SHOW-ME INSTITUTE
WHERE LIBERTY COMES FIRST

REPORT

SEPTEMBER 2019

AMENDING MISSOURI'S CONSTITUTION:

Accounting for the Frequency of Amendments and Considering Revisions to the Amendment Process

By John Dinan

Department of Politics and International Affairs
Wake Forest University

EXECUTIVE SUMMARY

Missouri's Constitution is one of the longest state constitutions and among the more frequently amended. As of 2019, Missouri's 1945 Constitution has grown to more than 85,000 words and been amended more than 120 times, placing Missouri in the top half-dozen states in the length of its constitution and among the top dozen states in the frequency with which it has been amended. My purpose in analyzing amendments to the Missouri Constitution and Missouri's amendment process is twofold. First, I identify reasons why

amendments to Missouri's Constitution are adopted so frequently. Second, drawing on examples from other states, I identify steps that could be taken to revise the amendment process to try to reduce the number of amendments. My goal is not to argue in favor of any particular revisions to Missouri's amendment process, but rather to set out a range of reform options and identify the likely consequences.

As I demonstrate, Missouri's amendment processes are generally more accessible than those of other states. In permitting legislature-generated amendments to be proposed by a majority of legislators in a single session and ratified by a majority of voters, Missouri's requirements are less burdensome than most other states' requirements, especially regarding the rules for legislators to place amendments on the ballot. Meanwhile, Missouri is one of 18 states that permit citizens to initiate amendments, and in this sense Missouri's constitution can be amended more easily than other state constitutions that fail to provide for a constitutional-initiative process. Compared to other states that do provide such a process, Missouri's requirements are in the broad middle of the spectrum in their rigor, with some other states setting lower barriers and some setting higher barriers.

Citizens and public officials in Missouri who want to revise Missouri's amendment process to increase the barriers to adoption of amendments can consider several options that have been enacted or have received serious consideration in other states. Among these options are:

- Altering the voter-ratification requirement so that amendments of any type, or amendments of certain types, can no longer be ratified by a bare majority of voters in a single election.
- Making it more difficult for legislators to place amendments on the ballot by requiring amendments to secure the support of a supermajority of legislators or be approved in two legislative sessions before they are sent to voters.
- Changing the citizen-initiated amendment process by:
    - Making it more difficult for groups to qualify amendments for the ballot.
    - Requiring citizen-initiated amendments to be first presented to the legislature, which can craft alternative proposals to appear on the ballot alongside the citizen-crafted amendment.
    - Limiting the subjects that can be addressed by citizen-initiated amendments.
    - Protecting citizen-initiated *statutes* from legislative modification in order to reduce the incentive for proponents of policy-enacting amendments to resort to the constitutional initiative process and instead steer some of this activity toward the statutory initiative process.

AMENDMENTS TO MISSOURI'S CONSTITUTION

Missouri's current constitution, which took effect in 1945, has been amended more than 120 times during the three-quarters of a century it has been in effect, an average of 1.7 amendments per year.[1] This amendment rate places Missouri 11th among the 50 states—behind Alabama, which far outpaces all other states (with an average of eight amendments per year), as well as Louisiana and South Carolina (over four amendments per year), California and Texas (over three amendments per year), Florida, Georgia, and Hawaii (over two amendments per year), and New York and Oklahoma (just under two amendments per year).[2] When we consider that state constitutions across the country are amended an average of 1.3 times per year and that one-third of the states amend their constitutions between one and two times per year,[3] Missouri's amendment rate is higher than the average but not dramatically different from several other states.

In considering the reasons for and purposes served by the amendments to Missouri's Constitution that have been adopted,[4] it is possible to identify three main types of amendments, and these generally track the types of amendments enacted in other states. One set of *institutional* amendments has altered the structure of the legislative, executive, and judicial branches and the duties and means of selecting officials in these branches. A second set of *rights* amendments has defined the scope of individual rights, whether by updating conceptions of rights or responding to and counteracting state supreme

court rulings. A third set of *policy* amendments has taken various forms, sometimes constraining public officials' policy discretion, and at other times authorizing passage of policies that would otherwise be disallowed, and at still other times enacting and entrenching policies blocked or disfavored by public officials.

Institutional Amendments

Several amendments to Missouri's Constitution have been adopted to revise the structure or means of selecting members of the legislative, executive, or judicial branches. In nearly all of these cases, the desired changes could only have been achieved by amending the constitution. That is, the Missouri Constitution, along with other state constitutions and the U.S. Constitution, has long contained rules for selecting governing officials and organizing governmental institutions. Any alteration in these rules or arrangements therefore requires a change in the constitution.

A number of institutional-reform amendments have focused on the legislature, for instance switching from biennial to annual sessions (1970), increasing the length of the session (1988), and limiting the number of terms legislators can serve (1992). Several amendments have focused on the process for drawing legislative districts. Amendments adopted in 1966, 1982, and most recently 2018 specify the role of redistricting commissions and other actors in the redistricting process. A few amendments have dealt with the executive branch by setting a two-term limit for governors (1965) and modifying the plan for succession to the governor's office (1968), along with amendments dealing with the tenure of other officials such as the state treasurer (1970). Several amendments have altered the structure or jurisdiction of the state judiciary, including amendments in 1970 and 1976.

Rights Amendments

A number of recent amendments to Missouri's Constitution have adjusted the rights guaranteed to individuals, whether in the state bill of rights or other articles of the state constitution. Although the U.S. Constitution and U.S. Supreme Court interpretations of the U.S. Constitution set a baseline level of protection for individual rights, they do not exhaust the sources of rights protection in the U.S. federal system. State constitutions and state court interpretations of state constitutional provisions provide alternative bases for protecting individual rights. State constitutions cannot provide any less protection for rights than is guaranteed by the U.S. Constitution. However, state constitutions can protect rights that are not guaranteed by the U.S. Constitution; they can also guarantee higher levels of protection for rights that are found in the U.S. Constitution.

In some cases, amendments to Missouri's Constitution have been adopted for the purpose of protecting rights without any counterpart in the U.S. Constitution. For instance, Missouri is one of 35 states in the last four decades to adopt an amendment protecting victims' rights, via a 1992 amendment. Missouri is also one of two states in the last decade, along with North Dakota, to enshrine in its constitution a right to farm, as a result of a 2014 amendment.

In other cases, amendments to Missouri's Constitution have been adopted to provide greater protection for rights than is guaranteed by similarly phrased provisions in the U.S. Constitution. Rather than counting on the Missouri Supreme Court to update or expand protection for these rights via decisions issuing expansive interpretations of existing state constitutional provisions, legislators and citizens have relied on the amendment process to alter the language of these provisions to provide greater protection for rights.

