could lead to more laws which are not necessarily better laws, while others contend that with general sessions held annually the result could be that action would be discouraged in the knowledge that issues can be solved the following year.

6. Annual general sessions could mean more extended meetings and more time spent in session for the legislator, who is not a full-time official and, therefore, must have time away from the legislature in order to earn his living in a nongovernmental

occupation. Annual general sessions (particularly if annual 60-day general) could well prevent many well qualified public spirited citizens from seeking legislative office.

7. Annual general sessions could necessitate greater overhead costs and additional pay for legislators, which could increase overall costs of the legislative process and further deplete an already over-stretched state budget.

8. Another reason that may be advanced for retaining the present general session every other year with the fiscal session in odd years is that, if general sessions were held annually, enough time would not elapse between general sessions for good laws to demonstrate their regulatory effectiveness since time is always needed for administrative and regulatory agencies to become familiar with and put into effect new laws.

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9. It might be argued that annual general sessions (especially if the odd year sessions were lengthened to 60 days) could cause the legislator to be away from home too much of the time (with interim committee activity included) that he would actually lose touch with his constituents.

10. It might be said that annual general sessions could give lobbyists and special interest groups more frequent opportunities to bring pressures to bear on the legislature regarding all issues concerning state government where the fiscal session restricts this primarily to budgetary.

11. It can be reasoned that the fiscal session in alternate years permits legislators to give uninterrupted attention to fiscal problems alone at least every other year, thus encouraging better fiscal policy.

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LEGISLATIVE SESSIONS

Appendix A

State or other jurisdiction	Years in which sessions are held	Sessions convened		Limitations on length of sessions		Special sessions	
		Month	Day	Regular	Special	Legislature may call	Legislature may determine subject
Alabama	Odd	May	1st Tues. (a)	36 L	36 L	No	2/3 vote those present
Alaska	Annual	Jan.	2nd Mon.	None	30 C	2/3 of membership	Yes (b)
Arizona	Annual	Jan.	2nd Mon.	None	None	Petition 2/3 members	Yes (b)
Arkansas	Odd	Jan.	2nd Mon.	60 C(e)	15 C(d)	No	Yes (d)
California	Annual	Jan.	Mon. after Jan. 1	None(e)	None	No	No
Colorado	Annual(f)	Jan.	Wed. after 1st Tues.	None(g)	None(g)	No	No
Connecticut	Annual(f)	Jan.	Odd-Wed. after 1st Mon.	(h)	None(i)	Yes	Yes
Delaware	Annual	Feb.	Even-Wed. after 1st Mon.	(h)	None	Yes(j)	Yes
Florida	Annual	Jan.	2nd Tues.	60 C	None	Yes(j)	Yes
Georgia	Annual	Apr.	Tues. after 1st Mon.(k)	60 C(c)	20 C(c)	Petition 2/3 members(m)	Yes(b)
Idaho	Annual	Jan.	Odd-2nd Mon.(l)	45 C	(m)		
Illinois	Annual	Jan.	Even-2nd Mon.	40 C			
Indiana	Annual	Jan.	3rd Wed.	60 L(n)	30 L(n)	Petition 2/3 members(o)	Yes(o)
Iowa	Annual	Jan.	2nd Mon.	60 C(g)	20 C	No	No
Kansas	Annual	Jan.	2nd Wed.	None	None	Yes(j)	Yes(j)
Kentucky	Annual	Jan.	Odd-Tues. after 2nd Mon. (p)	Apr. 30(q)	30 L(q)	No	Yes
Louisiana	Annual	Jan.	Even-Tues. after 2nd Mon.(p)	Mar. 15(q)		No	Yes
Maine	Annual	Jan.	2nd Mon.	None	None	No	Yes
Maryland	Annual	Jan.	Odd-2nd Tues.	None(g)	None(g)	Petition 2/3 members	Yes
Massachusetts	Annual	Jan.	Even-2nd Tues.	60 C(e)	None	No	No
Michigan	Annual	Jan.	Tues. after 1st Mon.	60 L	30 C	Petition 2/3 elected members each house	No
Minnesota	Annual(f)	May	Even-2nd Mon.	60 C	30 C	Majority of each party	Yes
Mississippi	Annual	May	Odd-2nd Mon.	30 C	30 C	Petition of majority of members	Yes
Missouri	Odd	Jan.	1st Wed.	None	None		Yes
Montana	Annual	Jan.	2nd Wed.	90 C(e)	30 C		Yes
Nebraska	Annual	Jan.	1st Mon.	60 C	60 C	No	No
Nevada	Annual	Jan.	Odd-1st Tues.	90 L(c)	None	Petition 2/3 members	Yes
New Hampshire	Annual	Jan.	Even-1st Tues.	60 L(c)			
New Jersey	Annual	Jan.	3rd Mon.	None(g)	None(g)	No	No
New Mexico	Annual	Jan.	1st Wed.	(g)	None(g)	Yes	Yes
New York	Annual	Jan.	2nd Wed.	None	None	(u)	Yes
North Carolina	Annual(f)	Jan.	Odd-3rd Tues.	60 C	30 C(v)	Yes(v)	Yes(b, v)
North Dakota	Annual	Jan.	Even-3rd Tues.	30 C			
Ohio	Annual	Jan.	Wed. after 1st Mon.	None	None	No	No
Oklahoma	Annual	Jan.	Wed. after 2nd Mon.	60 L	None	Petition 2/3 members	Yes
Oregon	Annual	Jan.	Tues. after 1st Mon.	90 L	None	No	No
Pennsylvania	Annual	Jan.	1st Tues.	None	None	No	Yes
Rhode Island	Annual	Jan.	1st Tues.	60 L(g)	None	Petition of majority of members	No
South Carolina	Annual	Jan.	2nd Tues.	None	None	No	Yes
South Dakota	Annual	Jan.	Odd-Tues. after 3rd Mon.	45 L	None	No	Yes
Tennessee	Annual	Jan.	Even-Tues. after 1st Mon.	60 L			
Texas	Annual	Feb.	4th Tues.(x)	90 L(g)	None(g)	Petition 2/3 members	Yes
Utah	Annual	Jan.	2nd Tues.	140 C	30 C	No	No
Vermont	Annual	Jan.	Odd-2nd Mon.	60 C	30 C	No	Yes
Virginia	Annual	Jan.	Even-2nd Mon.	20 C		No	Yes
Washington	Annual	Jan.	Wed after 1st Mon.	None(g)	None	No	Yes
West Virginia	Annual	Jan.	Odd-2nd Wed.	30 C	30 C(c)	Petition 2/3 members	Yes
Wisconsin	Annual	Jan.	Even-2nd Wed.	60 C	None	No	Yes
Wyoming	Annual	Jan.	2nd Mon.	60 C	None	Petition of 2/3 members	Yes
Guam	Annual	Jan.	1st Tues. after Jan. 15(ab)	None	None	Petition of majority of members	Yes(aa)
Puerto Rico	Annual	Jan.	2nd Tues.	40 C	None	No	Yes
Territories	Annual	Jan.	2nd Mon.	None	N.A.	N.A.	N.A.
Virgin Islands	Annual	Jan.	2nd Mon.	Apr. 30(c)	20 C	No	No
				50 C	None	No	No
				75 L	None	No	No

Abbreviations: L—Legislative days; C—Calendar days.
 (a) Convened quadrennially on second Tuesday in January after election to organize.
 (b) If Legislature convenes itself.
 (c) Session may be extended for an indefinite period of time by vote of members in both houses. Arkansas: 2/3 vote; Florida: 2/3 vote; Kansas: 2/3 vote, only limit is in compensation and expenses; Maryland: 2/3 vote for 30 additional days; Nebraska: 2/3 vote; Virginia: 2/3 vote for 30 days; West Virginia: 2/3 vote; Puerto Rico: by joint resolution.
 (d) Governor may convene General Assembly for specific purpose. After that business is completed, a 2/3 vote of members in both houses may extend session up to 15 days.
 (e) Reconvenes for constitutional limit of 5 days on the Monday after a 30-day recess to reconsider vetoed measures.
 (f) Even-year session (odd-year in Louisiana) is basically limited to budget and fiscal matters.
 (g) Indirect restriction since legislators' pay, per diem or daily allowance stops but session may continue: Colorado: statutory limit of 160 days pay in biennium for those Senators elected prior to 1970; Kansas: statutory limit of 90 days pay in odd-numbered years, 30 days special session; Nevada: constitutional limit of 60 days, no limit on allowances, 20 days for special sessions; New Hampshire: constitutional limit on expenses of 90 legislative days or July 1, whichever occurs first, 15 days salary and expenses for special session; Rhode Island: constitutional limit of 60 days; Tennessee: constitutional limit of 90 days on expenses only, 30 days for special session; Vermont: statutory limitation.
 (h) Odd year, not later than first Wednesday after the first Monday in June; even year, not later than first Wednesday after first Monday in May.
 (i) Special session for reconsideration of bills vetoed by the Governor after close of regular session, limited to three days.
 (j) Legislature may be called into special session in Delaware by mutual call of both presiding officers; in Florida and in Illinois by joint proclamation of the presiding officers of both houses.
 (k) By statute, convenes February 1, in 1972 only.
 (l) Convenes for 12 days to organize, recesses and convenes on second Monday in February for limit of 33 calendar days.
 (m) Limited to 70 days if called by Governor and 30 days if called by Governor at petition of Legislature, except for impeachment proceedings.
 (n) Extension of 15 days granted by presiding officers of both houses at the written request of 2/3 of the membership or granted by the Governor.
 (o) If Governor notifies Legislature he plans to return bills with objections which were submitted to him less than 10 days before adjournment, a special session to reconsider such

bills may be convened without call on 45th day after adjournment.
 (p) Convenes November 15 every year to organize and elect officers and to organize.
 (q) Regular session, odd year: 61 L days or 40 C days; even year: 70 L days or 50 C days; special session: 30 session days in a period of 40 calendar days.
 (r) Unless Legislature petitions for special session. However, no special session may be called during the 30 days before or 30 days after the regular fiscal sessions in odd years without consent of 2/3 of the elected members of each house. Legislature may convene in special session on 31st day after the adjournment to act on all measures vetoed by the Governor if a simple majority of each house desires to reconsider at least one vetoed bill. Such a session is limited to 10 days.
 (s) Regular sessions in 1972 and every fourth year thereafter are limited to 125 calendar days; other years 90 calendar days. By concurrent resolution and by 2/3 vote of those present and voting in each house, session may be extended for 30 days with no limit on number of extensions.
 (t) If the Governor returns any bill with his objections after adjournment of the Legislature in even-numbered years, the Legislature shall automatically reconvene on the first Wednesday following the first Monday in September for a period not to exceed 10 days for the sole purpose of considering bills vetoed by the Governor.
 (u) Petition by majority of members of each house to Governor, who then "shall" call special session.
 (v) Limitation does not apply if impeachment trial is pending or in process. Legislature may call 30-day "extraordinary" session if Governor refuses to call session when requested by 2/3 of Legislature. Only then may they determine the subject.
 (w) Legislature may divide session to meet in even year also. Ohio is required by law to hold 2nd session.
 (x) The Legislature convenes on first Tuesday in January for 15 days to organize and adjourn.
 (y) In 1973 and every 4 years thereafter following each gubernatorial election the Legislature convenes on the 2nd Wednesday of January to organize and recesses until the 2nd Wednesday in February for the start of the 60-day session.
 (z) Governor must extend until general appropriation is passed.
 (aa) No if called by Governor alone; questionable if called as a result of petition of members.
 (ab) Unless otherwise provided by the Joint Committee on Legislative Organization. Early in each odd-year session the Joint Committee on Legislative Organization develops the legislative session work schedule to be adopted by legislative joint resolution, which is to be held at least one meeting in January of each year.

"Log-Jam" in Last Two Weeks of Session

Memorandum

February 2, 1973

	1971 Fiscal Session		1972 Regular Session	
	Total Enacted	Enacted in last 2 weeks of session	Total Enacted	Enacted in last 2 weeks of session
House Bills	114	113	542	440
House Resolutions	33	25	38	12
House Concurrent Resolutions	93	88	167	108
Senate Bills	82	82	273	242
Senate Resolutions	20	13	14	13
Senate Concurrent Resolutions	53	47	86	46

Appendix C

Total of Bills Introduced and Enacted

Year	Number of Introductions	Number of Enactments	Length of Session
1922	573	142	60C
1960	1,759	646	60C
1961	310	101	30C*
1962	1,584	549	60C
1963	354	141	30C
1964	1,657	565	60C
1965	366	175	30C
1966	1,548	577	60C
1967	308	133	30C
1968	2,609	967	60C
1969	788	370	30C
1970	2,746	911	60C
1971	710	320	30C
1972	2,855	1,068	60C

* 60 Calendar Day Sessions

30 Calendar Day Sessions

Appendix D

Number of Days of Each Session Actually Convened

Year	House	Senate	Calendar Days
1961	20	16	30
1962	42	40	60
1963	16	14	30
1964	36	35	60
1965	17	15	30
1966	37	36	60
1967	17	16	30
1968	38	34	60
1969	21	17	30
1970	47	39	60
1971	22	19	30
1972	50	38	60

RE: Kinds of legislation considered at the 1971 Regular Session of the Legislature

The 1971 Rules of the House of Representatives enumerated the matters which were to be considered "fiscal" or "budgetary" and which could be introduced without passage of a Consent Resolution. Rule No. 1 defined eight categories of legislation as "fiscal" or "budgetary":

1. The General Appropriation Bill - the bill which appropriates funds for the ordinary expenses of state government, public schools and other state institutions.
2. Revolving Fund Bills - legislation concerning the establishment of agency working capital funds.
3. The Bill to Defray the Expenses of the Legislature - appropriate funds to pay per diem and mileage for members, expenses of operations of the Legislature, the Speaker's Office and committees; renovations and repairs of chambers, printing, supplies and other legislative expenses.
4. Measures Authorizing Suits - suits to waive sovereign immunity of the state, its agencies and subdivisions. If a competent court allows recovery against these bodies, another bill must be enacted to appropriate funds for payment of such judgment. Such bills would logically be within the category of appropriation bills where the appropriation is the primary object.
5. Appropriation Bills when Appropriation is the Primary Object of the Legislation - this is appropriation of state funds for certain purposes presumably where the purpose is already authorized by law. Example: Appropriation of funds to the Wildlife and Fisheries Commission to repair certain facilities would be an appropriation which is the primary object of legislation. However, appropriation of funds to an agency which is created in the same legislation would not conform to such designation.

Examples of 1971 legislation introduced under this designation:

- Appropriations to pay judgments rendered against the state.
- Appropriations to pay tax claims.
- Appropriations to a vocational technical school in order to purchase land.
- Appropriation to State Parks and Recreation Commissions to acquire land for a state park.
- Appropriation for construction of a building.
- Appropriations to agencies with certain conditions attached.
- Appropriations to implement supplemental pay raises.

In this category in the House there was some apparent inconsistency of application. Several bills were allowed to be introduced in which the appropriation was merely a secondary object of the bill. Examples:

To establish a vocational technical school for a three parish area and an appropriation for that purpose.

Providing for the creation of an Educational Television Authority and making an appropriation therefor.

6. Retirement Measures - any legislation concerning retirement systems. Examples of 1971 legislation:

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- Establishment of retirement system.
- Suspension of benefits.
- Provisions as to retirement, survivor and disability benefits.
- Provisions as to service credit.
- Eligibility Matters.
- Transfer of service credit.
- Computations.
- Investment practices and other matters concerning Boards of Trustees.
- Cost of living increases.

7. Propositions for amending the Constitution and enabling statutory legislation recommended by the Louisiana Constitutional Revision Commission - this includes introduction of joint resolutions to amend the Constitution on any matter. Also included bills to enable the Constitutional Revision Commission to transfer certain constitutional matters into the revised statutes.

8. Matters dealing directly with the procedure or administration of the Legislature - an example of such bill introduced in the 1971 session is a bill relative to membership in the Budget Committee.

Certain legislation was introduced in the 1971 Session which would be considered fiscal but is not within the scope of any of these enumerations. Examples:

- Dedication of certain funds for the payment of a minimum salary schedule for State Police officers.
- Limitation of the total bonded indebtedness of the Louisiana Stadium and Exposition District.
- Authorization of irrigation districts to incur debt and issue bonds.

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Directing the State Bond Commission to issue certain general obligation bonds.

Since these matters, especially matters concerning bonded indebtedness, are within the normal meaning of fiscal or budgetary legislation, some attempt might be made to expand the enumeration to include these matters.

In our study of legislation introduced in the House we found only two measures (excluding those which made appropriations but which the appropriations were merely the secondary object of the legislation) which appeared clearly non-fiscal in the normal sense of the word and not within the enumeration of Rule No. 1. These are: (1) A bill authorizing the registrar of voters of Orleans Parish to establish a branch office and to change office hours, and (2) authorizing municipalities and special districts to enter into contracts relative to their jurisdiction and functions.

Our study concludes that the enumeration in Rule No. 1 was for the most part adhered to and that members of the House of Representatives can, with few exceptions, rely upon such enumeration in considering whether this proposed legislation is fiscal or may only be introduced by way of a consent resolution.

The 1971 Rules of Order of the Senate were virtually the same as those of the 1969 Rules with respect to introduction of bills in a fiscal session.

All bills introduced were immediately referred to the Senate and Governmental Affairs Committee which reported the bills as fiscal or budgetary or non-fiscal or non-budgetary. The Senate was much more liberal in labeling of legislation as fiscal than was the House.

Examples of Bills reported by the Senate and Governmental Affairs as Fiscal that would not conform to the House enumeration are:

- Authorization of relocation assistance and replacement housing.
- Creation of a criminalistics laboratory.

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Reapportionment of the Legislature

Assignment of custody of a child to a non-state operated agency and concerning payments for children so assigned.

Extensive legislation concerning the Louisiana Employment Security Law including definitions of terms, termination and election of coverages and limitations on receiving certain benefits.

Matters concerning the Uniform Controlled Dangerous Substances Law including definitions and provisions concerning distributions to persons under eighteen years of age.

