

ARTICLE II

RIGHT OF SUFFRAGE

Memorandum 3

~~Supfrage~~
Title: Supfrage and Elections would be a more adequate description of the Article. OR

ARTICLE II

Right of Suffrage

Section 1. Elections by ballot.—All elections by the people shall be by ~~secret~~ ballot, ~~and elections shall never be held or the ballots counted in secret.~~

See Const. 1868, VIII, 1.

the ballots shall not be counted in secret.

The contents of this section depend in part upon what is included in the Declaration of Rights about elections. If the language of the 1895 Constitution is to be used, then this section could be combined with Section 9, Article I and the combined provision could be listed at the first section under the Article on Suffrage. The combined provisions would read as follows:

Section 1: All elections by the people shall be by ballot, and elections shall never be held or the ballots counted in secret. The right of suffrage, as regulated in this Constitution, shall be protected by law regulating elections and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or improper conduct.

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Section 2. Qualifications for office—two offices.—Every qualified elector shall be eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution! But no person shall hold two offices of honor or profit at the same time: *Provided*, That any person holding another office may at the same time, be an officer in the Militia or a Notary Public: *Provided, further*, That the limitation above set forth "But no person shall hold two offices of honor or profit at the same time," shall not apply to the Circuit Judges of the State under the circumstances hereinafter stated, but that whenever it shall appear that any or all of the Justices of the Supreme Court shall be disqualified or be otherwise prevented from presiding in any cause, or causes, for the reason set forth in Section 6 of Article V of the Constitution, the Chief Justice or in his stead the Senior Associate Justice shall when available designate the requisite number of Circuit Judges for the hearing and determination thereof: *Provided*, The limitation above set forth shall not prohibit any office holder from being a delegate to a Constitutional convention.

See Const. 1868, VIII, 2; XIV, 1.

1930 (36) 1251; 1931 (37) 107; 1951 (47) 798; 1953 (48) 72.

This section and sections 10 and 11 of Article I contain much the same statements and perhaps the thoughts should be combined and listed as section 2 of this Article. A number of ideas are contained within these sections and the committee will have to decide if all of these ideas are constitutional questions, and if so, how they should be expressed. The basic ideas and the problems they raise are listed below:

1. Who is eligible for public office? Section 2 of Article II gives a clear, short statement: "Every qualified elector shall be eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution." Nothing more than this is needed. Turning to Article I, section 11, this statement, "No property qualification, unless prescribed in this Constitution, shall be necessary for an election to or the holding of any office," is not necessary. It is suggested that this latter statement be omitted from the proposed draft.

2. Term of office. This is given in Article I, section 11, but if a statement is included, the proper place seems to be in this Article. The term of office provision in the S. C. Constitution gets involved because a general rule on the subject is difficult to state without making some

exceptions. Many state constitutions contain no statement whatsoever on the term of office. Such a statement is omitted from the Model, the Michigan, the Alaska, the N. J., and the Texas Constitutions and the Maryland Draft. The proposed Kentucky Constitution continued the statement in the existing Constitution which states: "The General Assembly shall not . . . create any office the appointment of which shall be for a longer time than a term of years." The term of office provision was added to South Carolina Constitutional history by the 1895 Constitution. The statement in the S. C. Constitution could be shortened by stating simply: "the terms of all officers shall be for some specified period, except notaries public and officers in the militia." An alternative would be to require that the General Assembly by law fix the term of office for officeholders.

3. Dual officeholding. The S. C. provision that no person shall hold two offices of honor or profit has perhaps caused the Attorney General more trouble than anyone else, since this provision is the source of many official opinions made by him. Such a provision is hard to write for a constitution without getting into the exceptions which should be made. The need for exceptions has caused three amendments to be made to this section. Other states do not generally provide such a restriction in the constitution. This does raise the question if dual officeholding is a constitutional question or a legislative one. Public policy may well frown upon dual officeholding, but it may be best to have this regulated by statute. While there are many cases where holding two offices may be incompatible, there are just as many where there would be no incompatibility as for example a school trustee who also may be a member of a state board.

