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Three Constitutional Amendments Submitted to the Voters 1972

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FOREWORD

The responsibility of amending the Iowa Constitution is shared by the legislators and the voters. Two elected legislative bodies, the 63rd and 64th General Assemblies, have approved the three proposed constitutional amendments which are discussed in this publication; in accordance with the amending process provided in the Constitution, they will be presented to the voters for their ratification or rejection in the November, 1972, general election.

The purpose of this publication is to acquaint the voters with the contents of the three proposed amendments. The brief review of their purpose and history will help prepare the voters to make informed decisions on the three issues.

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THREE CONSTITUTIONAL AMENDMENTS
Submitted to the Voters

THREE PROPOSALS to amend the Constitution of Iowa will be on the ballot for approval or rejection by the voters in the November, 1972, election. Each of the proposed amendments was approved in the 1969 and 1971 sessions of the General Assembly. The final decision regarding the fate of these very important proposals now rests with the voters of Iowa. This publication, which explains the subject and intent of the amendments, is presented to assist in the decision-making.

The Amendments in Brief

The proposed amendments were passed in the General Assembly as House Joint Resolutions. In brief, their substance is as follows:

H.J.R. 6. To give the Supreme Court the power to discipline and retire judges.

H.J.R. 7. To change the term of office of the governor and other state executive officers from two to four years.

H.J.R. 8. To remove the constitutional ban on lotteries and give to the legislature the responsibility of defining what activities are prohibited.

The succeeding sections present more detailed accounts of the proposals.

DISCIPLINE AND RETIREMENT OF JUDGES

House Joint Resolution 6 proposes an amendment to the Iowa Constitution relating to judges of the District and Supreme courts. Specifically, the resolution adds the following section to Article V of the Constitution:

"In addition to the legislative power of impeachment of judges as set forth in Article three (III), sections nineteen (19) and twenty (20) of the Constitution, the Supreme Court shall have power to retire judges for disability and to discipline or remove them for good cause, upon application by a commission on judicial qualifications. The General Assembly shall provide by law for the implementation of this section."

The amendment, which passed by substantial margins in both the House and Senate, is a direct outgrowth of a 1969 recommendation of the Iowa District Court Judges Association. Increasing criticism in recent years of judges remaining on the bench despite illness or old age led to the recommendation.

A judicial qualifications commission, which would receive and review complaints, is established by the amendment. Subsequent to proper review,

the commission would make recommendations to the Supreme Court regarding the retirement or removal of judges for good cause. A final decision would be made by the Court on the basis of the commission's recommendations. The composition of the commission, as well as the specific procedures to be followed, are to be defined by the legislature.

Presently, Iowa judges can be removed from office only by impeachment, which applies only if the judge is guilty of "misdemeanor or malfeasance in office." Impeachment cannot be used to remove judges considered unfit by reason of physical or mental disability.

The legislature first attempted to alter the situation in 1963 by giving the chief justice authority to convene a special three-judge court to pass on complaints of judicial unfitness by reason of disability. Serious doubt arose about the legality of such removal action in view of the power vested by the Constitution in the legislature to remove judges by impeachment. Moreover, both the constitutional and statutory provisions relate only to removal and make no provision for censure or other disciplinary action short of removal. The proposed amendment, on the other hand, delegates to the Supreme Court the authority both to remove and discipline judges.

Some members of the legal profession object to subjecting judges to disciplinary procedures. They argue that:

–the maintenance of ethical standards rests completely in the conscience of the judge and, apart from gross wrongdoing amounting virtually to criminal conduct, judicial derelictions should not be the subject of sanctions.

–a disciplinary procedure interferes with judicial independence.

–disciplinary machinery harms innocent people by giving unscrupulous individuals and newspapers an excuse for unwarranted attacks on judges.

–other means exist for maintaining standards of conduct, including bar association action, scrutiny by the public and press, legal opinions and decisions of higher courts, and the influence of judicial colleagues.

Proponents of an effective discipline and removal system point out:

–although a great majority of the judges are honest, competent and industrious, there should be a system whereby the few judges who are unfit or guilty of misconduct can be disciplined and removed.

–the image of the bench would be enhanced, not hurt, by taking steps to censure and remove unworthy judges.

–the existence of an effective discipline and removal system acts as a deterrent to the occasional recalcitrant judge and discourages judicial misconduct.

–judicial removal or retirement in cases of mental or physical disability will increase greatly the efficiency of the courts.

–the traditional methods of discipline and removal–public opinion, elections and bar association action–have proven unsatisfactory.

