

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

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**No. 33 MD 2024**

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**DAVID H. ZIMMERMAN & KATHY L. RAPP,**  
**Petitioners,**

**v.**

**AL SCHMIDT, SECRETARY OF THE COMMONWEALTH, et al.,**  
**Respondents.**

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**BRIEF OF RESPONDENTS AL SCHMIDT AND DEPARTMENT  
OF STATE IN OPPOSITION TO PETITIONERS' APPLICATION  
FOR SUMMARY RELIEF**

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## INTRODUCTION

Petitioners wait until page 20 of their application for summary relief to acknowledge what they already conceded at the June 10, 2024, status conference: this Court is bound by the Supreme Court's decision in *In re Canvass of Absentee Ballots of 1967 Gen. Election*, 245 A.2d 258, 259 (Pa. 1968), which squarely addressed and rejected Petitioners' legal theory. That concession should resolve this matter.

While Petitioners spend much of their brief attacking the Supreme Court's reasoning, they misapprehend the tenants of constitutional interpretation, misconstrue the text, and misrepresent history. They provide this Court with no reason to ignore the precedent it is bound to follow. Nor do Petitioners even have standing to press these meritless claims because they cannot identify any discernable adverse impact from the location where absentee ballots are canvassed.

Because Petitioners do not have standing and their claims have no merit, the Court should deny Petitioners' application for summary relief, grant the Commonwealth Respondents' application for summary relief, and dismiss the Petition with prejudice.

## ARGUMENT

### I. Petitioners have not alleged any facts that establish standing.

In their summary relief briefing, Petitioners incorporate by reference the standing arguments they made in their preliminary objection briefing. (Pet. Br. in Supp. of Summ. R. (“Pet. Summ. R. Br.”) at 31 (citing Pet. Br in Opp. to Prelim. Objects. (“Pet. PO Br.”) at 14-22)). There, Petitioners acknowledge that they must demonstrate a substantial, direct, and immediate interest in this matter that surpasses the common interest of all citizens. (Pet. PO Br. 14-15). At summary relief, Petitioners further acknowledge that they must show the purported “constitutional violation has a harmful impact.” (Pet. Summ. R. Br. 32).

Petitioners have failed to identify *any* impact, much less a harmful one, from indisputably lawful absentee ballots’ being returned to and counted by county boards of elections. Because Petitioners will not experience any “discernable adverse effect,” they lack standing to bring this constitutional challenge. *See William Penn Parking Garage v. City of Pittsburgh*, 346 A.2d 269, 282 (Pa. 1975) (plurality); *see also*

*Pittsburgh Palisades Park, LLC v. Com.*, 888 A.2d 655, 662-63 (Pa. 2005). The Court should dismiss the Petition with prejudice.

*First*, the cursory claims of harm in Petitioners' preliminary objection briefing are not alleged in the Petition for Review and are insufficient in any event. Petitioners state summarily (Pet. PO Br. 15) that their elections will be "impacted by absentee ballots that are not canvassed in accordance with the Pennsylvania Constitution" and they will have to "adapt their campaigns to a void law." These claims are absent from their Petition for Review, which contains *no* allegations about how absentee ballots canvassed centrally by county boards of elections will negatively impact Petitioners' elections or campaigns. *See generally* Pet. ¶¶ 5-13. Because the Petition represents Petitioners' only factual allegations before the Court, Petitioners' belated and vague attempts to identify a legally sufficient interest cannot succeed.

Nor would Petitioners' alleged harms be well-pleaded if they were set forth in the Petition. *See Dorfman v. Pennsylvania Soc. Servs. Union-Loc. 668 of Serv. Emps. Int'l Union*, 752 A.2d 933, 936 (Pa. Cmwlth. 2000) (conclusory allegations and unwarranted inferences from facts are not well-pleaded and do not need to be accepted as true).



Petitioners still cannot explain how the location where absentee ballots currently are counted could have any effect on their campaigns or the outcome of their elections. There is no basis to infer that the current location of counting affects vote totals or how Petitioners campaign. Nor is there any basis to conclude that lawfully cast absentee ballots returned to and centrally counted by county boards of elections are invalid.

To the contrary, Petitioners do not dispute—and therefore concede (Pet. Summ. R. Br. 32)—that their requested relief would require them to expend *more* time and resources, since they would have to send observers to dozens of polling places instead of to the boards of elections offices for Berks, Lancaster, Warren, Forest, and Crawford Counties.

It is well established that a party who “will be better off” if the purportedly “unconstitutional law or practice is allowed to continue” lacks standing. (*Cf.* Pet. Summ. R. Br. 32). For example, in *Pittsburgh Palisades*, the Supreme Court held that petitioners lacked standing to bring a constitutional challenge to a provision of the Pennsylvania Race Horse Development and Gaming Act because “rather than disadvantaging Petitioners, it would appear that the legislation at issue

would only benefit them.” 888 A.2d at 660. Because petitioners could not show that the challenged legislation “harms them, or will harm them, personally in any way,” they could not establish a substantial, direct, or immediate interest. *Id.*; see also, e.g., *In re Hickson*, 821 A.2d 1238, 1243 (Pa. 2003) (holding that if a party “is not adversely affected in any way by the matter he seeks to challenge, he is not aggrieved thereby and has no standing to obtain a judicial resolution of his challenge”) (cleaned up). The same is true for Petitioners, who are “not adversely affected in any way” by where absentee ballots are currently counted.

The cases Petitioners cite only highlight their lack of standing as candidates. Petitioners invoke their First Amendment interest in candidacy (Pet. PO Br. 15-16) but do not establish how this interest is harmed by the location where absentee ballots are canvassed. Unlike plaintiffs in the cases they cite, Petitioners are not prevented from running for office or from campaigning. *Cf. Phillips v. City of Dallas*, 781 F.3d 772, 774 (5th Cir. 2015) (challenge by city employee to city law preventing city employees from running for office in a county overlapping with the city); *Davies v. Grossmont Union High Sch. Dist.*,

930 F.2d 1390, 1396 (9th Cir. 1991) (challenge by Davies to a contract provision preventing him from running for office).

Likewise, the location where absentee ballots currently are counted cannot change the outcome of Petitioners' elections. Where these ballots are counted will not change the total votes cast for Petitioners, and Petitioners offer no reason that lawfully cast absentee ballots centrally counted in county boards of elections offices would be invalid. *Cf. In re Shuli*, 525 A.2d 6, 7 (Pa. Cmwlth. 1987) (challenge by candidate Defino to opponent Shuli's nomination petition for lacking the requisite number of signatures); *In re Gen. Election-1985*, 531 A.2d 836, 838 (Pa. Cmwlth. 1987) (challenge by candidate to court decision suspending voting during natural disaster and resuming the election two weeks later, which could have placed candidate "in jeopardy of losing"); *Albence v. Higgin*, 295 A.3d 1065, 1087 (Del. 2022) (challenge by candidate to laws permitting mail-in voting and same-day voter registration, where law could permit casting and counting of legally invalid ballots).

*Second*, the Court should not countenance Petitioners' attempt to manufacture standing (Pet. PO Br. 17-18; Pet. Summ. R. Br. 31-32) by

speculating about paying “for legal advice related to issues raised in this action and contesting or opposing the inclusion of improperly returned and canvassed absentee ballots in the vote totals.” It is well established that “[m]ere allegations of speculative future harm are insufficient to establish standing.” *Gates v. City of Pittsburgh Historic Rev. Comm’n*, 254 A.3d 803, 810 (Pa. Cmwlth. 2021). Moreover, Petitioners “cannot manufacture standing merely by inflicting harm on themselves based on their fears of hypothetical future harm that is not certainly impending,” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 416 (2013), or by pointing to uncertainty created by their own lawsuit, *Toth v. Chapman*, No. 22-0008, 2022 WL 821175, at \*11-12 (M.D. Pa. Mar. 16, 2022). Threatening to sue in the future does not create standing to sue now—especially because Petitioners will still be unable to identify any harmful impact from lawful absentee ballots counted in county boards of elections offices.

*Finally*, Petitioners have not pleaded—and cannot establish—the limited set of facts that permit taxpayer standing. (*Cf.* Pet. PO. Br. 19-21); *see Application of Biester*, 409 A.2d 848, 851-52 (Pa. 1979) (holding that taxpayer standing is only permissible in “special circumstances”).

To satisfy this “narrow exception” from traditional standing requirements, *Consumer Party of Pennsylvania v. Com.*, 507 A.2d 323, 328 (Pa. 1986), Petitioners must allege facts to establish five criteria: “(1) the governmental action in question would otherwise go unchallenged; (2) those who are directly and immediately affected by the action complained of benefit from the action and thus are not inclined to challenge it; (3) judicial relief is appropriate; (4) redress through other channels is unavailable; and (5) no other person is better suited to bring the challenge,” *Firearm Owners Against Crime v. City of Harrisburg*, 218 A.3d 497, 514 (Pa. Cmwlth. 2019). Even if a party successfully pleads the five criteria, “taxpayer standing is only appropriate in cases where the challenged action affects in some way the plaintiff’s status *as a taxpayer*.” *Id.*

Here, Petitioners do not even mention the five criteria in their Petition, much less provide any “description or explanation of how Petitioners fall within the *Biester* taxpayer exception.” *Atiyeh v. Com.*, No. 312 M.D. 2012, 2013 WL 3156585, at \*6 (Pa. Cmwlth. May 28, 2013). The absence of any relevant allegation is plainly “insufficient to

confer taxpayer standing upon Petitioners under the *Biester* standard.”  
*Id.*

In addition, Petitioners have failed to provide any reason why the location where absentee ballots are canvassed would adversely affect them in any way, much less *as taxpayers*. *Firearm Owners*, 218 A.3d at 514. Petitioners cannot credibly claim that the central canvass of absentee and mail ballots by 67 county boards of elections costs more than would a bifurcated system in which absentee ballots (but not mail ballots) are returned to and canvassed by 9,159 election districts. Because the challenged provisions of the Election Code “pose[] no harm” to Petitioners “*as taxpayers*,” taxpayer standing “is not an appropriate alternative basis to allow them” to bring this challenge. *Id.* at 515.

\* \* \*

Without well-pleaded harms to their elections and campaigns, Petitioners do not have standing as candidates; without well-pleaded harms to their status as taxpayers, Petitioners do not have taxpayer standing. The Court should grant Commonwealth Respondents’ application for summary relief and dismiss the Petition with prejudice for lack of standing.

**II. Petitioners concede that this Court is bound by Supreme Court precedent, which was rightly decided.**

As Commonwealth Respondents explain in their application for summary relief, Petitioners cannot establish that 25 P.S. §§ 3146.6(a) and 3146.8(a) clearly, palpably, and plainly violate Article VII, § 14, in part because the Supreme Court has already squarely addressed and rejected Petitioners' legal theory. (Com. Br. in Supp. of Summ. R. ("Com. Summ. R. Br.") at 20-33); see *In re Canvass of Absentee Ballots of 1967 Gen. Election*, 245 A.2d 258, 259 (Pa. 1968) ("*In re 1967 Gen. Election*"); *In re 223 Absentee Ballot Appeals*, 245 A.2d 265, 266 (Pa. 1968) (plurality).

Petitioners now concede (Pet. Summ. R. Br. 20) that these decisions are binding on this Court. Nonetheless, they attempt to discredit this precedent by misapprehending Pennsylvania's standard of constitutional interpretation, misconstruing the text, and misrepresenting a 1968 legislative change to the Election Code. Petitioners are wrong, and, in any event, cannot make the strong showing necessary to overrule established precedent.

**A. The Supreme Court rightly concluded that the Pennsylvania Constitution does not mandate counting absentee ballots at polling places.**

Petitioners' summary relief argument rests on their misconception of the text and misapprehension of the standard of constitutional interpretation. From this erroneous start, Petitioners argue that the Supreme Court's 1968 interpretation of Article VII, § 14 is flawed and contrary to the intent of the 1967 electorate. (Pet. Summ. R. Br. 13-14). But the 1968 Supreme Court properly considered the text and other relevant factors when it squarely addressed and rejected Petitioners' legal theory, and contemporaneous records only reinforce the Supreme Court's conclusion.

*First*, Petitioners misapprehend the standard of constitutional interpretation in Pennsylvania. (See Pet. Summ. R. Br. 10-12, 23-24, 27-29). The language of the Pennsylvania Constitution is the Court's "touchstone" and "must be interpreted in its popular sense, as understood by the people when they voted on its adoption." *Robinson Twp., Washington Cnty. v. Com.*, 83 A.3d 901, 943 (Pa. 2013) (quoting *Stilp v. Com.*, 905 A.2d 918, 939 (Pa. 2006)). The Court can also consider the history of the provision, "any relevant decisional law and



policy considerations argued by the parties, and any extrajurisdictional caselaw from states that have identical or similar provisions, which may be helpful and persuasive.” *Id.* at 944 (citing *Jubelirer v. Rendell*, 953 A.2d 514, 525 n.12 (Pa. 2008)); *see also Com. v. Edmunds*, 586 A.2d 887, 895 (Pa. 1991) (requiring litigants to brief the “1) text of the Pennsylvania constitutional provision; 2) history of the provision, including Pennsylvania case-law; 3) related case-law from other states; 4) policy considerations, including unique issues of state and local concern, and applicability within modern Pennsylvania jurisprudence”).

Pennsylvania courts have used these so-called “*Edmunds* factors in cases implicating the Pennsylvania Constitution” even “where no federal constitutional counterpart exists.” *Allegheny Reprod. Health Ctr. v. Pa. Dep’t of Hum. Servs.*, 309 A.3d 808, 867 n.48 (Pa. 2024) (citing *League of Women Voters v. Commonwealth*, 178 A.3d 737, 802-03 (Pa. 2018) (“certain of the *Edmunds* factors obviously may assist us in our analysis[ ]”); *Robinson Twp.*, 83 A.3d at 944 (“some of the *Edmunds* factors obviously are helpful in our analysis[ ]”); *McLinko*, 279 A.3d 539 (although not labelled as an *Edmunds* analysis, all four factors

discussed)); *see also Jubelirer*, 953 A.2d at 525 n.12 (“This is not to say that certain *Edmunds* factors would not be helpful.”).

Indeed, there is “a growing body of law and academic commentary concerning [ ] state constitutional interpretation” that recognizes that “the overarching task is to determine the intent of voters who ratified the constitution.” *Robinson Twp.*, 83 A.3d at 944 (quoting former Justice Thomas G. Saylor, *Prophylaxis in Modern State Constitutionalism: New Judicial Federalism and the Acknowledged Prophylactic Rule*, 59 N.Y.U. Annual Survey of Am. L. 283, 290-91 (2003)). To that end, “courts reference, *inter alia*, text; history (including constitutional convention debates, the address to the people, [and] the circumstances leading to the adoption of the provision); structure; underlying values; and interpretations of other states.” *Id.* (quoting Saylor, *supra*, at 290-91) (internal quotation marks omitted); *see also Allegheny Reproductive*, 309 A.3d at 889-90 (discussing the intent of the Equal Rights Amendment).

In 1968, the Supreme Court correctly interpreted Article VII, § 14 consistent with these principles. *In re 1967 Gen. Election*, 245 A.2d at 260-64. The Supreme Court considered relevant history (*id.* at 260-61),

policy considerations (*id.* at 261-64), caselaw from another state with an identical constitutional provision (*id.* at 264), and the text (*id.*). The Court ultimately concluded that “what the Constitution aims at is the counting of each vote not *by* the local elections district but in such a manner that the computation appears on the return *in* the district where it belongs.” *Id.* at 264 (emphases in Atlantic Reporter). This holding followed from the Supreme Court’s “conclusion that the framers of the controverted constitutional amendment never intended that the actual counting of the absentee ballots was to be performed in the local districts as against the more-convenient, expeditious, business-like operation of having them tabulated on a county-wide basis.” *Id.* at 263.

Although the Supreme Court did not discuss the provision’s plain language in depth, its holding is entirely consistent with the text, which requires the return and canvass of absentee *votes in* election districts, not the counting of absentee *ballots by* election districts. *See* Pa. Const. art. VII, § 14. It is also consistent with other provisions of the Pennsylvania Constitution, which broadly authorize the General Assembly “to prescribe any process by which electors may vote” so long as the “method preserves secrecy in voting.” *McLinko*, 279 A.3d at 577

(discussing Pa. Const. art. VII, § 4). It is Petitioners, not the Supreme Court, who misread the text by improperly replacing the word “vote” with the word “ballot.” (*E.g.*, Pet. Summ. R. Br. 13-14).<sup>1</sup>

*Second*, the crux of Petitioners’ textual argument is that the 1967 change from “may” to “shall” in the Pennsylvania Constitution changed the meaning of the phrase “and for the return and canvass of their votes in the election district in which they respectively reside” from an optional to a mandatory requirement. (Pet. Summ. R. Br. 12-19). According to Petitioners, prior to 1967, the Pennsylvania Constitution suggested two separate and optional exercises of legislative power: providing for a manner of absentee voting and providing “for the return and canvass of their votes in the election district in which they respectively reside.” (Pet. Summ. R. Br. 15-17). To summarize this argument is to refute it. Were Petitioners’ textual argument accurate, the General Assembly prior to 1967 could have provided “for the return and canvass of their [absentee] votes in the election district in which

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<sup>1</sup> Oddly, Petitioners also claim that the plain text actually “mandates that absentee ballots must be returned and reviewed/canvassed (*but not necessarily adjudicated in all their legal aspects*) in the election districts in which the absentee voters respectively reside.” (Pet. Summ. R. Br. 13-14 (emphasis added)). Petitioners provide no explanation for how their textual analysis located this limitation.

they respectively reside”—but not provided a manner of absentee voting. This makes no sense.

More importantly, the Supreme Court in 1968 treated the phrase “and for the return and canvass of their votes in the election district in which they respectively reside” as a mandatory requirement. *In re 1967 Gen. Election*, 245 A.2d at 263-64. It then interpreted that requirement to mean the “counting of each vote . . . in such a manner that the computation appears on the return *in* the district where it belongs.” *Id.* (emphasis in Atlantic Reporter). So too did the New Jersey court, which treated the identical phrase in the New Jersey Constitution as mandatory and interpreted it to mean “the counting of each vote so that it appear [*sic*] on the return in the district where it belongs.” *Miller v. Town of Montclair*, 108 A. 131, 134 (N.J. Sup. Ct. 1919).

Had our Supreme Court viewed the phrase as optional prior to 1967, as Petitioners contend, then the Court would have reached a different conclusion in each case, since one concerned an election after the change and one concerned an election before it. *In re 1967 Gen. Election*, 245 A.2d at 259 (addressing the November 1967 election); *In re*

*223 Absentee Ballot Appeals*, 245 A.2d at 265 (addressing the November 1966 election). But the Court did not do so.

*Finally*, contemporaneous records preceding the 1967 constitutional amendment do not show any “obvious intent” by the electorate to “require[e] the Legislature to pass legislation providing for the return and review/canvass of absentee ballots in the local election district.” (*Cf.* Pet. Summ. R. Br. 14). To the contrary, all contemporaneous records of which Commonwealth Respondents are aware describe the change as mandating the General Assembly to provide for *absentee voting*, without any discussion of changing where absentee ballots would be returned and canvassed.