Legislation to perfect title to certain lands.

Creation of assistant district attorneys for certain judicial districts.

Provisions for amendment of the governing instruments of charitable trusts so as to take advantage of new federal income tax provisions.

Renaming of certain districts and commissions.

Empower a district concerning industrial development and adding to membership.

Many provisions concerning the collection of, exemption from, and notice of state taxes due.

Many provisions as to bonded indebtedness.

Legislation concerning dedication of taxes to certain projects.

Certain joint resolutions were reported non-fiscal which could have been introduced under House Rule No. 1.

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LOUISIANA LEGISLATIVE COUNCIL

(Appendix F)

Memorandum

October 12, 1970

To: Executive Committee of the House of Representatives

Re: Impact of Sullins v. Shreveport on Legislative Process in Fiscal Sessions

The Sullins Decision

The Louisiana Constitution, Article III, Section 6, establishes annual sessions of the Louisiana Legislature. Sessions "convening in the even numbered years" are declared to be "general sessions", and no limitation is placed upon legislative considerations in such sessions except for a fifteen day time limitation upon the introduction of "new matter intended to have the effect of law", and the establishment of a sixty day limitation on the length of the sessions. Sessions however "convening in the odd numbered years", in addition to a thirty day limitation on the length of the session and a ten day limitation upon the introduction of new matter intended to have the effect of law, are further "restricted to budgetary and fiscal matters" A further limitation is imposed by the prohibition of the introduction or enactment of "measures levying new taxes or increasing existing taxes."

Section 8 of Article III does however provide for the consideration of non-fiscal or non-budgetary measures in a fiscal session, provided that "... any proposal to extend the budget session to matters other than those enumerated in this Paragraph... shall require the consent of three-fourths of the elected members of each house." (Emphasis added.) The prevailing interpretation of this provision was that a "three-fourths record vote of the elected members of both Houses consenting thereto" was necessary before a non-fiscal matter could be introduced.¹

1. Rules of Order of the House of Representatives, 1970, "Rules Applicable to Fiscal Sessions Only", Rule 1., p. 3. In this light, the Rules of the House of Representatives and Senate provide for the introduction of a concurrent resolution "providing that the budget session of the Legislature be extended to the subject matter of his (the author's) bill or resolution..." which must be adopted by the vote of three-fourths of the elected members of each House.¹ Upon the adoption of such a consent resolution, the Rules provide that "such bill or resolution shall be acted upon as if it were in the case of other bills or resolutions."² This interpretation of the Constitutional requirements of Section 8 relative to the consideration of non-fiscal matters in a fiscal or budget session rests on the following conceptions: (1) the requirement of Article III, Section 8, that a three-fourths vote is necessary "to extend" the budget session to non-fiscal matters implies only that a three-fourths "consenting" vote is necessary to introduce such a measure, and (2) a duly enacted concurrent resolution of consent to the introduction of such a measure constitutes a "proposal to extend the budget session"

The Louisiana Supreme Court in 1968 held to a significantly different interpretation of these relevant provisions of Article III, Section 8. In the case of Sullins v. Shreveport³ which involved a state constitutional challenge to the validity of the Legislature's passage of an authorization for suit against the City of Shreveport on the grounds that it was enacted without the prior passage of a consent resolution, the court found that: (1) "A resolution involving a non-fiscal matter is a 'proposal to extend' the session to 'matters other than' budgetary and fiscal," implying that a non-fiscal matter of itself constitutes "proposal to extend" the session, and (2) the Constitution does not require a three-fourths vote to consider

1. Ibid., Rule 2.
2. Ibid.
3. Sullins v. Shreveport, 252 La. 423, 211 So.2d 314 (1968).

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a non-fiscal matter, but a three-fourths vote to enact a proposed non-fiscal matter.

In the words of the Court:

Nor do we find that Section 8 requires the three-fourths vote before a non-budgetary or nonfiscal matter can be considered. The restriction which the constitution placed upon the Legislature is a requirement that no non-budgetary or nonfiscal matter can be enacted unless it be by a vote of three-fourths of the elected members of each House. The Constitution does not require the three-fourths vote to consider a nonfiscal matter, it requires a three-fourths vote to enact a proposed non-fiscal matter.¹

Effect of the Sullins Decision

Without delving into the comparative merit of the two contrasting interpretations of the requirements of Article III, Section 8, it is clear that so long as the Sullins decision remains viable, any non-fiscal measure enacted in a fiscal session without a three-fourths vote is potentially in danger of being declared unconstitutional.² Further, the Sullins decision calls for a reevaluation of certain legislative procedures used in fiscal sessions, particularly the use of consent resolutions, and the Affairs "screening" committees.

1. Required Votes

As noted above, the clear finding of the Sullins decision is that a three-fourths vote of the elected members of each House is required to enact a proposed

non-fiscal matter in a fiscal or budgetary session. Such ruling seems to clearly anticipate that such a three-fourths vote is mandatory for final passage. On the basis of the Sullins interpretation of Article III, Section 8, and on the basis of other relevant Constitutional provisions, there seems to be at present no

1. Ibid., 211 So.2d 314 at 317.
2. In this light, a Constitutional challenge was entered against the Congressional apportionment scheme enacted by the Legislature in its 1969 Regular Session which did not muster three-fourths vote in both Houses on final passage. The re-enactment of this measure in the 1970 Regular Session has rendered such challenge moot, and thus has also prevented a further test of the Sullins doctrine.

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requirement for such an extraordinary vote for committee action or for amendment. The Constitution (Article III, Section 24), relative to committee action, provides only that "no bill shall be considered for five per cent unless... reported on by a committee..." Relative to amendments, the Constitution (Article III, Section 25) provides only that "No amendments to bills by one house shall be concurred in by the other, nor shall reports of committees of conference be adopted in either House, except by a majority of the members elected thereto..." Only in reference to bills or measures "levying or proposing to levy new state taxes or increasing the rate on any state tax now or hereafter imposed", does the Constitution require an extraordinary vote (two-thirds of elected members) for adoption of amendments or reports of committees on conference (Article III, Section 25.1).¹

2. Consent Resolutions

Despite the Court's finding in Sullins that a three-fourths vote is required "to enact" a non-fiscal matter in a fiscal session, rather than "to consider" such a proposition, the Court still did not clearly rule that prior consent is not necessary to consider such a measure. Relative to this question, the Court commented:

The Constitution requires consent of only three-fourths of the elected members of each House, however, 84.6% of the elected members of the Senate and 93.1% of the elected members of the House were in fact obtained to adopt the Resolution. No objection to the Resolution appears in the Legislative Calendar or in the Journals of the Senate and House, nor do they reflect that three-fourths of the elected members of each House did not consent to the extension of the budget session to consider and pass Resolution No. 5.

Under these circumstances, if a separate preliminary proposal were necessary to consider the substantive matter of the Resolution, we must

1. It is noted that prior to the adoption of Section 25.1 of Article III in 1968, it was generally held that amendments to tax measures (which require approval by two-thirds of the members elected to each house of the legislature under Article X, Section 1a) did not necessarily require such a two-thirds vote.

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presume that the proposal was voted upon and approved. For the Constitution does not require that action on the preliminary proposal be entered in the Journals or the Legislative Calendar. The members of the Legislature, therefore, may or may not enter this action in their discretion. Silence of the journals is not evidence that it was not done. Walt v. Close, 203 La. 345, 14 So.2d 19 (1943).

The Court, as is seen above, does not rule on whether "preliminary proposals" are necessary, but does indicate that if they are necessary, the silence of the journals creates a presumption that the proposal was voted upon and approved.

In light of the Sullins decision the following are advanced as reasons for and against the continued use of consent, concurrent resolutions:

Against continued use:

1. The Louisiana Supreme Court in Sullins v. Shreveport has ruled that a three-fourths vote is necessary "to enact" a non-fiscal measure, and not "to consider" it, and even if prior consent is necessary has ruled that the silence of the journals creates a presumption that the proposal was voted upon and approved.
2. The consent resolution is time consuming and expensive to utilize.

For continued use.

1. The Louisiana Supreme Court in Sullins v. Shreveport does not directly rule that consent resolutions are not necessary, which raises the possibility of future challenge to legislation enacted without it, particularly if "objection. . . appears in the Legislative Calendar or in the Journals"
2. While perhaps consent resolutions are expensive and time-consuming, they save both time and money in the long run by eliminating committee and

1. Sullins v. Shreveport, supra, 211 So.2d 314, 317-318.

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floor consideration of measures not likely to receive the necessary three-fourths vote for final passage.

3. Committee of the Affairs of the House.

Rule 7.3 of the Rules of the House of Representatives governing its sessions, establishes The Committee of the Affairs of the House whose duty is to screen all bills and resolutions classifying them as (a) fiscal or budgetary; or (b) non-fiscal or non-budgetary.¹ Those measures classified as fiscal or budgetary are then to be introduced and processed while those classified as non-fiscal or non-budgetary must, to be introduced, have a consent resolution enacted.² A two-thirds vote of members present and voting is required to over-rule committee reports.³

The continued use of the Committee of the Affairs of the House may well depend upon the decision relative to the continued use of the consent resolution. If decision is made to continue the use of the consent resolution, the continued use of the Affairs Committee may be deemed advisable to afford decision as to whether such consent is necessary for a particular measure or not. If decision is made to discontinue the use of consent resolutions, the committee's present function is eliminated. However, it may be advanced that even if the use of consent resolutions is discontinued, an Affairs committee may still be deemed useful to advise the Chair as to which measures will, due to their nature, require a three-fourths vote

1. Except consent resolutions, and resolutions dealing with Rules of the House, Condolences, Memorials, Organization and Adjournment and Joint Sessions of the Legislature. Rules of Order of the House of Representatives, 1970, "Rules Applicable to Fiscal Sessions Only", Rule 3., p. 3.

2. Ibid.

3. Ibid.

4. Ibid.

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for enactment. It is noted that in Sullins, while the Supreme Court did not chose to rule on whether the resolution there in question was budgetary or fiscal, and accepted arguendo that it was not, the Court did not rule that such question is beyond the scope of judicial determination.¹ In light of no contrary ruling, it may only be supposed that the question of the fiscal or non-fiscal nature of a bill or resolution is considered by the Court to be within the scope of judicial determination, and further that any measure which the Court finds non-fiscal or non-budgetary and fails to be enacted by a three-fourths vote in fiscal or budgetary sessions may well be declared unconstitutional.

1. Sullins v. Shreveport, supra, 211 So.2d 314 at 317.

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NOTES

Addenda to Addenda F is omitted. See, Sullins v. City of Shreveport, 211 So. 2d 314(La.1968).

CC/73 Research Staff

Committee on Legislative Powers and Functions

March 23, 1973

Staff Memo No. 3

RE: Size of legislature and length of terms of legislators.

Size of Legislature

The Louisiana Constitution fixes the size of the senate at not more than 39 members (Art. 3, § 3). The size of the house of representatives is set at 105 members by statute (R.S.24:35). Other state legislatures vary considerably in size from the smallest, Nebraska, with 49 members, to the largest, New Hampshire, with 424 members (see Appendix). The smallest bicameral legislatures are Delaware with 53 members and Nevada with 54 members. Senate membership ranges from 17 in Nevada to 67 in Minnesota. Lower houses vary from 35 seats in Delaware, to 240 in Massachusetts, to 400 seats in New Hampshire. The ratio of senators to house members averages about one to three. Colorado, Delaware and Idaho have one senator for less than two representatives. Montana and Hawaii have a ratio of one senator to two representatives. New Hampshire has one senator for approximately 17 representatives. Louisiana has a ratio of one senator for approximately three representatives and a total membership of 144.

Arguments For and Against Smaller Size

The National Municipal League and other authorities favor

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small legislative houses because they are better able to meet the modern needs for greater efficiency, deliberation and responsiveness. Advocates claim that with fewer legislators, membership becomes more important, each member's responsibility is increased, the raising of salaries is less difficult, and the tendency to leave important decisions to irresponsible committees is reduced.

Advocates of larger houses point out that the small house can be inefficient and nondeliberative because it lacks sufficient personnel to adequately perform committee work. Larger houses can better represent a broad range of interests throughout the state. However, it is not only the number of seats, but also the distribution of the seats which enables a legislature to be representative. Beyond a certain size a legislature can cease to reflect its constituency. Some scholars maintain that an increase in the size of a legislature to increase popular representation might defeat its own end when the increased size results in the business of the legislature grinding to a halt or a steel fisted hand must wield the gravel to make the body get its work done.

Other scholars are less certain about the effects of size noting that state legislatures vary in size without really affecting overall performance.

Some authorities, including the National Municipal League, contend that including maximum and minimum limits in the constitution ensures against the dangers cited for both very large and very small chambers. Also, by providing only maximum

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and minimum figures, greater flexibility in districting the state would be gained. The Model State Constitution (1963) states that "The number of members shall be prescribed by law but shall not be less than ____ nor exceed ____." (Art. IV, sec. 4.02)

The necessity of establishing a minimum is doubtful, in the opinion of some observers. There is serious difficulty in reducing the number of seats because of the effect upon the incumbents in the districts concerned. The tendency has been to increase rather than decrease the number of seats.

Louisiana has since the adoption of the Constitution of 1921 increased the size of the House of Representatives from 100 to 105.

From the foregoing it appears that there is no one ideal size for a legislative body. Size appears to be determined on the basis of practical and political needs.

Length of Terms

Louisiana is one of the four states (Alabama, Louisiana, Maryland, and Mississippi) which provides 4-year terms for both senators and representatives. Every four years all of the 144 members of the Louisiana Legislature are elected. Because of the fast turnover in membership in the Louisiana Legislature, there generally is a large majority who have had little or no legislative experience. In the 1972 Legislature, for example, approximately percent of the members had had no previous legislative experience.

The length of legislative terms varies among the states. Four-year terms for the members of the upper chambers of legislatures are most common, 35 states elect senators to serve for

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that length of time. Twelve states elect senators to serve for two years. Nebraska, which has a unicameral legislature, elects all its members for 4-year terms. Illinois and New Jersey elects all of their senators to 2-year and 4-year terms. (See Appendix)

Four year terms for members of the lower houses are not so common, since only Alabama, Louisiana, Maryland, and Mississippi elect representatives for 4-year terms. Forty-five states have 2-year terms for the members of their lower chambers. Nebraska has a unicameral legislature.

It would seem that the state constitutions which set senators' terms at four years and representatives' terms at two years are modeled after the federal Constitution, which provides 6-year overlapping terms for United States Senators and 2-year terms for United States Representatives. The Senate, in early political history, was looked upon as the stable legislative chamber, more conservative and less likely to make radical changes. The House of Representatives elected more frequently, was thought to be more representative of the people's changing desires. This idea has carried over to 28 states whose state

senators are elected for 4-year overlapping terms and whose state representatives are elected for only 2-year periods.

Although the emphasis here is on the length of the term, some attention should be given to how much actual legislative experience a legislator gets during his term. The length of a legislator's term cannot be considered the only factor determining how much actual legislative experience he will get during his term of office, for the number of sessions held during his term is

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important also. For example, since the Louisiana Legislature alternates general and fiscal sessions and representatives and senators serve 4-year terms, Louisiana legislators participate in just two general sessions during their terms of office. On the other hand, since the Maryland Legislature meets in annual general session and all its legislators serve 4-year terms, Maryland legislators participate in four regular sessions during their terms.

In the large majority (15) of the 16 states having biennial sessions, the representatives participate in only one session during their terms, since they are elected for 2-year terms. On the other hand, in 12 of these states the senators participate in two regular sessions, since they are elected for 4-year terms.

Arguments For and Against Longer Terms

The basic question involved in the consideration of the merits of a longer term appears to be that of stability versus current representation in the legislature.

More frequent or longer participation in the legislature tends to insure a certain amount of skill and experience among legislators which is necessary for smooth and efficient operation. Long legislative terms tend to give continuity and stability to legislative programs and policies. The legislator should be able to become more familiar with the Louisiana law and the procedures of law-making, more closely acquainted with the organization and duties of government agencies, and better informed on the problems with which the state government is concerned and upon which he must legislate. Long terms tend to capitalize on the experience of the legislator and to allow him to make use of his experience in improving the legislative product.

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Short legislative terms are favored as a means of keeping the legislature attuned to public wishes. A major argument for 2-year terms has been that poor representation of any parish or district can be quickly remedied. Frequent elections and rapid turnover in legislative personnel tend to keep the legislators in accord with the views of their constituents and prevent disregard of the voters' wishes by a group which is assured of its position for two or more regular sessions.

Some states have compromised by adopting a combination of long terms for one house and shorter terms for the other. This idea has been carried further by the practice of staggering the senatorial terms so that the Senate is never a completely

new body. The idea of staggered or overlapping terms will be discussed below.

Overlapping Terms

The Council of State Governments has recommended that a portion of each house of state legislatures be elected at regular intervals so that the houses would never be composed of all new, inexperienced members. In Louisiana, all 144 legislators are elected at one election every four years.

Twenty-eight states provide for staggered terms for members of their senate. The usual practice of these states is to elect either one-half of the senate members, or the senators in the odd-numbered or the even-numbered districts, at the same time as all members of the lower house are elected. There is at present no record of lower houses which are elected with staggered or overlapping terms.

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Arguments For and Against Staggered Terms

Although senates elected for staggered terms are not considered to be continuous bodies in regard to procedures and rules, the overlapping terms do provide a continuity of membership and preservation of legislative leadership and experience. Experienced legislators in a session make for a better organized body and more efficient legislative procedure, while inexperienced legislators make for confused legislation particularly in the early days of a session. The presence of old members in the legislature may foster stability and afford protection against abrupt changes in policy. Committee appointments may depend to some extent on the experience of legislators, and favored positions may be granted to legislators most qualified in respect to service.

On the other hand, legislative terms which run concurrently with the governor's term make for smoother over-all legislative operations, since the governor is more likely to get his measures passed without opposition from old members who were elected at different times and who advocate different programs of legislation. Law-making to a large extent is the combined effort of the governor and the legislature, and lack of harmony between these two branches often results in disharmony in the legislature. Although staggered terms may provide valuable experience for legislators, there would be the possibility that the old group would form a clique which would tend to direct legislation along certain partisan lines. Their influence and control over new legislators could be detrimental

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to freedom and independence of individual legislative thought, particularly if the staggered terms carried other privileges of seniority.

