

LWV Constitutional Amendment Study

Introduction and Motivation

Danice and Tom Picraux
SWSCV League



**LEAGUE OF
WOMEN VOTERS®**

2 New National Studies Initiated

- ✓ **Constitutional Amendment Process**
- ✓ **Money In Politics**



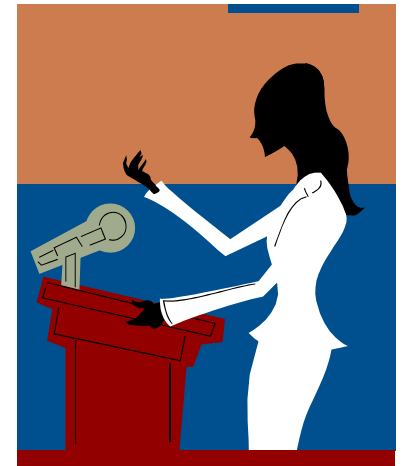
Why these studies?

- LWV has no position on a process to evaluate proposed Constitutional Amendments.
- Need update to LWV's Campaign Finance position due to recent Supreme Court decisions.

Why Conduct Studies?

- ✓ To consider all aspects of an issue
- ✓ To reach member consensus
- ✓ To develop positions on issues

- ✓ Process unique to LWV:
 - thoughtfulness sets us apart and
 - further promotes our respected reputation



Motivation for Constitutional Amendment Study

- ✓ Enables League to take a position on proposals
- ✓ Public pressure to amend the Constitution is rising on a wide range of issues.
- ✓ Examples:
 - Overturn Citizens United/campaign finance limits
 - Balanced budget
 - Flag desecration
 - “Anchor babies” to attain residency in USA



Historical Perspective

What is the purpose of the Constitution?

- The Constitution sets up the framework of government. It also sets forth fundamental political ideals—equality, representation, and individual liberties—that limit the actions of a “temporary” majority.
- Our Constitution is durable because it sets up a delicately balanced system based upon enduring principles for governing a complex and diverse country.
- The Constitution serves as an effective constraint on the exercise of government power, allowing pursuit of majority wishes while holding individual liberties sacred.
- The Constitution expresses a unified political philosophy—liberty, justice & equality.

