Research Report

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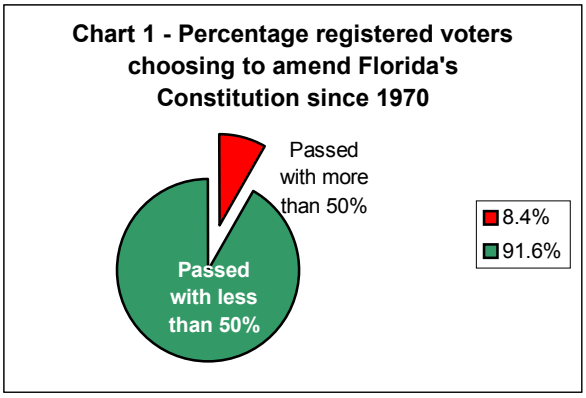
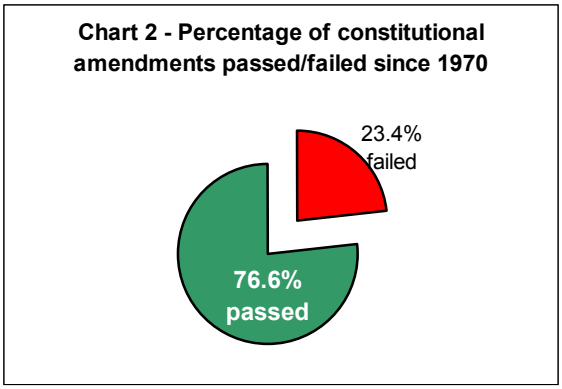
Constitutional Revision: Protecting All Floridians from Minority Rule

Florida TaxWatch has released several reports, beginning in 1994, urging the implementation of a higher threshold before an amendment can be added to the Florida Constitution. Over the past nine years, a number of proposals to do just that have been introduced in the Florida Legislature but ultimately failed.

The recent influx of proposed constitutional amendments again brings the need for a higher standard to the forefront, and perhaps now this serious issue can receive the attention that it deserves. This debate is a longstanding and serious one. *Federalist Paper No. 10* argued in favor of representative government as the cure for factional politics. In it James Madison wrote, "By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." It is this issue—the will of the majority being disregarded due to the fervor of a few—that provides the strongest reason to increase the threshold for adding amendments to Florida's Constitution. This is clearly documented by the percentage of the state's registered voters that voted affirmatively to pass an amendment after the constitutional revision of 1968.





Currently a simple majority of those voting on an amendment can pass it into law. As the Chart 1 (above left) shows, of the 95 amendments that passed only eight (or 8.4%) of them were supported by more than 50% of the state's registered voters. Yet a majority of the amendments placed on the ballot (76.6%) passed into law (above right). And remarkably, five (or 5.3%) passed with the support of less than 20% of those registered to vote.

Ten amendments were on the ballot in the 2002 General Election, and all but one passed under the current threshold. Florida's Constitution now is amended to require the limiting of cruel and inhumane confinement of pigs during pregnancy as well as a number of other issues that, while important, do not rise to the level of "organic law" but are ensconced in "constitutional concrete".

The Florida Division of Elections currently lists 50 active initiatives that may be on a ballot near most voters in 2004. They range from one aiming to lower the voting age to 16 to another requiring the labeling of foods that are genetically engineered and another that would legalize marijuana.

A state constitution is intended to serve as an outline of the general construct for a government. It should include provisions to protect the rights of its citizens, direct its government in the procedure of its duties and assign and limit power. To adapt to the changing needs of the population it serves, a state constitution must also be an organic document, allowing for thoughtful, deliberate revision—that is, with safeguards to ensure that any revision fulfills a need for change in the general procedural instructions and guidelines for its government. Constitutional revision is not intended to serve merely as a response to the passing political emotions of the moment or serve as a means to an end desired by a limited group.

The Florida Constitution is, and rightly should be, an organic document. Clearly, serving the needs of the current population of Florida (nearly 16 million according to the US Census data from 2000) is dramatically different than serving the needs of the pioneer citizenry of Florida in 1838 (54,477 in 1840). As a result of the changing needs of Floridians, the Florida Constitution has been completely rewritten five times from its original incarnation drafted in 1838. A striking example of the need for these revisits and reconstructions and evolving needs of Florida is the fact that the original constitution affirmed slavery, prohibited the emancipation of slaves and forbade freed slaves from entering Florida. These provisions were a reflection of the times, but few, if any, today would contend that they were incorrectly removed from the Constitution.

Fundamental changes in the structure of government must be allowed when necessary, but it is imperative that they be based on a broad consensus of the governed. When they are not, an intense minority can tyrannize majority rights. In Florida, there are currently five different methods of proposing an amendment to the constitution:

- Proposal by State Legislature (69 of the 95 amendments passed since 1970);
- Proposal by Citizen Initiative (16 of the 95 amendments passed since 1970);
- Proposal by the Constitution Revision Commission (8 of the 95 amendments passed since 1970);
- Proposal by the Taxation and Budget Reform Commission (2 of the 95 amendments passed since 1970); and
- Proposal by Constitutional Convention (0 of the 95 amendments passed since 1970).