Law-making in state legislatures is characterized not only by deliberation on the chamber floors but also by compromise, bargaining, and political maneuvering which is learned only by first-hand experience as a legislator. Long terms provide means of acquiring this experience, and overlapping terms insure the

legislative body of experienced personnel at each legislative session. On the other hand, such a policy may place experienced legislators in favored positions, result in deadlock in administrative programs, and make it difficult for an incoming governor or party to carry out its mandate from the people.

Although no serious question concerning legislative terms has arisen in Louisiana, these two suggestions--lengthening legislative terms and providing for staggering those terms--should be included in any thorough consideration of possible ways to improve legislative procedures. They are based on the premise that the legislative procedures can be no better than the legislators who serve in the legislature and that if legislators were more experienced the process would be more satisfactory. It is upon this basis that the merits of these two suggested changes should be evaluated.

APPENDIX

NUMBER OF MEMBERS - LENGTH OF TERMS

State	Senate		House		House and Senate Totals
	Number	Term	Number	Term	
Alabama	35	4	106	4	141
Alaska	20	4	40	2	60
Arizona	30	2	60	2	90
Arkansas	35	4	100	2	135
California	40	4	80	2	120
Colorado	35	4	65	2	100
Connecticut	36	2	177	2	213
Delaware	19	4	39	2	58
Florida	48	4	119	2	167
Georgia	56	2	195	2	251
Hawaii	25	4	51	2	76
Idaho	35	2	70	2	105
Illinois	59	(a)	177	2	235
Indiana	50	4	100	2	150
Iowa	50	4	100	2	150
Kansas	40	4	125	2	165
Kentucky	38	4	100	2	138
Louisiana	39	4	105	4	144
Maine	32	2	151	2	183
Maryland	43	4	142	4	185
Massachusetts	40	2	240	2	280
Michigan	38	4	110	2	148
Minnesota	67	4	135	2	202
Mississippi	52	4	122	4	174
Missouri	34	4	163	2	197
Montana	(b)	4(c)	(b)	2	(b)
Nebraska	49	4			49
Nevada	20	4	40	2	60
New Hampshire	24	2	400	2	424
New Jersey	40	4(d)	80	2	120
New Mexico	42	4	70	2	112
New York	57	2	150	2	207
North Carolina	50	2	120	2	170
North Dakota	49	4	98	2	147
Ohio	33	4	99	2	132
Oklahoma	48	4	99	2	147
Oregon	30	4	60	2	90
Pennsylvania	50	4	203	2	253
Rhode Island	50	2	100	2	150
South Carolina	46	4	124	2	170
South Dakota	35	2	75	2	110
Tennessee	33	4	99	2	132
Texas	31	4	150	2	181
Utah	28	4	69	2	97
Vermont	30	2	150	2	180
Virginia	40	4	100	2	140
Washington	49	4	99	2	148
West Virginia	34	4	100	2	134
Wisconsin	33	4	100	2	133
Wyoming	30	4	61	2	91

(a) All senators ran for election in 1972 and every 10 years thereafter. Senate districts are divided into thirds. One group shall elect senators for terms of 4 years, 4 years, and 2 years; the second group for terms of 4 years, 2 years, and 4 years; the third group for terms of 2 years, 4 years, and 4 years.

(b) The size of the legislature shall be provided by law, but the senate shall not have more than 50 or fewer than 80 members and the house shall not have more than 100 or fewer than 80 members.

(c) 4 years. One-half of the senators shall be elected every two years.

(d) 4 years. Senate terms beginning in January of second year following the U. S. decennial census are for 2 years only.

REAPPORTIONMENT

No other term in the past decade has had more of an effect on the lives of all persons nationwide than the term "reapportionment". With the advent of Baker v. Carr, 369 U. S. 186 (1962) one legislature after another has been forced to come to grips with the problems involved in their own reapportionment. The principle of "one-person, one-vote" more popularly known as "one-man, one-vote", first enunciated in the case of Gray v. Sanders, 372 U. S. 368 (1963), if properly applied, truly results in representative government at its finest, a government that derives its just powers from the consent of the governed.

The problems involved in legislative reapportionment are fundamental to the make-up of state government, for the method of assigning legislative seats and dividing political units into districts provides the basis for the selection of legislative representatives. The term "reapportionment" has come to identify two separable but related aspects of a periodic though oftentimes in the past sporadic process for determining representation in representative bodies. Strictly speaking, the term "apportionment" refers to the process of assigning the number of representatives (legislators, congressmen, police jurors, school board members, councilmen or aldermen) to be elected from each district, while the term "districting" refers to the process of establishing the boundaries of the districts from which those representatives are to be elected.

PART I Reapportionment - Judicial Action

Before 1962, the courts generally were reluctant to intervene in reapportionment matters. The United States Supreme Court, in Colegrove v. Green, 328 U. S. 546 (1946), declined to grant judicial relief from malapportionment of congressional districts in Illinois. In that case, the Illinois congressional districts had been established in 1901 on the basis of the census of 1900. There had been no reapportionment thereafter. Each district elected one congressman, but because of population shifts they were grossly malapportioned, with the smallest district having a population of approximately 112,000 and the largest having a population of approximately 900,000. The court found that judicial intervention would necessitate review of political questions which were not justiciable, that is, appropriate for judicial remedy.

Justice Frankfurter, writing for the majority, stated that "Courts ought not to enter this political thicket." He argued that due regard for the working of government and the idea of involving the judicial branch in the politics of the people

dictated that the courts not intervene. The court felt that the solution to unfairness in districting was to be found in the legislative branch of government, either state or federal.

Thus Colegrove v. Green established a judicial precedent of nonintervention in reapportionment matters which was to last until 1962, when the Supreme Court in the decision of Baker v. Carr, reversed itself.

On March 26, 1962, the United States Supreme Court held in Baker v. Carr that reapportionment matters were indeed justiciable and amenable to judicial relief in appropriate cases. The decision was based on the question of justiciability and not the merits of the controversy, but it opened the door for the first time to further consideration of reapportionment matters.

The court in Baker v. Carr did not go into the merits of the questions raised; however it did make three crucial findings:

- (1) The federal courts do have jurisdiction over reapportionment matters;
- (2) that reapportionment matters were amenable to judicial relief; and
- (3) that citizens, as registered voters and residents of a representative district have standing in court to challenge reapportionment matters under the equal protection clause of the Fourteenth Amendment to the United States Constitution.

Since the decision in Baker v. Carr did not rule on the question of reapportionment, a determination of what was required under the equal protection clause relative to reapportionment matters fell to the various federal district courts. Immediately thereafter, numerous federal court decisions affecting reapportionment matters were rendered and many were appealed to the United States Supreme Court.

On February 17, 1964, the United States Supreme Court first decided a reapportionment case on its merits. In Wesberry v. Sanders, 376 U. S. 1. the court declared unconstitutional a 1931 Georgia statute which created 10 congressional districts on the grounds that certain of those districts under the 1960 census had a disproportionate number of people than other districts. Since each district elected one congressman, some congressmen represented as many as two to three times the number of people as did other congressmen. The court agreed with the finding of the lower court that the vote of a person in a more heavily populated district is diluted when compared with the vote of a person in a much less populated district. It held that the district court erred in dismissing the complaint for "want of equity" and stated that Article I, Section 2 of the United States Constitution, which provides that representatives be chosen "by the People of the several States" meant that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's". Since the case involved congressional districts and was based on Article I, section 2 rather than the equal protection clause of the Fourteenth Amendment, the central question in the minds of state legislators became: would

the courts apply the same rule of equal population to state legislative reapportionment.

The answer was not long in coming for the United States Supreme Court on June 15, 1964 squarely passed upon the question of state legislative reapportionment in Reynolds v. Sims, 377 U. S. 533 (from Alabama), and its five companion cases, WMCA, Inc. v. Lomenzo, 377 U. S. 633 (from New York); Maryland Citizens Committee for Fair Congressional Redistricting, Inc. v. Tawes, 377 U. S. 656 (from Maryland); Davis v. Mann, 377 U. S. 678 (from Virginia); Roman v. Sincoc, 377 U. S. 695 (from Delaware); and Lucas v. Forty-Fourth General Assembly of the State of Colorado, 377 U. S. 713 (from Colorado).

The basic holding of Reynolds v. Sims and its five companion cases was that the equal protection clause of the Fourteenth Amendment to the United States Constitution requires that seats in both houses of a bicameral state legislature be apportioned substantially on a population basis. (Reynolds v. Sims, id. at 568; WMCA, Inc. v. Lomenzo, id. at 653; Maryland Committee v. Tawes, id. at 674)

The court explained:

"(w)e mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement." (Reynolds v. Sims, id. at 577)

Considering Reynolds v. Sims and its five companion cases together, a series of constitutional guidelines for reapportionment might be drawn as follows:

(1) Factors that will not justify any deviation from the equal population standard, popularly referred to as "one-man, one-vote" principle in either house of a bicameral state legislature include:

- a. "history alone"
- b. "economic or other sorts of group interests"
- c. "considerations of area alone"
- d. distance, in light of modern developments and improvements in transportation and communications
- e. geographic or topographic considerations
- f. a policy of protecting "insular minorities"
- g. according recognition to a state's "heterogeneous characteristics"
- h. attempting to balance urban and rural power in the legislature

(Reynolds v. Sims, id. at 579-580; Lucas v. Colorado General Assembly, id. at 738; Davis v. Mann, id. at 692)

(2) Factors that may justify some deviation from a strict population standard, provided that population is not submerged as the controlling consideration include:

- a. the use of political, natural, or historical boundary lines to avoid indiscriminate districting and gerrymandering
- b. according political subdivisions some independent representation
- c. maintaining compactness and contiguity of districts
- d. the balancing of a slight over-representation of a particular area in one house with a minor under-representation of that area in the other house.

However in determining the rational state policy of any state the court stated: "What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case." (Reynolds v. Sims, id. at 578-581; Lucas v. Colorado General Assembly, id. at 735, N.27)

(3) Analogy to the federal system of a nonpopulation-based senate coupled with a population-based lower house is "inapposite and irrelevant" to state legislative reapportionment. (Reynolds v. Sims, id. at 573)

(4) States must provide reasonable plans for periodic reapportionment. Reapportionment after each decennial census meets the "minimal" requirements for maintaining a reasonably current scheme of legislative representation. (Reynolds v. Sims, id. at 583, 584)

(5) Rigid or uniform mathematical criteria of constitutionality are neither workable nor desirable. (Reynolds v. Sims, id. at 577; Roman v. Sincoc, id. at 710)

William J. D. Boyd, Assistant Director of the National Municipal League, in "Reapportionment in the 1970s: The Problems of Compliance" (Lexington, Kentucky: The Council of State Governments, 1971) states:

"Legislatures must also forget about finding some magic percentage deviation between districts that is or is not acceptable. The court's thinking has been very clear on this point. They have said they are not going to establish any minimum or maximum deviation percentage. Were they to do so, all State Legislatures would aim right for that figure." (Id at 3)

(6) Military and military-related personnel cannot be peremptorily excluded from the population base used for reapportionment merely because of the nature of their employment or status. Discrimination against a "class of individuals," merely because of their status, without additional reasons, is "constitutionally impermissible." (Davis v. Mann, id. at 691)

(7) A majority vote of the people of a state cannot validate an apportionment scheme if it fails to measure up to the requirements of equal protection. An individual's constitutionally protected rights cannot be denied even by a vote of a majority of a state's electorate. (Lucas v. Colorado General Assembly, id. at 736)

(8) In a bicameral system, the scheme of representation provided for one house cannot be considered or evaluated without necessarily considering the kind or representation provided for in the other house. This is necessary to determine whether the state has in good faith created a total scheme of apportionment best suited to the state's needs. (Maryland Committee v. Tawes, id. at 673; Lucas v. Colorado General Assembly, id. at 735, N. 27)

Following on the heels of Reynolds v. Sims and its five companion cases came the United States Supreme Court's per curiam decision one week later on June 22, 1964 which disposed of nine additional cases from as many states; Swann v. Adams, 378 U. S. 553 (from Florida); Meyers v. Thigpen, 378 U. S. 554 (from Washington); Nolsn v. Rhodes, 378 U. S. 556 (from Ohio); Williams v. Moss, 378 U. S. 558 (from Oklahoma); Germano v. Kerner, 378 U. S. 560 (from Illinois); Marshall v. Hare, 378 U. S. 561 (from Michigan); Town

of Franklin v. Butterworth, 378 U. S. 562 (from Connecticut); Hearne v. Sylie, 378 U. S. 563 (from Idaho); Hill v. Davis, 378 U. S. 565 (from Iowa).

The court, without having had briefs on the merits nor having heard oral argument in any of the above cases, found, as in the preceding week, that each state's apportionment scheme was invalid and each case was remanded to the lower court for further proceedings consistent with the court's opinion in Reynolds v. Sims and its companion cases. Thus in a week's time the apportionment schemes for almost one-third of all the state legislatures was held unconstitutional.

Following this action of the Supreme Court in its June, 1964 decisions, numerous lower courts were faced with applying the guidelines articulated in Reynolds v. Sims and its companion cases. The court had indicated that the implementation of those guidelines would be reviewed on a "case-by-case basis" and had stated: "Lower courts can and assuredly will work out more concrete and specific standards for evaluating state legislative apportionment schemes in the context of actual litigation." (Reynolds v. Sims, *id.* at 578)

How the lower courts worked out "more concrete and specific standards" for Louisiana will be treated in Part II of this study.

PART II REAPPORTIONMENT - LOUISIANA

Louisiana's first constitution, that of 1812, was approved by Congress as the basis for admission of the State of Louisiana into the Union in 1812. It provided: "Representation shall be equal and uniform in this state, and shall be forever regulated and ascertained by the number of qualified electors therein."

An enumeration of electors was to be made in 1813 and every fourth year thereafter. The number of representatives was fixed at not less than 25 nor more than 50. (La. Const. of 1812, Art II, §6) The state was to be divided into 14 senatorial districts and each district was to elect one senator

Most of the original districts were composed of individual parishes, but population differences were taken into account. The City of New Orleans and the Parish of Orleans were divided into two districts and two parishes, St. Bernard and Plaquemines were combined into one district. (*Id.*, §10)

The constitution of 1845 increased the membership of the house of representatives to not greater than 100 nor less than 70. The requirement of "equal and uniform" representation in the house of representatives was retained, but a provision was added that "Each parish shall have at least one Representative". This was qualified by a prohibition against creating new parishes (a) with "less than the full number entitling it to a Representative," or, (b) when the creation of a new parish would leave any other parish without the required "number of electors." Reapportionment was to be completed after each enumeration of electors, in 1847, 1855 and every ten years thereafter. (La. Const. of 1845, Tit. II, Art. 8) The number of senators was set at 32 and no parish was to have

more than one-eighth of the whole number of senators. No parish was to be divided in the formation of senatorial districts except Orleans. The senators were to be apportioned according to the population of the whole state after deducting the population of the City of New Orleans. The remainder was to be divided by 28 (Orleans was entitled to four) and the result was the "Senatorial ratio entitling a Senatorial District to a Senator". To achieve this ratio, single or contiguous parishes could be formed into districts having a population as near as possible to the senatorial ratio. If a parish or a district fell short of or exceeded the senatorial ratio by one-fifth then a district could be created having not more than two senators. (*Id.*, Arts. 15, 16)

The constitution of 1852 did not significantly change the method of apportionment but did alter the base for reapportionment of the house of representatives from the "number of qualified electors" to the "local population of each of the several parishes of the State." In the reapportionment of the senate, no parish was to have more than five senators and the division was then set at 27 since Orleans was entitled to five. There was no change at all in the size of either the house of representatives or the senate. For the purpose of ascertaining total population an enumeration was to be taken in 1853, 1858, 1865 and then at least once every ten years. (La. Const. of 1852, Tit. II, Arts. 8, 15, 16)

The Convention of 1861 adopted the constitution of 1852 making only such changes as necessary to conform to the Constitution of the Confederate States of America. None of the changes altered the reapportionment provisions.