The national trend in recent years has been toward increased use of a commission-court arrangement. Students of the legal system generally agree that the most successful example is the California Commission on Judicial Qualifications.[1] Composed of nine members, the commission is empowered to investigate a complaint submitted by any person concerning the incapacity or misconduct of a state judge and to recommend to the supreme court that he be retired or removed. To aid in its investigation, the commission is given the power to subpoena witnesses, order hearings and make findings.

The commission only can make recommendations to the supreme court. The court, after reviewing the record of the proceedings, may order the removal or retirement as recommended, or it may reject totally the commissions' recommendations.

A judge or justice in California "may be *removed* for willful misconduct in office or willful and persistent failure to perform his duties or habitual intemperance." Upon an order for removal, the judge or justice is thereby removed from the date of such order. An order for *retirement,* however, retires the judge or justice with the same rights and privileges as if he retired pursuant to statute. Such retirement may be ordered "for disability seriously interfering with the performance of his duties, which is, or is likely to become, of a permanent nature."[2]

During its first three years, the commission received 277 complaints against specific judges. Twenty resignations were forced without publicity as a result of ensuing investigations in 86 of the cases that were regarded as having merit. Not a single judge against whom the commission suggested retirement elected to fight the decision.

TERM OF OFFICE

An amendment to change the terms of executive state officers from two to four years was passed initially by the 1965 legislature. Not only did the amendment extend the terms of office, but it also provided for the election of the governor and lieutenant governor as a team. The amendment also was passed by the House in 1967, but met defeat in the Senate. The Senate action was based on an opinion of the Iowa Attorney General, which stated that the amendment was unconstitutional because it dealt with two subjects —the two top elected state officials running as a team, and their election to four-year terms. Because an amendment must be passed in identical

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[1] See, for example, Jack E. Frankel, "Removal of Judges—Federal and State," *Journal of the American Judicature Society,* 48(9) (February 1965), 182.

[2] *California Constitution,* art. VI, sec. 106.

form by two successive sessions of the legislature, the proposed amendment never was submitted to the people.

The present amendment, which does not provide for the election of governor and lieutenant as a team, is proposed for the election and terms of state officers beginning with the 1974 general election. Specifically, the proposed constitutional amendment repeals Sections 2, 3, 15 and 22 of Article IV and Section 12 of Article V and replaces them with the following sections:

"Sec. 2. The Governor shall be elected by the qualified electors at the time and place of voting for members of the General Assembly, and shall hold his office for four years from the time of his installation, and until his successor is elected and qualifies."

"Sec. 3. There shall be a Lieutenant Governor who shall hold his office for the same term, and be elected at the same time as the Governor. In voting for Governor and Lieutenant Governor, the electors shall designate for whom they vote as Governor, and for whom as Lieutenant Governor. The returns of every election for Governor, and Lieutenant Governor, shall be sealed up and transmitted to the seat of government of the State, directed to the Speaker of the House of Representatives, who shall open and publish them in the presence of both Houses of the General Assembly."

"Sec. 15. The official term of the Governor, and Lieutenant Governor, shall commence on the second Monday of January next after their election, and continue until their successors are elected and qualify. The Lieutenant Governor, while acting as Governor, shall receive the same compensation as provided for Governor; and while presiding in the Senate, and between sessions such compensation and expenses as provided by law."

"Sec. 22. A Secretary of State, an Auditor of State and a Treasurer of State shall be elected by the qualified electors at the same time that the governor is elected and for a four-year term commencing on the first day of January next after their election, and they shall perform such duties as may be provided by law."

"Sec. 12. The General Assembly shall provide, by law, for the election of an Attorney General by the people, whose term of office shall be four years, and until his successor is elected and qualifies."

Longer terms for governors (and other executive officers) have won acceptance for several reasons. The principal argument is that four years are sufficient time for the governor to develop and implement his programs. Stated negatively, a two-year term does not allow a governor to put into effect the programs upon which he based his campaign. Furthermore, a short term may cause the governor to devote an undue proportion of his

energies to campaigning for re-election, at the expense of his administrative duties. The argument was stated succinctly by former Iowa Governor Harold Hughes: "Governors are forced to campaign—with the money of the state's citizens—practically full time. This does not make economic sense, (nor) does it allow governors to stick to their business."[3]

Proponents also argue that a four-year term allows the governor to initiate programs which are not based primarily on the criterion of political expediency. If elected for four years, the governor can initiate programs early in his term which otherwise would not be politically possible, but which may be necessary to the welfare of the entire state. In essence, the governor is less vulnerable to the pressures of esoteric interest groups and better equipped to carry out his functions as the state's chief executive.