The Committee may wish to 1) leave all of the sections pertaining to qualifications for office, term of office, and dual officeholding essentially as they are now listed; or 2) combine the sections in Articles I and II, but leave the phraseology as it now stands; or 3) redraft the sections so as to restate the issues involved. If point three should be desired, a section similar to

the following could be used:

Every qualified elector shall be eligible to any office to be voted for, unless disqualified by age, as prescribed in the Constitution. The terms of all officers shall be for some specified period. No elected official may hold more than one office of profit or honor.

In addition, a mandate could be given to the General Assembly to regulate dual officeholding of other officers and employees.

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Section 3. Electors.—Every male citizen of this State and of the United States twenty one years of age and upwards, not laboring under the disabilities named in this Constitution and possessing the qualifications required by it, shall be an elector.

See Const. 1868, VIII, 2.

Section 4. Qualifications for suffrage.—The qualifications for suffrage shall be as follows:

(a) **Residence.**—Residence in the State for one year, in the county for six months, and in the polling precinct in which the elector offers to vote for three months; *provided*, that ministers in charge of an organized church and teachers of public schools and the spouse of any such person shall be entitled to vote after six months' residence in the State, otherwise qualified.

1959 (51) 317; 1963 (53) 109.

(b) **Registration.**—Registration, which shall provide for the enrollment of every elector once in ten years, and also an enrollment during each and every year of every elector not previously registered under the provisions of this Article.

(c) Qualification for registration up to January, 1898—list of registered voters.—Up to January 1st, 1898, all male persons of voting age applying for registration who can read any section in this Constitution submitted to them by the registration officer, or understand and explain it when read to them by the registration officer, shall be entitled to register and become electors. A separate record of all persons registered before January 1st, 1898, sworn to by the registration officer, shall be filed, one copy with the Clerk of Court and one in the office of the Secretary of State, on or before February 1st, 1898, and such persons shall remain during life qualified electors unless disqualified by the other provisions of this Article. The certificate of the Clerk of Court or Secretary of State shall be sufficient evidence to establish the right of Said Citizens to any subsequent registration and the franchise under the limitations herein imposed.

(d) **Qualification for registration after January, 1898.**—Any person who shall apply for registration after January 1st, 1898, if otherwise qualified, shall be registered: *Provided*, That he can both read and write any Section of this Constitution submitted to him by the registration officer, or can show that he owns, and has paid all taxes collectible during the previous year on, property in this State assessed at three hundred dollars (\$300) or more.

(e) **Payment of taxes necessary for voting.**—(*Eliminated*).

1949 (46) 773; 1951 (47) 24.

(f) **Certificate of registration.**—The General Assembly shall provide for issuing to each duly registered elector a certificate of registration, and shall provide for the renewal of such certificate when lost, mutilated or destroyed, if the applicant is still a qualified elector under the provisions of this Constitution, or if he has been registered as provided in subsection (c).

See Const. 1868, VIII, 2.

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Qualifications for suffrage and electors are regulated by all Constitutions. As a general rule three factors are provided for: Age, U. S. Citizen, and Residence. In addition, literacy and registration are often mentioned. Before formulating a provision to regulate each of these factors, general information about each should be given. Once it is determined what the constitutional section should state, the wording and arrangement can easily be worked out.

Age. Except for a brief period in which S. C. permitted citizens 18 years of age to vote in Democratic Primaries, the voting age has always been 21. Four states now use an age less than 21: Georgia, 18; Kentucky, 18; Alaska, 19; and Hawaii, 20. The arguments for and against reducing the voting age below 21 have been well presented by the Maryland Constitutional Study Commission. The Maryland discussion pertaining to age follows:

This draft section retains the present age requirement of twenty-one years. Consideration was given to a proposal to lower the voting age to eighteen and there was a Commission hearing on the question, but there was no strong support voiced for such a change.

Any decision as to voting age must be arbitrary, but it should have a sound theoretical basis. An age must be set at which it may be assumed that most if not all people have acquired a maturity of judgment and the good sense to think for themselves.

There are approximately 9,300,000 Americans between the ages of eighteen and twenty-one; and of these, 560,000 currently are serving in the armed forces. The latter compose approximately twenty-two per cent of all active military personnel. Under proposed draft law changes there will be many more young people between the ages of eighteen and twenty-one in the armed services in the near future than at present.

