

## Amending the Constitution: The Peoples' Consent by Supermajority

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This document was prepared as part of Florida TaxWatch's response to the Senate Committee on Government Operations request for the expert assessment of issues pertaining to the revision or amendment of Florida's Constitution.

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Nearly every Floridian would agree that changes in the foundation and structure of government should be based on the consensus of the governed. Yet changes to the Florida Constitution have been ratified by as few as 17.2% of the registered voters of Florida as recently as 1980 – even though 75% of the registered voters went to the polls for the general election.

Since the 1968 revision of the main document, 91 amendments have been on the ballot seeking ratification, 64 of which passed – often by a very small proportion of the registered voters. In contrast, the United States Constitution has survived for more than 200 years with only 27 amendments.

Two key issues have contributed to the large number of amendments to Florida's constitution – the number of ways amendments can be proposed and the ease of ratification of proposed amendments. This report focuses on the second and more easily correctable of these issues: the small proportion of eligible voters necessary to ratify proposed constitutional amendments.

### *A few voters can make a big difference*

Under current law in Florida, a very small proportion of registered voters has made changes in the constitution that have significantly affected the structure and operation of Florida's government. Constitutional revision is decided by a simple majority of the voters who choose to vote on an amendment. Since 1970, the average turnout of registered voters has been 58.1% in

non-presidential election years and 76.5% in presidential years, ranging from as little as 50.49% in 1974 to as much as 83.1% in 1992. On average, of those voting, fewer than 80% have chosen to vote on the proposed constitutional amendments that passed since 1970. One can see that it does not take much of the voting-age population to change the constitution – the peoples' basic protection from governmental abuse and unnecessary intrusion.

The current system for amending the constitution favors the financially influential. Well-heeled interests can spend millions of dollars to promote a constitutional amendment. Privately funded campaigns for constitutional revision often play on voter dissatisfaction, using the peoples' initiative or legislative action to care for special interests under the guise of responding to peoples' discontent. Such campaigns hire constitutional lawyers to skillfully craft amendments that serve their needs. Promotional companies are hired to develop catchy amendment titles and phrases to promote the amendment and incite the public to act on what appears to be its own behalf. A voter is likely to vote for an emotionally named and packaged amendment even if he or she is not familiar with the issue.

Unlike campaigns for political office, there are no restrictions on funds raised for publicity campaigns for constitutional amendments. Under the process of bringing government to the people, governing by constitutional initiative does not open the public to the

# Constitutional Amendments Pa

Year	Amendment	Percent of voters voting to amend	Passed by 2/3 of those who voted on the item	Source (*)	Approval by percent of registered voters
1970					
	4 Amendment to pollution abatement	71.2%	Yes	L	29.30%
	5 Amendment to Land Sales	61.3%	No	L	24.32%
1971					
	1 Amendment to Article VII Tax on Corporations	70.3%	Yes	L	30.08%
1972 (Presidential Preference Primary)					
	1 Amendment to Article V, Judicial	70.7%	Yes	L	34.67%
	2 Amendment to Article VII Student Loan	65.2%	No	L	31.37%
1972					
	1 Amendment to Chapter 259, F.S. Endangered Lands	71.1%	Yes	L	36.02%
	2 Amendment to XII Natural Resources	73.0%	Yes	L	36.84%
	3 Amendment to Article XI, Initiative	70.9%	Yes	L	33.19%
	4 Amendment to Article XII Public Schools and Jr. Colleges	69.1%	Yes	L	34.15%
	5 Amendment to Article X Devise of Homestead	67.2%	Yes	L	32.62%
1974					
	1 Amendment to Article XII Gross receipt taxes	65.4%	No	L	23.36%
	3 Amendment to Article VIII Property Appraiser	57.5%	No	L	19.96%
	4 Amendment to Article IV, Game and Freshwater Fish Commission	70.1%	Yes	L	23.74%
	5 Amendment to Article V Judicial Qualifications Commission	78.2%	Yes	L	26.12%
	6 Amendment to Article VII Electrical Energy Generating or Transmission Facilities	56.0%	No	L	18.19%
	7 Amendment to Article I Prohibiting Discrimination Based Upon Physical Handicaps	76.4%	Yes	L	26.92%
1976					
	1 Amendment to Article II, Section 8 Sunshine Amendment	79.3%	Yes	I	43.12%
	2 Amendment to Article V, Section 3,10,11 Retention of Judges	75.2%	Yes	L	39.10%
	3 Amendment to Article V, Section 12 Discipline of Judges	72.9%	Yes	L	36.99%
	8 Article X, Retirement System	62.4%	No	L	30.64%
1978					
None passed					
1980					
	1 Tax Exemption	75.0%	Yes	L	21.68%
	2 Bonds for Housing	57.2%	No	L	17.19%
	3 Ad Valorem Taxation	62.8%	No	L	19.05%
	4 " "	81.2%	Yes	L	26.01%
	5 " "	69.4%	Yes	L	20.87%
	1 Homestead Exemption	69.6%	Yes	L	22.64%
	2 Modified Jurisdiction of Supreme Court	67.1%	Yes	L	19.55%
	2 Right of Privacy	60.6%	No	L	35.82%
	3 Passage of Bills	66.9%	Yes	L	36.67%
	4 State Bonds for Water Facilities	67.0%	No	L	37.97%
	5 Second Gas Tax	55.6%	No	L	31.16%

