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STATE OF TEXAS**

EIGHTEENTH DAY
(Monday, February 11, 1974)

REPORTS OF THE
COMMITTEE ON RIGHTS AND SUFFRAGE

The Honorable Price Daniel, Jr, President
Constitutional Convention of 1974

Sir:

We, your Committee on Rights, Suffrage, Amendments, and Separation of Powers, to whom was referred Article VI of Constitutional Convention Proposal 1, have had the same under consideration and beg to report back with the recommendation that it do pass.

The proposal was reported from Committee by the following record vote: 12 Yeas, 8 Nays.

Respectfully submitted,

/s/
SCHWARTZ
Chairman

Date Submitted: February 7, 1974

The Honorable Price Daniel, Jr.
President, Texas Constitutional Convention

The Committee on Rights, Suffrage, Amendments, and Separation of Powers submits herewith its report containing recommended provisions for a new voter qualifications and elections article in the Texas Constitution. The proposal is intended to replace in its entirety Article VI (Suffrage) of the present constitution.

The committee has attempted to provide an Article VI which is consistent with the United States Constitution and proper standards for determining items of constitutional magnitude. Provisions believed to require extensive analysis and susceptible to varying treatment depending on differing circumstances were left to legislative discretion. Every attempt was made to put the provisions of Article VI into language having one plain meaning so that the average citizen of this state can easily understand its contents.

The members differed as to what language would be consistent with the above considerations. There was minority support for not restricting a felon's right to vote after completion of the sentence. There was also minority support for keeping the Constitutional Revision Commission recommendation that property ownership never

be a voting qualification. Both of these positions and the votes thereon are reflected in the comments as well as the minority report attached to these committee recommendations. Minority support was also shown in the vote on requiring the secret ballot to be unsigned.

The report was adopted after consideration was given to recommendations of the Constitutional Revision Commission, suggestions by 14 persons who testified before the committee in public hearings, delegates who submitted proposals, and the many citizens who have contributed to the work of the committee.

During its work the committee utilized the services of the following staff members and advisors: David Garza, research associate, Mark Cohen, research assistant, and Mary K. Wall, Legislative Council staff.

The committee believes this proposal provides a much improved constitutional framework for voter qualifications and elections in Texas and urges its adoption by the Constitutional Convention.

/s/
SCHWARTZ
Chairman

Date Submitted: February 7, 1974

BE IT PROPOSED BY THE COMMITTEE ON RIGHTS AND SUFFRAGE:

That there be a new article on suffrage to read as follows:

ARTICLE VI

VOTER QUALIFICATIONS AND ELECTIONS

Sec. 1. QUALIFIED VOTER. A qualified voter is a citizen of the United States 18 years of age or older who meets registration and residence requirements, who has never been convicted of a felony, and who is not mentally incompetent as determined by a court.

Sec. 2. ADDITIONAL QUALIFICATIONS. The legislature by law:

(1) shall prescribe the registration and residence requirements for voting;

(2) may make property ownership an additional qualification for voting in elections held by a political subdivision, the activities of which have a more burdensome effect on the property owners;

(3) may make exceptions to the disqualification of persons convicted of a felony.

Sec. 3. ELECTIONS. Elections by the qualified voters shall be by unsigned secret ballot. The legislature by law shall provide requirements for absentee voting and the administration of elections and shall ensure the purity of elections and guard against abuses of the electoral process.

Sec. 4. GENERAL ELECTIONS. General elections for state and county officials shall be held in even-numbered years on a date provided by law.

A. Introduction

The committee began its work with the version in Constitutional Convention Proposal 1 which was identical to the Constitutional Revision Commission recommendations for

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Article VI. After witness testimony, staff memorandums, and extensive intracommittee discussion, the committee proceeded to vote on amendments to Proposal 1 section by section. When every section was completed, the committee staff and the staff of the Committee on Style and Drafting made some structural changes.

At the time that the majority proposal was scheduled for a vote, it appeared that a substantial number of citizens desired to be heard further on the issues of voting rights of convicted felons and another meeting was scheduled to hear those witnesses. After that testimony another section-by-section vote was taken at the next meeting. As a result of that second section-by-section vote, Section 2(2) was broadened and Section 3 was amended to provide that all ballots be unsigned.

Section 1 defines a qualified voter. Section 2 delineates areas in which the legislature may add to or delete from qualifications for voting contained in Section 1. Section 3 describes the obligations placed on the legislature with regard to regulation of elections. Section 4 defines the term "general election" and guarantees they will be held in even-numbered years.

The revised Article VI was then submitted to the committee for approval as a whole. The article was approved by a majority vote of the committee membership, with 12 votes for the committee report and 8 against.

Six of the eight members voting "Nay" signed the minority report attached.

