

Research Report



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Supermajority Votes on Taxes and Constitutional Amendments Will Promote Public Consensus and Voter Confidence While Slowing the Trend Toward Governing by Referendum

Introduction

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 as described in The Federalist Papers, no. 10 , by James Madison. (see box)

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 are 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.

Voters' disaffection with the tax system is another trend that has fueled their demand for popular referendums to head off tax increases. This taxation by popular plebiscite compromises benefits which are afforded minorities by constitutional protections operative under the auspices of representative government. Consensus building is the key element in providing such protection. However, the endorsement or rejection of a tax in the atmosphere of a plebiscite short-circuits the legislative consensus element and opens the door to a massive transfer of tax burdens. In a populist environment that is emerging in the current political atmosphere, a substantial portion of such transfers are focused on the voting minority of society or the tax paying entities who do not possess a direct vote in elections, namely the private sector and business. Such an environment forces businesses to resort to committing more and more resources to lobbying efforts and political contributions. In order to maintain favorable economic conditions for themselves, they must expend resources that could be more efficiently used for economic productivity and job creation to benefit the entire state.

Federalist Papers Point the Way

During the ratification process that followed the drafting of the United States Constitution, Alexander Hamilton, James Madison, and John Jay wrote a series of articles known as *The Federalist Papers*. Published anonymously under the name Publius, these essays advocated the new representative government established by the Constitution and helped persuade political leaders in New York State to ratify it. Over the course of American history, the *Federalist Papers* have become essential to understanding the meaning of the Constitution and the purpose of American representative government.

Federalist Paper No. 10 argued in favor of representative government as the cure for factional politics. Madison asserted that the effects of representative government are "to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations. Under such a regulation, it may well happen that the public voice, pronounced by the representatives of the people, will be more consonant to the public good..." Due to the deteriorating view which the public holds its political leaders, a supermajority requirement might return some of the virtues Madison is describing.

The popular sounding 1992 "Save Our Homes" Constitutional Amendment is a good example. The implications and outcomes associated with this provision have not helped

save most homes or reduced the tax burden for the average citizen. Rather, it has helped mainly affluent owners of beach front property while increasing the tax burden on commercial and business property.

A responsible alternative to governing by and taxation through popular initiatives is supermajority requirements that will produce greater consensus among legislators and voters concerning the important issues of taxation and constitutional amendments. Two proposed reforms discussed in this paper should be considered by the Constitution Revision Commission to provide a legitimate alternative to government by plebiscite that is posturing as the only way to restore the people's confidence in government. More panaceas like the "*Save Our Homes*" Amendment will not bring consolation to the public -- returning to fundamental principles that assure consensus building will.

It is imperative for Florida's government to address this concern to avoid the prospect of being rendered unable to protect the foundation of representative government from the adverse effects of direct voter control methods of government where the winner takes all and the minority is at its mercy.

Supermajority of Legislature to Raise Taxes

As currently provided by the state Constitution, a majority of a quorum of the membership of each house of the Legislature, meaning as few as one member more than a quarter of the membership of the Florida Senate and House of Representatives, can pass a new or increased state tax. Although this scenario is highly unlikely due to the importance that citizens -- and consequently their legislators -- place on the issue of taxes, the possibility of minority rule does exist. This possibility, along with the public's distrust of government, makes it clear that requiring a greater consensus among lawmakers to raise or initiate new taxes is a needed safeguard.

Requiring a supermajority of the full membership of each house of the Legislature, such as 2/3 or 3/5 votes, to increase existing taxes or enact new ones would help assure citizens, taxpayers, and business leaders that Florida will have a stable and predictable tax structure that is less subject to tweaking and manipulation by special interests. It would also discourage special interests from wasting resources on lobbying and campaign contributions which ultimately reduce the accountability of legislators and other elected leaders. Finally, it would reduce legislators' ability to increase taxes as the first option in meeting the state's fiscal needs.

Why is a supermajority needed rather than a simple majority vote of a quorum of members present in the respective houses of the legislature? As Florida TaxWatch stated previously, (*Briefings*, Volume III Issue 4, March 1995) a simple majority, particularly a simple majority of a quorum, can mask unresolved conflict amongst the electorate and its lack of real acceptance of a tax change. It is the obligation of elected officials to provide political leadership built upon public consensus. A supermajority to raise or even lower taxes would provide such leadership and promote such consensus.

The legislative process has historically been the vehicle used to build consensus. A supermajority requirement to raise taxes would help restore public confidence in representative government and reduce the inclination to utilize alternative methods to promote special interest agendas. It would also help assure better government by allowing more thoughtful consideration of the impacts of taxes. If the *"Save Our Homes"* amendment, cited above, had been drafted by the Legislature, the threat to renters and commercial property interests -- and the subsequent harm it has caused economic development -- might have been avoided. In fact, the amendment could have been designed to suit the concerns of a much broader constituency than it currently benefits.

Voter approval of taxes by referendum has been proposed as a way to allow the public greater say in taxation. This objective would essentially be accomplished by requiring supermajority votes in the Legislature to pass new or increased taxes. Voter approval is not widespread in the United States as a device to limit government. Only a handful of states have it, and only in one state (Colorado) does it apply to all taxes. Arkansas applies voter approval to most state taxes. Oklahoma applies it to any taxes passed by the Legislature with less than a 3/4 majority. Michigan applies it only to raising taxes above their constitutional limit. Tax shifting can be the ultimate outcome that aborts the legislative process.

