

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIRST LEGISLATURE

Legislative Document

No. 33

S. P. 40

In Senate, January 9, 1963

Communication and Report. Referred to Committee on Constitutional Amendments and Legislative Reapportionment. Sent down for concurrence and ordered printed in document form.

CHESTER T. WINSLOW, Secretary

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-THREE

TO THE LEGISLATURE OF THE STATE OF MAINE:

FIRST REPORT OF MAINE CONSTITUTIONAL COMMISSION

This is the first report of the Commission appointed in January 1962 by the Governor to study the Constitution of the State of Maine. This Commission was directed to report to the 101st Legislature such changes and amendments to the Constitution of the State as appeared to it to be necessary or desirable.

The Commission has decided that it can best discharge its duties by rendering to the 101st Legislature a series of reports covering various Articles in the Maine Constitution with proposed amendments thereto.

In its concluding report the Commission will discuss, at least in summary form, the history of the Maine Constitution and of amendments proposed thereto since its adoption. Such report will also review the work of the Commission from the date of its organization in January 1962 and make such recommendations as may then seem advisable concerning future studies of the Constitution and of specific provisions thereof.

This report is concerned with Articles I and II of the Constitution.

We believe that the Declaration of Rights set forth in Article I of the Constitution is still an adequate statement of the protections guaranteed to the individual Maine citizen under the constitutional form of government originally adopted in this State in 1820.

Admittedly, there are a number of Sections of the Maine Declaration of Rights which have become of limited or of no importance. For example, Section 23 forbidding the granting of any title of nobility or hereditary dis-

tion, privilege, honor or emolument to a citizen could well be revoked at this time. For another example, it is doubtful if in this century, Section 19 guaranteeing a remedy by due course of law for all injuries to person or property needs to be included in the Constitution.

On the other hand, the Commission does not at this time propose a complete redraft of the Constitution. The members of the Commission believe that provisions in the Constitution which are subject only to the criticism that they are no longer necessary for protection of individual rights, may remain in the Constitution without causing confusion or detracting from the strength and effectiveness of the essential provisions of the Declaration of Rights. The Commission has therefore made no suggestions for rewriting, eliminating or streamlining Article I of the Constitution.

Two additional provisions are proposed by the Commission for addition to the Declaration of Rights.

A due process clause, similar to that which appears as the 14th Amendment to the United States Constitution and which would forbid discrimination against any person because of race, religion, sex or ancestry, should be added to the Maine Constitution.

The section which we propose for adoption is as follows:

“No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.”

We do not believe that anyone will challenge the desirability of amending the Constitution along the lines above suggested. It may well be said that in various places within the Declaration of Rights, as the same is now written, much of the protection given by the proposed new due-process clause appears. However, the rights with which we are here concerned are so fundamental and so important that if there is a second or repeat guarantee, such underwriting of protection is, we believe, all to the good.

The development of modern methods of communication and the ability through electronic means to reach into private communications makes it necessary, the Commission believes, to guarantee to the people of the State of Maine security against unreasonable interception of electronic communications. The Commission, therefore, proposes the following additional amendment to Article I of the Constitution:

“The right of the people to be secure against unreasonable interception of telephone, telegraph and other electronic means of communications shall not be violated, and no orders and warrants for such interception shall issue but on complaint in writing, upon probable cause, supported by oath or affirmation that evidence of crime may thus be obtained, and particularly identifying the means of communication and the person or persons whose communications are to be intercepted.”

In making these suggestions, the Commission members recognize that there is no history in the State of Maine of abuses in the areas to be covered by the proposed additions which would continue if Constitutional provisions were not adopted to prevent the same. On the other hand, the additional rights which the amendments would guarantee are important and essential and guarantees should, the Commission believes, be written into the Constitution at this time rather than defer such action until a later date.

Article II of the Constitution contains the provisions granting citizens of the United States with established residences in the State of Maine the right to vote. A number of criticisms have been directed against this Section of the Constitution by citizens who have appeared before your Commission and by other students of the Constitution. Changes should be made in this Article.

First, the Commission recommends that the voting age in the State of Maine be reduced from twenty-one to twenty. While there appears to be no urgent desire among our young people nineteen and twenty years of age to receive the right to vote prior to reaching twenty-one years of age, the Commission believes that in our present society the capacity of most Maine men and women who reach twenty years of age and the degree of responsibility placed on them are such that they should be given the right of franchise at that age.

Suggestions have been made that the voting age be reduced to eighteen. It is the unanimous view of the Commission, however, that a three-year reduction should not be made, certainly not at this time. The State of Hawaii in adopting its new Constitution selected the age of twenty as the voting age. This the Commission believes is a good precedent for the most easternmost State in the Union to follow. It is, therefore, recommended that a one-year reduction be made in the voting age.