The constitution of 1864 retained much of the principles of apportionment of the 1852 constitution but returned to the "number of qualified electors" as the base for reapportionment of the house of representatives. The number of representatives was set at not more than 120 nor less than 90. An enumeration was ordered for the years 1866, 1870, 1876 and at least once every ten years thereafter. (La. Const. of 1864, Tit. III, Arts. 10)

The state was divided into 22 senatorial districts and the number of senators was set at 36 to be apportioned among the districts on the basis of "electoral population". The electoral population of the whole state was to be divided by 36 to arrive at the senatorial ratio but no parish was entitled to more than nine senators. (*Id.*, Arts. 12, 22)

The constitution of 1868 carried forward the same basic principles of reapportionment but returned to "total population" as a base for reapportionment of both the house of representatives and the senate. The number of senators remained at 36 but no mention was made of the number of representatives except that each parish of the state was entitled to at least one representative. It did provide that until an apportionment could be made the number of representatives was 101 and apportioned them among the then 48 parishes with 23 representatives specified for the parish of Orleans and from one to four representatives assigned to the other parishes. The

census of the United States for the year 1870 was to be used in apportionment until the census of the state could be taken in 1875 and every ten years thereafter. (La. Const. of 1868, Tit. II, Arts., 20,22,29)

The constitution of 1879 maintained the basic elements of apportionment from previous constitutions but unlike the constitution of 1868 spelled out the maximum and minimum number of representatives. These were set at not more than 98 nor less than 70. Each parish was entitled to an additional representative for any fraction exceeding one-half the representative number. The first enumeration to be made by the state was to be in 1890 and every tenth year thereafter. Until that time the constitution itself apportioned both the house of representatives and the senate. (La. Const. of 1879 Arts. 16, 18) The number of senators was set at not more than 26 nor less than 24 and the number of senatorial districts to be maintained until the census of 1890 was set at 26. (La. Const. of 1879, Arts. 17, 18)

The constitution of 1898 while maintaining much of the past apportionment principles, established several firsts. In it first appears the historical provision that representation in the house of representatives was to be equal and uniform and "shall be based upon population". It was the first to provide that each parish and "each ward of the City of New Orleans" was to have at least one representative. It was also the first constitution in this state to establish the United States census alone for apportionment, beginning with the census of 1900. These provisions have been carried forward into the succeeding constitutions of 1913 and 1921. The constitution of 1898 set the number of representatives at not more than 116 nor less than 98. It was amended in 1910 to increase the maximum to 120 and provide for apportioning of new parishes. (La. Const. of 1898, as amended 1910, Art. 18) The number of senators was set at not more than 41 nor less than 36. The constitution established 30 senatorial districts with a total of 39 senators apportioned among them. (La. Const. of 1898, Arts. 19,20)

The constitution of 1913 tracked much of the language relating to apportionment from the constitution of 1898 as amended in 1910. It provided for a maximum of 120 members of the house of representatives and did not specify a minimum. The provisions relation to the senate tracked the previous constitution exactly. It also provided that the existing apportionment of the senators and representatives was to remain in force. (La. Const. of 1913, Arts. 18-20)

The constitution of 1921 (the present constitution) continued the previous methods of reapportionment, specifying at least one representative for each parish and each ward of the City of New Orleans. The constitution provided for a maximum of 101 representatives (Art. III, §2) but apportioned 100 representatives among the representative districts. (Art. III, §5) Article III, section 5, was amended in 1954 to increase the number of representatives from Jefferson parish

and in 1960 it was amended again to provide the maximum number of house seats at 105. The 1960 amendment also apportioned the house of representatives giving both East Baton Rouge Parish and Jefferson Parish each two additional representative seats. The number of senators was set at 39 (Art. III, §3) and apportioned among 33 senatorial districts (Art. III, §4). Article III, section 4 also provides that whenever more than one senator is apportioned to a district composed of more than one parish, not more than one senator could be elected from any parish. Article III, section 2 provided that at the first regular session after the United States census of 1930, and after each census thereafter, "the Legislature shall, and it is hereby directed to, apportion the representation among the several parishes and representative districts on the basis of total population".

Despite this clear mandate the Louisiana legislature made no serious effort to comply. The amendments of 1956 and 1960 increased the number of representatives and these were apportioned but there was no reapportionment on the basis of total population. It was not until certain citizens and taxpayers of East Baton Rouge Parish relying on the case of Baker v. Carr, instituted in the federal courts an action seeking a declaratory judgment and a decree ordering reapportionment of the house of representatives that the legislature was moved to act. Act 2 of the Special Session of 1963 was passed in a special session called a few days following the adjournment of the 1963 regular session after the court fixed the hearing on the application for a preliminary injunction. The court in that case, Daniel v. Davis, 220 F. Supp. 601(1963) stated that malapportionment of representation in the Louisiana legislature amounting to "invidious discrimination" violated the equal protection clause of the Fourteenth Amendment. It found that the Louisiana constitutional provisions (Art.

III
§5) apportioning the house of representatives and the corresponding statutory provision, (R.S. 24:35) prior to the latter's amendment and reenactment in 1963 were unconstitutional on these grounds. The court ruled that a legislative apportionment plan satisfied the requirements of equal protection if the plan, considered as a whole, had a rational basis and gave importance to population as a major factor. It held that Act 2 of the ^{1963 Special Session} Special Session of 1963 met "the Court's Constitutional test and substantially meets the plaintiffs' demands". (Id., at 605) Not at issue in this case were the questions of the validity of apportioning 80 seats in the house according to geographic units nor the apportionment of the senate. The court noted:

"The Supreme Court has not yet fixed boundaries for the role of courts in legislative apportionment. Nor has it established the standard. Courts must use in testing the constitutional validity of apportionment. Federal judges should tread lightly on ground historically within the province of state legislatures." (Id. at 605)

A little over three years later the court, in the case of Bannister v. Davis, 263 R. Supp. 202 (1966) would state that

the Daniel v. Davis case was decided before Reynolds v. Sims and its companion cases and therefore:

"The Court is unanimously of the opinion that unless the legislature of the State of Louisiana adopt and submit to this Court before January 1, 1967, a constitutionally satisfactory statute reapportioning its Senate and House, the Court will order that the next subsequent election for both houses be conducted at large." (Bannister v. Davis, id at 205)

The court went on to state that if a constitutionally valid plan was submitted for only one of the two houses, elections for both would be at large. It sought to aid the legislature's task by formulating general guidelines as follows:

1. General principles set forth in Reynolds v. Sims
 - a. Both houses were to be apportioned on the basis of population.
 - b. Analogies to the United States Senate are inapposite for state legislatures.
 - c. Mathematical exactitude was not a constitutional requirement.
 - d. Minor deviations from the "one-man, one-vote" principle are permitted to insure some voice to political subdivisions as political subdivisions.
2. Three tests for determining the fairness of apportionment.
 - a. Population variance: the ratio between the population per representative in the most overrepresented district to the population per representative in the most underrepresented district.
 - b. Maximum detrimental deviation from the average percentage: the percentage deviation of the population of each representative district from the "ideal district" - the number of people that each member would represent if every member represented exactly the same number of people, obtained by dividing the number of members into the total population of the state.
 - c. Minimum controlling factor: the minimum percentage figure of the population necessary to elect a majority of representatives.
3. Permissible population bases.
 - a. Total population: from census figures.
 - b. Citizen population: total population ~~XXXX~~ minus transients, aliens, and military personnel who are not citizens of the state.
 - c. Voting population: qualified electors, whether or not registered to vote.
 - d. Registered voters or numbers ~~of~~ of votes cast: the court found that racial minorities were not registered in sufficient numbers in this state for it to approve such a base.
4. Close relationship of house and ~~XXXXXX~~ senate.

The apportionment of the house of representatives and the senate should be viewed as a unit. Each is to be considered in light of the other.
5. Possible conflicts with Louisiana Constitution.
 - a. Reapportionment plan should conform as closely as possible to the state's constitution.

- b. The size of the state legislature is for the state to decide.
 - c. As long as the house has 105 members, the provisions of Article III section 2 declaring that each parish must have at least one representative is unconstitutional.
 - d. The formula in Article III section 4 which provides that in any multi-member, multi-parish senatorial district, no more than one of the senators may be elected ~~XXXX~~ from any one parish must be discarded.
6. Joinder of parishes; multi-member and gerrymandered districts.
 - a. Multi-member, multi-parish districts will be necessary to satisfy the equal population standard while adhering to the boundaries of political subdivisions but they should be avoided whenever possible.
 - b. Gerrymandering of any kind will be closely scrutinized if it tends to dilute voting strength. Racial gerrymandering will not be tolerated.
7. Fractional and weighted voting.

In fractional and weighted voting systems, each parish would elect one representative, but the weight of his vote would be keyed to the population of the parish. This sort of system overlooks the fact that a representative does more than just vote for legislation and the court stated it would disapprove of such a system.

The Louisiana legislature reapportioned the senate^e and the house of representatives by Acts 3 and 4 of the 1966 Extraordinary Session. It divided the state into 27 senatorial districts among which it apportioned 39 senate seats with one to three seats per ~~XXX~~ district. Only two parishes were divided in the Senate plan, Orleans and Jefferson, with part of Jefferson being combined with plaquemines and St. Bernard parishes to form a single member ~~xx~~ senatorial district. The house of representatives was divided into 49 representative districts among which were apportioned 105 house seats with one to ~~xx~~ seven seats per district. No parish except Orleans was divided in the house plan. The court in a per curiam order dated December 30, 1966 ruled that the reapportionment was "substantially in accordance with the court's guidelines" and that it met the requirements of the United States Constitution. (Bannister v. Davis, id. at 209)

This plan was only effective for the legislative elections of 1967-1968 as the court in Bannister v. Davis noted that the CONSTITUTION OF Louisiana required reapportionment after each ten-year census of the United States and ruled that "the reapportionment resulting from this decision should remain in effect only until the expiration of the first session of the Legislature after the 1970 census." (Banniseer v. Davis, id. at 205)

The Louisiana legislature in 1970 moved to comply with the implied order of the court in Bannister v. Davis and the clear mandate of Article III, sections 2 and 3 to reapportion both the house of representatives and the senate after the census of 1970. It established a joint legislative committee whose purpose was to survey and study the various means by which reapportionment of the legislature could best be accomplished (SCR No. 5 of 1970¹⁵) and a Legislative Reapportionment Study Commission to make continuing

studies of the apportionment and reapportionment of the legislature and the congressional districts and to report the findings of such studies after each United States census. (Act 630 of 1970RS)

The reapportionment study commission working with members of the joint legislative committee on reapportionment began, in early 1971, the work of producing a plan which would ~~begin~~ be in accordance with the 1970 census and comply with the principle of one-man, one-vote and other equal protection requirements. All efforts by the committee to have a special session called to consider its plan were to no avail and it was not until the 1971 regular session that the question of reapportionment was considered. The result, after much legislative debate and amendment, was Acts 106 and 108 of the 1971 Regular Session.

Several suits were instituted following the ~~adjournment~~ adjournment of the legislature, seeking to have Acts 3 and 4 of the 1966 Extra Session and Acts 106 and 108 of the 1971 Regular Session declared unconstitutional, null and void, and seeking further to have the court fashion a plan of reapportionment that would be protective of the constitutionally guaranteed rights of the citizens of Louisiana. Bussie v. Governor of Louisiana, 333 F. Supp. 452 (1971). The court stayed all proceedings pending submission of the plan to the Attorney General of the United States as required by Sec. 5 of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973 C. This was done, and the Attorney General rejected the plan on the grounds of racial discrimination, thereby automatically rendering Acts 106 and 108 null and void.

The court then appointed a special master to prepare and present to the court a total comprehensive plan of reapportionment of the house of representatives and the senate of Louisiana. After four days of hearings the special master prepared and presented to the court a "Reapportionment Plan for the Louisiana Legislature" which the court after a thorough review and evaluation adopted as its plan, noting that the prayer of plaintiffs' complaint requested that a plan of reapportionment be fashioned and put into effect in a form and manner to be determined by the court. The plan provided for all single-member legislative districts, and maintained the number of representatives at 105 and the number of senators at 39. This resulted in divisions of parishes and in some instances even of wards. The court noted:

"Single member districts are always to be preferred if the use of multi-member districts tends to dilute the voting strength of any minority group. That such is the case in Louisiana could hardly be denied. By the uniform use of single member districts, and by deviating to some extent from historical boundaries, equal participation in the election process is made available to all citizens." (Id. at 458)

After being ordered to hold evidentiary hearings by the Fifth Circuit Court of Appeals the court concluded after those hearings that the plan presented by the special master and approved by the court does, in fact, meet all constitutional requirements.

Certain plaintiffs appealed the lower court decision and in the case of Bussie v. McKeithen, 457 Fed Rep 2d 796 (1971) the Fifth Circuit Court of Appeals affirmed the judgment of the district court with the following modifications:

"a) the boundaries of senate districts 2,3,4, and 5 are modified so as to conform with the defendants-appellants' alternate plan for those districts.

b) The boundaries of senate districts 14,15, and 16 are modified so as to conform with the DeBlieux alternate plan for those districts.

c) For the purposes of the forthcoming election only, we approve the reapportionment of Jefferson Parish as set forth in the Master's plan and adopted by the district court. This approval is without prejudice to any challenge to the apportionment of Jefferson Parish for future elections." (Id. at 796)

The court of appeals adopted those modifications without opinion and certain plaintiffs in the original suits sought review of this summary reversal by the United States Supreme Court. In that case Taylor v. McKeithen, _____ U.S. _____, 92 S. Ct. 1980 (1972) the Supreme Court stated that it would not impute to the Court of appeals reasoning which would raise a substantial federal question. The court further stated:

"Because this record does not fully inform us of the precise nature of the litigation and because we have not had the benefit of the insight of the court of Appeals we grant the petition for writ of Certiorari, vacate the judgment below and remand the case to the Court of Appeals for proceedings in conformity with this opinion." (Id. at 1982)

As of this writing the Fifth Circuit Court of Appeals still has this pending and has not stated its grounds for summary reversal.

APPENDIX A

COMPARISON OF LEGISLATIVE REAPPORTIONMENT PROVISIONS

LOUISIANA CONSTITUTION, 1921: Legislative Article
Article III

§2. House of representatives; representation; apportionment; number

Section 2. Representation in the House of Representatives shall be equal and uniform, and shall be based upon population. Each parish and each ward of the city of New Orleans shall have at least one representative. At its first regular session after the United States census of 1930, and after each census thereafter, the Legislature shall, and it is hereby directed to, apportion the representation among the several parishes and representative districts on the basis of total population shown by such census. A representative number shall be fixed, and each parish and representative district shall have as many representatives as such representative number is contained in the total number of the inhabitants of such parish or representative district, and one additional representative for every fraction exceeding one-half the representative number. The number of representatives shall not be more than one hundred and one.

§3. Senatorial Districts; new parishes; number of senators

Section 3. The Legislature, in every year in which it shall apportion representation in the House of Representatives, shall divide the State into senatorial districts. No parish, except the parish of Orleans, shall be divided in the formation of a senatorial district. Whenever a new parish is created, it shall be attached to the senatorial district from which most of the territory is taken, or to another contiguous district, but shall not be attached to more than one district. The number of senators shall not be more than thirty-nine.

§5. House of representatives; number; apportionment

Section 5. The House of Representatives of the Legislature shall be composed of one hundred five (105) members, unless increased herein provided.

Wards 3, 7 and 11 of the Parish of Orleans shall have two (2) representatives, and the remaining wards of said Parish shall each have one (1) representative.

The Parishes of Caddo, East Baton Rouge and Jefferson shall each have four (4) representatives; the Parishes of Rapides and St. Landry shall each have three (3) representatives; the Parishes

of Acadia, Avoyelles, Calcasieu, Lafayette, Lafourche, Natchitoches, Ouachita, St. Mary and Tangipahoe shall each have two (2) representatives; and each of the remaining Parishes of the State shall have one (1) representative. (As amended Acts 1960, No. 610, adopted Nov. 8, 1960.)

§6. Reapportionment; restriction; new parishes

Section 6. This apportionment of senators and representatives shall not be changed or altered in any manner until after the enumeration shall have been taken by the United States; provided, that when a new parish is created such parish shall be assigned one representative unless there is more than one representative in a parish from which the larger portion of the territory is taken for the purpose of creating a new parish, in which case one of such representatives shall be apportioned to the new parish in the same act which creates the parish.

PROPOSAL OF THE LOUISIANA CONSTITUTIONAL REVISION COMMISSION; Legislative Article

Article III

§2. Membership

Section 2. The number of senators and representatives shall be fixed by law; however, the number of senators shall not exceed thirty-nine and the number of representatives shall not exceed one hundred five.

§3. Representation; apportionment; number

Section 3. Representation in the Senate and House of Representatives shall be equal and uniform and shall be based on population. At its first regular session after the population of this state is reported to the President of the United States for each decennial federal census the Legislature shall apportion representation on the basis of the total population as shown by such census. Insofar as practicable, each district shall be composed of compact and contiguous territory and no parish and no ward of Orleans Parish shall be divided to effect the apportionment of the Senate and House of Representatives, except for the purpose of forming districts wholly within a parish or within a ward of Orleans Parish.

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MODEL STATE CONSTITUTION: Legislative Article

Article IV

§4.02. Composition of the Legislature.

Section 4.02. The legislature shall be composed of a senate and an assembly. The number of members of each house of the legislature shall be prescribed by law but the number of assemblymen shall not be less than ___ nor exceed ___, and the number of senators shall not exceed one-third, as near as may be, the number of assemblymen. Each assemblyman shall represent one assembly district and each senator shall represent one senate district. Each member of the legislature shall be a qualified voter of the state and shall be at least ___ years of age.

§4.04. Legislative Districts.

Section 4.04. (a) For the purpose of electing members of the assembly, the state shall be divided into as many districts as there shall be members of the assembly. Each district shall consist of compact and contiguous territory. All districts shall be so nearly equal in population that the district with the greatest population shall not exceed the district with the least population by more than ___ per cent. In determining the population of each district, inmates of such public or private institutions as prisons or other places of correction, hospitals for the insane or other institutions housing persons who are disqualified from voting by law shall not be counted.

(b) For the purpose of electing members of the senate, the state shall be divided into as many districts as there shall be members of the senate. Each senate district shall consist of a compact and contiguous territory. All districts shall be so nearly equal in population that the district with the greatest population shall not exceed the district with the least population by more than ___ per cent. In determining the population of each district, inmates of such public or private institutions as prisons or other places of correction, hospitals for the insane or other institutions housing persons who are disqualified from voting by law shall not be counted.

(c) Immediately following each decennial census, the governor shall appoint a board of ___ qualified voters to make recommendations within ninety days of their appointment concerning the redistricting of the state. The governor shall publish the recommendations of the board when received. The governor shall promulgate a redistricting plan within ninety to one hundred and twenty days after appointment of the board, whether or not it has made its recommendations. The governor shall accompany his plan with a message explaining his reasons for any changes from the recommendations of the board. The governor's redistricting plan shall be published in the manner provided for acts of the legislature and shall have the force of law upon such publication. Upon the application of any qualified voter, the supreme court, in the exercise of original, exclusive

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and final jurisdiction, shall review the governor's redistricting plan and shall have jurisdiction to make orders to amend the plan to comply with the requirements of this constitution or, if the governor has failed to promulgate a redistricting plan within the time provided, to make one or more orders establishing such a plan.

RECENTLY ADOPTED CONSTITUTIONS: Apportionment Provisions Contained in Legislative Article

Constitution of Montana, 1972

Article V

§14. Districting and apportionment.

Section 14. (1) The state shall be divided into as many districts as there are members of the house, and each district shall elect one representative. Each senate district shall be composed of two adjoining house districts, and shall elect one senator. Each district shall consist of compact and contiguous territory. All districts shall be as nearly equal in population as is practicable.

