A STUDY IN CONSTITUTIONAL RIGIDITY. I

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IT IS the purpose of this essay to show how the amendment of state constitutions in several states¹ has been hampered by provisions requiring that a proposed amendment must be ratified by a majority of the electors voting for any purpose at the general election at which the proposed amendment is submitted. Most state constitutions require only that the votes favorable to a proposed amendment exceed those against it. They disregard all who vote in a general election² at which a proposed amendment is submitted, but do not vote either for or against the amendment in question. The difference in the two systems of amendment is not always apparent from a perusal of the text of constitutional provisions, but subtle differences in terminology are often attended by substantial consequences.³ The states which have faulty systems of amending their constitutions are Illinois, Minnesota, Mississippi, Oklahoma, Tennessee, and Wyoming.

Amendments may be proposed either by legislatures or by constitutional conventions.⁴ More states require that a majority of those voting at a general election be obtained in order to call a convention than require such a majority to approve a legislatively proposed amendment. The count is eighteen to six.⁵ Our chief concern, however, will be with the

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¹ Fortunately this number is not great and has decreased during the past fifty years.

² By voting upon candidates for office, or by voting for or against other proposals.

³ Appendix A sets forth the citations of the sections of all state constitutions which deal with amendment. In Appendix B an attempt is made to analyze and classify the various systems by which state constitutions are amended. These appendices will appear following the last installment of this article.

⁴ See Appendix B. Proposal by initiative petition is not considered in this immediate connection.

⁵ *Ibid.* It is to be noted, however, that very few states (apparently only two) are so rigid as regards the approval of the amendments, or the new constitution, that is submitted by a constitutional convention. Generally a special election may be held for such a purpose, and in this special election only those interested in voting upon the constitutional proposals will vote. This appearance of flexibility may be illusory when it is considered that sometimes a proposed constitution is submitted to the electorate as an entirety, and a few unpopular sections may secure the defeat of the entire document. Cf. Sears, *Horse and Buggy Government*, Chicago Sunday Times, p. 6 M. (April 30, 1939), as regards the proposed Illinois Constitution of 1922.

ratification of amendments proposed by legislative assemblies, rather than with the call of constitutional conventions.

Five of the six states which require a majority of all those voting for any purpose at a general election to ratify a proposed constitutional amendment also have the same requirements as regards the call of a constitutional convention. On the other hand, of the eighteen states which require a majority of all votes cast for any purpose at a general election to call a convention, thirteen permit ratification of a legislatively proposed amendment by a majority of the votes cast on that amendment. A study of the amendment experience of this larger group of eighteen states would be complicated by the fact that in thirteen of them an easier method of amending the constitution exists, whereas that is not true of the smaller group of states. The American people seem generally to have preferred the proposal of constitutional amendments by state legislatures over the use of constitutional conventions. This study will not be limited, however, to those states which now require a majority of all votes cast at a general election to ratify an amendment, but will include five additional states⁶ which, though formerly employing that system, have either by formal amendment or by judicial interpretation adopted the system more generally used.

The requirements for constitutional amendment in some states are clearly apparent from the language of the constitutions themselves, but in other states the amending provisions of their constitutions are unclear and ambiguous. In some states it is clearly evident that an amendment need only obtain a majority of the votes cast upon the particular amendment.⁷ In other states it is manifest that the constitution was intended to require a majority of those voting for any purpose at a general election.⁸ There are still other states, however, the meaning of whose constitutions is far less apparent. The constitutions of Idaho, Indiana, and Wyoming provide that a proposed amendment must be approved by a "majority of electors." It has been pointed out⁹ that such language is

⁶ Alabama, Arkansas, Indiana, Nebraska, and Ohio.

⁷ For example, in Iowa it is specified that an amendment, to be approved, must be voted upon affirmatively by a "majority of the electors voting thereon."

⁸ For example, in Minnesota it is provided that to become effective an amendment must be approved by "a majority of all the electors voting at said election." Before 1898 a proposed amendment could be ratified in Minnesota by a majority vote thereon. In that year the method of amending the constitution was amended and the above language adopted. Without question the legislature, in proposing this amendment to the amending process, intended to restrict future amendments to such as might be adopted by a majority of all votes cast at a general election. See Anderson, *The Need for Constitutional Revision in Minnesota*, 11 Minn. L. Rev. 189, 192, 193 (1927).

⁹ Chattin, *In re Todd and Constitutional Amendment*, 10 Ind. L. J. 510 (1935).

susceptible of three interpretations: 1) that a majority of all of the qualified voters in the state is required; 2) that a majority of those voting for any purpose at the election at which the amendment is submitted must be obtained; and 3) that a majority of those voting upon the amendment is sufficient.

Every one of these constructions enjoys judicial sanction. The first finds possible support in a Wyoming case.¹⁰ The previous¹¹ leading case in Indiana, *State v. Swift*, took the same position.¹² In the cases following the *Swift* case¹³ this theory is qualified by saying that, in the absence of actual evidence in the record, the majority of those voting at an election would be regarded as the majority of the electorate. Such a presumption seems, for the cases without such evidence, to announce as a rule of law the second of the three interpretations rather than the first. The Idaho constitution is worded the same as those of Wyoming and Indiana, but in Idaho the third of the three constructions was reached.¹⁴ The court reversed an administrative ruling that an equal suffrage amendment was defeated because it failed to obtain a majority of all votes cast for any purpose at the election. The court placed its decision upon the basis of practicality, pointing out that the administrative interpretation of the constitution would render amendment too difficult. If an analytical basis were needed to support the decision, it could be argued that the term "electors" refers as reasonably to those voting upon a particular question as it does to the total number of eligible voters or to the total number of

¹⁰ *State ex rel. Blair v. Brooks*, 17 Wyo. 344, 99 Pac. 874 (1908). Prior to that case the Wyoming Constitution had been administratively construed to require only a majority of those voting upon the issue. See Dodd, *The Revision and Amendment of State Constitutions* 186 (1910). The court realized that this task of ascertaining the size of the electorate, that is, all those eligible to vote, is one of great difficulty, but passed that problem as not involved in the case. The case was one in which 12,160 votes were cast for a proposed amendment and 1,363 against it. Since 37,651 votes were cast at the election it is obvious that less than half of those who voted at the election voted in favor of the proposal. It was therefore immaterial that there may have been further eligibles who did not vote at all. I know of no Wyoming case in which the problem of determining the size of the electorate was squarely presented, that is, one in which more than half of those voting at a general election voted in favor of a proposed amendment, but one in which the contention was made that the amendment was supported by less than half of those eligible to vote.

¹¹ This reference is to the period prior to the decision in *In re Todd*, 208 Ind. 168, 193 N.E. 865 (1935), which has completely changed the Indiana doctrine and practice to conform to that prevailing throughout the United States.

¹² 69 Ind. 505 (1880). This was by way of dictum. Like the Wyoming case, actually the affirmative votes were less than half of the total vote cast at the election.

¹³ *In re Denny*, 156 Ind. 104, 59 N.E. 359 (1901); *In re Boswell*, 179 Ind. 292, 100 N.E. 833 (1913).

¹⁴ *Green v. State Board of Canvassers*, 5 Idaho 130, 47 Pac. 259 (1896).

persons voting at a particular election.¹⁵ As above pointed out, since the case of *In re Todd*,¹⁶ Indiana has followed the same construction and practice as Idaho.¹⁷

The problem of selecting the states to be considered in this essay involves a degree of discrimination. Arkansas, Illinois, Indiana, Minnesota, North Carolina, Oklahoma, Tennessee, Texas, and Wyoming have been classified as states in which, in order to obtain a constitutional amendment, a favorable majority of all those voting for any purpose at a general election must be obtained.¹⁸ Another source¹⁹ included Arkansas, Illinois, Minnesota, Mississippi, Oklahoma, Tennessee, and Wyoming, a list differing from that found in *State Government* by omitting Indiana, North Carolina, and Texas, and including Mississippi. Professor Dodd,²⁰ writing in 1910, listed the states involved as Alabama, Arkansas, Illinois, Indiana, Minnesota, Mississippi, Nebraska, Ohio, Oklahoma, Tennessee, and Wyoming.²¹ Several changes have occurred since Professor Dodd

¹⁵ Compare *Stebbins v. Judge of Superior Court of Grand Rapids*, 108 Mich. 693, 66 N.W. 594 (1896); *The State ex rel. Allen v. Mayor of St. Louis*, 73 Mo. 435 (1881); and *People v. Town of Berkeley*, 102 Cal. 298, 36 Pac. 591 (1894). In each of these cases a majority of all votes cast at a general municipal election was necessary in order to obtain popular approval on official actions of a non-constitutional nature, that is, approval of a bond issue in the case first cited. In the first two cases the statutes involved permitted submittal at either a general or a special election, but in those cases the general elections were involved. In the third of the above cases the statute required that the submittal be at a general election. When the chicaneries of municipal politics are considered, one can understand why a rule different from that used in constitutional amendment may be necessary.

¹⁶ 208 Ind. 168, 193 N.E. 865 (1935); see also note 9 supra.

¹⁷ It was aptly pointed out that under the previous Indiana rule, since special elections are permitted in that state, it would be possible for an amendment to be adopted at a special election with an affirmative vote of less than the vote cast against it at a previous general election. In *State v. Swift*, 69 Ind. 505 (1880), a case which established the old Indiana rule, such a phenomenon in fact took place. An amendment to liberalize the suffrage requirements was declared defeated because it failed to obtain an affirmative vote of more than half the total vote cast at the general election at which it was submitted, although the affirmative vote exceeded the negative. Later the same amendment was submitted to the voters at a special election and was ratified, although the affirmative vote was less than the negative vote cast at the prior general election. See *Chattin*, op. cit. supra note 9.

¹⁸ 7 *State Government* 264 (1934). The inclusion of Indiana is explained by the fact that the list was compiled before the decision in *In re Todd*, 208 Ind. 168, 193 N.E. 865 (1935).

¹⁹ Chipp, *Fundamental Attitude of the American People Regarding the Amending Process* (1938), an unpublished thesis classified in the Library of Congress as Number J. K. 2421.

²⁰ Dodd, op. cit. supra note 10, at 134, 187.

²¹ He also noted that Oregon had previously employed that system but had changed its method of amendment in 1906. My own investigation does not reveal that Oregon ever required that a proposed amendment be ratified by a majority of all votes cast for any purpose at a general election. Oregon statistics of votes on proposed constitutional amendments date as far back as 1902, but they do not state the total vote at the elections. However, they indicate that an amendment was ratified if there were more affirmative votes than negative votes.

wrote.²² Therefore, a brief survey of the constitutional provisions, practices, and doctrines of the designated states may be of some avail.

