Constitutional Change in Tennessee

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Introduction

The Tennessee state constitution has existed for well over a century with almost no significant changes. While many may attribute this long-lasting continuity to a sound and well-written constitution, close inspection reveals various problems. While Tennessee’s constitution is better than many states in a number of different areas, there are still dozens of areas which many agree need to be changed. Why, then, have only a small handful of changes ever been made? My explanation for the continuation of Tennessee’s flawed constitution centers on the state’s cumbersome amendment process. Since 1870, the amendment process of Tennessee’s constitution has continually slowed the progress and damaged the efficiency of the state’s government.

In this paper I will discuss the numerous steps that a proposed amendment must endure. I will show how this process has changed through Tennessee’s three constitutions. Along with an examination and explanation of the process, I intend to show the immense difficulty involved in each step of changing the state’s supreme law. I will also show how the difficulty of the amendment process in Tennessee has created problems for the state’s government. The inability to create constitutional change has hamstrung the state legislature by binding them to overly particular provisions in the constitution. Tennessee’s inability to amend the constitution has created a judicial branch with almost no threat of its power being checked. Instead of protecting the basic democratic idea of majority rule with minority rights, the amendment process in Tennessee creates a breeding ground for minority subversion of the majority will.

In addition to showing how the amendment process in Tennessee has helped cause a variety of problems, I will also show how a simplified amendment process
can remedy those problems. A simplified process should allow for the necessary change to adequately balance the power between the three branches as well as remedy many of the problems faced by overly particular provisions contained in the Tennessee constitution. The key to my proposal for improving upon the amendment process will be in the reaching of an adequate level of difficulty to allow for change but preserve constitutional integrity and supremacy.

Ultimately, Tennessee’s amending procedures are too difficult and they affect the state in a multitude of negative ways. Until the problem is recognized, studied, and solved, the state is destined for a mixture of judicial and minority rule. For the state to achieve progress and maximize the efficiency of government, changes must be made to the state constitution, starting with the amendment provision.

**History**

To fully understand Tennessee’s amendment process, its difficulty, and the problems it creates, one must first examine the history of the amendment process. Tennessee’s original method of amendment came with the state’s first constitution in 1796. From the constitution’s adoption until its redrafting in 1835, there was only one method for amendment. This original means of constitutional change was by convention only. The approach first required that the question of a convention be called for by the state legislature. To pass the legislature, the resolution calling for the convention required a two-thirds majority in both the House of Representatives and the Senate. After this approval by the state legislature, the proposal required a majority vote by the people voting for representatives. This extremely difficult style of constitutional amendment was only successful once, in 1834, which led to Tennessee’s second constitution.¹

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In the second constitution, which was drafted in 1835, the amendment process changed dramatically. With such little success from the convention method in the first 40 years of the state’s existence, no provision for a convention was included in the second constitution. Instead of constitutional convention, the new amendment process allowed for individual amendments to be proposed. Though created as an alternative to the highly unsuccessful convention approach, this new method was difficult as well. Tennessee’s first single amendment process was largely the same as it is today. First, an amendment was proposed by one of the two Houses of the General Assembly. After being addressed in the appropriate committees, it was then addressed by the entire Senate or House. In each respective house, the resolution had to be read aloud three separate times on three separate days. Passage of the resolution by the General Assembly required a simple majority in both houses. If a resolution succeeded, it moved on to the second phase.

A proposed amendment was less than halfway through the process after being approved by the General Assembly. Next, the amendment was published at least six months prior to the election of the next General Assembly. The next General Assembly then would address the resolution all over again. Requirements for passage in the second assembly were tougher than the first. Once again, the resolution was subjected to the committee system and to the requirement of three readings. The difference between the assemblies was that the second General Assembly had to approve the measure by a super majority. The approval by two-thirds of all members in both the Senate and the House then sent the resolution to the final step.

Once clearing the second assembly, the proposal was placed on the ballot for public ratification as prescribed by the General Assembly. To successfully become an

\[\text{Ibid.}\]
amendment, the proposal had to achieve “a vote equal to a majority of all those voting for representatives.” Amendments could not be proposed by the legislature more often than once in six years. This single amendment method, which was successful only twice, would remain the only amendment process, until the drafting of Tennessee’s current constitution in 1870.