In many instances it is necessary for contractual reasons to appoint guardians for those less than 21 years of age. In order that it may be clear that the appointment of a guardian for an individual less than 21 years of age does not of itself make the ward incompetent to vote, the phrase "except incompetents under guardianship" has been added to the Constitution. One needing a guardian because he or she is not 21 years of age would not be "incompetent" within the meaning of the word as used by the Commission in the redraft of Section 1 of Article II of the Constitution.

Second, the changes in laws in this State covering paupers are such that the Constitution should no longer deny the right to vote to "paupers". If the Legislature desires to add additional restrictions on the right to vote to those contained in the Constitution, it may do so. But the old idea of pauperizing the underprivileged no longer exists in this country and this limitation should be removed from our Constitution.

The Constitution should make it clear that once an individual has established his residence and been registered to vote, this right shall continue until its possessor has removed himself from the State, or if he has removed himself from the voting district from which he is entitled to vote but continues to remain a

resident of the State, until a period of three months has elapsed after a change in his place of residence.

Instead of the Constitution containing language which would appear to prevent those in the Armed Services of the United States and college students from obtaining the right to vote, we believe that the Constitution should only indicate that the fact of being stationed in the State of Maine or attending an institution of learning here is not sufficient in itself to meet the residential requirement for voting. In other words, officials charged with registration of voters should consider all facts presented in deciding whether a given individual is, in fact, a resident of Maine and entitled to the rights of a citizen of this State.

One minor change in the 1st Section of the Article is a removal of the so-called grandfather clause guaranteeing the right to vote to anyone who possessed it July 4, 1893.

Attached hereto and marked Amendment A is the amendment which we suggest to guarantee due process of law.

Attached hereto and marked Amendment B is the change which we believe would protect our people against unreasonable interception of electronic communication.

Attached hereto and marked Amendment C is a proposed revision of Section I of Article II.

We urge favorable action on these amendments by the Legislature and their submission to the People of Maine.

Emery O. Bean, Jr.
 John P. Carey
 Carleton E. Edwards
 Robert A. Marden
 Edwin R. Smith
 Stanley G. Snow
 George D. Varney
 John F. Ward
 Robert M. York
 Fred C. Scribner, Jr., President

January 4, 1963

AMENDMENT A

RESOLVE, Proposing an Amendment to the Constitution Forbidding Discrimination Against Any Person Because of Race, Religion, Sex or Ancestry.

Constitutional amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article I, amended. Article I of the Constitution is amended by adding thereto a new section to read as follows:

'No person shall be deprived of life, liberty or property without due process of law, nor be denied the equal protection of the laws, nor be denied the enjoyment of his civil rights or be discriminated against in the exercise thereof because of race, religion, sex or ancestry.'

AMENDMENT B

RESOLVE, Proposing an Amendment to the Constitution to Prohibit the Unreasonable Interception of Telephone, Telegraph and Other Electronic Communications.

Constitutional amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article I, Section 5, amended. Section 5 of Article I of the Constitution is amended by adding at the end a new paragraph, to read as follows:

'The right of the people to be secure against unreasonable interception of telephone, telegraph and other electronic means of communication shall not be violated, and no orders and warrants for such interception shall issue but on complaint in writing, upon probable cause, supported by oath or affirmation that evidence of crime may thus be obtained, and particularly identifying the means of communication and the person or persons whose communications are to be intercepted.'

AMENDMENT C

RESOLVE, Proposing an Amendment to the Constitution to Provide Revised Qualifications for Electors.

Constitutional amendment. Resolved: Two-thirds of each branch of the Legislature concurring, that the following amendment to the Constitution of this State be proposed:

Constitution, Article II, amended. Article II of the Constitution is amended by substituting in place and in stead of the present Section I of Article II thereof the following:

ARTICLE II.

Electors.

Section I. Every citizen of the United States of the age of twenty years and upwards (except incompetents under guardianship), having his or her residence established in this state for the term of six months next preceding any election, shall be an elector for governor, senators and representatives, in the city, town or plantation where his or her residence has been established for the term of three months next preceding such election, and he or she shall continue to be an elector in such city, town or plantation for the period of

three months after he or she shall cease to reside therein, if he or she continues to reside in this state during such period. Being stationed at any establishment maintained in the State of Maine by any one of the military services of the United States shall not in and of itself give sufficient residence to entitle one so stationed to right of suffrage in the city, town or plantation in which such establishment in the state is maintained. The residence of a student at any institution of learning shall not in and of itself entitle such student to the right of suffrage in the city, town or plantation where such institution is established. No person, however, shall be deemed to have lost his or her residence by reason of absence from the state in the military service of the United States, or of this state, or by temporary absence from this state with no intention of ceasing to reside in the state.

No person shall have the right to vote or be eligible to office under the constitution of this state, who shall not be able to read the constitution in the English language, and write his name; provided however, that this shall not apply to any person prevented by a physical disability from complying with such requirements.

Every Indian, residing on tribal reservations and otherwise qualified, shall be an elector in all county, state and national elections.