Unfortunately, recent public dissatisfaction with government has led to the proposal of drastic measures by a very vocal minority. It is important to note that while only 16 initiative-driven amendments have been added to Florida's Constitution since 1970, six of these were passed

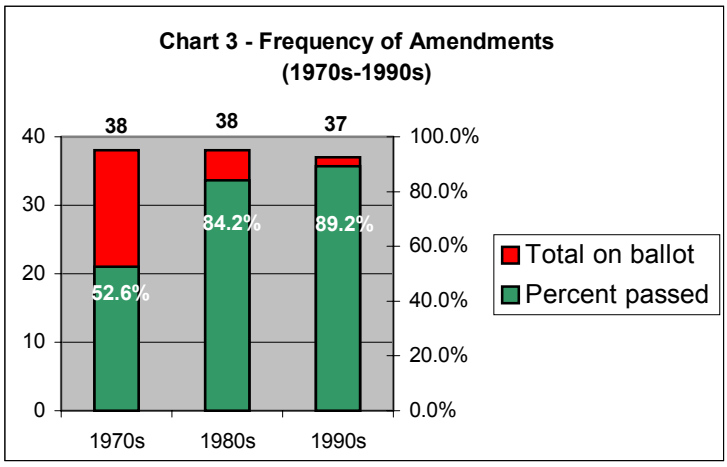
since 2000. This resorting by the Florida electorate to single-issue, hyper-democracy threatens the viability of representative government if left unchecked. Although some direct voter controls are sound in concept and a fundamental right of a citizenry, if carried to the extreme, they can have dire consequences for all concerned. This is especially true when constitutional revision by initiative is dominated by special interests and used in lieu of statutory revision to bring about issues that are not fundamental to constitutional law.

Supermajority Vote to Amend the State Constitution

> *A simple majority, particularly a simple majority of a quorum, can mask unresolved conflict between the electorate and a lack of real acceptance of the law by the public.*

Currently, a simple majority of those voting on an amendment can fundamentally change 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 that are placed before them. Alarmingly, less than 20% of Florida's registered voters have enacted some constitutional amendments. This scenario is increasingly common, leaving the door to minority rule open. The potentiality for increasing mischief by minority rule is so great Florida voters need to seriously consider requiring supermajority approval in order for the state constitution to be changed. A supermajority vote could 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 does raise the bar higher than what currently exists.

U.S. Constitution Amended 27 Times in Over 215 Years - Florida Constitution Amended 95 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 1970, the Florida Constitution has often been amended by less than a majority of those voting on election day. The ease of placing amendments on Florida ballots by citizen initiative and legislative directive, compared to the difficulty of amending the federal constitution, has resulted in the

state constitution being amended 95 times (out of 124 proposed) since 1970—an astonishing 76.6% success rate (the rate is 88.6% over the last ten years.) Between 1890-1966, 212 amendments appeared on the ballot, 148 of which were adopted for a success rate of 69.8%. By comparison, the U.S. Constitution, the oldest written constitution in the world, has been amended only 27 times in 215 years. Ten of the 27 formed the Bill of Rights, and two (Amendments XVIII and XXI on prohibition) mitigated one another. The U.S. Constitution requires that an amendment must pass each house of the Congress by 2/3 and then be approved by 3/4 of states. Chart 3 illustrates that although the number of amendments reaching the ballot has been consistent over the last three decades, the success rate has changed dramatically.

Impact of Supermajority Requirements on Constitutional Amendments Since 1970

Table 1

	Type of vote required			
	Current law (simple majority of those voting on amendment)	3/5 of those voting on amendment (60%)	2/3 of those voting on amendment (66.67%)	Simple majority of those voting in election*
# that would have passed	95	77	59	65
# that would have failed	29	47	65	58
% passed	76.6%	62.1%	47.6%	52.8%

Source: Department of State Division of Elections, Bureau of Elections Records and Florida TaxWatch, November 2003

*The number of people voting in the Special Election of 1971 was unavailable; therefore the percentage of those voting on one amendment is unknown.

Table 1 shows the impact that a supermajority requirement would have had on the previously noted 124 amendments to Florida's Constitution. While 76.6% of the amendments were actually approved by the voters since 1970, a 3/5 or 2/3 supermajority requirement would have resulted in 62.1% and 47.6%, respectively, being passed. The actual numbers would have undoubtedly been slightly different because, if a higher threshold had been in place, sponsors presumably would have campaigned differently.