Several recent rights-expanding amendments have been adopted for this purpose, including a 2014 amendment that altered the language in the Missouri Constitution's long-standing guarantee of a right to keep and bear arms. All but six state constitutions include right-to-bear-arms guarantees. These constitutional guarantees found in 44 state constitutions occasionally hew closely to the language of the Second Amendment to the U.S. Constitution but in many cases go further in making clear that the right is not tethered to militia service and in declaring various specific purposes for which the right may be exercised. Missouri's 2014 amendment, one of a handful of similar amendments adopted around the country in the last decade, altered the existing state constitutional language in several ways. The Missouri amendment makes clear

that this guarantee also applies to gun "ammunition" and "accessories," and adds the protection of "family" to the existing list of justifications for individuals to exercise this right, and finally requires courts to apply a "strict scrutiny" test when evaluating any efforts to restrict this right. Still another 2014 amendment added language to the state's search-and-seizure guarantee to make clear that persons are protected from unreasonable searches and seizures of their "electronic communications and data." Meanwhile, a 2012 amendment re-wrote the language of the state's religious freedom guarantee to provide express protection for the "right to pray" in various public settings.

In still another set of cases, amendments have been adopted for the purpose of counteracting Missouri Supreme Court decisions that have interpreted provisions of the Missouri Constitution. On various occasions the Missouri Supreme Court has interpreted the Missouri Constitution as barring enactment of certain measures, but a sizable number of citizens and public officials have viewed the judges' interpretation of these constitutional provisions as incorrect, or in need of correcting. In response, legislators have crafted amendments to the relevant state constitutional provisions to make clear that these provisions can no longer be interpreted as preventing passage of the desired measures.

Two recent amendments have been adopted in response to state court decisions.[5] A 2014 amendment allows prosecutors to introduce "propensity" evidence when trying sex offenses committed against minors. The Missouri legislature had tried on several prior occasions to enact statutes allowing introduction of evidence that the defendant had committed similar acts in the past and for the purpose of demonstrating a propensity to commit the offense in question. However, the Missouri Supreme Court interpreted several sections of Missouri's bill of rights as disallowing introduction of this kind of propensity evidence. In order to make such evidence admissible and to ensure that the Missouri Supreme Court's interpretation of the state bill of rights did not stand in the way of such an outcome, the Missouri legislature crafted and voters in 2014 approved an amendment stipulating that notwithstanding other provisions of the Missouri constitution, propensity evidence is admissible in prosecutions of sex offenses against children. A 2016 amendment authorizing photo-ID requirements for voting had a similar origin and purpose. A decade earlier, the Missouri Supreme Court invalidated a photo ID requirement on the grounds that it violated various Missouri constitutional provisions. The 2016 amendment was enacted to establish that a photo ID requirement could be adopted and would not run afoul of the Missouri Constitution.

Policy Amendments

A significant portion of amendments to Missouri's Constitution deal with public policy. However, it is important to distinguish among three very different reasons for, and purposes served by, adopting amendments dealing with policy matters.

Policy-constraining Amendments

Some amendments have been adopted for the purpose of constraining public officials. These amendments are generally enacted when the public, and sometimes legislators themselves, conclude that certain policy decisions can no longer be safely entrusted to the legislature, (or, at the least, that legislators' discretion should be limited). In the 19th and early 20th centuries, policy-constraining amendments were adopted on several occasions in Missouri and other states for a variety of purposes, such as prohibiting the legislature from contracting debt or loaning the credit of the state or making any direct grant of funds to any person or corporation or authorizing lotteries. In recent years, policy-constraining amendments have dealt almost entirely with taxing and spending policy, in the belief that legislators cannot always be counted on to act in the long-term public interest in making decisions in these areas. In adopting a number of these recent fiscal policy-constraining amendments, Missouri voters have generally followed in the path of other states that passed similar tax-and-expenditure limitation (TEL) amendments.

Several amendments constraining tax policy have been enacted in recent decades, most significantly in 1980 via the citizen-initiated Hancock Amendment that was approved two years after Proposition 13 in California and during a wave of tax-limitation amendments around the country. The Hancock Amendment imposed a series of far-reaching limits on state and local government

discretion regarding taxation. Among other constraints, the amendment set a maximum amount of annual revenue that can be raised by the state government, as determined by a formula based on the amount and growth of personal income in the state. Public officials are prevented from increasing taxes or fees above this amount unless they submit such proposals to a public referendum.

The Hancock Amendment is the best-known and most important amendment that has constrained legislators' taxing power, but it is not the only such amendment. A 1996 amendment imposed an additional limit on the taxing power by preventing the legislature from increasing taxes or fees by more than $50 million without first securing voter approval. Subsequent amendments have barred enactment of specific taxes. For instance, a 2010 amendment prevents enactment of any real-estate transfer tax. A 2016 amendment bars expansion of the sales tax to any services or transactions not subject to the sales tax at the time of the amendment's passage.

The legislature's spending power has also been constrained through various amendments. Several of these restrict legislators' discretion by requiring that certain funds be used only for designated purposes. A 1992 amendment prevents state lottery revenue from being used for any purposes other than education. In similar fashion, a 2004 amendment requires that revenue from the gas tax and other motor vehicle taxes and fees be spent on road construction and repair. A 2000 amendment had a somewhat different purpose: establishing a rainy-day fund in which excess revenue is deposited for use in case of a future budget shortfall.

Policy-authorizing Amendments

A second set of policy amendments has a very different purpose: authorizing enactment of policies in the face of existing constitutional constraints. Because state governments possess plenary power, in that they can enact any policies not prohibited by the state constitution or by federal law, there is generally not a need to amend the state constitution to authorize policies.[6] However, policy-authorizing amendments are occasionally needed to overcome explicit state constitutional limits added to state constitutions over the years to limit government authority in respect to gambling, borrowing, and taxing especially. When one generation of state constitution-makers enacts policy-constraining amendments in order to limit legislative discretion, but then a future generation wants to overcome these constraints, doing so requires passage of policy-authorizing amendments to make exceptions to the existing limits. A significant number of the amendments to the Missouri Constitution in recent decades are policy-authorizing amendments of this kind. These amendments are necessitated by constitutional limits imposed by earlier generations of constitution-makers who feared the consequences of letting public officials exercise untrammeled discretion in borrowing money, allowing gambling, and levying taxes.

A number of policy-authorizing amendments in Missouri in recent decades have been approved in order to allow certain kinds of gambling, and for the purpose of overcoming a long-standing state constitutional prohibition on gambling. This earlier gambling prohibition was inserted in the Missouri Constitution, as with most other state constitutions, in the nineteenth century, at a time when gambling was seen as inimical to the welfare of the citizenry and government. As later generations became less steadfast in their opposition and even came to support various forms of gaming, it became necessary to amend the Missouri Constitution to make exceptions to the general prohibition on gambling. At various times, amendments have been adopted to authorize bingo games (1980), a state lottery (1984), pari-mutuel betting on horse-races (1984), riverboat gambling (1994 and 1998), and raffles and sweepstakes (1998). As long as Missouri's general constitutional prohibition on gaming is retained, any further expansion of gambling in particular areas will require passage of gambling-authorizing amendments.

