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TUESDAY, OCTOBER 17, 1972

Legislature's Appropriate

Can Anyone Rewrite Constitution?

By MIKE KINGSTON
Editorial Staff Writer

CONSTITUTIONAL revision is taking its licks from the opposition, as expected, both in Texas and elsewhere.

In every state, there are those who either have too little knowledge about the constitution to make an intelligent decision about revision or who have an intimate knowledge of the charter and don't want their comfortable world disturbed.



KINGSTON

The Texas controversy revolves around Proposition 4 on the Nov. 7 constitutional amendment ballot and there seems to be considerable misunderstanding about just what the amendment will do.

First of all, it authorizes the State Legislature to set up a constitutional revision commission next January to study the present charter and make whatever recommendations for revision it deems appropriate by November of 1973. Only the Bill of Rights is exempted from consideration.

The Legislature would convene a constitutional convention in January of 1974 and have until the end of May to propose either revisions of the present charter or adoption of an entirely new one.

Any revision, however, would have to be proposed by two thirds of the convention (that's 122 members of the combined convention membership of 181) and then be voted on by general referendum in November of 1974.

The procedure combines the blue-ribbon commission approach with the use of elected officials. Revision would begin and end with the people.

FEW TEXANS will contend with a straight face that the state does not need a new constitution. So opposition has centered on the supposed inadvisability of allowing the Legislature to rewrite the charter.

Curiously enough, some critics apparently have the idea that the Legislature is appointed or takes office by act of lobbyists; they contend that whoever revises the constitution should be elected by the people.

Question: Who elects the legislators and to whom are the legislators answerable? The people, of course.

Competence and character of the Legislature also is questioned in view of the scandals that rocked the 62nd session. This would be a legitimate complaint if the same lawmakers were going back in 1973, but they aren't. Already it is assured that over half of the legislators will be new. Even more may be after the general election.

Precisely because of the scandals, the 63rd Legislature may be one of the most open, most competent and most conscientious in recent years. The lawmakers are painfully aware that the public is keeping a much closer eye on them than in the past.

Indeed, many of the members going to Austin next year ran on reform and constitutional revision platforms.

If the past is any guide, over half the membership will be attorneys, presumably well-versed in what it takes to write a good constitution.

Are critics of legislative revision of the constitution prejudging the Legislature on no other basis than their own prejudice? Are they saying that Texans, after being shocked and embarrassed by recent scandals, don't have enough sense to elect competent lawmakers and competent constitution writers?

SOME CRITICS contend that the 11 months allowed the revision commission to make recommendations isn't enough. But fact of the matter is that two major studies of the State Constitution have been made in the past 15 years and these could be used as bases for future studies. So could material that has been developed by other states in recent years.

It also is complained that the 4½ months allowed the Legislature to rewrite the constitution isn't enough. The

present charter was written in 2½ months and the ill-fated Maryland Constitution, considered a national model, was written in just under four months in 1968.

Others say they don't want politicians writing the constitution. But can they seriously think that the document that sets out the limits of power of a political system can be written without politics coming into play?

Finally, it is complained that special interests will control the Legislature in the rewriting process.

Well, if the special interests can gain control of lawmakers, who are answerable to the voters on the next election day, how much easier would it be for them to control specially elected representatives to a constitutional convention, who are answerable to no one even the day after their election?

With the miserable turnouts that the state has for special elections, we indeed could see the special interests controlling the revision convention.

It is amusing that critics complain that allowing the Legislature to rewrite gives the body too much power when one of the major criticisms of the present constitution is that it gave the Legislature too little power. The Galveston News, for example, in 1876 chided (of all things) the special interest groups in control of the 1876 convention, which "... in the name of represented sovereignty of the people, would chain the will of the people from expression hereafter through legislative representatives of their choice. In its insufferable presumption, this element forgets that sovereignty is a continuous, perpetual force, of which the convention in its proper character, is at most a transient reflection, a temporary medium, a provincial agent."

The State Constitution should be a living document written to meet modern needs by knowledgeable men acquainted with the operation of government and responsible to the people who elect them. The Legislature fills this bill. Proposition 4 merits not only support, but enthusiastic endorsement by any Texan who cares about his state and his state government.

