Responsibility of Other State Officials
Locating responsibility for elements of the amending process in a specific official helps to assure that these tasks are performed and builds accountability. Some state constitutions charge the secretary of state with receiving proposed amendments after passage, assuring that they are properly considered by the electorate and proclaiming the results. In those states, the secretary of state is usually also responsible for preparing the form of the ballot question, sometimes within constitutionally prescribed guidelines requiring impartiality. Alternatively, as in Alaska, the task may fall to the lieutenant governor. In Alabama and Vermont the governor must timely "give notice" of or "proclaim" an election on a constitutional amendment. In Ohio responsibility for preparing ballot language (with an explanation of proposed amendments and arguments in favor and against) is given to a board that includes the secretary of state and four others, no more than two of whom may be in the same political party. The sole constitutional responsibility of the Attorney General in New York is "to render an opinion in writing to the senate and assembly as to the effect of . . . [an] amendment or amendments" within twenty days after it is filed.

Limits
Constitutional limits on the amending process through the legislature seek to assure that the ratification process is manageable for voters, and that they have the unbiased information they need about proposed amendments so that they may vote intelligently.

Number of Amendments Offered by One Session: In Arkansas the legislature may propose to the voters no more than three amendments in any one year. In Kentucky the limit is four; in Kansas five. The Illinois legislature may propose to amend no more than three articles of the constitution in any one year. The Colorado legislature is limited to seeking alteration of six articles in any one session.

Single Purpose: Amendments are generally limited to a single purpose (or in Louisiana, "object"), though a number of state constitutions specifically allow a number of articles to be altered by an amendment pursuant to a single purpose.[29]

Election Timing: In most states, amendments may be considered at either general or special elections. A few—Connecticut, Kentucky, and New Hampshire are examples—require submission at a general election only. In West Virginia, if a special election is used for consideration of constitutional amendments it may not be used for another purpose.

Separate Vote: State constitutions generally provide for a separate vote on each proposed amendment. In Oregon, however, an amendment submitted by the initiative and one submitted by the legislature may be framed as alternatives in a single question so that "one provision will become a part of the Constitution if a proposed revision is adopted by the people and the other provision will become a part of the Constitution if a proposed revision is rejected by the people."

Limits on Resubmission: If an amendment proposed by the legislatures of New Jersey fails, neither it nor a similar change may be submitted again to the voters until two general elections have passed. In Pennsylvania, five years must pass before resubmission.

Time for Consideration, Publicity, and Information: Most constitutions specify a minimum period of time that must pass after legislative approval (three months is common) before a vote on an amendment may occur. During this time publication of the text, a summary description and other information about the amendment or amendments is often required. The Missouri constitution requires publication in "two newspapers of different political faiths" in each county. In Georgia, a summary of any proposed amendment must be prepared by the attorney general, the legislative counsel, and the secretary of state and published throughout the state. Idaho specifically requires publication of arguments for and against each amendment. As noted, Ohio has a similar requirement. A unique provision in New Mexico requires publication in both English and Spanish, with the legislature also making "reasonable efforts" to communicate the substance of proposed constitutional amendments in indigenous languages and minority language groups.

Court Challenges

The Ohio Constitution establishes deadline is established for court challenges to a proposed amendment. The state supreme court is given original jurisdiction. Amendment language may be invalidated only if found likely to "to mislead, deceive, or defraud the voters." The Ohio Constitution also provides that "An election on a proposed constitutional amendment submitted by the general assembly shall not be enjoined nor invalidated because the explanation, arguments, or other information is faulty in any way."

Home Rule

In Georgia constitutional amendments must have "uniform and general applicability throughout the state." The Louisiana constitution requires amendments that affect five or fewer parishes to be passed by both statewide and parishwide majorities to become effective. Similarly, in Maryland if an amendment is found by the legislature to affect just one county or the city of Baltimore, it must pass with a majority in the potentially effected locality as well as

one statewide. The California Constitution prevents the legislature from passing amendments that "Include or exclude any political subdivision of the State from the application or effect of its provisions based upon approval or disapproval of the measure, or based upon the casting of a specified percentage of votes in favor of the measure," within a jurisdiction.[30]

Substantive Limits or Special Majorities

Several examples are illustrative. A provision in the Alabama Constitution that the legislature may not amend the constitution to change the basis of legislative representation from population dating to 1901 anticipated the current requirements of federal law.[31] The constitution of New Mexico requires higher popular majorities to change provisions on franchise and education than to pass other amendments. Support of two-thirds voting on the question in Florida is needed if an amendment imposes a new tax or fee.[32]

Ratification[33]

In Delaware no popular ratification is required to amend the state constitution. The vast majority of states (forty-three) require a majority of those voting on the question to ratify amendments proposed by the legislature. To deal with the problems of "dropoff" of voters on ballot questions or low turnout, in Hawaii this number must also equal 50 percent of those voting in a general election, or the equivalent of 30 percent of those registered if a special election is used. In Nebraska the majority for an amendment must also exceed 35 percent of those voting in the election.