The North Carolina Constitution provides that for adoption an amendment must be approved "by a majority of the votes cast." A search for a judicial construction of this language has not been rewarded, but an amendment is regarded by an administrative officer in North Carolina as ratified, if the affirmative votes upon the amendment exceed the negative.²³ Thus, North Carolina is not a state that will be included in this survey. Texas would require no notice but for the fact that the list in *State Government* includes it with such states as Illinois. If any doubt is apparent from the wording of the Texas Constitution it has been dispelled by the Texas Supreme Court.²⁴

AMENDMENT EXPERIENCE OF SPECIFIC STATES

Alabama—Under the Alabama Constitution of 1875, a proposed amendment was not ratified unless it was approved by a majority of all those voting for any purpose at the general election at which the amendment was submitted.²⁵ An amendment was adopted in 1901, and it appears to have been intended to remedy this defect, but it was not absolutely free from doubt.²⁶ As late as 1910, Professor Dodd listed Alabama as a state that still required, to adopt an amendment, a majority of all the votes cast for any purpose at a general election.²⁷ And it is inferable from

²² See note 6 *supra*.

²³ A personal letter received from Mr. T. Eure, Secretary of State of North Carolina, in part follows: "... after an amendment has been proposed by the legislature of North Carolina and it is submitted to the people for ratification, it is sufficient that more votes be cast for the amendment than against it in order to ratify same."

²⁴ *Itasca School District v. McElroy*, 103 Tex. 64, 123 S.W. 117 (1909). The constitution provides that an amendment shall be effective "if it shall appear from said return that a majority of the votes cast have been cast in favor" of it. The supreme court squarely defined the problem as the determination of what is meant by "votes cast" and decided that that term referred to the votes cast for or against a proposed amendment, without reference to the total vote cast at the election.

²⁵ The Constitution of 1875 specifically required that if "a majority of all the qualified electors of the state, who voted at said election, voted in favor of the proposed amendments, said amendments shall be valid. . . ." Cf. *May v. Mayor and Aldermen of Birmingham*, 123 Ala. 306, 26 So. 537 (1899), in which it was held that the legislature could legally provide that any one who failed to scratch the proposed amendment from his ballot would be considered as having voted in favor of it.

²⁶ Section 284 was amended to provide that proposed amendments should be ratified if voted upon affirmatively, by "a majority of the qualified voters who voted at said election upon the proposed amendments." Section 285, however, after specifying details as to how an amendment should appear upon the ballot, provided that "no amendment shall be adopted unless it receives the affirmative vote of a majority of all the qualified voters who vote at such election."

²⁷ Dodd, *op. cit.* *supra* note 10 at 187.

his book that there existed an administrative practice to this effect. If such a practice existed it was abandoned prior to 1912.²⁸ This doubtful situation was settled in 1917 in *Harris v. Walker*,²⁹ which interpreted the amendment of 1901, and held that an amendment which had failed to receive a majority of all the votes cast at a general election had been adopted.³⁰

A thorough search at the capitol of Alabama failed to reveal any statistics of the votes cast on proposed amendments in Alabama prior to the amendment of 1901. It appears that the situation regarding constitutional amendments must have become deplorable, because in 1898 the Alabama legislature submitted an amendment with a provision that the ballot should have printed upon it the words "For Birmingham Amendment" without any negative statement of the proposition; and that any voter who did not erase or strike out these words with pen or pencil should be counted as having voted for the amendment. By grace of this device the amendment received a majority of all votes cast at the general election. This method of voting was sustained as valid despite the wording of the Alabama Constitution before it was amended in 1901.³¹

Professor Dodd enumerates three proposed amendments that were sub-

²⁸ Statistics of the voting upon proposed constitutional amendments in Alabama have not been officially published, but the statistics since 1912 are available at the capitol of the state. These show only the votes for and against proposed amendments. The total vote cast at the various elections at which the amendments were submitted has not been recorded. It is evident, therefore, that a preponderance of affirmative votes was considered sufficient for ratification.

²⁹ 199 Ala. 51, 74 So. 40 (1917).

³⁰ Two arguments were advanced against the amendment. 1) Section 284 referring to proposed amendments, required that each proposed amendment receive a majority of the largest vote cast upon any amendment, whenever two or more amendments are submitted at the same election. This was held to be untenable. 2) Reliance was placed upon the provisions of Section 285, but the court held that this section should be construed in *pari materia* with the preceding section, and that the word "election" meant the vote upon the particular proposal.

³¹ *May v. Mayor and Alderman of Birmingham*, 123 Ala. 306, 26 So. 537 (1899). The statute provided that after the names of candidates for state offices, and before the names of the candidates for county offices, should appear the statement "For the Birmingham Amendment." It was argued in this case that a majority of the votes obtained at an election by the use of such a ballot did not constitute a majority of all votes cast at the election "within the spirit and meaning of the constitution" because it did not establish that a majority of the voters actually favored the amendment. The court had two answers. 1) All voters are presumed to know what is on their ballots, and thus, if they were opposed to the amendment, they would have scratched the statement. 2) Literally the constitution was complied with, and a majority of the votes were cast in favor of the amendment irrespective of what the voters may have intended. It was also argued that this device in effect compelled a general election voter to vote one way or the other on an amendment and that compulsory voting was not authorized by the constitution. The court answered that this ballot device did not compel a voter to vote one way or the other any more than was true under the constitution when an ordinary ballot was used. It merely changes the effect of a failure to vote.

mitted to the Alabama voters in the general election of 1908.³² One, providing for a system of good roads, received 45,794 affirmative votes as against 25,806 negative votes, but it failed of adoption because it did not receive a majority of 103,399, the total vote cast at the general election. Information prior to 1912 is unavailable, but thereafter amendments were regarded by the administrative authorities as adopted if they received a majority of the votes cast thereon.³³

During 1924 seven amendments were proposed in Alabama and all were ratified.³⁴ In only one instance, however, was the affirmative vote in excess of 50 per cent of the total vote cast in the general election. This was subsequent to the decision in *Harris v. Walker*,³⁵ and the deficiency in the favorable vote on the other amendments was not material. The affirmative votes received by the other six proposals varied from 41 to 46 per cent of the total vote cast at this 1924 election. These percentage figures assume an increased significance when it is remembered that suffrage is very much restricted in the southern states. It would appear that a larger percentage of the electorate in these states would be likely to take an interest in constitutional amendment than would be the case in many other states.

Arkansas—The clear wording of the Arkansas Constitution³⁶ has caused that state to be classified as one in which a majority of all those voting at a general election for any purpose is required.³⁷ Such was the uniform holding of the early cases.³⁸

Between 1899 and 1908 seven proposed amendments were submitted

³² Dodd, *op. cit.* supra note 10, at 295.

³³ This latter statement is based upon the fact that in the files in the Secretary of State's office containing the election returns, amendments which received more affirmative than negative votes carry the notation "adopted." At the same time no statement as to the total number of votes cast at the general elections, at which the amendments were submitted, accompanied the data as to the votes upon the amendments. Evidently, after 1912 the administrative officers of Alabama construed the amendment of 1901 as having removed the necessity that an amendment obtain a majority of all votes cast at a general election in order to be adopted. The construction was upheld in *Harris v. Walker*, 199 Ala. 51, 74 So. 40 (1917).

³⁴ See the table in 40 Pol. Sci. Q. Supp. 84 (1925) (complete information on 1924 election). There were amendments voted upon between 1908 and 1924, and others after 1924, but information as to the total vote cast at the various general elections at which they were submitted is lacking.

³⁵ 199 Ala. 51, 74 So. 40 (1917).

³⁶ Ark. Const. art. 19, § 22, provides that "if a majority of the electors voting at such election adopt such amendments the same shall become a part of this Constitution."

³⁷ See page 145 and notes 19 and 22 supra.

³⁸ *Rice v. Palmer*, 78 Ark. 432, 96 S.W. 396 (1906); *St. Louis Southwestern Railway Co. v. Kavanaugh*, 78 Ark. 468, 96 S.W. 409 (1906); *Knight v. Shelton*, 134 Fed. 423 (1905).

to the voters in Arkansas.³⁹ Two were successful because they received a majority of the total vote cast at the general election. One amendment, providing for a poll tax, received 92,969 out of 151,848 votes or 62 per cent of the total, as against 47,368 negative votes, or 31 per cent; the other, which made payment of the poll tax a requirement of the right to vote, received 88,368 out of a total of 163,674 votes, or 54 per cent of the total, as against 46,835 votes (28 per cent). The other five proposed during this period failed. Two of them received more negative than affirmative votes. One of the remaining three affected the pay of members of the General Assembly. Although receiving 45,598 votes (38 per cent of the total cast at the election) as against 43,982 votes (36 per cent), it failed because it lacked a majority of the 119,741 votes cast at the general election. Another which failed was an amendment to forbid the loan of credit by cities, counties, or the state. It received 45,198 affirmative votes (30 per cent), and 44,378 negative votes (29 per cent) out of a total of 149,780 votes cast at the general election.

In 1910 an adopted amendment provided that amendments might be submitted to the voters by initiative petitions. This amendment also provided that "any measure referred to the people shall take effect and become a law when it is approved by a majority of the votes cast thereon and not otherwise."

Further statistics are available on the State of Arkansas for the years 1917-1918,⁴⁰ 1919-1921,⁴¹ and 1924.⁴² During these periods ten proposals were presented to the Arkansas voters. Four were adopted, and three were defeated by a majority of negative votes on the proposals themselves. Three, all voted upon in 1924, were defeated although they received more affirmative than negative votes. Thus, an amendment fixing a debt limitation upon municipal corporations was not adopted, although it received 57,854 affirmative votes as against 35,449 negative votes; a proposal to increase the size of the supreme court lost even though it received 52,151 affirmative votes as against 40,955 negative votes; and a proposed amendment to give municipalities a larger measure of local autonomy was defeated with an affirmative vote of 56,910 as against 34,174 negative votes.⁴³

³⁹ Dodd, *op. cit.* supra note 10 at 295.

⁴⁰ See the table in Kettleborough, *Amendments to State Constitution*, 13 *Am. Pol. Sci. Rev.* 429, 439 (1919).

⁴¹ See the table in Dodd, *Amendments to State Constitutions 1919-21*, 16 *Am. Pol. Sci. Rev.* 245, 249 (1922).

⁴² Table in 40 *Pol. Sci. Q. Supp.* 84, 85 (1925).

⁴³ The table from which these figures are taken does not give the total vote at the election.