A RESOLUTION
IN SUPPORT OF H. J. R. 61, 62ND LEGISLATURE,
REGULAR SESSION, 1971, A PROPOSED CONSTITUTIONAL
AMENDMENT TO APPEAR ON THE BALLOT AT THE ELECTION
IN NOVEMBER, 1972, PERTAINING TO REVISION OF THE TEXAS
CONSTITUTION, AND REAFFIRMING THE PRINCIPLE OF LOCAL HOME RULE.

WHEREAS, the State of Texas presently operates under the State
Constitution of 1876, as amended, and

WHEREAS, the State Constitution of 1876 contained 23,000 words
when adopted, and by 201 amendments has increased to more than 55,000
words, making it one of the longer state constitutions in the nation; and

WHEREAS, the growth in population, the major changes in dis-
tribution of the people of Texas between farm and city, in technology, and
in transportation and communications, which have occurred since 1876,
raise the question as to whether the Texas Constitution with its many details
is the most appropriate instrument for government under present conditions;
and

WHEREAS, in 1912 the Constitution was amended to extend home rule
to cities having more than 5,000 inhabitants, which amendment has con-
tributed to the growth of our cities; and

WHEREAS, the principle of home rule government in Texas, which
is recognized as a model in the nation, was devised to permit the expression
of local affairs, and has proved to be the most effective form of government;
and

WHEREAS, the 62nd Texas Legislature, at its Regular Session in
1971, adopted H. J. R. 61, a proposed amendment to the Texas Constitution,
to appear on the ballot at the General Election to be held on November 7, 1972,
which will authorize the Legislature to create a constitutional revision com-
mission in 1973, to study and make recommendations to the Legislature for
constitutional change, and convenes the 63rd Legislature in January, 1974

to sit as a constitutional convention, with any changes adopted by the convention to be submitted to the voters; Now therefore

BE IT RESOLVED by the delegates assembled at the 59th Annual Conference of Texas Municipal League that the League endorses H.J.R. 61, 62nd Legislature, Regular Session, 1971, as a means of initiating needed changes in the Constitution of the State of Texas.

BE IT FURTHER RESOLVED that Texas Municipal League reaffirms the principle of local home rule adopted by the people in 1912, and urges the constitutional revision commission and the constitutional convention created by H.J.R. 61 to preserve this principle in any revision of the State Constitution.

PASSED AND APPROVED at Houston, Texas, on the 5th day of October, 1971.

APPROVED:

President

ATTEST:

Executive Director





Telegram

I APPLAUD YOUR EFFORTS TO INITIATE A STATEWIDE
ORGANIZATION DEVOTED TO CONSTITUTIONAL REVISION AND THE
MODERNIZATION OF STATE GOVERNMENT AND HOPE THAT YOU MAY
BE SUCCESSFUL IN THE PASSAGE OF HJR 61 NEXT YEAR. BE
ASSURED OF MY CONTINUING SUPPORT AND ASSISTANCE.

JOHN B. CONNALLY

SECRETARY OF THE TREASURY

/GDC1029370/

NNNN(1122A EST)



The Supreme Court of Texas

Capitol Station

Austin, Texas

78711

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ADMINISTRATIVE ASST.

December 10, 1971

Mr. Terrell Blodgett
Interim Chairman
Citizens for Texas
Austin National Bank Building
Austin, Texas 78701

Dear Terrell:

Thank you for bringing me up to date on the new effort which is being undertaken to consider revision of our State Constitution. As you know, for many years I have advocated constitutional revision. While serving as Governor, I addressed myself to this need in each of my annual messages to the Legislature.

Although my present position on the Supreme Court restricts my participation in such matters, I want you to know that I still think the updating of our Texas Constitution is essential, and I support the present movement to study our Constitution with a view toward making it more responsive to the present and future needs of our State.

I commend the organization of a broad based, non-partisan effort to inform the citizens of Texas regarding this great need and wish you every success.