New Hampshire requires a two-thirds favorable vote on the question to adopt an amendment. Passage of amendments requires support of a majority of those voting in the election in Minnesota and Wyoming. In Tennessee adoption requires backing by the number of voters equal to a majority voting in the gubernatorial election. In Illinois support is required by either a majority in voting in the election or three-fifths voting on the question.

Effective Date

Most state constitutions specify an effective date for amendments once they are ratified. Clarity on this matter is importance. Litigation in Wisconsin in 2002 established that a constitutional amendment there did not take effect until the canvass of the vote adopting it was completed.[34]

Without Legislative Participation

Twenty-five states provide expressly for a means of constitutional amendment that bypasses the legislature. The constitutional initiative is the means most commonly used. Amendment may be also achieved through convention. The constitutional commission has also been adopted in a limited number of jurisdictions.

Constitutional Initiative

Tax limitation and legislative term limitation, the two most far-reaching structural reforms in state government of the late twentieth century, were achieved largely through the use of the constitutional initiative.[35] Sixteen states, most in the Midwest and West, permit direct access to the ballot for constitutional amendments proposed by popular initiative.[36] In one of these (Illinois), however, the use of the initiative for constitutional revision is confined to the legislative article only, perhaps because this is the area of the constitution in which the legislature is likely to be most self-interested, and therefore least likely to initiate change.

An additional two states, Massachusetts and Mississippi, allow the use of the indirect initiative to propose amendments.[37] In Massachusetts, an amendment may not reach the ballot unless passed in two consecutive sessions by one-quarter of the legislature sitting jointly. On first consideration, but not thereafter, an initiative proposal may be amended by three quarters of the legislature. The legislature may simultaneously present a substitute proposal with an initiative measure it passes. In Mississippi a constitutional initiative may reach the ballot without legislative action. If a proposal sent to it as a result of the indirect initiative is amended by the legislature both the original and the amended versions are placed on the ballot.[38]

The indirect initiative has not yet been used in Mississippi, and is rarely successful in Massachusetts. However, one study shows that "many initiatives that fail to pass the legislature succeed in prodding the legislature to take action on an issue."[39]

The use of the initiative process to achieve constitutional change is hotly debated. Critics argue that it is insufficiently deliberative, overly demanding on voters, excessively susceptible to manipulation by moneyed interests, inconsiderate of minorities, and, therefore, ultimately undermining of republican government. Defenders, with greater faith in the capacity of referendum voters to make reasonable choices, argue the legitimacy of direct action by citizen majorities and the utility of this mechanism for constraining entrenched self-interested elected officials. Resultant policies, they say, are no more subject to special interest influence than those made by legislatures, nor are they, in general, substantively less defensible.[40]

Both constitutional and statutory provisions are used in the states to define and delimit the constitutional initiative process. In reaction to the more extensive use of the initiative, legislatures in several states have sought by law or constitutional amendment to place more limiting procedural requirements on the initiative process. Considerable litigation has ensued, much of it focused on the freedom of speech and equal protection implications of these actions under the United States constitution. This review focuses on procedural requirements for the initiative process that are included in state constitutions.

Administration of the Process
Because of their general responsibility for administering elections, Secretaries of State are typically charged in state constitutions with administering the constitutional initiative. In some states the Attorney General is constitutionally required to receive petitions, put them in proper form and prepare an official title and summary. It is important that the locus of responsibility for effecting this or any constitutional change process be clearly identified in the document to assure accountability and avoid proposed changes being blocked through passive resistance by those in office who might oppose them.

Correction of Error
If he or she finds an error or errors in an initiative petition, the North Dakota Constitution requires the Secretary of State to allow petitioners a period of twenty days to correct it.

Timing
State constitutions often require that complete initiative petitions advancing a constitutional amendment be filed by a specified date (for example, 4 months in Arkansas, 90 days in Nevada) before the question is scheduled for a vote.