However, in *Brickhouse v. Hill*⁴⁴ it was held that the initiative amendment had changed the system of ratification as far as amendments proposed by the initiative were concerned, and that as to such proposals, a majority voting upon that issue sufficed.⁴⁵ The next year *Combs v. Gray*⁴⁶ applied the ruling in *Brickhouse v. Hill* to an amendment proposed by the legislature. It held that the initiative amendment had changed the method of ratification for all amendments, however proposed.⁴⁷

Arkansas never resorted to an unusual ballot provision, such as was successfully invoked in Alabama, to obtain ratification of proposed amendments. Constitutional proposals were submitted to the voters upon the right-hand side of the official election ballot. However, prior to the decision in *Combs v. Gray* a curious practice arose in Arkansas, and it amounted to an amendment of the constitution even though the amendment had not been legally adopted.⁴⁸

Illinois—Seventeen amendments to the Illinois Constitution of 1870 and two proposals to call a constitutional convention have been submitted to the Illinois voters, as disclosed by Table 1.⁴⁹

The five amendments that were submitted before 1891 received more than 50 per cent of the total vote cast at the general election and

⁴⁴ 167 Ark. 513, 268 S.W. 865 (1925).

⁴⁵ The same question had been previously presented in *Hildreth v. Taylor*, 117 Ark. 465, 175 S.W. 40 (1915), and a contrary result was reached. It was held that the initiative amendment merely added a method of proposing amendments and did not change the method of ratification. *Hildreth v. Taylor* was overruled by *Brickhouse v. Hill*.

⁴⁶ 170 Ark. 956, 281 S.W. 918 (1926).

⁴⁷ Viewed objectively this Arkansas decision is hardly tenable. Probably, the legislature, which proposed the initiative amendment, intended only to add an additional method by which amendments might be proposed. It is hard to believe that it intended to change the method of ratification of legislatively proposed amendments. But the decision was fortunate. There seems to be more justification in requiring a majority of all those voting at a general election in the case of an amendment proposed by the initiative than in the case of one proposed by the state legislature. In the former situation the possibility of minority action is clear. In the latter, before an amendment is submitted, a resolution has passed a representative body, in many states by a two-thirds vote.

⁴⁸ Thomas, Amending a State Constitution by Custom, 23 Am. Pol. Sci. Rev. 920 (1928). An amendment to permit the governor to fill vacancies "in any state, district, county, or township office" by appointment was submitted in 1893. It received a majority of those who voted on that issue, but not a majority of those voting at the election. In 1906 this amendment was held invalid in *Rice v. Palmer*, 78 Ark. 432, 96 S.W. 396, because it had not received a majority of all who voted at the general election. Nonetheless the practice of filling vacancies, including in some instances vacancies in the general assembly, by gubernatorial appointment, continued. This practice had changed the constitution despite the decision of the court.

⁴⁹ Sears, Voting on Constitutional Conventions and Amendments, 2 Univ. Chi. L. Rev. 612 (1935); Sears, Constitutional Revision in Illinois, 33 Ill. L. Rev. 2 (1938); Sears, The Illinois Constitution and the Banking Amendment, 6 Univ. Chi. L. Rev. 234 (1939); Sears, loc. cit. supra note 5; Powell, A Plan for Facilitating Constitutional Amendment in Illinois, 30 Ill. L. Rev. 59 (1935).

TABLE 1

Year and Amendment	Total Vote Cast at Election	Necessary Majority	For	Against	Not Voting	Result
1878: Drainage and Ditching	448,796	224,399	295,960 (65.9%)	60,081 (13.4%)	92,755 (20.7%)	Adopted
1880: County Officers	622,306	311,154	321,552 (51.7%)	103,966 (16.7%)	196,788 (31.6%)	Adopted
1884: Veto of Appropriation Items	673,096	336,549	427,821 (63.6%)	60,244 (8.9%)	185,031 (27.5%)	Adopted
1886: Anti-Contract Convict Labor	574,080	287,041	306,565 (53.4%)	169,327 (29.5%)	98,188 (17.1%)	Adopted
1890: World's Fair Bonds	677,817	338,909	500,209 (73.8%)	55,073 (8.1%)	122,445 (18.1%)	Adopted
1892: Gate-way Amendment*	871,508	435,755	84,645 (9.7%)	93,420 (10.7%)	693,443 (79.6%)	Defeated
1894: Labor	873,426	436,714	155,393 (17.8%)	59,558 (6.8%)	658,475 (75.4%)	Not adopted§
1896: Gate-way Amendment	1,090,869	545,435	163,057 (14.9%)	66,519 (6.1%)	861,293 (78.9%)	Not adopted
1904: Chicago Charter†	1,089,458	544,730	678,393 (62.3%)	90,038 (8.2%)	321,027 (29.5%)	Adopted
1908: Deep Waterway Bonds	1,169,330	584,666	692,522 (59.2%)	195,177 (17.7%)	281,631 (24.1%) (sic)	Adopted
1916: Revenue Amendment	1,343,381	671,691	656,298 (48.9%)	295,782 (22.0%)	391,301 (29.1%)	Not adopted
1918: To Call a Constitutional Convention	975,545	487,773	562,012 (57.6%)	162,206 (16.6%)	251,327 (25.8%)	Adopted
1924: Gate-way Amendment	2,579,860	1,289,931	704,665 (27.3%)	397,835 (15.4%)	1,477,360 (57.3%)	Not adopted
1926: Revenue Amendment	1,912,706	956,354	651,768 (34.1%)	476,455 (24.9%)	784,483 (41.0%)	Not adopted

* Notice the great difference in the record after the Ballot Act of 1891 took away from the political parties the function of printing their own ballots.

† In 1899 the separate or "little" ballot was adopted for constitutional proposals.

§ The term "not adopted," as used in this and subsequent tables, is used to describe the results of elections in which the votes for the amendments exceed those against, but the amendments fail of adoption because they do not obtain a majority of all votes cast at the election. The term "defeated" is used in instances in which the negative votes exceed the affirmative. I am indebted to Professor Dodd for this distinction.

TABLE 1—*Continued*

Year and Amendment	Total Vote Cast at Election	Necessary Majority	For	Against	Not Voting	Result
1930: Revenue Amendment†	2,332,696	1,166,349	371,812 (15.9%)	513,861 (22.0%)	1,447,023 (62.1%)	Defeated
1932: Gate-way Amendment	3,465,926	1,732,964	1,080,541 (31.2%)	275,329 (7.9%)	2,110,056 (60.9%)	Not adopted
1934: To Call a Constitutional Convention	2,935,192	1,467,597	691,021 (23.5%)	585,879 (20%)	1,658,292 (56.5%)	Not adopted
1938: Banking	3,274,814	1,637,408	922,237 (28.1%)	352,428 (10.8%)	2,000,149 (61.9%)	Not adopted
1942: Sales Tax on Food May Be Removed	3,049,312	1,524,657	979,892 (32.2%)	346,232 (11.3%)	1,723,188 (56.5%)	Not adopted

† In 1929, the Emmerson law became effective.

thus were adopted. Between 1891 and 1943 only two of twelve proposed amendments have been adopted by the voters, although all but two amendments received a majority of the vote cast thereon. As a result, eight times out of twelve the will of a majority of those sufficiently interested in the proposals to vote upon them has been thwarted.

Prior to 1891 ballots in Illinois could be printed by political parties or by any individual who chose to do so. In those days a party could and did print upon its ticket a statement merely approving a proposed constitutional amendment. All such ballots which were left unchanged in this respect by the voters were counted according to the position of the party. Such was the system of voting familiar to the drafters of the Illinois Constitution of 1870. Under this system the adoption of constitutional amendments was not difficult, for, out of five proposed amendments, five were adopted. After the Australian Ballot Act was made a law and until 1899, constitutional proposals were placed beneath the names of the candidates on the blanket ballot. This was an obscure place as the voting in 1892, 1894, and 1896 clearly indicated. The affirmative votes were a pitiful percentage of those who voted in the general elections.

In 1899 Illinois started printing proposed amendments upon a ballot separate and distinct from the ballot with the names of the candidates for office. This separate or "little" ballot was supposed to awaken interest

in proposed amendments, and at first it appeared to have that result because the next two to be proposed were adopted. Then the separate ballot apparently became ineffective, and in 1929 the separate ballot law was repealed. Thereafter the legislature provided that amendments should appear upon the ballot that carried the names of candidates for office in a separate column on the left side of that ballot. It was thought that such a ballot would further stimulate voting upon constitutional amendments, but, to date, it has apparently failed to attract as much interest as the separate ballot did after 1899 and prior to 1929.⁵⁰

The first of the two amendments to be adopted after 1899, by use of the separate or "little" ballot, was one granting Chicago a limited measure of home rule. This was adopted as the result of intense political activity⁵¹ of a type seldom duplicated. The other was a proposal to authorize deep waterway bonds and was a matter of no basic governmental importance. A constitutional convention was authorized by a vote in November, 1918. The vote was taken on an opportune occasion that will not be duplicated very often.

There has been, and still is, considerable agitation for constitutional reform in Illinois, including the method of constitutional amendment. But the very vice in the method of amendment makes it difficult to adopt a new method calculated to facilitate amendment. Two types of ballot have been proposed to facilitate the amending process prior to the adoption of a formal change in the process, and in particular to render feasible the adoption of a true "gateway amendment," that is, an amendment to amend the article permitting an amendment of the constitution. This will permit an amendment to be adopted if there is a preponderance of affirmative over negative votes on the particular amendment. The first of these two types of ballots is embodied in what is known as the "party circle bills." It would simulate the type of ballot used prior to the adoption of the Australian ballot system in Illinois, by permitting political parties to print in their party columns a statement endorsing or opposing proposed amendments, and by counting all party circle votes according to the party stand unless otherwise indicated by the voter. This type of ballot was successfully used in both Nebraska and Ohio prior to the time that the amending process was changed in those states. The other type of proposed ballot is more drastic. The use of it in Illinois has been advocated by the Cook County Judicial Advisory Council. Under it the candidates'

⁵⁰ For the text of the present Illinois ballot law see Ill. Rev. Stat. (1941) c. 46, § 304a.

⁵¹ Gardner, *The Working of the State-Wide Referendum in Illinois*, 5 Am. Pol. Sci. Rev. 394 (1911).

ballot in a general election would carry a statement that the ballot would be cast for the proposed amendment, that is, the "gateway amendment" to facilitate the amending process. Unless the voter should indicate a contrary desire by scratching out this statement, the ballot would be counted for the proposal. This is the type of ballot that was successfully used in Alabama and is substantially the same as the ballot that was used in adopting the Illinois Constitution of 1870 and the optional provisions thereof.⁵² This latter usage suggested to the Council that it should be used once again to get Illinois out of its constitutional bog.

The text of the true "gateway amendment" suggested by the Council to Article XIV of the Illinois Constitution, the section dealing with the manner of amendment, provides in part:

"Such amendments shall be submitted to the electors for adoption or rejection at the next general election to be held throughout the State, or at a special election to be called for the purpose, as the General Assembly may direct, and shall be published in full for at least three months preceding the election. If a majority of the electors voting thereon shall *affirmatively* cast their votes by mark or writing, as may be prescribed by law, for any proposed amendment, it shall become part of this Constitution. But the General Assembly shall have no power to propose amendments to more than three articles of this Constitution at the same session nor to the same article oftener than once in four years."

