



# OLR RESEARCH REPORT

September 7, 2012

2012-R-0379

## **HISTORY OF ABSENTEE VOTING IN THE STATE CONSTITUTION**

By: Terrance Adams, Legislative Analyst II

This report describes the history of absentee voting provisions in the state constitution. It also describes legislation on this issue that predated its inclusion in the constitution.

### **SUMMARY**

Absentee voting provisions were first added to the constitution in 1864 (Article XIII of the Amendments to the 1818 Constitution) to allow Civil War soldiers to vote by absentee ballot. The General Assembly first attempted to accomplish this objective through legislation in 1862, but the Supreme Court ruled the law unconstitutional (*Opinion of the Judges of the Supreme Court*, 30 Conn. 591, 1862 WL 941 (Conn.)), thus necessitating a constitutional amendment. The amendment was effective only for the duration of the war.

After the war, absentee voting was not addressed in the constitution until 1932, through Article XXXIX of the Amendments to the 1818 Constitution. (In 1918 the legislature passed a temporary absentee voting law for World War I soldiers.) The 1932 amendment allowed the General Assembly to enact legislation establishing absentee voting privileges for individuals who could not appear at the polls because of absence from their city or town, sickness, or physical disability. In 1964, the privilege was extended to include individuals whose religion forbids secular activity on the day of an election (Article XII of the Amendments to the

1955 Constitution). These provisions are now codified in Article VI, Section Seven of the current constitution. Legislation authorizing the use of absentee ballots is codified at CGS § [9-135](#).

It appears that Connecticut adopted the 1932 amendment in response to absentee voting's growing national popularity around that time period; speakers at a 1929 public hearing expressed concern that Connecticut was one of the few states without it. Additionally, a 1929 opinion by the attorney general indicated that absentee voting could be established only by a constitutional amendment, and not through legislation. The 1964 amendment was prompted by the practice in many municipalities at that time of holding elections on the first Monday in October, which frequently conflicted with the Jewish holidays Rosh Hashanah and Yom Kippur.

### **CURRENT PROVISIONS**

The constitution sets the qualifications of electors and the time, place, and manner for voting. Article VI, Section Seven authorizes the General Assembly to allow electors to vote by absentee ballot only if they are unable to appear at the polling place on the day of election due to (1) absence from their city or town of residence, (2) sickness or physical disability, or (3) the tenets of their religion, which forbid secular activity.

The General Assembly exercised its authority by enacting legislation (codified at CGS § [9-135](#)) that permits any qualified elector to vote by absentee ballot if:

1. he is absent from his city or town of residence during all hours of voting;
2. he is ill or physically disabled;
3. the tenets of his religion forbid secular activity on the day of the primary, election, or referendum;
4. he is in active service with the armed forces of the United States; or
5. he is an election or referendum official outside of his voting district and his duties will keep him away during all hours of voting.

In 2012, the General Assembly passed a resolution that proposes a constitutional amendment to (1) remove restrictions on voting by absentee ballot and (2) permit a person to vote without appearing at a polling place on Election Day. Because the resolution did not pass by a

three-fourths vote in each chamber, it will be referred to the 2013 legislative session, where it must pass each chamber by a majority vote in order to appear on the 2014 general election ballot. If a majority of those voting in the general election approves the amendment, it will become part of the state constitution.

## **CIVIL WAR ERA**

### ***1862 Legislation and Court Case***

In 1862, the General Assembly passed “An Act in addition to an Act entitled an Act relating to Electors and Elections,” which allowed people to vote if they were absent from the state because of U.S. military service. A separate act required the governor to seek the state supreme court’s opinion as to the absentee voting act’s constitutionality.

In December of 1862, the court held unanimously that the act was unconstitutional with respect to the election of the governor, lieutenant governor, treasurer, secretary, comptroller, and legislators. The court first noted that if the constitution (1) clearly and sufficiently prescribes the time, place, and manner of holding elections and (2) does not, expressly or by implication, delegate or leave anything to the legislature, then the legislature cannot alter them.

It then held that the constitution did just that, writing that its framers and the people who adopted it intended:

to place every thing pertaining to the election of state officers and members of the General Assembly beyond the reach of subsequent legislatures... it was one of the leading objects of the convention and the people, to direct explicitly and *exclusively*, and in *every* essential detail, *when, where, and how* the elective franchise should be exercised...these provisions must control the General Assembly *in all exigencies*, until changed by the supreme will of the people, expressed in a new or amended constitution” (emphasis in original).

### ***Constitutional Amendment***

The court held that the act’s provisions violated the constitution’s restrictions on the place and manner of holding elections. This meant that granting absentee voting rights could be accomplished only by amending the constitution. In response, such an amendment was adopted in 1864 (Article XIII of the Amendments to the 1818

Constitution) to allow Civil War soldiers to vote by absentee ballot. It was effective only through the end of the war, and thus impacted only the 1864 election.

## **WORLD WAR ONE**

After 1864, absentee voting was not addressed again until 1918, when the legislature granted absentee voting rights to soldiers serving in World War I (An Act Concerning Voting by Electors Absent from the State in the Military or Naval Service of the United States). It passed the act, which applied only for the duration of the war, in a special session convened in March 1918 specifically for that purpose. The legislature enacted the law despite the 1863 court case, but a 1929 opinion by the attorney general noted that no court challenges to the 1918 act were ever raised, and it appears that the legislature was unaware of that case when it passed the act. Similarly, public hearing testimony did not have any references to possible constitutional issues.

