Policy amendments figured prominently among the 19 successful and two defeated amendments in the five states considering them in 2013. Among the high-profile policy amendments approved by voters was a New Jersey amendment raising the minimum wage, a New York amendment authorizing operation of as many as seven casinos, and a pair of Texas amendments allowing reverse mortgage loans and authorizing the transfer of $2 billion from the state rainy day fund to pay for water projects. Colorado voters defeated an amendment that would have increased income tax rates and boosted school spending.

Constitutional Amendment and Revision Methods

Five states considered constitutional amendments in 2013. This is comparable to, or slightly lower than, the number of states considering amendments in recent odd-year elections (nine states in 2011, five states in 2009 and eight states in 2007). It is, of course, much lower than the number of amendments approved in recent even-year elections (92 amendments were approved in 2012, 116 in 2010 and 87 in 2008).

Constitutional Conventions and Commissions

No constitutional conventions were operating in 2013. Residents of Rhode Island, however, will vote in November 2014 on whether to call a convention due to a constitutional requirement that a convention question be submitted automatically every 10 years. One of 14 states with a periodic convention question requirement, Rhode Island held the most recent full-scale state constitutional convention, in 1986, after voters approved an automatically generated convention referendum in 1984 (see Table 1.4 for the list of states with such a requirement and the designated intervals between submissions). The last time a convention question was submitted to Rhode Island voters in 2004, it was defeated by a narrow margin of 52 to 48 percent.¹
Constitutional revision commissions were operating in two states—Alabama and Ohio—in 2013. The Alabama legislature created the Alabama Constitutional Revision Commission in 2011 and charged the 16-member commission with reviewing and proposing changes to 11 of the constitution’s 18 articles, but not the taxation article, and removing language inconsistent with the U.S. Constitution.2 The commission concluded its work in 2013 by submitting several proposals to the legislature, which must approve any amendments by a three-fifths vote before they are submitted to voters. Among other proposals, the commission recommended changing the current system whereby constitutional amendments dealing solely with a particular locality are placed on the statewide ballot rather than the ballot of the affected locality if a single representative or senator casts a dissenting vote on the motion to approve the amendment. The commission recommended raising the threshold for placing a local amendment on the statewide ballot by requiring at least three dissenting votes in the senate or at least 10 dissenting votes in the house to force a statewide vote. Local amendments failing to generate sizable legislative opposition will continue to be voted on only by residents in the affected locality. This change, along with various technical and occasionally substantive changes to legislative, executive, separation of powers, impeachment and homestead-exemption provisions, will be considered by the Alabama legislature in its 2014 session and, if approved, will appear on the 2014 ballot.

The commission also recommended several controversial constitutional amendments that will not be considered by the legislature until its 2015 session. One proposal authorizes counties to exercise some additional administrative powers, but falls well short of a full-scale home-rule arrangement sought by some constitutional reformers. Alabama legislators also will consider yet another proposal to eliminate obsolete and unenforceable language in the education policy provision of the Alabama state constitution that allows the legislature to operate racially segregated schools. Voters narrowly defeated a 2004 amendment that would have eliminated this language, as well as language stipulating that “nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense.” In the belief that voters’ defeat of this 2004 amendment was attributable to their desire to retain the latter clause as a barrier against court-ordered changes in school financing, a proposed 2012 amendment would have eliminated the segregation language but retained the language disclaiming any constitutional right to education. The 2012 amendment, however, generated criticism from groups opposed to retention of the no-right-to-an-education language and was defeated soundly at the polls.


<table>
<thead>
<tr>
<th>Method of initiation</th>
<th>Number of states involved</th>
<th>Total proposals (a)</th>
<th>Total adopted (b)</th>
<th>Percentage adopted (c)</th>
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<td>32</td>
<td>40</td>
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<td>Commission</td>
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<td>...</td>
<td>4</td>
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</table>

*Source: John Dinan and The Council of State Governments. Key:*

(a) Excludes Delaware, where proposals are not submitted to voters.

(b) Includes Delaware.

(c) Excludes one Alabama local amendment approved by voters in November 2010 but not certified pursuant to a court order.