The word "affirmatively" has been italicized because that is the crucial word, according to the Council, that will presumably prevent the use of this drastic ballot or the party circle ballot, after the "gateway amendment" is adopted. It is doubtful whether the word "affirmatively" will mean as much. However, the text could be changed so that the specified object could be accomplished. In the meantime, it is clear that for practical purposes Illinois has a constitution that cannot be amended under the present system of voting.

⁵² Section 10 of the Schedule of the Illinois Constitution of 1870 provides:

At the said election the ballots shall be in the following form:

NEW CONSTITUTION TICKET

For all the propositions on this ticket which are not cancelled with ink or pencil; and against all propositions which are so cancelled.

For the New Constitution.

For the sections relating to railroads in the article entitled "Corporations."

For the article entitled "Counties."

For the article entitled "Warehouses."

For a three-fifths vote to remove County Seats.

For the section relating to the Illinois Central Railroad.

For the section relating to Minority Representation.

For the section relating to Municipal Subscriptions to Railroads or Private Corporations.

For the section relating to the Canal.

Each of said tickets shall be counted as a vote cast for each proposition thereon not cancelled with ink or pencil, and against each proposition so cancelled, and returns thereof shall be made accordingly by the judges of election.

Indiana—It has been pointed out⁵³ that prior to 1935 a majority of all votes cast was necessary to effectuate constitutional amendment in Indiana. The Indiana requirement was not as prohibitive as those of other states being considered because the Indiana legislature could designate that amendments be submitted to the voters at special elections.⁵⁴ The method of amendment in Indiana was changed in 1935 by a judicial decision, and now an amendment is ratified if more votes are cast for it than against it. Table 2 is a record of all amendments proposed to the voters of Indiana since 1851.⁵⁵

From Table 2 it is apparent that the voters have voted 46 times since 1851 upon constitutional proposals. The figures may be further analyzed as shown in Table 3.

Although there were forty-six distinct votes, because of repetitions, there have been only thirty-three different propositions voted upon. The amendment to change the qualifications for permission to practice law was voted upon five times,⁵⁶ and the amendment to authorize an income tax was voted upon three times.⁵⁷ In addition to these, seven amendments which failed of adoption in the general election of 1880 because they did not receive a majority of all votes cast at the general election, although they all received a majority of the votes cast thereon, were again submitted at the special election of 1881 and adopted. It is interesting to note that in every instance the affirmative vote in 1881, which was sufficient for adoption, was less than the negative vote in 1880.

The availability of the special election in Indiana and the decision of its supreme court in *In re Todd* rendered it unnecessary for Indiana to resort to any particular type of ballot in order to obtain the ratification of necessary constitutional amendments. By a general law, Indiana required that proposed amendments be printed on the same general election ballot as that upon which the names of the candidates for office are printed. In practice, however, the legislative resolutions submitting amendments to

⁵³ See page 143 and notes 9-14 supra.

⁵⁴ In Oklahoma, amendments may be submitted at the special elections, but only in case two-thirds of each house of the legislature so designate. No such limitation obtains in Indiana.

⁵⁵ The information contained in this table was furnished me by Miss Emma Phillipp, a graduate student at the University of Indiana. She obtained it from the Indiana Historical Commission; Kettleborough, *Constitution Making in Indiana* (1916); and Sikes, *Indiana State and Local Government* (1940). The *Indiana Year Book*, 1917 at 847 gives some further but inconclusive data on votes prior to 1851.

⁵⁶ In 1900, 1906, 1910, 1921, and 1932.

⁵⁷ Defeated in 1921, and declared not adopted as a result of the elections in 1926 and 1932. It is now probably effective as of 1926.

TABLE 2

Year, Type of Election, Total Vote Cast at Election, and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1851: Special election; total vote, 140,868: Constitution as a whole	113,230 (80.4%)	27,638 (19.6%)	None	Adopted
Article XIII: Negro provision	113,828 (80.8%)	21,873 (15.5%)	5,167 (3.7%)	Adopted
1873: Special election; total vote, 159,430: Nonliability of state to pay stock issued for benefit of Wabash and Erie Canal	158,400 (99.4%)	1,030 (0.6%)	None	Adopted
1880: General election; total vote, 380,771: To fix general qualification for suffrage	169,483 (44.5%)	152,251 (40.0%)	59,037 (15.5%)	Not adopted
To allow negroes to vote	177,304 (46.6%)	138,985 (36.5%)	64,482 (16.9%)	Not adopted
Same—amendment of another section	176,145 (46.3%)	136,716 (35.9%)	67,910 (17.8%)	Not adopted
To fix dates of general elections	173,921 (45.7%)	144,897 (38.0%)	61,953 (16.3%)	Not adopted
Relating to salaries of public offices	181,684 (47.7%)	137,175 (36.0%)	61,912 (16.3%)	Not adopted
Relating to state judicial system	175,626 (46.1%)	141,318 (37.1%)	63,827 (16.8%)	Not adopted
Establishment of municipal debt limit	176,943 (46.5%)	126,953 (33.3%)	76,875 (20.2%)	Not adopted
1881: Special election; total vote, 172,900: To fix general qualifications for suffrage ⁵⁸	123,736 (71.6%)	45,975 (26.6%)	3,189 (1.8%)	Adopted
To allow negroes to vote	124,952 (72.3%)	42,896 (24.8%)	5,052 (2.9%)	Adopted
Same—amendment of another section	125,170 (72.4%)	42,162 (24.4%)	5,568 (3.2%)	Adopted
To fix dates of general election	128,038 (74.1%)	40,163 (23.2%)	4,699 (2.7%)	Adopted
Relating to salaries of public officers	128,731 (74.5%)	38,345 (22.2%)	5,824 (3.3%)	Adopted
Relating to judicial system	116,570 (67.4%)	41,434 (24.0%)	14,896 (8.6%)	Adopted
Establishment of municipal debt limit	126,221 (73.0%)	36,435 (21.1%)	10,244 (5.9%)	Adopted

⁵⁸ All these amendments, submitted at the special election of 1881, were the same as those submitted to the voters at the general election of 1880.

TABLE 2—*Continued*

Year, Type of Election, Total Vote Cast at Election, and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1900: General election; total vote, 664,094: Legislature to prescribe qualification to practice law	240,031 (36.2%)	144,072 (21.7%)	279,991 (42.1%)	Not adopted
Membership of Supreme Court	314,710 (47.4%)	178,960 (26.9%)	170,424 (25.7%)	Not adopted ⁵⁹
1906: General election; total vote, 589,044: Legislature to prescribe qualification to practice law ⁶⁰	39,061 (6.6%)	12,128 (2.3%)	537,855 (91.1%)	Not adopted
1910: General election; total vote, 627,133: Qualification to practice law ⁶¹	60,357 (9.6%)	18,404 (2.9%)	548,242 (87.5%)	Not adopted
1914: General election; ⁶² Constitutional Convention	235,140	338,947		Defeated
1921: Special election; total vote, 218,698: Relating to qualification of voters	130,242 (59.6%)	80,574 (36.8%)	7,882 (3.6%)	Adopted
Registration of voters	90,269 (41.3%)	110,333 (50.4%)	18,096 (8.3%)	Defeated
Power in governor to veto items in appropriation bills	83,265 (38.1%)	101,790 (46.5%)	33,643 (15.4%)	Defeated
Four-year terms for county officers	82,389 (37.8%)	115,139 (52.5%)	21,170 (9.7%)	Defeated
Four-year terms for prosecuting attorneys	76,587 (35.0%)	116,683 (53.4%)	25,428 (11.6%)	Defeated

⁵⁹ Prior to 1935 these amendments received a majority of the votes cast thereon; yet they were regarded as not adopted. What is their status, however, when considered in the light of the decision in *In re Todd*, 208 Ind. 168, 193 N.E. 865 (1935)? That they are in force is suggested in Chattin, *op. cit.* supra note 9 at 515. The problem is presented in but a few instances (hereafter designated by this note number 59), as in most cases in which an amendment failed of adoption, it was later adopted in a special election. Notice particularly the income tax amendments submitted in 1926 and 1932. They were identical and permitted a levy on income "from whatever source derived." The amendment is probably valid today, as of 1926, the date when a majority of affirmative over negative votes was first obtained, rather than as of 1932. Indiana has had a gross income tax since 1933, Ind. Stat. Ann. (Burns, 1933) § 64-2601, but has not enacted a tax levy upon net incomes.

⁶⁰ Same amendment proposed at the general election of 1900.

⁶¹ Same amendment proposed in 1900 and 1906.

⁶² Information is lacking as to the total vote at this election.

TABLE 2—*Continued*

Year, Type of Election, Total Vote Cast at Election, and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
<i>1921:—Continued</i>				
Qualifications to practice law ⁶³	78,431 (35.8%)	117,479 (53.8%)	22,788 (10.4%)	Defeated
Constituency of militia	55,027 (25.2%)	142,909 (65.3%)	20,762 (9.5%)	Defeated
No salary to be increased during term of office	80,191 (36.6%)	117,140 (53.5%)	21,367 (9.9%)	Defeated
Legislative appointment	76,963 (35.1%)	117,890 (54.1%)	23,845 (10.8%)	Defeated
Four-year terms for state officers	74,177 (33.9%)	113,300 (51.6%)	31,221 (14.5%)	Defeated
To permit income tax legislation	39,005 (17.8%)	157,827 (72.2%)	21,866 (10.0%)	Defeated
To permit establishment of a system of taxation ⁶⁴	31,786 (14.5%)	166,186 (76.0%)	20,726 (9.5%)	Defeated
To create an office of Superintendent of Public Instruction	46,023 (21.0%)	149,294 (68.3%)	23,381 (10.7%)	Defeated
<i>1926: General election; total vote, 1,052,994:</i>				
Registration for elections	198,579 (18.8%)	184,684 (17.5%)	669,731 (63.7%)	Not adopted ⁵⁹
Apportionment	183,828 (17.5%)	180,928 (18.0%)	679,238 (64.5%)	Defeated
No salary increase during term of office	182,456 (17.3%)	177,748 (16.9%)	692,790 (65.8%)	Not adopted ⁵⁹
Income tax ⁶⁵	239,734 (22.9%)	212,224 (20.1%)	601,036 (57.0%)	Not adopted ⁵⁹
<i>1930: General election; total vote, 1,247,267:</i>				
Constitutional Convention	355,546 (28.5%)	439,461 (35.2%)	452,260 (36.3%)	Defeated
<i>1932: General election; total vote, 1,600,484:</i>				
Income tax ⁶⁶	701,045 (43.8%)	209,076 (13.1%)	690,363 (43.1%)	Not adopted ⁵⁹
Qualifications to practice law	439,949 (27.4%)	236,613 (14.6%)	923,922 (58.0%)	⁶⁷

⁶³ Same amendment submitted in 1900, 1906, and 1910.⁶⁴ An amendment to permit income tax legislation and other similar types of tax legislation. It is somewhat broader than the amendment immediately preceding.⁶⁵ Same as the one defeated at the special election in 1921.⁶⁶ Same as in 1921 and 1926. Vote in 1926, as well as that in 1932, probably made this amendment effective, under the decision in the Todd case. See note 59 *supra*.⁶⁷ Same amendment proposed in 1900, 1906, 1910, and 1921. It was declared adopted by the Todd case.