(2) In the legislative session following ratification of this constitution and thereafter in each session preceding each federal population census, a commission of five citizens, none of whom may be public officials, shall be selected to prepare a plan for redistricting and reapportioning the state into legislative and congressional districts. The majority and minority leaders of each house shall each designate one commissioner. Within 20 days after their designation, the four commissioners shall select the fifth member, who shall serve as chairman of the commission. If the four members fail to select the fifth member within the time prescribed, a majority of the supreme court shall select him.

(3) The commission shall submit its plan to the legislature at the first regular session after its appointment or after the census figures are available. Within 30 days after submission, the legislature shall return the plan to the commission with its recommendations. Within 30 days thereafter, the commission shall file its final plan with the secretary of state and it shall become law. The commission is then dissolved.

Constitution of Illinois, 1970

Article IV

§1. Legislature - Power and structure.

Section 1. The legislative power is vested in a General Assembly consisting of a Senate and a House of Representatives elected by the people from fifty-nine Legislative Districts.

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§2. Legislative Composition.

Section 2. (a) One Senator shall be elected from each Legislative District. Immediately following each decennial redistricting, the General Assembly by law shall divide the Legislative Districts as equally as possible into three groups. Senators from one group shall be elected for terms of four years, four years and two years; Senators from the second group, for terms of four years, two years and four years; and Senators from the third group, for terms of two years, four years and four years. The Legislative Districts in each group shall be distributed substantially equally over the State.

(b) Three Representatives shall be elected from each Legislative District for a term of two years. No political party shall limit its nominations to less than two candidates for Representative in any Legislative District. In elections for Representatives, including those for nomination, each elector may cast three votes for one candidate or distribute them equally among no more than three candidates. The candidates highest in votes shall be declared elected.

§3. Legislative Redistricting.

Section 3. (a) Senatorial and Representative Districts shall be compact, contiguous and substantially equal in population.

(b) In the year following each Federal decennial census year, the General Assembly by law shall redistrict the House and Senate.

If no redistricting plan becomes effective by June 30 of that year, a Legislative Redistricting Commission shall be constituted not later than July 10. The Commission shall consist of eight members, no more than four of whom shall be members of the same political party.

The Speaker and Minority Leader of the House of Representatives shall each appoint to the Commission one Representative and one person who is not a member of the General Assembly. The President and Minority Leader of the Senate shall each appoint to the Commission one Senator and one person who is not a member of the General Assembly.

The members shall be certified to the Secretary of State by the appointing authorities. A vacancy on the Commission shall be filled within five days by the authority that made the original appointment. A Chairman and Vice Chairman shall be chosen by a majority of all members of the Commission.

Not later than August 10, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

If the Commission fails to file an approved redistricting plan, the Supreme Court shall submit the names of two persons, not of the same political party, to the Secretary of State not later than September 1.

Not later than September 5, the Secretary of State publicly shall draw by random selection the name of one of the two persons to serve as the ninth member of the Commission.

Not later than October 5, the Commission shall file with the Secretary of State a redistricting plan approved by at least five members.

An approved redistricting plan filed with the Secretary of State shall be presumed valid, shall have the force and effect of law and shall be published promptly by the Secretary of State.

The Supreme Court shall have original and exclusive jurisdiction over actions concerning redistricting the House and Senate, which shall be initiated in the name of the People of the State by the Attorney General.

Constitution of Florida, 1968

Article III

§1. Composition.

Section 1. The legislative power of the state shall be vested in a legislature of the State of Florida, consisting of a senate composed of one senator elected from each senatorial district and a house of representatives composed of one member elected from each representative district.

§16. Legislative apportionment.

Section 16. (a) SENATORIAL AND REPRESENTATIVE DISTRICTS. The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory. Should that session adjourn without adopting such joint resolution, the governor by proclamation shall reconvene the legislature within thirty days in special apportionment session which shall not exceed thirty consecutive days, during which no other business shall be transacted, and it shall be the mandatory duty of the legislature to adopt a joint resolution of apportionment.

(b) FAILURE OF LEGISLATURE TO APPORTION; JUDICIAL REAPPORTIONMENT. In the event a special apportionment session of the legislature finally adjourns without adopting a joint resolution of apportionment, the attorney general shall, within five days, petition the supreme court of the state to make such apportionment. No later than the sixtieth day after the filing of such petition, the supreme court shall file with the secretary of state an order making such apportionment.

(c) JUDICIAL REVIEW OF APPORTIONMENT. Within fifteen days after the passage of the joint resolution of apportionment, the attorney

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general shall petition the supreme court of the state for a declaratory judgment determining the validity of the apportionment. The supreme court, in accordance with its rules, shall permit adversary interests to present their views and, within thirty days from the filing of the petition, shall enter its judgment.

(d) EFFECT OF JUDGMENT IN APPORTIONMENT; EXTRAORDINARY APPORTIONMENT SESSION. A judgment of the supreme court of the state determining the apportionment to be valid shall be binding upon all the citizens of the state. Should the supreme court determine that the apportionment made by the legislature is invalid, the governor by proclamation shall reconvene the legislature within five days thereafter in extraordinary apportionment session which shall not exceed fifteen days, during which the legislature shall adopt a joint resolution of apportionment conforming to the judgment of the supreme court.

(e) EXTRAORDINARY APPORTIONMENT SESSION; REVIEW OF APPORTIONMENT. Within fifteen days after the adjournment of an extraordinary apportionment session, the attorney general shall file a petition in the supreme court of the state setting forth the apportionment resolution adopted by the legislature, or if none has been adopted reporting that fact to the court. Consideration of the validity of a joint resolution of apportionment shall be had as provided for in cases of such joint resolution adopted at a regular or special apportionment session.

(f) JUDICIAL REAPPORTIONMENT. Should an extraordinary apportionment session fail to adopt a resolution of apportionment or should the supreme court determine that the apportionment made is invalid, the court shall, not later than sixty days after receiving the petition of the attorney general, file with the secretary of state an order making such apportionment.

RECENTLY ADOPTED CONSTITUTIONS: Apportionment Provisions Contained in Separate Article.

Constitution of Alaska, 1959

Article VI. Legislative Apportionment

§1. Election Districts.

Section 1. Members of the house of representatives shall be elected by the qualified voters of the respective election districts. Until reapportionment, election districts and the number of representatives to be elected from each district shall be as set forth in Section 1 of Article XIV.

§2. Senate Districts.

Section 2. Members of the senate shall be elected by the qualified voters of the respective senate districts. Senate districts shall be as set forth in Section 2 of Article XIV, subject to changes authorized in this article.

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§3. Reapportionment of House.

Section 3. The governor shall reapportion the house of representatives immediately following the official reporting of each decennial census of the United States. Reapportionment shall be based upon civilian population within each election district as reported by the census.

§4. Method.

Section 4. Reapportionment shall be by the methods of equal proportions, except that each election district having the major fraction of the quotient obtained by dividing total civilian population by forty shall have one representative.

§5. Combining Districts.

Section 5. Should the total civilian population within any election district fall below one-half of the quotient, the district shall be attached to an election district within its senate district, and the reapportionment for the new district shall be determined as provided in Section 4 of this article.

§6. Redistricting.

Section 6. The governor may further redistrict by changing the size and area of election districts, subject to the limitations of this article. Each new district so created shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socioeconomic area. Each shall contain a population at least equal to the quotient obtained by dividing the total civilian population by forty. Consideration may be given to local government boundaries. Drainage and other geographic features shall be used in describing boundaries wherever possible.

§7. Modification of Senate Districts.

Section 7. The senate districts, described in Section 2 of Article XIV, may be modified to reflect changes in election districts. A district, although modified, shall retain its total number of senators and its approximate perimeter.

§8. Reapportionment Board.

Section 8. The governor shall appoint a reapportionment board to act in an advisory capacity to him. It shall consist of five members, none of whom may be public employees or officials. At least one member each shall be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Appointments shall be made without regards to political affiliation. Board members shall be compensated.

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§9. Organization.

Section 9. The board shall elect one of its members chairman and may employ temporary assistants. Concurrence of three members is required for a ruling or determination, but a lesser number may conduct hearings or otherwise act for the board.

§10. Reapportionment Plan and Proclamation.

Section 10. Within ninety days following the official reporting of each decennial census, the board shall submit to the governor a plan for reapportionment and redistricting as provided in this article. Within ninety days after receipt of the plan, the governor shall issue a proclamation of reapportionment and redistricting. An accompanying statement shall explain any change from the plan of the board. The reapportionment and redistricting shall be effective for the election of members of the legislature until after the official reporting of the next decennial census.

§11. Enforcement.

Section 11. Any qualified voter may apply to the superior court to compel the governor, by mandamus or otherwise, to perform his reapportionment duties or to correct any error in redistricting or reapportionment. Application to compel the governor to perform his reapportionment duties must be filed within thirty days of the expiration of either of the two ninety-day periods specified in this article. Application to compel correction of any error in redistricting or reapportionment must be filed within thirty days following the proclamation. Original jurisdiction in these matters is hereby vested in the superior court. On appeal, the cause shall be reviewed by the supreme court upon the law and the facts.

RECENTLY PROPOSED CONSTITUTIONS: Not Adopted

Constitution of Arkansas, 1970

Article III. Legislative Branch

§3. Legislative Districts.

Section 3. The State shall be divided into as many House districts as there are Representatives and as many Senate districts as there are Senators. Only one member shall be elected by the voters of each district. Districts shall consist of compact and contiguous territory and shall be as nearly equal in population as practicable. The population of each district for the purpose of representation shall not include inmates of prisons, hospitals for the mentally ill, or similar institutions. In determining representation, adjustments shall be made for persons counted in the federal census who were not legal residents of the districts where they were counted.

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§4. Board of Apportionment.

Section 4. (a) A Board of Apportionment is established and shall consist of the Governor, who shall be chairman, the Attorney General, the Lieutenant Governor-Secretary of State, and two persons not members of the General Assembly, one named by the House of Representatives and one by the Senate at the regular session held next following the biennial general election. If a vacancy occurs when the General Assembly is not in session, such vacancy shall be filled by appointment, for the remainder of the term, by the Speaker of the House or the President of the Senate, as the case may be. The Board of Apportionment shall divide the State into House and Senate districts immediately following each decennial federal census and shall, so far as practicable, observe county and municipal boundaries in establishing such districts.

(b) The reapportionment shall be completed within ninety days after the official census population figures are released by the United States. The report of the Board shall be filed with the Lieutenant Governor-Secretary of State, setting forth the population and boundaries of each House and Senate district. This apportionment shall be effective thirty days after filing unless action for revision is commenced in the Supreme Court within that period.

(c) The Supreme Court shall have original jurisdiction of any action filed by a qualified elector to compel the Board of Apportionment to perform its duties, or to revise any arbitrary action or abuse of discretion by the Board in making the apportionment. These proceedings shall have precedence over any other business before the Court. If a revision is decreed by the Court, a certified copy of its judgement shall be transmitted to the Lieutenant Governor-Secretary of State and shall be the apportionment.

of the legislature. So far as can be ascertained, in each of these cases the legislature has permitted such appointed members to serve, perhaps under authority of Article III, Section 10 which provides that each house shall be the judge of the qualifications, elections and returns of its own members. In at least one opinion of the Attorney General, the governor was advised that such appointments could be made under the broad powers granted to the executive branch under Article V, Section 12, which provides in part that the governor has the power to fill vacancies that may occur during the recess of the senate (Op. Atty. Gen. 1934-36, p. 659). The provision of Section 12 is qualified, however, by the language, "in cases not otherwise provided for in this Constitution." The rationale here stated may be somewhat difficult to understand in view of the fact that specific provision is made in Article III, Section 8 for the filling of vacancies in either house of the legislature by election.

The courts of this state have not been called upon to adjudicate this question and in a proper case a court could rule that no vacancy in the legislature can be filled except by election. On the other hand the court ruled in the case of Lee v. Lancaster, 262 So. 2d 124 (La. Ct. App., 1972) that eligibility to serve as a state legislator as stated by one constitutional article is among the "qualifications" of which the legislature is the judge

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April 5, 1973
Staff Memorandum No. 5

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under another constitutional article providing that each house shall be the judge of qualifications of its own members.

In Other States

The constitutions of 28 states (including Louisiana) provide for legislative vacancies to be filled by election. In 12 other states, the constitution provides that the legislature shall provide for the filling of legislative vacancies. In five states, the constitution provides for gubernatorial appointment. In four states, the constitution requires appointment by the county commissioners from the county or counties where the vacancy occurs and in one state, Illinois, the constitution provides for appointment according to law.

In five of the constitutions which have been recently proposed (Montana, Illinois, Florida, Alaska and Arkansas) the determination as to how legislative vacancies shall be filled is vested primarily in the legislature as follows:

1. In Montana, for example, the constitution provides that a vacancy is to be filled by a special election unless "otherwise provided by law."

2. The Illinois constitution provides that a vacancy must be filled by appointment as provided by law within thirty days after it occurs, and that the office must be filled by a member of the same political party as the former legislator. If the vacancy occurs in a senatorial district "with more than twenty-eight months remaining in the term, the appointed Senator shall serve until the next general election, at which time a Senator shall be elected to serve for the remainder of the term."

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FILLING OF VACANCIES IN THE LEGISLATURE

This memorandum will cover the filling of legislative vacancies. It will discuss Louisiana's provision and the provisions of other states. An addendum has been attached which contains a comparative study of constitutional provisions relating to legislative vacancies. In addition several alternative proposals are presented for the committee's review.

In Louisiana

The pertinent provision for the filling of a vacancy in either house of the legislature is found in Article III, Section 8 which provides in part:

"Should a vacancy occur in either House, the governor shall order an election to fill such a vacancy for the remainder of the term."

This provision has been in Louisiana's constitutions since the Constitution of 1879. Prior to that constitution, provisions in all of Louisiana's constitutions had been essentially that the legislature was to "regulate by law, by whom and in what manner" writs were to be issued for an election to fill a vacancy.

Ordinarily when a vacancy occurs in the legislature the governor calls a special election, but in several instances since adoption of the Constitution of 1921 the governor has made appointments to fill vacancies caused by the death of members

3. The Florida constitution provides that a vacancy must be filled "only by election as provided by law."

4. Both the Alaska constitution and the proposed Arkansas constitution contain provisions that legislative vacancies be filled as provided by law, but with the further provision that if no provision is made by the legislature then the governor will fill the vacancy by appointment.

SUGGESTED ALTERNATIVE PROPOSALS

1. § ___. Vacancies

Section ___. Should a vacancy occur in either house, the governor shall order an election to fill such vacancy for the remainder of the term.

2. § ___. Vacancies

Section ___. Any vacancy occurring in either house of the legislature shall be filled by election, as provided by law.

3. § ___. Vacancies

Section ___. Vacancies in legislative office shall be filled only by election as provided by law.

4. § ___. Vacancies

Section ___. A vacancy in the legislature shall be filled by special election for the unexpired term, unless otherwise provided by law.

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5. § ___. Vacancies

Section ___. Each vacancy occurring in either house of the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

6. § ___. Vacancies

Section ___. Each vacancy occurring in either house of the legislature shall be filled by appointment, as provided by law.

7. § ___. Vacancies

Section ___. Each vacancy occurring in either house of the legislature shall be filled by appointment by the governor, as provided by law.

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ADDENDUM

Comparative Study of State Constitutions With Respect To The Filling of Vacancies in the Legislature

CONSTITUTION OF LOUISIANA, 1921: Legislative Article

ARTICLE III

§8. Annual sessions, general, budgetary and special sessions; duration; bills and joint resolutions; vacancies

Section 8. The Legislature shall meet in regular session at the seat of government on the second Monday in May, 1954, at twelve o'clock noon, and annually thereafter. All regular sessions convening in the even numbered years shall be general sessions and shall be limited to sixty days. No new matter

intended to have the effect of law shall be introduced or received by either branch of the Legislature after midnight of the fifteenth day of its session, except in case of emergency, and then only by a ye and nay vote of two-thirds of the members elected. Notwithstanding any contrary provision of this Constitution, and particularly the provisions of Article XXI, Section 1 thereof, no proposition for amending the constitution shall be considered unless introduced in the legislature within the first twenty-one days of its session.

All regular sessions convening in the odd numbered years shall be restricted to budgetary or fiscal matters; however, no measures levying new taxes or increasing existing taxes shall be introduced or enacted. All regular sessions convening in the odd numbered years shall be limited to thirty days; provided, however, that no new matter intended to have the effect of law shall be introduced or be received by either branch of the Legislature after midnight of the tenth day of its session. Any proposal to call or convene a special session of the legislature within thirty days prior to the convening of the budget session or within thirty days after its adjournment sine die and any proposal to extend the budget session to matters other than those enumerated in this Paragraph, whether proposed by the governor or by the legislature, shall require the consent of three-fourths of the elected members of each house.

Should a vacancy occur in either House, the governor shall order an election to fill such vacancy for the remainder of the term. (As amended Acts 1966, No. 557, adopted Nov. 8, 1966.)

PROPOSAL OF THE LOUISIANA CONSTITUTIONAL REVISION COMMISSION: Legislative Article

ARTICLE III

§5. Annual Sessions; duration; bills and joint resolutions; vacancies

C. Should a vacancy occur in either house, the governor shall order an election to fill such vacancy for the remainder of the term.

MODEL STATE CONSTITUTION

Contains no provision for filling of vacancies in the legislature.

PROJECT OF A CONSTITUTION FOR THE STATE OF LOUISIANA: Legislative Articles

ARTICLE III

§10.

Section 10. Should a vacancy occur in either house, the governor shall order an election to fill the vacancy for the remainder of the term unless the vacancy occurs within sixty days of the expiration of the term, in which case it need not be filled; otherwise, the election shall be called within ten days.

RECENTLY ADOPTED CONSTITUTIONS:

Constitution of Montana, 1972

ARTICLE V

§7. Vacancies

Section 7. A vacancy in the legislature shall be filled by special election for the unexpired term unless otherwise provided by law.

