State Constitutional Developments in 2004

By Janice C. May

In 2004 state constitutions played an unusually important role in state and national affairs. A record number of amendments banned same-sex marriage and may have influenced the presidential election. Other significant issues were also addressed. But the long-term trend against comprehensive revision continued.

Many important developments concerning state constitutions occurred in 2004. In retrospect, it was a remarkable year. Most publicized was the historic number of state constitutional amendments prohibiting same-sex marriage. Thirteen, all passing handily, were on the ballot in 2004, 11 in the November presidential election and two in special elections. There was speculation that the popularity of the amendments may have helped George W. Bush win the presidential election, particularly in the battleground state of Ohio where a win by John Kerry would have enabled him to receive enough electoral votes for the majority necessary to be president. Also of relevance to the presidential election was a proposed Colorado amendment to change the state's winner-take-all method of allocating the state's electoral votes to a proportional one. It was rejected but is a reminder that the Electoral College is constitutionally state based. Of national and world interest was the adoption of a California amendment to establish one of the world's largest stem cell research programs. Also of considerable interest were tort reform propositions on the ballots in several states. Fiscal issues also commanded attention. A budget amendment in California was designed to assure passage of a $15 billion bond issue, the largest floated in U. S. municipal bond history. In contrast to specific changes, however, no general revision of state constitutions took place by constitutional convention or other method. Rhode Island voters turned down the only convention call on the ballot.

Use of Authorized Methods

Developments in 2004 appear to be consistent with a downward trend in state constitutional activity observed in recent years. State constitutional amendments proposed or adopted in 33 states, including Delaware where constitutional amendments are not referred to the voters. By comparison, in 2002, a general election year, 35 states participated. Also, the number of amendments proposed in 2004 was 140 compared with 175 in 2002 and 98 were adopted, rather than 118. Table A contains information by which other comparisons can be made. Except for 2004, the figures refer to biennia to facilitate comparison with similar tables published in *The Book of the States* since 1968-1969.

Legislative Proposal and Constitutional Initiatives

As indicated in Table A, the legislative and constitutional initiative methods were the only ones used by the states in 2004. The legislative method, available in all states, continued to dominate the amendment process. The method accounted for over 77 percent of proposals and 82 percent of adoptions.

Table A: State Constitutional Changes by Method of Initiation: 1998–99, 2000–01, 2002–03 and 2004

	Number of states involved				*Total proposals*				*Total adopted*				*Percentage adopted*			
Method of initiation	*1998–1999*	*2000–2001*	*2002–2003*	*2004*	*1998–1999*	*2000–2001*	*2002–2003*	*2004*	*1998 1999*	*2000–2001*	*2002–2003*	*2004*	*1998–1999*	*2000–2001*	*2002–2003*	*2004*
All methods	46	40	38	33	296	212	232	140	229(b)	154	164	98	77.2 (a)(b)	72.0 (a)	70.6	70.0
Legislative proposal	46	38	36	30	266	180	208	109	210(b)	141	155	81	78.8 (a)(b)	91.0 (a)	74.5	74.3
Constitutional initiative	12	10	11	12	21	32	24	31	11	13	9	17	52.4	40.6	37.5	54.8
Constitutional convention	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .	. . .
Constitutional commission	1	. . .	. . .	. . .	9	. . . .	. . .	. . .	8	. . .	. . .	. . .	. . .	. . .	. . .	. . .

Source: Survey conducted by Janice May, University of Texas at Austin, January 2005.
Key:
. . . — Not applicable.
(a)—In calculating these percentages, the amendments adopted in Delaware (where proposals are not submitted to the voters) are excluded.
(b)—One Alabama amendment is excluded from adoptions because the election results were in dispute.

However, the constitutional initiative authorized in 18 states, proved to be more popular than usual. The number of states (12), proposals (31) and adoptions (17) were all high and the adoption rate (54.8 percent) was the highest. The boost in numbers can be attributed in large part to the six same-sex marriage initiatives, all of which passed.