Other policy-authorizing amendments have permitted borrowing for certain purposes in the face of a long-standing limit on borrowing that was added to Missouri's Constitution, along with many other state constitutions, in the nineteenth century in response to excessive borrowing that resulted in some states defaulting on their debt. In the nineteenth century, state constitutional debt limits were viewed as a necessary and appropriate way of preventing state legislatures from giving in to the temptation to borrow money for short-term benefits and saddle later generations with the long-term costs. However, in recent decades, public sentiment about debt has evolved

and become more permissive about borrowing, at least for certain purposes. However, as public opinion has shifted, each additional allowance for borrowing has required passage of a constitutional amendment to make an explicit exception to the existing constitutional ban on borrowing. For instance, amendments have authorized borrowing to build schools (1956) and address water pollution and support storm water control and drinking water upgrades (1971, 1979, 1988, and 1998), among other projects.

Occasionally, policy-authorizing amendments have been enacted for still another purpose: to overcome limits on taxation found in the Missouri Constitution. In the nineteenth century, state constitutional provisions were crafted to require that taxes be imposed in a uniform fashion, as a way of preventing legislators from engaging in favoritism in the taxes they imposed. However, in recent years, as legislators have sought to exempt certain persons from paying property taxes, it has proved necessary to adopt constitutional amendments making explicit exceptions to the general requirement that taxes be imposed in a uniform fashion. This was the purpose of a 2006 amendment granting property-tax exemptions to nonprofit groups and veterans' organizations and a 2010 amendment granting property-tax exemptions to disabled former prisoners of war.

Policy-enacting Amendments

A third and final kind of policy amendment adopted on several recent occasions has still another purpose: enacting policies whose passage is blocked or disfavored by legislators. These policy-enacting amendments are invariably adopted through the citizen-initiated amendment process in situations where they are opposed by legislators and groups are concerned that legislators would repeal or modify these policies if they rested on a statutory basis. Groups seeking to enact policies that are opposed by legislators have two main options. One option is to rely on the *statutory* initiative process and frame a policy as a citizen-initiated statute. A second option is to turn to the *constitutional* initiative process and enact a policy as a citizen-initiated constitutional amendment. The advantage of resorting to the statutory initiative process is that it requires supporters to collect fewer signature than would be required if they proceeded through the constitutional initiative process. However, from the perspective of advocacy groups, the advantage of resorting to the constitutional initiative process is that the policy is then entrenched in the constitution and cannot be changed, at least without passing a subsequent constitutional amendment.

In order to enact and entrench policies blocked or disfavored by the legislature, groups have occasionally tried to pass policy-enacting amendments to Missouri's Constitution. The number of policy-enacting amendments approved in Missouri is rather low, especially in comparison with the frequent passage of policy-constraining and policy-authorizing amendments. However, policy-enacting amendments have been adopted on several notable occasions in recent years, as with a 2016 amendment imposing a comprehensive set of campaign-finance regulations and a 2018 amendment decriminalizing medicinal marijuana.

Also of note are several policy-enacting amendments proposed and occasionally approved for the purpose of increasing taxes and generally earmarking the revenue for particular programs. Periodically, groups have sought and failed to pass citizen-initiated amendments that would increase cigarette taxes and earmark the revenue for particular programs, as seen with defeated amendments of this kind in 2006 and 2016. Other tax-increasing and revenue-earmarking amendments have been more successful, as with an amendment boosting the sales tax by a modest amount and dedicating the revenue to conservation and parks, which was first approved in 1976 and then renewed once each decade since that time.

MISSOURI'S CONSTITUTIONAL AMENDMENT PROCESS AND OPTIONS FOR REVISING THE PROCESS

In recent years, questions about whether state constitutions are too easily amended and whether amendment processes should be revised to try to reduce the number of amendments have generated discussion in Missouri and other states. It should be noted that the current discussion, which focuses on making amendment processes less accessible, differs from the discussions that took place throughout most of American history, when state constitutional amendment processes were generally made more accessible. On a few occasions from the late-18th through the late-20th century, to be sure, states strengthened barriers to passing amendments. For

the most part, though, efforts up through the late 20th century focused on adding more paths for changing state constitutions (through citizen-initiated and occasionally commission-submitted amendments) and lowering barriers to existing paths (such as through legislature-referred and convention-crafted amendments).[7] However, in the 21st century, the focus has clearly shifted toward considering ways to make amendment processes less accessible in order to limit the frequency of amendments.[8]

Recent efforts to limit the frequency of state constitutional amendments have not gone unchallenged and are not without controversy. The debate about the benefits and downsides of permitting regular passage of amendments focuses to a significant extent on the channels through which constitutional principles and understandings should be updated over time. Should changes in constitutional meaning take place primarily through judicial decisions interpreting constitutional provisions? Or should they take place through passage of constitutional amendments, and in a way that would reduce reliance on judges to bring about changes in understanding of constitutional principles and permit legislators and citizens to counteract judicial interpretations?

The debate about the benefits and disadvantages of permitting regular resort to the amendment process also turns in some fashion on the degree to which legislators can be trusted to resolve questions of governance in a responsive and responsible fashion. To the extent that legislators are deemed incapable of handling matters of governance, the case becomes stronger for limiting legislative discretion via constitutional provisions. On the other hand, to the extent that legislators are seen as capable of governing in a responsible fashion and preferable to alternative venues for deliberating about and resolving questions of governance, the case becomes weaker for binding them through constitutional constraints.

To sum up: Insofar as constitutions are short and the barriers to amendment are high, as is the case at the federal level, this increases the importance of the judiciary in interpreting and updating constitutional provisions and leads to a more prominent role for the legislature in resolving issues. When constitutions are longer and more detailed and capable of being amended on a regular basis, as in many states, this shifts deliberation about constitutional meaning away from the judiciary and tends to limit the scope of legislative authority and discretion.

My purpose here is not to engage, much less resolve, this broad debate about whether the advantages of reducing state amendment rates outweigh the disadvantages, a question I have explored at length in a recent book.[9] Nor do I intend to take sides in debates about the wisdom of undertaking particular changes to the amendment process. Rather, I concentrate on two goals. First, I identify the main decisions that Missouri and other states encounter in designing their amendment processes and take note of how the design of Missouri's amendment process compares with other states. Second, drawing on experiences of other states, I identify a menu of options for changing Missouri's amendment process and assess the leading consequences of these various options.