## **1932 AMENDMENT**

Absentee voting for people other than soldiers was not authorized until 1932, when Article XXXIX of the Amendments to the 1818 Constitution allowed the legislature to enact absentee voting legislation for individuals who could not appear at the polls because of absence from their city or town, sickness, or physical disability. The 1933 General Assembly followed by passing legislation permitting absentee voting by such individuals.

It appears that Connecticut amended its constitution in response to the growing national popularity of absentee voting around that time period. Speakers at a 1929 public hearing expressed concern that Connecticut was one of the few states not to have absentee voting and that this absence harmed some electors' ability to vote. The transcripts also indicate that absentee voting had been proposed in Connecticut throughout the 1920s, but was not enacted for one reason or another. A 1931 *Hartford Courant* article stated that commercial travelers in particular sought the change.

Unlike in 1918, the legislature was aware of the constitutional issues concerning absentee voting, and in 1929 it considered both a constitutional amendment and a legislative change. It appears that it chose the constitutional amendment after a 1929 opinion from the attorney general indicated that a legislative change would likely be ruled unconstitutional. Referencing the 1863 court case, the attorney general wrote that his office "should not advocate the passage of any law, the constitutionality of which depends upon the Supreme Court overruling a

clear decision of its own upon the matter in question.” He also wrote that the 1918 act could not be used as the basis for an argument that legislation would be constitutional.

### ***Adoption***

At the time of the absentee voting amendment, the constitution required amendments to originate in the House. If an amendment passed by a majority of the House, it was continued to the next General Assembly, where it had to be approved by a two-thirds majority in each chamber. The final step was for each municipality to hold a town meeting to vote on the amendment. If the majority of the electors present at such meetings voted to approve the amendment, it became part of the constitution.

The absentee voting amendment process began when the House passed HR 26 in 1929. In 1931, the House and Senate passed HJR 159, followed by voter approval in 1932.

### **1964 AMENDMENT**

A 1964 constitutional amendment extended absentee voting privileges to individuals whose religion forbids secular activity on the day of an election (Article XII of the Amendments to the 1955 Constitution). The 1965 General Assembly followed by making a conforming change to the absentee voting statute.

The impetus for the amendment appears to be the practice at the time of numerous municipalities (130 according to the Legislative Council, a bipartisan fact-finding body) holding their elections on the first Monday in October, which frequently conflicted with the Jewish holidays Rosh Hashanah and Yom Kippur, during which secular activity (including voting) is prohibited.

The Legislative Council first studied the issue in 1957 at the request of several legislators and other interested people. It identified three possible solutions: (1) delaying municipal elections by two days in the event of a religious holiday, (2) amending the constitution to extend absentee voting privileges to include such situations, and (3) requiring municipal elections to be held on the first Tuesday after the first Monday in November.

The council recommended delayed elections as the best solution, but the legislature rejected this proposal apparently because of implementation challenges. For instance, the proposed legislation would

have allowed a delayed election upon a petition by five ordained clergymen of a particular religion, but precisely defining “clergyman” proved difficult.

In 1959, the council re-studied the issue and recommended a constitutional amendment as the solution, noting that Maine, Vermont, and several western states had authorized absentee voting for this purpose. With respect to uniform election dates, it stated that such a policy was very desirable, but reported that several municipal officials were reluctant to change their traditional election dates. (However, the legislature later made such a change, in 1967, by requiring municipal elections to be held in either November or May.)

The 1964 amendment followed the same adoption process as the 1932 amendment. It began when the House passed HR 32 in 1961. In 1963, the House and Senate passed HJR 60, followed by voter approval in 1964.

## **TEXT OF CONSTITUTIONAL AMENDMENTS**

### ***Article XIII.***

Every elector of this state who shall be in the military service of the United States, either as a drafted person or volunteer, during the present rebellion, shall, when absent from this state because of such service, have the same right to vote in any election of state officers, representatives in congress, and electors of president and vice president of the United States, as he would have if present, at the time appointed for such election, in the town in which he resided at the time of his enlistment into such service. This provision shall in no case extend to persons in the regular army of the United States, and shall cease and become inoperative and void upon the termination of the present war. [The General Assembly shall prescribe by law in what manner and at what time, the votes of electors absent from this State in the military service of the United States, shall be received, counted, returned and canvassed.]

Art. 13. Adopted August, 1864.

### ***Article XXXIX.***

The general assembly shall have power to provide by law for voting by qualified voters of the state who are absent from the city or town of which they are inhabitants at the time of

an election or because of sickness or physical disability are unable to appear at the polling places on the day of election, in the choice of any officer to be elected or upon any question to be voted on at such election.

Art. 39. Adopted 1932.

***Article XII.***

SECTION 1. The general assembly may provide by law for voting in the choice of any officer to be elected or upon any question to be voted on at an election by qualified voters of the state who are unable to appear at the polling place on the day of election because of absence from the city or town of which they are inhabitants or because of sickness or physical disability or because the tenets of their religion forbid secular activity.

SEC. 2. Section 6 of Article Sixth of the constitution is repealed.

Art. 12. Adopted November 24, 1964.

TA:ro