**CONSTITUTIONAL AMENDMENT PROCESSES IN THE AMERICAN STATES**

**Robert F. Williams[[1]](#footnote-1)\***

1. Introduction: States’ Amendment Processes Compared With Federal Processes - Article V Sanford Levinson, Framed: America’s 51 Constitutions and The Crisis of Governance (2012);

Robert F. Williams, *Book Review* (Levinson Book), 91 Tex. L. Rev. 1149 (2013).

1. Constitutional convention - fear of runaway convention; difficult congressional amendment proposal process
2. Subnational processes always easier than federal

Tom Ginsberg & Eric Posner, *Subnationalism*, 62 Stan. L. Rev. 1583, 1600, 1618-1619 (2010); John Dinan, *Patterns of Subnational Constitutionalism in Federal Countries*, 39 Rutgers L.J. 837, 841-847 (2008).

1. American state constitutional amendment processes have been getting easier through history until recently

John Dinan, *Twenty-First Century Debates and Developments Regarding the Design of State Amendment Processes,*  69 Ark. L. Rev. 283 (2016); G. Alan Tarr, *Explaining State Constitutional Change*, 60 Wayne L. Rev. 9 (2014).

John Dinan, State Constitutional Politics: Governing By Amendment in the American States (2018).
1. Examples

1. Early state constitutions with no process of amendment -New Jersey
2. Development of the Initiative - Oregon, California and back to Eastern states
3. Advent of constitutional commissions - New York/New Jersey; Ohio, Florida – Robert F.Williams, The Law of American State Constitutions 381-387 (2009); Steven H. Steinglass, *Constitutional Revision: Ohio Style*, 77 Ohio St. L.J. 282 (2016).
4. National political issues showing up in proposed state constitutional amendments
5. Two-step change in constitutional amendment process where first change loosens process for later substantive amendment

2. Recent restrictions on process of state constitutional amendment processes

1. Florida
2. Colorado

II. State constitutional conventions

1. Hundreds have taken place
2. Alan Tarr, Understanding State Constitutions (1998)

     1. Elected delegates

2. Extensive documentation
     3. Proposals submitted to public vote (except Delaware)

4. Conventionphobia - public fear of politics as usual - few approved recently

Thomas Gais & Gerald Benjamin, *Public Discontent and the Decline of Deliberation: A Dilemma in State Constitutional Reform*, 68 Temple L. Rev. 1291 (1995).

5. Expensive to organize and run
6. Permit comprehensive review of constitution, compromise, and structural integration

1. Limited state constitutional conventions
2. Alan Tarr & Robert F. Williams, *Getting from Here to There: Twenty-First Century Mechanisms and Opportunities in State Constitutional Reform*, 36 Rutgers L.J. 1075, 1085-1086 (2008).

1. Limits voted on by people

2. Judicial approval in some states

3. Take controversial topics off the table

4. Avoid public fear of unlimited conventions
     C. Automatic, periodic vote on whether to call a convention
       1. Jefferson -constitution of the living generation
       2. Shifts political burden from those favoring a convention vote to those in opposition
       3. May come at a bad political moment or election cycle
       4. May not be limited

John Dinan, *The Political Dynamics of Mandatory State Constitutional Convention Referendums: Lessons from the 2000s Regarding Obstacles and Pathways to their Passage,* 71 Mont. L. Rev. 395 (2010); Gerald Benjamin, *The Mandatory Constitutional Convention Question Referendum: The New York Experience in National Context*, 65 Alb. L. Rev. 1017 (2002).
III. Legislatively-proposed amendments
   A. Most common method
   B. Can result in piecemeal change and inconsistency
   C. Allows deliberation and compromise
   D. Still submitted to voters (except Delaware)
   E. Legislature may be too busy to focus on constitution
   F. Much less expensive than convention
IV. Constitutional Commissions
 A. Not provided for in constitutions
 B. Appointed not elected, lacking representative character
 C. Much less expensive than conventions
 D. Can draw on expertise
 E. Must submit proposals to legislature for review and submission to voters (except
 Florida’s unique commission)

Robert F. Williams, *Foreword*: *Is Constitutional Revision Success Worth Its Popular Sovereignty Price?* 52 Fla. L. Rev. 249 (2000).

 F. Allow for deliberation and compromise
 G. Can have limited commissions

V. Initiative
 A. Can bypass unresponsive legislature
 B. Does not allow for deliberation and compromise
 C. Vulnerable to large spending campaigns
 D. Can result in inconsistent provisions
 E. Allows direct public involvement in constitutionmaking
 F. Can provide for amendment but not comprehensive constitutional revision
VI. Innovative mechanisms for state constitutional amendment and revision- Tarr and Williams

 A. Sunset provisions - shift burden from those wishing to remove provisions to those who

 wish to keep them
  B. Provisions with differing requirements for amendment or repeal
VII. Procedural requirements for state constitutional amendment and revision
  A. Single-subject, ballot clarity requirements
  B. Amendment/revision distinction for initiative amendments
  C. Directly involves State judiciary in processes of state constitutional amendment and

 revision
VIII. Federal constitutional limitations
  A. Supremacy clause
  B. No State spending limits on ballot measures
  C. No state limits on paid signature gathers for initiatives
  D. State amendments may not violate federal constitution or valid federal law
  E. Congressional requirements in enabling acts and approval of new states’ constitutions to

 join Union and for readmission after the Civil War

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