Constitution of Illinois, 1970

ARTICLE IV

§2. Legislative Composition

Section 2 (d) Within thirty days after a vacancy occurs, it shall be filled by appointment as provided by law. If the vacancy is in a Senatorial District with more than twenty-eight months remain

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in the term, the appointed Senator shall serve until the next general election, at which time a Senator shall be elected to serve for the remainder of the term. If the vacancy is in a Representative District or in any other Senatorial District, the appointment shall be for the remainder of the term. An appointee to fill a vacancy shall be a member of the same political party as the person he succeeds.

Constitution of Florida, 1968

ARTICLE III

§15. Terms and qualifications of legislators.

Section 15. (d) Assuming office; vacancies. Members of the legislature shall take office upon election. Vacancies in legislative office shall be filled only by election as provided by law.

Constitution of Alaska, 1959

ARTICLE II

§4. Vacancies

Section 4. A vacancy in the legislature shall be filled for the unexpired term as provided by law. If no provision is made, the governor shall fill the vacancy by appointment.

RECENTLY PROPOSED CONSTITUTIONS:

Constitution of Arkansas, 1970: Not adopted

ARTICLE V

§6. Vacancies

Section 6. Vacancies in the General Assembly shall be filled for the unexpired term as provided by law, or if no provision be made by law, by appointment of the Governor.

CC/73 Research Staff
Committee on Legislative Powers
and Functions
April 5, 1973
Staff Memorandum No. 6

RE: Change of residency from district - domicile

This study will consider various aspects concerning change of residency from one district to another and the resultant loss or vacation of office. Questions of domicile and residence will be discussed. In addition alternative proposals will be presented for the committee's review.

In Louisiana

The pertinent provisions relating to loss of office resulting from a change of residency from one district to another is found in Article III, Section 9 which provides in part:

"The seat of any member who may change his residence from the district or parish or ward of the parish of Orleans which he represents shall thereby be vacated, any declaration of a retention of domicile to the contrary notwithstanding; and members of the Legislature shall be elected for a term of four years."

This provision has been in Louisiana's constitutions since the Constitution of 1879 in essentially the same form. Prior to that time it was not found in the legislative provisions but was encompassed in that provision of the constitution which related to all officeholders. This provision, our present Article VIII, Section 13 provides that an officeholder must be both an elector and a resident of the state, district, parish, municipality or ward wherein the functions of the office are to be performed. A change of residence from the state, district, parish, municipality or ward results in the office being vacated.

The Attorney General's office has ruled on numerous occasions that an officer's change of residence from the district, parish, municipality or ward in which he holds office "ipso facto" vacates the office. (Op. Atty. Gen. 1914-16, p. 582; 1916-18, p. 416, 1930-32, p. 444; 1932-34, p. 618; 1938-40, p. 778)

In Other States

In five of the constitutions which have been recently

proposed (Montana, Illinois, Florida, Alaska and Arkansas) there is no specific provision relating to vacation of office resulting from change of residency from the legislative district. All of these contained provisions, however, setting up minimum residency requirements and it may be that loss of those requirements implies vacation of office.

Domicile versus Residency

Article 38 of the Civil Code contains a general definition of domicile as follows:

"The domicile of each citizen is in the parish wherein he has his principal establishment. The principal establishment is that in which he makes his habitual residence; if he resides alternately in several places, and nearly as much in one as in another, and has not declared his intention in the manner hereafter prescribed, any one of the said places where he resides may

be considered as his principal establishment, at the option of the persons whose interests are thereby affected."

The courts of this state have ruled that the term "principal establishment" means the principal domestic establishment and that the essential elements of acquiring a "domicile" are:

1. Actual bona fide residence, the physical fact of residing at a particular place, and
2. Intention to establish or acquire domicile, the mental intent to remain at that place for an indefinite period of time.

(Succession of Dancie, 191 La. 518, 186 So. 14, (1939); Shreveport Long Leaf Lumber Co. v. Wilson, 38 F. Supp. 629, (1941); Zinko v. Zinko, 204 La. 478, 15 So. 2d 859, (1943)).

In numerous cases involving questions of residency of candidates, the courts have ruled that while a person may have only one "domicile" he may have more than one "residence." They have indicated that the question of residence is largely one of intention considered in connection with a person's conduct and the circumstances of his life. (Canfield v. Cravens, 138 La. 283, 70 So. 226 (1915); Melerine v. Democratic Parish Executive Committee, 164 La. 855, 114 So. 711 (1927); Stavis v. Engler, 202 So. 2d 672 (Ct. App. 1967)).

SUGGESTED ALTERNATIVE PROPOSALS

1. §____. Vacation of Seat

Section____. The seat of any member who may change his residence from the legislative district which he represents shall thereby be vacated, any declaration of a retention of domicile to the contrary notwithstanding.

Comment: This proposal essentially tracks the present provision contained in Article III, Section 9 with changes to reflect the existence of legislative districts for both houses as opposed to representation from parishes or wards.

2. §____. Vacation of seat

Section _____. The seat of any member who may change his domicile from the district which he represents shall thereby be vacated.

Comment: This proposal substitutes the word "domicile" for that of "residence" and would require a change in the qualification provision as well, from "resident" to "domiciliary."

3. Comment: Delete provision from legislative article since the general provision affecting all officeholders covers the legislature.

4. Comment: Delete all provisions since the qualification requirements necessarily imply that a loss of any of those requirements results in loss or vacation of office.

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NOTES

Staff Memo No.7 is omitted. See, Minutes, April 20, 1973, Appendix B, supra.

Staff Memo No.8 is omitted. See, Minutes, April 21, 1973, Appendix B, supra.

Staff Memo No.9 is omitted. See, Minutes, April 20, 1973, Appendix A, supra.

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(KL)

CC/73 Research Staff
Committee on Legislative Powers and Functions
May 3, 1973
Staff Memorandum No. 10

CONFLICTS OF INTEREST OF STATE LEGISLATORS

This memorandum will principally concern itself with conflict-of-interest, i.e., the use or perhaps more correctly, the abuse of public office for something other than the public good or interest. Other areas of proper legislative conduct will be touched upon briefly. An addendum has been attached which contains a comparative study of constitutional provisions relating to conflict-of-interest.

Conflict-of-interest may be defined as that situation in which an official's independent public decision is (or could be) influenced by his own direct private gain.

Dual office holding is encompassed in the concept of conflict-of-interest. Forty-seven states (including Louisiana) have considered it important enough to include provisions in their constitutions prohibiting, restricting, or limiting dual office holding. Only Alabama, Connecticut, and Idaho do not have provisions in their constitutions relating to dual office. Even

those states that have provisions vary as to the extent of the prohibition. Some only prohibit federal and state dual office holding, while others restrict dual office holding prohibitions only between the three branches of state government while permitting dual office holding between state and local governments. However, since the provision relating to dual office holding is being considered by the Committee on the Executive Department, this phase of conflict-of-interest will be excluded from this memorandum.

Another area of concern included within conflict-of-interest is bribery. Bribery nearly always involves overt criminal behavior and is covered in approximately three-fourths of the states by explicit constitutional or statutory law or by legislative rule. Bribery is a clearly definable transgression and will not be considered further here since it has been assigned by the Coordinating Committee to the Committee on Bill of Rights and Elections.

The question of lobbying might also be included in conflict-of-interest. Promotion of particular interest is an accepted fact. However, the promotion of special interests can take many forms, some of which obviously are not in the general public interest. Since lobby regulation is a complex area and not ordinarily of constitutional status it is not included in the scope of this memorandum.

A broader area involving proper legislative conduct than conflict-of-interest is the question of ethics. Ethics may be defined as the principles of conduct governing an individual or profession, i.e., a standard of behavior. Any effort to further define this standard of behavior must be made in light of the

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arena in which the behavior occurs. State legislators operate within the legislative process, which may be defined as extending from the election phase through the enactment of bills to re-election. Each state's legislative process is unique and the question of ethics is apparently subject to as many interpretations as there are theories of moral, political and personal conduct. The legislature should review its own current situation and the needs of the state in considering the desirability and feasibility of a formal code of ethics. The question of governmental ethics has been assigned by the Coordinating Committee to the Committee on the Executive Department and will not be discussed further herein.

Legislative Conflict-of-Interest

A conflict of interest generally arises when a legislator has a personal or private interest in some legislative action under consideration that is not shared in common with the community as a whole. In addition to actual conflicts, there is the question of potential conflicts, both real and imagined, which tend to undermine public confidence and respect for state government.

State legislators occupy a unique position in this regard. Basically, the state legislator represents people and their interests on a part-time basis. Where the concept of the citizen-legislator is espoused, the compensation or salary is not usually sufficient

to preclude legislators from seeking income from private sources to support their families. It follows almost inevitably, that, at some time during the course of a legislator's term in office,

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his private interests will somehow be affected either immediately or remotely by the policies he will be asked to vote upon. For example, a legislator who is also a farmer may have been elected by his constituents solely because he is a farmer and could best understand their problems and represent their interests. A legislator's essential responsibility is to those who elected him and that legislator would be expected to support and vote for advantageous farm legislation even though he had a private interest involved and he might personally derive economic benefits. Conflicts of interest relating to normal employment and other known income producing investments might be characterized as "necessary conflicts," which may or may not be avoided.

Indeed, it might be suggested that a legislator cannot escape certain conflicts of interest. Those conflicts that arise or occur because a legislator is a parent, homeowner, taxpayer, consumer, etc. which might be categorized as "inherent conflicts."

Yet a third category exists which might be titled "avoidable conflicts." This includes those personal and private interests, economic or otherwise, which substantially risk impairment of independence and are unnecessarily held by or pursued by a legislator.

In attempting to formulate provisions aimed at prohibiting conflict-of-interest, various approaches have been suggested. Four general approaches have surfaced: 1) advise; 2) prohibit; 3) prohibit; 4) review. None of these is mutually exclusive. A code of conduct might have disclosure requirements, prohibit certain specific actions while leaving the rest to an advisory statement

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of rights and duties, all to be administered by a review board.

1) Advisory provisions. Provisions of this type are usually in the form of guidelines. They may be positive or negative but they do not ordinarily involve sanctions. They may emphasize duties and rights as well as prohibitory actions.

2) Prohibitive provisions. Provisions of this type usually emphasize the negative, the "shall nots" found in constitutions and statutes. Many existing provisions were drafted to correct specific past abuse but therein lies their fault. It is practically impossible to enumerate all possible avenues of wrongdoing, and provisions which are restricted to specific prohibitions tend to provide a loop-hole for the unscrupulous in those situations not covered explicitly. It would seem that prohibitions can only cover the more overt problems, such as accepting compensation or something of value for actions related to legislation or the legislative process, representing a private case before a public official or body, or using confidential information for personal gain.

3) Disclosure provisions. Provisions of this type are usually classed into two areas. Those that pertain to a specific action,

vote or subject matter such as Louisiana's and those pertaining to periodic reporting of personal economic or financial interests. The nature, detail, and extent of disclosure is critical in either area. It may be in such general terms as to be useless or it may be to a review committee where access to information is not granted to the general public.

Specific disclosure refers to single incidents or pieces of

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legislation as when a legislator declines to participate or vote on a bill because of his own personal or private economic interest.

Periodic disclosure refers to the listing of certain assets, activities and interests of the legislator, his family and partners.

4) Review provisions. Provisions of this type usually provide for two kinds of review committees. Those that provide for a committee composed of legislators and those providing for a committee composed of members of the public.

Legislative review committees are based on the theory that legislators can best understand the operations and circumstances of their fellow members and the legislature is the "sole judge" of its members and can enforce penalties against its members.

Public review committees are based on the difficulty of legislators judging their peers and the "public image" aspect.

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ADDENDUM

Comparative Study of State Constitutions With Respect To Conflicts of Interest Among Legislators

CONSTITUTION OF LOUISIANA, 1921

ARTICLE III

§29. Personal interest in bill; disclosure; vote

Section 29. Any member of the Legislature who has a personal or private interest in any measure or bill proposed, or pending before the Legislature, shall disclose the fact to the house of which he is a member, and shall not vote thereon.

§30. Sale or trade of votes; purchase of supplies on bids; contracts, personal interest, approval

Section 30. Any member of the Legislature who gives, or offers or promises to give, any official vote in consideration of a fee or reward, or in consideration that another member of the Legislature shall give any such vote, either upon the same or any other question or measure, shall forfeit the office which such member holds, upon conviction of such offense by the house of which he is a member.

All stationery, printing, paper, fuel and other supplies necessary for use in all the departments of government shall be purchased or contracted for of the lowest responsible bidder and under such regulations as are or may be prescribed by law.

No member or officer of any department of government shall be in any way interested in such contracts, and same shall be subject to the approval of the Governor, the President of the Senate and the Speaker of the House, or of any two of them.

PROPOSAL OF THE LOUISIANA CONSTITUTIONAL REVISION COMMISSION

ARTICLE III

§10. Sale or trade of votes

Section 10. Any member of the Legislature who gives, or offers or promises to give, any official vote in consideration of a fee or reward, or in consideration that another member of the Legislature shall give any such vote, either upon the same or any other question or measure, shall forfeit the office which such member holds, upon conviction of such offense by the house of which he is a member.

The commission recommends the deletion of Section 29 of Article III.

PROJET OF A CONSTITUTION FOR THE STATE OF LOUISIANA

Article III

§23.

Section 23. Any member of the legislature who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member, and he shall not vote thereon.

§12.

Section 12. Any member of the legislature who gives, or offers or promises to give, any vote in consideration of a fee or reward, or in consideration that another member of the legislature shall give any vote, upon any question or measure, shall forfeit the office which he holds, upon conviction of such offense by the house of which he is a member.

MODEL STATE CONSTITUTION

Contains no provision relating to conflict-of-interest.

RECENTLY ADOPTED CONSTITUTIONS

Constitution of Montana, 1972

ARTICLE XIII

§4. Code of ethics

Section 4. The legislature shall provide a code of ethics prohibiting conflict between public duty and private interest for members of the legislature and all state and local officers and employees.

Constitution of Illinois, 1970

Contains no provision relating specifically to conflict-of-interest.

Constitution of Florida, 1968

ARTICLE III

§18. Conflicts of interest

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Section 18. A code of ethics for all state employees and non-judicial officers prohibiting conflict between public duty and private interests shall be prescribed by law.

Constitution of Alaska, 1959

Contains no provision relating specifically to conflict-of-interest.

RECENTLY PROPOSED CONSTITUTIONS

Constitution of Arkansas, 1970: Not Adopted

ARTICLE II

§5. Code of Ethics

Section 5. (a) No official or employee of this State or its political subdivisions shall engage or participate in any employment or activity which involves a conflict of interest with the duties of his position. (b) The General Assembly shall enact a comprehensive code of ethics for all appointive and elective officials and employees of the State and its subdivisions.

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CC/73 Research Staff
Committee on Legislative Powers and Functions
May 3, 1973
Staff Memorandum No. 11

IMPEACHMENT, REMOVAL, AND RECALL FROM OFFICE

This memorandum will cover impeachment, removal, and recall

from office. It will discuss Louisiana's provisions and the provisions of other states. An addendum has been attached which contains a comparative study of constitutional provisions relating to impeachment, removal and recall from office.

In Louisiana

Section 1 of Article IX enumerates the grounds for impeachment of a state and district to wit: high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, or oppression in office, or for gross misconduct, or habitual drunkenness. This provision has been in the Louisiana Constitution since 1879, except that before the constitution of 1921, nonfeasance or malfeasance in office was an additional ground for impeachment. However, the constitution of 1921 dropped nonfeasance or malfeasance as a ground for impeachment and the section does not so provide today.

Article IX, Section 2 provides that impeachment shall be by the House of Representatives and shall be tried by the Senate and two-thirds of the senators elected shall be necessary to convict. The essence of this procedure can be traced to the constitution of 1812, but there has been a frequent change in its requisite number of senators necessary to convict. The constitution of 1812 provided that no person should be convicted without the concurrence of two-thirds of the senators present. The constitution of 1864 required a majority of the senators elected, however, the constitution of 1868 returned the number to two-thirds of those present. This provision was followed up to the present document where it was again changed to two-thirds of the senators elected.

Article IX, Section 3 states that any officer, except governor, or acting governor, shall be removed and ineligible to succeed himself on the address of two-thirds of the members elected to each house of the legislature. Unlike the grounds for impeachment supra Section 1, an officer may be removed for any reasonable cause, whether sufficient for impeachment or not. The constitution of 1864 provided removal by a majority of each house, but since that time, the required vote has been two-thirds of each house.

Article IX, Section 6 provides still another method to remove an officer. Any officer, except the governor, lieutenant governor, and judges of the courts of record, may be removed by judgment of the district court of their domicile for any cause enumerated in Section 1 supra. However, where the constitution provides a method of removal of any officer from his office, such method is not exclusive, Troxler v. Mongrue, 175 So.2d 309, (La. app. 1965),

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cert. denied, 248 La. 361, 178 So.2d 654, and the legislature was not inhibited from adopting LSA-R.S. 42: 4 providing that all public officers appointed by the governor should serve at the pleasure of the governor. The constitutional history of Section 6 dates to 1879, and has remained largely unchanged since that date.

Section 7 of Article IX provides additional procedure for the suit to remove an officer. Ten days citation shall be allowed in all suits to remove and no suit shall work a suspension from

office of the accused party, unless by rule nisi and contradictory hearing, the trial court should suspend the officer, subject to appeal the review. This section is new to the constitution and had no history prior to 1921.

Article IX, Section 9 vests with the legislature the power to pass laws pursuant to the recall of officers by election. This section is new to the constitution of 1921. Prior to that date, starting with the constitution of 1898, the document provided a very detailed provision for the recall election. However, the present section marks a shift away from the specific mechanics of a recall election stated in the constitution, to a general grant of power to the legislature to pass laws for a recall election.

Projet Recommendations

The Projet of a constitution for the State of Louisiana, Article VIII would follow, with very minor proposed changes, the existing provisions of the constitution of 1921. The changes proposed would be in terminology for the purpose of clarification.

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Louisiana Constitutional Revision Commission

The commission recommended that Article IX, Section 3 (removal on address by legislature) be amended by deleting "the Governor or acting Governor" and substituting in lieu thereof "elected officials."