For example, the Pennsylvania Bar Association 1966 Handbook on Constitutional Revision described the change as “largely technical”: “The present Constitution contains three sections on absentee voting. These are consolidated into one which would be Section 14 of the new Article.” Pa. Bar Ass’n, *Pennsylvania Constitutional Revision 1966 Handbook*, at 43 (Sept. 12, 1966) (retrieved from microfiche available at Jenkins Law Library<sup>2</sup>) (attached as **Exhibit C**). Several years earlier,

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<sup>2</sup> <https://catalog.jenkinslaw.org/record=b120402>.

the Bar Association described the revision as “stat[ing] that the Legislature *shall* provide for absentee voting, ‘including those who are in actual military service of the United States or of this Commonwealth.’” *Revised Constitution for Pennsylvania (“Project Constitution”)*, 34 Pa. Bar Ass’n Q. 147, 293 (Jan. 1963) (retrieved from microfiche available at Jenkins Law Library<sup>3</sup>) (attached as **Exhibit D**).

The Pennsylvania Council of Republican Women’s Legislative Advisory Committee described the proposed constitutional amendment as “a consolidation of Sections 18 and 19 of present Article VIII. Proposed Section 15 states that the Legislature shall provide for absentee voting, ‘including those who are in actual military service of the United States or of this Commonwealth.’ The word ‘unavoidably’ before the word ‘absent’ is removed.” Council of Republican Women Leg. Advisory Comm., *Crusade Constitution A Guide for Study of Proposals for a Revised Constitution for Pennsylvania Presented to the 1963 Session of the Legislature by the Pennsylvania Bar Association (Part II)*,

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<sup>3</sup> [https://encore.jenkinslaw.org/iii/encore/record/C\\_\\_Rb1167114?lang=eng](https://encore.jenkinslaw.org/iii/encore/record/C__Rb1167114?lang=eng).

at 15 (May 15, 1963) (retrieved from microfiche available at Jenkins Law Library<sup>4</sup>) (attached as **Exhibit E**).

And a publication by A Modern Constitution for Pennsylvania just months before the electorate voted summarized the proposed amendment simply as “requir[ing] the Legislature to provide for absentee voting.” Modern Constitution for Pennsylvania, *Halfway There: An Interim Report on Constitutional Revision*, at 8 (Jan. 1967) (retrieved from microfiche available at Jenkins Law Library<sup>5</sup>) (attached as **Exhibit F**).

These contemporaneous records are significant because at the time of the 1967 amendment, absentee ballots were returned to and canvassed by county boards of elections. (Com. Summ. R. Br. 7-8). As a result, the understanding of the “people when they voted on” the adoption of the 1967 amendment was only that it would require the General Assembly to provide for absentee voting, not that it would mandate a change in where absentee ballots were returned and counted. *See Robinson Twp.*, 83 A.3d at 943.

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<sup>4</sup> [https://encore.jenkinslaw.org/iii/encore/record/C\\_\\_Rb1127021?lang=eng](https://encore.jenkinslaw.org/iii/encore/record/C__Rb1127021?lang=eng).

<sup>5</sup> [https://encore.jenkinslaw.org/iii/encore/record/C\\_\\_Rb1167111?lang=eng](https://encore.jenkinslaw.org/iii/encore/record/C__Rb1167111?lang=eng).



**B. The 1968 changes to the Election Code do not support Petitioners' theory.**

Petitioners read too much into the General Assembly's 1968 decision to have election districts canvass absentee ballots. (*Cf.* Pet. Summ. R. Br. 6-8, 19, 27-28, 30). To the contrary, this legislative change illustrates why Petitioners' argument is flawed.

*First*, absentee voters have *never* returned absentee ballots to election districts in the 75 years since the words “and for the return and canvass of their votes in the election district in which they respectively reside” were first added to the Constitution. Petitioners misrepresent what changed in 1968. (*See* Pet. Summ. R. Br. 6-8, 19, 27-28, 30). Between 1968 and 2019, the Election Code still required absentee voters to *return* absentee ballots to the county boards of elections:

*The county boards of election, upon receipt of official absentee ballots in such envelopes, shall safely keep the same in sealed or locked containers until they distribute same to the appropriate local election districts in a manner prescribed by the Secretary of the Commonwealth.*

Act of Dec. 11, 1968, P.L. 1183, 1198, No. 375 (emphasis added)

(attached as **Exhibit G**) (amending Section 1308(a) of the Election

Code). County boards of elections then distributed the absentee ballot

envelopes to the voter's respective election district "concurrently with the distribution of the other election supplies." *Id.* at P.L. 1199.<sup>6</sup>

What Petitioners ask for, therefore, would be a sea change in Pennsylvania elections. For the first time, more than 9,000 polling places, most of which are in public buildings, would have to receive and store absentee ballots in the weeks ahead of Election Day. This would create obvious security and custody concerns with no concomitant benefit. (*See* Com. Summ. R. Br. 30).

*Second*, the General Assembly required election districts to canvass absentee ballots at a time when no-excuse mail-in voting did not exist. When the General Assembly created mail-in voting in 2019, it aligned the procedures for requesting, voting, returning, and canvassing

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<sup>6</sup> Petitioners also misrepresent what changed in 2019. Act 77 did not "delete[] all of the provisions of the 1968 Election Code related to the canvassing of absentee ballots" and create "[t]wo new provision." (*Cf.* Pet. Summ. R. Br. 8). Instead, Act 77 again amended Section 1308(a) of the Election Code to have county boards of elections canvass absentee ballots:

The county boards of election, upon receipt of official absentee ballots in sealed official absentee ballot envelopes as provided under this article and mail-in ballots as in sealed official mail-in ballot envelopes as provided under Article XIII-D, shall safely keep the ballots in sealed or locked containers until they are to be canvassed by the county board of elections.

Act of Oct. 31, 2019, P.L. 552, § 7, No. 77.

mail-in ballots with the procedures for absentee ballots. (Com. Summ. R. Br. at 4-5); Act of Oct. 31, 2019, P.L. 552, §§ 6-8, No. 77. Petitioners do not dispute that their requested relief would apply only to absentee ballots, not mail-in ballots. But bifurcating absentee voting from mail-in voting would “create chaotic and highly disruptive situations” for county boards of elections and for voters. *In re 1967 Gen. Election*, 245 A.2d at 263. In the face of these significant and obvious concerns, Petitioners have failed to identify any practical countervailing benefit.

*Finally*, the 1968 change is entirely consistent with the Supreme Court’s 1968 decisions. The Supreme Court held in *In re 1967 Gen. Election* and *In re 223 Absentee Ballot Appeals* that the Constitution does not *require* absentee voters to return absentee ballots to election districts to be counted. But the Constitution does not preclude the General Assembly from choosing to impose such a requirement. The Supreme Court hypothesized that the General Assembly could amend the Election Code to require absentee ballots returned to election districts a day before election day—but crucially, held three sentences later that requiring absentee ballots be returned to and canvassed by county boards of elections “contains no inherent constitutional

infirmities.” *In re 223 Absentee Ballot Appeals*, 245 A.2d at 266. In other words, the Supreme Court recognized that the Constitution does not require absentee ballots to be canvassed by election districts, but does not prohibit it either.

The legislative history confirms that the General Assembly agreed. In the legislative journals, the General Assembly does not suggest it changed the location of absentee ballot canvassing in response to the 1967 constitutional amendment or the Supreme Court’s decisions. 1967 House Leg. J. 1614, 1645, 1688; 1968 House Leg. J. 67, 139, 345, 640, 864-66, 873-87, 906-12, 914, 935-41, 1622, 1643-47, 1743-44; 1968 Sen. Leg. J. 450, 489, 491, 504-05, 552-53, 601-06, 628, 689-92, 702. Were the members of the General Assembly motivated by either, it is reasonable to expect they would have mentioned it.

**C. There is no reason for the Supreme Court to revisit its 1968 decisions.**

Petitioners concede that this Court is bound by the Supreme Court’s 1968 decisions. While they argue that these decisions should be revisited on appeal (Pet. Summ. R. Br. 19-30 & n.20), this Court cannot overrule Supreme Court precedent and there is no reason for this Court to address arguments aimed at the Supreme Court. In any event, stare

decisis will further compel rejecting Petitioners’ attack on sensible election administration.

Reversing a decision requires “a special justification, over and above the belief that the precedent was wrongly decided.”

*Commonwealth v. Alexander*, 243 A.3d 177, 196 (Pa. 2020) (quoting *Allen v. Cooper*, 140 S. Ct. 994, 1003 (2020)). Whether a court should “overrule prior precedent depends on a number of factors,” including the age of the challenged decision, “the quality of its reasoning, the workability of the rule it established, its consistency with other related decisions, and reliance on the decision.” *Id.* (quoting *Freed v. Geisinger Med. Ctr.*, 5 A.3d 212, 215 (Pa. 2010); *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2177-78 (2019)) (cleaned up).

Petitioners urge the Supreme Court to revisit its 1968 decisions based primarily on what they argue is flawed reasoning. (Pet. Summ. R. Br. 22-30). But as discussed, *supra* Part II.A, the Supreme Court properly interpreted Article VII, § 14 consistent with text, history, extrajudicial caselaw, and policy considerations. And the Supreme Court did so while applying the correct legal standard. *In re 223 Absentee Ballot Appeals*, 245 A.2d at 267 (“We fail to see in the present

litigation a clear, palpable and plain violation of the Constitution.”); *In re 1967 Gen. Election*, 245 A.2d at 260. That those cases involved a request to invalidate lawfully cast absentee ballots, (Pet. Summ. R. Br. 25-26), does not change the strength of the Court’s constitutional interpretation.

Moreover, the Supreme Court’s 1968 decisions have stood for more than half a century and formed a foundation against which the General Assembly has revised the Election Code. *See supra* Part II.B; Act of Oct. 31, 2019, P.L. 552, § 7, No. 77. Petitioners’ cavalier claim that overruling the 1968 decisions “would not upset the expectation or reliance interests of the electors or the Respondent County Boards of Elections,” (Pet. Summ. R. Br. 30), is too absurd to be credited, (*see, e.g.*, Com. Summ. R. Br. 29-31). Indeed, that not a single County Respondent sides with Petitioners says everything about how disruptive their proposed relief would be.

Finally, the Supreme Court’s interpretation is eminently workable: the Constitution requires the General Assembly to ensure that absentee votes are counted “in such a manner that the computation appears on the return *in* the district where it belongs,” *In*

*re 1967 Gen. Election*, 245 A.2d at 264 (emphasis in Atlantic Reporter), but does not prescribe the precise way the General Assembly must do so. This has given the General Assembly flexibility to amend the Election Code consonant with the times.

Petitioners, by contrast, seek an entirely unworkable rule under which County Respondents continue to receive and canvass mail ballots but must arrange for 9,159 polling places to receive and canvass absentee ballots. The Constitution does not concern itself with this level of procedural detail. *See, e.g., McLinko*, 279 A.3d at 576 (noting that the term “offer to vote” in Article VII, § 1 is a “descriptive term, used to define the election district residency requirement,” not a procedural requirement mandating in-person ballot casting only). And Petitioners urge this result despite never identifying any practical rationale for their interpretation of the Constitution.

\* \* \*

Petitioners cannot evade the precedential force of the Supreme Court’s decisions. Because the decisions were rightly decided and Petitioners cannot demonstrate that 25 P.S. §§ 3146.6(a) and 3146.8(a)

clearly, plainly, and palpably violate Article VII, § 14, the Court should dismiss the Petition with prejudice.

### CONCLUSION

Because Petitioners lack standing and concede that this Court must reject their claims, the Court should deny Petitioners' application for summary relief, grant the Commonwealth Respondents' application for summary relief, and dismiss the Petition for Review with prejudice.

July 7, 2024

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## CERTIFICATION REGARDING PUBLIC ACCESS POLICY

I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

Date: July 7, 2024

/s/ Aimee D. Thomson

Aimee D. Thomson

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## CERTIFICATE OF LENGTH

I certify that this brief complies with the word count requirement set forth in Pennsylvania Rule of Appellate Procedure 2135(a)(1).

Excluding matters identified in Pennsylvania Rule of Appellate Procedure 2135(b), this brief is 5,042 words. I have relied on Word's word count function to determine the length of this brief.

Date: July 7, 2024

/s/ Aimee D. Thomson

Aimee D. Thomson

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# EXHIBIT C

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**PENNSYLVANIA CONSTITUTIONAL  
REVISION**

**1966 HANDBOOK**

Containing

**INTRODUCTORY NOTE** by W. Walter Braham,  
President, Pennsylvania Bar Association

**PROJECT CONSTITUTION** — Amendments on:

Public Officers—Finally Adopted,  
May 1966

Private Corporations—to be  
Voted on at the  
November 1966 Election

Bill of Rights  
The Legislature  
Legislation  
The Executive  
Elections  
Amendments  
Railroads and Canals

Must be Adopted for the  
second time early in the 1967  
Session of the Legislature to  
be on the Ballot at the May  
Primary in 1967

Legislative Reapportionment  
The Judiciary (2 amendments)  
Taxation and State Finance  
Local Government

Must be Adopted by the  
Legislature in 1967 or 1968  
and Again in 1969 to be on  
the Ballot in 1969

**COMMENTS** by William A. Schnader, Chairman,  
Pennsylvania Bar Association's Special  
Committee on Project Constitution

**PENNSYLVANIA BAR ASSOCIATION**  
401 North Front Street  
Harrisburg, Pennsylvania

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**INTRODUCTORY NOTE**

By

W. WALTER BRAHAM

President, Pennsylvania Bar Association

The Pennsylvania Bar Association feels that as a part of its on-going campaign for the revision of the Pennsylvania Constitution, its members and other interested parties must be kept informed of the status of "Project Constitution".

**PROJECT CONSTITUTION**

Project Constitution was an undertaking by the Pennsylvania Bar Association to study Pennsylvania's ancient constitution and make recommendations for its modernization. The project was proposed by then Vice-President William A. Schneider and undertaken by the Association's Board of Governors in 1961 when the Constitution of 1874 was 87 years old. It is now almost 92 years old.

The project was undertaken because a very able commission authorized by the Legislature in 1957 made an excellent report in 1959 to which the Legislature paid practically no attention. Judge Robert E. Woodside was Chairman of this Commission which has been popularly known as the Woodside Commission.

The Bar Association determined to study the Constitution in the light of the Woodside Commission's report and to make the modernization of Pennsylvania's State Constitution a goal which must be achieved.

The first step was the appointment of 14 committees consisting of upwards of 300 of Pennsylvania's top judges and lawyers. To each committee was assigned a portion of the Constitution for study and each committee was directed if possible to make an interim report at the Summer Session of the Bar Association in 1962 and a final report at the Annual Meeting of the Association in Pittsburgh at the end of January, 1963.

The Committees worked faithfully. Practically the entire time of the 1963 Annual Meeting in Pittsburgh was devoted to debating the various committee reports.

The Committees recommended that the Constitution be amended article by article. To do this, 12 amendments were proposed, 11 of which would provide Pennsylvanians with a modernized Constitution and one of which would repeal an article which has become obsolete in its entirety.

It was the belief of the Committees that with one or two exceptions the 11 articles which were proposed would be non-controversial.

In addition, 12 short amendments were proposed, each intended to amend a single section of the Constitution. These 12 amendments admittedly were controversial.

No action on the proposed amendments was taken at the Pittsburgh meeting. Instead, it was resolved that a referendum should be conducted among all of the members of the Bar Association, asking them to vote "yes" or "no" on the 12 article by article amendments and also on the 12 short amendments. The members were also given an opportunity to vote their preference for the amendment of the Pennsylvania Constitution by a convention or by the article by article method.

The referendum was conducted promptly after the annual meeting in February and resulted in the overwhelming approval of all of the article by article amendments and the approval of all of the shorter controversial amendments except one. Also, by a vote of more than two to one, the members expressed a preference for the article by article method of amendment, rather than for a constitutional convention.

Also at the Pittsburgh meeting, the board of Governors of the Association created a Special Committee on Project Constitution. Desmond J. McTighe, the incoming President of the Association, appointed William A. Schnader, the outgoing President, to be its Chairman. This Committee was given broad powers to make changes which might be suggested by, or which might make the several amendments more acceptable to, the Legislature; and the Committee has from time to time exercised this power and reported its actions to the Association, usually by the circulation of the latest version of the amendments among all the members of the Association.

Notwithstanding the fact that the Bar Association's program was well-known, both political parties in the summer of 1962 declared themselves in favor of a constitutional convention and when the Bar Association's 12 article by article amendments were introduced into the Legislature in March, 1963, they were shunted aside because the Legislature was contemplating the enactment of a Bill calling for a referendum (the sixth since the present Constitution was adopted) on the question whether a constitutional convention should be held. Hence, instead of debating the merits of the 12 amendments both the Legislature and the public debated the desirability of a constitutional convention until the November election when the constitutional convention was, as in all previous cases, defeated.

Promptly after the defeat of the convention, Governor Scranton on his own initiative created a bi-partisan commission of high quality and named as its chairman William A. Schnader, Chairman of the Bar Association's Special Committee on Project Constitution. This committee got down to business immediately, held meetings frequently and made its report in January, 1964.

The basis for its study was the Bar Association's package of 12 article by article amendments. These were recommended to the Governor with but a few modifications.

The Governor caused the introduction of the 12 amendments to be made into the 1964 session of the Legislature and urgently recommended the Legislature to adopt them. However, the Legislature adopted only 2 of the 12 amendments, those entitled Public Officers and Private Corporations.

In the fall of 1964 the Special Committee on Project Constitution reviewed the ten amendments which had not been adopted by the 1964 Legislature. Several modifications in the provisions of the proposed amendments were made and on November 2, 1964 the Special Committee, with the approval of the Board of Governors of the Bar Association, submitted to Governor Scranton a report containing the ten amendments as the Special Committee recommended them for introduction into the 1965 Legislature. Copies of the recommendations to the Governor were sent to every member of the Bar Association.

At the Annual Meeting of the Bar Association in Harrisburg in January, 1965, Chief Justice Bell made some rather sharp criticisms of the Bar Association's proposed Judiciary Article as it had been recommended to Governor Scranton and was ready for introduction into the Legislature. The Board of Governors of the Bar Association felt that criticisms by the Chief Justice should not be ignored, and therefore withheld introduction of the Judiciary Article pending its further consideration by the Sub-committee which had drafted it.

The two amendments which had been adopted by the 1964 Legislature were again adopted by the 1965 Legislature as Senate Bills Nos. 534 and 538. Each of them was adopted almost unanimously by both Houses of the Legislature — one of them was adopted by the voters at the 1966 May primary and the other will be on the ballot at the 1966 November election.