The primary arguments for retaining the minimum age of twenty-one as a basic suffrage requirement are:

1. It has long been the tradition in forty-six of the states.
2. The same reasons should apply in establishing the minimum age for voting as for establishing the legal age of majority, and in Maryland in the past few years the legal age of majority for most purposes has been standardized at twenty-one years.
3. Lowering the voting age would add to the voting population many persons who are idealistic rather than practical due to their lack of experience in adult society.

4. Reducing the voting age would add to the voting population persons highly influenced by their parents, schools, television and special interest groups.

5. If the voting age were reduced to eighteen, many small college communities would find their municipal governments overrun by energetic college students.

Those who favor reducing the voting age to eighteen argue that the sweeping changes in modern society require the responsibilities of full citizenship at an increasingly earlier age, for the abundant, diverse and complex problems of today affect individuals at every age level. The right to vote is a means by which individuals influence the political decision-making process in order to solve their problems. The goal is to insure that all individuals capable of assuming the responsibilities of citizenship are duly represented in the political community.

Those who favor reducing the voting age to eighteen also argue that:

1. Persons in the eighteen to twenty-one year old group are better educated today than such persons were when the precedent of the twenty-one year old voting age was established.

2. Under the laws of some states, eighteen year olds can make wills, get married, pay income taxes, obtain licenses to operate automobiles, own firearms and be sued.

3. Eighteen year olds can be drafted and their lives endangered; yet they are denied the right of voting for the composition of that government they are asked to defend.

4. The national average age of the electorate is rising; however, the problems faced by the nation are felt increasingly by the young people. Unemployment is an example of a problem which acutely focuses on the eighteen to twenty-one year old group.

5. The sense of responsibility of persons in the eighteen to twenty-one year old age group would improve and broaden if they were given the right to vote. They would more easily become part of the political system, rather than its eternal gadfly.

6. To work for the federal government, the minimum age under the Civil Service laws is eighteen.

7. Since the advent of student participation in the civil rights movement, eighteen to twenty-one year old students has assumed responsibilities for the concerns of the nation by registering voters, tutoring disadvantaged children and youth, and assisting in the development of nations through the Peace Corps.

Eighteen to twenty-one year olds have been allowed to vote in the State of Georgia since 1943 and in Kentucky since 1955. Alaska allows voting at the age of nineteen, and Hawaii at the age of twenty. Officials in Georgia and Kentucky, including school officials, have uniformly endorsed their state laws conferring suffrage at the age of eighteen.

After reviewing the reasons for and against a reduction in the minimum voting age, the Commission concludes that the arguments for lowering the voting age in Maryland are not persuasive. The Commission, therefore, recommends retention of the age of twenty-one years as the basic suffrage requirement.

U. S. Citizen. This really requires no discussion except to state that normal practice is to require that a qualified voter be a citizen of the state in which he resides and to be a U. S. Citizen. *see 3* *JB*

Residence. Residence varies from state to state, both as to length of residency and the number of jurisdictions in which residency must be earned. Most states having political body organization and election districts similar to South Carolina require a three-way residency: State, County or election district for assemblymen, and polling precinct.

South Carolina has made three amendments to the section on residency: one pertaining to taxes included in this section, one permitting the 6-month rule to apply to spouses of ministers and teachers, and one reducing the length of time in each of the three areas involved in residency by about one-half. Over the years then, the trend has been to soften the residency requirements in the 1895 Constitution.

Almost two-thirds of the states require a state residency of one year or longer. See the table on page 8a. The trend, however, is to shorten the state requirement to not more than 6 months. The Model suggests 3 months, the Maryland draft 6 months, in 1966 N. Y. reduced residency to 3 months (the shortest in the nation and requires the same time in the county or district and eliminated the precinct altogether), N. J. has 6 months, and Michigan 6 months. Alaska, Hawaii, and the Kentucky Draft established one year. The needs of our mobile society indicate a short period. If S. C. reduced its residency to 6 months, this would take care of the special clause on teachers and ministers.