Constitutional Conventions and Commissions

In every state, the constitutional convention is the traditional method to draft new constitutions or substantially revise existing ones. But no convention has convened since the Rhode Island Convention of 1986. The prospects for a convention in Rhode Island and Colorado were considered in the last volume of *The Book of the States*. In neither state was a convention approved in 2004.

Rhode Island voters rejected the referendum to call a convention at the November general election by a narrow margin (52 to 48 percent). The Rhode Island Constitution requires a vote on the issue at least every 10 years. At the same election the voters approved an amendment to reshape the constitutional distribution of powers among the three branches of government to a more traditional separation of powers structure. They had approved a nonbinding referendum in 2000 for a convention on the separation of powers issue. It is reasonable to conclude that at least some voters were satisfied with the resolution of the issue and a convention was unnecessary. The campaign focused on issues that might be considered in an unlimited convention. Those in favor supported the possibility of new reforms; those opposed were concerned about costs and undesirable changes.

In Colorado no action was taken on the convention question in the 2004 legislative session. The legislature was deeply divided over the resolution of a serious fiscal crisis and other issues and no consensus for a convention was likely in this political atmosphere. Research underway on conventions was discontinued.

In New Jersey, the prospects for a constitutional convention in the near future were improved with the passage in 2004 of legislation creating the Property Tax Convention Task Force. Property tax reform has been an issue for many years in the state and the idea of a convention has been considered as the best way to bring about needed reforms. Former Gov. James McGreevey, a strong advocate of reform, backed the convention option.

The task force was composed of 15 members, nine members appointed by the governor and the others by legislative leaders. Four were members of the New Jersey Legislature. The body was charged with "considering and developing recommendations regarding the process of conducting a constitutional convention designed to change the existing property tax system." Following an organizational session in September, nine public hearings were held to encourage public participation, among other activities. The final report was submitted on the last day of December.

The task force recommendations were numerous. They began with an emphasis on strictly limiting the convention to property tax reform. They proposed that a vote on the convention call be scheduled for the 2005 general election and at the same election non-partisan election of delegates should take place. The convention should be held as soon as possible after the election and end in July 2006. The convention's proposals were to be submitted at the 2006 general election in the form of a single comprehensive ballot measure in which separate proposals could be incorporated. The most unusual recommendation was the group's preference for convention authority over both statutory and constitutional property tax changes. To implement the recommendation, a temporary constitutional amendment to allow consideration of statutory changes would have to be proposed by the legislature for voter approval.

Creation of a task force to advise the legislature on the process of holding a convention is a fresh approach to constitutional change. Although it performed some of the services of a constitutional commission, it is not regarded as a commission, a common purpose of which is to propose substantive reforms. It is of interest that bills have been introduced in the 2005 New Jersey Legislature to carry out task force recommendations

Table A refers to constitutional commissions as a method of changing state constitutions. The only commissions included are Florida commissions which have the unique power to refer proposals directly to the voters. These commissions are created periodically and none of them were in operation in 2004. In 2004, the only constitutional commission in operation was the Utah Constitutional Revision Commission, which was established on a permanent basis in 1977 (see Table 1.5).

Substantive Changes

Substantive changes in the form of a new constitution were not on the ballot in 2004. Not since the 1980s have new constitutions been proposed or adopted. Also missing was comprehensive revision, either substantive or editorial, of an existing constitution. However, Rhode Island voters approved a

substantial change by the adoption of an amendment on separation of powers. The ballot language made clear that the amendment's intent was to ensure the separation of powers among the three branches of government. To this end, four articles were amended. In general the powers of the state legislature were reduced and the governor's power enhanced, most particularly over appointments. In the absence of general revision of constitutions, it is common to propose editorial revision of some kind. In 2004 "clean-up" amendments repealing a few provisions were approved in Colorado and Nevada. Editorial revision is usually non-controversial. Somewhat of a surprise was the defeat of an Alabama amendment that would have deleted provisions on racial segregation in the public schools, prohibiting a right to education and several references to the poll tax. The change was recommended in 2003 by the Alabama Citizens' Constitution Commission. Opponents argued that it would lead to federal intervention and increased taxes. The initial vote was so close that a recount was ordered.

