Many of the state constitutional developments described in recent editions of The Book of the States have continued into the 21st century. Probably the most important of these is the absence of constitutional conventions and new constitutions. Instead, constitutional change is dominated by amendments and is piecemeal rather than comprehensive. Concerns about terrorism and the threat of war will most likely make it difficult to reverse this trend. Also important is the trend away from adoption of amendments designed to limit state governments’ capacity to govern and toward reforms that are arguably designed to make government more representative and efficient.

State constitutions are essential to the organization and operation of state governments in the United States. As the highest state-made law, they provide the framework for state government, but they also include numerous policy provisions. This makes them instruments of government, not solely its framework. Whether state governments govern well depends in no small measure on the status of their constitutions.

A defining characteristic of state constitutions is the frequency with which they are changed by the formal processes of amendment and revision. The subject of this essay is recent constitutional changes by amendment and revision. It relies on data collected from official sources in each of the 50 states. State constitutions also change by judicial interpretation, but state constitutional jurisprudence is quite voluminous and cannot be addressed in this essay, except incidentally.

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General Overview: Use of Authorized Methods

As reported in the last volume of The Book of the States, the number of state constitutional changes by amendment and revision has been declining in recent years. As Table A shows, the downward trend was again apparent in 2002 with respect to the number of states involved and the number of amendments proposed and adopted. Also, the only methods used to amend state constitutions in 2000-2002 were the legislative and constitutional initiatives. From 1996 to 2002, no constitutional conventions were convened and only one constitutional commission proposed amendments.

Constitutional Conventions

The constitutional convention is the traditional and oldest method used to propose a new constitution or substantially revise an existing one. Subject to variations by state, the convention is a uniquely democratic method that allows elected delegates to focus on the entire constitution in a deliberative setting with proposals referred to the voters for approval or rejection. The last convention was held in Rhode Island in 1986.

In 2000-2001, it appeared that Alabama might hold the first convention of the 21st century. Gov. Don Siegelman and an active citizens’ group, the Alabama Citizens for Constitutional Reform, supported a convention. But in November 2002, Bob Riley defeated Gov. Siegelman in a close election. Although Gov. Riley is in favor of constitutional revision, he opposes a convention. In 2003, he appointed a commission to advise him on reforms. One victory for the reformers was the voters’ overwhelming approval in 2002 of a constitutional amendment providing that no new constitution could be adopted without the approval of a majority of voters voting on the issue. This put to rest any uncertainties about the role of the voters should revision proceed.

Lack of support for a convention was also emphatically demonstrated in 2002 by the defeat of mandatory referendums on calling a convention in three other states: Alaska, New Hampshire and Missouri. (Public indifference about conventions was well-
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illustrated in Alaska, where the League of Women Voters had to cancel an event for lack of interest.)

Voters in Rhode Island will have an opportunity to vote on a convention call in 2004, as required by their constitution. As reported in The Book of the States 2002, the state’s voters in 2002 approved a nonbinding referendum calling for a constitutional convention limited to one subject: separation of powers. The convention was to make explicit that the three branches of state government are separate and co-equal. In 2002, the voters approved another nonbinding proposal on the same subject. It would amend the legislative article of the state constitution (Art. 6, Sec. 10) to repeal one provision and to add another to expressly provide for separation of powers. The political pressure behind these ballot measures by the governor, Common Cause and others may result in a convention, but a constitutional amendment may be preferred, if any action is taken.

The failure to call a convention to change state constitutions was not unusual during the 20th century. Only 62 conventions were held, compared to 144 in the 19th century. Of the 20th century conventions, the most occurred in a short period of 10 or 12 years during the 1960s and 1970s as part of the “quiet revolution,” which marked the adoption of many state governmental reforms and the reinvigoration of the states.

The environment for conventions in the 21st century may be even less encouraging than in the previous century. Terrorism and war or the threat of war divert attention away from writing new constitutions. (However, during World War II, a convention met in Missouri and its proposed constitution was adopted.) Of great importance currently is the fact that the nation is evenly divided on issues and political parties.

The 2000 presidential election was the closest in years and political divisions were also apparent in the 2002 midterm elections. Consensus is important, if not essential, for making comprehensive constitutional changes. In the past, bipartisan support for conventions and new constitutions was regarded as an essential ingredient for success.

Constitutional Commissions

Table A includes only Florida commissions because they are the only ones empowered to propose amendments directly to the voters. The Florida Constitution requires their periodic establishment. Commissions have generally played important roles in state constitutional change as advisory bodies to conventions, legislatures and governors.