TABLE 2—*Continued*

Year, Type of Election, Total Vote Cast at Election, and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1936: General election; total vote, 1,643,820: Militia to include negroes	426,031 (26.0%)	398,201 (24.2%)	819,588 (49.8%)	Adopted ⁶⁸
1940: Total vote, 1,790,109: Elimination of double liability for bank stockholders	355,578 (19.9%)	267,589 (14.9%)	1,166,942 (65.2%)	Adopted ⁶⁸
Corporate shareholder's liability	344,262 (19.2%)	229,370 (12.8%)	1,216,477 (68.0%)	Adopted ⁶⁸
Elimination of require- ment to renew bank charters	325,280 (18.2%)	242,846 (13.6%)	1,221,983 (68.2%)	Adopted ⁶⁸

TABLE 3

	Total	Adopted	Not Adopted	Defeated
General election.....	23	None	20 ⁶⁹	3
Special election.....	23	11	None	12
Grand total.....	46	11	20	15

the voters have always provided that the amendment shall be submitted on a ballot separate from that carrying the names of candidates for office.⁷⁰

An act passed in 1911⁷¹ provides that political parties may take official action upon constitutional amendments, and that such action will be printed upon the official ballot below the names of the parties' candidates

⁶⁸ Adopted by virtue of the change in the method of amendment resulting from the Todd decision. But for this decision they would not have been adopted.

⁶⁹ This number includes five amendments, one of which was given effect by the decision in *In re Todd*, and four others which were voted upon after the decision in that case and so are effective by virtue thereof. None of these would have been adopted had the Indiana rule not been changed by that decision. Also included are four amendments, one of which was submitted twice, which were voted upon prior to the Todd decision, and were regarded at the time they were voted upon as not having been adopted, but which are now probably effective as a result of such decision. See note 59 *supra*.

⁷⁰ Phillipp, note 55 *supra*.

⁷¹ Ind. Stat. Ann. (Burns, 1933) c. 12, §§ 29-1203-29-1207.

for office. It provides that a vote in the party circle shall be counted for or against the amendment according to the party action taken. The proposed amendment, with an opportunity to vote in the affirmative or negative, is also to be printed elsewhere on the ballot, and a voter may, by voting separately upon the amendment, have his vote counted differently from the position taken by his party. No political party has ever availed itself of this power, conferred by the act of 1911, to have its position on an amendment printed in its column on the ballot.⁷² In view of the decision in the *Todd* case it is difficult to visualize why Indiana retains this party circle law. It is no longer needed and it could be used for an undesirable partisan purpose.

Minnesota—The method of ratifying constitutional amendments in Minnesota was changed by a constitutional amendment in 1898. Prior thereto, amendments were ratified by the vote of a majority of those voting thereon. After the amendment of 1898 a majority of all votes cast for any purpose at the general election became necessary in order to obtain ratification.⁷³ It is interesting to note that under the rule adopted by the amendment of 1898, that amendment itself would never have become effective because, while it received 68 per cent of the votes cast thereon, still it obtained only 27 per cent of all votes cast at the general election at which it was submitted to the voters.⁷⁴

Prior to the change in 1898 there had been proposed to the people of Minnesota a total of sixty-six amendments, of which forty-eight were adopted.⁷⁵ Table 4 shows the varied experience which Minnesota has had with such amendments as have been proposed since the change was made.

The experience in constitutional amending as presented by Table 4 is far from satisfactory. It shows the struggle of a great commonwealth to keep its constitutional machinery adapted to ever changing problems. Prior to the change in the amending system in 1898, 73 per cent of all proposed amendments were adopted as against 27 per cent defeated. Of the seventy-six amendments submitted to the electorate in the four decades between 1898 and 1938, only two, or less than 3 per cent of the total, were actually defeated by a preponderance of negative votes on the

⁷² Phillipp, note 55 *supra*.

⁷³ Anderson, *op. cit. supra* note 8. The usual history has been reversed in Minnesota. Most changes in the method of constitutional amendment have favored greater flexibility.

⁷⁴ Information received from Mr. M. Holm, Secretary of State, St. Paul, Minnesota. For a table of amendments voted on between 1890 and 1898 see note 99 *infra*.

⁷⁵ Anderson, *op. cit. supra* note 8.

TABLE 4⁶

Year, Total Vote Cast at Election, ⁷⁷ and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1900: Total vote for Governor, 314,181 (for President, 316,311): To permit school funds to be invested in municipal bonds	108,681 (34.6%)	30,160 (9.6%)	175,340 (55.8%)	Not adopted
1902: ⁷⁸ Total vote 276,071: To permit school funds to be invested in municipal bonds	116,766 (42.3%)	20,777 (7.5%)	138,528 (50.2%)	Not adopted
State tax for road and bridge fund	114,969 (41.6%)	23,948 (8.7%)	137,154 (49.7%)	Not adopted
Franchise and income taxation	124,584 (45.1%)	21,251 (7.7%)	130,236 (47.2%)	Not adopted
1904: Total vote 322,692: To permit school funds to be invested in municipal bonds ⁷⁹	190,718 (59.1%)	39,334 (12.2%)	92,640 (28.7%)	Adopted
Repealing requirement of indictment by grand jury	164,555 (51.0%)	52,152 (16.2%)	105,985 (32.8%)	Adopted

⁷⁶ The data in this table has been taken from the Annual Legislative Manuals issued by the Secretary of State of the State of Minnesota, and from Anderson and Lobb, *History of the Constitution of Minnesota 278-85* (1921). In 1902, 1904, 1906, 1908, and 1910 the total number of women who voted is set forth; but the number was always less than 20,000. They appear to have voted in certain counties only. In later years, but before 1920, they voted to some extent but the total vote is not stated. This female vote is not included.

⁷⁷ The elections mentioned in this table were general elections. Hereafter, unless specified otherwise, only general elections will be dealt with. Indiana, which has already been considered, and Oklahoma are the only states being considered, in which constitutional amendments have been submitted to the voters at special elections.

⁷⁸ In 1902 and 1904 a proposition to increase the gross earnings tax on railroads was submitted, but it is not clear whether it was a constitutional amendment. The totals on such proposition were:

Year	Affirmative	Negative	Not Voting	Results
1902.....	130,522 (47.3%)	15,033 (5.4%)	130,516 (47.3%)	Not adopted
1904.....	240,578 (74.6%)	30,518 (9.5%)	51,596 (15.9%)	Adopted

⁷⁹ Previously submitted in 1900 and 1902.

TABLE 4—*Continued*

Year, Total Vote Cast at Election, ⁷⁷ and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1906: Total vote 284,366:				
Amendment to article on taxation	156,051 (54.9%)	46,982 (16.5%)	81,333 (28.6%)	Adopted
State tax for road and bridge fund	141,870 (49.9%)	49,232 (17.3%)	93,264 (32.8%)	Not adopted
To permit peddling of farm products, raised by farmer, without a license	190,807 (67.2%)	34,004 (12.0%)	59,375 (20.8%)	Adopted
1908: Total vote 355,263:				
Amendment to article on taxation	134,141 (37.8%)	65,776 (18.5%)	155,346 (43.7%)	Not adopted
State tax for road and bridge fund	154,226 (43.4%)	56,557 (15.9%)	144,500 (40.7%)	Not adopted
Acreage tax upon land subject to state protection against wind and hail, to create an insurance fund	137,710 (38.8%)	61,084 (17.2%)	156,469 (44.0%)	Not adopted
Educational qualification for county superintendent of schools	169,785 (47.7%)	42,114 (11.9%)	143,364 (40.4%)	Not adopted
1910: Total vote 310,165:				
State tax for road and bridge fund	159,746 (51.5%)	44,387 (14.3%)	106,032 (34.2%)	Adopted
Repeal of required publication of annual reports of state treasurer	123,787 (39.9%)	51,650 (16.7%)	134,729 (43.4%)	Not adopted
Acreage tax upon land subject to state protection against wind and hail, to create an insurance fund	108,926 (35.1%)	63,205 (20.4%)	138,034 (44.5%)	Not adopted
Congressional and state legislative reapportionment	95,181 (30.7%)	61,520 (19.8%)	153,464 (49.5%)	Not adopted
Tax for reforestation	100,168 (32.3%)	63,062 (20.6%)	146,935 (47.1%)	Not adopted
Exemption of certain land from taxation to encourage reforestation	87,943 (28.4%)	73,697 (23.8%)	148,525 (47.8%)	Not adopted
1912: Total vote 349,678:				
State tax for road and bridge fund ⁸⁰	195,724 (56.0%)	51,135 (14.7%)	102,819 (29.3%)	Adopted
Acreage tax upon land subject to state protection against wind and hail, to create an insurance fund ⁸¹	145,173 (41.5%)	60,439 (17.3%)	144,066 (41.2%)	Not adopted

⁸⁰ Previously submitted in 1902, 1906, 1908, and 1910.⁸¹ Previously submitted in 1908 and 1910.

TABLE 4—Continued

Year, Total Vote Cast at Election, ⁷⁷ and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
<i>1912:—Continued</i>				
Increase of gross income tax on railroads	184,612 (52.9%)	41,130 (11.9%)	123,936 (35.2%)	Adopted
To authorize loan of school funds upon im- proved farm lands	168,440 (48.2%)	39,483 (11.1%)	141,755 (40.7%)	Not adopted
To allow municipal cor- porations to frame their own charters	157,086 (45.0%)	41,971 (12.0%)	150,621 (43.0%)	Not adopted
Educational qualifica- tion for superintendent of county schools	167,983 (47.9%)	36,584 (10.6%)	145,111 (41.5%)	Not adopted
Senatorial reapportion- ment	122,457 (35.0%)	77,187 (22.0%)	150,034 (43.0%)	Not adopted
<i>1914: Total vote 356,906:</i>				
Initiative and referendum	168,004 (47.0%)	41,577 (11.8%)	147,325 (41.2%)	Not adopted
To increase supreme judges from four to six and to forbid supreme court from declaring act unconstitutional ex- cept by concurrence of five out of six judges	127,352 (35.6%)	68,886 (19.4%)	160,668 (45.0%)	Not adopted
Revolving fund for roads, etc., from school and swamp land fund	162,951 (45.7%)	47,906 (13.4%)	146,049 (40.9%)	Not adopted
Repeal of requirement of publication of annual reports of state treasurer ⁸²	131,213 (36.8%)	58,827 (16.5%)	166,866 (46.7%)	Not adopted
To authorize loan of school funds on im- proved farm lands	159,531 (44.7%)	38,145 (10.6%)	159,230 (44.7%)	Not adopted
Increased term for pro- bate judges	128,601 (36.3%)	64,214 (17.7%)	164,091 (46.0%)	Not adopted
Senatorial reapportion- ment ⁸³	98,144 (27.6%)	84,436 (23.6%)	174,326 (48.8%)	Not adopted
Tree bounties	108,352 (30.9%)	63,782 (17.3%)	184,772 (51.8%)	Not adopted
Use of state lands for state forests	178,954 (50.1%)	44,033 (12.4%)	133,919 (37.5%)	Adopted
Recall of public officials	139,801 (39.3%)	44,961 (12.2%)	172,144 (48.5%)	Not adopted
Taxation of dogs to com- pensate for dog in- juries	136,671 (38.4%)	59,786 (16.6%)	160,449 (45.0%)	Not adopted

⁸² Previously submitted in 1910.⁸³ Previously submitted in 1910 and 1912.