B. Section-by-section Analysis

Title. VOTER QUALIFICATIONS AND ELECTIONS

COMMENTS

The issue was presented as to whether or not a more modern and understandable title was desirable. It was proposed that Proposal 1 be amended so as to change the title of Article VI from "Suffrage" to "Voter Qualifications and Elections." The committee then approved the amendment by a majority of the members.

Sec. 1. QUALIFIED VOTER. A qualified voter is a citizen of the United States 18 years of age or older who meets registration and residence requirements, who has never been convicted of a felony, and who is not mentally incompetent as determined by a court.

COMMENTS

Constitutional Convention Proposal 1, Article VI, Section 1 reads, "Any citizen eighteen years of age or older who meets the registration and residence requirements provided by law, who is not serving a sentence for a felony, whether incarcerated, on parole, or on probation, and who is not of unsound mind as determined by a court, shall be a qualified voter."

This section defines a qualified voter. The advisability of using the term unsound mind with regard to the scope of its meaning had been discussed. On the first occasion of a section-by-section vote on Article VI, the first amendment offered was to change the words "of unsound mind" to "mentally

incompetent." A substitute amendment was offered which would have prohibited all felons from voting but would allow the legislature to make exceptions as well as change the words "of unsound mind" to "mentally incompetent." Three amendments were offered to the substitute. The first would have allowed convicted felons who were not incarcerated the right to vote. The second would have allowed convicted felons who were not incarcerated or on parole to vote. The third would have allowed persons convicted of a felony to vote as long as they were not incarcerated, on parole, or on probation. All three failed and Substitute Amendment Number 1 received the affirmative vote of 15 members of the committee, and 5 members against.

In the meeting with the staff of the Style and Drafting Committee, the direction to the legislature to provide registration and residence requirements and the authorization to make exceptions in the case of convicted felons was moved to what is now Section 2 of this report.

On the second occasion of a section-by-section vote, an amendment was offered which would have used the Constitutional Revision Commission language adding, "subject to such exceptions as the legislature may provide" as a substitute for the 1954 constitutional amendment language of the majority report. This amendment failed on a 10 to 10 tie vote.

This section makes only one substantive change in Article VI, Section 1, of Constitutional Convention Proposal 1. That proposal would have permitted persons convicted of a felony to vote as long as the sentence had been completed. This committee report uses the 1954 constitutional amendment language which prohibits all felons from voting unless the legislature permits it by statutory exception.

Sec. 2. ADDITIONAL QUALIFICATIONS. The legislature by law:

(1) shall prescribe the registration and residence requirements for voting;

(2) may make property ownership an additional qualification for voting in elections held by a political subdivision, the activities of which have a more burdensome effect on the property owners;

(3) may make exceptions to the disqualification of persons convicted of a felony.

COMMENTS

This section was created for clarity purposes in the meeting with the Style and Drafting Committee staff. Subsections (1) and (3) came from Section 1 of the originally drafted committee report and have been discussed in the comments to Section 1. This section delineates the areas in which the legislature may add to or delete from the qualifications for voting as defined in Section 1.

Constitutional Convention Proposal 1 did not mention property ownership as a qualification for voting. Committee staff testified concerning the Supreme Court of the United States' holdings that property ownership as a qualification for voting might conflict with the equal protection clause of the Fourteenth Amendment but pointed out that one recent case had allowed property ownership as a qualification in some

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situations. An amendment was offered to Article VI of Constitutional Convention Proposal 1 to add a new section titled "Bond Elections" which read as follows:

The legislature by law may make property ownership an additional requirement for voting in elections held by political subdivisions for the purpose of issuing bonds, or otherwise lending credit, or expending money or assuming any debt.

The amendment was approved at that time by a vote of 11 yeas and 6 nays. At the hearing of additional witnesses after the first section-by-section vote, a witness pointed out an unusual situation in a special district in El Paso which would not be covered by the authorization granted the legislature in the proposed Section 2(2).

On the occasion of the second section-by-section vote, the committee, by a vote of 15 yeas and 5 nays, adopted the broader language contained in the present Section 2(2) which would permit the legislature to require property ownership as a requirement for voting in any type of election in certain political subdivisions rather than only in those types of elections specified in the previous draft.

This section thus makes one more substantive change in Constitutional Convention Proposal 1. It allows the legislature to make property ownership a qualification for voting in elections in certain political subdivisions.

Sec. 3. ELECTIONS. Elections by the qualified voters shall be by unsigned secret ballot. The legislature by law shall provide requirements for absentee voting and the administration of elections and shall ensure the purity of elections and guard against abuses of the electoral process.

COMMENTS

This section describes the obligations placed upon the legislature in the exercise of its authority to regulate the election process. Since the direction to the legislature to provide registration and residence requirements was moved to Section 2 for clarity purposes at the meeting of the staffs of this committee and the Style and Drafting Committee, its reiteration in this section would be redundant.

