

Requiring Supermajority Vote on Constitutional Amendments: Changing Florida's Fundamental Governing Document Should Require a Broad Consensus

Florida TaxWatch has released several reports since 1994 pointing to the need for a requirement of a supermajority vote to amend the Florida Constitution. Joint resolutions proposing constitutional amendments to do just that are currently moving through the Florida Legislature. To help in this debate, Florida TaxWatch has updated its research on the issue and is presenting this *Briefing*.

For over two centuries America's system of representative government has been vested with the responsibility of protecting the rights and property of vulnerable minorities from the tyranny of the majority. The masses are also protected from the undue influence of a powerful and well-organized minority by promoting the construct of consensus building and accommodation.

Unfortunately, in recent years public dissatisfaction with government has led to the proposal of drastic measures that threaten the viability of representative government by resorting to a single-issue hyper-democracy of referendum politics. Although some direct voter control methods are sound in concept and a fundamental right of citizens, if carried to an extreme, they can have dire consequences for government and the people government is supposed to both serve and protect. This is especially true when constitutional revision by referendum, supported by special interests, is used in lieu of the legislative process to address the people's concerns.

Supermajority Vote to Amend the State Constitution

Currently, a simple majority of those voting on an amendment can add it to the state constitution. Turnout of registered voters has been as low as 58% in non-presidential election years, and less than 80% of those voters actually vote on constitutional amendments. Consequently, just over 20% of Florida's registered voters have enacted some constitutional amendments. Although this scenario is not common, the door to the possibility of minority rule remains open. The potential for such an outcome and the public's lack of confidence in government lend merit to requiring their to be supermajority approval in order to change the state constitution. A supermajority vote can range from 3/5 to 2/3 of voters voting on each proposed amendment or even a simple majority of the total of all persons who vote in an election (as opposed to a majority of

those voting on the amendment). Although the latter requirement is not a supermajority by definition, it is more stringent than what currently exists.

Impact of Supermajority Requirements on Constitutional Amendments Since 1968

Type of Vote Required	Current Law (Simple Majority)	3/5 of those voting on an amendment	2/3 of those voting on the amendment
Number that would have passed	94	75	59
Number that would have failed	32	51	67
Percent passed	75%	60%	47%

Source : Department of State, Division of Elections and Florida TaxWatch, April 2001.

U.S. Constitution Amended 27 Times in Over 200 Years - Florida Constitution Amended 94 Times in Just Over 30 Years

Most Floridians likely would agree that changes in the foundation and structure of government should be based on a broad consensus of the governed. However, since 1968, the Florida Constitution has often been amended by less than a majority of those voting on election day. The ease of placing amendments on the ballot by citizen initiative and legislative directive, compared to the difficulty of doing so to the federal constitution, has resulted in the state constitution being amended 94 times (out of 126 proposed) since 1968--an astonishing 75% success rate (the success rate is 85% over the last ten years.) By comparison, the U.S. Constitution has been amended only 27 times in more than 200 years.

Two key factors have contributed to the large number of amendments: (1) the number of ways that amendments can be proposed and (2) the ease with which proposed amendments may be ratified. Two earlier Florida TaxWatch Briefings (September 1994 and August 1995) proposed reforming the more easily remedied of the two -- how amendments are ratified.

The previous table shows what impact a supermajority requirement would have had on the previously noted 126 amendments to Florida's Constitution. While 75% of the amendments were actually approved by the voters, a three-fifths or two-thirds supermajority requirement would have resulted in 60% and 47%, respectively, being passed.

Other States

Only one state currently uses a true supermajority requirement for constitutional amendments. However, several states have a standard that makes it more difficult to amend their constitutions. According to the National Conference of State Legislatures:

- ▶ New Hampshire has a supermajority requirement (2/3 of the people voting on an amendment;) and
- ▶ Two states, Wyoming and Minnesota, require a simple majority of people voting in an election. This actually can be more stringent than a true supermajority.

In addition, 16 states have a standard that refers all constitutional amendments to a vote in the Legislature prior to allowing the people to vote on them. Moreover, some states even require the Legislature to vote on an amendment in two consecutive legislative sessions before the people vote on it. Of these:

- ▶ Tennessee requires a simple majority vote in the first session and a 2/3 supermajority in the second session;
- ▶ South Carolina and Delaware require a 2/3 supermajority in both sessions; and
- ▶ Eight states require a simple majority in both sessions.

Conclusion

Florida TaxWatch recommends requiring a greater consensus of Florida voters to pass constitutional amendments. Of the two options, Florida TaxWatch concludes that a 3/5 supermajority of those voting on proposed changes to the Constitution would be more desirable.

A supermajority requirement is beneficial for three reasons:

- ▶ First, the Constitution should be a basic document that contains the root guidelines (organic law) from which Florida law should be written. It should not be an instrument for redress of policy issues that the Legislature refuses to tackle, or a compendium of special interest provisions put forth to the public in petition drives that use flowery language and high-powered advertising campaigns to gain support. Moreover, the body of law encompassed in the state constitution should be a product of dialogue and consensus generated by deliberation. It should not involve "logrolling," which hides special interest issues under a coating of popular prescriptions and attractive attributes often designed to mislead voters.
- ▶ Second, if a supermajority vote is required to amend the state constitution, it would be more difficult for special interest groups to effectuate changes that benefit their priorities at the expense of the voters and taxpayers. Many powerful interest groups have the money to run well-financed campaigns that may misrepresent or deceive voters. Such efforts attempt to induce a positive perception of an amendment, not necessarily an

understanding of its impact. A supermajority vote would help ensure that passing constitutional amendments requires greater consensus and acceptance by Florida's diverse demographic and social groups.

Third, requiring a supermajority vote would force those endorsing controversial amendments to campaign differently--hopefully more openly--in order to pass their agendas. The greater degree of consensus required to pass amendments would ensure that the concerns of more Floridians are heard. In short, a more stringent method of ratification would help prevent narrowly focused amendments from being forced into the Constitution and creating "constitutional concrete."

Implementing a supermajority requirement to pass constitutional amendments would put Florida at the forefront of the struggle to limit the influence of special interests and help restore Floridians' confidence in our democratic-republic form of government.

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