The residency required for the county and precinct bears a direct relationship to that required for the State. Note that under the current rule, the county

GENERAL ELECTIONS IN 1966 AND 1967—Continued
Including All Elections for State Officers with Statewide Jurisdiction*
All dates are for 1966 except those identified as 1967

State or other jurisdiction	Date of general elections in 1966 (a)	State officers with statewide jurisdiction to be elected	State Legislatures: Members to be elected (b)		U. S. Congress: Members to be elected	
			Senate	House	Senate	House
Kentucky.....	Nov. 8 (1967) Nov. 7	Four Court of Appeals Judges Governor, Lt. Governor, Secretary of State, Attorney General, Auditor, Treasurer, Superintendent of Public Instruction, Commissioner of Agriculture, Clerk of Court of Appeals	None 3/4	None All	1 0	7 0
Louisiana.....	Nov. 8	None	None	None	1	8
Maine.....	Nov. 8	Governor	All	All	1	2
Maryland.....	Nov. 8	Governor, Attorney General, Comptroller	All	All	0	8
Massachusetts....	Nov. 8	Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, Auditor	All	All	1	12
Michigan.....	Nov. 8	Governor, Lt. Governor, Secretary of State, Attorney General, 2 Supreme Court Justices, 2 State Board of Education members, 6 members of State Universities Boards	All	All	1	19
Minnesota.....	Nov. 8	Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, Auditor, 2 Supreme Court Justices, 1 Railroad and Warehouse Commissioner	All	All	1	8
Mississippi.....	Nov. 8 (1967) Nov. 7	9 Supreme Court Judges Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, Auditor, Superintendent of Education, Land Com- missioner, Commissioner of Agriculture, Insurance Commissioner	None All	None All	1 0	5 0
Missouri.....	Nov. 8	State Auditor	3/4	All	0	10
Montana.....	Nov. 8	1 Associate Supreme Court Justice, 1 Railroad and Public Service Commissioner	3/4	All	1	2
Nebraska.....	Nov. 8	Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, Auditor, 1 Railroad Commissioner, 2 members of Board of Regents, 2 members of State Board of Education, 3 Supreme Court Justices	All (d)		1	3
Nevada.....	Nov. 8	Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of State Printing, Inspector of Mines, 1 Justice of Supreme Court, 3 State Board of Education members, 4 members of University of Nevada Board of Regents, 8 State Board of Fish & Game Commissioners	All	All	0	1
New Hampshire...	Nov. 8	Governor, 5 Executive Councilors	All	All	1	2
New Jersey.....	Nov. 8 (1967) Nov. 6	None None	None All	None All	1 0	15 0
New Mexico.....	Nov. 8	Governor, Lt. Governor, Secretary of State, Attorney General, Treasurer, Auditor, Commissioner of Public Lands, 1 Corporation Commissioner, 1 Supreme Court Justice	3/4	All	1	2
New York.....	Nov. 8	Governor, Lt. Governor, Attorney General, Comptroller, Chief Judge and 1 Judge of Court of Appeals	All	All	0	41
North Carolina....	Nov. 8	None	All	All	1	11
North Dakota.....	Nov. 8	Commissioner of Labor	All	All	0	2
Ohio.....	Nov. 8	Governor, Lt. Governor, Secretary of State, Attorney General, Auditor, Treasurer, 2 Supreme Court Justices	All	All	0	24

is one-half the state and the precinct one-half the county. Consideration should be given to a very short precinct residency, especially if the requirements are strictly enforced. Many voters would be disqualified under present requirements if there was a method to ensure strict enforcement. The Maryland Constitution and Proposed Draft contain a very interesting idea. Maryland avoids the question of moving just prior to an election by the following proviso: "Removal from one house district to another in this State shall not deprive a person of his qualification to vote in the house district from which he has removed until three months after his removal."

Such a provision would solve some of the questions now being raised concerning a voter's eligibility when he has moved shortly before election day.

In summary to meet the needs of South Carolina voting districts, including municipalities, there still appears to be a need for a three-way residency requirement; namely, state, county or legislative district, and precinct.