With the third drafting of Tennessee’s constitution came the combining of the two amendment methods. Since 1870, the two amendment processes have remained almost exactly the same. The convention method that exists today is an eased version of the 1796 process. Currently, the provision requires that a question calling for a constitutional convention be submitted to the people at the time of any general election. To propose a convention to the people, a bill must be passed by a simple majority in both houses of the legislature. Once submitted to the people, a simple majority of votes on the issue calls for the convention. The only change since 1870 to the amendment process occurred due to state Supreme Court decisions in 1949 and 1975. In the case Cummings v. Beeler in 1949, the court decided that the legislature could allow for either an open or limited constitutional convention. Another case in 1975 further defined the limited convention by restricting convention calls to sections of the constitution so as to prevent too narrowly defined limitations in a convention. As the process stands now, limited conventions only allow for amendment to specific sections as proposed to the people by the legislature. The convention, if approved by the people, would then take the next step and elect delegates at the next general election. Those delegates would then meet and could change part or all of the constitution, depending upon the convention called for by the

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5 Ibid, 19.
6 Ibid, 23.
legislature and voted upon by the public at large. Any changes made by the delegates at the convention require a simple majority. These conventions, according to the constitution, may only take place once every six years. 

The legislative method, though less often used in Tennessee history, is the process most commonly associated with amending the constitution. This method has only slightly changed since its drafting in 1870 and is almost an exact mirror of the 1834 process. Like the single amendment process of 1834, to successfully amend the Tennessee constitution through this legislative method a multitude of steps must take place. In fact, the current process replicates its predecessor exactly until the popular vote stage. Once approved by two General Assemblies, a resolution is placed on the ballot during the next gubernatorial election. The stipulation of a gubernatorial election was due to an amendment that was passed in the 1952 convention. The amendment traded the restriction of amendments being offered only once every six years for the gubernatorial election restriction. This effectively held the proposal of amendments to the public at a four-year restraint instead of six. If, at the gubernatorial election, a majority of those who vote for the office of governor also vote to approve the amendment, it becomes an amendment to the Tennessee state constitution.

Even with two possible processes to amend the constitution, Tennessee’s amendment process is nearly impossible. The difficulty of both processes is the main reason that the 1870 constitution remained unamended for 83 years, until 1953, “which is apparently the longest period such a document has ever stood unamended anywhere in the world.” In all, 31 amendments have been added to the state’s constitution. Of the amendments, only four have successfully used the legislative

7 http://www.tncrimlaw.com/law/constit/XI.html
8 Laska, Tennessee Constitutional History. 19.
9 http://www.answers.com/topic/tennessee-state-constitution
amendment method. Successive constitutional conventions every six years from 1953 through 1977 were responsible for the other amendments. By 1943, the average state had more than 50 amendments whereas Tennessee had none. What about the amending processes makes Tennessee's constitution so difficult to change? To answer the question, one must inspect each portion of the processes and the difficulties that are contained therein.

**The Process**

When examining the processes by which the constitution may be amended, the convention method has proven to be significantly easier. Even this method is not simple, however. As previously discussed, the first step in the convention method is for the legislature to pass a bill seeking to call a convention. Though this is not difficult, it is impractical. Due to Tennessee's part-time legislature, many legislators are reluctant to spend time away from their main profession for likely intense, unpaid, legislative duties. Though the state could possibly allocate payment to delegates, or select those outside the members of the General Assembly as delegates, neither of these options is likely. The continuing difficulty many states experience with their budgets, combined with constant political pressure from the public, makes payment to delegates unlikely. The likelihood that either party would risk convention delegates outside of the existing legislative makeup is also low. Another problem that exists with initiating a constitutional convention stems from the restriction of only one convention every six years. With growing economic problems in the state, many legislators are hesitant to call for a convention when one may be needed at any time to deal with vital taxation matters.