Table B contains information on the number of proposed and adopted state constitutional amendments by articles common to state constitutions. Except for 2004, the figures apply to biennia so that comparisons can be made to tables published in earlier volumes of *The Book of the States*. The table can serve as a rough guide to changes over a period of years in the framework of state government, including rights and elections in addition to the three branches of government and local government, and the various policies that are part of state constitutions.

Framework of Government

Proposals to prohibit same-sex marriage were the most numerous and most significant of amendments pertaining to state constitutional rights in 2004. Eleven were before the voters in the November 2 general election (Arkansas, Georgia, Kentucky, Michigan, Mississippi, Montana, North Dakota, Ohio, Oklahoma, Oregon and Utah) and two in special elections (Louisiana, Missouri). All passed by comfortable to large margins. Adding four measures adopted in previous years, Alaska, Hawaii, Nebraska and Nevada, 16 ban same-sex marriage and Hawaii reserves to the legislature the power to do so. In at least three more states (Massachusetts, Tennessee and Wisconsin) the proposal is expected to be on the ballot in 2005 or 2006. It is widely believed that a key factor in the large number of same-sex amendments in 2004 was a reaction to the ruling in 2003 by the Massachusetts Supreme Judicial Court that prohibiting same-sex marriages denies basic rights under the state constitution. This was a signal that only by amending the state constitution could the same-sex marriage prohibition be secure under state law.

Most of the proposals (at least five in 2004 and all four of the earlier ones) have amended the Bill of Rights (or Declaration of Rights) in state constitutions. To those who believe that denial of marriage to same-sex couples is a violation of constitutional rights, this must seem ironic. The location in the Bill or Rights might be simply a directive to the courts that gay marriage is not a right or it may be a return to an earlier view of community rights. Historically, the ban on interracial marriage was placed in the constitutions of six of the 16 states in which the ban was law.[1] In none was the provision in the state bill of rights.

Although the state constitution is the highest state law, it is still possible for a constitutional proposal to violate it. For example, soon after Louisiana voters approved the same-sex marriage amendment, it was declared unconstitutional by a Louisiana court for violating the constitution's single subject rule. The amendment not only prohibited same-sex marriage but also civil unions, two different subjects according to the court. The case is on appeal.

It is more common to argue that the marriage amendments could violate the U.S. Constitution. As reported in the 2004 edition of *The Book of the States*, this was the ruling of a federal district court in a case challenging the Nebraska ban. The court held that the bar amounted to an unconstitutional bill of attainder, among other arguments. The most likely provision of the U.S. Constitution to be relevant, however, is the "equal protection clause" of the 14th Amendment. The marriage prohibition may be in violation of the clause, but even if it is sustained, other provisions of the amendments might violate it. Nine of the laws of the state amendments do more than limit a marriage to one man and one woman (Arkansas, Georgia, Kentucky, Michigan, North Dakota, Ohio, Oklahoma and Utah). They also prohibit other unions or domestic partnerships that give benefits equivalent to marriage. In the case of *Romer v. Evans* (517 U.S. 620 [1996]), the U.S. Supreme Court ruled that persons on the basis of their sexual orientation could not be denied the same rights as others to use politic processes to pursue their political goals. The argument has been made that the nine amendments deny persons the right to use political methods to retain or add benefits of a civil union or domestic partnership without having to amend the state constitutions.