Like constitutional conventions, the number of commissions has also been declining in recent years — partly because there have been few conventions to assist. In 2000-2002, the only official commission in operation was the Utah Constitutional Revision Commission, which is also the only permanent commission (see Table 1.5 for more information). The commission’s major accomplishment in 2002 was voter approval of its revision of the revenue and taxation article after a four-year study.

Another commission was active in 2002, but it was not an official agency and is not included in Table 1.5. Styled the Alabama Citizens’ Commission on Constitutional Reform, it was a creature of the Alabama Citizens for Constitutional Reform, the advocacy group mentioned above. In January 2003, it presented its final report, in which it recommended a new constitution and specific constitutional reforms on subjects such as local home rule, tax reform and the item veto. In 2003, Gov. Riley appointed a new
commission. The 34-member blue ribbon group includes many members of the citizens’ commission, among them co-chair Jim Bennett, former secretary of state, who headed the previous commission. Given a limited mandate, the commission reported its recommendations to Riley in March.

**Legislative Proposal**

Currently and historically, proposal by the legislature is the principal method for initiating amendments. All states allow the legislature to propose amendments. In every state but Delaware, the proposals are referred to the voters. In 2002, state legislatures accounted for 88 percent of the proposed amendments and 91.5 percent of those adopted. In the absence of conventions and comprehensive revision, the legislatures have taken on the task of editorial revision, although on a limited scale, to give order or coherence to the frequently amended charters. It is a rare biennium without one or more editorial revisions on the ballot.

In 2002, Colorado voters approved a “clean up” of several sections in various articles. Legislatures also propose substantive revisions of single articles. In Arkansas the voters in 2002 rejected revision of the executive article, although they had approved revision of the judicial article two years before. Also, the corporation article of the Kentucky Constitution was revised to allow the Legislature to regulate corporations by repealing 11 sections in the article.

Some state legislatures may propose comprehensive revision or a new constitution, but none has done so since 1982, when the Georgia Legislature referred a new constitution to the voters. In the 1999 and 2001 regular sessions of the Texas Legislature, a new Texas Constitution was introduced and considered in committee, but no floor action was taken. Legislatures may also place convention calls on the ballot, except for Florida, where the initiative is the only method authorized for this purpose.

**Constitutional Initiatives**

In 11 of the 18 states with the constitutional initiative, this method was used to place measures on the ballot in 2002. The number of amendments proposed and adopted by constitutional initiative in 2002 was lower than in 2000-2001 and was considerably lower than during the 1990s, when records were broken for both proposals and adoptions.

Although use of the constitutional initiative has been subject to considerable criticism for drafting problems, commercialization of petition-gathering, “up or down” voting on the issues and other matters, it is very unlikely that its use will drop to the low levels of the 1940s through the 1970s. Public distrust of government has often been cited as a reason for the rise of the initiative in recent years. But even if trust is restored, the initiative remains popular as a way of introducing measures unlikely to be considered by the legislature. Whether or not additional states will adopt the constitutional initiative in the future cannot be determined. The last state to add the device was Mississippi in 1992.

**Substantive Changes**

The most important trend concerning substantive changes of state constitutions is the failure to propose or adopt new constitutions in recent years. The last new constitutions were approved in the 1980s — Georgia in 1982 and Rhode Island in 1986. (The latter was the result of editorial revision and amendments by a convention.) More recently, Florida voters ratified an extensive revision of their constitution in 1998, as proposed by the Florida Constitution Revision Commission.

Of interest in 2003 is whether the September 11, 2001 attack in New York and homeland security measures have had an impact on state constitutions’ content. To date, no direct response has occurred, as it did in the 1960s during the height of the Cold War. At that time, constitutions across the nation were amended to comply with guidelines set by the Federal Emergency Management Agency to ensure the continuity of government in the event of an enemy attack. Amendments provided for replacement of legislators and other public officials if they became “unavailable.” Nonetheless, state constitutional provisions concerned with fiscal matters and intergovernmental cooperation will have a bearing on how state government in general can react.