Literacy. According to section 4 (d), South Carolina has the following provision pertaining to literacy. "Provided, that he can both read and write any Section of this Constitution submitted to him by the registration officer, or can show that he owns, and has paid all taxes collectible during the previous year on property in this State assessed at three hundred dollars (\$300) or more." About one-fourth of the states have some type of literacy test for voting.

Literacy tests do help to insure the secrecy of the ballot and so long as they are fairly enforced there seems to be no reason to object. Of course, unless a very strict test is applied, most voters will soon be sufficiently literate to pass a test for voting.

When looking at the South Carolina provision in the 1895 Constitution, the delegates certainly did not intend to establish a difficult test and made special provision for the property owner who could not read or write. In thinking about the future, South Carolina would be in order to retain the

present literacy test. It is assumed that the present federal restrictions or regulations will be lifted at some time in the future and the State would at that time revert to its constitutional requirements. The U. S. Supreme Court has upheld the right of a state to have literacy tests so long as they are applied without discrimination. The federal regulations and pertinent court cases have been ably summarized by the N. Y. Study and is reproduced below for your use.

FEDERAL STANDARDS

The Supreme Court of the United States has held that a state could, consistently with the federal constitution, require English literacy as a qualification for voting, so long as such a requirement was not administered in an unfair and discriminatory manner.¹

Section 4(e) of the Federal Voting Rights Act of 1965² provides that any person who has successfully completed sixth grade in a public or an accredited private school in any state or territory of the United States or in the Commonwealth of Puerto Rico, in which the predominant classroom language was other than English, shall be entitled to vote in any federal, state or local election notwithstanding any state literacy requirement.³ The Supreme Court of the United States has recently held that for those to whom this provision was applicable, the Federal Voting Rights Act superseded New York's English literacy requirements.⁴ Thus, New York residents who are not literate in English but have completed the sixth grade in Spanish-language schools in Puerto Rico (or in schools taught in another foreign language in any state or territory of the United States) are entitled to vote, notwithstanding the literacy requirement of New York's Constitution.

Section 2 of the Federal Voting Rights Act⁵ prohibits any state from imposing any voting qualification "to deny or abridge the right to vote on account of race or color." This provision prohibits literacy qualifications from being administered in a racially discriminatory manner. There has been no challenge to New York's literacy requirement on such grounds.⁶

¹Lassiter v. Northampton Board of Elections, 360 U.S. 45 (1959). That case involved a provision of North Carolina law requiring ability to "read and write any section of the Constitution in the English language." The Court only considered whether such a requirement was constitutional per se, and did not consider whether it was administered in a fair manner.

²42 U.S.C.A. §1973b(e).

³In states in which persons are presumed literate for voting purposes by achieving a level of formal education other than a sixty-grade education, the act uses such level of education.

⁴Katzenbach v. Morgan, 384 U.S. 641 (1966). That case held that Section 4(e) of the act was a valid exercise of Congressional power under

U.S. Const., Amen. XIV, Sec. 5, which gave Congress the power to adopt legislation to enforce the equal protection clause. The court did not invalidate New York's literacy requirements to the extent they were not superseded by Section 4(e) of the Federal Voting Rights Act.

⁵42 U.S.C.A. S1973.

⁶See Cardona v. Power, 384 U.S. 672 (1966).

If the Committee retains a literacy provision, an additional short statement is needed so as not to disqualify someone who may be physically unable to read or write. The clause of literacy could read: "That except in cases of physical disability he can both read and write any Section of this Constitution submitted to him by the registration officer."

Registration. Constitutions vary on the amount of detail concerning the registration of voters. Most, however, have some statement which specifies the period of registration. Often the General Assembly is directed by a general statement to take care of the necessary details.

Most of the states have a permanent registration system. South Carolina is the only one with a 10-year period. Several have four-year periods and several have annual or registrations before each election.

The period of registration, then, usually is a constitutional question and should be specified. Fixing a registration period in the Constitution so that changes will not have to be made in the future can be done in a manner to uphold the present 10-year provision and to allow a different period in the future. A statement similar to this may be used: "Registration shall be fixed by the General Assembly for a period of not less than ten years."