Missouri's Amendment Process Compared with Other States' Processes

Missouri's Constitution sets out three amendment mechanisms, two of which are used regularly and are the focus of my analysis. First, as in all 50 states, amendments to Missouri's Constitution can be proposed by the legislature. This is how the vast majority of amendments are adopted in Missouri and other states. Second, relying on a mechanism available in 18 states and instituted in Missouri in 1908 as part of a broad expansion of direct democratic institutions in the Progressive Era, citizens can place amendments directly on Missouri's ballot. Use of this constitutional initiative process has increased in Missouri and in other states in the late-20th and early-21st centuries, but it still accounts for only a small portion of amendments adopted each year. A third mechanism for amending the Missouri Constitution is to call a convention that can propose particular amendments or wholesale constitutional revisions. Through a provision now in place in 14 states and introduced in Missouri in 1920, the question of whether to call a convention is automatically submitted to Missouri voters every twenty years, with the next referendum slated for 2022.[10] Alternatively, the legislature can submit a convention referendum to voters. In either of these cases, if a majority of the people vote in favor of a convention referendum, this triggers a convention whose procedures are outlined in the Missouri Constitution.

Legislature-generated Amendments

Missouri's legislature-generated amendment process is among the most accessible of the 50 states, especially when considering the rules for legislators to propose amendments.[11] Legislators in Missouri can place an amendment on the ballot by a simple majority vote in the house and senate in a single session. Missouri is one of only ten states to set such a low barrier to legislative submission of amendments. Thirty-six states require amendments to secure the support of a supermajority legislative vote in a single session or be approved by a majority vote in two sessions separated by an election. In fact, four states go further and require amendments to secure a supermajority legislative vote and also be approved in two sessions. In short, when considering the path for legislatures to place amendments on the ballot, no state provides an easier path than Missouri, and most states require amendments to travel a more difficult path.

In stipulating that legislature-generated amendments can be ratified by a bare majority of voters, Missouri is in line with the vast majority of states. However, eight states set a higher bar for the level of voter support needed to ratify amendments: a two-thirds threshold in New Hampshire, 60 percent in Florida, and 55 percent in Colorado. Illinois requires amendments to be approved either by 60 percent of voters on the amendment or by a majority of voters participating in the entire *election*. This kind of majority-in the-election requirement is also in effect in Hawaii, Minnesota, Tennessee, and Wyoming. In states with majority-in-the-election rules, voters who abstain on amendments essentially count as no votes, thereby making it more difficult for amendments to be approved.

Citizen-initiated Amendments

When comparing Missouri's constitutional initiative process with the other 17 states that allow such a process, Missouri's process is generally in the broad middle of the pack in the strictness of its requirements and limits. The barriers to accessing Missouri's constitutional initiative process are slightly lower than some states but slightly higher than some other states. On each of the relevant dimensions—the requirements for placing amendments on the ballot, the voter-ratification rules, a possible role for the legislature in reviewing citizen-initiated amendments, and limits on the permissible subjects of such amendments—Missouri's constitutional initiative process generally resembles other states' processes.

Consider Missouri's requirements to qualify amendments for the ballot and the way they compare with other states.[12] In order to place an amendment on the ballot through the constitutional initiative process, Missouri requires collection of signatures equal to 8 percent of the votes cast for governor in the last election. Several states set a lower signature-requirement, as in Colorado where supporters need only secure signatures equal to 5 percent of votes cast in the last secretary-of-state election. Other states, including California, Illinois, and Oregon, are aligned with Missouri in requiring collection of signatures equal to 8 percent of votes cast in the last gubernatorial election. Still other states set a higher barrier: 10 percent of gubernatorial votes in Arkansas, Michigan, Montana, Ohio, and North Dakota; 12 percent of gubernatorial votes in Mississippi; and 15 percent of gubernatorial votes in Arizona and Oklahoma.

Missouri is one of eleven states that go further and impose a geographic-distribution requirement on signature-collection efforts as part of the constitutional initiative process.[13] Missouri's distribution requirement that the 8-percent mark be met in six of the state's eight congressional districts generally resembles other states' distribution requirements and is slightly more rigorous than most other states with distribution requirements.[14] For instance, some states simply require that no more than a certain number of signatures be collected from any one county, as in Massachusetts.

One final requirement is worth noting regarding signature collection: the deadline for submitting signatures. Missouri currently sets a deadline of six months before the election, a requirement that became more burdensome two decades ago. Signature-gatherers in Missouri used to have until four months before the election to complete their work, until a 1998 constitutional amendment moved the deadline two months earlier. Missouri's six-month deadline is now among the more burdensome requirements among the states. Several states require an even longer lead-time for submitting signatures and therefore impose higher burdens on signature-gatherers, as with Florida (nine months before the election) and South Dakota (a full year before the election). However, most states set a shorter deadline than Missouri does, with many states setting a

four-month deadline and a few states allowing signature-gatherers to submit their work up to three months before the election.[15]

Regarding the rules for ratifying citizen-initiated amendments, Missouri follows most states in requiring amendments to be supported by a majority of voters.[16] However, some states set a higher requirement. Several states that set a higher voter-ratification requirement for legislature-referred amendments apply the same requirement to citizen-initiated amendments. This includes Florida's 60-percent threshold and Colorado's 55-percent threshold. However, a few states set a slightly higher requirement for citizen-initiated amendments than they impose for legislature-referred amendments.[17] Nevada makes the clearest distinction in the processes for ratifying citizen-initiated amendments and legislature-referred amendments. When the Nevada legislature places an amendment on the ballot it can be ratified by a majority of voters in a single election, as is the norm across the country. However, citizen-initiated amendments in Nevada must be ratified by voters in two consecutive elections.

In designing citizen-initiated amendment processes, Missouri and other states face several other decisions, including whether to give the legislature a role in blocking, altering, or framing alternatives to a citizen-initiated amendment. Sixteen states, including Missouri, operate a *direct* constitutional-initiative process. Once supporters submit a sufficient number of valid signatures in these states, the amendment is placed on the ballot without any role for the legislature. However, two states, Massachusetts and Mississippi, currently operate an *indirect* constitutional-initiative process. In Massachusetts, the legislature can actually block a citizen-initiated amendment from appearing on the ballot; if a proposed amendment fails to secure support from one-fourth of the legislators in two consecutive sessions, it is not submitted to voters. Another option for the Massachusetts legislature is to alter a citizen-initiated amendment before it goes to voters; such a move requires a three-fourths vote of legislators. Still another option, available to legislators in both Massachusetts and Mississippi, is to craft an alternative legislature-crafted amendment for submission to voters alongside the citizen-drafted amendment.[18]

A final decision facing the 18 states that permit citizen-initiated amendments is whether to limit the subjects that can be addressed through this particular process. Missouri is one of a half-dozen states to impose subject-matter limits on citizen-initiated amendments.[19] Missouri imposes a very specific limit; the initiative process cannot be used "for the appropriation of money other than of new revenues created and provided for thereby." Two other states, Arizona and Ohio, impose similarly modest subject-matter limits. Three states impose more restrictive subject-matter limits. Massachusetts and Mississippi provide a list of subjects, such as provisions in the bill of rights, among other subjects, that are deemed off limits to citizen-initiated amendments. Illinois goes further than any state in restricting citizen-initiated amendments, specifying that they can be used only for the limited purpose of addressing "structural and procedural subjects" dealing with the legislative branch.