Current and emerging trends concerning substantive changes may be obscured by the specificity and sheer number of amendments to state constitutions. To better determine the trends, the amendments will be placed in two categories: those dealing with the framework of government and those dealing with policy. As a rough guide to this classification, the articles listed in Table B will be used. Framework articles are those dealing with: bills of rights, suffrage and elections, the three branches of government, local government and amending. Policy articles are those dealing with: finance and taxation, state and local debt, functions, and miscellaneous issues. General revision and local amendments will be excluded, because they frequently include both framework and policy. Such a mix is less likely in the other articles, although it does occur, particularly in the legislative article.
Applying this classification to the amendments proposed and adopted in 2002 shows that there were more policy amendments proposed than framework amendments (76 compared to 61) and more policy amendments adopted (47 compared to 38). The approval rate of amendments was about the same for both (61 percent for policy and 62 percent for framework). This ratio of more policy than framework amendments was also true in 2000-2001, when policy amendments accounted for 87 proposals and 61 adoptions, compared to 75 framework proposals and 47 adoptions. The approval rate for policy amendments (70 percent) was higher than for framework amendments (62 percent). The large number of policy amendments in recent years is significant. They contribute to the frequency of constitutional change and are reflective of the “governing” character of state constitutions. They can determine directly and indirectly what government does for the citizenry.

### Framework of Government

Significant amendments relevant to the framework of government were proposed and adopted in 2000-2001. As reported in *The Book of the States* 2002, successful amendments included annual legislative sessions (Kentucky), the joint ticket for electing the governor and lieutenant governor (Nebraska), an independent reapportionment commission (Arizona), nonpartisan election of judges (Arkansas) and an urban county (New Mexico). Fewer reforms were on the ballot in 2002, but like in 2000-2001, no amendments were adopted that limit state governments’ capacity to govern. Some changes in individual rights in 2002 represent trends for the future.

Changes proposed and adopted to the state bills of rights in 2002 were different from the past biennium. In 2000-2001, very few rights-related measures were on the ballot, and none related to criminal justice in the bills of rights. However, the well-established trend toward reducing the rights of persons in the criminal justice system accused or convicted of a crime resumed in 2002. Denial of bail for sexual offenses was approved in Arizona, while South Dakota voters rejected a rare attempt to increase defendants’ rights. The measure would have allowed defendants during trial to question the merits of the law under which they were being tried, including sentencing.

Florida voters approved a death penalty amendment. The amendment is significant not only because it adds a death penalty to the constitution for the first time, but because it might represent a trend toward retreating from protecting state constitutional rights that exceed the protection of those under the U.S.
Constitution. The voters in effect replaced their own constitutional right that provided more protection against cruel or unusual punishment with the more limited right in the Eighth Amendment of the U.S. Constitution. Concern for homeland security may also lead to reduction in the protection of individual rights under state constitutions.

Other amendments related to individual rights are also significant for the future. Voters rejected a Nevada amendment to legalize marijuana and an Ohio amendment allowing treatment instead of incarceration for certain drug-law offenders. Two propositions extending constitutional protection to public employees’ right to bargain collectively were defeated, one in Michigan and one in Missouri. Nevada voters gave final approval to a proposition defining marriage as a union between a man and a woman (constitutional initiatives require positive votes in two elections in that state). To date, only three other states have adopted similar amendments. It is probable that more states will adopt the amendment in the future.

An expansion of suffrage rights in California may very well set a trend. Voters approved the right to have one’s vote counted, obviously a fallout from the 2000 presidential election. But a voter-friendly amendment in Colorado to permit voting and registration the same day failed. However, Colorado voters did approve a campaign finance reform measure. No states added the initiative and referendum device and only a few amendments proposed changes in the process. In Montana, the petition process will be somewhat more difficult, because the number of petitions must come from a larger geographical area (one-half of the counties). And in Oregon, the voters approved a measure that prohibits paying persons by the number of petitions gathered. Georgia voters approved an amendment to disqualify from election to public office persons in default on their taxes, which may be regarded as a reduction of rights.

Relatively few changes were made by amendment to the three branches of government in 2002. In one respect this may be significant. The year 2002 may mark the end of new proposals to adopt legislative term limits. Aside from minor changes to constitutions in two states that already have these limits, the only other measure would have allowed an exception to them. Although it failed, a California proposition would have allowed district voters to extend the term of their own legislators by four years. Wyoming voters approved the expansion of legislative powers by allowing the Legislature to call itself into special session. One of the two amendments on the subject was for the purpose of resolving problems with the selection of presidential electors. In Louisiana, the electorate approved switching general legislative sessions from odd to even-numbered years and switching the fiscal sessions from even to odd years. Oregon voters rejected a proposal to lower the age qualification for state legislators from 21 to 18.