The gay marriage amendments also raise the question of recognizing such marriages from other states

or jurisdictions. Whether this is a violation of the "full faith and credit clause" of Article IV of the U.S. Constitution will eventually have to be resolved by the U.S. Supreme Court. To date, the only U.S. Supreme Court action on the issue was to deny review of a U.S. Court of Appeals decision to reject a challenge to the constitutionality of the Massachusetts Supreme Judicial Court's ruling on same-sex marriage based on the "republican form of government clause" of Article IV of the U.S. Constitution.[2]

Litigation is under way in many states either to support or oppose same-sex marriage. The state constitutions and courts will continue to play an important role in its resolution.

Among the amendments of most interest to the states and nation were those proposing reform of the civil justice system, a major responsibility of the states in the federal system. The trend seems to be one of more constitutional proposals to change the system but a mixed record of success. Tort reform amendments to cap non-economic damage in medical malpractice cases, similar to the one approved in Texas in 2004 (see the last volume of *The Book of the States*) failed to pass in Oregon and Wyoming. But a third proposal to remove limits on damages in suits against construction companies failed in Colorado, the effect of which was to retain restrictions. Also defeated was a lengthy constitutional initiative measure in Nevada to punish attorneys for filing frivolous law suits. However a limit on attorney fees in medical practice cases was passed in Florida, as was a Wyoming amendment to allow the legislature to require alternative dispute resolution or review by a medical panel before suits could be filed against health providers. Three Florida proposals, all passing, were of relevance to medical malpractice. Doctors who had committed three or more incidents of malpractice were barred from the practice of medicine in the state. The other two allowed access to medical records by patients or their families when medical error led to injury or death, and the public was entitled to information on "adverse medical incidents" caused by a health care provider or facility.

The intensity of interest in medical malpractice cases was well illustrated in Oregon by the narrow margin of defeat and also by the numerous arguments for and against printed in the Oregon Voters' Pamphlet. Proponents emphasized the need to reduce the high costs of law suits, high medical insurance rates and the loss of doctors. The opposition was concerned about the erosion of the right to a trial by jury and access to the courts and blamed insurance companies rather than the courts and lawyers for high insurance costs. Both the governor and attorney general opposed the measure.

Contributing to the large number of state constitutional amendments concerned with rights were several others in addition to same-sex marriage and tort reform. The most unique was the right to study stem cell research, adopted in California. More traditional was another California proposal, one that elevated the statutory right of public access to government information to constitutional status; it also passed. The trend toward creating a constitutional right to

Table B: Substantive Changes in State Constitutions: Proposed and Adopted: 2000–01, 2002–03 and 2004

Subject Matter	*Total proposed*			*Total adopted*			*Percentage adopted*		
	2000–01	*2002–03*	*2004*	*2000–01*	*2002–03*	*2004*	*2000–01*	*2002–03*	*2004*
Proposals of statewide applicability	162 (a)	191	113 (b)	114 (b)	128	81 (b)	70.3 (a)(e)	67.0	71.6 (b)(c)(f)(g)
Bill of Rights	4	12	12 (f)	1	8	12 (f)	25.0	66.6	100.0
Suffrage & elections	6	6	9	4	3	6	66.6	50.0	66.6
Legislative branch	37	24	14	27	17	6	72.9	70.8	42.8
Executive branch	9	8	4	7	4	3	77.7	50.0	75.0
Judicial branch	7 (a)	19	8	8	11	3	100.0	57.8	37.5
Local government	9	5	2	6	5	2	66.6	100.0	100.0
Finance & taxation	38	65	29	25	39	22	65.5	60.0	75.8
State & local debt	5	10	3	5	5	3	100.0	50.0	100.0
State functions	24	16	14 (b)	17	13	8(b)	70.8	81.2	57.1
Amendment & revision	3	3	1	0	3	1	0.0	100.0	100.0
General revision proposals	0	0	0	0	0	0	0.0	0.0	0.0
Miscellaneous proposals	20 (c)	23 (c)	17 (c)(g)	14	20 (c)	15 (c)(g)	70.0	86.0	88.2
Local amendments	50	41	27	40	36	17	80.0	87.8	62.9

Source: Survey conducted by Janice May, University of Texas at Austin, January 2005.

