State Constitutional Developments in 2012

By John Dinan

Several of the 135 amendments on the 2012 ballot attracted significant attention, including a California amendment increasing income and sales tax rates, a Colorado amendment legalizing recreational marijuana, and various amendments regarding the right to bear arms, same-sex marriage and affirmative action. Although voters in three states rejected automatically generated referendums on calling constitutional conventions, two recently established constitutional revision commissions were operating this year, thereby continuing a recent tradition of undertaking constitutional reform through piecemeal amendments and commissions rather than in conventions.

Individual rights figured prominently among the 135 amendments proposed and 92 adopted in 2012, as voters approved amendments securing hunting and fishing rights, strengthening the right to bear arms, protecting religious expression, limiting eminent domain power, restricting affirmative action and targeting health insurance mandates. Voters also defeated, for only the second time, a same-sex marriage ban amendment. Voters approved several amendments regarding governing institutions, most notably a California amendment relaxing legislative term limits. Several policy amendments also attracted significant attention, including a California amendment increasing income and sales tax rates and a Colorado amendment legalizing recreational marijuana.

Constitutional Amendment and Revision Methods

Constitutional amendments appeared on the 2012 ballots in 35 states, which is comparable to the number of states considering amendments in recent even-year elections—37 states in 2010, 30 states in 2008, and 34 states in 2006. The number of amendments proposed, 135, and the number of amendments approved, 92, in 2012 are slightly below the level of amendment activity in recent even-year elections—165 proposals and 116 approvals in 2010; 140 proposals and 87 approvals in 2008; and 166 proposals and 125 approvals in 2006.

Alabama, which boasts the longest constitution in the world and far more amendments than any other state constitution, accounted for about one-quarter of the total amendment activity in 2012, with 29 proposals and 25 enactments. As has generally been the case, the majority of these Alabama measures were local amendments that apply to a single county but are nevertheless included in a constitution that now contains 880 amendments and exceeds 376,000 words.

Although the remainder of this review focuses on constitutional developments in the states, the three U.S. territories with constitutions also considered amendments. Voters in American Samoa rejected a proposition to eliminate the power of the U.S. interior secretary to veto bills passed by the territorial legislature. Puerto Rico voters rejected two amendments, one to reduce the size of the territorial legislature and another to limit the right to bail for certain crimes. Voters in the Northern Marianas Islands approved all three amendments on the ballot, on subjects ranging from election of the attorney general to issuance of bonds to the mission of the Northern Marianas College.

Legislative Proposals and Constitutional Initiatives

All the state constitutional amendments on the 2012 ballot were formally proposed either by legislatures or the initiative process. Voters approved 85 of the 117 legislature-proposed amendments, for a passage rate of 72.6 percent. This is in line with the passage rate for legislature-proposed amendments in recent years. Seven of the 18 citizen-initiated amendments were approved, for a passage rate of 38.9 percent, which is roughly comparable to the passage rate for initiated amendments in recent years.

Constitutional Conventions and Commissions

No constitutional conventions were operating in 2012, marking more than a quarter-century since the last full-scale convention was held in Rhode Island in 1986. Voters in three states considered
automatically generated referendums that would have established conventions, including Alaska and New Hampshire, where such referendums appear on the ballot every 10 years, and Ohio, where a referendum is held every 20 years. But there was no indication of any major groups mobilizing in support of these referendums and little attention was paid to these referendums in the lead-up to the November election. All three convention referendums in 2012 were defeated by overwhelming margins. The Ohio convention question was defeated on a 68 to 32 percent vote. Alaska voters defeated the convention referendum by a 67 to 33 percent margin. The New Hampshire convention question failed by a 64 to 36 percent margin.

The defeat of these three convention referendums is generally in line with voting patterns on recent convention questions held in the 14 states whose constitutions require a convention question to be submitted to the electorate at periodic intervals. The only convention question that came close to passing in recent years was in Maryland in 2010. Voters in that state supported a convention by a 54 to 46 percent margin; but because blank votes were counted as no votes, the question only secured the support of 48 percent of people voting in the entire election and therefore was deemed to have failed.

