



South Dakota Legislative Research Council

Issue Memorandum 98-20

CONSTITUTIONAL AMENDMENT H: AGE QUALIFICATIONS FOR LEGISLATORS, GOVERNOR, AND LIEUTENANT GOVERNOR

Introduction

Initiatives and referendums often pose difficult problems for the voters who are called on to analyze complicated and often voluminous statutes and constitutional amendments in the voting booth. Frequently, voters are of necessity forced to rely on the Attorney General's synopsis or television advertising to make their decision because they do not have time to read and consider the legislation that often runs to several pages or deals with intricate policy questions. But Amendment H is simple and direct. It merely proposes to lower the minimum age for legislators from twenty-five to twenty-one and to establish the same age restrictions for Governor and Lieutenant Governor.

Legislative History

In the form that HJR 1002 was introduced on January 16, 1998, by Representative Bill Napoli (R-Rapid City), it would have provided for a constitutional amendment to establish a minimum age of twenty-five to hold the office of Governor and Lieutenant Governor in South Dakota. With the introduction of HJR 1002, Representative Napoli and his thirty-eight cosponsors from both parties sought to redress what they considered to be the illogical inconsistency of having constitutional age restrictions for legislators but not for the Governor. However, when the joint resolution was

heard in the House State Affairs Committee, the committee members, on a narrow 7 to 6 vote, preferred to resolve the ambiguity by eliminating the age requirements for legislators rather than reestablishing them for the Governor. This hoghoused version of HJR 1002 subsequently passed the House of Representatives by a comfortable margin of 45 to 22, although several of the joint resolution's original cosponsors voted against the hoghouse.

The Senate State Affairs Committee promptly struck the House amendments and unanimously reported the joint resolution to the Senate floor in its original form. The Senate ratified its committee's decision by approving HJR 1002 on a 31 to 3 vote. The House, however, refused to concur with the Senate's action and, on a 36 to 31 vote, sent the measure to a conference committee.

The conference committee, composed of Representatives Napoli, Weber, and Haley and Senators Aker, Drake, and Symens, again rewrote HJR 1002 pursuing a true compromise between the House and Senate versions. The final report called for establishing a constitutional age requirement for the Governor and the Lieutenant Governor, but at twenty-one rather than twenty-five years of age. On the other hand, the issue of consistency in the legislative standard was addressed by reducing the

minimum legislative age from twenty-five to twenty-one. Both houses overwhelmingly adopted the conference report, 34 to 0 in the Senate and 56 to 8 in the House of Representatives.

National Perspective

From the very wellspring of American political philosophy, the drafting of the United States Constitution in 1787, the founding fathers have enshrined age qualifications for elective office as a fundamental principle of American government. The Philadelphia convention established thirty-five as the minimum age for president, thirty as the minimum age for senators, and twenty-five as the minimum age for representatives. It is interesting to note that, in over two hundred years of practical experience, there has never been a concerted effort to revise any of these hallowed federal standards.

Few presidents or senators have been elected until fairly recently who were not well into middle age. Prior to the election of John F. Kennedy in 1960, Theodore Roosevelt had been the only “young” president, ascending to the office from the vice presidency at the age of forty-three after the assassination of William McKinley. Since JFK, the median age of serious presidential candidates has fallen despite the election and reelection of the country’s oldest president in the person of Ronald Reagan.

Until 1913, United States senators were elected by the state legislatures, thereby effectively eliminating the possibility of anyone aspiring to the senate who had not pursued a political career well past the minimum age of thirty. Since the Seventeenth Amendment, some senators in their thirties have been popularly elected, but the American tradition of viewing the Senate as the more august and prestigious of the two congressional bodies persists. (The word, senate, derives from the Latin

“senatus” meaning, literally, an assemblage of old men.)

The Founding Fathers, however, viewed the House of Representatives as not only the preeminent congressional body (analogous to the British House of Commons), but also the more democratic, political, vibrant, and representative. Since the country, and especially the West, was young, the House was intended to reflect that demographic; and it has. From its earliest days, many congressmen have begun their careers in their thirties and not a few in their twenties. Today, a marked distinction persists between the average age in the U.S. Senate and the House of Representatives.

The States’ Perspective

As every state constitution is based to a considerable extent on the great federal model, it is hardly surprising that most impose age qualifications for legislators and governors. But unlike the national experience, these state provisions have been frequently reviewed, debated, and sometimes, revised. The trend has clearly been to reduce, unify, or eliminate the minimum age to be elected to the state assembly, senate, or governorship. Nevertheless, eighteen states continue to adhere to the “pure” federal model with a three-tier progression from the house to the senate to the governor’s mansion. Most frequently, the ages involved are twenty-one for the House, twenty-five for the Senate, and thirty for Governor.

South Dakota is currently one of six states that have eliminated the age requirement for Governor entirely. Three others provide for a minimum age of eighteen. No state has entirely eliminated the age requirement for legislators, but fifteen now permit election to either house at age eighteen. In all, twenty-seven states, if Nebraska’s unicameral is included, have the same age qualification for both houses. The other twenty-three have a higher qualification for

the Senate. The largest variance is in New Hampshire where you may enter the House at eighteen but must be thirty to enter the Senate. Delaware is unique in establishing a three-year gap from twenty-four and twenty-seven, respectively.