The remaining nine amendments were introduced into the Senate which adopted all of them, with a few modifications, and 4 of the 9 measures were also adopted by the House of Representatives. These 4 measures were Senate Bill No. 530 — Bill of Rights — which passed both Houses unanimously;

Senate Bill No. 531 — The Legislature — which passed the Senate 27 to 20, and the House 191 to 9, the Senate concurring in certain House amendments unanimously; Senate Bill No. 532 — Legislation — which passed the Senate 27 to 20 and the House 201 to 1, the Senate concurring unanimously in certain House amendments; Senate Bill No. 539 — Repealing the Article on Railroads and Canals — which passed the Senate 48 to 0, and the House 199 to 3; with the Senate concurring unanimously in certain House amendments.

Thus, at the close of the 1965 session of the Legislature, that body had adopted, either once or twice, 6 of the 12 amendments constituting the program of the Pennsylvania Bar Association and the Governor's Commission on Constitutional Revision.

In 1966, the 6 remaining amendments (including again the amendment which would give Pennsylvania a new Judiciary Article) were again introduced, plus two supplemental amendments which had never before been introduced as a part of the Bar Association's program.

One of these would render valid under the Constitution of the United States, Sections 15 and 16 of Article II of the Pennsylvania Constitution and would include in Section 18 more effective provisions for legislative reapportionment after each federal census.

The other new amendment was one of the 11 supplemental short amendments which were approved on the Bar Association's referendum in 1963. The Judiciary Article as again introduced into the Legislature would render mandatory the Merit Plan for Selecting Judges (sometimes called the American Bar Association Plan and sometimes the Missouri Plan) only as to appellate judges and judges in Allegheny and Philadelphia Counties. The supplemental amendment would render the new plan mandatory throughout the State.

The introduction of the amendments in 1966 was postponed almost to the last minute in an effort to obtain bi-partisan sponsorship for them. Under the present Constitution amendments must be advertised three months before the November election, at which a new House of Representatives is to be elected, to render them eligible for re-adoption by the next Legislature.

When efforts to obtain bi-partisan sponsorship failed, all of the amendments were introduced into the Senate with Republican sponsors only. The Democrats in the House of Representatives promptly began to break down our article by article

amendments into what have been section by section amendments, thus increasing the number of amendments necessary to accomplish the same results probably tenfold. However before this process was completed the leaders of the two Houses got together and agreed that three of the Senate amendments would be adopted in 1966 with modifications but that as Republicans had sponsored all the amendments adopted in 1965, the Senate would amend three bills which had been passed by the Democratic-controlled House, to embody three modified article by article amendments which had been introduced into the Senate.

Accordingly, the bills adopted were House Bill No. 401 — The Executive — passed in the House 198-0 — adopted with amendments in the Senate 48-0, the House concurring unanimously in the Senate amendments; House Bill No. 422 — Elections — adopted in the house 198-0 and in the Senate 48-0, the House concurring unanimously in the amendments made by the Senate; House Bill No. 438 — Amendments — adopted in the House 181-19 and in the Senate with amendments 48-0, the House concurring in the Senate amendments 157-38.

This leaves unadopted by both Houses Senate Bill No. 192 — Taxation and State Finance — which passed the Senate 28-20; Senate Bill No. 193 — Local Government — which after two readings in the Senate was recommitted to committee; Senate Bill No. 195 — Legislative Reapportionment — which was not reported out of committee; Senate Bill No. 196 — The Judiciary — which was not reported out of committee; and Senate Bill No. 197 — Extending the Merit System of Selecting Judges to all Counties of the State — which did not come out of committee.

We cannot conclude this very sketchy history of Project Constitution without saying a few words about "A MODERN CONSTITUTION FOR PENNSYLVANIA, INC." — a non-profit corporation organized in 1965 to assist in educating the public as to the measures necessary to give this State a modern Constitution.

The corporation is strictly bi-partisan. Its President is Richard C. Bond of Philadelphia, a Republican and its most active Vice President has been Gustave G. Amsterdam, a Democrat, also of Philadelphia. The corporation has a large and excellent Board of Directors including men and women from every part of Pennsylvania. It also has a growing contributing membership. Its very energetic Executive Director is Robert Sidman of Harrisburg.



## PREVIOUS ATTEMPTS AT CONSTITUTIONAL REVISION

The present Pennsylvania Constitution was drafted by a convention which was authorized by a vote of the people in 1872. The convention convened in November 1872 and finished its work on November 3, 1873.

At a special election in December 1873 the people adopted the new Constitution by a large majority. It went into effect on January 1, 1874.

The first attempt at general revision of the present Constitution was in 1891, but the people defeated the calling of a convention by a 2½ to 1 vote.

No further effort to revise the entire Constitution was made for almost 30 years.

In 1919 Governor William C. Sproul, at the direction of the Legislature, appointed a commission of 25 eminent members to examine the Constitution and report to the Legislature. The Commission made its report in 1921, recommending a general revision of the Constitution and the calling of a constitutional convention. The 1921 Legislature submitted the question of calling a constitutional convention to the people but on September 20, 1921, the people voted "No".

Three years later the question of calling a convention was again submitted to the people at the regular November election. This time the vote against a convention was approximately 3 to 1.

In 1934 the platforms of both the Democratic and the Republican parties declared that a constitutional convention should be held. After his election Governor Earle appointed a bi-partisan Advisory Commission of approximately 75 distinguished citizens of the State who also recommended the calling of a constitutional convention. But at an election held September 17, 1935, the proposal was killed by approximately 200,000 votes.

The 1953 Legislature passed a law calling for a referendum on a constitutional convention. The referendum was held on November 3, 1953, but for the fifth time the voters rejected a convention, this time by about 150,000 votes.

In 1957 the Legislature authorized the appointment of a Commission on Constitutional Revision (the Woodside Commission) consisting of five members appointed by the Governor, five members appointed by the President pro tempore of the Senate, and five members appointed by the Speaker of the House of Representatives. This was an excellent Commission and in its 1959 Report, it made many recommendations for the improvement of the Constitution, but it did not recommend the calling of a constitutional convention. As before stated, the

Legislature paid very little attention to the commission's recommendations.

In 1962 the platforms of both parties having declared for a constitutional convention, an act was passed by the 1963 Legislature providing for a referendum at the November 1963 election. A vigorous campaign was conducted on behalf of the convention in which Governor Scranton took a prominent part as did Milton Shapp, the 1966 Democratic candidate for Governor. This time the vote was close, but again the people said "No".

The Pennsylvania Bar Association has been actively promoting the cause of constitutional revision, at least since the year when Owen J. Roberts, former Justice of the Supreme Court of the United States, was President of the Association. I know that in 1950 I became Chairman of the Committee on the Pennsylvania Constitution, appointed by the president of the Bar Association. Continuously we advocated a constitutional convention. Constantly this was defeated.

In contrast to our unsuccessful efforts to obtain revision by the convention method, the method of revising the constitution article by article has been singularly successful. The Legislature has approved all except four of the essential resolutions and has thus cleared the way for a more orderly and reasonable consideration of the remainder.

There is a great advantage in enabling the elector to vote on segments of the Constitution — Articles — rather than to be compelled to vote on an entire new Constitution at one time. The article by article method of constitutional revision offers this advantage over revision by a constitutional convention.

## SHOULD THERE BE A SEVENTH REFERENDUM?

Just as this booklet was being readied for the printer, the press reported that the Republican State Committee had inserted a plank in the 1966 Republican platform favoring a seventh referendum on the calling of a constitutional convention. However, the report went on to say that, in an obvious (but perhaps futile) effort to satisfy the voters who are against graduated income taxes it is proposed that a constitutional convention, if authorized, shall have no power to propose anything which would permit the Legislature at any time to impose a graduated income tax.

This reported proposal for a constitutional convention was a complete surprise to the Pennsylvania Bar Association as well as to A Modern Constitution for Pennsylvania, Inc., both of which organizations have been working for the amendment of the Pennsylvania Constitution article by article.

Never in the history of Pennsylvania was there less need for a constitutional convention than now. As has been shown under the history of Project Constitution, the Bar Association and the Governor's Commission on Constitutional Revision submitted to Governor Scranton 12 amendments which, if adopted, will completely revise the Constitution. Of these 12 amendments, one has been finally approved by the people at the May 1966 primaries and one, having been adopted by two Legislatures, will appear on the ballot in November 1966. Seven more of the Bar Association's amendments have been adopted by one Legislature and await only adoption by a second Legislature and approval by the electorate. These seven amendments can appear on the ballot at the 1967 primary elections on May 16, 1967 if the new Legislature to be elected this fall adopts them promptly when it convenes next year. These amendments must be advertised three months before they appear on the ballot so that they will have to be adopted by the 1967 Legislature not later than February 6, 1967 in order to have them on the ballot on May 21st. The Secretary of the Commonwealth must have 10 days to arrange for the required advertising all over the State.

In my Message to the Pennsylvania Bar Association in the October issue of the Pennsylvania Bar Association QUARTERLY, I am making the proposal that if a constitutional convention's deliberations and recommendations can be limited by the statute under which the convention is called, and if the 1967 Legislature sees fit for the seventh time in the history of the present Constitution, to authorize a referendum on calling a constitutional convention, the convention should be limited to the consideration of the four subjects upon which the Legislature has thus far been unable to agree. These subjects are judicial reform, state finance (with an express restriction that the convention shall not authorize the imposition of graduated income taxes), local government and legislative apportionment.

By doing this, the Legislature would not discard agreements already reached between the House of Representatives and the Senate as to the amendment of 12 of the 18 Articles and part of another Article of our present Constitution. The Articles to which I refer are Articles I, II (in part), III, IV, VI, VII, VIII, X, XI, XII, XVI, XVII and XVIII.

Assuming that the 1967 Legislature adopts for the second time, and the people adopt at the polls, the amendments which have already been adopted by either the 1965 or 1966 Legislatures, to complete the modernization of our Constitution, the Legislature must agree on (and the voters must approve)

revisions of only Articles IX, XIII, XIV and XV, and sections 16, 17 and 18 of Article II.

Not one of the several State Administrations which recommended the calling of a constitutional convention in the past did so in the midst of a drive to have the Legislature propose amendments to the people article by article. The present reported proposal of a convention is particularly unfortunate because of the fact that so much in the way of revision has already been accomplished.

#### COMMENTS ON THE ARTICLES WHICH FOLLOW

The comments to the amendments which appear on the following pages were written by William A. Schnader, Chairman of the Special Committee on Project Constitution.

September 12, 1966

### III

**SEVEN AMENDMENTS WHICH HAVE BEEN ADOPTED BY THE 1965 OR 1966 SESSIONS OF THE LEGISLATURE AND WHICH WILL BE ELIGIBLE TO BE VOTED UPON BY THE ELECTORATE IF RE-ADOPTED BY THE 1967 LEGISLATURE.**

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## A JOINT RESOLUTION

Proposing that article eight of the Constitution of the Commonwealth of Pennsylvania relating to suffrage and elections be amended.

THE GENERAL ASSEMBLY OF THE COMMONWEALTH OF PENNSYLVANIA HEREBY RESOLVED AS FOLLOWS:

Section 1. The following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the provisions of the eighteenth article thereof:

That the number and title of article eight and sections one, two, three, seven, twelve, fourteen, fifteen, seventeen and nineteen thereof be amended to read:

### ARTICLE [VIII]

#### [SUFFRAGE AND] ELECTIONS

Section 1. *Qualifications of Electors.*—Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.

1. He or she shall have been a citizen of the United States at least one month.

2. He or she shall have resided in the State [one year (or, having previously been a qualified elector or native born citizen of the State, he or she shall have removed therefrom and returned, then six months)] *ninety (90) days* immediately preceding the election.

3. He or she shall have resided in the election district where he or she shall offer to vote at least *sixty (60) days* immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within *sixty (60) days* preceding the election.

Section 2. *General Election Day.* — The general election shall be held biennially on the Tuesday next following the first Monday of November in each even-numbered year, but the General Assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto: Provided, That such election shall always be held in an even-numbered year.

Section 3. *Municipal Election Day; Offices to be filled on Election Days.* — All judges elected by the electors of the State at large may be elected at, either a general or municipal election, as circumstances may require. All elections for judges of the courts for the several judicial districts, and for county, city, ward, borough, and township officers, for regular terms of service, shall be held on the municipal election day; namely, the Tuesday next following the first Monday of November in each odd-numbered year, but the General Assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto: Provided, That such elections shall be held in an odd-numbered year: Provided further, That all judges for the courts of the several judicial districts holding office at the present time, whose terms of office may end in an odd-numbered year, shall continue to hold their offices until the first Monday of January in the next succeeding even-numbered year.

• • •

Section [7] 6. *Election and Registration Laws.* — All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State, except that laws regulating and requiring the registration of electors may be enacted to apply to cities only, provided that such laws be uniform for cities of the same class, and except further, that the General Assembly shall by general law, permit the use of voting machines, or other mechanical devices for registering or recording and computing the vote, at all elections or primaries, in any county, city, borough, incorporated town or township of the Commonwealth, at the option of the electors of such county, city, borough, incorporated town or township, without being obliged to require the use of such voting machines or mechanical devices in any other county, city, borough, incorporated town or township, under such regulations with reference thereto as the General Assembly may from time to time prescribe. The General Assembly may, from time to time, prescribe the number and duties of election officers in any political subdivision of the Commonwealth in which voting machines or other mechanical devices authorized by this section may be used.

• • •

Section [12] 10. *Viva Voce Elections.* — All elections by persons in a representative capacity shall be viva voce or by

*automatic recording device publicly indicating how each person voted.*

• • •

Section [14] 11. *Election Officers.* — District election boards shall consist of a judge and two inspectors, who shall be chosen at municipal elections for such terms as may be provided by law. Election officers shall be privileged from the judge and one inspector, and each inspector shall appoint one clerk. The first election board for any new district shall be selected, and vacancies in election boards filled, as shall be provided by law. Election officers shall be privileged from arrest upon days of election, and while engaged in making up and transmitting returns, except upon warrant of a court of record or judge thereof, for an election fraud, for felony, or for wanton breach of the peace. In cities they may claim exemption from jury duty during their terms of service.

Section [15] 12. *Disqualifications for Service as Election Officer.* — No person shall be qualified to serve as an election officer who shall hold, or shall within two months have held any office, appointment or employment in or under the government of the United States, or of this State, or of any city, or county, or of any municipal board, commission or trust in any city, save only [justices of the peace and aldermen] notaries public and persons in the [militia service of the State] national guard or in a reserve component of the armed forces of the United States; nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general law.

• • •

Section [17] 13. *Contested Elections.* — The trial and determination of contested elections of electors of President and Vice-President, members of the General Assembly, and of all public officers, whether State, judicial, municipal or local, and contests involving questions submitted to the electors at any election shall be by the courts of law, or by one or more of the law judges thereof [ ; the] The General Assembly shall, by general law, designate the courts and judges by whom the several classes of election contests shall be tried, and regulate the manner of trial and all matters incident thereto; but no such law assigning jurisdiction, or regulating its exercise, shall

apply to any contest arising out of an election held before its passage.

• • •

Section [19] 14. *Absentee Voting.* — The Legislature [may] shall, by general law, provide a manner in which, and the time and place at which, qualified [voters] electors who may, on the occurrence of any election, be [unavoidably] absent from the State or county of their residence, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

Section 2. The following sections of article eight of the present Constitution of the Commonwealth of Pennsylvania are hereby renumbered: eight to seven, ten to eight and eleven to nine.

Section 3. The existing sections six, nine, thirteen, sixteen and eighteen of article eight of the present Constitution which read as hereinafter set forth, are hereby repealed.

[Section 6. Whenever any of the qualified electors of this Commonwealth shall be in actual military service under a requisition from the President of the United States or by the authority of this Commonwealth, such electors may exercise the right of suffrage in all elections by the citizens, under such regulations as are or shall be prescribed by law, as fully as if they were present at their usual places of election.]

• • •

[Section 9. Any person who shall, while a candidate for office, be guilty of bribery, fraud, or willful violation of any election law, shall be forever disqualified from holding an office of trust or profit in this Commonwealth; and any person convicted of willful violation of the election laws shall, in addition to any penalties provided by law, be deprived of the right of suffrage absolutely for a term of four years.]

• • •

[Section 13. For the purpose of voting no person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while employed in the service, either civil or military, of this State or of the United States, nor while engaged in the navigation of the waters of

the State or of the United States, or on the high seas, nor while a student of any institution of learning, nor while kept in any poor house or other asylum at public expense, nor while confined in public prison.]

\* \* \*

[Section 16. The courts of common pleas of the several counties of the Commonwealth shall have power, within their respective jurisdictions, to appoint overseers of election to supervise the proceedings of election officers and to make report to the court as may be required; such appointments to be made for any district in a city or county upon petition of five citizens, lawful voters of such election district, setting forth that such appointment is a reasonable precaution to secure the purity and fairness of elections; overseers shall be two in number for an election district, shall be residents therein, and shall be persons qualified to serve upon election boards, and in each case members of different political parties; whenever the members of an election board shall differ in opinion the overseers, if they shall be agreed thereon, shall decide the question of difference; in appointing overseers of election all the law judges of the proper court, able to act at the time, shall concur in the appointments made.]

\* \* \*

[Section 18. The General Assembly may, by general law, provide a manner in which, and the time and place at which, qualified war veteran voters may vote, who are unable to attend at their proper polling places because of being bed-ridden or otherwise physically incapacitated, and may provide for the return and canvass of their votes in the election district in which they respectively reside. Positive proof of being bed-ridden or otherwise physically incapacitated shall be given by affidavit or by certification of a physician, hospital or other authenticated source.]

Section 4. This proposed amendment shall be submitted by the Secretary of the Commonwealth to the qualified electors of the State, at the primary election next held after the advertising requirements of article eighteen, section one of the constitution of the Commonwealth of Pennsylvania have been satisfied,

#### COMMENT

The first change in this Article originated with the Legislature itself rather than with the Bar Association or the Gover-



nor's Commission on Constitutional Revision. It would reduce the required period of residence in this State to qualify a person for voting, from one year, or in certain cases six months, to ninety days immediately preceding the election. There is no reason why a person should be disfranchised for as long a period as one year simply because he has moved from another State into Pennsylvania.

As introduced into and adopted by the Senate, this amendment would have made two highly important changes in our Constitution:

(a) It would have provided that all Judges including our appellate judges, shall be elected on municipal election days. The purpose of this was to save a judge from defeat merely because he runs on the opposing ticket to that of a popular presidential or gubernatorial candidate; and

(b) It would have eliminated from the Constitution the enumeration of precinct election officers and permitted the Legislature to provide the number and method of selection of such officers.

These provisions were eliminated by the House of Representatives.

The remaining changes are largely technical. They follow:

1. There is express authorization providing that all elections by persons in a representative capacity may be by automatic recording device publicly indicating how each person voted.

2. Justices of the peace and alderman would be disqualified as election officers. Election officers are elected on a political basis and perform functions entirely foreign to the duties of justices of the peace and aldermen.

3. Election contests involving questions, submitted to the voters at any election would be decided as all other election contests are decided.