Sincerely yours,

Price Daniel
Price Daniel

PD:lgc

January 14, 1972

SPECIAL TO TEXAS DAILIES, WEEKLIES, AND TV-RADIO STATIONS

FOR IMMEDIATE RELEASE --

Austin -- Citizens with a long-standing interest in the well-being of state and local government in Texas announced the formation today of CITIZENS FOR TEXAS, a statewide organization. CITIZENS FOR TEXAS will work for modern and effective government in Texas with primary emphasis on assuring passage in November of 1972 of Proposition No. 4 to initiate a procedure for revision of the State Constitution.

Tom J. Vandergriff, spokesman for the new organization, said: "After almost 100 years we believe it is time for a fundamental re-examination of the State Constitution of 1876. The best parts of the Constitution must be preserved while at the same time initiating change where modernization and improvement is in order.

"The State Constitution is too long, it has too much statutory language in it, it encourages government by crisis, it prevents timely response to important public problems, and the torturous process of amendment is not only becoming more and more unmanageable but also a point of confusion and frustration for the voters.

"CITIZENS FOR TEXAS believes Proposition No. 4 to be a demonstration of faith in the wisdom of the people of Texas. It begins with a vote by the people and ends with an opportunity for the people to accept or reject any proposals for changes in the constitution."

A YES vote for Proposition No. 4 by the people in November 1972 will set in motion the following steps.

(More)

The new Texas Legislature elected at the same November general election is directed to establish a CONSTITUTIONAL REVISION COMMISSION when it meets in regular session in January 1973.

The COMMISSION is to be provided with money and adequate staff to study the need for Constitutional change and report its findings to the Legislature not later than November 1973.

After receiving the findings and recommendations of the CONSTITUTIONAL REVISION COMMISSION, the 63rd Texas Legislature will convene in January of 1974 as a CONSTITUTIONAL CONVENTION under the temporary Chairmanship of the Lt. Governor.

After deliberations, the CONVENTION by two-thirds vote of its members may submit to the people a new Constitution which may contain alternative articles or sections or may submit revisions of the existing Constitution which may contain alternative articles or sections.

The Bill of Rights of the present Texas Constitution is to be retained in full.

Any changes proposed by the CONVENTION must be submitted to the people for approval or rejection.

Spokesmen for the new organization said that CITIZENS FOR TEXAS, which is nonpartisan and composed of businessmen, civic leaders, labor representatives, representatives of womens groups and youth, will work on several fronts.

First, it will campaign to assure passage of Proposition No. 4.

Second, it will see that the people of Texas are informed that the Legislators they elect or re-elect in 1972 may well have the responsibility of also serving as delegates to the CONSTITUTIONAL CONVENTION.

(More)

Third, CITIZENS FOR TEXAS will see that basic research and civic education about the Constitution is started in time that research results and informed public opinion will be ready for the CONSTITUTIONAL COMMISSION the day it begins its deliberations.

Finally, CITIZENS FOR TEXAS will work to insure that the CONSTITUTIONAL COMMISSION is representative of the diversity of Texas and is composed of the finest individuals the State has to offer to such an important, once in a century, endeavor.

Initial Board Members for the new organization include:

Tom J. Vandergriff, Mayor of Arlington (Chairman)

John Gronouski, Dean, Lyndon B. Johnson School of Public Affairs, Austin

Roy Evans, President, Texas AFL-CIO, Austin

John Gatti, Mayor of San Antonio

Mrs. Veta Winick, State President, League of Women Voters, Dickinson

Kenneth Douglas, Immediate Past President, County Judges and Commissioners Association, Corsicana

Alvin Burger, Board Member and Former Executive Director of the Texas Research League, Austin

Barbara Jordan, Attorney and State Senator, Houston

Harry Provence, Editor-in-Chief, Newspapers, Inc., Waco

Louie Welch, Mayor of Houston

John Bebout, Constitutional Revision Scholar, University of Houston

Dannie Billingsly, Student and City Councilman, Huntsville

Terrell Blodgett, Principal, Peat, Marwick, Mitchell & Co., Austin

Joe Cisneros, President, Coastal Bend Central Labor Union, Corpus Christi

Harry W. Clark, Vice President, First National Bank, Midland

(More)