Key:

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

(b)—Includes Delaware.

(c)—Includes amendments that contain substantial editorial revision.

(d)—Excludes one Alabama amendment in a legal dispute at the time.

(e)—Excludes one Oregon amendment not canvassed by court order.

(f)—Includes a Georgia amendment adopted by voters but in litigation in 2004.

(g)—Includes a Louisiana amendment adopted by voters but in litigation in 2004.

hunt and fish continued with its adoption in two more states, Louisiana and Montana. In Hawaii, four changes in the criminal justice system were passed, among them allowing prosecutors to file charges by information. The only one to reduce rights was a Florida amendment requiring parental notification before a minor could have an abortion. The only one on this list to fail was a South Dakota amendment to extend transportation and food assistance to all school children, including those in religious schools. Also recently adopted (in 2003) was protection of free speech added to the Delaware Bill of Rights. It was inadvertently omitted from the last volume of *The Book of the States*.

The year 2004 turned out to be a significant one for proposals to change election provisions in state constitutions. Because it could conceivably affect the outcome of the current presidential election, a Colorado proposal to change the method of allocating the state's electoral votes for president and vice president was the most significant, nationally. The state's winner-take-all method would be replaced by a proportional distribution of the votes on the basis of the percentage of the popular vote received by each candidate. The new method would have applied, if passed, to the 2004 election. The amendment was soundly defeated. Had it been adopted it undoubtedly would have been challenged as a violation of Section 1 of Article II of the U.S. Constitution, which provides that electors shall be "appointed in such a manner as the Legislature thereof may direct." The Colorado measure was proposed by a constitutional initiative and was not a decision made by the state legislature.

In California the voters decided to retain the closed primary that was challenged by supporters of a modified blanket primary, one distinguishing feature of which was the possibility of two candidates from the same party for a given office to advance to the general election. Oregon voters approved an unusual provision to postpone an election if a nominee for a given office died 30 days before the election. The postponement would enable the voters to elect the replacement instead of having an appointed or a holdover officer serve. Also of importance was the adoption in New Mexico of run-off elections in large cities (over 20,000) to replace the plurality vote currently required.

Other propositions proposed changes to the initiative and referendum. With one important exception the amendments would make it more difficult to use the process by placing new restrictions. The most far-reaching of these was an Arizona amendment. An initiative measure that requires new spending must identify the source of funding, such as a tax increase or fees without drawing from the general fund. The legislature is allowed to make cuts if revenues are insufficient. Opponents argued that it would unduly interfere with the public's right to influence public policy. Supporters contended that the legislature cannot balance the budget when spending is beyond its control. Two other amendments, only one of which passed, set earlier dates for submission of petitions. Voters approved an Alaska measure to increase the number of districts and signatures required to submit a petition. The only exception to the new restrictions was the approval by Nebraska voters of an amendment to increase the effectiveness of an initiative by requiring a two-thirds vote of the legislature to change a measure adopted by the initiative process.

Amendments were proposed in 2004 to change the structure or procedures of all three branches of state government. A little over half were adopted. The Rhode Island reform of separation of powers was the most substantial of the proposals as already noted. In contrast, most of the other significant changes were rejected. Ballot measures that passed tended to fill gaps in existing provisions or clarify confusion over others.

Of the legislative amendments, attempts to change term limits by extending the number of years legislators could serve met with defeat in Arkansas and Montana. Another proposal, also rejected, would have removed the Nebraska lieutenant governor as presiding officer of the unicameral state legislature and power over ties. Although the office is one of little or no legislative power, voters are reluctant to abolish it. Virginia voters agreed to modification of reapportionment laws to avoid double or no representation of residents in certain districts. It allowed state legislators and U. S. representatives to complete their elected terms before newly drawn districts became effective. Also, to fill a gap voters approved a measure to give the Utah Legislature power to call itself into session for impeachment purposes.