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10 Tennessee Legislative Library Documents.
Though simply starting the process of a constitutional convention is likely the biggest obstacle in this method, there are other hurdles that may arise. Even a convention proposal that successfully survives the legislature may be declined by the public at large for fear of unwanted or unnecessary change by politicians. Only once, in 1834, have the voters of Tennessee approved an open convention. The public has been much more open since the creation of the limited convention, approving a total of five consecutive conventions from 1953 through 1977.12 Should the public approve of the call for a convention, the changes still must be made by elected delegates. The simple majority required to pass an amendment in the convention is possibly the easiest step, but it is by no means guaranteed. Numerous proposals are defeated at any given convention, and no agreement is required. Four separate sections that have been considered for amendment by conventions remained unamended due to the delegates' inability to reach an agreement during the 1959 and 1965 conventions.13 After the convention, if any agreements have been reached, one final obstacle remains for any proposed constitutional change. Approval by the voters by a simple majority makes the proposal an amendment. Even this portion has its difficulties, however, proven by one proposed amendment from the 1977 convention. The attempt at judicial reform passed by the convention delegates was unable to receive a simple majority of votes and was defeated by the general public.14

Though the convention method has proven to be the far more successful way of amending the Tennessee constitution, one can easily see the significant difficulty that exists in this convention process. Several examples of failure at every step of the convention method exist in Tennessee's history. Examples of failed legislative efforts for conventions, failed popular vote approvals, failed amendment proposals in

13 Tennessee Legislative Library Documents.
conventions, and even failed votes for amendment ratification all exist. These failures prove the difficulty of the convention half of the Tennessee amendment process.

Tennessee's convention method of constitutional amendment, while difficult, does not approach the near impossibility of the legislative process. Once again, to understand the difficulty of amendment in Tennessee, one must examine each step of the process. Like all bills, a proposed amendment must go through the committee system. Any committee or subcommittee can pass or kill a possible amendment by a simple majority. Some proposed amendments may be subject to review by as many as three separate full committees in addition to subcommittees in the House of Representatives. Few bills, if any, other than amendments face such scrutiny in the committee system. One reason is that all amendments must be heard by the Judiciary Committee to review legal consequences, and they must also be heard by the Finance, Ways, and Means Committee due to the costs inherent in the publishing of notices and eventually the new constitution. This increased time in the committee system makes amendments much more susceptible to defeat than an average bill. Increased time in the committees increases chances that a proposed resolution may be defeated or receive undermining amendments.

If it is able to escape the committee system, a resolution proposing an amendment reaches its next obstacle. Though all bills must meet a three-reading requirement, the first two readings on most bills are passed without the actual reading of the contents of the bill and are done before being referred to committee. For a proposed amendment it is much different. The entirety of the resolution is read aloud three separate times on three separate days to ensure all legislators are aware of the proposal. This reading takes place after the resolution's passage out of the committee system. While this sounds like a minor piece of the amendment process, it provides
some of the biggest hurdles for amendments. During the span of three session days upon which the resolution is read, opponents of the bill have ample opportunity to attach hostile amendments. If an amendment is attached that changes the resolution, the resolution may be sent back to the committee system for approval again. This can lead to eventual defeat by a vote or simply defeat by prevention of the resolution from ever reaching a final vote on the floor.

Once a resolution reaches a vote on the Senate and House floors, the simple majority vote that is required is one of the easiest tasks of the legislative amendment process. Even this step is by no means simple, however. It is not uncommon for a bill or resolution to be passed out of committee only to face defeat on a floor vote. On average, only one in three bills will be passed by the legislature. Most bills are not subject to the difficulty of extra committee and floor attention that an amendment resolution receives. As pointed out before, should a proposed constitutional amendment make it so far as to pass the simple majority vote of the first General Assembly, it is still less than halfway through difficulties it must face.

A successfully passed resolution then must be published a minimum of six months prior to the election of the next General Assembly. This step allows for opponents and supporters to rally support for candidates on their particular side of a given issue. The division of support versus opposition is rarely balanced, however. In most cases, voters opposed to an issue are much more energetic, as was the case when legislators considered a state income tax. This step has yet to be a very large factor in the amendment process, but it has the potential to be in the future, especially with possible income tax amendments in the near future. Should an amendment be

15 http://www.legislature.state.tn.us/, http://www.state.tn.us/sos/acts/index.htm
proposed that sparks voters, it is very likely that a legislative body could shift enough
during one election to counteract an attempt at amendment.