Statements on Registration are scattered throughout Article II of the present Constitution. Good form would bring all the statements together in one section or in succeeding sections. Note the following:

Section 4, paragraph (b)
Section 4, paragraph (c)
Section 4, paragraph (d)
Section 4, paragraph (f)
Section 5
Section 8
Section 11

In looking at these sections, Section 4 (b) or some similar statement is needed. Sections 4 (c) and (d) appear to have outlived their usefulness and should be deleted, except that the literacy clause would be stated as a separate section. Section 4 (f) should be combined with 4(b).

Most of Section 5 can be deleted and the remaining part combined with another section.

Most of Section 8 is no longer applicable and the pertinent sections should be combined with another section.

Section 11 should be eliminated or combined with another section. Opening and closing or registration books should be left to the General Assembly.

The trend in all the newer constitutional documents is to omit most of the details concerning registration, leaving it to the General Assembly.

The Kentucky Draft dropped all of the detailed regulations and instead recommended this section: "All voting by the people at public elections shall be by secret process. The General Assembly shall have power to regulate elections except as otherwise herein expressly provided." Nothing else is given except the requirements for suffrage and disqualifications. The General Assembly is also authorized to reduce Constitutional residence requirements.

The Model suggests the following: "The legislature shall by law define residence for voting purposes, insure secrecy in voting and provide for the registration of voters, absentee voting, the administration of elections and the nomination of candidates." Alaska states it this way: "Methods of voting, including absentee voting, shall be prescribed by law. Secrecy of voting shall be preserved. The procedure for determining election contests,

with right of appeal to the courts, shall be prescribed by law. The legislature may provide a system of permanent registration of voters, and may establish voting precincts within election districts."

The Maryland Draft suggests the following: "The General Assembly shall by law define residence, establish a uniform system of permanent registration of voters, provide for the nomination of candidates, regulate the time, place and manner of elections, provide for the administration of elections and for absentee voting, insure secrecy of voting and protect the integrity of the election process."

To include the important sections of the 1895 Constitution without undue repetition and unnecessary detail which may become dated, the following wording is proposed: "The General Assembly shall provide for a permanent registration system/ registration system for a period of not less than ten years/. The registration rolls shall be public records open to the inspection of any citizen at all times. Each person must be duly registered as a condition to being a qualified elector." Having the right to prescribe a registration system would automatically give the General Assembly power to provide for the method of registering, to fix dates, to provide for re-issuing of lost certificates, the changing of precincts, etc.

Section 5. Appeal—crimes against election laws.—Any person denied registration shall have the right to appeal to the Court of Common Pleas, or any Judge thereof, and thence to the Supreme Court, to determine his right to vote under the limitations imposed in this Article, and on such appeal the hearing shall be *de novo*, and the General Assembly shall provide by law for such appeal, and for the correction of illegal and fraudulent registration, voting, and all other crimes against the election laws.

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This section does not seem to be needed. Would not such an appeal be permitted under law as a natural course of events? The section on fraudulent registration and crimes against the elections laws may be stated elsewhere.

Section 6. Persons disqualified from voting.—The following persons are disqualified from being registered or voting:

First, Persons convicted of burglary, arson, obtaining goods or money under false pretenses, perjury, forgery, robbery, bribery, adultery, bigamy, wife-beating, house-breaking, receiving stolen-goods, breach of trust with fraudulent intent, fornication, sodomy, incest, assault with intent to ravish, miscegenation, larceny, or crimes against the election laws: *Provided*, That the pardon of the Governor shall remove such disqualification.

Second, Persons who are idiots, insane, paupers supported at the public expense, and persons confined in any public prison.

See Const. 1868, VIII, 8.

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The wording of this section is completely outdated and should be changed. Two lines of thought are developing for disqualifying a person from voting for committing a crime: (a) If defined in the Constitution, restrict the crimes to felonies and (b) permit the General Assembly to disqualify for serious crimes. Penology is rapidly changing, and perhaps the wording of a disqualifying clause should be broad enough to permit the General Assembly to provide for the restoration of voting rights. The Alaska Constitution uses a good statement which allows flexibility: "No person may vote who has been convicted of a felony involving moral turpitude unless his civil rights have been restored." Thus the phrase "his civil rights have been restored" would allow the General Assembly to provide for a pardon by whatever agency has this responsibility or to provide for restoration of voting rights when the sentence had been served, or some other provision. The sentence pertaining to disqualification if confined in a public prison may be retained, depending upon the wording of the section. If the existing thought of a pardon is retained, then the wording should simply refer to a pardon without naming the agency. As now stated, pardon by the Governor conflicts with the Pardon Board established by amendment under Article IV.