Balancing the contention of greater efficiency and effectiveness is the argument that a governor's race is needed every two years to keep government close to the people—to stimulate interest, enthusiasm and excitement in the campaign and to keep people alert to what is going on in state government. It has been suggested that political parties might go dormant for the four years between elections if the present two-year term was extended to four years.

A final basic disagreement between proponents and opponents relates to accountability. Proponents argue that four years is a short enough period to enforce accountability to the electorate. Opponents, on the other hand, suggest that increasing the tenure of the governor will increase even further the unresponsiveness and inaccessibility of the state's top officer.

The national trend has been toward lengthening the governor's term. Eight states, including Iowa, presently retain two-year terms of office; the remainder authorize four years.[4] States most recently switching to four-year terms include Arizona, Massachusetts, Michigan, Minnesota, Nebraska, New Mexico, North Dakota and Wisconsin.

A less evident movement to limit the maximum number of terms which a governor may serve has accompanied the trend toward longer terms. Seventeen states now allow a maximum of two consecutive terms; sixteen of these states have four-year gubernatorial terms. Nine states provide that the governor cannot serve an immediate successive term. This ban on immediate succession is characteristic primarily of the southern states. An absolute limitation to two terms is found only in Delaware and Missouri among the states and in the Twenty-Second Amendment to the federal

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[3] *Cedar Rapids Gazette,* April 20, 1964.

[4] In addition to Iowa, the states include Arkansas, Kansas, New Hampshire, Rhode Island, South Dakota, Texas and Vermont.

Constitution, which restricts the president to two terms plus two years of a term filled by succession rather than election.[5]

The chief argument favoring restricted tenure is that a strong governor may develop a capacity for self-perpetuation, possibly by unscrupulous means, if his re-election is unrestricted. Many students of the state executive conclude, however, that the Constitution should not restrict re-election of the governor at all, and certainly not to one term. These students suggest that such restrictions are an expression of lack of faith in the electorate's ability to make intelligent decisions on whether to re-elect the one man whose record is readily available to be judged. "Why," asks A. Harry Moore, former governor of New Jersey, "should we eliminate from the prospective field of candidates from whom the people can make a choice, the one individual whose qualifications they are best able to judge—the then current governor?"[6]

A final question relates to the timing of the election for governor and other state officials. Presently, gubernatorial and presidential elections are held concurrently in Iowa. The proposed amendment changes the time of the gubernatorial election to November of the even-numbered year between presidential elections.

At first glance, the question of timing of the governor's election seems a matter of no significance; there is, however, a considerable difference of opinion. W. Brook Graves, a prominent student of state government, effectively states the case for separate elections:[7]

> The holding of state elections to coincide with national elections is unfortunate because it ordinarily means that little or no serious thought will be given to state problems. Citizens will vote for their preferences in the national offices and will without much consideration support the same parties for state offices, whereas the problems of government in any one of the states are large and sufficient enough to the well-being of citizens to warrant a decision based upon their own merits. The selection of major state officers should not be merely an incidental aspect of national party contests.

In response to the argument of Graves and other supporters of separate elections, opponents suggest that concurrent election of governor and president is desirable because voter turnout is greater during a presidential election than at any other time. Consequently, there will be increased participation in the election of a governor and other state officers. Furthermore,

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[5] Council of State Governments, *The Governor: The Office and Its Powers* (Lexington, 1972), p. 5.

[6] State of New Jersey, *Constitutional Convention of 1947*, V (1953), p. 64. Also see Russell M. Ross and Kenneth F. Millsap, *State and Local Government and Administration* (New York: Ronald, 1966), p. 332.

[7] *American State Government* (Boston: Heath, 1953), pp. 322-323.

recent studies indicate that ticket-splitting between president and governor has increased significantly over the past several years.[8]

The second argument for separating state and presidential elections is that the result may be changed by the "coat-tail" effect: a popular presidential candidate may carry a state ticket into office with him. While there is some evidence to support the coat-tail effect, the large number of variables in each election makes firm conclusions impossible. The most detailed analyses of presidential-gubernatorial voting patterns support only the guarded conclusions that the presidential race seems to influence the gubernatorial race in those states where there is substantial party competition, especially if there is a change in national party control.[9]

REPEAL OF ANTI-LOTTERY PROVISION

The history of the "bingo amendment," as it is commonly known, is a lengthy and colorful one. Measures to legalize bingo were introduced, with little success, during the 1961 and 1963 sessions by Senator Peter F. Hansen of Manning. In 1965, however, the legislature approved a bingo amendment which authorized the "licensing and regulation of bingo games by charitable organizations, religious organizations or veterans organizations chartered by Congress." A poll taken by the *Des Moines Register* in October, 1966, of all candidates for state senator and state representative in the general election of that year indicated that over 60 percent of the candidates held favorable opinions toward the amendment, thus suggesting its passage by the 1967 legislature.