In Other States

In five of the constitutions which have been recently proposed (Montana, Illinois, Florida, Alaska, and Arkansas), all have impeachment provisions, but none contain specific sections on recall or removal from office.

1. In Montana, the legislature shall provide for the manner, procedure, and causes for impeachment, and other proceedings for removal from public office for cause as may be provided by law. Conviction requires a two-thirds vote of the members of the tribunal hearing the charges.

2. The Illinois Constitution provides that a majority of the House elected, may impeach, with a concurrence of two-thirds of the senators elected. No enumerated cause for impeachment is stated.

3. Constitution of Florida states that an officer is liable to impeachment "for misdemeanors in office," and no officer shall be convicted without the concurrence of two-thirds of the members of the senate present. Finally, all impeachment of the House of Representatives shall be tried by the Senate.

4. The 1959 Constitution of Alaska states that all civil officers of the state are subject to impeachment by the legislature.

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Impeachment originates in the Senate where a two-thirds vote of its members is required to impeach. Concurrence of two-thirds of the members of the house is also required for a judgment of impeachment.

5. The proposed Arkansas Constitution would generally follow the procedure provided by Article XI, Section 2 of our own constitution. Impeachment would be allowed for "high crimes and misdemeanors and gross misconduct in office."

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ADDENDUM

Comperative Study of State Constitutions With Respect To Impeachment, Removal, and Recall from Office

CONSTITUTION OF LOUISIANA, 1921

ARTICLE IX

§1. State and district officers; grounds for impeachment

Section 1. All state and district officers, whether elected or appointed, shall be liable to impeachment for high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, or oppression in office, or for gross misconduct, or habitual drunkenness.

§2. Impeachment; trial; effect of conviction; other prosecutions; suspension

Section 2. All impeachments shall be by the House of Representatives, and shall be tried by the Senate, whosa members shall be upon oath or affirmation for that purpose, and two-thirds of the senators elected shall be necessary to convict. When the governor is on trial the chief justice or an associate justice of the Supreme Court shall preside. The Senate may sit for said purpose whether the House be in session or not, and may adjourn as it thinks proper. Judgment of conviction in such cases shall remove and debar the accused from holding any office under the State, and shall disqualify any judge or district attorney, or attorney general from practicing law, but whether of conviction or acquittal, shall not prevent prosecution and punishment otherwise according to law. Such proceeding shall suspend any officer, except the Governor or acting Governor, and the office shall be filled by the appointing power until decision of the impeachment.

§3. Removal on address by legislature

Section 3. For any reasonable cause, whether sufficient for impeachment or not, any officer, except the Governor or acting Governor, on the address of two-thirds of the members elected to each house of the Legislature, shall thereby be removed, and be ineligible to succeed himself. The cause or causes for which such removal is made shall be stated at length in the address and printed in the journals of both housas.

§6. Removal by suit; officers subject; commencement of suit

Section 6. For any of the causes enumerated in Section 1 hereof, any officer, whether state, district, parochial, or of a ward or municipality, except the Governor, Lieutenant-Governor, and judges of the courts of record, may be removed by judgment of the district court of his domicila. The Attorney General or district attorney may, in his discretion, institute such suit, and shall do so (except when the suit is to be brought against himself) on the written request, specifying the charges, of twenty-five citizens and taxpayers, or of the governor, in the case of state, district, parochial or municipal officers, and of ten resident citizens and taxpayers in the case of ward officers. Suits against the Attorney General shall be brought at the place where he discharges his official duties by the district attorney of that district, and suits against a district attorney shall be brought by the Attorney General or the district attorney of an adjoining district, or by an attorney appointed by the court, whenever requested to do so, as above set forth.

§7. Removal by suit; citation; appeals; effect; costs and attorney's fee

Section 7. Ten days citation shall be allowed in all suits to remove, and they shall have preference throughout over all other cases. The State, Attorney General, district attorney, or any person at whose instance a suit is brought, may appeal, and in cases of state and district officers, the appeal shall lie to the Supreme Court; all other appeals shall lie to the courts of appeal having territorial jurisdiction.

No suit for removal shall work a suspension from office; but the trial court may, by rule nisi and contradictory hearing, after ten days notice, suspend any officer, subject to a review by the proper appellate court, and such office shall be filled by the appointing power until the cause is finally decided.

In any cause finally decided in favor of a defendant officer, he shall recover judgment for all costs and a reasonable attorney's fee.

§9. Recall

Section 9. The Legislature may pass laws for the recall of any State, district, parish, municipal or ward officer, except

judges of the courts of record, and except wherein otherwise provided by this Constitution; provided, the sole issue tendered at any recall election shall be whether such officer shall be recalled.

MODEL STATE CONSTITUTION

ARTICLE IV

§4.18. Impeachment

Section 4.18. The legislature may impeach the governor, the heads of principal departments, judicial officers and such other officers of the state as may be made subject to impeachment

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by law, by a two-thirds vote of all the members, and shall provide by law procedures for the trial and removal from office, after conviction, of officers so impeached. No officer shall be convicted on impeachment by a vote of less than two-thirds of the members of the tribunal hearing the charges.

Bicameral Alternative: Section 4.18. Impeachment. Refer to "by a two-thirds vote of all the members of each house."

PROJECT OF A CONSTITUTION FOR THE STATE OF LOUISIANA

ARTICLE VIII

§1.

Section 1. Any officer, whether elected or appointed, shall be liable to impeachment for high crimes and misdemeanors in office, incompetency, corruption, favoritism, extortion, oppression in office, gross misconduct, or habitual drunkenness.

§2.

Section 2. All impeachments, except that of the governor, shall be by the house of representatives and shall be tried by the senate, whose members shall be upon oath or affirmation for that purpose; and two-thirds of the senators elected shall be necessary to convict. The senate may sit for said purpose whether the house be in session or not and may adjourn as it thinks proper. Judgment of conviction in such cases shall remove and debar the accused from holding any public office and shall disqualify any judge, district attorney, or attorney general from practicing law; but judgment whether of conviction or acquittal, shall not prevent prosecution and punishment otherwise according to law. Such proceeding shall suspend any officer, and the office shall be filled by the appointing power until decision of the impeachment.

§3.

Section 3. On the address of two-thirds of the members elected to each house of the legislature, any officer, except the governor, shall be removed for any reasonable cause, whether sufficient for impeachment or not and shall be ineligible to succeed himself. The cause of removal shall be stated at length in the address and printed in the journals of both houses.

§6.

Section 6. For any of the causes enumerated in Section 1 hereof, any officer, except the governor, lieutenant governor, and judges of the courts of record, may be removed by judgment of the district court of his domicils. The attorney general or in his discretion the district attorney may institute such suit, and he shall do so, except when the suit is to be brought against himself, on the written request specifying the charges of twenty-five resident citizen taxpayers; or of the governor, in the

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case of state, district, parochial, or municipal officers; or of ten resident citizen taxpayers, in the case of ward officers. Suits against the attorney general shall be brought at the place where he discharges his official duties by the district attorney of that district, and suits against a district attorney shall be brought by the attorney general or the district attorney of an adjoining district, or by an attorney appointed by the court, whenever requested to do so, as provided herein.

§7.

Section 7. Ten days' citation shall be allowed in all suits to remove, and they shall have preference over all other cases. The state, attorney general, district attorney, or any person at whose instance a suit is brought may appeal. In cases of state and district officers the appeal shall lie to the supreme court. All other appeals shall lie to the court of appeal having territorial jurisdiction.

No suit for removal shall work a suspension from office; but the trial court may, after ten days' notice, by rule nisi and contradictory hearing, suspend any officer, subject to a review by the proper appellate court. The office shall be filled by the appointing power until the cause is finally decided.

In any cause finally decided in favor of a defendant officer, he shall recover judgment for all costs and a reasonable attorney's fee.

§9.

Section 9. The legislature may pass laws for the recall of any officer except the governor and judges of the courts of record, provided the sole issue tendered at any recall election shall be whether such officer shall be recalled.

RECENTLY ADOPTED CONSTITUTIONS:

Constitution of Montana, 1972

ARTICLE V

§13. Impeachment

Section 13. (1) The governor, executive officers, heads of state departments, judicial officers, and such officers as may be provided by law are subject to impeachment, and upon conviction shall be removed from office. Other proceedings for removal from public office for cause may be provided by law. (2) The legislature shall provide for the manner, procedure, and causes for impeachment and may select the senate as tribunal. (3) Impeachment shall be brought only by a two-thirds vote of the house. The tribunal hearing the charges shall convict only by a vote of two-thirds or more of its members.

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(4) Conviction shall extend only to removal from office, but the party, whether convicted or acquitted, shall also be liable to prosecution according to law.

Constitution of Illinois, 1970

ARTICLE IV

§14. Impeachment

Section 14. The House of Representatives has the sole power to conduct legislative investigations to determine the existence of cause for impeachment and, by the vote of a majority of the members elected, to impeach Executive and Judicial officers. Impeachments shall be tried by the Senate. When sitting for that purpose, Senators shall be upon oath, or affirmation, to do justice according to law. If the Governor is tried, the Chief Justice of the Supreme Court shall preside. No person shall be convicted without the concurrence of two-thirds of the Senators elected. Judgment shall not extend beyond removal from office and disqualification to hold any public office of this State. An impeached officer, whether convicted or acquitted shall be liable to prosecution, trial, judgment and punishment according to law.

Constitution of Florida, 1968

ARTICLE III

§. 17. Impeachment

Section 17. (a) The governor, lieutenant governor, members of the cabinet, justices of the supreme court, judges of district courts of appeal and judges of circuit courts shall be liable to impeachment for misdemeanor in office. The house of representatives by two-thirds vote shall have the power to impeach an officer. The speaker of the house of representatives shall have power at any time to appoint a committee to investigate charges against any officer subject to impeachment.

(b) An officer impeached by the house of representatives shall be disqualified from performing any official duties until acquitted by the senate, and unless the governor is impeached he may by appointment fill the office until completion of the trial.

(c) All impeachments by the house of representatives shall be tried by the senate. The chief justice of the supreme court, or another justice designated by him, shall preside at the trial, except in a trial of the chief justice, in which case the governor shall preside. The senate shall determine the time for the trial of any impeachment and may sit for the trial whether the house of representatives be in session or not. The time fixed for trial shall not be more than six months after the impeachment. During an impeachment trial senators shall be upon their oath or

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affirmation. No officer shall be convicted without the concurrence of two-thirds of the members of the senate present. Judgment of conviction in cases of impeachment shall remove the offender from office and, in the discretion of the senate, may include disqualification to hold any office of honor, trust or profit. Conviction or acquittal shall not affect the civil or criminal responsibility of the officer.

Constitution of Alaska, 1959

ARTICLE II

§20. Impeachment

Section 20. All civil officers of the State are subject to impeachment by the legislature. Impeachment shall originate in the senate and must be approved by a two-thirds vote of its members. The motion for impeachment shall list fully the basis for the proceeding. Trial on impeachment shall be conducted by the house of representatives. A supreme court justice designated by the court shall preside at the trial. Concurrence of two-thirds of the members of the house is required for a judgment of impeachment. The judgment may not extend beyond removal from office, but shall not prevent proceedings in the courts on the same or related charges.

RECENTLY PROPOSED CONSTITUTIONS:

Constitution of Arkansas, 1970: not adopted

ARTICLE II

§9. Impeachment

Section 9. All civil officers of the State are subject to impeachment by the House of Representatives for high crimes and misdemeanors and gross misconduct in office. Impeachments shall be tried publicly by the Senate with the Chief Justice presiding, but if he is disqualified the Senate shall select a presiding officer. No person shall be convicted upon impeachment except by a two-thirds vote of the total membership of the Senate entered in the journal. Judgment of impeachment shall not extend beyond removal from office but shall not prevent criminal or civil proceedings on the same or related charges.

CC/73 Research Staff
Committee on Legislative Powers and Functions
May 3, 1973
Staff Memorandum No. 12

RE: The duties of the Vice President of the United States as President of the Senate

In his role of presiding officer, the Vice President has been an integral part of the Senate's ceremonials and proceedings. His duties, under the rules, may be summarized as follows:

1. He gives the oath of office required by the Constitution to the new Senators, necessary before they can enter upon their duties;
2. He opens the daily sessions and leads the Senate through its regular order of business;
3. If at any time during the proceedings a Senator questions the presence of a quorum, he interrupts the business to have the roll called, and announces the result. Depending on the result, the business either proceeds or stands in suspension until a quorum is obtained or the body decides to adjourn;
4. Yea and nay votes are conclusive upon his announcement of the result, and no Senator may vote after this has been done;
5. Every bill and joint resolution receives three readings, usually on different days, and the presiding officer "shall give notice at each reading whether it be the first, second, or third;"
6. In debate, a Senator desiring to speak "shall rise and address the Presiding Officer, and shall not proceed until he is recognized;"
7. In case of manifold requests for recognition, the Vice President is to "recognize the Senator who shall first address him;"

8. Senators may not interrupt a speaker "without his consent," which may be obtained by first addressing the Chair (usually in the form "Mr. President, will the Senator yield?");

9. Any Senator transgressing the rules of the Senate "in speaking or otherwise" is to be called to order by the Chair, sit down, and proceed further only by "leave of the Senate;"

10. Confusion or demonstration whether on the floor or in the galleries is to be curbed by the Chair as a duty. In enforcing this rule, he is to act "on his own initiative" and not because a Senator requests order;

11. All points of order are decided by him "without debate, subject to an appeal to the Senate." If the Chair does not desire to rule he may "submit any questions of order for the decision of the Senate;"

12. If the Chair so desires, all motions are to be reduced to writing;

13. He enforces the rules and regulations for the Senate Office Building and such parts of the Capitol as are set aside for the use of the Senate;

14. In executive session of the Senate, he has discretionary power to let remain such Senate employees beyond those

stated in the Rules whom he "shall think necessary;"

15. If cloture is invoked, he is required "to keep the time of each Senator who speaks," which total time is not to be in excess of one hour. If any points or order or appeals from the Chair are raised during cloture, they are to be decided without debate.

Though not affirmatively stated in the Senate rules, the Vice President has acquired two further prerogatives. It has become the practice for him

16. to determine the distribution of introduced measures to the proper committees, and

17. to make committee appointments and fill vacancies therein if the Senate (or Congress) has not otherwise determined.

These are all the typical functions and prerogatives of chairmen of assemblies, and for most purposes it matters little whether the Vice President is in the chair or not, since any competent Senator can (and periodically does) fulfil the presiding officer's duties.

Information derived from: The American Vice-presidency: New Look

CC/73 Research Staff
Committee on Legislative Powers and Functions
May 3, 1973
Staff Memorandum No. 13

RE: Constitutional status of legislative bureau

Louisiana's legislative bureau stands alone among the fifty states in its constitutional status. This is not to say that the function of the legislative bureau is not being performed in the other states of the union, merely that no other state's constitution contains a provision establishing a legislative bureau.

The legislative bureau was first established in the constitution of 1921. It is contained in Article III, Section 31, which reads as follows:

"The Attorney General, or his assistant, and two members of the legislature, one to be selected by each house, shall constitute a legislative bureau, to which all legislative matter intended to have the effect of law shall be referred before advancement to third reading by the house where it did not originate, for examination and report as to the construction, duplication, legality, and constitutionality, which said report shall be advisory only."

In the Projet it is found in Article III, Section 21 and is essentially the same provision as the present one with minor changes in language and style.

The Louisiana Constitutional Revision Commission retains the legislative bureau in the constitution but places the responsibility of establishing it in the legislature.

The Model State Constitution does not contain a provision for the establishment of a legislative bureau.

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CC/73 Research Staff
Committee on Legislative Powers
and Functions
May 3, 1973
Staff Memorandum No. 14

RE: Enacting clauses in the fifty states

This memorandum will cover the enacting clauses of the fifty states. It will discuss Louisiana's provision and the provisions of other states.

In Louisiana

The pertinent provision on the style of laws and the enacting clause is found in Article III, Section 7 which reads as follows:

"The style of laws of this State shall be: 'Be it enacted by the Legislature of Louisiana.' It shall not be necessary to repeat said enacting clause after the first section of an act."

This provision has been in Louisiana's constitutions since the Constitution of 1879 in essentially the same language. Up to the adoption of the present constitution in 1921, the legislature was called the "General Assembly." The second sentence was added in 1921 also.

In Other States

The constitutions of 39 states (including Louisiana) have

the same enacting clause - "Be it enacted by the _____ (Legislature, General Assembly, etc.) of _____." Four states, California, Illinois, Michigan, and Wisconsin, use the word "people" instead of "legislature" in their enacting clause which all read essentially "The people of the State of _____ do enact as follows."

Three states, Delaware, Georgia, and Pennsylvania, do not provide either an enacting clause nor a provision on enactment of laws. One state, Virginia, has no enacting clause but does have a provision on enactment of laws. One state, Arizona, uses the word "people" instead of "legislature" when the law is to be enacted by initiative. One state, Massachusetts, uses the language "Be it enacted by _____ and by the authority of the same." One state, Rhode Island uses the language "It is enacted by _____ as follows."

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CC/73 Research Staff
Committee on Legislative Powers
and Functions
May 3, 1973
Staff Memorandum No. 15

SUITS AGAINST THE STATE

This memorandum will cover the procedure for suits against the state. It will discuss Louisiana's provision and the provisions of other states. An addendum has been attached which contains a comparative study of constitutional provisions relating to suits against the state.

In Louisiana

Article III, Section 35 of the Constitution of 1921 vests with the legislature, the power to authorize suit to be filed against the state. The legislature shall designate the court in which suit is authorized and may waive any prescription which may have accrued in favor of the state. Generally, the procedure in suits against the state is the same as between private litigants, except money judgments shall be satisfied only from funds expressly appropriated by the legislature for that purpose. It should be noted that the authorization to sue the state shall extend only to a court of Louisiana. Unless otherwise provided, authorization to sue the state shall be nothing more than a waiver of the state's immunity. Section 35 was rewritten in 1946. Previously, it provided that "whenever the legislature shall authorize suit to be filed against the state, it shall provide a method of procedure and the effect of the judgment which may be rendered therein." This wording is found in Article III, Section 35 of the Projet of a Constitution for the State of Louisiana.