The oldest minimum age for election to the lower house in any state is twenty-five; South Dakota is one of only three other states, all western; i.e., Arizona, Colorado, and Utah, in this category. Five different states, most southern or eastern, share the highest age qualification for the senate—thirty years. Thirty is by far the most common minimum age for Governor; thirty-four states adhere to it. Only one, Oklahoma, is higher at thirty-one.

One final point of interest in this discussion is that, if Amendment H were to pass, South Dakota would join only three other states, California, Washington, and Wisconsin, in having identical minimum age requirements for all three offices—assemblyman, senator, and governor. But, while these three states have all provided for a minimum age of eighteen, South Dakota would be the only state in the Union with a uniform minimum age of twenty-one.

The South Dakota Perspective

When Dakota Territory was deemed ready for admission to statehood, a constitutional convention assembled in Sioux Falls in September 1885 to draft a Constitution. Although not admitted to the Union at that time, the 1885 Constitution was the basis of the later 1889 Constitution under which statehood was achieved. The original Legislative Article Committee, under the chair of Theodore D. Kanouse of Sanborn County, presented a draft calling for a minimum age of twenty-five for senators but only twenty-one for representatives. But on the convention floor, there was considerable opposition to the report. Many felt that the minimum ages were too low and that there was plenty of “good timber” to be harvested

without cutting the new growth. In a floor fight led by S.H. Cranmer of Edmunds County and the Reverend Joseph Ward of Yankton County, an effort was made to raise the minimum age for a senator to thirty. This failed narrowly. But, Delegate Cranmer’s plea that we “not put a boy in the Legislature until after he has voted for president” found more resonance in the convention, and the minimum age for representative was raised to twenty-five as a result.

The wisdom of the 1885 Convention on these matters, minimum ages of twenty-five for legislators and thirty for Governor, prevailed from statehood until 1972. In 1969, a Constitutional Revision Commission was created by the Legislature and charged with the responsibility of rewriting the Constitution article by article. The commission’s most significant achievement was the public approval of its revision of the Executive Article at the general election of 1972. One minor feature of this general revision was the elimination of any specific minimum age to qualify to hold the offices of Governor or Lieutenant Governor. The commission felt that the public could be trusted to select suitable candidates without the necessity of age restrictions. Later, the commission also deleted the age provisions from its draft of the revised Legislative Article. But, by the time the new legislative article came to a vote in 1974, the public had become skeptical of constitutional revision and voted it down by a 61.6 percent majority. The Legislature resubmitted the Legislative Article to the public in 1976; but public sentiment had now hardened to a hostile 77.8 percent against.

Throughout statehood, South Dakota’s age qualifications seem to have had little impact on practical politics. That would appear to be especially true in the case of the governorship. Few South Dakota governors have entered office before their late forties; most were in their fifties or sixties. At age thirty-nine, the two youngest, Joe Foss and

William Janklow, were more than nine years older than the Constitution contemplated.

In recent years, however, legislators have frequently bumped up against the constitutional age restrictions. Although a lack of complete genealogical data for early legislatures makes it impossible to definitively identify the youngest state representative and senator, in recent years at least five legislators have entered the House of Representatives at the age of twenty-six: James R. Hersrud of Rapid City in 1973, John L. Brown of Buffalo in 1979, Ron J. Volesky of Huron in 1981, Scott N. Heidepriem of Miller in 1983, and Michael V. Jaspers of Eden in 1997. After a term in the House, Brown went on to enter the Senate at the age of twenty-eight. Although few significant generalizations can be made about the age demographics of the South Dakota House and Senate, it is generally true that the under 36 age group is somewhat more likely to be found in the House, and the over 65 age group is somewhat more likely to be found in the Senate.

Conclusion

No one, including the proponents of HJR 1002, would be likely to assert that passage of Amendment H will have any great impact on practical politics in South Dakota in the

immediate future. Certainly, in a state that has had no age qualification for Governor since 1972 and has nevertheless failed to ever elect a Governor younger than age thirty-nine, the establishment of the minimum age of twenty-one is unlikely to eliminate any potential candidate who is either well-qualified for the position or electable to it. Only a handful of state senators have sought the office before reaching their mid-thirties. And, although there have been a few representatives who have approached the present constitutional restriction of twenty-five, it is unlikely that there will be many additional candidates between the ages of twenty-one and twenty-five or that they will be significantly less qualified or electable than their contemporaries just a few years older.

The primary object of Amendment H is to resolve the perceived illogicality of constitutional provisions which allow, no matter how unlikely it might be to really happen, the election of a Governor or Lieutenant Governor who is too young to legally run for the Legislature. If the voters view Amendment H in that light, it is difficult to foresee its defeat at the polls. However, if the voters choose to focus instead on the reduction of the minimum age for legislators from twenty-five to twenty-one, the result becomes more subjective.

This issue memorandum was written by Reuben D. Bezpaletz, Chief of Research Analysis and Legal Services for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