Among the few executive branch ballot measures was a Colorado amendment to strengthen the governor's power of appointment over state employees, which was rejected. It would have removed 140 positions from the civil service system, which has enjoyed constitutional status since 1918. To fill a gap in procedures Virginia voters approved an amendment recommended by the governor's Make Virginia Secure Panel, a post 9/11 homeland security body. It enlarges the list of officers who can succeed to the office of governor in the event of an emergency, including a

terrorist attack, and permit the lower house to convene to elect an acting governor and, if necessary, to waive eligibility requirements. Also passing was an Indiana proposition to determine who is to serve as governor when both the office of governor and lieutenant governor are vacant.

State judicial branches were changed very little by amendment in 2004 despite efforts to do so. Voters defeated a South Dakota amendment that would have extended merit selection of judges from the Supreme Court to the circuit courts, the second tier of courts in the unified judicial system. In New Hampshire voters defeated for the second time an amendment to resolve a separation of powers dispute between the legislature and the courts over authority to make rules regarding judicial administration and procedures. A majority of voters said yes, but two-thirds vote is required. Two ballot measures that passed concerned the office of justice of the peace in Arizona and magistrates (successors to the justice of the peace) in North Carolina. One confirmed that temporary justices of the peace do not have to be attorneys and the other set terms for the magistrates for the first time.

Major changes in local government structure and procedures were not the subject of amendments in 2004. The most important change for local governments related to fiscal policy.

Policy

In 2004 fiscal policy was the subject of more amendments to state constitutions than any other policy, the trend for many years. Although the performance of the economy improved, budget problems in the states were common. The most serious state budget difficulties were faced in California where deficits have been as high as $62 billion in recent years. In 2004 the governor and the legislature agreed to borrow more money to resolve current short-term problems and to allow some breathing space for a final solution. The result was a proposed bond issue of $15 billion, the largest floated in municipal bond history. The bond issue itself, approved by the voters, was not in the form of a constitutional amendment. Since 1962, the state's constitution has prohibited the inclusion of bond issues; they must be proposed to the voters as statutes or bond acts. But a companion constitutional amendment, said to "be joined at the hip" to the bond issue was adopted. Called the Balanced Budget Act, it was not effective unless the bond passed. It provided for a reserve fund for the purpose of avoiding future budget crises and a minor change that requires the final budget to be balanced, not just the governor's proposed in January.

Four other California amendment proposals were relevant to the budget. Rejected by the voters was a measure to reduce the legislative vote required to pass the budget from two-thirds to 55 percent. California is one of only three states with a super-majority vote. Two competing amendments, one referred to the voters by the legislature and the other by a constitutional initiative petition, would, if passed, make substantial changes in state-local fiscal relationships. Their relevance to the budget is that the state government has been exercising its authority over local taxes to use some of the revenues to pay for state costs and help reduce state budget deficits. The amendment proposed by the legislature was adopted. One result is that the state can no longer rely on local tax revenues to balance the budget, except in an emergency. The fourth amendment, which passed, dedicated revenues from the sales of state surplus property to paying interest and principal on the $15 billion bonds issue.

Constitutional amendments relating to taxes outnumbered others on fiscal policy. No major reforms to increase taxes comparable to the Alabama amendment defeated in 2003 were on the ballot. (See the 2004 edition of *The Book of the States* for information about the Alabama amendment.) New or increased taxes were notably absent from measures passed to resolve the budget crisis in California. (The vehicle license fee was reduced for a loss of $7 billion.) However, major changes in tax policy were proposed by the aforementioned California amendments on state-local fiscal relationships. According to the California legislative analyst, both measures proposed a substantial reduction of state authority over local taxes and would over time possibly increase local revenues by billions of dollars with a corresponding loss of state revenues. All three of the major local taxes (sales, property and vehicle license fee) would be affected. In addition changes were made to lessen the financial burden of state mandates on local governments. A primary difference between the two constitutional proposals was that the initiative version, which was rejected, required a statewide vote before the legislature could approve certain local tax changes.