Options for Revising Missouri's Amendment Process

Comparing Missouri's amendment process with other states' processes is useful in suggesting alternative ways of structuring Missouri's amendment process. The next step, and my focus in this final section, is to identify a menu of options that could be considered in Missouri and have been considered in other states, and to set out the likely consequences of each potential change.

Strengthening Voter-Ratification Rules

A leading approach to reducing the frequency of amendments is changing voter-ratification rules, either for all amendments or for certain kinds of amendments. Two main options for strengthening voter-ratification requirements are on display in other states. Both would affect the likelihood of amendments being proposed and approved, but they would achieve this goal in different ways and with different effects.

Super-majority Requirements. One option is to require amendments to be ratified by a super-majority of voters. In recent decades, Florida in 2006 and Colorado in 2016 increased their voter-ratification thresholds to 60 and 55 percent, respectively, while South Dakota voters in 2018 rejected an amendment that would have set a

55-percent threshold. In each state with a super-majority voter-ratification threshold, the requirement applies to passage of any amendment, whether proposed by citizens or by legislators or in some other fashion.

Florida's experience after adopting a 60-percent threshold indicates that adopting such a change is likely to reduce the amendment rate significantly. In the decade preceding Florida's 2006 change, when amendments only needed to meet a majority ratification threshold, voters considered 38 amendments and approved 35 of them, for a 92 percent ratification rate. In the decade following adoption of the higher threshold, voters considered 32 amendments and only approved 16 of them, for a 50 percent ratification rate.[20] On several occasions in Florida in the last decade, the effect of the higher threshold has been clearly evident, in that particular amendments enjoyed majority support but not super-majority support. For instance, in 2014 a citizen-initiated medical-marijuana amendment secured the support of 57 percent of Florida voters, but fell short of the 60-percent threshold and therefore failed (a similar amendment on the ballot two years later passed easily with 71 percent support). The main consequence of adopting a super-majority ratification requirement, therefore, is to ensure that amendments have a sizable level of popular support and more than just a narrow majority.

Double-passage Requirements. Another option is to require amendments to be approved by voters in two separate elections. Currently, Nevada is the only state to impose such a requirement, which applies solely to citizen-initiated amendments. However, the ranks of states with such a requirement would double if North Dakota voters approve an amendment set to appear on the 2020 ballot that would operate similarly, in requiring citizen-initiated amendments to be ratified in two elections.[21] These double-approval requirements are generally targeted at citizen-initiated amendments, but other states have considered imposing such a requirement on all amendments, as was envisioned by a proposed change that was rejected by Nebraska voters in 2000.

What lessons can be drawn about the consequences of this double-approval requirement in Nevada, where it has been in effect since 1962? For the most part, citizen-initiated amendments that are approved in one election in Nevada go on to be approved in the next election. However, on four occasions, twice in the early 1980s, once in the 1990s, and most recently in the 2010s, a majority of Nevada voters approved a citizen-initiated amendment in the first election but then defeated the same amendment when it was considered the second time.[22] The most recent of these cases, concerning an amendment that would have made a complex change in regulation of the state's energy market, is instructive in showing that support for an amendment is not always capable of withstanding two separate campaigns, and therefore the level of support for that proposed change may have been more ephemeral than enduring. In 2016, in the first election where this citizen-initiated amendment appeared on the ballot, Nevada voters supported it by a 72-28 percent margin. However, in 2018, when the measure was considered in the requisite second election, voters rejected it by a 67-33 percent margin.

The main consequence of a double-passage requirement is not to require changes to demonstrate a significant degree of popular support but rather to show that this support is enduring and not fleeting. That is, requiring an amendment to be approved by voters in two elections increases the probability that a proposed change has the support of a deliberative majority, in that support can be maintained through multiple campaigns over several years.[23]

Strengthening Requirements for Proposing Legislature-Referred Amendments

Another approach to reducing the frequency of amendments is to target legislature-generated amendments in particular and to make it more difficult for legislators to place amendments on the ballot. Legislature-generated amendments account for nearly 90 percent of amendments enacted around the country each electoral cycle.[24] Therefore, efforts to reduce the frequency of amendments generally focus to a significant extent on rules governing this path by which amendments reach the ballot. Two issues are of particular concern when designing the rules for legislative referral of constitutional amendments: whether amendments need to be approved in one legislative session or two, and whether they need the support of a legislative majority or a supermajority. As one of only ten states requiring a majority in a single session, and with the other 40 states requiring passage by a

supermajority and/or in a second session, Missouri could choose to strengthen either of these requirements.

Two-session Requirement. Requiring legislative approval of amendments in two sessions has generally not been found to have much of an effect on a state's amendment rate. Currently fifteen states set a double-passage requirement as a normal path for legislature-generated amendments.[25] When studies have investigated whether amendment rates are lower in states with double-passage requirements, they have concluded that this requirement does not have much of an effect.[26] Amendments approved by one set of legislators are generally approved by legislators in a subsequent session.

Super-majority Requirement. Requiring the support of a super-majority of legislators, rather than a simple majority, has been found in multiple studies to make a bigger difference than introducing a double-passage rule.[27] Twenty-nine states currently require amendments to be approved by a legislative super-majority in at least one session. Nine of these states set a three-fifths threshold; the other 20 states set a two-thirds threshold. In coming years, other states could join them. For instance, Arkansas voters in 2020 will decide on an amendment that would, among other things, require three-fifths of legislators to approve an amendment before it is sent to voters. Arkansas is currently one of the ten states, along with Missouri, that allow amendments to be submitted to voters by a majority vote in a single session. Approval of this Arkansas change would reduce by one this group of states that maintain the most accessible legislature-referred amendment requirements. Comparative studies of state constitutional amendment practices indicate that such a change would have a clear effect on the frequency with which amendments are enacted by keeping off the ballot amendments with narrow legislative support.[28]

Changing the Requirements for Proposing and Enacting Citizen-Initiated Amendments

Another approach to reducing the frequency of amendments is to change the rules for citizen-initiated amendments in particular. Although citizen-initiated amendments make up a small portion of the amendments enacted in any election cycle, their use is increasing.[29] Moreover, these amendments often attract the most attention from scholars and citizens and are in some cases a source of particular concern in terms of their consequences for governance.[30] In comparing Missouri's constitutional-initiative process with other states' processes, four main options can be identified and their consequences assessed.

Strengthening Signature Requirements. One option would focus on making it more difficult for groups to qualify amendments for the Missouri ballot, whether by increasing the signature requirement beyond the current eight-percent threshold or moving even earlier the deadline for signatures to be submitted, which currently stands at six months before the election. Missouri's 8-percent rule is similar to or higher than several other states but lower than a majority of states that maintain a 10-percent, 12-percent, or 15-percent rule. Meanwhile, Missouri's 6-month pre-election submission deadline is already among the stricter deadlines in the country. However, several states do set an earlier deadline. In fact, in recent years a number of states have adopted or considered adopting even earlier deadlines,[31] as with Florida's move in 2004 to a 9-month pre-election deadline and a proposed change on the 2020 Arkansas ballot that would require signatures to be submitted ten months before the election.