Sam Coats, Attorney, State Representative, Dallas

Bill B. Cobb, Senior Vice President, Corpus Christi Bank & Trust, Corpus
Christi

Dr. James H. Granberry, Mayor of Lubbock

Bob Honts, President, Christian, Miller & Honts, Inc., Austin

Mrs. Nancy Johnson, Chairman, Legislative Committee, AAUW, Dallas

Harold Keller, President, Bexar County Taxpayers League, San Antonio

Ed Watson, Legislative Representative, Oil, Chemical, and Atomic Workers,
Pasadena

Joe G. Moore, President, Aquarius, The Clean Water Co., Houston

William J. Pitstick, Executive Director, North Central Texas Council of
Governments, Arlington

Jim Ray, Arlington

Raymond Scott, Business Agent, Laborers Local No. 853, Port Arthur

Robert L. Sutherland, Consultant, Hogg Foundation for Mental Health,
University of Texas, Austin

Charles Wilson, Attorney, State Senator, Lufkin

Nelson Wolff, Attorney, State Representative, San Antonio

Bert Holmes, President, Texas United Community Services, Associate
Editor, Dallas Times-Herald

Mrs. Dean Armstrong, Secretary, Texas Political and Legislative
Committee, Communication Workers of America, Austin

Dr. Jose Cardenas, Superintendent, Edgewood Independent School District,
San Antonio

J. Neils Thompson, Director, Balcones Research Center, The University
of Texas, Austin

Vernon McGee, Vice-President, Management Services Associates, Austin

SUMMARY OF
MEETING TO DISCUSS ORGANIZATION OF A CITIZENS GROUP
TO WORK FOR CONSTITUTIONAL REVISION AND MODERNIZATION
OF STATE AND LOCAL GOVERNMENT IN TEXAS, DECEMBER 10, 1971 IN AUSTIN

The meeting was called to order by Terrell Blodgett of Austin who was acting as host for the meeting. Mr. Blodgett explained that a group of about 20 citizens from various parts of the State had been meeting since early September to prepare for the organization of a citizens group to work for improvement in state and local government in Texas and, as a first priority, to seek passage of proposition No. 4 to be voted on by the people of Texas in November 1972. This proposed amendment to the Constitution would set in motion a procedure for revising and modernizing the Texas Constitution.

Mr. Blodgett explained that the informal group had approached Tom J. Vandergriff of Arlington and asked that he serve as chairman of the new organization. Mr. Vandergriff had agreed to serve and since then the group had initiated specific plans including the preparation of a draft charter for the organization. Blodgett then introduced those individuals present and explained that many of them had already agreed to serve with Tom Vandergriff on the Board of the new organization while others were there to listen and then make a decision on their personal participation.

Mr. Blodgett introduced Tom Vandergriff for a short statement on the need for constitutional revision. Mr. Vandergriff was followed by State Representatives Nelson Wolff and Sam Coats who sponsored the resolution that resulted in the placement of proposition No. 4 on the ballot for November of 1972. Wolff and Coats explained the history and provisions of that resolution.

John Gronouski, Dean of the Lyndon B. Johnson School of Public Affairs and John Bebout of the Institute of Urban Studies at The University of Houston were then introduced to explain the need for research preparatory to constitutional revision and to discuss the work that was already underway to provide that research material.

After discussion, those present authorized Tom Vandergriff to proceed to file a charter for the new organization to be named "Citizens for Texas." Chairman Vandergriff was also authorized to appoint committees to work in the areas of organization and membership, finance, and research.

Mr. Vandergriff read letters and telegrams of support from Governor Preston Smith, Lt. Governor Ben Barnes, John Connally, Price Daniel, Allan Shivers, William P. Hobby, and Ralph Hall. Vandergriff indicated that other similar statements of support were on the way. He also called attention to a Texas Municipal League Resolution supporting proposition No. 4.

The first official meeting of Citizens for Texas organized under its new charter was set for January 14, at 10:00 a.m. in Austin at the Old Supreme Court Chambers in the Capitol.