(1) Excludes one Oklahoma amendment approved by voters in 2010 but whose implementation was permanently enjoined by a federal district court.
In this context, the commission returned to the subject yet again in 2013 and proposed another amendment. This most recent proposal would eliminate the segregation language and direct the legislature to “establish, organize and maintain a system of public schools throughout the state for the benefit of the children thereof, provided that nothing in this section shall create any judicially enforceable right or obligation and nothing in this section shall in any way affect the provisions of Amendment 582,” which guarantees that “No order of a state court, which requires disbursement of state funds, shall be binding on the state or any state official until the order has been approved by a simple majority of both houses of the Legislature.”

The Ohio Constitutional Modernization Commission, also established in 2011, was given a broader charge and longer time frame by the Ohio legislature. The 32-member Ohio commission has until 2021 to recommend changes dealing with any aspect of the state constitution. Proposed changes must secure support from two-thirds of commission members to be forwarded to the legislature, which has to approve them by a three-fifths vote before they can be submitted to voters for ratification. Attention focused in 2013 on finalizing selection of the 20 public members of the commission, to go along with the 12 legislative members. The commission also began to consider various alternatives to the current system whereby the legislature is responsible for drawing congressional district lines.

### Constitutional Changes

Few constitutional amendments in 2013 dealt with individual rights or governing institutions, although some notable amendments regarding rights and institutions already have qualified for the 2014 ballot. For the most part, amendments on the 2013 ballot dealt with policy matters, especially finance and taxation and gambling policy.

### Rights

After several years when rights amendments were proposed more frequently than all other types of amendments, aside from finance and taxation policy (see Table B), only one amendment concerning either individual rights or the suffrage was considered in 2013. The Delaware legislature gave its second approval to an amendment eliminating a requirement that felons must...
wait five years after completion of their sentence before they are eligible for restoration of their voting rights. Because amendments in Delaware are not submitted for popular ratification, the amendment took effect upon the legislature’s second approval in 2013, following its initial approval in 2012.

Although no amendments regarding same-sex marriage appeared on the 2013 ballot, several of the 31 states with constitutional amendments restricting same-sex marriage attracted attention because of federal court decisions invalidating them. In June 2013, the U.S. Supreme Court ruled in Hollingsworth v. Perry that the sponsors of California’s 2008 same-sex marriage ban amendment who were defending the measure in federal court lacked standing and therefore the case was not justiciable. This ruling had the effect of letting stand U.S. District Judge Vaughan Walker’s 2010 decision holding that the California amendment violated the U.S. Constitution. U.S. district judges also issued decisions in late 2013 and early 2014 invalidating same-sex marriage-ban amendments in Oklahoma, Utah, Texas and Virginia, although these rulings have been appealed. Similar federal constitutional challenges are pending against other same-sex marriage-ban amendments.

A same-sex marriage-ban amendment was expected to appear on the 2014 ballot in Indiana, but due to actions taken by the Indiana legislature in its 2014 session, the earliest that such an amendment will appear on the ballot is the 2016 election. The Indiana legislature in 2011 gave the first of the required two approvals to an amendment barring recognition of same-sex marriage or civil unions. When the legislature took up the amendment for the second time in 2014, however, the house changed the wording of the amendment and the senate concurred; the revised amendment would only prevent recognition of same-sex marriage and would not prohibit recognition of same-sex civil unions. Because this version of the amendment differs from the version approved by the previous legislature, it must be approved a second time by a newly elected legislature in its 2015–16 session, in which case it would appear on the 2016 ballot.

No amendments regarding abortion appeared on the 2013 ballot, but three amendments have qualified for the 2014 ballot. In response to a 2000 Tennessee Supreme Court decision interpreting the state constitution as barring enforcement of waiting period and informed consent provisions, the Tennessee legislature placed on the 2014 ballot a court-constraining amendment declaring, “Nothing in this Constitution secures or protects a right to abortion or requires the funding of an abortion,” and further stating, “The people retain the right through their elected state representatives and state senators to enact, amend, or repeal statutes regarding abortion, including, but not limited to, circumstances of pregnancy resulting from rape or incest or when necessary to save the life of the mother.” Meanwhile, residents of Colorado and North Dakota will vote in 2014 on personhood amendments. A North Dakota legislature-referred amendment declares, “The inalienable right to life of every human being at any stage of development must be recognized and protected.” Colorado voters will have their third opportunity in recent years to vote on a personhood amendment, although the 2014

<table>
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Source: John Dinan and The Council of State Governments.