Had a higher threshold of 3/5 or 2/3 of those voting on the amendment been in place, the highly controversial amendment to build a statewide high-speed monorail and the amendment to reduce class size doubtless would not be in Florida's Constitution today. In 2000, the high-speed rail amendment passed with the approval of 52.7% of those choosing to vote on the amendment and only 47.2% of those voting in the election. The popular sounding "Save Our Homes" amendment, that passed in 1992, was similarly approved by 53.6% of those voting on the amendment, but only 45.9% voting in the election overall.

Other States

According to the National Conference of State Legislatures, a number of states employ a supermajority and/or more stringent requirements for ballot measures. Some examples include:

- Illinois requires an affirmative vote by 3/5 of those voting on the measure (60%), or a majority of those voting in the election;
- In Nevada, an initiative constitutional amendment must receive a majority vote in two successive general elections in order to pass;
- Mississippi requires a majority vote, provided that the total number of votes cast on the initiative equals at least 40% of the total votes cast in the election.

Conclusion

Florida TaxWatch continues to strongly recommend and support requiring a greater consensus of Florida voters to pass constitutional amendments. Of the two options, Florida TaxWatch concludes that a 3/5 to 2/3 supermajority of those voting on proposed changes to the Constitution would be more desirable than the present simple majority of those voting on amendments.

Florida TaxWatch has long held[1] that a supermajority requirement is beneficial for numerous reasons, but three stand out:

- First, the State Constitution should be a fundamental document that contains the root guidelines (organic law) from which Florida should be governed. It should not be an instrument for redress of statutory 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 from a ruling minority of voters. 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 seemingly 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 narrowly defined priorities at the expense of the majority of 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, but not necessarily an understanding of the issue or its potential impact. A supermajority vote would help ensure that passing constitutional amendments requires greater consensus and acceptance by a greater number of Florida's diverse demographic and social groups.

- Third, requiring a supermajority vote would force those endorsing controversial amendments to campaign differently—hopefully more openly. The greater degree of consensus required

[1] See Research Report: *Supermajority Voters on Taxes and Constitutional Amendments Will Promote Public Consensus and Voter Confidence While Slowing the Trend Toward Governing by Referendum*, July 1998.

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, time-bound amendments from being forced into the Constitution by a vocal minority, thereby limiting the flexibility of the document and its durability over time.

Implementing a supermajority requirement to pass constitutional amendments would put Florida at the forefront among states in the struggle to limit the influence of special interests and help restore the electorate's confidence in our democracy and republican form of government.

Florida's current initiative process lacks the checks and balances necessary to achieve majority consensus and ensure that initiatives supported by a vocal few do not hobble the durability of Florida's Constitution for years to come.

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www.floridataxwtch.org where this *Research Report* was initially released before being printed in hardcopy format.

About Florida TaxWatch

Florida TaxWatch is the only statewide organization entirely devoted to protecting and promoting the political and economic freedoms of Floridians as well as the economic prosperity of our state. Since its inception in 1979, Florida TaxWatch has become widely recognized as the watchdog of citizens' hard-earned tax dollars. The nationally distributed *City and State* magazine (now *Governing* magazine) published a poll of the nation's statewide taxpayer research centers. Based on this poll, the publication cited Florida TaxWatch as one of the six most influential and respected government watchdogs and taxpayer research institutes in the nation.

In recent years, news stories about Florida TaxWatch have run in all Florida newspapers, *The Wall Street Journal*, *The New York Times* and *The Washington Post* and *Fortune* magazine. In addition, Florida TaxWatch has been featured on the prestigious *MacNeil/Lehrer News Hour.*

Florida TaxWatch is a private, non-profit, non-partisan research institute supported by voluntary, tax-deductible membership contributions and philanthropic foundation grants. Membership is open to any organization or individual interested in helping to make Florida competitive, healthy and economically prosperous by supporting a credible research effort that promotes constructive taxpayer improvements. Members, through their loyal support, help Florida TaxWatch to bring about a more effective, responsive government that is accountable to the citizens it serves.

Florida TaxWatch is supported by all types of taxpayers -- homeowners, small businesses, corporations, professional firms, labor unions, associations, individuals and philanthropic foundations -- representing a wide spectrum of Florida's citizens.

Florida TaxWatch's empirically sound research products recommend productivity enhancements and explain statewide impact of economic and tax and spend policies and practices. Without lobbying, Florida TaxWatch has worked diligently and effectively to build government efficiency and promote responsible, cost-effective improvements that add value and benefit taxpayers. This diligence has yielded impressive results: through the years, three-fourths of TaxWatch's cost-saving recommendations have been implemented, saving taxpayers over $6.2 billion (according to an independent assessment by Florida State University). That translates to approximately $1,067 in added value for every Florida family.

With your help, we will continue our diligence to make certain your tax investments are fair and beneficial to you, the taxpaying customer who supports Florida's government. Florida TaxWatch is ever present to ensure that taxes are equitable, not excessive, that their public benefits and costs are weighed, and that government agencies are more responsive and productive in the use of your hard-earned tax dollars.

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