REVISING THE TEXAS CONSTITUTION

IN PREPARATION

A PROPOSAL

Institute for Urban Studies
University of Houston



THE TEXAS CONSTITUTION

In a move of great potential significance for all Texans, the recently adjourned session of the Texas Legislature passed a constitutional amendment which, if approved by the voters, would provide for a constitutional convention composed of members of the Legislature to meet in 1974. This action of the Legislature is the latest in a long series of activities directed at modernizing the Texas Constitution. Once again, the citizens of Texas are presented with an opportunity to improve and modernize the State's fundamental document. This proposal is the first step in providing a basis for converting the opportunity into a reality.

During the past three decades, as government activity has grown in scope and size and the public sphere of our society has come to play a more important role in the lives of citizens, increasing attention has been paid to the fundamental framework and institutions of government. Concern among public and private citizens in Texas about the adequacy of the Texas Constitution has heightened as the operations of state government have become more complex and the demands of the citizenry have required quicker response.

The present Texas Constitution, written late in the 19th century has proved itself to be a cumbersome document that has prevented Texas State government from meeting the challenges of this century with alacrity and effectiveness. The price that Texans have paid for allowing the State Constitution to remain in its present state is high. Many matters, left unattended because of constitutional restriction or difficulty have become the domain of the federal government. Burdened by outmoded constitutional provisions, State government has been slow to act on many vital matters which

has led to an increasing distrust of State government on the part of the citizenry. Many Texas citizens, seriously concerned with moving effectively to solve the problems of the State, have time and again run up against the Constitution as the major obstacle.

Though not highly visible as an obstacle to the solution of problems confronting State government, the Texas Constitution lies at the heart of much of the governmental malaise evident today. The Texas Assembly on the State and the Urban Crisis stated:

As between the legislature and the governor, Texas relies more heavily on the legislature than do most states for the making of the State budget and the origination of state policy. The constitutional position of the governor is one of the weakest in the country. Yet, the legislature itself is seriously handicapped in the performance of its responsibilities by reason of constitutionally limited biennial sessions, inadequate pay, meager staffing of committee work and detailed substantive constitutional prohibitions and prescriptions.

Further, the Texas Constitution imposes one of the most archaic and inflexible systems of county government on all parts of the State, urban as well as rural, in all of the country.

The Constitution puts undesirable restraints on the adaptation of local government to the needs of an increasingly metropolitan state. In addition, the Texas Constitution establishes one of the most complex and dispersed systems of courts and judicial administration in the country.

One of the most compelling indications of the inability of the present Constitution to provide for effective government is the number of times that amendments have been proposed to change its various sections. Two

hundred and one amendments had been adopted by May, 1971. From 1965 to May 1971, the legislature submitted 67 amendments of which 43 were adopted. Fourteen additional amendments were adopted by the legislature in May 1971 for submission to the people in November, 1972. One student of the Texas Constitution has calculated that, at the present rate, by the year 2000, the Legislature will be proposing 30 amendments every two years to the voters.

Defenders of the present Constitution have argued many times that the requirement of voter approval for amendments is the ultimate democratic device in that it gives all citizens the chance to participate in a continuing rewriting of the basic document of their State government. In fact, except in the cases of highly salient issues (e.g. liquor by the drink), the list of constitutional questions to be voted on deals with such specialized facets of State government and are worded in such language that most voters cast their ballots in ignorance of the overall effect of the provisions and many cast no ballot at all. In the 1968 General Election, when 14 amendments were submitted to the voters for consideration, an average of 800,000 people less voted on the constitutional questions than voted in the race for Governor of the State. Moreover, in the past ten years it has become exceedingly difficult to obtain approval for constitutional amendments. The percentage of amendments approved by the voters for the elections during the decade of the sixties are as follows:

1961.....	71%
1963.....	57%
1965.....	74%
1967.....	65%
1968.....	50%
1970.....	56%
1971.....	20%

If, in fact, the description of "government by constitutional amendment" is apt for Texas State government, it is clear that we could be without government at all in many vital problem areas in the years to come should they require a constitutional mandate.

One student of the Texas Constitution has said that its framers wrote the Constitution so as to make certain that the government which they were creating would be "weak enough to be safe." It may be time to ask whether "weak enough to be safe" in 1876 is not too weak in 1971.