Although it has been several decades since a convention has been called, revision commissions are occasionally established and are viewed more favorably by legislators who are generally able to maintain more control over selecting commission members and determining the scope of their work. Since 1977, Utah has had a unique commission with an ongoing charge to recommend amendments to the legislature and review amendments proposed by legislators.1 But in 2011, the Utah State Legislature made several changes to the commission, eliminating its power to recommend amendments for legislative consideration and also stipulating that the commission could only review amendments at the instigation of the governor, the legislature as a whole or the legislative leadership. As a result, the Utah Constitutional Revision Commission did not meet during 2012; it last met in February 2011.

The only commissions to hold meetings in 2012 were the Ohio Constitutional Modernization Commission and Alabama Constitutional Revision Commission, which were both established by state legislatures in 2011 and charged with undertaking multi-year reviews of their respective constitutions. The 32-member Ohio commission has a 10-year time frame to undertake its review and made its first required status report to the legislature in December 2012. In order to be forwarded to the legislature, a proposed change would have to secure the approval of two-thirds of commission members, and the legislature would then have to agree by a three-fifths vote to refer the amendment for voter approval. In 2012, the commission focused on holding a major col-

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**Table A: State Constitutional Changes by Method of Initiation: 2008–09, 2010–11 and 2012**

<table>
<thead>
<tr>
<th>Method of initiation</th>
<th>2008–09 Total proposals (a)</th>
<th>2010–11 Total proposals (a)</th>
<th>2012 Total proposals (a)</th>
<th>2008–09 Total adopted (b)</th>
<th>2010–11 Total adopted (b)</th>
<th>2012 Total adopted (b)</th>
<th>Percentage adopted (c)</th>
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<td>40</td>
<td>35</td>
<td>161 (d) 191</td>
<td>35 (f) 135 (f)</td>
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<tr>
<td>Legislative proposal</td>
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<td>37</td>
<td>32</td>
<td>127 (d) 170</td>
<td>88 (d) 135 (f)</td>
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<td>9</td>
<td>7</td>
<td>30 21</td>
<td>18 (f) 136 (e)</td>
<td>13 12 7</td>
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<td>...</td>
<td>4</td>
<td>...</td>
<td>...         7</td>
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<tr>
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<td>...</td>
<td>...</td>
<td>3</td>
<td>...</td>
<td>75.0</td>
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</tbody>
</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) In calculating the percentages, the amendments adopted in Delaware (where proposals are not submitted to voters) are excluded (one amendment was adopted in 2010 and another was adopted in 2011).
(d) Excludes one New Mexico amendment approved by voters in November 2008 but declared invalid by the state Supreme Court on single-subject grounds in December 2008.
(e) Excludes one Alabama local amendment approved by voters in November 2010 but not certified pursuant to a court order.
(f) Excludes two Arkansas amendments that were placed on the 2012 ballot but whose results were not counted pursuant to a court order.
The 16-member Alabama commission is charged with reviewing 11 of the 18 articles of the state constitution and also recommending the removal of any language that is incompatible with the federal constitution; it is directed to make annual recommendations to the legislature on a specific schedule between 2011 and 2014. In 2011, the commission considered changes to the corporations article and banking article and also identified unconstitutional language concerning racial segregation in schools and regarding the poll tax. The commission forwarded its recommendations to the legislature, which voted to place several amendments on the November 2012 ballot. A pair of amendments regarding the corporations article and banking article proved uncontroversial and were approved by Alabama voters.