# Passing Since the 1968 Revision

Year	Amendment	Percent of voters voting to amend	Passed by 2/3 of those who voted on the item	Source (*)	Approval by percent of registered voters
1982					
	2 Searches and Seizures	63.5%	No	L	29.61%
	3 Pretrial release and detention	60.6%	No	L	29.03%
1984					
	1 Exemption of Homestead and personal property / forced sale	79.0%	Yes	L	49.63%
	2 Disbursement of State Funds	72.8%	Yes	L	44.26%
	3 Procedures of Judicial Nominating Commission	82.2%	Yes	L	48.80%
	5 Election of County Commissioners	64.3%	No	L	38.58%
	6 Eligibility to be a County Court Judge	75.4%	Yes	L	45.38%
	7 Bonds for State Capital Projects	65.4%	No	L	37.60%
	8 Public Education Capital Outlay Bonds, PECO	76.6%	Yes	L	45.80%
1986					
	1 State Wide Prosecutor	72.8%	Yes	L	38.51%
	4 Supreme Court Opinion, proposed initiatives	72.4%	Yes	L	35.32%
	5 State operated lotteries	63.6%	No	I	36.22%
1988					
	1 Impeachments of County Court Judges	72.3%	Yes	L	49.69%
	2 Rights of Victims of Crime	90.2%	Yes	L	63.50%
	3 Assessment of High Water Recharge Lands	67.1%	Yes	L	42.40%
	4 Bonds for acquisition of property for state roads or for constructing bridges	57.2%	No	L	37.47%
	5 Property tax exemption for widowers	85.2%	Yes	L	59.74%
	6 Taxation and Budget Reform Commission	57.8%	No	L	36.94%
	8 Civil Traffic Hearing Officers	70.5%	Yes	L	47.87%
	9 Department of Veterans Affairs and Elderly Affairs	69.0%	Yes	L	47.65%
	11 English is the Official Language of Florida	83.9%	Yes	I	60.48%
1990					
	1 Regular Legislative Sessions	83.6%	Yes	L	43.37%
	2 Three day waiting period for Handgun Purchases	84.5%	Yes	L	47.10%
	3 Laws affecting local government expenditures or ability to raise revenue or receive state tax revenue.	64.0%	No	L	33.68%
	4 Open Government	87.7%	Yes	L	46.36%
1992					
	1 Emergency Suspension or Delay of General Election	71.6%	Yes	L	51.51%
	2 Access to public records and meetings	83.0%	Yes	L	59.37%
	3 Historic preservation ad valorem tax exemption	62.4%	No	L	44.46%
	4 Budget Reform	82.7%	Yes	TBRC	58.33%
	5 Taxpayers Bill of Rights	90.0%	Yes	TBRC	65.10%
	8 Bonds for the construction of education facilities	67.9%	Yes	L	47.22%
	9 Limited political terms in certain elective offices	76.8%	Yes	I	55.42%
	10 Homestead Valuation Limitation	53.6%	No	I	38.12%

\* L = Legislature, I = initiative, TBRC = Taxation and Budget Reform Commission

\*\* 64 out of 91 proposed constitutional amendments were passed since the main constitutional revision in 1968, 43 of these passed with more than 2/3 of the voters voting on each issue.

Source: Department of State Division of Elections, Bureau of Election Records and Florida TaxWatch, September, 1994.

measured deliberation of a democratic republic. Instead, it often subjects them to the manipulation of superficial perceptions based on glitzy media campaigns.

### *A responsible alternative*

The simplest means of reducing the effects of the small sample of registered Floridians who choose to vote on proposed constitutional amendments is to require a supermajority of these voters to pass an amendment. By increasing the proportion of votes required to pass an amendment from a simple majority to a two-thirds majority, the likelihood of an amendment passing that the citizens did not support with a high level of consensus would be greatly reduced. The table (pages 2 and 3) shows which constitutional amendments would have passed if a two-thirds vote of approval had been required of those who expressed their will on each proposed amendment.

### *How "two-thirds" might have helped*

Forty-three of the 64 amendments shown in the table would have passed if a two-thirds majority of the people voting on each amendment were required for passage. Some of the other 17 might also have survived this more strict provision if it had been in place because sponsors would have campaigned differently knowing they needed more than a bare majority. It is clear, however, that at least one potentially damaging amendment that

passed in 1992 by only 53.6% of those who voted on it would have required a much greater consensus to pass. In fact, this proposal was passed by only 38% of the registered voters. If a supermajority had been required, Floridians may have been spared the unanticipated consequences of Amendment 10, the "Save Our Homes" amendment.

### *Two-Thirds of Who?*

It is very important to carefully define who is included in the two-thirds voting requirement. The supermajority should be based on two-thirds of those people who choose to vote on each constitutional amendment. It should be noted that while this supermajority provision would increase consensus on every proposed amendment, it would not place an overwhelming or onerous burden on the construct of constitutional revision.

Constitutional change, whether proposed by the Legislature, a citizen initiative, the Tax and Budget Reform Commission, the Constitutional Revision Commission or a Constitutional Convention, must be approved by the voters. Considering the importance of the decisions being made, a supermajority vote should be required for amending the constitution to ensure that there is a meaningful consensus of voters who express their will on each proposed amendment to the state constitution -- the most basic and fundamental document of Florida law.

*Views expressed in this Briefings do not necessarily represent those held by the members, staff, or the distinguished Board of Trustees of Florida TaxWatch.*

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