4. The present Constitution contains three sections on absentee voting. These are consolidated into one which would be Section 14 of the new Article.

5. Five sections of the Constitution are repealed as either unnecessary or supplied by the revised Article or matters which should be in the statutory law rather than in a Constitution.

This amendment was House Bill No. 422.

IT IS TO BE NOTED THAT THIS AMENDMENT ALSO WILL BE SUBMITTED AT A PRIMARY ELECTION INSTEAD OF A GENERAL OR MUNICIPAL ELECTION. See Preliminary Comment, page 15.

# EXHIBIT D

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# PENNSYLVANIA BAR ASSOCIATION QUARTERLY

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A REVISED CONSTITUTION

FOR

PENNSYLVANIA

("PROJECT CONSTITUTION")

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Members Should Be Sure to Bring This Volume with  
Them to the Annual Meeting in Pittsburgh

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# Pennsylvania Bar Association Quarterly

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No. 2A

## FOREWORD

By

WILLIAM A. SCHNADER

### Can Pennsylvania's Constitution Be Modernized Without a Constitutional Convention?

Thirteen Committee reports and the twenty-four resolutions which they recommend to the 1963 session of the Pennsylvania Legislature give an emphatic affirmative answer to this question.

Having participated vigorously in two unsuccessful campaigns for constitutional conventions in Pennsylvania and having analyzed the results of the five attempts to have the electors authorize a convention to rewrite the Constitution of 1873, I have reached the firm conclusion that it is very unlikely that the people of Pennsylvania will vote for a constitutional convention this year or any year in the near future.

The question whether a convention should be called was submitted to the people in 1891, 1921, 1924, 1935 and 1953. On at least two of those occasions—1921 and 1935—the full power of the State administration was behind the effort to have a convention authorized. But on those occasions as well as on the other three, the people emphatically said “no.” Never have as many as forty-five per cent of the electors voting on the question expressed themselves in favor of a convention.

This does not mean at all that the people of Pennsylvania are opposed to having their Constitution modernized. Rather, it means that because the people of this State are, generally speaking, conservative, they do not like the idea

of issuing a "blank check" to a convention whose authority could not be effectively limited or restricted. Then, too, there are imbedded in the present Constitution certain features which powerful political groups do not want to have changed.

It is the generally accepted view that the Legislature cannot limit the scope of the work of a constitutional convention. In theory, such a convention is superior in authority to the Legislature. It has the mandate of the electors to present for their consideration in a manner not authorized by the existing Constitution, a new document which would supersede the Constitution. Accordingly, most lawyers are convinced that even if the Legislature attempted to limit a constitutional convention to the consideration of certain subjects the convention could disregard the limitations and present to the people any constitution which the convention saw fit.

The fourteen committees whose reports are contained in this volume united in recommending that the Constitution be modernized without waiting until some future date when the voters of Pennsylvania may change their minds about the undesirability of a constitutional convention.

As a general rule the constitutional amendments which have been adopted during the last eighty-eight years have dealt with a single section of the Constitution. However, that is not required by any provision of the existing Constitution or by any known principle of law.

There is scant authority on the subject, but what there is, is all to the same effect, namely, that the Legislature is the sole judge of what constitutes a constitutional amendment for submission by it to the voters.

It is my opinion that the Legislature has a right to submit to the people each one of the resolutions contained in this volume.

Some of them propose changes in every section of a complete Article of the present Constitution. For one thing, it is proposed that the section headings to which we are all

accustomed in PURDON'S PENNSYLVANIA STATUTES, but which are not really parts of the Constitution, be made officially parts of that document.

Other resolutions propose amendments to single sections of the Constitution.

Still other resolutions propose the consolidation of as many as three or four Articles or parts of Articles of the present Constitution and their amendment into a single article.

Whether these resolutions contain "amendments" to the Constitution is a political—not a justiciable—question.

There are several matters which I should like to call to the attention of the members of the Association.

1. If a constitutional convention were to be called, its work would undoubtedly be submitted as a whole to the electors. The voter would have only an opportunity to say "yes" or "no" to the entire document. If, for example, he did not like the Article on the Legislature—or on Taxation and State Finance—or on Local Government—he could not register his displeasure with any or all of these Articles except by voting against the entire Constitution. He could not vote for those parts of it which he liked and vote against those parts which he disliked.

Under the method recommended by the Committees of the Bar Association, assuming that the Legislature will submit to the people all of the resolutions recommended by the Bar Association, each voter would have an opportunity to express himself on 24 separate questions. He could vote against the Article on the Legislature or the Article on Taxation and State Finance or the Article on Local Government without voting against the entire document. Thus, for the voter who conscientiously considers what the Constitution of his State should contain, the Bar Association's method gives him far greater latitude than if the Constitution were to be revised by a convention.



2. The time factor would be practically the same were the Constitution to be revised by a convention or were the Legislature to submit to the people the 24 resolutions which the Bar Association is recommending.

If the 1963 Legislature adopts resolutions containing the 24 proposals of the Bar Association and the 1965 Legislature does likewise, the people will be able to vote on these resolutions at the November election in 1965.

If the 1963 Legislature were to enact a law submitting to the electorate the question whether a constitutional convention shall be convened, that election would certainly not take place sooner than November, 1963. The chances are that the Legislature would provide in any bill submitting this question to the people, for the selection of delegates to the convention at a later date if a majority of those voting on the question approved a convention.

Delegates would probably be elected at the spring primary in 1964. It would be almost miraculous if the delegates elected at this time could organize the convention and get to work prior to July 1, 1964; and it would be contrary to all prior experience if the deliberations of a convention were concluded in less than from twelve to eighteen months.

If the convention were to conclude its work in the summer of 1965, it might be possible to have the proposed new Constitution advertised and voted on in November, 1965.

Accordingly, revision of the Constitution by the method proposed by the Bar Association and its revision by convention would bring before the people at precisely the same election either the resolutions now being proposed or the work of a constitutional convention.

3. It will doubtless be suggested that advertising the twenty-four resolutions which we are proposing would be costly. That unquestionably is true. However, a constitutional convention would involve an outlay of not less than a half-million dollars and after its work was concluded, the

proposed Constitution would also need to be advertised so that the voters could acquaint themselves with the convention's proposals.

Accordingly, here again the probabilities are that the two methods of revision would cost the taxpayers of the State approximately the same amount.

4. If a constitutional convention were called, the people of this State would no doubt elect some very capable delegates to represent them at the convention. However, it is extremely doubtful whether the group could possibly be more competent or more representative than the several hundred lawyers of our State who have devoted substantial time to "Project Constitution" since its inception, approximately a year ago. After all, every one of these several hundred persons is trained in the law, and presumably at least, has better than average qualifications to consider what changes should be made in the State's fundamental law.

Regardless of efforts to have the Legislature call a constitutional convention, the members of the Pennsylvania Bar Association should exert all the influence at their command to have the Legislature adopt the proposals herein contained in 1963 and again in 1965. Certainly, no one could object to giving the voters a prompt opportunity to adopt our non-controversial proposals at least. These would eliminate the obsolete provisions from the Constitution and a great many other provisions which have no place in the Constitution, but are properly the subject of legislation.

Finally, with regard to the twelve resolutions which our committees deem controversial in nature, I submit that the electorate of this State has a right to express itself on such questions as the following which are among those contained in the second set of resolutions:

1. Should the Legislature have the right to determine in what manner civil law suits shall be disposed of? Today, under Article I, Section 6, the Legislature has no power to

say that a civil suit, however insignificant, can be tried without a jury if one of the litigants insists upon a jury.

The so-called "backlog" in our courts in Philadelphia and Pittsburgh has reached scandalous proportions. Many lawyers think that with the increasing number of automobiles on the highways and the increasing number of accidents and injuries, merely adding more judges will not remedy this situation. These lawyers feel that some other method will have to be found for disposing of the thousands of these cases which are clogging up our court dockets if we are to get our court calendars again on a current basis.

These lawyers may be wrong, but the question is one which should be debated and one which the people themselves should have the right to decide.

2. Should the State and its political sub-divisions be permitted to continue to borrow money under the so-called "authority device"? There are now restrictions on borrowing by the Legislature and by local legislative bodies and school boards. To avoid these restrictions, a number of years ago someone invented the plan of creating authorities which would borrow money using long-term leases by the State or by its political sub-divisions as security. This type of borrowing is not done by officers elected by the people but by officers who have no direct responsibility to the people. This type of indirect debt costs more in interest rates and other charges than debt which is a primary obligation of the State or one of its sub-divisions.

Should we unshackle our Legislature and our local legislative authorities so that they can make direct loans (thus saving money to the taxpayers) and prohibit indirect debt?

This too is a question which should be debated with all of the facts laid right out on the table where the public can appraise them. And having ascertained the facts, the public—the electorate—should be allowed to make the ultimate decision.

These are only two examples of the type of question arising in connection with the second group of resolutions—those contained in Part II of this supplement.

I cannot too strongly urge the lawyers of this State to study the material contained in this supplement and to assume the leadership in deciding what should be done about revising our Constitution.

It should again be said that the report of the 1957 Commission on Constitutional Revision (the "Woodside Commission") was the starting point for the studies and recommendations now being presented. See the October, 1961 issue of the Pennsylvania Bar Association *Quarterly*, page 14 et seq., and also the June, 1962 issue, pages 378 to 380.

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**REPORT OF THE STANDING COMMITTEE  
ON CONSTITUTIONAL LAW**

*To the Board of Governors of the Pennsylvania Bar Association:*

A Special Meeting of the Standing Committee on Constitutional Law of the Pennsylvania Bar Association was held, at the call of its Chairman, at The Union League of Philadelphia, at ten o'clock A.M. on Saturday, December 8, 1962.

The meeting was called to consider the written reports of Sub-Committees numbers 1 to 14, inclusive, appointed by the President, to submit recommendations and resolutions in connection with "Project Constitution." Reports had previously been submitted to the Standing Committee on Constitutional Law on behalf of all of these sub-committees.

The Committee examined the several reports of the sub-committees to determine the extent to which they contained any provisions of such a controversial character as to suggest that they should be made the subject of separate resolutions and removed from the principal resolutions; and, further, to ascertain whether there existed in the reports and resolutions any substantial inconsistencies which should be eliminated prior to publication.

A number of changes and modifications suggested by the Committee were made in the reports submitted and, after discussion and debate which consumed upwards of five hours, the reports numbered 1 to 14, inclusive, of the Sub-Committees on "Project Constitution," and the resolutions implementing the same, were approved by those attending the meeting.

These reports are being submitted to the Board of Governors of the Pennsylvania Bar Association.

Respectfully submitted,

C. BREWSTER RHOADS,  
*Chairman.*

**A REVISED PENNSYLVANIA CONSTITUTION****I**

Beginning on page 160 and ending on page 220 are 12 resolutions which, if adopted by the 1963 and 1965 Legislatures and approved by the people at the election in November, 1965, would provide Pennsylvania with a completely revised Constitution.

We hope that the members of the Pennsylvania Bar Association, with near unanimity, will favor these changes in our Constitution.

Except for one article, we have endeavored to avoid in these 12 proposed resolutions anything which is likely to be controversial. We realize, of course, that someone for some reason which we do not suspect, may always be opposed to some suggested change. This cannot be avoided. However, the Subcommittees who have worked on "Project Constitution" have done their level best to separate the non-controversial and the controversial recommendations.

The one exception is the recommended Resolution No. 5 proposing a new Judiciary Article. It was the feeling of the Subcommittee, and it is the unanimous feeling of your Board of Governors and of an overwhelming majority of your Committee on Constitutional Law that nothing substantial can possibly be gained by attempting to tinker with the present Article V on the Judiciary. Nothing short of a complete reorganization of Pennsylvania's judicial system along the lines recommended by the very able Subcommittee which recommends a new Article V, will be worth while.

Until the people of Pennsylvania realize that our judicial system should be completely revamped the present Article V of the Constitution may as well remain. It is for this reason that we are including in our first 12 proposed resolutions a brand new article on the Judiciary.

You will find that in the other articles "dead wood" has been eliminated, that certain consolidations of articles are recommended, and that substantial improvements in our

Constitution are included. Among other things, one resolution would repeal Article XVII in its entirety. This section now deals with railroads and canals, a subject which has been completely covered by the Pennsylvania Public Utility Law, and which is entirely out of place in a Constitution.

So much for the first 12 resolutions, which, we repeat, appear on pages 160 to 220.

Beginning on page 222 you will find a series of separate resolutions, each dealing with a single section of the Constitution.

As far as possible, these resolutions are numbered in such a way as to enable the reader easily to connect them with the article of the Constitution which they would respectively, amend. Thus, there are 6 of these resolutions which would make changes in separate sections in Article I on the Bill of Rights. We are numbering these resolutions 1-A, 1-B, 1-C, 1-D, 1-E and 1-F.

You will note that each of these resolutions carries a second section dealing with its effective date.

Let us assume that Resolution No. 1 is passed by the 1963 and 1965 Legislatures, and placed before the voters at the 1965 November election, and also that the amendment contained in Resolution No. 1-A is similarly adopted by the same two Legislatures and comes before the voters on the same day. In this event, if both resolutions should be adopted to become effective at the same time, confusion might readily ensue. However, that is being avoided by making the amendment contained in Resolution No. 1-A effective at midnight of December 31st following its adoption by a majority of the electors.

The amendment contained in Resolution No. 1 would of course become effective immediately upon the certification of the vote by the Secretary of the Commonwealth. That would certainly occur before the end of December. Resolution No. 1-A would amend Section 4 of Article I of the Constitution. Accordingly, if Resolution No. 1 and Resolution No. 1-A were adopted at the 1965 election, the Bill of

Rights as contained in Resolution No. 1 would be effective until midnight of December, 1965, and at that time the new Section 4 contained in Resolution No. 1-A would supersede Section 4 as it appeared in Resolution No. 1.

## II

It is very important that the reader keep the following in mind as he studies the following pages :

**At present section headings are not parts of our Constitution. If the first 11 resolutions which we are recommending are adopted, our Constitution will have official section headings.**

**In all cases in which a section of the Constitution is being recommended with the changes recommended by the Woodside Commission, we are printing the section with a single asterisk in the margin.**

**In cases in which a subcommittee is recommending that a section be modified differently from the recommendation of the Woodside Commission, a double asterisk (\*\*) appears in the margin.**

In the ballot which will come to you as a member of the Pennsylvania Bar Association you will be asked to vote your approval or disapproval of each of the resolutions appearing on the following pages including the resolutions which are numbered and lettered A, B, C, etc.

You will also have an opportunity to express yourself on the question whether we should again seek to have our Constitution revised by a convention rather than by the method which is being suggested and recommended by our Standing Committee on Constitutional Law and its subcommittees.

## III

Also there will be submitted to the Assembly—and, we hope, later to the Legislature—a short act relating to constitutional amendments, a copy of which is published at page 325 of this volume. This act is necessary in order to



make possible the submission of our recommended amendments in the form in which we propose to submit them to the Legislature. As you will see, some of them are being submitted without numbers. They can, of course, be identified by their titles.

IV

We urge every member of the Association conscientiously to study the material herewith presented.

BOARD OF GOVERNORS,  
*Pennsylvania Bar Association.*

WILLIAM A. SCHNADER, Philadelphia, *President*  
THOMAS W. POMEROY, JR., Allegheny, *Past President*  
DESMOND J. MCTIGHE, Montgomery, *Vice-President*  
A. CARSON SIMPSON, Philadelphia, *Secretary*

James Alan Montgomery, <i>Philadelphia</i>	John M. McLaughlin, <i>Erie</i>
Gene D. Smith, <i>Lehigh</i>	Randolph Myers, <i>Cambria</i>
Gilbert Nurick, <i>Dauphin</i>	Victor J. Roberts, <i>Montgomery</i>
Malcolm Muir, <i>Lycoming</i>	J. Quint Salmon, <i>Beaver</i>
Charles H. Mines, Jr., <i>Luzerne</i>	B. Paul Campbell, <i>Centre</i>
William B. Farshall, <i>Fayette</i>	Thomas N. Griggs, <i>Allegheny</i>
	F. D. Hennessy, Jr., <i>Delaware</i>

**PART I**  
**CONTAINING 12 RESOLUTIONS WHICH IF**  
**ADOPTED BY THE LEGISLATURE AND**  
**THE PEOPLE WOULD PROVIDE**  
**PENNSYLVANIA WITH A**  
**REVISED CONSTITUTION**

Beginning on the next page and continuing on the following pages to page 220, are 12 Resolutions which, if passed by two successive sessions of the Legislature and subsequently submitted to the electors as provided in Article Eighteenth of the present Constitution, would provide this State with a new Constitution.

The Board of Governors of the Pennsylvania Bar Association, as well as the Association's Standing Committee on Constitutional Law, feel that practically nothing contained in these 12 Resolutions ought to be controversial.

Separate Resolutions each amending a single section of the Constitution are found in Part II, and in Part III are the Reports of the Committees which recommend the Resolutions in Parts I and II.

## RESOLUTION NO. 7

### A JOINT RESOLUTION

Proposing that Article VIII of the Constitution of the Commonwealth of Pennsylvania be amended.

The General Assembly of the Commonwealth of Pennsylvania resolves as follows:

*Section 1.* The following amendment to the Constitution of the Commonwealth of Pennsylvania is proposed in accordance with the provisions of the Eighteenth Article thereof:

That Article VIII of the Constitution of Pennsylvania is amended to read:

#### ARTICLE —\*. ELECTIONS

##### \*\*Section 1—Qualifications of Electors

(Formerly Article VIII, Section 1)

Every citizen twenty-one years of age, possessing the following qualifications, shall be entitled to vote at all elections subject, however, to such laws requiring and regulating the registration of electors as the General Assembly may enact.

(a) He or she shall have been a citizen of the United States at least one month.

(b) He or she shall have resided in the State one year (or, having previously been a qualified elector or native born citizen of the State, he or she shall have removed therefrom and returned, then six months) immediately preceding the election.

(c) He or she shall have resided in the election district where he or she shall offer to vote at least sixty days immediately preceding the election, except that if qualified to vote in an election district prior to removal of residence, he or she may, if a resident of Pennsylvania, vote in the election district from which he or she removed his or her residence within sixty days preceding the election.

\*See Proposed Act on page 125.

**Section 2—General Election Day; Municipal Election Day**

(Formerly Article VIII, Section 2)

General elections shall be held biennially on the Tuesday next following the first Monday of November in each even-numbered year; and municipal elections shall be held biennially on the Tuesday next following the first Monday of November in each odd-numbered year. The General Assembly may by statute fix a different day for the holding of general or municipal elections; but general elections shall always be held in even-numbered years, and municipal elections shall always be held in odd-numbered years.

**\*\*Section 3—Election of Judges and Local Officers**

(Formerly Article VIII, Section 3)

All elections of or involving judges elected on a state-wide basis may be held at either a general or municipal election, as circumstances require. All elections of or involving judges of the courts for the several judicial districts and all elections of county, city, ward, borough, and township officers for regular terms of service shall be at a municipal election.