An amendment eliminating language regarding school segregation and the poll tax, by contrast, generated significant controversy and went down to resounding defeat. There was little dispute about removing this particular language, which was long ago rendered inoperative by U.S. Supreme Court decisions. Rather, the concern, particularly among civil rights and education groups that opposed the measure, was that in excising language requiring that “separate schools shall be provided for white and colored children,” the amendment left intact language stating that “nothing in this Constitution shall be construed as creating or recognizing any right to education or training at public expense.” The defeat of this amendment marked the second time in less than a decade that Alabama voters rejected an effort to remove this school segregation clause. In 2004, voters rejected, by the narrowest of margins, an amendment to repeal the entirety of this language—both the segregation clause and no-right-to-education clause—largely due to opposition from conservative groups concerned that the removal of the no-right-to-an-education clause would enable courts to play a more active role in supervising school finance policy. In part in response to this concern, the 2012 amendment eliminating the segregation clause was drafted to retain the no-right-to-education clause and thereby allay conservative concerns; but it only served this time to upset liberal groups, and the amendment was defeated by a 59 to 41 percent margin.
The Book of the States 2013

Constitutional Changes

Finance and taxation amendments have invariably been the most prevalent type of amendment considered each year, and this continued in 2012—more amendments were proposed and enacted regarding finance and taxation than any other type of amendment (see Table B). In a notable development, however, rights-related amendments have, in recent years, emerged as the next most prevalent type of amendment, second only to finance and taxation measures. As recently as the 1980s, rights-related amendments were one of the least prevalent types of amendments. But over the past three decades, amendments regarding individual rights have become much more prominent, and this was also the case in 2012. Assorted other amendments regarding state functions such as education, welfare and transportation, and also targeting the legislative, executive and judicial branches, were also considered in 2012.

Rights

Although in 2012 the number of states enacting amendments limiting recognition of same-sex marriage increased to 31 with the May 2012 passage of a North Carolina amendment, voters in Minnesota rejected such an amendment in

Table C: State Constitutional Changes by Legislative and Initiative Proposal: 2012

<table>
<thead>
<tr>
<th>State</th>
<th>Legislative proposal</th>
<th>Constitutional initiative</th>
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<td>Number proposed</td>
<td>Number adopted</td>
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<td>Rhode Island</td>
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<td>South Dakota</td>
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<tr>
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<td>2</td>
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<tr>
<td>Totals</td>
<td>117</td>
<td>85</td>
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Source: John Dinan and The Council of State Governments.

Key:
(a) Excludes two amendments that were placed on the ballot but whose results were not counted pursuant to a court order.
November 2012, marking only the second time such an amendment has been defeated. The only prior rejection of a same-sex marriage ban amendment took place in Arizona in 2006; but voters in that state approved a revised amendment two years later. Minnesota voters’ rejection of a same-sex marriage ban amendment was part of a general pattern of voter support for same-sex marriage in the November 2012 election, as voters in Maine approved an initiated statute legalizing same-sex marriage, and voters in Maryland and Washington approved referendums affirming previously enacted legislative statutes legalizing same-sex marriage.

At the same time that North Carolina voters were approving an amendment barring same-sex marriages and civil unions and Minnesota voters were rejecting an amendment barring same-sex marriages, federal courts were considering the legitimacy of California’s 2008 same-sex marriage ban amendment that is the only one of the 31 amendments to overturn a state Supreme Court decision that already had legalized same-sex marriage. The U.S. Supreme Court in December 2012 agreed to hear an appeal during its 2012–13 term of a 9th Circuit Court decision in Hollingsworth v. Perry invalidating the California amendment on the ground that it was impermissible for voters in November 2008 to curtail same-sex marriage rights once granted by the California Supreme Court in a May 2008 ruling.

Oklahoma voters, meanwhile, approved an amendment barring consideration of race in public colleges and universities and in government hiring and contracting, marking the fifth such amendment limiting affirmative action. California was the first state to pass such an amendment, in 1996, followed a decade later by Michigan in 2006, and then Nebraska in 2008 and Arizona in 2010. Washington voters approved a measure on a statutory basis in 1998. Various federal courts, however, continue to consider the legitimacy of these amendments. One week after the November 2012 passage of the Oklahoma amendment, the 6th Circuit Court issued an en banc decision invalidating Michigan’s affirmative-action ban amendment, in a ruling likely to be appealed to the U.S. Supreme Court.