After the election of the second General Assembly, the resolution proposing
an amendment is subject to the committee system again. This once again provides
ample opportunity for the proposal to be defeated in the same manner as before. Also
like the first General Assembly, the three-reading requirement exists and creates
hurdles. The difficulty is increased however, once the resolution reaches the floor for
the second time. While the same simple majorities apply in committees, the second
time on the floor requires the resolution to meet a super majority, which in Tennessee
is a two-thirds vote. This is usually one of the true testing points for any proposed
amendment. Though an amendment has faced a significant amount of difficulty prior
to this stage, this step is likely the first occurrence in which the resolution must
overcome party divisions in a serious way. As the General Assembly stands
currently, the Democrats hold a seven-seat majority in the House and the Republicans
hold a one-seat majority in the Senate.\textsuperscript{16} With the houses split and the seat totals
extremely close, bills and resolutions of any controversy already face a more difficult
path for a simple majority, much less a super majority.

Should a resolution pass with a two-thirds vote, it still must pass the
ratification stage during the next gubernatorial election. This final obstacle has
proven too difficult for multiple amendments in Tennessee’s history. Most recently,
the $50 fine amendment reached this stage. Placed on the 2002 gubernatorial ballot,
the amendment proposal achieved a majority of more than 70,000 votes, but still
failed.\textsuperscript{17} The failure of the resolution to receive a majority of all citizens voting for
governor tripped the amendment at the final hurdle. Other instances have occurred as

\textsuperscript{16} \url{http://www.legislature.state.tn.us/}
\textsuperscript{17} \url{http://www.state.tn.us/sos/election/results/2002-11/amendments.pdf}
well. In 1940, an amendment to change the term of governor also received a solid majority, but failed to get the majority of votes cast in the general election. As in both these cases, the public can support a proposal but still fail to ratify an amendment. Due to Tennessee’s style of amendment ratification, a voter’s choice not to vote is the same as a nay vote.

While no single requirement for amendment is too difficult, the accumulation of so many requirements compounds the difficulty. Though every process that Tennessee uses in its amendment processes is used by another state, no other state uses all of them. This combination of amendment restrictions makes Tennessee’s constitution the most difficult to amend in the United States. The state constitution even surpasses the difficulty of the national amendment process.

**Why the Process Should Be Changed**

The overwhelming difficulty of the Tennessee amendment process causes two big problems. Each of these problems hinders the effective workings of government, especially the legislative branch. The first problem caused by the amendment difficulty is an upsetting of the state government’s division of powers. The concepts of separation of powers and checks and balances are vital parts of state constitutions and the U.S. Constitution. Tennessee’s amendment process thoroughly damages the legislative check upon the judiciary and, as a result, allows for legislative efforts of the courts to go unchecked. In addition to the negative effect that the amendment process has upon Tennessee’s separation of powers, it also adversely affects the state legislature’s ability to operate effectively in a more general manner. Combined with the bulky nature of the state constitution, a difficult amendment process can completely prevent an elected body from tending to matters best undertaken by

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regular legislation. To fully understand the negative influence of the amendment process in these areas, however, a closer examination is required.

Checks and balances and division of powers have been vital components in American constitutionalism. In *The Federalist Papers 47, 48, and 51*, James Madison defended the American constitution's division of power and its procedures for each branch to adequately check the power of each other branch. These concepts are evident in state constitutions as well. In fact, Tennessee's present constitution deliberately states that there will be a distribution of powers vested in three distinct branches, in a sense codifying the concept of each branch's separateness. As with the federal constitution, no branch is completely separate from the others, otherwise no checks and balances could be in place.

Tennessee's system of checks and balances closely mimics that of the federal system. The chief concern when examining the effects of the state amendment process obviously deals with the checks and balances established between the state legislature and the state supreme court. As in the federal system, the courts have the power to interpret the laws and statutes of the legislature as well as the ability to rule such legislation unconstitutional. Though the legislature has a fair amount of control over the establishment of lesser courts, the checks that the legislature provides upon the Tennessee Supreme Court are through two means.

The first method is through removal of court judges. This check on the judiciary is provided in the case of improper actions by a judge. It is doubtful that a judge could or would be removed by the legislature for any action other than illegal or unethical behavior. Possibly removing a judge for his or her interpretation of the law

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threatens the very foundation of the judicial branch as separate from politics and would threaten the entire legal system.