Disqualifications for mental incompetency is still recognized by most constitutions. The wording in the present Constitution is wholly outdated and would be objectionable to many people. A better approach would be to use a statement of this nature: "Persons who are mentally incompetent are disqualified from voting." Or the Alaska phraseology may be useful: "No person may vote who has been judicially determined to be of unsound mind unless the disability has been removed."

The clause "paupers supported at the public expense" is outdated and should be deleted.

~~Section 7. Residence gained or lost.~~—For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas, nor while a student of any institution of learning.

See Const. 1868, VIII, 4, 5.

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Details of residence should be defined by the General Assembly and not the Constitution. Long standing custom would insure the conditions mentioned in Section 7.

Section 8. Registration provided—elections—board of registration—books of registration.—The General Assembly shall provide by law for the registration of all qualified electors, and shall prescribe the manner of holding elections and of ascertaining the results of the same: *Provided*, At the first registration under this Constitution, and until the first of January, 1898, the registration shall be conducted by a Board of three discreet persons in each County, to be appointed by the Governor, by and with the advice and consent of the Senate. For the first registration to be provided for under this Constitution, the registration books shall be kept open for at least six consecutive weeks; and thereafter from time to time at least one week in each month, up to thirty days next preceding the first election to be held under this Constitution. The registration books shall be public records open to the inspection of any citizen at all times.

See Const. 1868, VIII, 3.

See previous discussion.

Section 9. Polling precincts.—The General Assembly shall provide for the establishment of polling precincts in the several Counties of the State, and those now existing shall so continue until abolished or changed. Each elector shall be required to vote at his own precinct, but provision shall be made for his transfer to another precinct upon his change of residence.

The General Assembly would automatically have this right unless the constitution directed otherwise. If it is decided that a statement is needed on polling precincts, the current section could be shortened. The wording could be thus: "The General Assembly shall provide for the establishment of polling precincts. Each elector shall be required to vote at his own precinct, but provisions shall be made for his transfer to another precinct upon his change of residence."

Section 10 has been previously deleted.

~~Section 11. Closing books of registration.~~—The registration books shall close at least thirty days before an election, during which time transfers and registration shall not be legal: *Provided*, Persons who will become of age during that period shall be entitled to registration before the books are closed.

Previously discussed.

Section 12. Municipal elections.—Electors in municipal elections shall possess the qualifications and be subject to the disqualifications herein prescribed. The production of a certificate of registration from the registration officers of the county as an elector at a precinct included in the incorporated city or town in which the voter desires to vote is declared a condition prerequisite to his voting in a municipal election, and in addition he must have been a resident within the corporate limits at least four months before the election. The General Assembly may provide for such additional registration for voters in municipal elections, as it deems desirable.

1939 (41) 217; 1941 (42) 201; 1942 (42) 1431; 1950 (46) 2670; 1951 (47) 18.

If this section is retained, then the time period should be made to coincide with the normal precinct residence. Note this section says four months as formerly prescribed in the Constitution. Under Article II, section 4, precinct residence is now only three months. Many constitutions do include a statement on municipal elections, but it hardly seems necessary. A person not living within the municipality would have no right to vote in the municipal elections. If this section is retained, should it not be worded to

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cover all local elections to include whatever units of government which may be provided under the Article on Local Government? The whole matter could easily be covered in the section on qualifications for electors by including a statement that the qualifications herein shall apply to all elections if residence requirements are met.