General or Special Election
Selection of the election at which a question will be considered is one key factor affecting the size of the electorate that will consider it. Most states allow proposed constitutional amendments to be voted on at the next scheduled general election or, with legislative authorization, at a special election. However, Michigan, Montana, Nebraska, Nevada, and Ohio specify a general election. Colorado allows constitutional change through initiative to be considered at the regular biennial general election only. Florida requires a three-quarters vote in each legislative house to permit a special election, and restricts its use to a single amendment question.

Signature Gatherers
The North Dakota Constitution specifies that petitions be circulated only by electors. Oregon requires that signature gatherers be registered to vote in the state. The use of paid signature gatherers in initiative campaigns is widespread. Massachusetts specifically empowers the legislature, if it chooses, to bar paid signature gathers from circulating petitions. Oregon in 2002 constitutionally barred payment on a per signature basis to paid gatherers. *Statutory* limitations on the signature gathering process (most are statutory, not constitutional)—including bans in Colorado on paid gatherers and requirements there that petition circulators disclose their identities and be registered voters—have been invalidated as violations of the First Amendment to the United States

Constitution. This brings into question the validity of similar state constitutional provisions elsewhere.[41]

Time Parameters for Gathering Signatures
One study found that three-quarters of the initiative states allowed petitioners at least one year to gather signatures.[42] Oklahoma allows the least time, ninety days; Florida allows the most, four years. Under the Illinois Constitution, signatures advancing a constitutional amendment by initiative must be gathered within twenty-four months of the election date at which the matter will be placed on the ballot. The Nevada constitution requires the person who intends to circulate a petition to file a copy with the secretary of state before beginning circulation and not earlier than September 1 of the year before the year in which the election is to be held.

Public Information
Citizens are the ultimate authority for making constitutional change. Informed citizens presumably are likely to make wiser choices. State constitutions therefore commonly include requirements that voters get neutral information on a question before it is brought to a vote, but also in at least one case while it is being circulated. Requirements are common that the text of amendments proposed through the initiative be published in newspapers of general circulation throughout the state at a specified time or during a specified period prior to the general vote. In Colorado the legislative research and drafting staff review proposed amendments and must comment on them in a public meeting within two weeks of their being filed with it. This same nonpartisan staff is required to prepare and publishes a voter information pamphlet thirty days prior to the vote on a constitutional initiative question. No publication or information requirements yet require the use of television, the Internet, or interactive technologies.

Signature Requirements
Paralleling the higher threshold for legislative action to propose formal constitutional change, petitions proposing amendments to state constitutions generally require more signatures than those proposing ordinary law. Greater percentage differences between the signature requirement for placing a statutory change and advancing a constitutional change through the initiative seemed to diminish the proportion of constitutional changes proposed.[43]

The Base: The signature requirement is universally stated as a percentage of a base. The selection of the base is critical; a base election with higher turnout elevates the signature requirement. Most commonly, the base is the vote in the previous gubernatorial election. Other bases used are voters in the previous election for secretary of state (Colorado), for presidential electors (Florida), for

the state office receiving the highest number of votes (Oklahoma), or those who voted in the entire state (Nevada). North Dakota does not use an election as the base for determining the petition signature requirement, but the population of the state.

The Percentage: Percentages required vary from a low of 3 percent (Massachusetts) to a high of 15 percent (Arizona), with 8 percent or 10 percent most common.

Geographic Distribution: In nine states a geographic distribution of signatures (e.g., in Nebraska, signatures equal to 10 percent of the gubernatorial vote in the last election must include at least 5 percent of that vote in two-fifths of the counties) or a maximum proportion of signatures from a specified geographic location (e.g., in Mississippi, no more than 20 percent from any one congressional district) may add to the demands of the signature gathering process. In 2002 Montana amended its constitution to require that an initiative petition proposing a constitutional amendment be signed by 10 percent of voters in the last gubernatorial election in at least half the state's counties, not (as before) two-fifths of the legislature's house districts. A geographic distribution requirement does assure that support for a proposal is not concentrated in a single large population center. States in which the initiative is most used—Oregon, California, Arizona, Colorado, and Washington—have no geographic distribution requirement.[44] In 2001 a Federal District Court judge in Idaho, saying it gave "rural voters preferential treatment," struck down the geographic distribution requirement there as a violation of the equal protection clause of the United States Constitution.[45]

The Number: Percentage-based requirements of course result in the need to gather greater numbers of signatures in larger states. The number of signatures required also shifts with voting participation, which itself is partly a function of population growth. Massachusetts sets an absolute minimum of 25,000 for the signature requirement.