The bill was passed a second time by the Senate in 1967 by a vote of 44-15 and appeared certain of passage by the General Assembly. On March 15, however, the House Committee on Constitutional Amendments voted 13-4 to postpone indefinitely the amendment. Because the committee recommendation was not challenged, the amendment was not debated on the House floor.

Two primary objections were voiced in the defeat of the proposed amendment. A number of legislators suggested that the amendment, as written, was too specific, since it made reference only to bingo rather than to lotteries in general. "The measure," claimed one lawmaker, "would have degraded the Iowa Constitution by putting in the word 'bingo,' and increased the chances for defeat of other constitutional amendments on the same ballot." Others claimed that the amendment would encourage organized

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[8] See, for example, Coleman B. Ransone, *The Office of Governor in the United States* (University of Alabama Press, 1956), pp. 83-84, and Joseph E. Kallenbach, *The American Chief Executive* (New York: Harper and Row, 1966), pp. 101-105.

[9] *Ibid.*

crime. "Syndicates move in on bingo, too," declared an astute opponent, "and it soon becomes much more sinister than a game of old ladies as pictured."

The present amendment, H.J.R. 8, was introduced in 1969 as a second and somewhat different attempt to legalize bingo. Unlike the earlier amendment, H.J.R. 8 makes no specific reference to bingo, but rather it removes the constitutional ban on lotteries in general. Passage was secured by both the 1969 and 1971 General Assemblies, but not without considerable debate and controversy. The small margin of victory in the Senate, 26-23, emphasizes the balanced distribution of opinion on the issue.

As written, H.J.R. 8 repeals section 28 of Article III of the Iowa Constitution, which reads: "No lottery shall be authorized by this State; nor shall the sale of lottery tickets be allowed." The amendment thus would give to the *legislature* the responsibility of defining precisely what activities are prohibited. Presently, the constitutional prohibition against lotteries requires the courts and attorneys general to perform a semi-legislative function by deciding whether merchandising and promotional activities—movie bank nights, TV bingo and drawings of many kinds—are prohibited.

Proponents have supported the amendment for several reasons. The most pervasive argument is that legalized bingo would be a popular form of entertainment, especially among the elderly. Although there appears to be general support of bingo on this basis, several legislators have cautioned against the possibility of unwise handling of money, and consequent financial crises, for those people on fixed incomes.

A number of supporters contend that passage of the amendment simply will legalize an activity which already is prevelant throughout the state. "If we want to enforce some of our laws, let's enforce all of them," challenged one legislator during debate on the amendment, "for bingo is being played weekly in some places and the city dads close their eyes."

A third contention is that legalized bingo will represent a much-needed source of revenue for local communities. One senator, for example, noted that profits from bingo games at annual celebrations for the past 20 years helped pay for a medical clinic and swimming pool in his community.

All of these arguments, it might be noted, are based on the implicit assumption that the legalization of bingo would be the primary, and possibly only, consequence of the amendment's passage. The strongest argument against passage of the amendment, however, is based on a substantially different assumption: Open the door to legalized bingo and you have opened the way for large-scale gambling. Because passage of the amendment will shift responsibility to the legislature, opponents contend that increased pres-

sures on lawmakers will result in permissive legislation relating to other types of gambling, such as pari-mutuel betting.

To define the issue more clearly, this primary argument of opponents can be dissected into two parts. On the one hand is the essential question of whether or not passage of the amendment will in fact lead to widespread gambling. Unfortunately, little causal evidence is to be found in this regard, even in those states which have legalized bingo. A second and complementary question relates to the likely consequences of gambling expansion. That is, if types of gambling other than bingo are allowed, what will be the impact on the state? Proponents suggest that certain gambling activities would be very beneficial to the state, since they represent new sources of much-needed income. Several states, including neighboring Nebraska and South Dakota, have used various lotteries and off-track betting for this purpose. A *Des Moines Register* analysis of betting at four race tracks just outside Iowa's western border, for example, showed that the Nebraska and South Dakota treasuries had received over $2.3 million from this activity in 1967.[10] On the other hand, opponents argue that increased gambling activity would lead inevitably to the entrance of organized crime into the state. The paucity of evidence precludes either rejecting or accepting this claim.

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[10] January 28, 1968.