The need for revision of the Texas Constitution is clear. The constitutional convention proposed by the recent Legislature is a vehicle by which revision can be accomplished. The success or failure of that effort will be determined initially by the preparation that is done before the convention begins its work.

Preparation for the Convention

The length and complexity of the Texas Constitution will make revision a difficult and tedious task. If the delegates to the convention are to have a chance at producing an acceptable document for consideration by the people of Texas, it is imperative that the background and research work essential to the working of any constitutional convention be completed in the two years prior to its convening.

There are a number of different kinds of tasks that must be completed before a constitutional convention can begin its work. Foremost among these tasks is the preparation of a thorough historical, comparative and analytical annotation of the present Constitution. Essentially, an annotation is a detailed, descriptive study of the Constitution, section by section, which

enables the reader to determine the history, purpose, effect and comparability of each constitutional provision. Such a document has been the mainstay of recent constitutional revision efforts. Delegates from the Michigan and Illinois conventions were provided with annotations of such high quality that they were regarded as the most useful document at the proceedings.

It is the purpose of this proposal to obtain funds for production of an annotation of the quality essential to successful constitutional revision in Texas. The work on such an annotation should begin immediately. Experience from other states indicates that this would take two years of the time of a man great competence who has experience in such activity. It would be important to retain Texas constitutional experts to assist in the task. It might be done by several people in a shorter period of time, but editorial problems would be great and the product would probably not be so good as that of one man with the help of a research assistant. In order to be ready in advance of the convention in 1974, work should begin no later than the fall of 1972.

There are several reasons why work on the annotation should begin immediately. Because the annotation is the most comprehensive document that will be used by members of the convention, preparation of it will necessarily produce valuable information useful to other preparatory activities. Early completion of the annotation will allow delegates to the convention and concerned citizens to obtain a broad view of the Constitution, its provisions and the extent to which they require revision.

The constitutional amendment passed by the Legislature specifies that the next regular session of the Legislature, which will meet in 1973, shall

provide for a commission to precede the convention to do such work as will be necessary for the operation of the convention. Although this is a logical and necessary step, it does not solve a key problem that must be resolved before a convention could begin its work. Even if the 1973 legislature moved in an expeditious fashion at the beginning of the regular session to provide for the commission and adequate staff, the time remaining to complete preparatory research would be approximately nine to ten months from the start of the convention in 1974. Experience from other states that have engaged in constitutional revision indicates that nine months is only a fraction of the time necessary to prepare for a constitutional convention. This is especially true in the case of the annotation.

The short period of time that would be available to the Commission occurred because the legislature opted to wait for the vote on the constitutional convention amendment before taking any action relating to preparatory activity. This decision does not alter the fact, however, that in the event the amendment passes, the time necessary to prepare for the convention will be much too short by January of 1973 when the legislature convenes.

This brings us to the question of the fate of the amendment itself and the relation to the work being proposed here. It might appear, that should the amendment fail, the activity proposed here would be of no value. This is not true.

A quality annotation, as proposed here, is an invaluable document for a wide variety of uses in the legislative process, the judicial process and scholarly pursuits. Once completed, it would provide a basic reference on the Constitution and provide a basis for future revision attempts, which would surely be in the offing.

On the other hand, waiting for the voters' decision on the amendment would leave an inadequate amount of time for the annotation to be completed and thus make the chances of a successful convention extremely difficult. In summary, should the amendment fail, the annotation would be a valuable reference document; should it pass, the annotation would be essential.

It is proposed that the annotation of the Texas Constitution be done by one man with the help of consultants who are particularly familiar with specific sections of the Texas Constitution. The total cost of the annotation project would be \$131,250 over two years. A budget is attached.



BUDGET

	<u>FY-72</u>	<u>FY-73</u>
Director	\$30,000	\$30,000
Program Director (1/3 time)	6,000	6,000
Research Assistant (1/2 time)	5,000	5,000
Consultants	8,000	8,000
Secretarial	5,500	6,000
Printing & Publication	2,000	8,000
Travel	2,000	2,000
Administrative Expense	<u>3,500</u>	<u>4,250</u>
Subtotal	\$62,000	\$69,250
Grand Total		<u>\$131,250</u>

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