With this option likely reserved for only the most extreme circumstances, the legislature’s one true check on the Tennessee Supreme Court rests with the ability to amend the constitution. This establishes a possible reverse check on the judiciary’s ability to interpret the constitutionality of a given matter. In the case of the federal system, this reverse check has been used on at least four occasions, resulting in five amendments. The Eleventh, Thirteenth, Fourteenth, Sixteenth and Twenty-Sixth Amendments to the U.S. Constitution have all been in response to Supreme Court decisions. Since the creation of Tennessee’s present constitution, this reverse check due to a specific court decision has been used only twice. This first check on a judicial ruling came from one of the 1953 convention amendments. The legislature deleted the provision for the poll tax from the state constitution after the 1943 case Biggs v. Beeler ruled that a statutory attempt at poll tax repeal was unconstitutional. The second time a ruling was overcome by amendment was during the 1972 convention. This amendment did away with the constitutional provision setting certain rates of property assessment after the 1968 case of Louisville and Nashville Railway Co. v. Public Service Commission.

While Tennessee has shown itself capable of a legislative reverse check, there are some reasons for concern. First, Tennessee’s constitution is similar to constitutions in many other states in that is overly concerned with specific matters best left to ordinary legislation. This additional bulkiness increases the matters that can be constitutionally interpreted. For this reason, one should expect a state constitution to allow for more legislative checks on the judiciary than the national

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constitution. This is not the case in Tennessee, however. In the past 135 years, the state legislature has checked the state courts in this way twice, compared to Congress checking the Supreme Court four times in 216 years.\textsuperscript{22}

Another reason for concern about the extent of the state legislature's check on the judiciary concerns the manner in which it has occurred previously. Both times the General Assembly has successfully redefined the constitution in response to a court decision it has done so at a constitutional convention. While this may not appear as a great concern, one must take into account the state's reluctance to use the convention method. With the exception of the consecutive conventions from 1953 to 1977, they have been extremely rare in the state's history. This is due to a number of concerns previously mentioned. With such reluctance of the state as a whole to embrace a convention, the only method left for the legislature to check the courts is through the single amendment method.

The single amendment method's immense difficulty makes even widely supported proposals nearly impossible to pass. An example would be Senate Joint Resolution 127 from the 2003-2004 General Assembly. This was an attempt by Senator David Fowler to check a ruling by the Tennessee Supreme Court from the 1998 case \textit{Sundquist v. Planned Parenthood} in which the right to an abortion was found protected by the state constitution despite no mention of abortion in the 1870 document. Despite passing the Senate by a vote of 22 yeas to 6 nays and having a majority of the House members as sponsors of the resolution, it still failed to pass out of its first General Assembly, being defeated in a House Subcommittee. This is just one specific example of the legislature's failure to check the judiciary through the single amendment process. As can be seen by the fact that only four amendments

\textsuperscript{22} \textit{Ibid.}
have ever made it through the single amendment process and the fact that conventions are extremely unlikely, there exists little to no current ability for a legislative check on the judiciary.

Though this problem, to date, has largely remained a theoretical one, this could very well change in the near future. Many on the conservative side of the political spectrum are concerned by what they consider to be "judicial activism." Legislators such as Senator Fowler feel that the increase in judicial legislation is evident in such decisions as *Sundquist v. Planned Parenthood* which he attempted to counteract through amendment. Other figures on the conservative side mirror Senator Fowler's view, such as Majority Leader Ron Ramsey. One chief concern about judicial activism was expressed by Senator Fowler who stated: "Every time the court effectively amends the constitution by itself, it undermines the democratic process."23 The possible increase in judicial activism also violates the very separation of powers so inherent in American political thought. As James Madison stated, "It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments."24 If the courts are in effect amending the constitution without the legislature, they are indeed violating the division of powers between the courts and the legislature, whether for good or ill.

The other end of the political spectrum, however, sees no such dangerous increase in judicial activity, or at least no danger in the increase of activity. One liberal legislator, Senator Steve Cohen, has stated his opinion that the courts are well within their jurisdiction of power. When asked if judicial activism was increasing, Cohen responded with a simple "no," but went on to state that the courts extend

23 Personal Interviews with Senator David Fowler and Senator Ron Ramsey. February 24, 2005
24 Madison, James. *Federalist #48*
people's rights and opportunities. Despite their polar opposite political beliefs and opinions on the courts, both Senator Fowler and Cohen agree that the state amendment process is overly difficult and would benefit from a slight easing.\textsuperscript{25}

The second concern caused by difficulty of the amendment process is simply a hamstringing of the state legislature. Once again, the bulky nature of state constitutions comes into play when examining this problem. Prior to its amendments, Tennessee's constitution was one of the smallest in the country but was still over 8,100 words.\textsuperscript{26} Numerous matters best left to everyday legislation were inserted into the state constitution. Some topics included legislator pay, property assessment rates, taxable items, and court fines.