The question was raised as to the possibility of lessening election fraud by making the secret ballot requirement more explicit. On the first occasion of a section-by-section vote, an amendment was offered to make the first sentence of Article VI, Section 2 of Constitutional Convention Proposal 1 read, "All elections by qualified voters shall be by secret ballot, and, except as may be essential to the orderly conduct of absentee voting, no voting procedure may be used which would make it possible to identify the voter who voted a particular ballot after the voter has relinquished possession of it." In the debate on this amendment the point was raised that the present constitution did not require secrecy and did require numbered ballots. Therefore, the Constitutional Revision Commission language was thought to be sufficient to allow the legislature to provide for any degree of secrecy it might choose. A motion to table that amendment received approval of a majority of the

committee by a 15 to 3 vote and therefore the amendment was not voted on. Another amendment was offered which sought to make the first sentence of Article VI, Section 2 of Constitutional Convention Proposal 1 read, "All elections by the qualified voters shall be by secret ballot, and the voter's signature shall not be required on the ballot." A motion to table that amendment also prevailed by a 16 to 2 vote and no vote was taken on the amendment. A motion to adopt Article VI, Section 2 of Constitutional Convention Proposal 1 as part of this committee report was approved by an affirmative vote of 17 members of the committee, and 1 against.

On the second occasion of a section-by-section vote, an amendment was offered adding the word "unsigned" between the words "by" and "secret" in the first sentence of Section 3. This amendment was approved by an affirmative vote of 11 members of the committee and 9 against.

This section, therefore, makes one substantive change from Constitutional Revision Commission recommendations. The present provision will not allow a voting procedure to require the voter to sign any part of the ballot.

Sec. 4. GENERAL ELECTIONS. General elections for state and county officials shall be held in even-numbered years on a date provided by law.

COMMENTS

Article VI, Section 3 of Constitutional Convention Proposal 1 reads as follows: "General elections shall be held in even-numbered years on a date provided by law."

This section defines "general elections" as the term is used in various parts of the constitution and guarantees they will be held in even-numbered years. A question was raised as to whether or not more specificity was needed. General elections are commonly those which are held on a recurring fixed date and therefore this language could be construed to include elections traditionally held in odd-numbered years, such as municipal elections. An amendment was offered to make this section read, "General elections for state and county officials shall be held in even-numbered years on a date provided by law." A majority of the committee voted to adopt this amended version as part of this committee report by a unanimous vote.

The change approved by the committee for this section merely provides more certainty in the definition of "general elections" and does not make a substantive change in the Constitutional Revision Commission recommendations.

Minority Report Number 1

BE IT PROPOSED:

That the following be substituted for Article VI of the majority proposal:

ARTICLE VI

VOTER QUALIFICATIONS AND ELECTIONS

Sec. 1. QUALIFIED VOTER. A qualified voter is a citizen of the United States 18 years of age or older who meets the registration and residence requirements provided by law, who is not serving a sentence for a felony, whether incarcerated,

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on parole, or on probation, subject to such exceptions as the legislature may provide, and who is not mentally incompetent as determined by a court.

Sec. 2. ELECTIONS. Elections by the qualified voters shall be by unsigned secret ballot. The legislature by law shall provide the requirements for absentee voting and the administration of elections and shall ensure the purity of elections and guard against abuses of the electoral process.

Sec. 3. GENERAL ELECTIONS. General elections for state and county officials shall be held in even-numbered years on a date provided by law.

EXPLANATION

This proposal makes two substantive changes in the majority report. The first is that the absolute bar to convicted felons voting without permission of the legislature is changed to guaranteeing the right to vote to convicted felons who have completed their sentence and allowing the legislature to permit other convicted felons to vote by statute. The second change is that the legislature's power to set property ownership as a voting qualification is deleted.

Since two of the subsections of Section 2 of the majority report are no longer appropriate under this minority report, Section 2 is eliminated. The direction to the legislature to prescribe registration and residence requirements is retained by adding "provided by law" after the word "requirements" in Section 1.

COMMENTS

This minority report reinstates the substantive intent of Constitutional Revision Commission recommendations and allows the legislature to extend a convicted felon's right to vote beyond those recommendations. There is no denial of the right to vote to persons convicted of a felony once they have paid their debt to society by completing their sentence. Those persons serving a sentence for a felony may be granted the right to vote by statute. In addition, the legislature cannot require one to be a property owner before being entitled to cast a vote. From a purely aesthetic viewpoint, this minority report is shorter and more concise. This is consistent with our efforts to develop a short clear constitution for the people of Texas.

Respectfully submitted,

/s/ R. C. Nichols

/s/ Ed R. Watson

/s/ Chris Miller

/s/ Ed J. Harris

/s/ John R. Bigham

/s/ Mickey Leland