In keeping with another trend, Virginia in 2012 became the 11th state in recent years to adopt an amendment barring use of the eminent domain power for economic development purposes. The Virginia amendment, along with 10 other amendments approved since 2006, was enacted in response to the U.S. Supreme Court’s decision in Kelo v. City of New London (2005) declaring that the federal constitution does not bar taking of land for economic development purposes but making clear that states are free to impose such restrictions. A number of states have enacted such restrictions on a statutory basis. Several state courts also have interpreted their existing state constitutions as imposing such restrictions. Virginia is the latest state to adopt a constitutional amendment containing explicit protections of property rights against economic-development takings.

Voters in several states approved amendments in 2012 securing the right to hunt and fish and, in one case, strengthening the right to bear arms. Idaho, Kentucky, Nebraska and Wyoming became the latest states to adopt amendments guaranteeing the right to hunt and fish, joining 17 states that already have constitutional provisions of this sort. As recently as the mid-1990s, only the Vermont Constitution protected the right to hunt and fish; but beginning with the passage of an Alabama amendment in 1996, the past decade and a half has seen the passage of numerous hunting and fishing rights amendments, bringing the total number of states with such provisions to 21 after the passage of the four amendments this year. Meanwhile, Louisiana voters approved a particularly strong gun rights amendment stating, “The right of each citizen to keep and bear arms is fundamental and shall not be infringed” and declaring that “Any restriction on this right shall be subject to strict scrutiny.”

Voters considered assorted amendments regarding religious liberty, and although amendments in North Dakota and Florida were defeated, a Missouri amendment was approved. A North Dakota amendment, voted down in a June 2012 election, sought to respond in belated fashion to the U.S. Supreme Court’s declaration in Oregon v. Smith (1990) that the federal constitution does not require governments to meet a compelling-interest test when enacting otherwise neutral laws that incidentally burden the free exercise of religion. The proposed North Dakota Religious Freedom Restoration Amendment would have added a compelling government-interest requirement to the state constitution, following Alabama, which adopted such a constitutional amendment in 1998, and other states that have provided such protection through statutes. A Florida amendment,
 meanwhile, would have eliminated longstanding “Blaine amendment” language in the state constitution that explicitly bars public money from directly or indirectly aiding sectarian institutions and has been invoked by Florida courts to cast doubt on the legitimacy of school voucher programs. The only successful religious liberty amendment this year, approved by Missouri voters in an August 2012 election, is a wide-ranging measure protecting the right to public prayer in various forums, including public schools.

Continuing a recent trend from the 2010 and 2011 elections, voters in 2012 took the heretofore unusual step of approving amendments targeting enacted or proposed congressional statutes. In response to congressional passage of the Affordable Care Act, Alabama and Wyoming in 2012 adopted amendments—Florida voters defeated a similar amendment this year—prohibiting imposition of health insurance mandates, following the passage of similar amendments in Arizona and Oklahoma in 2010 and Ohio in 2011, as well as similar statutes in other states. Meanwhile, in the aftermath of Congress’s consideration in 2009 and 2010 of a proposed, but not enacted, Employee Free Choice Act that would have reduced the role of the secret ballot in union organizing, Alabama in 2012 became the fifth state to adopt an amendment guaranteeing the right to cast a secret ballot in elections for determining union representation, joining Arizona, South Carolina, South Dakota and Utah, all of which approved such amendments in 2010. The purpose and status of these health care freedom amendments and save-our-secret-ballot amendments, as supporters dub them, is unclear. Although they are viewed by some supporters as vehicles for creating conflicts between state and federal law and thereby facilitating legal challenges to federal statutes, it is well established that federal statutes take precedence over conflicting state statutes and constitutional amendments.

Voters considered various other rights-related amendments in 2012. Arizona voters approved an amendment to an existing victim’s rights guarantee; the revised language declares that no crime victim shall have to pay damages to someone injured while committing or attempting to commit a felony against the victim. Meanwhile, Minnesotta voters defeated a voter identification amendment and Michigan voters rejected an amendment that would have elevated collective bargaining rights to constitutional status.