**Section 4—Secrecy in Voting**

(Formerly Article VIII, Section 4)

All elections by the citizens shall be by ballot or by such other method as may be prescribed by law: Provided, That secrecy in voting be preserved.

**Section 5—Electors Privileged from Arrest**

(Formerly Article VIII, Section 5)

Electors shall in all cases except treason, felony and breach or surety of the peace, be privileged from arrest during their attendance on elections and in going to and returning therefrom.

••Section 6—Election and Registration Laws

(Formerly Article VIII, Section 7)

All laws regulating the holding of elections by the citizens, or for the registration of electors, shall be uniform throughout the State, except that laws regulating and requiring the registration of electors may be enacted to apply to cities only, provided that such laws be uniform for cities of the same class, and except further, that the General Assembly shall, by general law, permit the use of voting machines, or other mechanical devices for registering or recording and computing the vote, at all elections or primaries, in any political subdivision or election district of the Commonwealth, at the option of the electors of such political subdivision or election district, without being obliged to require the use of such voting machines or mechanical devices in any other political subdivision or election district, under such regulations with reference thereto as the General Assembly may from time to time prescribe.

Section 7—Bribery of Electors

(Formerly Article VIII, Section 8)

Any person who shall give, or promise or offer to give, to an elector, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, or who shall give, or promise to give, such consideration to any other person or party for such elector's vote or for the withholding thereof, and any elector who shall receive or agree to receive, for himself or for another, any money, reward or other valuable consideration for his vote at an election, or for withholding the same, shall thereby forfeit the right to vote at such election, and any elector whose right to vote shall be challenged for such cause before the election officers shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received.

**Section 8—Witnesses in Contested Elections**

(Formerly Article VIII, Section 10)

In trials of contested elections and in proceedings for the investigation of elections, no person shall be permitted to withhold his testimony upon the ground that it may criminate himself or subject him to public infamy; but such testimony shall not afterwards be used against him in any judicial proceedings except, for perjury in giving such testimony.

**Section 9—Election Districts**

(Formerly Article VIII, Section 11)

Townships and wards of cities or boroughs shall form or be divided into election districts of compact and contiguous territory, and their boundaries fixed and changed in such manner as may be provided by law.

**Section 10—Viva Voce Elections**

(Formerly Article VIII, Section 12)

All elections by persons in a representative capacity shall be viva voce.

**Section 11—Election Officers**

(Formerly Article VIII, Section 14)

District election boards shall consist of a judge and two inspectors, who shall be chosen at municipal elections for such terms as may be provided by law. Each elector shall have the right to vote for the judge and one inspector, and each inspector shall appoint one clerk. In those election districts where voting machines or other mechanical devices are used the General Assembly may, from time to time, prescribe the number and duties of election officers. The first election board for any new district shall be selected and vacancies in election boards filled, as shall be provided by law. Election officers shall be privileged from arrest upon days of election and while engaged in making up and transmitting returns, except upon warrant of a court of

record or judge thereof, for an election fraud, for felony or for wanton breach of the peace. In cities they may claim exemption from jury duty during their terms of service.

*Section 12—Disqualifications for Election Officer*  
(Formerly Article VIII, Section 15)

No person shall be qualified to serve as an election officer who shall hold, or shall within two months have held, any office, appointment or employment in or under the government of the United States or of this State, or of any city, or county, or of any municipal board, commission or trust in any city, save only justices of the peace and aldermen, notaries public and persons in the militia service of the State; nor shall any election officer be eligible to any civil office to be filled at an election at which he shall serve, save only to such subordinate municipal or local offices, below the grade of city or county offices, as shall be designated by general law.

*Section 13—Overseers of Elections*  
(Formerly Article VIII, Section 16)

The courts of common pleas of the several counties of the Commonwealth shall have power, within their respective jurisdictions, to appoint overseers of election to supervise the proceedings of election officers and to make report to the court as may be required; such appointments to be made for any district in a city or county upon petition of five citizens, lawful voters of such election district, setting forth that such appointment is a reasonable precaution to secure the purity and fairness of elections; overseers shall be two in number for an election district; shall be residents of the county, and shall be persons qualified to serve upon election boards, and, in each case members of different political parties; whenever the members of an election board shall differ in opinion the overseers, if they shall be agreed thereon, shall decide the question of difference; in appointing over-

bers of election all the law judges of the proper court, able to act at the time, shall concur in the appointments made.

• **Section 14—Contested Elections**

(Formerly Article VIII, Section 17)

The trial and determination of contested elections of electors of President and Vice-President, members of the General Assembly, and of all public officers, except Governor and Lieutenant Governor, whether State, judicial, municipal or local, and contests involving questions submitted to the electors at any election, shall be by the courts of law, or by one or more of the law judges thereof. The General Assembly shall, by general law, designate the courts and judges by whom the several classes of election contests shall be tried and regulate the manner of trial and all matters incident thereto; but no such law assigning jurisdiction, or regulating its exercise, shall apply to any contest arising out of an election held before its passage.

•• **Section 15—Absentee Voting.**

(Formerly Article VIII, Sections 18 and 19)

The Legislature shall, by general law, provide a manner in which, and the time and place at which, qualified electors who may, on the occurrence of any election, be unavoidably absent from the state or county of their residence, including those who are in actual military service of the United States or of this Commonwealth, because their duties, occupation or business require them to be elsewhere or who, on the occurrence of any election, are unable to attend at their proper polling places because of illness or physical disability, may vote, and for the return and canvass of their votes in the election district in which they respectively reside.

thus repealing Article VIII, Sections 5, 6, 9 and 13 of the present Constitution.



## REPORT OF COMMITTEE NO. 8

on

## ELECTIONS

(Assignment: Article VIII of the Constitution)

## THE COMMITTEE

GEORGE KIESTER, Butler, Chairman

128 West Diamond Street, Butler, Pennsylvania

William J. Begley, Bucks	James F. McClure, Jr., Philadelphia
J. Campbell Collins, Luzerne	Barron P. McCune, Washington
John W. Fawcett, III, Philadelphia	James F. Pritchard, Northampton
William Fearen, Dauphin	Victor J. Roberts, Montgomery
John S. Fisher, Indiana	Vincent R. Smith, Westmoreland
C. Vincent Henry, Lebanon	Elvin R. Souder, Montgomery
Paul Kern Hirsch, Allegheny	Charles D. Storr, Beaver
Daniel H. Hayett, Berks	F. Brewster Wickersham, Dauphin
Hillard Kreimer, Allegheny	Alan D. Williams, Jr., Bucks
J. Julius Levy, Lehigh	John C. Youngman, Lycoming
Burton R. Laub, Erie	
William H. Mann, Lancaster	

## THE REPORT

To the Pennsylvania Bar Association through its Committee on Constitutional Law:

Your Committee No. 8—Elections—has considered the changes recommended by the 1957 Commission on Constitutional Revision (hereinafter called the "Woodside Report"). As indicated, most of the changes recommended by the Woodside Report have been approved. However, this Committee has made certain revisions, all of which are explained in the Report that follows. A brief explanation of each revised section has been made. Three sections were recommended for repeal and two sections have been consolidated. This reduced the sections under Article VIII from 19 to 15.

*Section 1—Qualifications of Electors*

This section should remain unchanged. To propose reducing the voting age to 18 years would endanger the passage of the entire amended article. The Woodside Commission recommended the amendment that grants the right of the resident elector to "vote in the election district from which he or she removed his or her residence within sixty days preceding the election." This amendment was adopted November 3, 1959.

*Section 2—General Election Day; Municipal Election Day*

The changes recommended by the Woodside Commission are for clarification and are approved. There has been added the provisions relating to municipal elections. The two-thirds vote requirement of each House to fix a different day for an election has been eliminated. Under the present constitution with this revision a majority of the members elected to each House, recorded as voting in its favor, would be required to change the day of an election.

*Section 3—Election of Judges and Local Officers*

The Woodside Report simplifies the text of Section 3 so that it is not in conflict with the proposed revision of Section 2. This Committee recommends a further change so that this section will not be in conflict either with the present system for the election of judges, the Pennsylvania Plan or any other plan. The mandatory requirement of this section that all judges shall be elected is eliminated.

*Section 4—Secrecy in Voting*

*Section 5—Electors Privileged from Arrest*

Neither the Woodside Commission nor this Committee recommended changes in these sections.

*Section 6—Voting When in Military Service*

This has been eliminated as a separate section. Specific reference to absentee voting for those in military service

has been incorporated in renumbered Section 15 (entitled "Absentee Voting") of the proposed amendment.

*Section 7—Election and Registration Laws*

This section is re-numbered Section 6 in the proposed amendment. "Political subdivision or election district" has been substituted for "county, city, borough or township." The last sentence of this section of the present Constitution relating to election of officers and voting machines has been incorporated in re-numbered Section 11 (Election Officers) of the proposed amendment.

The Woodside Commission revised Section 7 by eliminating the provision authorizing local option to require the use of voting machines. To avoid any question of the constitutionality of the "voting machine local option law," this Committee recommends that the language of the present Constitution be retained.

*Section 8—Bribery of Electors*

This is Section 7 of the proposed amendment. No change was recommended either by the Woodside Commission or this Committee.

*Section 9—Violation of Election Laws*

The Woodside Commission recommended the repeal of this section and our Committee concurs. Penalties for violation of the election laws should be determined by the legislature.

*Section 10—Witnesses in Contested Elections*

*Section 11—Election Districts*

Both the Woodside Commission and this Committee recommend that these sections of the present Constitution be retained. They are Section 8 and Section 9 in the proposed amendment.

*Section 12—Viva Voce Elections*

This is Section 10 of the proposed amendment. There has been no change in this section.

The necessity for this section was considered. James F. McClure, Jr. reported to the Committee that in the 1873 Constitutional Convention there was considerable debate as to whether or not voting by the electorate should continue to be by secret ballot. The Committee on Suffrage, Election and Representation initially reported out an article which contained no viva voce provision, but which provided for the elector to write his name upon the ballot. The minority on the Committee strongly objected to this provision and the proponents of the secret ballot eventually prevailed.

One of the resolutions proposed at the 1873 Constitutional Convention read as follows:

"In all elections by the people, and also by the Senate and House of Representatives, jointly or separately, the vote shall be personally and publicly given *viva voce*; *Provided*, That dumb persons entitled to suffrage may vote by ballot."

This may explain the inclusion of the viva voce section in the present Constitution. It is the recommendation of the Committee that the section be retained.

#### *Section 13—Residence of Certain Electors*

The Woodside Commission recommended no change from the present Constitution. This Committee concluded that the section is unnecessary and inappropriate in a Constitution. Therefore it is not included in the proposed amendment. It has been suggested that the section be included in a statute defining domicile.

#### *Section 14—Election Officers*

The Woodside Commission approved the language of this section of the present Constitution. This Committee added to this section the last sentence of Section 7 of the present Constitution relating to voting machines and election officers.

#### *Section 15—Disqualifications for Election Officer*

This section is unchanged. It is Section 12 of the proposed amendment.

***Section 16—Overseers of Elections***

The Woodside Commission recommended no change in this section. This Committee has made a change that will authorize the court to appoint overseers who are non-residents of the election district. A court should not be handicapped by the current restriction on residence when fraud is charged. This is Section 13 of the proposed amendment.

***Section 17—Contested Elections***

The Woodside Report excepted the Governor and Lieutenant-Governor from the provisions of this section on contested elections. This Committee concurs. The reason for the exclusion is that Section 2 of Article IV of the current Constitution covers contested elections involving these offices.

***Section 18—Absentee Voting by Disabled Veterans******Section 19—Absentee Voting***

The Woodside Commission recommended no change in either of these sections. This Committee has eliminated Section 18. Section 19 as revised is Section 15 of the proposed amendment. The new section states that the Legislature shall provide for absentee voting, "including those who are in actual military service of the United States or of this Commonwealth."

The members of this Committee are in general agreement on the changes that are being recommended in Resolution No. 7 (page 202). This Resolution should not be controversial. It is the recommendation of our Committee that it be introduced into the 1963 session of the Legislature.

# EXHIBIT E

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Pennsylvania Council of Republican Women  
Legislative Advisory Committee

PENNSYLVANIA COUNCIL OF REPUBLICAN WOMEN. Legislative Advisory Committee

# CRUSADE CONSTITUTION

*Sponsored by the  
Legislative Advisory Committee*

A GUIDE  
FOR STUDY OF PROPOSALS FOR  
A REVISED CONSTITUTION FOR  
PENNSYLVANIA  
PRESENTED TO THE

1963 SESSION OF THE LEGISLATURE  
BY THE PENNSYLVANIA BAR ASSOCIATION

Part I

*Prepared by  
M. VASHTI BURR, Chairman  
Subcommittee on Constitutional Changes*

## Crusade Constitution

The Legislative Advisory Committee of the Pennsylvania Council of Republican Women is sponsoring "Crusade Constitution".

Governor William W. Scranton has emphasized that "what is needed is enlightenment of the public on constitutional revision."

This "Crusade" is our contribution toward informing our Council members, and through them as many others as possible, concerning a number of proposals for constitutional revision now pending in the Legislature.

Among the proposals are 12 Joint Resolutions (House Bills 991-1002) which, if approved by the Legislature, would place before the electors article-by-article amendments of the Pennsylvania Constitution. The amendments set forth in those Joint Resolutions are as proposed in Resolutions presented to the 1963 Legislature by the Pennsylvania Bar Association (PBA).

If approved by the electors, those amendments, together with an Act (House Bill 1003) regarding the numbering and proclaiming of constitutional amendments, would effectively revise the Constitution in strict accordance with the procedure prescribed in present Article XVIII.

Also pending are 3 bills (Senate Bill 383, introduced on April 2, and Senate Bill 54 and House Bill 201, introduced January 28 and February 11 respectively) for Acts which would place before the electors, in referendum, the question whether a convention should be called to draw up a new Constitution.

It is expected that there will be popular demand for hearings on all proposals for constitutional revision, whether by article-by-article amendments or by the convention method.

All members of the Council should be prepared, if not to participate in such hearings, at least to follow them with understanding and be able to answer questions which may be asked by others.

A vote against a constitutional convention is not a vote against revising and modernizing our constitution. This can be done in the same period of time by article-by-article amendment.

### *The Need for Revision*

It is generally conceded that the Pennsylvania Constitution is in need of revision. It contains a number of obsolete provisions and many which have no place in a Constitution but should be the subject of legislation within the framework of a Constitution.

For that reason, it has been necessary repeatedly to amend the existing Constitution. As a result, the Constitution has become a hodge-podge greatly in need of a modernizing treatment.

## *The Challenge and the Issue*

In the near future we shall be called upon to vote either on the revision of the Constitution through adoption of the 12 separate amendments or on the calling of a constitutional convention, or both. It is imperative, therefore, that we know the facts about the various proposals.

So far as the convention method is concerned, little can be said at this time beyond the fact that, if the question of calling a convention were referred to and approved by the people, the new Constitution thereafter drawn up by the convention would be submitted to the electors, "Yes" or "No". It could not be known what the new Constitution would contain until the convention completes its work.

The 12 Joint Resolutions for article-by-article amendment, on the other hand, present a clear basis for immediate study. The Legislature and the people have before them specific proposals.

The purpose of the guide set forth in "Crusade Constitution", Part II is to facilitate a study of the amendments proposed in those Joint Resolutions as compared with the present provisions of the Constitution.

### *Prior Efforts to Revise the Constitution*

#### 1. CONSTITUTIONAL CONVENTION

The Constitution of the Commonwealth of Pennsylvania was approved by vote of the electors on December 16, 1873 and entered into force on January 1, 1874. As already indicated, it has been amended many times. Repeated efforts to have a convention called to draw up a new Constitution have failed.

In 1890, only 16 years later, there was sufficient urging for a constitutional convention that the question was submitted to the electors. The people voted against such a convention.

The question whether a constitutional convention should be called was submitted to the electors in 1921, 1924, 1935 and 1953. Each time the vote of the people was an emphatic "No".

Never, since the present Constitution became effective, have as many as 45% of the electors voting on the question expressed themselves in favor of a constitutional convention.

#### 2. COMMISSION ON CONSTITUTIONAL REVISION

In 1957, the Legislature appointed a Commission on Constitutional Revision (the "Woodside Commission"), which reported in 1959. The Commission recommended against calling a constitutional convention, but it found that amendments were "critically needed for the efficient conduct of the State Government." Resolutions embodying proposed amendments were introduced in the 1959 Legislature. No action was taken on them.



In October 1961 the PBA, in response to former Attorney General William A. Schnader's suggestion that the PBA "should always have at least one major public service project before it," enthusiastically authorized its "Project Constitution".

Based upon a year's study of our existing Constitution and of the Report of the Woodside Commission by some 300 lawyers and judges (variously assigned as subcommittees to deal with 14 separate subjects), the PBA has proposed amendments in the form of Resolutions numbered 1-12 (House Bills 991-1002).\*

The amendments recommended by the PBA include 18 changes in the present Constitution exactly as proposed by the Woodside Commission. The PBA recommendations include proposals for changes in or substitutions for 56 other Sections of the Constitution. The Woodside Commission had recommended that 20 of these 56 be amended, but the PBA has modified those proposed amendments.

Although the PBA has not taken a position for or against a constitutional convention, it has emphasized that the Constitution can be modernized, in the manner prescribed in present Article XVIII, by the adoption of the 12 proposed amendments which have been introduced in the Legislature. The article-by-article amendments as proposed would, if submitted to and approved by the people, result in a comprehensive revision of the Constitution.

In addition to those 12 proposals, an Act (House Bill 1003) is proposed regarding the numbering and proclaiming of constitutional amendments. If all of the proposed amendments were adopted, or if some were adopted and others were not, the result would be that certain present Articles of the Constitution would be eliminated (either by being combined with one or more other Articles or by outright repeal) and many present Sections would be repealed or otherwise eliminated. In order to assure that Articles and Sections of the Constitution as ultimately amended would have a proper sequential arrangement and numbering, the proposed Act would empower the Governor to effectuate such numbering and to proclaim the resulting Constitution as amended. Thus, any confusion which might otherwise result from elimination or consolidation of provisions would be avoided.

\* In addition, the PBA committees drafted 12 Resolutions containing proposals for further amendments, but consideration of them has been deferred. As explained on January 31, 1963, by Hon. William A. Schnader in his annual address as President of the PBA, they would, in the opinion of the committees, "still further improve our Constitution but are not necessary to its modernization."

Mr. Schnader, Chairman of the PBA Special Committee on "Project Constitution", has commented as follows (see *PBA Quarterly*, vol. XXXIV, No. 2A, January 1963, pp. 148, 149) in regard to the convention method:

"It is the generally accepted view that the Legislature cannot limit the scope of the work of a constitutional convention. In theory, such a convention is superior in authority to the Legislature. It has the mandate of the electors to present for their consideration in a manner not authorized by the existing Constitution, a new document which would supersede the Constitution. Accordingly, most lawyers are convinced that even if the Legislature attempted to limit a constitutional convention to the consideration of certain subjects the convention could disregard the limitations and present to the people any constitution which the convention saw fit.