Key:
(a) Delaware does not provide for submission of amendments to the people.
(b) Excludes Delaware’s three legislature-enacted amendments.
citizen-initiated measure differs from the initiated measures defeated in 2008 and 2010 in that it focuses on “defining ‘person’ and ‘child’ in the Colorado criminal code and the Colorado wrongful death act to include unborn human beings.”

Institutions
Four amendments considered in 2013 dealt with the judiciary. Voters defeated the most significant judiciary-related amendment, a New York amendment increasing the mandatory retirement age from 70 to 80 for court of appeals judges. This was the only legislature-referred amendment to be rejected in any state in 2013. Meanwhile, the Delaware legislature gave its second and final approval to two legislature-enacted amendments regarding the judicial branch. One Delaware amendment extends the term length for justices of the peace who already have served three terms. Under the old arrangement, justices of the peace initially were appointed for a four-year term and upon reappointment, they served six-year terms. The new rule keeps this arrangement mostly intact, but provides that after justices of the peace complete three terms, any subsequent terms will be for eight years. Another Delaware amendment adds the U.S. Bankruptcy Court to the list of courts that can certify questions of law to the state supreme court. A Texas amendment expands the types of sanctions the State Commission on Judicial Conduct can assess against judges.

Several amendments regarding the legislative branch have qualified for the 2014 ballot. Arkansas voters will consider a legislature-referred amendment that would relax the current six-year limit on house service and eight-year limit on senate service. Under the proposed amendment, legislators would be limited to a total of 16 years of service. This proposed Arkansas amendment follows the passage in 2012 of a similar California term-limit relaxation amendment that allows 12 years of total legislative service in place of prior limits that mirrored the current Arkansas rule.

A legislature-referred New York amendment on the 2014 ballot would establish a commission to draw state legislative and congressional district lines. In contrast with the recently created citizens redistricting commission in California, the 10-member New York commission would be comprised of two appointees by the majority and minority leaders of the house and the senate, as well as two other appointees chosen by the eight legislative appointees. Moreover, the commission would be required to submit its proposed redistricting maps to the legislature for final approval.

Policy
Colorado voters defeated the most high-profile amendment on the 2013 ballot—a citizen-initiated amendment raising income tax rates and spending the additional revenue on public schools. This wide-ranging amendment would have established a progressive individual income tax structure, in a move expected to raise $950 million in added revenue in the first year and higher amounts in future years. The amendment also would have triggered several other changes in education funding and policy that were contained in a statute, designed to take effect upon the amendment’s
Several other policy amendments attracted significant attention, including two of the nine amendments approved by Texas voters. One Texas amendment authorizes the use of $2 billion from the state’s rainy day fund to pay for water infrastructure projects in coming years. Another Texas amendment alters the definition of reverse mortgage and authorizes reverse home mortgages for the purpose of homestead property. Prior to approval of this amendment, Texas was the only state that did not permit this means of financing home purchases.

Following a path taken by several states in recent years, New Jersey voters approved a legislature-referred amendment increasing the state minimum wage to $8.25 and requiring annual adjustments for inflation. A number of other states have set minimum-wage rates that exceed the federal rate of $7.25. Most of these states enacted minimum wage increases on a statutory basis. In the early 2000s, however, voters in Colorado, Florida, Nevada and Ohio approved citizen-initiated amendments for this purpose. New Jersey is the latest state to increase its minimum wage by adopting a constitutional amendment, a step taken in order to overcome Gov. Chris Christie’s veto of an earlier bid by the legislature to pass a statutory minimum wage increase. Although legislative supporters needed to muster a two-thirds vote to overcome the governor’s veto and enact the measure on a statutory basis, they only needed to secure a majority vote in two consecutive sessions to place a constitutional amendment on the ballot.