Petition Form or Format: Some state constitutions (e.g., Colorado, Nevada) constitutionally specify petition form or format.

Procedural and Substantive Limitations

Half of the states that provide for constitutional amendment through the initiative process place no restrictions on the subject matter they may address.[46] Massachusetts bars the use of the initiative for matters concerning religion, judicial tenure, judicial decisions, abolition of courts, local matters, appropriations, and protected rights. In California the initiative cannot be used to name a person to office or designate a private entity to perform a function or exercise

a governmental power or duty. In Missouri, appropriations through the initiative process are bared. The Mississippi Constitution bars the use of the initiative process to modify the state Bill of Rights, to amend or repeal statutory or constitutional provisions relating to the state public employee retirement system, to repeal the constitutional "right to work" provision, or to modify the initiative process itself.[47]

Single Subject or Single Article and Clear Identification of the Amendment Subject in the Title: A constitutional limitation of each amendment to a single subject, or a single article, is common for constitutional amendments advance by popular initiative. These rules are similar to those that constrain the ordinary legislative process in most states. Such limitations have often been the subject of litigation.[48]

Question Form: In some states (Arkansas, Massachusetts, Missouri), the general form of initiative petitions or ballot questions is specified in the constitution.

Financial Impact: The Mississippi Constitution requires that a fiscal analysis of proposed amendments be prepared by the chief legislative budget officer and be included on the ballot. A proposal offered by the Florida legislature and accepted at the polls in 2002 requires the for the provision of an economic impact statement to prior to any vote on an amendment of the Florida Constitution proposed by initiative.

Conflicting Outcomes: If two conflicting amendments are passed in a single election, some state constitutions provide that the one that gained the most votes must prevail. In Hawaii, if an amendment proposed by a convention and one proposed by the legislature conflict, and both pass at referendum, the former prevails.

Resubmission: The Nebraska Constitution bars the resubmission by the initiative of the same question (in form or substance) more than once in every three years. In Mississippi, a provision that fails at the polls must be off the ballot for two years before it is offered again to the voters.

Vote to Ratify: In Illinois ratification requires three-fifths voting on the question or a majority voting in the election. Arizona, Michigan, and Wyoming require amendments to be passed by a majority of those voting in the election. (A proposal by the Wyoming legislature in 2002 that amendments to the state constitution be submitted to the electors of the state without prior presentment to the governor for his approval or disapproval received 52.7 percent of the votes cast on the question but failed because it did not gain a majority of those voting in the election.) Nebraska requires that the vote of a successful initiative

amendment be a majority on the question and at least 35 percent of the total vote cast at the election. In Nebraska, amendments must be ratified by majorities on the question in two successive elections. In the Mississippi indirect process an initiative or legislative alternative must receive a minimum of 40 percent of the total votes cast. Moreover, if an initiative proposal and a legislative alternative are presented, voters most vote twice: first for approval of either measure or against both measures, and then for one or the other measure.

Effective Date: It is common for state constitutions to specify an effective date for an amendment offered by this method, once it is adopted.

The Constitutional Commission

As an alternative means of bypassing the legislature to achieve constitutional change, the Florida constitution provides for two commissions. These commissions may place proposals directly on the ballot. They are constitutionally required to convene automatically every ten years, no more than thirty days after the close of the legislative session.[49] The Constitutional Revision Commission, which may consider the entire document, has thirty-seven members, with no single political actor controlling a majority: fifteen are appointed by the governor, nine by the speaker of the House; nine by the president of the Senate, and three by the chief justice of the Supreme Court. The chair is designated by the governor. The Taxation and Budget Reform Commission acts only on matters concerning the state's fiscal policies and budgetary processes. It has twenty-nine members. Eleven are selected by the governor, seven by the majority leader, and seven by the speaker. Legislators may not be among these twenty-five. However, two from each house—one from the major and one from the minority party—are appointed by the speaker and majority leader to participate as nonvoting members. The group chooses its own chair, who not be a sitting legislator.