"If a constitutional convention were to be called, its work would undoubtedly be submitted as a whole to the electors. The voter would have only an opportunity to say 'yes' or 'no' to the entire document. If, for example, he did not like the Article on the Legislature—or on Taxation and State Finance—or on Local Government—he could not register his displeasure with any or all of these Articles except by voting against the entire Constitution. He could not vote for those parts of it which he liked and vote against those parts which he disliked.

Concerning the relevant cost of the two methods, Mr. Schnader has commented as follows:

"As far as the cost of a convention is concerned, it will probably be not less than one million dollars, whereas the only cost involved in the consideration of the Bar Association proposals would be the cost of advertising the proposals as required by Article XVIII of the present Constitution."

#### *Governor Scranton's Position*

Governor William W. Scranton's position was explained in a statement given by him to newsmen on April 5 after a meeting with Mr. Schnader. According to the reports, the Governor stated: "Mr. Schnader asked whether the Bar Association should continue its efforts in view of our bill [S. B. 383, relating to the calling of a constitutional convention]. I most sincerely urged them to continue because what is needed is enlightenment of the public on constitutional revision."

#### *Advantages of Article-by-Article Amendment*

Certain of the advantages of amending the Constitution in the manner proposed by the PBA have been pointed out by Mr. Schnader as follows:

"In the first place, the Legislature and the people would have before them definite proposals. They would not be giving a 'blank check' to unascertained delegates to a convention who conceivably might propose a document which would not meet with the acceptance of the voters.

"Also, as Pennsylvania under the leadership of Governor Scranton is seeking to attract new industries to relieve the depressed economic situation in some of our counties, a constitutional convention might serve as a serious deterrent to successful efforts along this line. Industries might very well wish to wait and see what a convention would propose. Under the method proposed by the Bar Association, everyone would know definitely what proposals will come before the voters in 1965.

"In any event, we hope that the Legislature will follow Governor Scranton's suggestion and act on our proposals in 1963 so that if there is no convention, no time will have been lost. The Legislature, if it submits to the voters the question of calling a convention, can readily provide that our 12 Resolutions shall not be advertised until after the people have decided whether or not to call a convention. In this way, no money will have been wasted if a convention is called."

#### *The Proposed Amendments*

The present Constitution contains 18 Articles and 222 Sections. If and when revised as proposed in the 12 PBA Resolutions, the Constitution would contain 11 Articles and 152 Sections. Of the present Sections:

1. 75 Sections would be retained without change, except perhaps for renumbering.

2. 84 Sections would be repealed as either obsolete or containing material legislative in character. The Section, for example, relating to punishment for dueling would be repealed. Likewise, the Section providing that the Legislature shall not prohibit emigration from the State. The entire Article on railroads and canals would be repealed, having ceased to serve a useful purpose, practically everything it contains being now a part of our Public Utility Law. Various other provisions, appropriate for inclusion in a penal or corporation code or in other statutes, have no place in the fundamental law and would be eliminated.

3. The remaining Sections would be amended textually, some of the amendments being substantial and some being non-substantial or minor in nature (such as rephrasing for the sake of clarity).

In all cases the Sections would be given official headings. In the Constitution the Sections have no official headings, although published texts of the Constitution do contain headings for convenience of reference.

#### *Effect of Approving Some But Not All Amendments*

The effects of diverse action on the 12 amendments proposed in the PBA Resolutions have been summarized by Mr. Schnader as follows:

"Resolutions Nos. 1, 2, 4, 5, 7, 10, 11 and 12 each deal with but one article of the Constitution. If all of these amendments were submitted at the same time and several of them were defeated, it would mean simply that the old articles would remain.

"Resolutions Nos. 3, 6, 8 and 9 are the only ones which do not deal with a single article of the present Constitution.

"Resolution No. 3 would combine in Article III of the Constitution what are now Articles III, X and XI. If Resolution No. 3 were defeated, the result would be that Article III would continue 'as is,' as would Articles X and XI.

"The same situation would arise if Resolution No. 6 were defeated. This Resolution would consolidate the present Articles VI, VII and XII of the Constitution.

"In any of these situations, the Governor would merely issue his proclamation renumbering the articles of the Constitution to the extent which might be necessary. The result would not be chaotic, confusing or inconsistent.

"Resolution No. 8 deals with all except three sections of the present Article IX of the Constitution, and Resolution No. 9 deals with these three sections, as well as with Articles XIII, XIV and XV.

"If Resolution No. 8 were adopted, and Resolution No. 9 were defeated, Sections 7, 8 and 10 of Article IX of the present Constitution would remain undisturbed, except that it might be desirable for the Governor by proclamation to renumber these sections as the proposed act . . . would give him the right to do.

"If Resolution No. 9 were adopted and Resolution No. 8 defeated, Sections 7, 8 and 10 of the present Article IX would have been lifted out of Article IX and amended. The Governor by proclamation would renumber the remaining sections of Article IX to the extent necessary."

In his annual address to the PBA in January 1963, Mr. Schnader remarked:

"Whether or not the Legislature provides for a referendum on the question of having a Constitutional Convention, it ought to adopt our first 12 Resolutions so that if the people again vote 'no' on the question of having a convention, we shall not have lost two years in making the fundamental changes in our Constitution proposed in these 12 Resolutions."

### *Highlights of Changes*

1. Annual sessions of the Legislature at which all kinds of legislative business could be transacted, instead of only in odd-numbered years as now.

2. Governor's appointments could be confirmed by majority vote of the Senate, instead of by two-thirds as now.

3. Would give the Legislature a free hand to borrow money to make capital improvements for the State of State-aided institutions, or to rehabilitate depressed areas, or in anticipation of taxes already imposed but not yet collected. This change would very largely render unnecessary State Authorities.

4. Would permit a majority of the voters of a political subdivision to incur debt without limitation. Now, a loan cannot be made if the total debt of the municipality (except Philadelphia) already equals 7% of the assessed value of the property in the municipality. This change would very largely render unnecessary municipal authorities.

The proposals would not—

1. Curb our individual rights as guaranteed by the bill of rights.
2. Broaden legislative power to impose graduated income taxes and inheritance taxes.

M. VASKI BURR, *Chairman,*  
*Subcommittee on Constitutional Changes*

Harrisburg, Pa.  
May 15, 1963

Additional copies of "Crusade Constitution" Parts I and II available from the Pennsylvania Council of Republican Women at 25¢ per copy. For large quantities please write for bulk rate.

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PENNSYLVANIA COUNCIL OF REPUBLICAN WOMEN . Leg

lative Advisory Committee.

# CRUSADE CONSTITUTION

*Sponsored by the  
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A GUIDE  
FOR STUDY OF PROPOSALS FOR  
A REVISED CONSTITUTION FOR  
PENNSYLVANIA  
PRESENTED TO THE  
1963 SESSION OF THE LEGISLATURE  
BY THE PENNSYLVANIA BAR ASSOCIATION

Part II

*Prepared by  
M. VASHTI BURR, Chairman,  
Subcommittee on Constitutional Changes*

Pennsylvania Council of Republican Women  
Legislative Advisory Committee.

## CROSS REFERENCE GUIDE

### FOR STUDY OF THE EFFECT OF PROPOSED AMENDMENTS TO THE PRESENT CONSTITUTION OF PENNSYLVANIA

The Resolution numbers below refer to Resolutions as recommended by Pennsylvania Bar Association (see pamphlet entitled "A Revised Constitution for Pennsylvania—Project Constitution—12 Resolutions and An Act").

The House Bills introduced in the General Assembly are cited below in parentheses.

For text of present Constitution, see beginning page 34 of pamphlet reprint from Pennsylvania Manual distributed by Legislative Reference Bureau.

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#### Resolution No. 1 (H. B. 991)

##### ARTICLE I—DECLARATION OF RIGHTS

Proposes only 3 changes, as follows:

\* Proposed Section 15—*Special Criminal Tribunals* rephrases present Section 15 (Oyer and Terminer or Jail Delivery) to make it more understandable.

\*\* Proposed Section 19—*Attainer Limited* would eliminate, as unnecessary, the second sentence of present Section 19.

\*\* Proposed Section 25—*Reservation of Powers in the People* is present Section 26. Present Section 25 (Emigration) would be repealed as unnecessary.

#### Resolution No. 2 (H. B. 992)

##### ARTICLE II—THE LEGISLATURE

Proposes changes in Sections 4, 6, 16, 17 and 18, as follows:

###### \* Section 4—*Sessions*

By deleting the second sentence of Section 4 (as amended in 1959), the Legislature would consider any subject of legislation at regular sessions in even-numbered years also (now limited to financial legislation only).

###### \*\* Section 6—*Disqualification to Hold Other Office*

Present Section 6 would be divided into 2 sentences and certain words (as underscored below) would be inserted, so that Section 6 would read:

"No Senator or Representative shall, during the term for which he was elected, be appointed to any civil office or employment under this Commonwealth to which a salary, fee or perquisite is

\* A single asterisk on this and subsequent pages indicates a proposed section as recommended by the 1957 Commission on Constitutional Revision—the "Woodside Commission".

\*\* In cases in which the PBA is recommending that a section be modified differently from the Woodside Commission recommendation there is a double asterisk.

**Proposed Section 2—Incompatible Offices** is present Article XII, Section 2 without change except for the deletion of the word "a" before "salary".

\*\* **Proposed Section 3—Oath of Office** is present Article VII, Section 1, except that unnecessary detail of the oath is deleted and the detail regarding filing the oath and the recital of consequences of perjury in taking the oath are eliminated as not necessary in the Constitution.

**Proposed Section 4—Power of Impeachment** is present Article VI, Section 1, without change.

**Proposed Section 5—Trial of Impeachments** is present Article VI, Section 2, without change.

\*\* **Proposed Section 6—Officers Liable to Impeachment** is present Article VI, Section 3, except that "misbehavior" is inserted in lieu of "misdemeanor" because the misbehavior need not be a technical misdemeanor to support impeachment.

\*\* **Proposed Section 7—Removal of Civil Officers** is present Article VI, Section 4, except that "civil" is inserted before "officers" in the first two sentences, the words "and the Superintendent of Public Instruction," are deleted, and the words "learned in the law" following "judges of the courts of record" are deleted.

*Resolution No. 7 (H. B. 997)*

#### ARTICLE — — ELECTIONS

Proposes amendment of present Article VIII (Suffrage and Election), with the result that the present 19 Sections would be reduced to 15; 3 Sections would be repealed and 2 would be consolidated as 1. Present Section 6 (Voting When in Military Service) would be eliminated because specific reference to absentee voting for those in military service is incorporated in proposed Section 15 (see below). Present Section 9 (Violation of Election Laws) would be eliminated because penalties for violation of election laws should be determined by the Legislature. Present Section 13 (Residence of Certain Electors) would be eliminated as being unnecessary and inappropriate in the Constitution. Of the proposed 15 Sections, 5 of them (4, 5, 7, 8 and 9) are the same as 5 of the present Sections; except that 3 of the latter have been renumbered as indicated below. Of the remaining proposed 10 Sections, 1 involves no change other than a substitution of lettering for numbering of subparagraphs. The proposed Article would be numbered in accordance with a procedure set forth in a "Proposed Act Regarding Numbering and Proclaiming Constitutional Amendments".

**\*\* Proposed Section 1—*Qualification of Electors*** is the present Article VIII, Section 1, except that the clauses numbered 1, 2 and 3 are made lettered subparagraphs (a), (b) and (c).

**\* Proposed Section 2—*General Election Day; Municipal Election Day*** is present Article VIII, Section 2, amended (as proposed by the Woodside Commission) to add a fixed date for municipal elections; to eliminate the requirement of a two-thirds vote of each House to fix a different day for an election; and to make mandatory the requirement that general elections must be held in even-numbered years and municipal elections must be held in odd-numbered years.

**\*\* Proposed Section 3—*Election of Judges and Local Officers*** is present Article VIII, Section 3, modified to render it consistent with proposed Section 2 as well as consistent either with the present method of electing judges or the method that would be substituted if Resolution No. 5 (H. B. 995) were adopted. The mandatory requirement in present Section 2 that all judges shall be elected is eliminated.

**Proposed Section 4—*Secrecy in Voting*** is present Article VIII, Section 4, with no change.

**Proposed Section 5—*Electors Privileged From Arrest*** is present Article VIII, Section 5, with no change.

**\*\* Proposed Section 6—*Election and Registration Laws*** is present Article VIII, Section 7, in which the words "political subdivision or election district" would be substituted for the words "county, city, borough or township". The last sentence of present Section 7 would be combined with provisions of present Section 14 as renumbered Section 11.

**Proposed Section 7—*Bribery of Electors*** is present Article VIII, Section 8, with no change.

**Proposed Section 8—*Witnesses in Contested Elections*** is present Article VIII, Section 10, with no change.

**Proposed Section 9—*Election Districts*** is present Article VIII, Section 11, with no change.

**\*\* Proposed Section 10—*Viva Voce Elections*** is present Article VIII, Section 12, as amended by adding certain words (italicized below) so that it would read:

"All elections by persons in a representative capacity shall be *viva voce or by electronic device publicly indicating how each person voted.*"

**\*\* Proposed Section 11—*Election Officers*** is present Article VIII, Section 14, amended by deleting the first three sentences and substituting the revised last sentence of present Section 7 as the first sentence of proposed Section 11, thereby giving the Legislature the right to prescribe the number, duties and method of selection of election officers.

**\*\* Proposed Section 12—Disqualification for Election Officer** is present Article VIII, Section 15, amended by deleting the words "justices of the peace and aldermen" and the words "service of the State" and by inserting following the word "militia" the words "or in the organized reserve".

**\*\* Proposed Section 13—Overseers of Elections** is present Article VIII, Section 16, amended by requiring the General Assembly instead of judges of the courts to provide for the appointment of overseers of election and by making it clear that overseers need not be residents of the precincts in which they serve.

**\* Proposed Section 14—Contested Elections** is present Article VIII, Section 17, amended by dividing present Section 17 into two sentences and by excluding from the provisions the Governor and Lieutenant Governor. The reason for the exclusion is that Section 2 of Article IV covers contested elections involving those offices.

**\*\* Proposed Section 15—Absentee Voting** is a consolidation of Sections 18 and 19 of present Article VIII. Proposed Section 15 states that the Legislature shall provide for absentee voting, "including those who are in actual military service of the United States or of this Commonwealth". The word "unavoidably" before the word "absent" would be eliminated.

**Resolution No. 8 (H. B. 998)**

**ARTICLE — — TAXATION AND STATE FINANCE**

Proposes amendment of present Article IX (Taxation and Finance) with the result that the present 24 Sections would be reduced to 11, Sections 5, 13, 16 (first), 16 (second), 17, 19, 21, 22 and 23 would be repealed because unnecessary, obsolete, or capable of being dealt with by legislation; that is, because (1) no longer necessary in view of proposed revisions, or (2) the provisions are obsolete, such as the two sections numbered 16 (soldiers' bonus and acquisition of toll bridges), Section 17 (authorization to borrow money for expenses for 1933-35 biennium), Section 21 (authorizing bonds for public works, rehabilitation of war veterans, etc., adopted in 1945), Section 22 (soldiers' bonus, World War II), and Section 23 (Korean veterans' bonus), or (3) the matter can be dealt with adequately by legislation, such as Section 19 (authorizing Philadelphia to make special levies for transit facilities). Sections 7, 8 and 10 of the present Article IX would be inserted in the revised Article on local government (see PBA Resolution No. 9). Of the proposed 11 Sections, 6 of them (2, 3, 4, 6, 10 and 11) are the same as 6 of the present Sections, except for renumbering, as indicated below. The proposed Article would be numbered in accordance with a procedure set forth in a "Proposed Act Regarding Numbering and Proclaiming Constitutional Amendments".



# EXHIBIT F

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Modern Constitution for Pennsylvania, 1901

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An interim report on  
Constitutional revision

## HALFWAY THERE

Efforts to completely revise Pennsylvania's Constitution are nothing new.

Over 75 years ago, sentiment to write a totally new document was so strong that the Legislature authorized a constitutional convention, subject to voter approval. Although the referendum failed in 1891, about 30% of the voters supported it.

Ever since, leading Pennsylvania citizens have advocated constitutional revision. They have never enjoyed such strong support nor more followers.

Today, 75 years, 6 constitutional convention referenda, four constitutional commissions, and some six dozen amendments later, we are within sight of the halfway mark of the first thorough revision of the Constitution of 1874.

We can pass this halfway point in 1967.

We can complete the entire task by 1969.

\*\*\*\*\*

### **What will the proposed article-by-article amendments do?**

They will *repeal* about one-third of the Constitution of 1874, because these provisions are obsolete and no longer useful; they will *rewrite* about one-third, because these provisions are written in Civil War language whose meaning is no longer clear, even to lawyers and judges; they will

retain about one-third (including the section which our Supreme Court has said prohibits a graduated income tax); they will add some new provisions to repair weaknesses in all levels of our government without diluting the rights of the people.

\*\*\*\*\*

### **What is the difference between "regular" amendments and article-by-article amendments?**

Most of the 73 amendments to our Constitution have dealt with only a single provision (or section) at a time. A good example would be the 1966 amendment to Article IX, Section 8, which changed only two of 558 words in the section.

Article-by-article amendments rewrite, repeal, or rearrange entire articles of as many as 30 or more sections at a time. The 14 article-by-article amendments proposed by the Pennsylvania Bar Association include most of the 123 changes advocated by the Woodside Commission in 1959, as well as many others.

\*\*\*\*\*

### **How are article-by-article amendments adopted?**

The same way all amendments are adopted, under Article XVIII of our Constitution:

An amendment may be introduced in either House of the General Assembly, and must be approved by a majority of all the members of each House;

The Secretary of the Commonwealth must advertise it three times in the three months preceding the next election of members of the

General Assembly in at least two newspapers in each county of the state;

The amendment must be reintroduced in the newly-elected General Assembly in the identical form in which it was originally approved, and must again be approved by a majority of the members of each House, without change;

The Secretary of the Commonwealth must again advertise it as before, indicating that it will now be placed on the voting machines and ballots at a statewide election;

It must be adopted by a majority of the total number of voters voting upon it.

All this can rarely be done in less than three years; it can take five.

No other state has a more involved, lengthier, amendment process than Pennsylvania. In 93 years, only 103 amendment proposals have reached the voters for adoption; only 73 of them have been adopted.

\*\*\*\*\*

### **What chance is there of modernizing the Constitution by amendment?**

The chance seems very good.

The Legislature is indicating new willingness to submit amendments to the voters; in the past five years, they approved more than a dozen amendments, and sent them on for voter adoption.

Also, the voters seem to have become more accustomed to considering them, and adopting them when they seem wise; they adopted all but two of the proposed amendments in the past five years.

With such increasing initiative on the part of our legislators and growing understanding on the part of our voters, the job can be done if the amendments are properly drafted and properly explained to the voters.