When scholars have considered the consequences of tightening signature requirements or taking other steps that would require groups to expend more resources in qualifying measures for the ballot, they have generally concluded that such changes would have little effect on well-funded groups but would limit the work of grassroots groups. It is worth quoting a passage from a 2007 report from a Colorado commission that considered various reforms to Colorado's constitutional initiative process but ultimately decided not to recommend that Colorado increase its relatively low 5-percent signature requirement. As the commission explained, such a step "is not likely to reduce the number of petitions from large, well-funded special interests," but would "make it more difficult for Colorado grass-roots organizations to get their issues on the ballot. These organizations, typically less well funded than large national organizations, would likely be the ones disadvantaged."[32]

Adopting an Indirect Constitutional Initiative Process. A second option would be to give the legislature a formal role in crafting alternatives to citizen-initiated

amendments. Along with 15 other states that allow citizens to propose amendments, Missouri does not currently give the legislature a role in reviewing citizen-initiated amendments. However, two states, Massachusetts and Mississippi, do give the legislature a formal opportunity to review citizen-initiated amendments. Massachusetts goes so far as to permit legislators to block an amendment from going on the ballot or alter an amendment before it goes to voters. Mississippi does not go quite this far in permitting legislative interference with citizen-initiated amendments. The key aspect of Mississippi's indirect constitutional initiative process is that the legislature can craft an alternative amendment that is placed on the ballot alongside the citizen-crafted amendment. The intent is to benefit from the possibility that legislators have greater knowledge in a particular area or are better positioned to consider the effects of a proposed change and craft a superior measure.

In considering the consequences of permitting legislators to craft an alternative amendment to appear on the ballot alongside the citizen-crafted amendment, Mississippi's experience is instructive. On the one occasion when Mississippi legislators submitted an alternative amendment to go along with a citizen-initiated amendment, in 2015, reports during and after the election focused on the difficulties voters encountered in understanding the competing amendments and making an informed decision. Part of the complexity can be attributed to the design of Mississippi's process. Mississippi requires that voters make two decisions when encountering a citizen-initiated amendment and a legislature-crafted alternative amendment. Mississippi voters are first asked to indicate if they prefer that neither amendment pass or whether they prefer that either or both amendments pass; voters are then asked which of the two amendments they prefer. Added to the complexity of the indirect constitutional initiative process in Mississippi was the complexity of the education issues presented by the competing amendments in this 2015 election. Whereas a citizen-initiated amendment sought to strengthen the state constitution's education clause in several ways that would increase judicial enforcement of the clause, the legislature-crafted alternative was similarly phrased in many respects but differed in other respects that were legally meaningful but not readily grasped by most voters. Voters narrowly indicated a preference for the citizen-initiated amendment; however, they also signaled that they prefer neither amendment pass, and therefore this was the final outcome.[33]

The lesson that emerges from the Mississippi experience is that giving the legislature a formal opportunity to craft and place on the ballot an alternative to a citizen-initiated amendment runs the risk of increasing the complexity of the process and sowing confusion in voters. Certainly, it would be possible for other states to design a process for voters to choose between competing proposals that is simpler than the complex process used in Mississippi. It is also possible to envision clearer and more understandable contrasts in the proposals than was evident on the one occasion in Mississippi when competing amendments were on the ballot. Nevertheless, Mississippi's experience offers grounds for concern and caution for states contemplating adoption of an indirect constitutional initiative process.

Imposing Subject-Matter Limits on Citizen-initiated Amendments. A third option for changing Missouri's citizen-initiated amendment process is to impose greater limits on the subjects that can be addressed through this process. Missouri currently imposes one specific limit, which is applicable to initiatives of any kind: An initiative cannot appropriate money without generating the necessary revenue to cover the appropriation. However, several states go even further in imposing subject-matter limits on citizen-initiated amendments. [34]

One means of strengthening subject-matter limits is to confine use of the constitutional initiative process to subjects on which this process is viewed as most likely to produce helpful outcomes in terms of compensating for failures of governance or weaknesses of other amendment mechanisms. This is the logic underlying Illinois' decision to allow citizen-initiated amendments solely to address "structural and procedural subjects" concerning the legislative branch, on the grounds that this is the main area where legislators cannot be counted on to propose changes that are in the public interest but may not advance legislators' own interests.[35]

Another approach is to identify topics where the constitutional initiative process is most at risk of

producing problematic outcomes and then designating these areas off limits to citizen-initiated amendments. This is the approach followed by Massachusetts and Mississippi in barring use of the constitutional initiative process to address various subjects. A common feature of both states' subject-matter limits is a prohibition on using the constitutional initiative process to alter various provisions in the state bill of rights. Imposing this sort of subject-matter limit on the constitutional initiative process can be seen as consistent with and arising out of concerns among some scholars and officials that citizen-initiated amendments are more prone than legislature-referred amendments to lead to deprivation of the rights of minority groups.[36]

Steer Policy-enacting Measures Toward the Statutory Initiative Process. A final option for reducing the frequency of citizen-initiated amendments would not actually change the rules regarding this process but rather would reduce the incentive for groups to resort to the constitutional initiative process by increasing the attractiveness of the *statutory* initiative process as an avenue for groups to achieve their goals. The intent would be to reduce the frequency of *policy-enacting* amendments in particular, on the grounds that these amendments are a source of particular concern because they entrench in the constitution matters better left to legislative deliberation and disposition. Policy-enacting amendments differ from nearly all other types of amendments in that groups advocating for their passage generally have a choice as to whether to push for enactment of a constitutional change or a statutory change and may make different choices depending on the incentives to use one or the other process. Of the two main ways that states have sought to structure their rules to influence groups' decision-making in this regard, Missouri already makes use of one approach but could consider a second approach.