Other States

Looking to comparable provisions for governmental immunity on a nationwide basis, twenty-nine (29) states have no mention of

immunity of the state against suit. Nineteen (19) states (including Louisiana) provide generally that the legislature shall direct by law in what manner and in what court, suits may be brought against the state. One state, New York, provides by law for claims against the state to be settled by other than the legislative branch. One state, Arkansas, provides for absolute immunity. One state, Montana, provides expressly that it has no immunity.

Five constitutions which have been recently proposed (Montana, Illinois, Florida, Alaska, and Arkansas) deserve particular analysis.

Two states (Montana and Illinois) expressly abolish state immunity from suit. The proposed Arkansas Constitution provides for state immunity, except for breach of contract or as otherwise provided by law. However, Article V, Section 20 of the present Arkansas Constitution states that the state shall never be made defendant in any of the courts. Finally, two states (Florida and Alaska) vest with the legislature the power to establish the pro-

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cedure for suits against the state, while maintaining the concept of governmental immunity.

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ADDENDUM

Comparative Study of State Constitutions With Respect To the Suits Against the State

CONSTITUTION OF LOUISIANA, 1921

ARTICLE III

§35. Suits against the state; procedure; effect of legislative authorization

Section 35. Whenever the Legislature shall authorize suit to be filed against the State it shall provide the method for citing the State therein and shall designate the court or courts in which the suit or suits authorized may be instituted and may waive any prescription which may have accrued in favor of the State against the claim or claims on which suit is so authorized. The procedure in such suits except as regards citation and original jurisdiction, shall be the same as in suits between private litigants, but no judgment for money rendered against the State shall be satisfied except out of monies appropriated by the Legislature for the purpose. For the purpose of such suits the State shall be considered as being domiciled in the Capitol. No such suit shall be instituted in any court other than a Court of Louisiana. Except as otherwise specially provided in this section, the effect of any authorization by the Legislature for a suit against the State shall be nothing more than a waiver of the State's immunity from suit insofar as the suit so authorized is concerned. (As amended Acts 1946, No. 385, adopted Nov. 5, 1946.)

PROJECT OF A CONSTITUTION FOR THE STATE OF LOUISIANA

Article III

§35.

Section 35. Whenever the legislature shall authorize suit to be filed against the state, it shall provide a method of procedure and the effect of the judgments which may be rendered therein.

RECENTLY ADOPTED CONSTITUTIONS:

Constitution of Montana, 1972

ARTICLE III

§18. State subject to suit

Section 18. The state, counties, cities, towns, and all other local governmental entities shall have no immunity from suit for injury to a person or property. This provision shall apply only to causes of action arising after July 1, 1973.

Constitution of Illinois, 1970

ARTICLE XIII

§4.

Section 4. Sovereign Immunity Abolished Except as the General Assembly may provide by law, sovereign immunity in this state is abolished. [This Section 4 of Article XIII shall become effective on January 1, 1972]

Constitution of Florida, 1968

ARTICLE X

§13. Suits Against The State

Section 13. Provision may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating.

Constitution of Alaska, 1959

ARTICLE II

§21. Suits Against The State

Section 21. The legislature shall establish procedures for suits against the State.

RECENTLY PROPOSED CONSTITUTIONS:

Constitution of Arkansas, 1970: Not Adopted

ARTICLE XI

§10. Sovereign Immunity

Section 10. The State of Arkansas shall never be made a party defendant in any of her courts except in actions for breach of contracts or as otherwise provided by law.

Present Constitution of Arkansas

ARTICLE V

§20.

Section 20. The State of Arkansas shall never be made defendant in any of her courts.

NOTES

Staff Memo No. 16 is omitted. See Book of the States, 1972-1973, at 72-73. In re: Veto provisions among the states.

CC/73 Research Staff

Committee on Legislative Powers and Functions

May 17, 1973

Staff Memorandum No. 17

RE: Alternative method for handling claims against the state.

This study will present one method of dealing with the problem of the necessity of seeking authorization from the legislature to bring suit against the state, its agencies, or political subdivisions.

PROPOSED SECTION:

Article____, Section____. Sovereign Immunity and Liability Abolished; Court of Claims

Section____. The sovereign immunity and liability of the state, its agencies, and political subdivisions is abolished.

A court of claims shall be established by the legislature which shall have exclusive jurisdiction to hear and determine all claims against the state or its agencies or by the state or its agencies in reconviction or concursus.

The district courts shall have jurisdiction over all claims by or against political subdivisions.

Source: New

Comment: This provision would abolish the concept of sovereign immunity in Louisiana. It would eliminate the necessity of seeking waiver of immunity by the legislature to sue at any level of government.

It directs the legislature to establish a specific court of claims with exclusive jurisdiction to handle all claims against

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the state and its agencies. It vests additional jurisdiction in the court of claims to handle matters on reconvention or in concursus proceedings to avoid the necessity of the state having to file an additional suit when it decides to reconvene or invoke concursus proceedings.

It specifically establishes jurisdiction in the district courts for all claims by or against political subdivisions.

III. Committee Correspondence



STATE OF LOUISIANA CONSTITUTIONAL CONVENTION OF 1973, P. O. BOX 44473, BATON ROUGE LOUISIANA 70804

April 5, 1973

Senator Cecil Blair, Chairman
Committee on Legislative Powers and Functions
State Capitol
Baton Rouge, Louisiana 70804

Dear Senator:

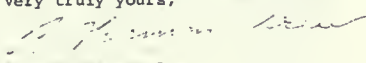
I appreciate the invitation to appear before your committee but will be unable to be present.

I am very much concerned about the possibility of your committee and the Convention becoming involved in reapportionment of the legislature as a constitutional matter.

I feel this is a matter which should be left to the legislature and could be very damaging to the adoption of the constitution if this matter was reopened in view of recent reapportionment.

I sincerely urge your committee to adopt this position after its deliberations.

Very truly yours,


Rep. R. Harmon Drew
Delegate, District 10

RHD:cgm

April 13, 1973

TO: Norma M. Duncan, Research Director
FROM: Committee on Legislative Powers and Functions

As per the request of Delegate Kean and the Subcommittee on Alternatives of the Coordinating Committee we have examined the 1921 constitution on those areas to be considered by the Committee on Legislative Powers and Functions.

I. We have determined that the following provisions are obsolete.

A. Those provisions in Article III dealing with reapportionment (Sections 2, 3, and 6) which are based on other than "one-man, one-vote" standards are obsolete because of the Reynolds v. Sims decision.

B. Those provisions in Article III which apportioned the Senate and the House of Representatives (Sections 4 and 5) are obsolete because of the Bannister v. Davis decision which declared them unconstitutional and subsequently the legislature has enacted statutory apportionment. (R.S. 24:35 and 35.1)

C. The provision in Article III dealing with legislative compensation and mileage (Section 14) is obsolete because the legislature has under authority of Article III, Section 34 increased both the per diem and mileage allowable. (R.S. 24:31)

D. The provision in Article III dealing with the accrual of prescription or peremption prior to January 1, 1962 (Section 35) is obsolete since that section also provides that suit must have

been brought prior to January 1, 1962.

E. The provision in Article III dealing with the drafting of a Code of Criminal Procedure is obsolete since the Code of Criminal Procedure was adopted in 1966.

F. The provision in Article IV dealing with the board of liquidation of state debt found in Section 2(a) is obsolete since a later amendment to the constitution now contained in Article IV, Section 1(a) transferred all power and authority formerly vested in the board of liquidation under Section 2(a) to the board of liquidation created under Section 1(a).

G. The provisions in Article IV dealing with the funding of bonds for the purpose of erecting the state capitol building and to pay the outstanding indebtedness of the state, and L.S.U., to pay the Confederate veterans' pensions and to reimburse the General Highway Fund (Sections 12 and 12-a) are obsolete since the bonds have been paid off.

H. The provision in Article X dealing with the rate of state taxation on property (Section 3) is obsolete since that section was repealed effective January 1, 1973 by the passage of Article X-A, Sections 1-5 which repealed all state ad valorem taxes.

II. We have determined that only one provision to be considered by the Committee on Legislative Powers and Functions is repeated verbatim in the statutes.

The provision in Article XIX dealing with governmental ethics which recites in a preamble a policy and purpose (Section 27, paragraph 1 A, B, and C) is repeated verbatim in the statutes. (R.S. 42:1101)

III. We have determined that the following provisions are repeated in the statutes in substance.

A. The provisions in Article IX dealing with the suspension of a fiscal officer when he is in arrears (Section 8) are repeated in substance in the statutes. (R.S. 42:301)

B. The provisions in Article XVII dealing with the appointment of the adjutant general (Section 3) are repeated in substance in the statutes. (R.S. 29:5)

C. The provisions in Article XIX dealing with eligibility of a fiscal officer for another office (Section 11) are repeated in substance in the statutes. (R.S. 42:34)

D. The provisions of Article XIX dealing with bribes (Section 12) are repeated in substance in the statutes (R.S. 14:118 and 120)

E. The provisions of Article XIX dealing with the immunity granted to an individual who may be compelled to testify involving bribery (Section 13) are repeated in substance in the statutes. (R.S. 14:121)

F. The provisions of Article XIX dealing with appeals of decisions involving governmental ethics (Section 27, paragraph 3C) are repeated in substance in the statutes. (R.S. 42:1121E)



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a majority of elected members of the House, then he should be willing to step down from that office.

I believe the second and third sentences of Section 10 should be redrafted to read as follows: "The legislative auditor shall be responsible solely to the legislature and shall perform such duties and functions as may be assigned to him by the legislature including but not necessarily limited to the auditing of the fiscal records of state and local government." The legislature should have substantial leeway in delineating what duties aside from auditing the legislative auditor shall have.

4) Under Section 11, is there any ambiguity with respect to the phrase "public officials"? Does this phrase include appointed public officials? Should we have a definition of what a public official is?

5) I fail to see the utility of Section 14 requiring special bills authorizing suits against the state and its subdivisions. Some argue this prevents unjust or frivolous suits from being filed. This is not correct as the legislature routinely approves these except where local politics enters the picture and one legislator asks that the suit not be permitted. Of course this is an injustice. We as legislators should not inquire into the merits of the suit (just or unjust, frivolous or unfriivolous), and local politics should play no part as it does now. The merits of a suit under our system of justice fall within the judiciary branch of government - not the legislature.

6) Under Section 17 or some other appropriate section, I believe we should have a paragraph which provides some basic definition of a conference committee, and outline of its duties and functions subject to further direction by the legislature. Section 17, much like the present constitution, only obliquely refers to a conference committee, but nowhere in our constitution or statutes is there any reference to its composition, functions and duties.

7) Under Section 18 regarding appropriations, we should consider requiring all appropriations be made in one appropriation bill which would be divided into the following possible categories: a) the ordinary operating expenses of government, public charities, pensions and public debt and interest thereon; b) capital expenditures; c) payment of judgments; and d) deficiency appropriations. If there were some mechanical way of getting funds early in the session for expenses of the legislature and yet include this category in the one appropriation bill, I will favor this also. The advantage of all categories being in one bill is of course financial control. With the many appropriations bills we have now, it is impossible at any one time to know the total proposed and total approved appropriations during any one session. Thus deficit financing is a real fear. There should also be added a clause, it seems to me, that the Governor shall not have the power to veto the latter two categories of the appropriations.

It seems to me the Governor should not properly have the authority to veto the last three categories as these are primarily legislative

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and not executive decisions. As you know, our state courts have ruled on several occasions that there are certain appropriations items which are beyond the veto of the Governor because of our separation of powers concept.

8) Under Section 20 I question the wisdom of requiring two-thirds of the elected members of each house to override the Governor's veto. It would seem to me that if the majority of the elected members have twice said that they favor a particular bill, it should then become law notwithstanding the Governor's veto.

Under the same section, there is a provision that the veto session shall not exceed five consecutive days. I assume that bills up for consideration in the veto session do not have the requirement of being read on three separate days, nor do they have the requirement of being referred to a committee for hearing.

9) In my opinion Section 23 respecting corporations is unnecessary so without this section the legislature would have the inherent authority regarding the matter set forth in that section.

10) Under Section 24 I would recommend the elimination of the words "incompetency, corruption, extortion, oppression in office, gross misconduct or habitual drunkenness." In lieu thereof, I would provide "impeachment for felonies and a violation of the public trust commensurate with the office of Senator and Representative." Incompetency, oppression in office and habitual drunkenness are in my opinion not in keeping with today's standards. In essence, the legislator in the end will be judged by his fellow members of the legislature, and that judgment ought to extend to any violation of the public trust assumed by the legislator.

Sincerely yours,

Frank P. Simoneaux

PPS:kl

E. L. MENIY
Chairman
NORMA M. DUNCAN
Director of Research

TO: All Members of the Senate and House of Representatives of the Legislature of the State of Louisiana

FROM: Norma M. Duncan, Director of Research, CC/73

Ladies and Gentlemen:

Senator Cecil R. Blair, Chairman, and the members of the Committee on Legislative Powers and Functions of the Constitutional Convention of 1973, have directed that the enclosed copy of a proposal making provisions for the legislative branch of government and related matters be transmitted to you.

It is the hope of the committee that you will give consideration to the provisions contained in the draft. The committee will welcome your comments and suggestions with respect to it, and you may wish to contact any delegate or transmit your ideas and suggestions to me for referral to the committee.

With kindest personal regards,

Norma M. Duncan
Director of Research

Enclosure

NMD:bb



STATE OF LOUISIANA
HOUSE OF REPRESENTATIVES
BATON ROUGE

July 12, 1973

FRANK P. SIMONEAUX
DISTRICT 70

Phone Office 243-1411
Phone Home 746-3331
P. O. BOX 3197
BATON ROUGE, LA. 70821

COMMITTEES:
HOUSE & GOVERNMENTAL AFFAIRS
JUDICIARY D

Mrs. Norma M. Duncan
Director of Research
Constitutional Convention of 1973
Post Office Box 17740-A
Baton Rouge, Louisiana 70803

Dear Mrs. Duncan:

I have reviewed the proposal of the Committee on Legislative Powers and Functions and belatedly would like to make a few comments thereon. You may feel free to distribute copies of this letter to members of the Committee depending upon any policy which the Committee may have adopted.

1) Under Section 3 regarding number of members of the legislature, there is no explanation for enlarging the maximum number of senators to 41 and the number of House members to 111 rather than retaining the current limits of 39 and 105, respectively. Is there any good reason for adding members, particularly to the House which is already quite large? Furthermore, if you add members, won't we be required to reapportion into the number of new districts? Otherwise, some sections would outweigh others in the legislature.

2) Under Section 7 regarding privileges and immunities of members of the legislature, I have some doubt as to the last sentence thereof which provides "No members shall be questioned in any other place for any speech or debate in either house." I think current United States Supreme Court decisions regarding libel and defamation are sufficient to permit a free discussion on the floor of either house, and therefore a restrictive rule such as the one just quoted seems to be out of place at this date in our history and almost certainly unconstitutional even in its narrow sense.

3) Under Section 10 respecting the legislative auditor, I think that a consent of only one-half of the elected members of each house should be sufficient for the removal of the person serving as legislative auditor. To require that two-thirds of the elected members of each house be dissatisfied prior to removal seems to be improper to me. I do not know of any similarly high requirement for removal of another officer. With a two-thirds requirement the person serving as auditor need only please one-third plus one of the members of each house and he can retain his position even though a heavy majority are opposed. If a person is in disfavor with over



June 8, 1973

E. L. MENRY
Chairman
NORMA M. DUNCAN
Director of Research

MEMORANDUM:

TO: Honorable Cecil R. Blair, Chairman, Committee on
Legislative Powers and Functions

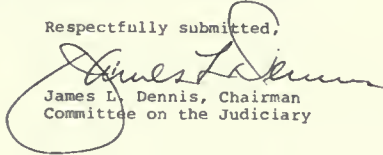
FROM: James L. Dennis, Chairman, Committee on the
Judiciary

RE: Recommendations relative to Article IV, §4

The Committee on the Judiciary wishes to inform you of action taken by it on Article IV, Section 4 of the present constitution.

The committee recommends that provision of the Model State Constitution concerning local and special laws be followed. Further, the committee recommends that the enumeration of particular subjects on which local and special laws are prohibited be continued, but it should be provided the list is not exclusive but illustrative.

Respectfully submitted,



James L. Dennis, Chairman
Committee on the Judiciary

JLD:ra



June 19, 1973

MEMORANDUM

E. L. MENRY
Chairman
NORMA M. DUNCAN
Director of Research

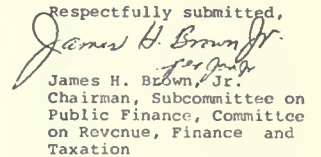
TO: Honorable Cecil R. Blair, chairman, Committee on
Legislative Powers and Functions

FROM: James H. Brown, Jr., chairman, Committee on Revenue,
Finance, and Taxation

RE: Proposal CC-1000, Section 12

The Subcommittee on Public Finance of the Committee on Revenue, Finance and Taxation wishes to express to you its views on Section 12 of the Proposal CC-1000 by Committee on Legislative Powers and Functions. Since the Coordinating Committee has assigned paragraphs 10, 15, and 17 of Section 4 of Article IV, Louisiana Constitution of 1921, to Committee on Revenue, Finance and Taxation which in turn has been assigned to the Subcommittee on Public Finance, this subcommittee wishes to go on record as being dissatisfied with Section 12 of Proposal CC-1000 because of the omission of any prohibition against legislative authority to pass local or special laws except for the requirement that no special or local law shall be passed when a general law is or can be made applicable. This subcommittee presently is of the opinion that the new constitution should contain an enumeration of local or special laws which the legislature shall have no authority to enact similar to that contained in Louisiana Constitution of 1921, Article IV, Section 4.

Respectfully submitted,



James H. Brown, Jr.
Chairman, Subcommittee on
Public Finance, Committee
on Revenue, Finance and
Taxation

JHB:ra