\*\*\*\*\*

### **What is the status of the 14 article-by-article amendments?**

As noted above, the first two amendments, entitled Public Officers and Private Corporations, were adopted by the voters in 1966, and are now part of our Constitution. These amendments revised four previous articles of the Constitution.

The next seven amendatory articles were passed for the first time by the 1965-66 General Assembly, and have been advertised again as required. They are ready to be considered by the 1967 General Assembly. If repassed by the General Assembly before February 5, 1967, they can be submitted to the voters as early as the Primary Election on May 16, 1967.

It is possible that at least three of the remaining five will be considered and passed for the first time by the Legislature in 1967, after the preceding seven have been sent on for voter approval.

The final two, both amending the Judiciary Article, may be held back in the Legislature until their debate will not influence thinking and action on the others. Even so, the Judiciary Article amendments might be acted upon in the 1968 session of the General Assembly if they are not the subject of a limited constitutional convention in the meantime.

With this timetable, second passage in the General Assembly of the last article-by-article amendments (with or without the two on Judiciary) can be expected in 1969, with the electorate voting on them finally in November, 1969.

\*\*\*\*\*

### **How do the article-by-article amendments modernize our Constitution and benefit Pennsylvania?**

*the two amendments ratified in 1966*

eliminated obsolete provisions, such as the prohibition against dueling by state officials, much of a ridiculously long oath of office, and regulations for the formation and conduct of private corporations which should be covered by statute law.

ended the constitutional prohibition against a Governor's removing a Superintendent of Public Instruction as he can most of his other appointees.

rewrote the constitutional provisions on private corporations to encourage new businesses (or businesses presently operating in this state) to incorporate here, thereby increasing our tax revenues without hardship to anyone and improving the business climate in Pennsylvania.

*the seven amendments to be acted on in 1967*

#### **(DECLARATION OF RIGHTS)**

repeal the obsolete and senseless provisions reading "Emigration from the State shall not be prohibited," and dealing with the estates of suicides or persons killed by accident.

add a guarantee of civil rights for everyone.

#### **(THE LEGISLATURE)**

make the General Assembly a continuing body for a full two-year term.

... permit the Auditor General and State Treasurer to succeed themselves for one additional 4-year term.

... make the State Treasurer ineligible to become Auditor General until four years have elapsed.

... repeal four sections of Article IV which are inconsistent with the proposed changes.

#### (ELECTIONS)

... permit new Pennsylvania residents, or former residents who have returned to the state, to vote after 90 days.

... retain the present 21-years-of-age requirement for voters.

... provide for contesting elections involving referendum questions.

... require the Legislature to provide for absentee voting.

... repeal five sections of Article VIII which are inconsistent with the proposed changes, or which are properly in the area of statutory law.

#### (FUTURE AMENDMENTS)

... retain the present method of amending the Constitution.

... provide an alternative, accelerated method of amending in only a few months, in case of emergency, by a two-thirds vote of both Houses of the Legislature, followed by a public referendum.

#### (RAILROADS AND CANALS)

... repeal all 12 of the outdated and inappropriate sections of Article XVII.

\*\*\*\*\*

... the five amendments yet to be considered by the Legislature ...

#### (LEGISLATIVE APPORTIONMENT)

(The introduction of this amendment, properly part of the amendment to the Article on The Legislature (see above), was delayed because of the series of decisions of the United States Supreme Court bearing on the subject. Also, because the reapportionment of the Legislature in 1966 by our Pennsylvania Supreme Court had temporarily made it unnecessary to bring our state Constitution into harmony with the Federal Constitution until the time for the next reapportionment, in 1971.

(This amendment, however, merits attention as soon as possible.)

... retain the present requirement that the General Assembly reapportion itself in the first regular session at which new United States census figures are available.

... further provide that, should the regular session fail to agree, the Governor must call them into special session for the sole purpose of reapportioning; should the special session fail to result in agreement within 120 days, the Pennsylvania Supreme Court shall apportion them, and may be assisted in their decision by appointing masters or boards of masters to hold hearings, take testimony and make recommendations.

#### (LOCAL GOVERNMENT)

... provide a limited form of home rule for county governments, by requiring the Legislature to authorize optional forms of government for counties, and permitting the voters of any county to choose from among the optional forms the

*Is more detailed information available?*

Certainly. Try your local public library, your county bar association, your state Senator or Representative, your local chamber of commerce, your labor union leaders, your newspaper and broadcast editors, and the constitutional revision chairmen of such organizations as the League of Women Voters, the Federation of Women's Clubs and the Association of University Women.

Or get in touch with us.

We are the only non-profit, non-partisan organization in the state devoting itself full time to the sole purpose of modernizing our obsolete State Constitution. We will serve you gladly in any way we can.

**A MODERN CONSTITUTION  
FOR PENNSYLVANIA, Inc.**  
240 North Third Street  
Harrisburg, Pennsylvania 17101  
(717) 234-2561

Richard C. Bond  
*President*

Robert [unclear]  
*Executive Director*

*January, 1967*

# EXHIBIT G

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monwealth, subject to the limitations provided in any current capital budget, money not exceeding in the aggregate the sum of [twenty-four million one hundred seventy thousand dollars (\$24,170,000)] twenty-four million two hundred eighty-three thousand six hundred ninety dollars (\$24,283,690) as may be found necessary to carry out the acquisition and construction of transportation assistance projects heretofore specifically itemized in a capital budget.

Section 2. This act shall take effect immediately.

APPROVED—The 11th day of December, A. D. 1968.

RAYMOND P. SHAFER.

No. 375

AN ACT

HB 1908

Amending the act of June 3, 1937 (P. L. 1333), entitled "An act concerning elections, including general, municipal, special and primary elections, the nomination of candidates, primary and election expenses and election contests; creating and defining membership of county boards of elections; imposing duties upon the Secretary of the Commonwealth, courts, county boards of elections, county commissioners; imposing penalties for violation of the act, and codifying, revising and consolidating the laws relating thereto; and repealing certain acts and parts of acts relating to elections," revising provisions relating to absentee voting and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Subclauses (9) and (10) of clause (w) of section 102, act of June 3, 1937 (P. L. 1333), known as the "Pennsylvania Election Code," added or amended August 18, 1968 (P. L. 707), are amended, and section 102 is amended by adding after clause (a),<sup>1</sup> and clause (r)<sup>2</sup> respectively<sup>3</sup> new clauses, to read:

Section 102. Definitions.—The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:

\* \* \*

(a.1) "Canvass" includes gathering the ballots after the election and counting, computing and tallying the votes.

<sup>1</sup> "and" not in original.

<sup>2</sup> "respectively" not in original.

<sup>3</sup> "and clause (z-2)" in original.

\* \* \*

(r. 1) "Public institution" means institutions primarily maintained by the Federal, State or local governments and includes but is not limited to veterans' hospitals and homes, State hospitals, poorhouses and county homes.

\* \* \*

(w) The words "qualified absentee elector" shall mean:

\* \* \*

(9) Any qualified war veteran elector who is bedridden or hospitalized due to illness or physical disability if he is [unavoidably] absent from the Commonwealth or county of his residence and unable to attend his polling place because of such illness or physical disability regardless of whether he is registered and enrolled; or

(10) Any qualified, registered and enrolled elector who expects to be or is [unavoidably] absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere during the entire period the polls are open for voting on the day of any primary or election; or

\* \* \*

Section 2. Clause (z-2) of section 102 of the act is repealed.

Section 3. Section 102 of the act, amended August 18, 1968 (P. L. 707), is amended by adding at the end thereof, a new clause to read:

<sup>1</sup> Section 102. Definitions.—The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:

\* \* \*

(z-8) The words "duties, occupation or business" shall include leaves of absence for teaching or education, vacations, sabbatical leaves, and all other absences associated with the elector's duties, occupation or business, and also include an elector's spouse who accompanies the elector.

Section 4. Subsections (i) and (j) of section 1801 of the act, amended August 18, 1968 (P. L. 707), are amended to read:

Section 1801. Qualified Absentee Electors.—The following persons shall be entitled to vote by an official absentee ballot in any primary or election held in this Commonwealth in the manner hereinafter provided:

<sup>1</sup> "Section 102. Definitions.—The following words, when used in this act, shall have the following meanings, unless otherwise clearly apparent from the context:" not in original.

\* \* \*

(i) Any qualified war veteran elector who is bedridden or hospitalized due to illness or physical disability if he is [unavoidably] absent from the Commonwealth or county of his residence and unable to attend his polling place because of such illness or physical disability regardless of whether he is registered and enrolled; or

(j) Any qualified registered and enrolled elector who expects to be or is [unavoidably] absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere during the entire period the polls are open for voting on the day of any primary or election; or

\* \* \*

Section 5. Subsections (a), (b), (c) and (e) of section 1802 of the act, amended August 18, 1968 (P. L. 707), are amended to read:

Section 1802. Applications for Official Absentee Ballots.—(a) Any qualified elector defined in preceding section 1801, subsections (a) to (h), inclusive, may apply at any time before any primary or election for any official absentee ballot in person, on [post card application or] any [other] form supplied by the Federal Government, or [by post card, letter or other writing,] on any official county board of election form addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of election of the county in which his voting residence is located. An application shall be issued only to an elector who appears in person at the office of the county board of election and signs for the application, or who, by mail, requests an application with a written and signed communication. No more than one application for an absentee ballot shall be issued to any elector. A copy of the request for the application shall be kept on record at the office of the county board of election.

(b) The application shall contain the following information: Home residence at the time of entrance into actual military service or Federal employment, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident of voting district, voting district if known, party choice in case of primary, name and, for a military elector, his [rank or grade,] stateside military address, [branch of service] FPO or APO number and serial number.

Any elector other than a military elector shall in addition specify the nature of his employment, the address to which ballot is to be sent, relationship where necessary, and such other information as may be

determined and prescribed by the Secretary of the Commonwealth. When such application is received by the Secretary of the Commonwealth it shall be forwarded to the proper county board of election.

(c) The application of any qualified military elector, as defined in preceding section 1301 subsection (a), for an official absentee ballot in any primary or election may not be made [or information supplied] over the signature of any person [who is familiar with the voting qualifications of the elector], other than the qualified elector or an adult member of his immediate family, as required in the preceding subsection.

\* \* \*

(e) Any qualified bedridden or hospitalized veteran [unavoidably] absent from the State or county of his residence and unable to attend his polling place because of such illness or physical disability, regardless of whether he is registered or enrolled, may apply at any time before any primary or election for an official absentee ballot [by post card, letter or other writing,] on any official county board of election form addressed to the Secretary of the Commonwealth of Pennsylvania or the county board of elections of the county in which his voting residence is located. The request for an application shall be in writing, signed and transmitted by mail.

The application shall contain the following information: Residence at the time of becoming bedridden or hospitalized, length of time a citizen, length of residence in Pennsylvania, date of birth, length of time a resident in voting district, voting district if known, party choice in case of primary, name and address of present residence or hospital at which hospitalized. When such application is received by the Secretary of the Commonwealth, it shall be forwarded to the proper county board of elections.

The application for an official absentee ballot for any primary or election [may] shall be made [or] on information supplied over the signature [of any person who is familiar with the voting qualifications] of the bedridden or hospitalized veteran as required in the preceding subsection [(f)]. Any qualified registered elector, including a spouse or dependent referred to in subsection <sup>1</sup>(1) of section 1301, who expects to be or is [unavoidably] absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election and any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or

<sup>1</sup>“(1)” in original.

physical disability and any qualified registered bedridden or hospitalized veteran in the county of residence, may apply to the county board of elections of the county in which his voting residence is located for an Official Absentee Ballot. Such application [or request may] shall be made upon an official application form supplied by the county board of elections. Such official application form shall be determined and prescribed by the Secretary of the Commonwealth of Pennsylvania. An application shall be issued only to an elector who appears in person at the office of the county board of election and signs for the application, or who, by mail, requests an application with a written and signed communication. A copy of the request for the application shall be kept on record at the office of the county board of elections.

(1) The application of any qualified registered elector, including spouse or dependent referred to in subsection <sup>1</sup>(1) of section 1801, who expects to be or is [unavoidably] absent from the Commonwealth or county of his residence because his duties, occupation or business require him to be elsewhere on the day of any primary or election, shall be signed by the applicant and shall include the surname and christian name or names of the applicant, his occupation, date of birth, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, the reason for his absence, and such other information as shall make clear to the county board of elections the applicant's right to an official absentee ballot.

(2) The application of any qualified registered elector who is unable to attend his polling place on the day of any primary or election because of illness or physical disability and the application of any qualified registered bedridden or hospitalized veteran in the county of residence shall be signed by the applicant and shall include surname and christian name or names of the applicant, his occupation, date of birth, residence at the time of becoming bedridden or hospitalized, length of time a resident in voting district, voting district if known, place of residence, post office address to which ballot is to be mailed, and such other information as shall make clear to the county board of elections the applicant's right to an official ballot. In addition, the application of such electors shall include a declaration stating the nature of their disability or illness, and the name of their attending physician, if any, together with a supporting dec-

<sup>1</sup> "(1)" in original.

<sup>2</sup> "this" in original.

laration signed by such attending physician, or, if none, by a registered elector unrelated by blood or marriage of the election district of the residence of the applicant: Provided, however, That in the event any elector entitled to an absentee ballot under this subsection be unable to sign his application because of illness or physical disability, he shall be excused from signing upon making a statement which shall be witnessed by one adult person in substantially the following form: I hereby state that I am unable to sign my application for an absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or have received assistance in making my mark in lieu of my signature.

..... (Date) ..... (Mark)

..... (Complete Address of Witness) ..... (Signature of Witness)

No more than one application for an absentee ballot shall be issued to any elector. A copy of the request for the application shall be kept on record at the office of the county board of election.

Section 6. Section 1302 of the act is amended by adding after subsection (e), three new subsections to read:

Section 1302. Applications for Official Absentee<sup>1</sup> Ballots.—\* \* \*  
(f) The county chairman of each political party or the head of each political body shall designate one representative from his respective political party or body for each public institution. The representatives so appointed shall, at the same time on a date fixed by the county board of election visit every public institution situate in the county for the purpose of obtaining the names and addresses of public institution residents who desire to receive applications for absentee ballots and to act as an election board as provided in subsection (g) of this section. The list of names and addresses thus obtained shall then be submitted by said representatives to the board which shall furnish applications individually to those appearing in the written request. If the chairman or head of a political party or body fails to appoint a representative within fifteen days from written

<sup>1</sup> "Ballot" in original.

notice from the county board of election, the county board of election shall appoint a representative from the political party or body.

(g) The county board of election shall appoint teams of three members for each public institution that shall go to the public institutions and hold the election on the first Friday prior to election day. Each member of the board shall appoint one member on every team. After the votes are cast, the teams shall collect the ballots and return them to the county board of election where they shall be placed unopened in a secure, safe and sealed container in the custody of the board until they shall be distributed to the respective absentee voters' election district as provided in section 1808 of this act where they shall be counted with the other absentee ballots, if any.

(h) The county board of election shall number, in chronological order, the applications for an official absentee ballot, which number shall likewise appear on the official absentee ballot for the qualified elector. The numbers shall appear legibly and in a conspicuous place but before the ballots are distributed the number on the ballot shall be torn off by the county board of election. This number information shall be appropriately inserted and become a part of the Registered Absentee Voters File and the Military, Veterans and Emergency Civilian Absentee Voters File provided in section 1802.3 of this act.

Section 7. Sections 1802.1, 1802.2 and 1802.3 of the act, added August 18, 1968 (P. L. 707), are amended to read:

Section 1802.1. Date of Application for Absentee Ballot.—

Applications for absentee ballots unless otherwise specified shall be received in the office of the county board of elections not earlier than fifty (50) days before the primary or election and not later than five o'clock P. M. of the first Tuesday prior to the day of any primary or election: Provided, however, That in the event any elector otherwise qualified who is so physically disabled or ill on or before the first Tuesday prior to any primary or election that he is unable to file his application or who becomes physically disabled or ill after the first Tuesday prior to any primary or election and is unable to appear at his polling place or any elector otherwise qualified who because of the conduct of his business, duties or occupation will necessarily be absent from the State or county of his residence on the day of the primary or election, which fact was not and could not

reasonably be known to said elector on or before the first Tuesday prior to any primary or election, shall be entitled to an absentee ballot at any time prior to five o'clock P. M. on the [day] first Friday

preceding any primary or election upon execution of an Emergency Application in such form prescribed by the Secretary of the Commonwealth.

In the case of an elector who is physically disabled or ill on or before the first Tuesday prior to a primary or election or becomes physically disabled or ill after the first Tuesday prior to a primary or election, such Emergency Application shall contain a supporting affidavit from his attending physician stating that due to physical disability or illness said elector was unable to apply for an absentee ballot on or before the first Tuesday prior to the primary or election or became physically disabled or ill after that period.

In the case of an elector who is necessarily absent because of the conduct of his business, duties or occupation under the unforeseen circumstances specified in this subsection, such Emergency Application shall contain a supporting affidavit from such elector stating that because of the conduct of his business, duties or occupation said elector will necessarily be absent from the State or county of his residence on the day of the primary or election which fact was not and could not reasonably be known to said elector on or before the first Tuesday prior to the primary or election.

**Section 1302.2. Approval of Application for Absentee Ballot.—**

(a) The county board of elections, upon receipt of any application filed by a qualified elector not required to be registered under preceding section 1301, shall ascertain from the information on such application, district register or from any other source that such applicant possesses all the qualifications of a qualified elector other than being registered or enrolled. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked approved such approval decision shall be final and

binding except that challenges may be made only on the ground that the applicant did not possess qualifications of an absentee elector.

Such challenges must be made to the county board of elections prior to 5:00 o'clock P. M. on the first Friday prior to the election. When

so approved, the county board of elections shall cause the applicant's name and residence (and at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilians Absentee Voters File as provided in section 1302.3, subsection (b): Providing, however, That no application of any qualified elector in military service shall be rejected for failure to include on his application any information if such information may be ascertained within a reasonable time by the county board of elections.



(b) The county board of elections, upon receipt of any application filed by a qualified elector who is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting as provided under preceding section 1301, shall ascertain from the information on such application or from any other source that such applicant possesses all the qualifications of a qualified elector. If the board is satisfied that the applicant is entitled, under the provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting and that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector prior to or concurrently with the time of voting. Such challenges must be made to the county board of elections prior to 5:00 o'clock P. M. on the first Friday prior to the election. When so approved, the county board of elections shall cause the applicant's name and residence (and <sup>1</sup> at a primary, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3 subsection (b).