The commission process in Florida has resulted in considerable constitutional change. This is an effective method of bypassing the legislature to make reforms in state government structure or processes that are not in accord with the interests of incumbent power holders. A legitimacy issue arises concerning commission proposals because most commission members, unlike legislators and constitution convention delegates, are not popularly elected. But the commission mechanism was popularly ratified, most commissioners are appointed by elected officials, and their work—like that of all sources of constitutional change proposals—is subject to popular ratification. Moreover in 1980, Florida votes rejected an amendment proposed by the legislature that would have abolished the revision commission process.[50]

There is a concern that commissions that come into existence on a fixed schedule rather in response to a felt political need. However, analysts of successes in 1997–98 emphasized the dependence of commission success on extensive

preparatory work, outreach in agenda formation, a self-imposed supermajority rule for decision making and effective communication prior to the vote.[51]

The addition of the commissions to the legislative and initiative amending processes gives Florida three means of constitutional amendment. This increases the possibility that changes offered by one means might be at odds with those proposed by another, or that one process might be used in reaction to try to undo the results of another. It may also raise the degree to which constitutional change politics is routinely intertwined with legislative politics.

The New Mexico constitution provides for an "independent commission established by law" that might propose constitutional changes to the legislature.[52] In Utah such a commission is not constitutionally based but established by statute.[53] As a result of the prestige of its members and careful attention to its agenda, the Utah Commission has had some success in initiating constitutional changes that have gained legislative approval. Because neither the New Mexico nor the Utah Commission is provided direct ballot access to present their proposals these are not effective mechanisms for bypassing the legislature to make constitutional changes opposed by those in control of the state government.

Revision by Convention

Constitutions in all but nine states explicitly specify processes for calling constitutional conventions.[54] They provide that state constitutional conventions may be proposed or called by legislatures, or be called as a result of automatic call provisions, or through use of the initiative.

Proposed by the Legislature

In Illinois and Nebraska three-quarters of the legislators elected must support a convention for a referendum on the matter to be authorized. South Dakota also requires three-quarters, but no following popular vote is needed. Two-thirds of the members elected are required to authorize a convention in an additional twenty states; in five of these, no popular referendum must be held. (In Maine the two-thirds majorities must be concurrent.) Finally, in sixteen states majorities elected to both houses may put a convention question on the ballot for voter approval. In Louisiana, these majorities must be obtained in two successive legislatures.[55] In Alabama a vote to call a convention may be repealed only by a vote at the same legislative session, requiring the same majority as when called.

Proposed Through the Initiative

The Florida Constitution provides for calling a convention only through use of the initiative. In South Dakota the initiative may be used to call a convention in the same manner as it is used to amend the state constitution.

Automatic Convention Call

Fourteen states provide that the people be automatically asked periodically whether they wish to hold a constitutional convention. In eight of these the period is twenty years, and in four ten years. Michigan has a convention question vote every sixteen years, and Hawaii every nine years.[56] In 2002, votes were negative by wide margins on the automatic convention question in Alaska, New Hampshire, and Missouri. Rhode Island's convention in 1985 was the most recent called by use of the automatic question. Between 1970 and 2002 the outcome of votes on the automatic convention call was positive four times (Rhode Island, Hawaii [1976] and New Hampshire [1972, 1982]) and negative twenty-five times.[57] Recent history notwithstanding (and as is demonstrated below [table 1]) constitutional conventions have been more frequently called in states with automatic call provisions.

Referendum Election Timing

Constitutions generally require the referendum on a convention to be held in a general election year. Connecticut specifies a general election in an even numbered year. In Oregon and Oklahoma the question may be put at either a general or special election.

Preparation for the Convention Vote

The Rhode Island constitution requires the legislature to create a nonpartisan commission to inform voters of potential constitutional issues prior to a vote on whether to call a convention.

Popular Vote Requirement

Of those states that call for popular ratification of a legislatively proposed convention before it is called, most (twenty-one) require the majority to be of those voting *on the question*. Two of these also specify a minimum required vote: one-quarter of those voting in the last general election in Kentucky, and at least 35 percent of the vote in the general election in which the referendum is held, in Nebraska. Ten states require support of a majority of those voting *in the election* for a convention to be called. (Alternatively in Illinois a convention may be authorized by three-fifths voting on the question.) Six of the ten states with the more demanding popular vote requirement also mandate extraordinary legislative majorities to propose a convention.[58] Finally, three states—Arizona, Oklahoma, and Oregon—are silent on the base of the popular majority required to call a constitutional convention.

For automatic periodic referenda, a majority vote on the proposal is generally required for calling a convention. In Hawaii in 1996 an automatic convention call was supported by a majority of those voting on the question, but the measure failed because a majority of those voting in the election was required.[59]