**Governing Institutions**

Voters in 2012 considered and approved several amendments regarding the legislative branch, including an important change in California’s term limits provision. Prior to passage of this California amendment in a June 2012 election, state legislators were limited to serving six years in the House and eight years in the Senate. The 2012 amendment eased these limits by allowing up to 12 years of service in the House and up to 12 years of service in the Senate, but with a maximum of 12 years of combined legislative service. Unlike a similar amendment defeated by California voters in 2008, this amendment does not apply to legislators who are already in office. Meanwhile, Nebraska voters rejected an amendment that would have eased the current limit of two consecutive four-year terms by allowing members of the state’s unicameral legislature to serve up to three consecutive terms.

In terms of amendments regarding legislator salaries and expenses, Alabama voters approved an amendment effectively reducing legislator salaries by tying them to the median state income; Nebraska voters rejected an amendment that would have substantially increased legislator salaries; and South Dakota voters rejected an amendment that would have eliminated a constitutional provision setting legislators’ travel reimbursement rates and left these rates to be determined by the legislature.

Amendments regarding the judicial branch were especially prevalent on the 2012 ballot. New Jersey voters approved an amendment making clear that a statute increasing the amount of money that public officials, including judges, must contribute to their pensions and health insurance does not amount to an unconstitutional reduction in judicial salaries. The legislature placed this amendment on the ballot as a way of effectively overturning a state Supreme Court decision that invalidated a 2011 statute that increased state employee contribution levels.

Voters rejected a number of other judiciary-related amendments, including a Missouri amendment changing the composition of the appellate nominating commission; an Arizona amendment increasing the length of judicial terms and raising the mandatory judicial retirement age; a wide-ranging Florida amendment making it easier for the legislature to overturn court rules and requiring state Supreme Court nominees to be confirmed by the Senate; and
a Hawaii amendment authorizing the chief justice of the state Supreme Court to appoint retired judges to serve on a temporary basis. The Hawaii amendment was one of several amendments in 2012 that attracted more voter support than opposition but failed to pass because of a requirement in some states that amendments be supported by a majority of all voters casting votes in the entire election, such that blank votes on an amendment effectively count as no votes.

Voters approved several amendments in 2012 regarding the executive branch. A South Carolina amendment requires the governor and lieutenant governor to run on a ticket, beginning in 2018, and brings to 27 the number of states with this rule. A North Dakota amendment requires members of the executive branch to take an oath of office before assuming their duties.

Several amendments approved in 2012 target criminal behavior of public officials. The Nebraska constitution already provided that elected officials can be impeached for misdemeanors committed in office, but voters approved an amendment also subjecting officials to impeachment for misdemeanors committed in pursuit of their office. Louisiana voters approved an amendment authorizing the legislature to take away the retirement benefits of public officials or employees convicted of a felony related to their service.

Several amendments proposing changes in the electoral system were defeated in 2012. Ohio voters rejected an initiated amendment that would have established an independent redistricting commission to draw congressional and state legislative district lines not only in the future, but also to replace redistricting maps drawn by the legislature after the 2010 Census. Arizona voters rejected an initiated amendment instituting a top-two primary system of the sort now in place in California and Washington, where candidates from all parties compete in a single primary and the top two vote getters regardless of party advance to the general election.

**Policy**

In a 2012 ballot that was replete with tax-related amendments, none attracted more attention than a California amendment temporarily increasing the sales tax by a quarter of a cent and raising the income tax rates of individuals earning more than $250,000 a year. Supporters and opponents of this ultimately successful measure spent more than $120 million, with the lead supporter Democratic Gov. Jerry Brown arguing that its passage would stave off significant reductions in school spending. This initiated amendment is expected to raise more than $6 billion in annual revenue over the next seven years, with a portion of the new revenue benefiting public schools and community colleges. It also guarantees continued funding for public safety programs that were recently transferred to local governments. Arkansas voters, meanwhile, approved an amendment that temporarily increases the sales tax by a half cent and dedicates the increased revenue to transportation projects.