Twenty-five years ago, Floridians accepted a supermajority requirement in the Legislature to raise the corporate income tax. Why should raising other taxes be permitted with less legislative support? The fact is that all taxes should meet this high threshold of legislative consensus because all taxes are confiscatory and involuntary in nature.

A supermajority vote of the Legislature will support one of the most basic tenets of representative democracy: protection of the minority from dominance by the majority. It will also promote another basic idea: limitation of undue control by a powerful minority.

[Table 1](#) shows how 2/3 and 3/5 supermajority requirements would have affected the outcome of major tax and fee increases in Florida over the past decade. While eight of nine would have passed a 3/5 requirement, just five of the nine increases would have passed under a 2/3 majority requirement. Thus, the 2/3 majority would substantially impact the fiscal and political landscape of state government in Florida.

Twelve other states currently have supermajority requirements for raising taxes. Table 2 shows which states have them and what size majority they require. Seven of these states also have revenue limits similar to one Florida voters approved in a 1994 constitutional amendment.

Table 2 States Requiring Supermajorities to Raise Taxes	
3/5	Delaware*, Mississippi, Oregon

majority	
2/3 majority	Arizona*, California*, Colorado*, Louisiana*, Nevada, South Dakota, Washington#
3/4 majority	Arkansas, Oklahoma*

*also have revenue limit similar to FL

#only taxes raising revenue exceeding constitutional revenue limit

Source : Florida TaxWatch and National Conference of State Legislatures, July 1997

Benefits of a supermajority requirement to raise taxes

- ◆ More responsible tax policy built on broader consensus;
- ◆ More stable tax policy to promote economic growth and job creation;
- ◆ Increased accountability in the Legislature;
- ◆ Public policy based not on taxation as first response, but on more thorough analysis of the state's needs; and
- ◆ Increased public confidence and trust in the Legislature to govern effectively and responsibly.

Supermajority Vote to Amend 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, less than 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 is open. The potential of this fact and the public's lack of confidence in government lend merit to a requirement of supermajority approval to change the state constitution. A supermajority 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 the election (as opposed to a majority of those voting on the amendment.) Although the latter is not a supermajority by definition, it is a more stringent requirement than what is currently in place.

Most Floridians likely 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 73 times (out of 103 proposed) since 1970, an astonishing 71% success rate! By comparison, the U.S. Constitution has been amended only 27 times in the last 208 years.

Two key issues have contributed to the large number of amendments: the number of ways amendments can be proposed and the ease of ratification of proposed amendments. Two earlier Florida TaxWatch *Briefings* (Sept. 1994 and August 1995) proposed reforming the more easily correctable of the two key issues -- amendment ratification.

Florida TaxWatch supports requiring a greater consensus of Florida voters to pass constitutional amendments for three reasons:

First, the constitution should be a basic document that contains the root guidelines 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 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 pass constitutional amendments, it would be more difficult for special interest groups to effect changes that benefit their priorities at the expense of the 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.

Table 3 shows what impact a supermajority requirement would have had on the previously noted 73 amendments to Florida's Constitution. Although about two-thirds of the amendments would have passed a supermajority requirement, Floridians might have been spared the consequences of controversial amendments, such as the 1992 "Save Our Homes" amendment, which passed by a bare majority of those voting on it. The full consequence of this tax shifting amendment is yet to be calculated.

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 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.

Table 3
Impact of Supermajority Requirements on
Constitutional Amendments Since 1968

Type of	2/3 of those	3/5 of those	Simple majority
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Supermajority required:	voting on an amendment	voting on the amendment	of all persons voting in the election*
Number that would have passed	48	62	41
Number that would have failed	25	11	23

* = Total election counts unavailable for nine amendments: 1971, 1972, 1980 (special election amendments)

Source : Department of State, Division of Elections and Florida TaxWatch, June 1997

[Table 4](#) lists each amendment to the Florida Constitution that has passed since the 1968 Revision. Fifteen of those amendments would have failed a two-thirds requirement. The table also shows that imposing a requirement of approval by 51% of those voting in an election would present a higher hurdle to ratification. Only thirteen amendments would have passed if this restriction had been in place.

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 confidence in government. Currently, New Hampshire is the only state that requires a supermajority vote (2/3) to pass amendments to its Constitution. Three other states, Minnesota, Tennessee, and Wyoming, require a majority vote of all persons voting in the election.

Conclusion

The 1997 Florida Legislature did not act to place amendments on the 1998 ballot requiring a supermajority vote in the Legislature to raise taxes and to approve constitutional amendments. Ironically, legislators who see merit and virtue in a supermajority of the Legislature raising taxes do not see the same virtue in a supermajority vote by the people to amend the Constitution. Likewise, those favoring a supermajority to approve constitutional amendments should favor a supermajority vote for legislative changes in taxes. Although the appeal of these two ideas may be different, the fundamental construct of garnering substantial consensus concerning any basic public issue is not.

The public should make legislators aware of its beliefs and concerns about what thresholds should be required for the Legislature to change the state's tax structure, and voters to change the state's primary body of law -- the constitution. Florida TaxWatch hopes the Constitutional Revision Commission will take on this issue as it conducts its

important work over the next few months. If not, grave harm could come to the political and social climate our constitution sustains.

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