One way to influence groups' decisions about which of these processes to pursue in pressing for enactment of policies is to make it more difficult to pass constitutional initiatives than statutory initiatives.[37] After a 2016 change in Colorado, all fifteen states providing for both a constitutional and statutory initiative process now make such a distinction in the difficulty of these processes,[38] generally by setting a higher signature threshold for constitutional initiatives than for statutory initiatives.[39] Missouri did not initially make such a distinction. When constitutional and statutory initiative processes were introduced in Missouri in 1908, the signature threshold for both processes was set at 8 percent. However, in framing Missouri's current constitution, delegates to Missouri's constitutional convention of 1943–1944 intentionally sought to reduce reliance on the constitutional initiative process and took several steps to divert activity away from the constitutional initiative process and toward the statutory initiative process. As part of these efforts, the convention reduced from 8 percent to 5 percent the signature threshold for qualifying statutory initiatives, while leaving the signature threshold at 8 percent for qualifying constitutional initiatives. The Missouri Supreme Court later explained that the intent of making such a change was to "discourag[e] use of the initiative for constitutional amendments while encouraging use of the process for statutes."[40]

A second way to boost the incentive for groups pushing for enactment of policies to work through the statutory initiative process instead of the constitutional initiative process is to protect citizen-initiated statutes, once enacted, from legislative repeal or modification. A 2002 report from a National Conference of State Legislatures Task Force on the initiative and referendum process set out the reasons why restricting legislative alteration of citizen-initiated statutes could reduce groups' interest in enacting policies through the citizen-initiated amendment process: "Very often, initiative proponents elect to use the constitutional initiative in order to prevent the legislature from amending or repealing their proposal. If proponents were assured that the legislature's ability to amend and/or repeal statutory initiatives was limited, perhaps they would be more inclined to avail themselves of the statutory initiative process."[41]

Nearly half of the states providing for both a constitutional and a statutory initiative process have adopted rules limiting legislators' ability to repeal or modify citizen-initiated statutes after they are enacted, but Missouri is not in this group. The seven states with both processes that do impose such limits take various approaches.[42] California provides the highest level of protection for citizen-initiated statutes by barring the legislature from amending or repealing them unless the change is submitted to and approved by voters. Other states protect citizen-initiated

statutes against repeal or modification for a period of time following their passage, as in Nevada where they are protected for a three-year period. Another common approach, followed in Arizona, Arkansas, Michigan, Nebraska, and North Dakota, is to require a super-majority legislative vote for any repeal or modification of citizen-initiated statutes.[43]

Adopting rules protecting citizen-initiated statutes from legislative modification is not guaranteed to reduce groups' interest in enacting policy through the constitutional initiative process. However, there is some indication that the absence of such protection is associated with greater resort to the constitutional initiative process. Consider groups that have pushed for increasing the state minimum wage in the 21st century. When their efforts have been blocked in state legislatures, they have turned on various occasions to state initiative processes. Of the four states where advocates have achieved their goal by enacting citizen-initiated amendments, only one of these states, Nevada, also allows citizen-initiated statutes or protects them from legislative modification. In Florida, which does not allow citizen-initiated statutes, supporters of a minimum-wage hike secured passage of a citizen-initiated amendment in 2004. Similar citizen-initiated amendments were enacted in Ohio (in 2006) and in Colorado (in 2006 and again in 2016); neither state provides any protection for citizen-initiated statutes.

Recent developments in several states regarding campaign-finance policies furnish additional evidence that the lack of protection for citizen-initiated statutes can lead groups to turn to the constitutional initiative process. In Missouri and Colorado (among other states), groups pushing for enactment of strict campaign-contribution limits initially worked through the statutory initiative process and secured voter approval for a 1994 Missouri statute and a 1996 Colorado statute. Both of these citizen-initiated statutes were the subject of protracted federal litigation that resulted in judicial invalidation of some, but not all, of their provisions. In both cases, the state legislature then made additional changes to the statutes in ways that were viewed by campaign-finance reformers as limiting their effectiveness. Campaign-finance reform groups therefore again used the initiative process to enact stricter campaign-finance limits. However, because Missouri and Colorado do not protect citizen-initiated statutes from legislative repeal or modification, campaign-finance reform groups turned this time to the constitutional initiative process, with an eye to insulating these policies from legislative modification. Citizen-initiated amendments were a vehicle for adopting comprehensive (and controversial) campaign-finance policies in Colorado in 2002 and Missouri in 2016.[44]

The wisdom of allowing for initiative processes of any kind is, to be sure, open for debate, with some scholars and officials concluding that initiative processes present problems for governance, regardless of whether they are used to pass statutes or constitutional amendments. Certainly, one consequence of taking steps to protect citizen-initiated statutes from legislative repeal or modification is to increase the attractiveness of the statutory initiative process and in a way that generates concerns among critics of the initiative process in any form. However, insofar as the choice is whether to steer groups pushing for policy-enacting measures toward statutory initiative processes or toward constitutional initiative processes, a case can be made in favor of enacting policies through the former process and taking steps to increase the incentives accordingly.

CONCLUSION

Missouri's Constitution is amended somewhat more often than other state constitutions, but Missouri's amendment rate is not dramatically different from those of other states. Amendments are adopted in Missouri for similar reasons that amendments are adopted in other states. Groups and officials who want to reduce the frequency of amendments by revising Missouri's amendment process have a number of options to choose from in view of the wide range of amendment processes and requirements in other states. These groups can also benefit from research and evidence regarding the consequences of adopting various proposed changes, whether in terms of their effect on the frequency of amendments or their capacity to contribute to more deliberative consideration of amendments.

John Dinan is a professor of politics at Wake Forest University.

NOTES

1. The number of amendments to Missouri's 1945 Constitution and the current length of the document are reported in "General Information on State Constitutions as of January 1, 2019, Table 1.3," *Book of the States 2019* (Council of state governments forthcoming).

2. Dinan J. *State Constitutional Politics: Governing by Amendment in the American States.* Chicago: University of Chicago Press, 2018.Table 1.3, pp. 25–26.

3. Ibid., p. 23.

4. For a comprehensive review of current Missouri constitutional provisions and their origins, including amendments enacted through the years, see Greg Casey and Justin Buckley Dyer, *A Guide to the Missouri Constitution* (New York: W.W. Norton, 2018).

5. A 2004 amendment, eventually rendered unenforceable by a U.S. Supreme Court ruling, served a slightly different purpose of *preempting* the possibility of a state decision interpreting Missouri's Constitution as containing a right to same-sex marriage, at a time when state courts around the country had begun to contemplate issuing decisions of this kind and in Massachusetts had done so. That is, amendments are sometimes adopted in response to state court rulings; at other times, amendments are adopted in anticipation of and with an eye to preventing issuance of state court rulings.

6. State governments and state constitutions differ in this respect from the federal government and the federal constitution. In contrast with state governments, which possess plenary powers, the federal government possesses enumerated powers. As a result, it has proved necessary on several occasions to approve amendments to the U.S. Constitution augmenting the federal government's powers, such as to prohibit slavery or enact an income tax, in a way that would be unnecessary at the state level, where state governments possess all powers not prohibited to them.

7. Dinan J. "Twenty-First Century Debates and Developments Regarding the Design of State Amendment Processes." *Arkansas Law Review*, 2016. 69(283), pp. 285–291.

8. Ibid., pp. 292–305.

9. Dinan J. *State Constitutional Politics*, ch. 8.

10. Dinan J. "The Political Dynamics of Mandatory State Constitutional Convention Referendums: Lessons from the 2000s Regarding Obstacles and Pathways to their Passage." *Montana Law Review,* 2010. 71 (395), p. 400.