Very little changed with respect to the executive branch. According to ballot directions, the Wyoming proposals on special sessions noted above were not designed to reduce gubernatorial powers over special sessions. A successful Montana amendment requires the governor to give advance notice of special sessions.

Of the 15 proposals to amend the judicial article, the most important was a New Hampshire proposition intended to resolve a separation-of-powers dispute between the Supreme Court and the Legislature over authority to make rules regarding judicial administration, including the “practice, procedure and rules of evidence” in all state courts. It did not receive a two-thirds vote of the electorate required for adoption. Two Oregon proposals, both of which were rejected, would have affected the election of judges. One would have required election of justices of the Supreme Court and Courts of Appeals by district rather than election at large, and the other would have changed the ballot to add “none of the above” to voter options.

With respect to local government, no reforms on the order of New Mexico’s 2000-2001 urban county amendment were on the ballot in 2002. A measure approved in North Dakota will facilitate intergovernmental cooperation by allowing certain county officers, except the sheriff, to serve in counties not of their residence if the other counties approve. Missouri voters approved an amendment to allow St. Louis residents to amend or revise their charter to reorganize county functions and offices. But Florida voters turned down an amendment authorizing Miami-Dade County to revise its home rule charter.

As usual, few amendments were proposed to change the amending article. The Alabama proposal on a new constitution has been mentioned. Florida voters approved a requirement to add an economic-impact statement prepared by the Legislature to constitutional initiative measures. A rejected Wyoming amendment to the executive article would have denied the governor a veto over proposed constitutional amendments.

**Policy Amendments**

Constitutionally speaking, policy amendments are not necessary. State legislatures have plenary powers restricted only by the U.S. Constitution, valid federal
laws and treaties and the state constitution. Nonetheless, policy amendments are numerous and reduce legislative discretion and authority over many subjects. They are often indistinguishable from statutes, raising questions about any inherent differences between the content of state constitutions and statutes.

The most important trend relates to fiscal policy, which clearly dominates the policy amendments to state constitutions. Invariably, the article on finance and taxation is the one most frequently amended; these amendments can significantly impact the way states govern. Adopted in 1978, California’s Proposition 13, which slashed property taxes by almost 60 percent, is the best known amendment of this magnitude. In the 1990s, several states, including Arizona, Colorado, Oklahoma, Nevada and South Dakota, moved toward supermajority legislative requirements to increase revenues or taxes. In addition, all these states but Arizona included popular vote requirements. No similar propositions were adopted from 2000 to 2002.

States have also approved other constitutional restrictions on the power to spend and borrow. Although not necessarily of recent vintage, state constitutional budget-balancing provisions are common. (Thirty-four state constitutions require the legislature to pass a balanced budget.) These provisions are highly relevant during the current fiscal crisis facing the states, the worst in 50 years. States have contemplated cutting or have already cut services and have taken other actions to meet the constitutional requirements. Although there are ways of getting around the constitution, the problems the states face are too large to be ignored. Reduced expenditures, employee layoffs and the like would seem to work at cross-purposes with the national government’s efforts to stimulate the economy.

In addition to major fiscal reforms, state constitutional amendments typically regulate in some detail local property taxes, a case of constitutional micro-management. Almost all of these are designed to reduce taxes. Only a few amendments deal with other taxes, primarily the sales and the income tax. In 2002, a successful Louisianan amendment combined the termination of the sales tax on certain items with a limit on income taxes. In Arkansas, voters deviated from the pattern of approving tax reductions and rejected a proposal to end the sales tax on food and medicine.

Amendments on funds and bonds are typically fairly numerous. A common response in 2002 to investment strategies was to reject investment in stocks, as might be expected in light of recent corporate scandals and lower stock prices.

All state constitutions incorporate provisions on education. This is not surprising, since public education is a major state and local responsibility in the federal system. State judicial decisions have also been important in the interpretation of constitutional provisions on education. New policy directions on education by constitutional amendments are not uncommon. In 2000–2001, two voucher propositions were on the ballot, but both failed. There was none in 2002, but the recent U.S. Supreme Court decision that vouchers are not unconstitutional may encourage more amendments in the future.\footnote{See G. Alan Tarr, Understanding State Constitutions (Princeton, N.J.: Princeton University Press, 1998), 94-95, 136-137.} Florida voters adopted two amendments related to education. One requires a pre-kindergarten program by 2005 for four-year-olds. The second will reduce class size by 2010, with the state absorbing the costs. Colorado voters turned down English immersion as an answer to the problems of bilingual education. Nebraska voters rejected an amendment to change the wording on English as the official language in public schools.