TABLE 4—*Continued*

Year, Total Vote Cast at Election, ⁷⁷ and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1916: Total vote 416,215:				
Revolving fund for roads, etc., from school and swamp lands fund	240,975 (58.0%)	58,100 (14.0%)	117,140 (28.0%)	Adopted
To permit loan of school funds on improved farm lands ⁸⁴	211,529 (50.7%)	56,147 (13.5%)	148,539 (35.8%)	Adopted
To authorize protection for public waters	183,597 (44.0%)	64,255 (15.8%)	168,363 (40.2%)	Not adopted
To increase number of judges on supreme court	130,363 (31.4%)	108,002 (26.0%)	177,850 (42.6%)	Not adopted
To permit approval by governor of single items in appropriation bills	136,700 (32.9%)	83,324 (20.3%)	196,191 (46.8%)	Not adopted
To allow taking of private property for drainage purposes	132,741 (31.8%)	97,432 (23.5%)	186,042 (44.7%)	Not adopted
Initiative and referendum ⁸⁵	187,711 (45.0%)	51,544 (12.5%)	176,960 (42.5%)	Not adopted
Increase of terms of probate judges	186,847 (44.8%)	72,361 (17.5%)	157,007 (37.7%)	Not adopted
1918: Total vote 380,604:				
Prohibition	189,614 (49.7%)	173,665 (45.8%)	17,325 (4.5%)	Not adopted
1920: Total vote 797,945:				
Taxation of motor vehicles to provide a trunk highway system	526,936 (66.0%)	199,603 (25.0%)	71,406 (9.0%)	Adopted
Increase of terms of probate judges ⁸⁶	446,959 (56.0%)	171,414 (21.5%)	179,572 (22.5%)	Adopted
Amendment of tax article of constitution, permitting a progressive income tax	331,105 (41.5%)	217,558 (27.0%)	249,282 (31.5%)	Not adopted
1922: Information as to total vote not available: ⁸⁷				
State credit to agriculture	534,310	73,917		Adopted
Tax on mining	474,697	91,011		Adopted

⁸⁴ Previously submitted in 1912 and 1914.⁸⁵ Previously submitted in 1914.⁸⁶ Previously submitted in 1914 and 1916.

⁸⁷ Data in the usual yearbook was not available for 1922. Information was obtained from a private file in the Library of Congress and from 12 National Municipal Review 201 (1923). The total vote at the election was not disclosed in these sources. But in the National Municipal Review it is stated that the vote for governor was 685,095 and that the two propositions received aggregates of 88 and 82 per cent respectively of the vote for governor, which aggregates include both affirmative and negative votes.

TABLE 4—Continued

Year, Total Vote Cast at Election, ⁷⁷ and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1924: Total vote 869,151:				
Tax on gasoline sales for trunk highway system	520,769 (60.0%)	197,455 (22.7%)	150,927 (17.3%)	Adopted
Change of requirements for publication in amending municipal charters	246,414 (28.4%)	200,391 (23.0%)	422,346 (48.6%)	Not adopted
State-owned grain elevator	253,732 (29.2%)	257,492 (29.6%)	357,927 (41.2%)	Defeated
Authorizing laws encouraging reforestation	428,407 (49.4%)	143,977 (16.5%)	296,767 (34.1%)	Not adopted
Authorizing forest-fire control measures	460,965 (53.3%)	143,518 (16.5%)	264,668 (30.2%)	Adopted
1926: Total vote 722,781:				
To increase number of judges on supreme court	331,964 (45.9%)	148,784 (20.7%)	242,033 (33.4%)	Not adopted
Authorizing laws encouraging reforestation	383,003 (53.0%)	127,592 (17.8%)	212,186 (29.2%)	Adopted
Authorizing legislation to limit the liability of stockholders in corporations	323,322 (44.8%)	140,422 (19.4%)	259,037 (35.8%)	Not adopted
1928: Total vote 1,070,274:				
To divide gasoline tax between the "Road and Bridge Fund" and the "Trunk Highway Fund"	542,796 (50.8%)	346,109 (32.3%)	181,369 (16.9%)	Adopted
Authorizing legislation to limit the liability of stockholders in corporations	506,065 (47.3%)	223,725 (20.9%)	340,484 (31.8%)	Not adopted
1930: Total vote 828,401:				
Authorizing legislation to limit the liability of stockholders in corporations ⁸⁸	486,818 (58.8%)	135,345 (16.3%)	206,238 (24.9%)	Adopted
To increase number of judges on Supreme Court ⁸⁹	428,013 (51.7%)	130,833 (15.8%)	269,555 (32.5%)	Adopted
Authorizing exchange of state lands for United States lands	378,716 (45.7%)	174,231 (21.0%)	275,454 (33.3%)	Not adopted

⁸⁸ Previously submitted in 1926 and 1928.⁸⁹ Previously submitted in 1916 and 1926.

TABLE 4—Continued

Year, Total Vote Cast at Election, ⁷⁷ and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1932: Total vote 1,054,203:				
Authorizing progressive income tax	420,052 (39.8%)	409,924 (38.8%)	224,227 (21.4%)	Not adopted
Amending tax power as to motor vehicles	537,292 (51.0%)	227,634 (21.5%)	289,277 (27.5%)	Adopted
Authorizing exchange of state lands for United States lands	433,913 (41.2%)	258,257 (24.5%)	362,033 (34.3%)	Not adopted
Authorizing taxation of land acquired through state's rural credit system	468,101 (44.5%)	261,856 (24.8%)	324,246 (30.7%)	Not adopted
1934: Total vote 1,064,332:				
Changed routes for trunk highway system	509,074 (47.9%)	279,877 (26.3%)	275,381 (25.8%)	Not adopted
Authorizing taxation of land acquired through state's rural credit system ⁹⁰	496,017 (46.7%)	215,623 (20.3%)	352,692 (33.0%)	Not adopted
To exempt household goods and farm equipment from personal property tax	630,125 (59.3%)	181,126 (17.0%)	253,081 (23.7%)	Adopted
Authorizing exchange of state lands for United States lands	468,617 (44.0%)	216,760 (20.4%)	378,955 (35.6%)	Not adopted
Limiting property of educational institutions, for tax exemption purposes, to that actually used in institution	472,374 (44.4%)	247,166 (23.3%)	344,792 (32.3%)	Not adopted
1936: Total vote 1,164,268:				
Authorizing exchange of state lands for United States lands	448,917 (38.6%)	397,106 (34.1%)	318,245 (27.3%)	Not adopted
Changing tax system, authorizing progressive income tax, and other taxes ⁹¹	355,588 (30.6%)	543,847 (46.7%)	264,833 (22.7%)	Defeated
1938: Total vote 1,144,926:				
Authorizing exchange of state lands for United States lands ⁹²	609,046 (53.0%)	259,007 (23.0%)	276,873 (24.0%)	Adopted
Change of method for adoptions of charters for municipal corporations	488,370 (42.7%)	260,152 (22.7%)	396,404 (34.6%)	Not adopted

⁹⁰ Previously submitted in 1932.

⁹¹ Tax amendments had previously been submitted in 1902 and 1920. A progressive income tax amendment was submitted in 1932, but it was not adopted although it received more affirmative than negative votes.

⁹² Previously submitted in 1930, 1932, 1934, and 1936.

amendments.⁹³ Only twenty-three, or 30 per cent, were adopted, and the remainder, fifty-two in number constituting 67 per cent, even though they received preponderances of affirmative votes, failed of adoption. A further recapitulation of the data contained in the table is unnecessary to emphasize the unfortunate requirement that a constitutional amendment must secure a majority of the total vote. One can see many instances in which the affirmative vote was three or more times the negative vote and yet the proposal failed. In many cases the affirmative vote missed a majority of the total vote cast at the election by a very small margin.

Attention, however, will be directed specifically to two facts apparent from the table. First, how the severity of the requirement is mitigated somewhat in Minnesota by the power to lay an amendment before the voters repeatedly, until it happens to find the voters in a happy mood or until eventually sufficient interest has been aroused to obtain the required majority.⁹⁴ Thus, a tax for a road and bridge fund was proposed five times, beginning in 1902, before its adoption in 1910, and in a different form in 1912. Likewise, an amendment to permit the exchange of state land for United States land was adopted in 1938, after having been placed before the people five times starting in 1930. Other amendments adopted after repeated attempts were: an amendment to permit the investment of school funds by loans on improved farm land within the state, three times;

⁹³ The state-owned grain elevator amendment, proposed in 1924, and the progressive income tax amendment, proposed in 1936. The latter one had previously, in 1932, obtained a majority of the votes cast thereon, and yet failed. Other income tax amendments had failed of adoption in 1902 and 1920. The following election results complete Table 4:

Year, etc.	Affirmative	Negative	Not Voting	Results
1940: Total vote, 1,301,573: Changing requirements for publication of proposed amendments to municipal charters	635,815 (48.8%)	287,286 (22.0%)	378,472 (29.2%)	Not adopted
1942: Total vote, 817,511: Reducing rate of interest at which state trust fund could be loaned	415,012 (50.8%)	190,563 (23.3%)	211,936 (25.9%)	Adopted
Reduce expense for publishing amendments to home rule charters	459,868 (56.2%)	144,842 (17.7%)	212,801 (26.1%)	Adopted

⁹⁴ In Illinois amendments cannot be submitted to the same article of the constitution more frequently than once in four years. The "gateway" and revenue amendments have each been submitted more than once but they have not been adopted. Illinois is further embarrassed, as far as attempts to amend its constitution are concerned, by the fact that amendments cannot be submitted to more than one article at any one general election. See Article XIV. Thus, an attempt to awaken interest in any particular amendment by submitting it more than once can only be made at the cost of neglecting other necessary amendments. Furthermore, it should also be remembered that in Minnesota amendments can be submitted to the voters by a mere majority of both houses of the legislature. Minn. Const., art. 14. Cf. Ill. Const., art. 14, which requires two-thirds of all the members elected to each of the two houses.

an increase of the term of probate judges, three times; power to invest school funds in municipal bonds, three times.