In the string of conventions from 1953 to 1977, many of these overly specific sections of the constitution were addressed and changed. The issue of legislative pay was taken care of by the 1953 and 1965 conventions. The 1971 convention was solely concerned with resolution of the property tax provisions in the constitution. Finally, the 1977 convention solved the restrictiveness of constitutional interest rates. Despite many of these problems being resolved, others still exist.\textsuperscript{27}

One of the best examples of the constitutional amendment process hindering effective government concerns the $50 fine amendment. The state constitution states in Article VI, Section 14, that, "No fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers..."\textsuperscript{28} Based upon inflation calculations, fifty dollars in 1913 would have the same purchasing power as $976.26 today.\textsuperscript{29} That figure for inflation does not even account for almost

\textsuperscript{25} Personal Interviews with Senator David Fowler and Senator Steve Cohen. February 24, 2005.
\textsuperscript{26} Howard, L. Vaughn and John H. Fenton. \textit{State Governments in the South: Functions and Problems.} Tulane University: 1956. p15.
\textsuperscript{27} Laska, \textit{The Tennessee State Constitution.} 18-27.
\textsuperscript{28} \url{http://www.state.tn.us/sos/bluebook/online/trconst.pdf}
\textsuperscript{29} \url{http://www.bls.gov/cpi/home.htm}
one-third of the time passage since the $50 fine provision was written into the constitution. The need to change this section of the constitution is widely accepted. A proposed amendment, as discussed before, made it to the final voter ratification and failed despite achieving a majority of yes votes.

Highly specific sections like Article VI, Section 14 are a detriment to state government. As state budgets grow, legislatures are increasingly looking for methods other than increasing taxes to pay for government services and programs. To maximize a legislature’s effectiveness in funding while minimizing the increase to taxation, restrictions present in the constitution must be eliminated. The $50 fine section’s inadequateness is an example of one area that hinders state government. Other restrictions best left to statute also exist.

One section that has the potential to mimic the $50 fine provision’s hindrance to the state is Article II, Section 30. It states, “No article manufactured of the produce of this State, shall be taxed otherwise than to pay inspection fees.” This section leaves too much to be interpreted but is still specific enough to cripple possible taxation. Using the loosest definition, produce can be considered any agricultural product. Should a court of the state ever hear a case in regard to this provision, the combination of a loose definition of produce with a similar definition of the phrase “…taxed otherwise than to pay inspection fees” could very well constitutionally limit the taxation of any product using a Tennessee agricultural good. Though Tennessee has a strong tie to agriculture that is likely the basis for such a provision, it again is an overly limiting factor best left to the statutory control of the General Assembly.

New Amendment Process Proposal

Solving the problems Tennessee has with its constitution can be greatly aided by a new amendment process. As I have pointed out, the difficulty of the current
amendment process is excessive. When examining possible alternatives, however, one must be cautious not to ease the process too much. Oversimplification of the amendment process could also create problems. Instead of correcting the bulkiness and overly specific areas of the constitution, an amendment process with too little difficulty could worsen the problem. Another significant problem deals with constitutional integrity. Should an amendment be as easily passed as ordinary legislation, it risks losing its validity as the supreme law.

My proposal for a new constitutional amendment process takes into account the numerous methods used throughout the United States. The first issue I examined was Tennessee's method of ratification. This method is extremely unique and unfair. The vast majority of states require only that a majority vote on the amendment itself. Under Tennessee's present system, however, an amendment could receive a unanimous vote in its favor, but still fail to receive a majority of votes cast for governor. In my opinion, abstention from voting is just as much a freedom granted to voters as casting a vote in favor or opposition. As a result, the first change that I propose is a reduction in the difficulty of ratification. Requirement of a simple majority vote on the amendment should be an adequate form of ratification by the public.

The second issue that I explored dealt with Tennessee's two legislature requirement. Few states require two legislatures to approve a proposed amendment. I agree with this measure, however. By requiring the approval of multiple legislatures, two main things are accomplished. First, more power is given to the electorate by giving them the chance to vote for or against candidates based upon proposed amendments. Second, this requirement gives time credibility to an amendment. It
assures that a proposed change is thoroughly debated and not simply a reaction to the passions of the moment.