Voters in 2012 also considered and occasionally approved amendments limiting taxes. Oregon voters approved an initiated amendment prohibiting real estate transfer taxes, joining three other states that enacted similar amendments in the prior two years. Oklahoma voters approved two tax-limitation amendments. One prohibits any property taxes on intangible personal property, thereby responding to and effectively overturning a 2010 state Supreme Court decision to the contrary. Another Oklahoma amendment limits annual increases in property taxes by reducing the maximum allowable increase from 5 percent to 3 percent. Voters, however, rejected a North Dakota amendment eliminating the property tax, a Michigan amendment requiring a two-thirds legislative vote or a popular referendum for tax increases, and a New Hampshire amendment barring any new tax on personal income. Although the New Hampshire amendment attracted the support of 57 percent of voters, it failed to achieve the necessary two-thirds threshold, the highest ratification requirement of any state.

The vast majority of taxation amendments on the 2012 ballot sought to grant exemptions from various taxes, generally property taxes. Florida voters approved three property tax exemption amendments. One expands property tax discounts for elderly low-income homeowners. Another authorizes the legislature to grant property tax exemptions to surviving spouses of military veterans or first responders who die from injuries incurred in the course of their duties. Another extends property tax discounts for combat-disabled veterans so that these discounts apply to veterans who were not living in the state at the time they joined the military. As one indication of the popularity of these property tax exemption amendments that have become increasingly prevalent in recent years, these were the only three amendments approved by Florida...
voters out of a total of 11 amendments on the ballot. Voters also approved property tax exemptions in other states, including Louisiana for spouses of deceased combat-disabled veterans and Utah for military personnel called to active duty. An amendment approved by Kansas voters authorizes the legislature to lower the property tax on boats.

Several amendments approved in 2012 dealt with revenue from various trust funds. In a closely watched September 2012 election, Alabama voters approved an amendment transferring $145 million from the Alabama Trust Fund, an oil and gas trust fund, to the general fund in order to prevent cuts to Medicaid and other programs. Louisiana voters approved an amendment prohibiting diversion of money from a Medicaid Trust Fund for the Elderly to the general fund. South Dakota voters approved an amendment changing the method of distributing revenues from a cement plant trust fund to the general fund.

Voters considered several other financial policy amendments in 2012. South Dakota voters approved a balanced-budget amendment requiring the governor to submit a balanced budget and prohibiting the legislature from appropriating money in excess of expected revenues. Meanwhile, Illinois voters rejected an amendment that would have required a three-fifths vote for any state or local governing body to increase public employees’ pension benefits. The amendment gained the support of 56 percent of voters who voted on this question, but fell short of the Illinois requirement that amendments be approved by three-fifths of voters on the amendment or by a majority of all voters participating in the election.

In recent years, voters have considered various amendments concerning drug policy and gambling, and 2012 was no exception. Few amendments this year attracted more attention than an initiated Colorado amendment legalizing recreational marijuana. This was one of several marijuana-legalization measures on the 2012 ballot. Washington voters approved and Oregon voters rejected initiated statutes legalizing recreational marijuana. Meanwhile, Massachusetts voters approved and Arkansas voters rejected statutory medical marijuana legalization initiatives. The Colorado amendment legalizing recreational marijuana goes further than the 17 other states that have legalized medical marijuana; it also differs from the Washington measure in placing this policy in the constitution.

Gambling amendments appeared on the ballot in 2012 in several states, including Rhode Island, where voters approved a pair of amendments allowing table games at the state’s two casinos. A pair of amendments authorizing casino gambling in specified counties appeared on the Arkansas ballot but the results were not counted due to a state court decision deeming the amendments illegitimate for various reasons.

Other policy amendments on the 2012 ballot dealt with subjects ranging from education to land management. Georgia voters approved an amendment authorizing both state and local boards of education to create charter schools, thereby reversing a 2011 state Supreme Court decision that interpreted the state constitution as barring the state board of education from chartering schools. Meanwhile, Arizona voters defeated an amendment declaring that the state possesses sovereignty over all land and resources in the state, including the public lands.