Other amendments did not fare so well, notwithstanding repeated proposals. Three times the proposal that a system of reforestation be undertaken was thwarted; initiative and referendum proposals twice failed; a proposal providing for legislative reapportionment of the state failed in 1910, 1912, and 1914; and several other proposals of less importance were not adopted after they had repeatedly received a preponderance of affirmative votes.

Of special importance is the failure to adopt most proposals to improve the state's tax system. Professor Anderson places emphasis upon this fact.⁹⁵ True, the progressive income tax amendment was defeated by a preponderance of negative votes on the amendment, but that was after the same proposal had received more affirmative than negative votes in 1932 and yet was not adopted, and after similar proposals had met the same fate in 1902 and 1920. At least five other measures to reform the taxing system of the state failed of adoption, although favored by a preponderance of those voting on the propositions.

Minnesota has never had any system whereby political party action concerning proposed amendments could be printed upon the official ballot, and all party circle votes counted accordingly.⁹⁶ Prior to 1903 proposed amendments were placed at the bottom of the official ballot.⁹⁷ In 1903 a statute was passed requiring all proposed amendments to be submitted to the voters upon a separate pink ballot, as distinguished from the ballot with the names of the candidates, which is white.⁹⁸ At the 1941 session of the legislature a law was passed requiring that the following statement appear upon the separate ballot for constitutional amendments: "If a voter fails to vote, he votes in effect, in the negative." Mr. M. Holm, Secretary of State of Minnesota, reported that such a statement will be printed upon the next ballot upon which constitutional amendments are submitted.⁹⁹

It will be interesting to compare the percentage of general election voters who voted one way or the other on proposed amendments before the change in the method of amending, with the percentage who voted after the change (see Table 5). For convenience in making comparisons, five groups of amendments have been selected: 1) Those on which 20 per

⁹⁵ Anderson, *op. cit.* *supra* note 8 at 203-5.

⁹⁷ Minn. L. (1893) c. 4.

⁹⁶ Note 74 *supra*.

⁹⁸ Minn. L. (1903) c. 251.

⁹⁹ He also wrote: "I have no doubt but what it will improve greatly the chances of adoption of a proposal." This device is not to be confused with that used at one time in Alabama. The Alabama system actually counted as affirmative votes all not cast in the negative. Minnesota merely intends to call the voters' attention to the effect of a failure to vote upon proposed amendments.

TABLE 5¹⁰⁰

Date of General Election, Total Vote Cast Thereat, and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting on Proposed Amendment	Result*
1890: Total vote for Governor 240,892: Verdict by five-sixths of jury in civil cases	66,929 (27.8%)	41,341 (17.2%)	132,622 (55.0%)	Adopted
1892: Total vote 259,696: ¹⁰¹ To prohibit special legisla- tion	77,614 (30.0%)	19,583 (7.5%)	162,499 (62.5%)	Adopted
Amendment of section pro- viding for taxation of sleeping-car companies	53,372 (20.6%)	82,910 (31.9%)	123,414 (47.5%)	Defeated
1894: Total vote 306,393: Inheritance tax	108,332 (35.4%)	41,242 (13.8%)	156,819 (50.8%)	Adopted
1896: Total vote 343,319: Taxation of railroad lands	235,585 (68.6%)	29,530 (8.6%)	78,204 (22.8%)	Adopted
Road and bridge fund	152,765 (44.5%)	28,991 (8.4%)	161,563 (47.1%)	Adopted
Creating a Board of Par- dons	130,354 (38.0%)	45,097 (13.0%)	167,868 (49.0%)	Adopted
Prohibit aliens from voting	97,980 (28.5%)	52,454 (15.3%)	192,885 (56.2%)	Adopted
Municipal home-rule char- ters	107,086 (31.2%)	58,312 (17.0%)	177,921 (51.8%)	Adopted
Amendment of eminent- domain provision	101,188 (29.5%)	56,839 (16.6%)	185,292 (53.9%)	Adopted
Loan of school funds to municipal corporations	127,151 (36.9%)	36,134 (10.5%)	180,034 (52.6%)	Adopted
Taxation of sleeping-car and other companies	163,694 (47.7%)	42,922 (12.5%)	136,703 (39.8%)	Adopted
1898: Total vote 251,250: To permit women to vote for and serve on library boards	71,704 (28.5%)	43,660 (17.4%)	135,886 (54.1%)	Adopted
Amendment to change method of amendment so that future constitution- al amendments will not be adopted unless voted upon favorably by a ma- jority of all voters for any purpose at a general election	69,760 (27.8%)	32,881 (13.1%)	148,609 (59.1%)	Adopted
Amend municipal home- rule section	68,754 (27.4%)	32,068 (12.8%)	150,428 (59.8%)	Adopted
State road and bridge fund	70,043 (27.9%)	38,017 (15.1%)	143,190 (57.0%)	Adopted

* Remember that at this time the amendment carried if more voted yes than no, irrespective of the total vote at the election.

¹⁰⁰ The following table is a record of the amendments proposed to the voters of Minnesota between 1890 and 1898, inclusive. The information was obtained from Mr. M. Holm, Secretary of State of Minnesota, supplemented by Anderson and Lobb, op. cit. supra note 76.

¹⁰¹ Total vote of four political parties for members of congress. The total vote at the election may have been slightly larger than this figure.

cent or less of the general election voters voted one way or the other; 2) where the percentage was between 21 and 40 inclusive; 3) where the percentage was between 41 and 60 inclusive; 4) where the percentage was between 61 and 80 inclusive; and 5) where the percentage was 81 or over. For this purpose there are three significant periods. From 1890 to 1898 inclusive, amendments were ratified by a majority voting thereon, irrespective of the number who voted at the general election, and the amendments appeared at the foot of the ballot upon which the names of the candidates for office appeared. After 1898, a proposed amendment must obtain a majority of all voting for any purpose at a general election in order to be ratified; but the ballot upon which the proposal was submitted remained the same. In 1903 the present system of submitting proposed amendments upon a separate pink ballot was adopted. This comparison is exhibited in Table 6.

TABLE 6

Years	20% and less	21% to 40%	41% to 60%	61% to 80%	81% to 100%
1890-1898.....	None	3 ¹⁰² (20.0%)	11 (73.3%)	1 (6.7%)	None
1900-1902.....	None	None	4 (100%)	None	None
1904-1938 ¹⁰³	None	1 (1.5%)	28 (40.0%)	37 (52.8%)	4 ¹⁰⁴ (5.7%)

From Table 6 it appears that there was no substantial change in the percentage figure of those who voted on proposed amendments after the change in the system of amendment in 1898, until the adoption of a separate ballot of a different color, in 1903. If it be suggested that during the lapse of thirty-four years between 1904 and 1938 the increase in popular education may have caused a larger portion of the voters to become interested in constitutional reform, it may be observed that the change in the percentage voting upon proposed amendments was immediate upon the change in the form of the ballot in 1903. Four of the five propositions voted upon in 1904 and 1906 attracted a vote of more than 70 per cent of the total vote cast in the general elections for those years.

¹⁰² These percentages are the percentage of the total number of amendments submitted.

¹⁰³ These figures will add up to seventy rather than seventy-two (seventy-six constitutes the total number of amendments proposed since 1900, minus four considered in the 1900-1902 category) because data as to the total vote in 1922 is not available.

¹⁰⁴ The four amendments which attracted a vote of more than 80 per cent of that cast at the general election were: Prohibition in 1918, and three amendments in 1920, 1924, and 1928 proposing various methods of financing a proposed truck highway system for the state. It is interesting to note that three of these four were adopted.

Further comparison may be made with the percentage of votes cast upon constitutional amendments in Illinois and New York (see Table 7).

It is evident that since 1903, a larger percentage of those voting at general elections in Minnesota have voted upon proposed constitutional amendments than in either Illinois or New York. It is a reasonable inference that the separate ballot is responsible for this increase. This conclusion is supported by the fact that of six constitutional propositions submitted in Illinois between 1899 and 1929, while constitutional propositions were submitted upon a ballot distinct from that carrying the names of the candidates for office, four were voted upon by more than 60 per cent of the voters who voted at the elections at which they were submitted.

TABLE 7¹⁰⁵

20% and under	21% to 40%	41% to 60%	61% to 80%	81% and over
Illinois: none ¹⁰⁶	6 (42.8%)	4 (28.6%)	4 (28.6%)	None
New York: none.....	10 (40.0%)	14 (56.0%)	1 (4.0%)	None

Mississippi—Table 8 shows the constitutional amendments submitted to the voters of Mississippi since 1898.

A summary of this table shows that since 1898 the electorate of Mississippi has voted forty-four times upon thirty-three proposals for amendments to the state constitution. In twenty-three of the forty-four instances the proposed amendments were adopted. In nine they were defeated by a preponderance of negative votes. In twelve, more affirmative than negative votes were cast upon the proposed amendments, but they were not adopted because they failed to obtain a majority of all votes cast at the general election. Of the thirty-three proposed amendments, fifteen were adopted the first time voted upon, seven were defeated the first time voted upon by a preponderance of negative votes upon the proposals, and eleven secured a favorable majority of those voting upon the proposals but were not adopted

¹⁰⁵ The Illinois data is contained in Table 1. The New York data is taken from the tables in Sears, op. cit. supra note 49 at 245, 248. The table on page 245 is the New York vote upon amendments submitted by a convention in 1938. The table on page 248 contains the vote on certain proposed constitutional amendments between 1929 and 1937, inclusive.

¹⁰⁶ The Illinois figures cover constitutional propositions after 1891. Prior to 1891, which was the year of the adoption of the Australian ballot in Illinois, party tickets frequently took positions upon constitutional propositions. Unscratched party votes were counted according to the party positions. Prior to 1891, all five of the amendments proposed received more than 60 per cent of the vote cast at the general election at which they were submitted, and two received more than 80 per cent.