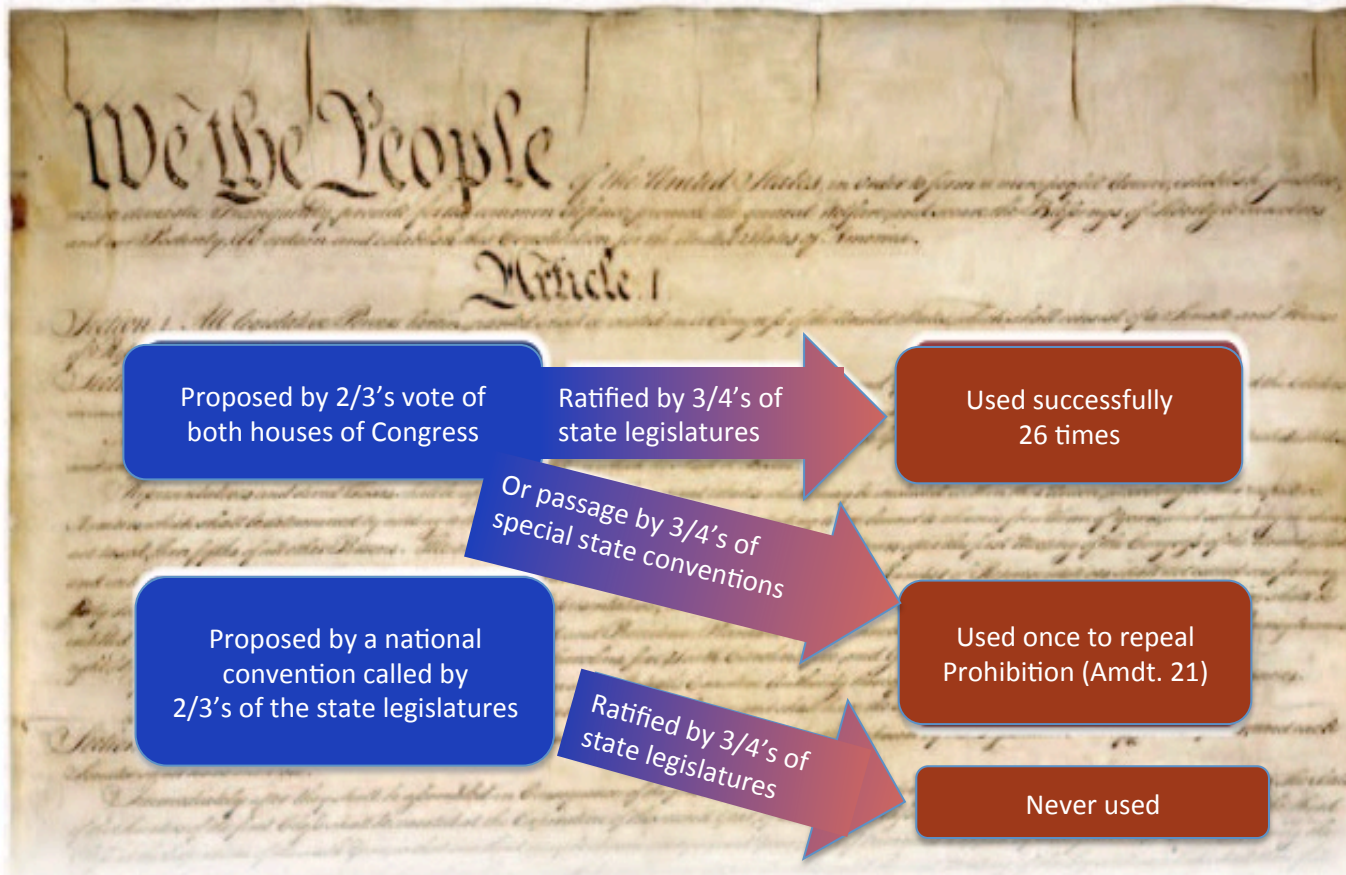
Historical Perspective

Why allow amendments to the Constitution?

- The Articles of Confederation predated the Constitution and could not be amended without the consent of every state. That was found to be too restrictive.
- The authors of the Constitution deemed it necessary to enable changes in case the Constitution proved to be deficient in unanticipated ways and to accommodate needs of future generations.
- Changes should reflect only the most fundamental aspects of an evolving political philosophy.
- The Constitution should be amended only on “great and extraordinary occasions”. (*James Madison, The Federalist No. 49*)

Historical Perspective

Processes for Amending the U.S. Constitution



Historical Perspective

Why make the Constitution hard to amend?

- A supermajority is required in order to achieve broad consensus.
Congress can propose by 2/3's vote of both chambers or 2/3 of states can call for a Constitutional Convention. Proposed amendments must be ratified by 3/4 of states (38 states)
- Amendments bind not only our own generations, but future generations.
Contested policy questions should be subject to reexamination in the light of experience and knowledge available to future generations (e.g., Prohibition Amendment failed and was rescinded because it turned out to be enormously expensive in terms of dollars and social cost. People didn't want it and it was ultimately deemed unenforceable, hence repealed.)
- Restraint is important to preserve the Constitution as a symbol of our nation's democratic system and its cherished diversity.
Proposed amendments often put on the table fundamental issues about our values and our character as a nation, thereby bringing to the fore some of the most divisive issues in our society.

Historical Perspective

What is the past history of Constitutional Amendments?

- 27 Amendments approved over 200 years (including initial Bill of Rights).
 - *over 11,000 amendments to the US Constitution have been introduced into Congress, but only 33 received the requisite Congressional supermajorities to send the question to the States*
 - *restraint provides a sense of stability and protection of life, liberty, and pursuit of happiness*
- The 50 States have ratified over 6,000 Amendments to their state constitutions!
 - *many are of the flavor of ordinary legislation*
- Recently there have been many proposals for amendments to US Constitution.
 - *reverse Supreme Court decisions*
 - *some as a response to popular opinion*
 - *some for political posturing*

Historical Perspective

What are some considerations for Amendments?

*Is a Constitutional Amendment the appropriate remedy?
Should it be supported or opposed? Is it well crafted?*

1. Does the proposed amendment address matters that are of more than immediate concern and will be recognized as important by subsequent generations?
2. Does the proposed amendment make our system more politically responsive or/ and better protect individual rights?
3. Are there significant practical or legal obstacles to achieving the amendment's goals by other means?
4. Is the proposed amendment consistent with related constitutional doctrine?
5. Does the proposed amendment embody enforceable, or purely aspirational, standards?
6. Have proponents attempted to articulate the consequences, including interaction with existing constitutional provisions and principles?

Organization of the Study's Consensus Questions

- ✓ Scope of study – 15 Consensus Questions
- ✓ Consensus questions are in three parts

Constitutional Amendment Consensus Questions

- ✓ **Part 1: Criteria for supporting or opposing a particular Constitutional Amendment**



We have no member understanding and agreement as to the basis by which we will evaluate constitutional amendment proposals

Constitutional Amendment Consensus Questions

- ✓ **Part 2: Constitutional Convention**
- ✓ Article V provides that a Constitutional Convention shall be called by Congress if directed by 2/3 of the states



We have no member understanding or agreement on whether we would support the concept of an Article V Constitutional Convention or the way such a convention would be conducted.

Constitutional Amendment Consensus Questions

- ✓ **Part 3:** Balance between League position and a proposed
 - Constitutional Amendment or
 - an Article V Constitutional Convention



Seeking Consensus on the LWVUS Constitutional Amendment Questions

★ Process

- Study members present Pros, Cons, & Background for each question
- Each League huddles, decides & records its position for that question
- Leagues raise hands after deciding and we proceed to next question
- To cover the 15 questions in the next 2 hours we have ~ 8 min./question

★ Consensus

- Consensus is a “sense of the members”
A mutual agreement among members arrived at through discussion and understanding
- It is not a vote.
- If a position can be accepted (even if not the most favored by everyone), it is the consensus. If not, then “no consensus.”

★ Ground rules

- Discuss until decision emerges
- All League members contribute/participate
- No side conversations & cell phones on vibrate