Section 13. Bonded debt in municipalities.—In authorizing a special election in any incorporated city or town in this State for the purpose of bonding the same, the General Assembly shall prescribe as a condition precedent to the holding of said election a petition from a majority of the freeholders of said city or town as shown by its tax books, and at such elections all electors of such city or town who are duly qualified for voting under Section 12 of this Article, and who have paid all taxes, State, County and municipal, for the previous year, shall be allowed to vote; and the vote of a majority of those voting in said election shall be necessary to authorize the issue of said bonds. K

Only the original text is included. The amendments are lengthy and exclude some of the major municipalities from the requirements of the original language. Previously the nine-member committee agreed to eliminate this section. This section does work a major hardship on municipalities and specifies a condition not required for special districts, counties, school districts, etc. It also probably forces many municipalities to use revenue bonds when general obligation bonds may be more desirable. If this or a similar restriction is retained, the decision should be delayed until agreement has been reached on general constitutional debt provisions.

Apparently thinking in terms of the framers of the S. C. Constitution, the Alaska Constitution provided the following authority: "Additional voting qualifications may be prescribed by law for bond issue elections of political subdivisions."

Section 14. Arrests of electors.—Electors shall in all cases except treason, felony, or a breach of the peace, be privileged from arrest on the days of election during their attendance at the polls, and going to and returning therefrom. m

See Const. 1868, VIII, 6.

None of the recent constitutions contain such a statement. Many of the older constitutions do have similar provisions. The section probably grants very little protection from arrest, especially if "breach of the peace" is interpreted in a broad manner as it is for legislative immunity; hence, in effect, providing protection only from civil arrest. There seems to be no harm in leaving the statement.

Section 15. Right of suffrage free.—No power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage in this State.

The protection given by this section is stated in several other sections of the Constitution and is not needed here, unless other sections stating the same thing have been deleted. The problem here is coordination rather than deletion.

Note: The Article on Elections and Suffrage needs considerable attention from the standpoint of arrangement, elimination of duplications, and clarification. This can be done once the Committee has agreed upon the basic content. A fairly concise Article can be prepared which states the fundamental requirements concerning suffrage and elections.

The following outline is suggested:

I. General statement on elections: ballots, free and public, prevention of fraud, and a positive mandate to the General Assembly to provide for election procedures, methods of votings, absentee voting, procedure for election contests and appeals, etc. The General Assembly would have these rights without their being listed unless the Constitution prohibited it from acting, but most constitutions considering the importance of open and fair elections give the General Assembly a mandate in these matters. This section would coordinate and combine many of the sections in Article II and parts of several sections in Article I.

II. Qualifications for public office and dual officeholding if a statement is desired.

III. Qualifications to be an elector.

Age

Citizen

Residency

Literacy, if retained

Others

IV. Disqualification.

Crimes

In prison

Mental incompetency

Removal of the disqualification

V. Registration

Time period--Periodic, Permanent, etc.

Instructions to or restrictions on General Assembly

VI. Polling Precincts

VII. Any statement desired on local elections

VIII. Protection from arrests

IX. Any other matters considered important by the Committee and which should be placed in separate sections. For example, a special condition for Presidential Elections.

Additional Ideas on Elections

Presidential Elections. Major thought is being given to make it easier for citizens to vote in presidential elections. Some states have already changed their constitutions to this effect. Many citizens who must move around the country very seriously wish to vote in presidential elections and feel that they should be allowed to do so. The Committee may wish to consider this possibility. The Maryland Draft recommends this and states the right thusly: "A person who has been a resident of this State less than six months /the state residency requirement / next preceding an election, but who is otherwise eligible to vote under this Article, may vote under this Article, may vote for President and Vice President of the United States or presidential electors in that election."

Provision for Referendum and Initiative.

About one-fourth of the states have a constitutional provision providing in some manner for the submission of questions to the people in a referendum. Usually this may be done by the legislature or the people may petition for this to be done. About the same number of states allow the citizens to initiate legislation by getting a petition signed by a certain number of electors. These are methods of direct democracy and can be used to set aside that which the legislature enacts or to enact laws which the legislature has refused to pass. There are many arguments for and against these measures. Basically, the referendum and initiative can be used as weapons against the General Assembly. If applied they certainly complicate the ballot and often through the

initiative get measures approved without providing for financing of the projects. They may be considered as a safety value, but work against representative government. Previously, the Model Constitution advocated the referendum and initiative as constitutional rights. The current edition omits these as recommendations. If the Committee is interested in the referendum and initiative as constitutional questions, then more research can be done.