The few constitutional tax increases on the ballot were limited to specific purposes: in Colorado, higher taxes on cigarettes and tobacco products to improve public health; in West Virginia legislative authorization to impose or raise taxes to finance bonds to pay for bonuses and death benefits to veterans of recent conflicts; and in California, a surcharge on monthly telephone bills to help pay for emergency health care. The California amendment was the only one to be rejected. Although not a tax increase, Missouri vot-

ers approved a significant dedication of motor fuels tax to highways and roads.

As usual, the property tax measures were the most popular and numerous and invariably reduced rather than raised taxes. All eight on the ballot were approved. Veterans were given exemptions of one kind or another in New Mexico and Oklahoma.

Also congruent with past trends was the approval of bonds authorized by constitutional amendment. In the four states with such amendments all were approved, three were for economic development and one for veteran benefits. Another continuation of past developments was the approval of funds to support specific projects or programs. In 2004, they included noxious weed eradication, a trust fund for lotteries, and promotion of seafood products (all passed).

Gambling enterprises and lotteries are often put forward as alternatives to taxes or as a source of new tax revenue. It seems appropriate to consider them as a component of fiscal policy although other issues are relevant. Nine propositions in six states (California, Florida, Michigan, Missouri, Nebraska and Oklahoma) were on the 2004 ballot, possibly a record number. The two lottery amendments (Nebraska and Oklahoma) were adopted and two of the gambling measures (Florida and Michigan). Oklahoma became the 42nd state to approve a state lottery. Although the lottery itself was adopted as a statute, a companion Lottery Trust Fund was created by constitutional amendment. In common with lotteries in many other states, the revenues are dedicated to education.

All state constitutions contain provisions on public education, a primary responsibility of the states in the federal system. Education provisions are frequently amended, but in 2004 no major reforms were on the ballots. A number of amendments already reviewed contributed to the funding of education, such as the previously mentioned Oklahoma Lottery. North Carolina added proceeds from civil penalties. In response to budgetary difficulties last year, voters gave the first approval to a Nevada proposition to consider education first in the appropriations process. (See the 2004 edition of *The Book of the States* for more information.) But raising school expenditures to the national average failed. Among other proposals already reviewed was the South Dakota measure to provide transportation and food assistance to private schools. Amendments to the Arizona and Utah constitutions would permit intellectual property developed by state universities to be transferred or exchanged for stock in private companies. Only the Utah version passed.

Of the many other policy amendments, the most unusual and significant was the California measure to promote stem cell research. It would establish one of the world's largest stem cell research programs as already noted. A new medical institution would be created. Financing would be provided by the sale of bonds. Projected annual expenditures would exceed current federal government spending on stem cell research and research on human reproductive cloning would be prohibited.

Among other policy amendments were: adoption of a minimum wage in Florida and the first of two approvals in Nevada; repeal of a Florida amendment authorizing a high-speed railroad; approval of a change in alcohol regulation in South Carolina whose constitution contains a separate article on alcohol regulation; repeal of an obsolete Delaware provision on types of consideration received by corporations for stock issues; and defeat of a Arizona amendment to exchange state trust land for federal land to protect open space and help military bases. This was the fifth defeat for a land exchange measure in that state.

Research Note

The Center for State Constitutional Studies at Rutgers University, Camden, continues to provide current information on state constitutions and support research activities and conferences. In 2004 the Center published a series of background papers for the New Jersey Property Tax Convention Task Force. The papers are posted on the Center's Web site, www.camlaw.rutgers.edu/statecon.

Notes

[1]*Loving v. Virginia,* 338 U.S. 1 (1967) p. 6 N. 3

[2]*Largess v. Massachusetts Supreme Court*. U.S. Supreme Court. Case No. 04-420. 73 U.S.L.W. 3318 (Nov. 30, 2004).

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