(c) The county board of elections, upon receipt of any application of a qualified elector required to be registered under the provisions of preceding section 1301, shall determine the qualifications of such applicant by comparing the information set forth on such application with the information contained on the applicant's permanent registration card. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "approved." Such approval decision shall be final and binding, except that challenges may be made only on the ground that the applicant did not possess the qualifications of an absentee elector. Such challenges must be made to the county board of elections prior to 5:00 o'clock P. M. on the first Friday prior to the election. When so approved, the registration commission shall cause [the applicant's permanent registration card to be removed from the district register and the county board of elections shall cause same to be inserted in the Registered Absentee Voters File as provided in section 1302.3 subsection (a):] an absentee voter's temporary registration card to be inserted in the district register on top of and along with the

<sup>1</sup> "at" not in original.

permanent registration card. The absentee voter's temporary registration card shall be in the color and form prescribed in subsection (e) of this section:

Provided, however, That the duties of the county boards of elections and the registration commissions with respect to the [removal] insertion of the [original] absentee voter's temporary registration card of any elector from the district register as set forth in section [1305] 1302.2 shall include only such applications and emergency applications as are received on or before the first Tuesday prior to the primary or election. In all cases where applications are received after the first Tuesday prior to the primary or election and before five o'clock P. M. on the [day] first Friday prior to the primary or election, the county board of elections shall determine the qualifications of such applicant by comparing the information set forth on such application with the information contained on the applicant's duplicate registration card on file in the General Register (also referred to as the Master File) in the office of the Registration Commission and shall cause the name and residence (and at primaries, the party enrollment) to be inserted in the Military, Veterans and Emergency Civilian Absentee Voters File as provided in section 1302.3, subsection (b). In addition, the [county] local district boards of elections shall, upon canvassing the official absentee ballots under section 1308, examine the voting check list of the election district of said elector's residence and satisfy itself that such elector did not cast any ballot other than the one properly issued to him under his absentee ballot application. In all cases where the examination of the [county] local district board of elections discloses that an elector did vote a ballot other than the one properly issued to him under the absentee ballot application, the [county] local district board of elections shall thereupon cancel said absentee ballot and said elector shall be subject to the penalties as hereinafter set forth.

(d) In the event that any application for an official absentee ballot is not approved by the county board of elections, the elector shall be notified immediately to that effect with a statement by the county board of the reasons for the disapproval.

(e) The absentee voter's temporary registration card shall be in duplicate and the same size as the permanent registration card, in a different and contrasting color to the permanent registration card and shall contain the absentee voter's name and address and shall conspicuously contain the words "Absentee Voter." Such card shall

also contain the affidavit required by subsection (b) of section 1306.

Section 1302.3. Absentee Electors Files and Lists.—(a) The county board of elections shall maintain at its office a file containing the [original] duplicate absentee voter's temporary registration cards of every registered elector to whom an absentee ballot has been sent. Such [original] duplicate absentee voter's temporary registration cards shall be filed by election districts and within each election district in exact alphabetical order and indexed. The registration cards so filed shall constitute the Registered Absentee Voters File for the Primary or Election of (date of primary or election) and shall be kept on file for a period commencing the [Thursday] Tuesday prior to the day of the primary or election until the [third Monday] day following the primary or election or the day the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations.

(b) The county board of elections shall post in a conspicuous public place at its office a master list arranged in alphabetical order by election districts setting forth the name and residence, and at primaries, the party enrollment, of (1) every military elector to whom an absentee ballot is being sent, each such name to be prefixed with an "M"; (2) every bedridden or hospitalized veteran outside the county of his residence who is not registered and to whom an absentee ballot is being sent, each such name to be prefixed with a "V"; and (3) every registered elector who has filed his application for an absentee ballot too late for the extraction of his original registration card and to whom a ballot is being sent and every qualified elector who has filed his application for an absentee ballot and is entitled, under provisions of the Permanent Registration Law as now or hereinafter enacted by the General Assembly, to absentee registration prior to or concurrently with the time of voting, each such name to be prefixed with a "C." This list shall be known as the Military, Veterans and Emergency Civilians Absentee Voters File for the Primary or Election of (date of primary or election) and shall be posted for a period commencing the Tuesday prior to the day of the primary or election until the [third Monday] day following the primary or election or the day on which the county board of elections certifies the returns of the primary or election, whichever date is later. Such file shall be open to public inspection at all times subject to reasonable safeguards, rules and regulations. This posted list shall not contain any military address or references to any military organization. Upon written request, the county board shall furnish a copy of such list to any candidate or party county chairman.

(c) Not less than five days preceding the election, the chief clerk shall prepare a list for each election district showing the names and post office addresses of all voting residents thereof to whom official absentee ballots shall have been issued. Each such list shall be prepared in duplicate, shall be headed "Persons in (give identity of election district) to whom absentee ballots have been issued for the election of (date of election)," and shall be signed by him not less than four days preceding the election. He shall post the original of each such list in a conspicuous place in the office of the county election board and see that it is kept so posted until the close of the polls on election day. He shall cause the duplicate of each such list to be delivered to the judge of election in the election district in the same manner and at the same time as are provided in this act for the delivery of other election supplies, and it shall be the duty of such judge of election to post such duplicate list in a conspicuous place within the polling place of his district and see that it is kept so posted throughout the time that the polls are open. Upon written request, he shall furnish a copy of such list to any candidate or party county chairman.

Section 8. Sections 1304 and 1306, subsection (b) of section 1307 and section 1308 of the act, amended August 13, 1963 (P. L. 707), are amended to read:

Section 1304. Envelopes for Official Absentee Ballots.—

The county boards of election shall provide two additional envelopes for each official absentee ballot of such size and shape as shall be prescribed by the Secretary of the Commonwealth, in order to permit the placing of one within the other and both within the mailing envelope. On the smaller of the two envelopes to be enclosed in the mailing envelope shall be printed, stamped or endorsed the words "Official Absentee Ballot," and nothing else. On the larger of the two envelopes, to be enclosed within the mailing envelope, shall be printed the form of the declaration of the elector, and the name and address of the county board of election of the proper county. The larger envelope shall also contain information indicating the local election district of the absentee voter. Said form of declaration and envelope shall be as prescribed by the Secretary of the Commonwealth

and shall contain among other things a statement of the elector's qualifications, together with a statement that such elector has not already voted in such primary or election. The mailing envelope addressed to the elector shall contain the two envelopes, the official absentee ballot, lists of candidates when authorized by section 1303 subsection (b) of this act, the uniform instructions in form and substance as prescribed by the Secretary of the Commonwealth and nothing else: Provided, however, That envelopes for electors qualified under preceding section 1301, subsections (a) to (h), inclusive, shall have printed across the face of each transmittal or return envelope two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed, in the upper right corner of each such envelope in a box, the words "Free of U. S. Postage, Including Air Mail;" that all printing on the face of each such envelope be in red, and that there be printed in red, in the upper left corner of each such envelope, the name and address of the county board of elections of the proper county or blank lines for return address of the sender:

Provided further, That the aforesaid envelope addressed to the elector may contain absentee registration forms [and instructions] where required, and shall contain detailed instructions on the pro-

cedures to be observed in casting an absentee ballot as prescribed

by the Secretary of the Commonwealth, together with return envelope upon which is printed the name and address of the registration commission of the proper county, which envelope shall have printed across the face two parallel horizontal red bars, each one-quarter inch wide, extending from one side of the envelope to the other side, with an intervening space of one-quarter inch, the top bar to be one and one-quarter inches from the top of the envelope and with the words "Official Election Balloting Material via Air Mail" between the bars; that there be printed in the upper right corner of each such envelope in a box the words "Free of U. S. Postage, Including Air Mail," and, in the upper left corner of each such envelope, blank lines for return address of the sender; that all printing on the face of each such envelope be in red.

Section 1306. Voting by Absentee Electors.—(a) At any time after receiving an official absentee ballot, but on or before [the day of] five o'clock P. M. on the Friday prior to the primary or

election, the elector shall, in secret, proceed to mark the ballot only in black lead pencil, indelible pencil or blue, black or blue-black ink, in fountain pen or ball point pen, and then fold the ballot, enclose and securely seal the same in the envelope on which is

printed, stamped or endorsed "Official Absentee Ballot." This envelope shall then be placed in the second one, on which is printed the form of declaration of the elector, and the address of the elector's county board of election and the local election district of the elector. The elector shall then fill out, date and sign the declaration printed on such envelope. Such envelope shall then be securely sealed and the elector shall send same by mail, postage prepaid, except where franked, or deliver it in person [or by representative] to said county board of election:

Provided, however, That any elector, spouse of the elector or dependent of the elector, qualified in accordance with the provisions of section 1301, subsections (e), (f), (g) and (h) to vote by absentee ballot as herein provided, shall be required to include on the form of declaration a supporting declaration in form prescribed by the Secretary of the Commonwealth, to be signed by the head of the department or chief of division or bureau in which the elector is employed, setting forth the identity of the elector, spouse of the elector or dependent of the elector:

Provided further, That any elector who has filed his application in accordance with section 1302 [ , subsection (f) ] subsection (e) (2), and is unable to sign his declaration because of illness or physical disability, shall be excused from signing upon making a declaration which shall be witnessed by one adult person in substantially the following form: I hereby declare that I am unable to sign my declaration for voting my absentee ballot without assistance because I am unable to write by reason of my illness or physical disability. I have made or received assistance in making my mark in lieu of my signature.

..... (Mark)

.....  
(Date)

.....  
(Signature of Witness)

.....  
(Complete Address of Witness)

(b) In the event that any such elector, excepting an elector in military service or any elector unable to go to his polling place because of illness or physical disability, entitled to vote an official absentee ballot shall be in the county of his residence on the day for holding the primary or election for which the ballot was issued, or in the event any such elector shall have recovered from his

illness or physical disability sufficiently to permit him to present himself at the proper polling place for the purpose of casting his ballot, such absentee ballot cast by such elector shall, [upon challenge properly sustained,] be declared void.

[However, any] Any such elector referred to in this subsection, who is within the county of his residence must present himself at his polling place and, shall be permitted to vote upon presenting himself at his regular polling place in the same manner as he could have voted had he not received an absentee ballot: Provided, That such elector has first presented himself [before the court of common pleas of his county between the hours of seven o'clock A. M. and five o'clock P. M. on the day of any primary or election and has procured an "Emergency Voting Form" signed by the court, which form entitles the elector to vote at his regular polling place upon the signing of a voter's certificate: Provided, however, That the court may require the surrender of said elector's absentee ballot where he has not already voted, which shall thereupon be marked "cancelled" by said court and transmitted to the county board of elections. In the event such elector has already voted, then the court shall direct the county board of elections to set such ballot aside unopened.] to the judge of elections in his local election district and shall have signed the affidavit on the absentee voter's temporary registration card, which affidavit shall be in substantially the following form:

I hereby swear that I am a qualified registered elector who has obtained an absentee ballot, however, I am present in the county of my residence and physically able to present myself at my polling place and therefore request that my absentee ballot be voided.

(Date)

.....  
(Signature of Elector)

.....  
(Local Judge of Elections)

An elector who has received an absentee ballot under the emergency application provisions of section 1302.1, and for whom, therefore, no temporary absentee voter's registration card is in the district register, shall sign the aforementioned affidavit in any

case, which the local judge of elections shall then cause to be inserted in the district register with the elector's permanent registration card.

Section 1307. Certain Electors Voting in Districts of Residence.—

\* \* \*

(b) Each such application shall be in the form and shall contain the information required by this act together with a statement by the applicant that he has not already voted in the election.

The county board of elections shall ascertain from the information on such application or from any other source that such applicant possesses all the qualifications of a qualified elector other than being registered or enrolled. If the board is satisfied that the applicant is qualified to receive an official absentee ballot, the application shall be marked "Approved," subject to the limitations set out in section 1302.2 of this act. When so approved, the

county board of elections shall cause the applicant's name and residence (and at primaries, the party enrollment) to be inserted in the "Military, Veterans and Emergency Civilian Absentee Voters File" as provided in section 1302.3 subsection (b).

\* \* \*

Section 1308. Canvassing of Official Absentee Ballots.—

(a) The county boards of election, upon receipt of official absentee ballots in such envelopes, shall safely keep the same in sealed or locked containers until they [meet to canvass official absentee ballots, which canvass shall begin immediately following the official civilian canvass for the primary or November election or the second Friday following the primary or November election, whichever date is later. Said canvass to commence at ten o'clock A. M., Eastern Standard Time. No such ballots shall be counted which are received in their offices later than ten o'clock A. M., Eastern Standard Time, of the second Friday following the primary election or the November election. At such time the members of the return boards or the county boards of election shall in person dispose of official absentee ballots in the manner hereinafter set forth. The county boards of election may designate a sufficient number of clerks to perform such duties. When it is determined that clerks shall be appointed, the total number shall in every case be in multiples of three, and each member of a county board of elections shall appoint an equal number thereof.] distribute same to the appropriate local election districts in a manner prescribed by the Secretary of the Commonwealth.

The county board of elections shall then distribute the absentee ballots, unopened, to the absentee voter's respective election dis-



trict concurrently with the distribution of the other election supplies. Absentee ballots shall be canvassed immediately and continuously without interruption until completed after the close of the polls on the day of the election in each election district. The results of the <sup>1</sup> canvass of the absentee ballots shall then be included in and returned to the county board with the returns of that district. No absentee ballot shall be counted which is received in the office of the county board of election later than five o'clock P. M. on the Friday immediately preceding the primary or November election.

(b) [Each candidate for nomination or election shall be entitled to appoint one watcher and each political party or body which has nominated candidates shall be entitled to appoint three watchers.] Watchers shall be permitted to be present when the envelopes containing official absentee ballots are opened and when such ballots are counted and recorded.

[ (c) In disposing of an official absentee ballot the county return board or the county board of election shall examine the declaration and if the same bears a date later than the date of such primary or election, the envelope shall be set aside unopened.]

(d) Whenever it shall appear by due proof that any absentee elector who has returned his ballot in accordance with the provisions of this act has died prior to the opening of the polls on the day of the primary or election, the ballot of such deceased elector shall be rejected by the canvassers but the counting of the ballot of an elector thus deceased shall not of itself invalidate any nomination or election.

(e) [The] At such time the local election board shall then further examine the declaration on each envelope not so set aside and shall compare the information thereon with that contained in the "Registered Absentee Voters File," the absentee voters' list and the "Military Veterans and Emergency Civilians Absentee Voters File." If the local election board is satisfied that the declaration is sufficient [and that the elector has qualified,] and [the board has utilized] the information contained in the "Registered Absentee Voters File," the absentee voters' list and the "Military Veterans and Emergency Civilians Absentee Voters File" [to verify] verifies his right to vote, the local election board shall announce

<sup>1</sup> "canvas" in original.

the name of the elector and shall give any watcher present an opportunity to challenge [in like manner and for the same cause, except the failure of qualified electors set forth in preceding section 1301, subsections (a) to (i), inclusive, to register or enroll, as the elector could have been challenged had he presented himself in his own district to vote other than by official absentee ballot: Provided further, That any watcher may challenge] any absentee elector upon the ground or grounds (1) that the absentee elector is not a qualified [absentee] elector: [as defined in this act;] or (2) that the absentee elector was within the county of his residence on the day of the primary or election during the period the polls were open, except where he was in military service or except in the case where his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability; or (3) that the absentee elector was able to appear personally at the polling place on the day of the primary or election during the period the polls were open in the case his ballot was obtained for the reason that he was unable to appear personally at the polling place because of illness or physical disability. Upon challenge of any absentee elector, as set forth herein the local election board shall mark "challenged" on the envelope together with the reason or reasons therefor, and the same shall be set aside for return to the county board unopened pending decision by the county board and shall not be counted. All absentee ballots not challenged for any of the reasons provided herein shall be counted and included with the general return of paper ballots or voting machines, as the case may be as follows. Thereupon, the local election board shall open the envelope of every unchallenged absentee elector in such manner as not to destroy the declaration executed thereon. All of such envelopes on which are printed, stamped or endorsed the words "Official Absentee Ballot" shall be placed in one or more depositories at one time and said depository or depositories well shaken and the envelopes mixed before any envelope is taken therefrom. If any of these envelopes shall contain any extraneous marks or identifying symbols other than the words "Official Absentee Ballot," the envelopes and the ballots contained therein shall be set aside and declared void. The local election board shall then break the seals of such envelopes, remove the ballots and record the votes in the same manner as district election officers are required to record votes. With respect to the challenged ballots, [the board] they shall be returned

to the county board with the returns of the local election district where they shall be placed unopened in a secure, safe and sealed container in the custody of the county board until it shall fix a time and place for a formal hearing of all such challenges and notice shall be given where possible to all absentee electors thus challenged and to every attorney, watcher or candidate who made such challenge. The time for the hearing shall not be later than [ten (10)] seven (7) days after the date of said challenge. On the day fixed for said hearing, the county board shall proceed without delay to hear said challenges and, in hearing the testimony, the county board shall not be bound by technical rules of evidence.

The testimony presented shall be stenographically recorded and made part of the record of the hearing. The decision of the county board in upholding or dismissing any challenge may be reviewed by the court of common pleas of the county upon a petition filed by any person aggrieved by the decision of the county board. Such appeal shall be taken, within two (2) days after such decision shall have been made, whether reduced to writing or not, to the court of common pleas setting forth the objections to the county board's decision and praying for an order reversing same.

Pending the final determination of all appeals, the county board shall suspend any action in canvassing and computing all challenged ballots irrespective of whether or not appeal was taken from the county board's decision. Upon completion of the computation of the returns of the county, the votes cast upon the challenged official absentee ballots shall be added to the other votes cast within the county.

(f) Any person challenging an application for an absentee ballot or an absentee ballot for any of the reasons provided in this act shall deposit the sum of ten dollars (\$10.00) in cash with the local election board, in cases of challenges made to the local election board and with the county board in cases of challenges made to the county board for which he shall be issued a receipt for each challenge made, which sum shall only be refunded if the challenge is sustained or if the challenge is withdrawn within five

<sup>1</sup> "challenge" in original.  
<sup>2</sup> "challenger" in original.

(5) days after the primary or election. If the challenge is dismissed by any lawful order then the deposit shall be forfeited. All deposit money received by the local election board shall be turned over to the county board simultaneously with the return of the challenged ballots. The county board shall deposit all deposit money in the general fund of the county.

Notice of the requirements of subsection (b) of section 1306 shall be printed on the envelope for the absentee ballot.

Section 9. The act is amended by adding after section 1330, a new section to read:

Section 1331. Violation of Provisions Relating to Absentee Voting.

—Any person who shall violate any of the provisions of this act relating to absentee voting shall, unless otherwise provided, be subject to the penalties provided for in section 1850 of this act.

Section 10. This act shall take effect immediately.

APPROVED—The 11th day of December, A. D. 1968.

RAYMOND P. SHAFER.

No. 376

AN ACT

SB 1086

Prohibiting the interception and interference of certain police and fire radio broadcasts; regulating the manufacture, conversion, sale, possession and use of certain equipment adaptable for such purpose and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Police and Fire Radio Broadcasts.—(a) Police or fire radio broadcasts as used herein shall mean broadcasts on frequencies from one hundred fifty-four to one hundred fifty-six megacycles and four hundred fifty-three to four hundred fifty-nine megacycles only.

(b) No unauthorized person shall interfere with or broadcast on any police or fire radio broadcast. No person shall intercept any such broadcast for the purpose of aiding himself or others in the perpetra-