TABLE 8¹⁰⁷

Year, Total Vote Cast at Election, and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1898: Total vote 27,378: To give additional powers to commissioners of levee districts	14,516 (53.0%)	5,321 (19.5%)	7,541 (27.5%)	Adopted
1900: Total vote not apparent: Reorganization of supreme court	21,169	8,643		Adopted
1902: Total vote 18,072: To forbid counties and municipalities from holding stock in or aiding corporations	7,665 (42.4%)	7,464 (41.4%)	2,943 (16.2%)	Not adopted
To change method of amendment to permit ratification of proposed amendment by majority voting upon issue	7,354 (40.7%)	7,427 (41.1%)	3,291 (18.2%)	Defeated
To require meeting of legislature every two years	8,088 (44.8%)	6,602 (36.6%)	3,382 (18.6%)	Not adopted
1910: Total vote 25,888: To require meeting of legislature every two years ¹⁰⁸	20,362 (80.0%)	3,987 (14.9%)	1,539 (5.1%)	Adopted
Popular election of circuit and chancery court judges	19,597 (76.0%)	5,159 (20.0%)	1,132 (4.0%)	Adopted
That every proposed amendment be adopted by the legislature at the next session after adoption by popular vote	19,013 (73.5%)	4,036 (15.5%)	2,839 (11.0%)	Adopted
1912: Total vote 64,948: Prescribing the manner by which bills should be introduced into the legislature	27,818 (43.0%)	13,594 (20.8%)	23,536 (36.2%)	Not adopted
To permit verdicts in civil cases by the concurrence of nine out of twelve jurors	28,064 (43.2%)	14,255 (21.8%)	22,629 (35.0%)	Not adopted
Initiative and referendum	25,153 (38.8%)	13,383 (20.5%)	26,412 (40.7%)	Not adopted

¹⁰⁷ This data was obtained by searching the files in the office of the Secretary of State of Mississippi. This search was made possible through the courtesy of Mr. Wood, Secretary of State of Mississippi, and has been checked as far as possible with the Mississippi official reports.

¹⁰⁸ Same amendment submitted in 1902.

TABLE 8—*Continued*

Year, Total Vote Cast at Election, and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1914: Total vote 40,070:				
Popular election of supreme court judges	23,161 (57.7%)	8,364 (20.9%)	8,545 (21.4%)	Adopted
Nullification of Sec. 151, the existing method of selecting supreme court judges	20,903 (52.3%)	8,346 (20.7%)	10,821 (27.0%)	Adopted
Fixing term of supreme court judges at eight years	21,255 (53.0%)	8,639 (21.5%)	10,176 (25.5%)	Adopted
Increase in number of supreme court judges to six	20,338 (50.7%)	9,441 (23.6%)	10,291 (25.7%)	Adopted
To repeal provision in constitution that by agreement a case might be reviewed by any three members of supreme court	20,508 (51.3%)	8,725 (21.7%)	10,837 (27.0%)	Adopted
Authorizing supreme court to sit in two sections	20,467 (51.2%)	8,641 (21.5%)	10,962 (27.3%)	Adopted
Permitting, by agreement of parties, verdicts by nine out of twelve jurors in civil cases ¹⁰⁹	20,110 (50.1%)	9,911 (24.9%)	10,049 (25.0%)	Adopted
Initiative and referendum ¹¹⁰	19,118 (48.0%)	8,718 (21.7%)	12,234 (30.3%)	Not adopted
Reapportionment of senatorial districts	19,249 (48.3%)	8,650 (21.5%)	12,171 (30.2%)	Not adopted
1918: Total vote 34,038:				
Legislative power to classify property for taxation	6,517 (19.0%)	22,628 (66.8%)	4,893 (14.2%)	Defeated
Change of qualifications of governor	4,207 (12.4%)	24,753 (72.7%)	5,078 (14.9%)	Defeated
1920: Total vote 83,116:				
Relating to jurisdiction of Board of Supervisors	20,184 (24.2%)	45,938 (55.0%)	16,994 (20.8%)	Defeated
Fixing terms of office of levee commissioners	32,236 (39.0%)	26,743 (32.1%)	24,137 (28.9%)	Not adopted
Woman suffrage	39,186 (47.3%)	24,296 (29.0%)	19,634 (23.7%)	Not adopted
Uniform poll tax	41,693 (50.1%)	22,733 (27.3%)	18,690 (22.6%)	Adopted
Pensions for Confederate soldiers and widows	42,442 (51.0%)	19,542 (23.6%)	21,132 (25.4%)	Adopted

¹⁰⁹ Same amendment submitted in 1912.¹¹⁰ Same amendment submitted in 1912.

TABLE 8—*Continued*

Year, Total Vote Cast at Election, and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but Not Voting for or against Proposed Amendment	Result
1922: Total vote 71,835:				
To abolish office of county treasurer	46,471 (64.7%)	15,380 (21.1%)	9,984 (14.2%)	Adopted
Relating to jurisdiction of Board of Super- visors ¹¹¹	53,792 (75.0%)	10,465 (14.5%)	7,578 (10.5%)	Adopted
1924: Total vote 118,327:				
Progressive Income and inheritance taxes	9,865 (8.4%)	83,689 (71.0%)	24,773 (20.6%)	Defeated
To fix number of levee commissioners in each district	33,932 (28.7%)	50,463 (42.6%)	33,932 (28.7%)	Defeated
To change manner of electing levee commis- sioners	33,992 (28.7%)	45,808 (38.7%)	38,527 (32.6%)	Defeated
1926: Total vote 29,485:				
To fix number of levee commissioners in each district ¹¹²	24,831 (84.1%)	978 (3.3%)	3,676 (12.6%)	Adopted
To change manner of electing levee commis- sioners and to fix their terms of office ¹¹³	25,185 (85.7%)	1,004 (3.3%)	3,296 (11.0%)	Adopted
1932: Total vote 146,029:				
To change beginning of fiscal year from Oc- tober 1 to July 1	62,026 (42.5%)	21,230 (14.5%)	62,773 (43.0%)	Not adopted
Appropriation laws to have no validity after two months after end of fiscal year follow- ing year of passage	55,243 (37.8%)	21,371 (14.5%)	69,415 (47.7%)	Not adopted
Payment of poll tax to be only qualification for suffrage	68,202 (46.7%)	23,710 (16.2%)	54,117 (37.1%)	Not adopted
Age at which children must attend school changed from five to six	73,966 (50.5%)	21,412 (14.7%)	50,651 (34.8%)	Adopted
Progressive income and inheritance taxes	38,648 (26.4%)	41,180 (28.2%)	66,201 (45.4%)	Defeated

¹¹¹ Same amendment submitted in 1920.¹¹² Same amendment submitted in 1924.¹¹³ Combined subject matter of amendment submitted in 1920 but not adopted and one submitted in 1924 but defeated.

TABLE 8—*Continued*

Year, Total Vote Cast at Election, and Description of Proposed Amendment	Vote for Proposed Amendment	Vote against Proposed Amendment	Voting at Election but not Voting for or against Proposed Amendment	Result
1934: Total vote 58,419:				
Payment of poll tax to be only qualification for suffrage ¹¹⁴	39,427 (67.5%)	13,113 (22.4%)	5,879 (10.1%)	Adopted
To change beginning of fiscal year from October 1 to July 1 ¹¹⁵	34,033 (58.3%)	15,017 (25.7%)	9,369 (16.0%)	Adopted
Appropriation laws to have no validity after two months after end of fiscal year following year of passage ¹¹⁶	30,907 (53.0%)	16,636 (28.5%)	10,876 (18.5%)	Adopted
Progressive income and inheritance taxes ¹¹⁷	9,833 (16.8%)	38,605 (66.2%)	9,801 (17.0%)	Defeated
1940: Total vote 168,267:				
Allowing state to sell certain land owned by it	117,519 (69.5%)	14,196 (8.4%)	36,552 (22.1%)	Adopted ¹¹⁸

because they failed to obtain a majority of all votes cast for any purpose at the general election at which they were submitted to the voters. Of the latter eleven, four were not again submitted to the voters but seven were voted upon again. Of the seven submitted to the voters the second time, six were adopted, and one, the initiative and referendum proposal of 1912, again failed of adoption in 1914, although both times more votes were cast for it than against it.¹¹⁹ Thus, in five out of thirty-three distinct amendments the desire of a majority of the people sufficiently interested to vote was thwarted, four times because the previously proposed amend-

¹¹⁴ Same amendment submitted in 1932. ¹¹⁶ Ibid.

¹¹⁵ Ibid.

¹¹⁷ Same amendment defeated in 1924 and 1932.

¹¹⁸ The following election returns complete Table 7:

	Affirmative	Negative	Not Voting	Results
1942: Total vote 52,045:				
Creation of board of trustees of state schools	44,785 (86.1%)	4,250 (8.2%)	3,010 (5.7%)	Adopted
Providing for lease of township school land	42,750 (82.1%)	5,378 (10.2%)	3,917 (7.7%)	Adopted

¹¹⁹ Of the seven defeated the first time they were submitted, by a preponderance of negative votes upon the proposals themselves, three were abandoned, and four were again submitted. Of these four, three were later adopted. The amendment to authorize income and inheritance tax laws was defeated three times, in 1924, 1932, and 1934.

ments were not again proposed and once because it was again proposed and again failed.

The ballot used in the general elections of Mississippi contains several columns but not party columns. At the top of the left-hand column are the candidates for the most important office. Thereunder other offices and candidates are listed. After these offices, and the candidates therefor, the proposed amendments are listed. The amendments usually start about halfway down the second column, and generally run over into the third column. Thus amendments are partially at the bottom and partially at the right of the ballot. The texts of all proposed amendments are set out in full rather than being summarized as in Minnesota and most states.¹²⁰ The record for participation by general election voters, in the vote upon proposed amendments, is particularly good. Out of forty-three amendments voted upon,¹²¹ twenty-four, or 55 per cent, were voted upon by between 61 and 80 per cent of those voting in the general election; and fifteen, or 33 per cent, were voted upon by more than 80 per cent of those voting at the general election. Only four amendments were voted upon by less than 60 per cent of the voters voting at the general election and none was voted upon by less than 40 per cent.¹²²

The Mississippi record of constitutional amendment is good when compared with that of Minnesota and Illinois. Such a view accords with that expressed by one versed in governmental affairs in that state.¹²³ It must be remembered that the southern states have a select electorate, which probably has a greater interest in constitutional problems than is felt in the case of the average electorate in the northern states. Furthermore, Mississippi's record would not look at all good were it not for the feasibility of re-submitting an amendment which failed to obtain ratification. In Tennessee and Illinois¹²⁴ such an expedient is not as readily available because of limitations upon the number and frequency with which amendments may be submitted for ratification.†

¹²⁰ Information furnished through private correspondence with Mr. W. Wood, Secretary of State of Mississippi.

¹²¹ There were forty-four, but data as to the total vote cast at the election in 1900 is not available.

¹²² Figures apparent from Table 7.

¹²³ Professor H. B. Howerton, head of the Department of Political Science in the University of Mississippi, has stated, in a private letter, that the people of Mississippi are well satisfied with their ability to amend their constitution. He states: "We have had five or six amendments ratified in the past few years. It is true we have had two or three defeated, but my judgment is that we are able to amend the Constitution of Mississippi without a great deal of trouble, provided of course the subject matter is of potential general interest."

¹²⁴ See Tenn. Const. art. 11, § 3 and Ill. Const. art. 14.

† This article will be concluded in a forthcoming issue of the *Review*.