Voters in two states approved gambling-related amendments in 2013. Most importantly, a New York amendment authorizes operation of up to seven casinos at sites to be determined by the legislature. Meanwhile, New Jersey voters approved an amendment adding veterans’ organizations to the list of groups permitted to operate bingo and other games of chance and use the proceeds to fund their organizations.

Among other policy amendments approved in 2013 were Texas amendments authorizing property-tax exemptions for the surviving spouse of armed forces members killed in action and for partially disabled veterans living in a house donated by a charitable organization. A New York amendment allows disabled veterans to obtain civil-service employment credit even if their disability was not certified until after they first applied for a civil-service position.

Looking ahead to 2014, several policy amendments already have qualified for the ballot. Florida voters will consider a citizen-initiated amendment legalizing medical marijuana. A number of states have legalized medical marijuana in the past two decades, but these measures have generally taken the form of statutory changes, except in Colorado and Nevada, where medical marijuana legalization measures were approved as constitutional amendments in 2000. Colorado voters then took the further step of approving a constitutional amendment legalizing recreational marijuana in 2012, at the same time Washington voters approved a statutory measure along these lines. If voters approve the Florida medical marijuana amendment in 2014—and it should be noted Florida amendments require approval by three-fifths of voters—Florida would become the third state to address marijuana legalization policy in its constitution.

Conclusion

In considering state constitutional developments in 2013, as well as measures on the 2014 ballot, several conclusions can be drawn about trends in state constitutional amendment activity.

First, supporters of various policies continue to turn to constitutional amendment processes to secure policy goals that are unattainable in the legislative process. This was evident in 2013 with adoption of a New Jersey amendment boosting the minimum wage after the legislature was unable to override a gubernatorial veto of a statutory minimum wage increase. Although legislative supporters needed to muster a two-thirds vote to overcome the governor’s veto and enact the measure on a statutory basis, they only needed to secure a majority vote in two consecutive sessions to place a constitutional amendment on the ballot.

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Amendments also continue to deal with certain recurring issues concerning the design of governing institutions, with particular attention to the judiciary in recent years. A defeated New York amendment in 2013 increasing the judicial retirement age is one of a number of similar amendments that have been considered by other states in recent years and, more often than not, rejected by voters. Hawaii voters will consider a similar amendment on the 2014 ballot.6
An amendment on the Tennessee ballot in 2014 providing for gubernatorial appointment and legislative confirmation of judges is illustrative of widespread interest in changing the judicial selection process, albeit in a wide range of ways. Amendments calling for increased reliance on merit-selection commissions continue to be proposed, but they have generally been defeated in recent years, most recently in Nevada in 2010. On the other hand, several states are considering amendments to eliminate merit-selection commissions, as in Tennessee.

Meanwhile, in considering a 2014 amendment to regulate the redistricting process, New York voters are following a path taken by several other states in recent years. California voters approved amendments in 2008 and 2010 giving an independent commission the task of redistricting state legislative and congressional districts. Florida voters approved a pair of amendments in 2010 barring legislators from drawing state legislative and congressional district lines with an eye to creating a partisan or incumbent advantage. Other redistricting amendments could appear on the ballot in the next several years.

Finally, an amendment relaxing legislative term-limits on the Arkansas ballot in 2014 is indicative of ongoing debate about the term-limits requirements currently applicable to legislators in 15 states. After rejecting a 2008 amendment that would have relaxed California’s term-limits requirement, California voters in 2012 approved a slightly different amendment along these lines. Similar term-limit relaxation amendments could appear on the ballot in other states in coming years.

Notes
2 Information about the work of the commission is available at: http://ali.state.al.us/constitutional-revision.html. Additional information was supplied by Nancy Ekberg.
3 Information about the work of the commission is available at: http://www.ocmc.ohio.gov/ocmc/home.


About the Author
John Dinan is professor of politics and international affairs at Wake Forest University in North Carolina. He is the author of The American State Constitutional Tradition and various articles on state constitutionalism.