11. The information about state legislature-referred amendment procedures presented in this and the following paragraph are drawn from "Constitutional Amendment Procedure: By Legislature," Table 1.3, *Book of the States 2018*, http://knowledgecenter.csg.org/kc/system/files/1.3.2018.pdf.

12. The information about the rules regarding citizen-initiated constitutional amendment processes discussed in this paragraph and the following two paragraphs are drawn from "Constitutional Amendment Procedure: By Initiative," Table 1.4, *Book of the States 2018*, http://knowledgecenter.csg.org/kc/system/files/1.4.2018.pdf.

13. Ibid.

14. For an analysis that ranks Missouri's distribution requirement among the more burdensome distribution requirements, see Ballotpedia, "Distribution requirement," https://ballotpedia.org/Distribution_requirement.

15. Ballotpedia, "Ballot Measure Petition Deadlines and Requirements, 2018," https://ballotpedia.org/Ballot_measure_petition_deadlines_and_requirements,_2018.

16. "Constitutional Amendment Procedure: By Initiative."

17. Dinan J. *State Constitutional Politics*. pp. 18, 287n41.

18. Discussion of these processes is found in J. Dinan, *State Constitutional Politics*, pp. 17–18.

19. Ibid., p. 288n45.

20. In the preceding decade, voters approved 12 of 13 amendments in 1998, 1 of 1 amendments in 2000, 9 of 10 amendments in 2002, 7 of 8 amendments in 2004, and 6 of 6 amendments in 2006. In the decade following the increased threshold, voters approved 5 of 7 amendments in 2008, 3 of 6 amendments in 2010, 3 of 11 amendments in 2012, 1 of 3 amendments in 2014, and 4 of 5 amendments in 2016.

21. The proposed North Dakota change would set up a process that is more complex than the Nevada process. In North Dakota, a citizen-initiated amendment would have to be ratified by voters in one election and then considered by legislators. If the legislature voted in favor of the amendment it would take effect. But if the legislature did not approve the amendment it would then have to be ratified by voters in a second election. The expectation is that under this rule citizen-initiated amendments would generally need to be approved by voters in two elections.

22. The first three cases are discussed in J. Dinan, "State Constitutional Initiative Processes and Governance in the Twenty-first Century," *Chapman Law Review,* 2016. 19 (61), p. 99n245.

23. Krislov M, Katz DM. "Taking State Constitutions Seriously." *Cornell Journal of Law and Public Policy,* 2008. 17 (295), pp. 332–333.

24. Dinan J. *State Constitutional Politics*, p. 34.

25. In four of these states, an alternative path is provided, whereby amendments that would ordinarily need to be approved by a majority legislative vote in two sessions can, in emergency situations, be approved by a super-majority vote in a single session. Ibid. p. 14.

26. Lutz DS. "Toward a Theory of Constitutional Amendment." *American Political Science Review,* 1994. 88 (355), p.361; Dixon R, Holden R. "Constitutional Amendment Rules: The Denominator Problem." in Ginsburg T, ed., *Comparative Constitutional Design.* New York: Cambridge University Press, 2012, p. 205.

27. Lutz DS. "Toward a Theory of Constitutional Amendment," p. 361, found a clear connection between adoption of a super-majority requirement and reduction in a state's amendment rate. Dixon and Holden, "Constitutional Amendment Rules," pp. 205, 206, reached different conclusions, depending on the particular model they used; but in several models, they found a clear correlation, along the lines reported by Lutz.

28. Dinan J. *State Constitutional Politics*, pp. 26–27.

29. Krislov M, Katz DM, "Taking State Constitutions Seriously," pp. 306–309.

30. Dinan J. "Twenty-first Century Debates and Developments Regarding the Design of State Amendment Processes," p. 292; Dinan J. "State Constitutional Initiative Processes and Governance in the Twenty-First Century," pp. 85–88.

31. Dinan J. "Twenty-first Century Debates and Developments Regarding the Design of State Amendment Processes," pp. 298–301.

32. University of Denver Strategic Issues Program. *2007 Colorado Constitution Panel, Final Report*, https://www.du.edu/ideas/media/documents/Constitution_Report.pdf p. 12.

33. Dinan J. "State Constitutional Developments in 2015." *Book of the States 2016* (Council of State Governments, 2016), pp. 3–4, http://knowledgecenter.csg.org/kc/content/state-constitutional-developments-2015.

34. It should be noted that the Missouri Constitution includes a single-subject rule, a standard feature of many state constitutions, that prevents citizen-initiated amendments from changing more than one article of the state constitution or adding a new article dealing with more than one subject.

35. Dinan J. "State Constitutional Initiative Processes and Governance in the Twenty-first Century," pp. 76–79.

36. Ibid., pp. 88–93.

37. Krislov M, Katz DM. "Taking State Constitutions Seriously," pp. 336–337.

38. Although 18 states have a constitutional initiative process, three of these states—Florida, Illinois, and Mississippi—do not have a statutory initiative process. This leaves 15 states, including Missouri, that have both a constitutional and statutory initiative process.

39. Colorado took a slightly different approach than other states in 2016 when it introduced a distinction in the difficulty of qualifying constitutional and statutory initiatives for the ballot. The signature threshold has been and remains the same for constitutional and statutory initiatives: 5 percent of votes cast in the last election for secretary of state. Colorado in 2016 imposed a geographic-distribution requirement on constitutional initiatives but did not impose any such requirement on statutory initiatives. Nevada also takes a different approach to distinguishing the difficulty of enacting constitutional and statutory initiatives by setting different ratification rules. There is no difference in the difficulty of qualifying the two types of measures for the Nevada ballot; however, constitutional initiatives must be approved by voters in two elections whereas statutory initiatives need only be approved by voters once.

40. *Union Electric Company v. Kirkpatrick*, 678 S.W.2d 402 (1984), pp. 404–405.

41. National Conference of State Legislatures, *Initiative and Referendum in the 21st Century: Final Report and Recommendations of the NCSL I&R Task Force* (July 2002), http://www.ncsl.org/Portals/1/documents/legismgt/irtaskfc/IandR_report.pdf.

42. The seven states with a constitutional and statutory initiative process that protect citizen-initiated statutes from legislative modification in some fashion are Arizona, Arkansas, California, Michigan, Nebraska, Nevada, and North Dakota. Ballotpedia, "Legislative Alteration," https://ballotpedia.org/Legislative_alteration.

43. Dinan J. "State Constitutional Initiative Processes and Governance in the Twenty-first Century," pp. 105–106.

44. The impetus for and passage of these amendments in Colorado and Missouri are discussed in Dinan, *State Constitutional Politics*, pp. 252–253.

5297 Washington Place I Saint Louis, MO 63108 I 314-454-0647
3645 Troost Avenue I Kansas City, MO 64109 I 816-561-1777

Visit Us: showmeinstitute.org
Find Us on Facebook: Show-Me Institute
Follow Us on Twitter: @showme
Watch Us on YouTube: Show-Me Institute