Conclusion
Several trends emerge from a consideration of state constitutional activity in 2012. First, rights-related amendments are proposed and enacted rather frequently, especially in comparison with prior decades, and are usually the second most prevalent type of amendment considered each year. At times, amendments expand rights beyond what the U.S. Supreme Court has guaranteed through interpretation of the federal constitution, as seen in 2012 in Virginia’s eminent domain limitation amendment and Louisiana’s gun rights amendment. At other times, amendments secure protection for rights not mentioned explicitly in the federal constitution, as seen in 2012 in the passage of four more hunting and fishing rights amendments and an Arizona amendment protecting rights of crime victims. At still other times, amendments prevent state courts from expanding rights beyond federal guarantees, as seen in 2012 with the consideration of amendments barring recognition of same-sex marriage, including an approved amendment in North Carolina (the 31st enactment of a same-sex marriage limitation amendment) and a rejected Minnesota amendment (only the second rejection of such an amendment).

Second, taxation and finance amendments continue to be considered more frequently than any other type of amendment. At times, amendments increase taxes, as with amendments enacted...
in California and Arkansas in 2012. At other times, amendments limit taxes, whether by prohibiting certain taxes altogether, as in 2012 with Oregon’s ban on real estate transfer taxes, or by limiting the rate of tax increases, as in 2012 with Oklahoma’s limit on property tax increases. On other occasions, amendments seek to grant exemptions from taxes, usually property taxes; a significant number of tax-exemption amendments appeared on the 2012 ballot and most were approved.

A third notable feature of amendment activity on display in 2012 is the requirement in some states that amendments must receive more than a simple popular majority to be approved. In most states a simple popular majority approves amendments. But some states require amendments to be approved by a majority of all voters participating in the election, in which case blank votes on an amendment are treated as no votes. Such requirements came into play in 2012 when a debt amendment and judiciary-related amendment in Hawaii and a judiciary-related amendment in Wyoming all attracted the support of a majority of voters voting on the amendment, but failed to secure the necessary majority of all voters in the election. Still other states impose a supermajority ratification requirement, whether a three-fifths requirement in Illinois and Florida or a two-thirds requirement in New Hampshire. Several amendments in 2012 attracted majority support but nevertheless failed because they fell short of a supermajority requirement, as was the case with an Illinois pension-limit amendment and a New Hampshire income tax ban amendment.

Notes

1 The Utah commission was created on a temporary basis in 1969 and then turned into a continuing body by a 1977 statute.

2 Janice C. May, “Constitutional Amendment and Revision Revisited,” *Publius* 17 (Winter 1987), 153, p. 172, Table 2.


Acknowledgements

The Council of State Governments and the author would like to thank the following individuals for their contributions.

Alabama................. Nancy Ekberg
Alaska ..................... Jerry McBeath
Arizona .................... Terri Desai
Arkansas ................... Art English
Colorado .................... Richard B. Collins
Florida ................... Rebecca M. Salokar
Georgia ............. Robert M. Schaefer
Hawaii ................ Anne Feder Lee
Illinois ................ Ann M. Louin
Indiana ................... Andrew Downs
Kentucky ............ Michael Wayne Hail
Maryland ................ Dan Friedman
Michigan ................ Robert A. Sedler
Minnesota ........ Mary Jane Morrison
Mississippi .............. John W. Winkle III
Nebraska ............ Anthony B. Schutz
New Jersey ............ Robert F. Williams
New Mexico ........ K. Seckler
New York ................. Robert Wells
North Dakota ....... Dana Michael Harsell
Ohio ...................... Steven H. Steinglass
Pennsylvania ........ Joel Fishman
Rhode Island .......... Mel A. Topf
South Dakota ......... Michael A. Card
Utah ..................... Robert H. Rees
Washington ........ Hugh D. Spitzer
Wisconsin ............ Michael Richter Fine
Wyoming .............. Robert B. Keiter

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.