The year 2002 saw a new subject for constitutional protection: animal rights. Florida voters approved a measure to protect pregnant pigs from unnecessary confinement. And in Georgia, the Legislature was authorized to establish a program of dog and cat sterilization funded by special license plates.

In other miscellaneous areas, a Florida measure to prohibit smoking in certain enclosed workspaces passed. Also unusual was an amendment in New Mexico, which was rejected, establishing a holiday in memory of Cesar Chavez. Voters in North Dakota and Tennessee approved lotteries. The North Dakota measure authorized the Legislature to decide whether to participate in a multistate lottery, while Tennessee voters approved the repeal of a prohibition against lotteries.

In the future, state constitutions will continue to include the types of policy measures mentioned here, however minor, local or statutory they may be.

\textbf{Notes}

\footnote{1 See G. Alan Tarr, Understanding State Constitutions (Princeton, N.J.: Princeton University Press, 1998), 94-95, 136-137.}
\footnote{2 See Armstrong v. Harris, 773 S.2d 7 (Fla. 2000) for an explanation.}
\footnote{3 Zelman v. Simmons-Harris, 122 S.Ct 2460 (2002).}

\textit{Research note:} The Center for State Constitutional Studies has made available papers prepared by national experts on important areas of state constitutional reform as part of its project “State Constitutions for the 21st Century.” The topics include constitutional change processes, the state judicial branch, the executive branch and rights. They may be viewed on the center’s Web site (http://www.camlaw.
rutgers.edu/statecon/) and will be published by the State University of New York Press. The center does not plan to publish a Model State Constitution as indicated in The Book of the States 2002, but like the National Municipal League, it is relying on experts to contribute to the reform of state constitutions by providing research and recommendations as guidance to those interested.

References


About the Author

Janice C. May is a professor of government at the University of Texas at Austin, where she specializes in state government and politics. A regular contributor to The Book of the States, she is the author of numerous publications on the Texas Constitution and government, including The Texas State Constitution: A Reference Guide, and on state constitutional developments nationwide. She has served on two Texas constitutional commissions and on the board of directors of the Texas State Bar.
Thirty-three amendments to the United States Constitution have been proposed by the United States Congress and sent to the states for ratification since the Constitution was put into operation on March 4, 1789. Twenty-seven of these, having been ratified by the requisite number of states, are part of the Constitution. The first ten amendments were adopted and ratified simultaneously and are known collectively as the Bill of Rights. Six amendments adopted by Congress and sent to the states have not Constitutional amendment. Quite the same Wikipedia. Just better. Constitutional amendment. A constitutional amendment is a modification of the constitution of a nation or state. In many jurisdictions the text of the constitution itself is altered; in others the text is not changed, but the amendments change its effect. The method of modification is typically written into the constitution itself. Ordinary revision: this relates to key changes in relation to the competences of the EU and requires the convening of an intergovernmental conference to adopt proposals for amendments by consensus. All EU countries have to ratify the treaty amendments for them to enter into force. The Constitution of the United States provides two methods for making amendments. Only one has ever been used. The United States Congress can pass a bill setting out a proposed amendment by a vote of two thirds in each body. Or a constitutional convention can be convened by a vote of two thirds of the state legislatures, which will propose one or more amendments. This has never happened and its unclear exactly how such a constitutional convention would operate. In either case, the amendments to the U.S. Constitution only become effective after being ratified by 3/4 of the states. Some amendments... Amending the Constitution was never meant to be simple. Although thousands of amendments have been discussed since the original document was approved in 1788, there are now only 27 amendments in the Constitution. Though its framers knew the Constitution would have to be amended, they also knew it should never be amended frivolously or haphazardly. Clearly, their process for amending the Constitution has succeeded in meeting that goal. Constitutional amendments are intended to improve, correct, or otherwise revise the original document. The framers knew it would be impossible for the Constitution... Each American state has its own rules and procedures that govern how its constitution can be amended. The ways a state constitution can be amended or revised are: Via a legislatively referred constitutional amendment. Via an initiated constitutional amendment. Eighteen states allow this method of amendment although the requirements in several of these states are so prohibitively difficult that the process has rarely if ever been used (Illinois, Mississippi).