The final issue I examined in regard to the amendment process was over the majorities required for passage in the legislatures. Under a single legislature requirement, approval by two-thirds of each house seems reasonable. Needing a super majority of that level along with a two session requirement seems excessive. On the opposite end of the spectrum, a simple majority does not seem to preserve an adequate level of difficulty, even if done twice. My solution is to require a three-fifths majority vote for both legislatures.

This change accomplishes three things. First, it reduces the number of amendment proposals passing the first session, which saves money and legislative time. Second, it allows the members of the public a better opportunity to exercise their power under the two-session requirement. Voters have fewer issues to follow and are faced with the increased probability that an amendment will pass the second legislature. This should increasingly motivate voters. The final accomplishment of my proposal is a slight easing from the two-thirds requirement which helps balance the process's overall difficulty.

Conclusion

Tennessee's amendment process goes far beyond the necessary level of difficulty to the point of creating negative effects. Tennessee's legislature is hamstrung, and even the state's separation of powers is threatened by the difficulty of the state amendment process. Though no perfect solution exists, I believe Tennessee would benefit greatly from my proposed changes. My proposals moderate the difficulty of the amendment process but still preserve constitutional integrity. Hopefully with additional time and study, the state will effectively moderate the
amendment process and solve the various problems attached to the current constitution. With such a difficult amendment process, however, Tennessee may have to endure its problems for many years to come.
### Amending Processes of Tennessee and Surrounding States

<table>
<thead>
<tr>
<th>State</th>
<th>Passage by First Legislature</th>
<th>Passage by Second Legislature</th>
<th>Ratification by Electorate</th>
<th>Other Restrictions</th>
<th>Convention Method?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tennessee</td>
<td>Majority of each house</td>
<td>2/3 majority of each house</td>
<td>Majority of votes cast for Governor Majority vote on amendment</td>
<td>Ratification at gubernatorial elections only</td>
<td>Yes</td>
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<tr>
<td>(1870)</td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>Alabama</td>
<td>3/5 majority of each house</td>
<td>None</td>
<td>Majority vote on amendment</td>
<td>Only 3 proposals per election</td>
<td>Yes</td>
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<tr>
<td>(1901)</td>
<td></td>
<td></td>
<td></td>
<td>Ratification at general elections in even numbered years only</td>
<td>Yes</td>
</tr>
<tr>
<td>Arkansas</td>
<td>Majority of each house</td>
<td>None</td>
<td>Majority vote on amendment</td>
<td>Only 4 proposals per election</td>
<td>No (initiative method)</td>
</tr>
<tr>
<td>(1874)</td>
<td>2/3 majority of each house</td>
<td>None</td>
<td>Majority vote on amendment</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>Georgia</td>
<td>2/3 majority of each house</td>
<td>None</td>
<td>Majority vote on amendment</td>
<td>N/A</td>
<td>Yes</td>
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<tr>
<td>(1983)</td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
<td></td>
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<tr>
<td>Kentucky</td>
<td>3/5 majority of each house</td>
<td>None</td>
<td>Majority vote on amendment</td>
<td>Only 4 proposals per election</td>
<td>Yes</td>
</tr>
<tr>
<td>(1891)</td>
<td></td>
<td></td>
<td></td>
<td>Ratification at general elections in even numbered years only</td>
<td>Yes</td>
</tr>
<tr>
<td>Mississippi</td>
<td>2/3 majority of each house</td>
<td>None</td>
<td>Majority vote on amendment</td>
<td>Only 4 proposals per election</td>
<td>No (initiative method)</td>
</tr>
<tr>
<td>(1890)</td>
<td></td>
<td></td>
<td></td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>Missouri</td>
<td>Majority of each house</td>
<td>None</td>
<td>Majority vote on amendment</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>(1874)</td>
<td>3/5 majority of each house</td>
<td>None</td>
<td>Majority vote on amendment</td>
<td>N/A</td>
<td></td>
</tr>
<tr>
<td>North Carolina</td>
<td>Majority of each house</td>
<td>Majority of each house</td>
<td>Majority vote on amendment</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>(1971)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Virginia</td>
<td>Majority of each house</td>
<td>Majority of each house</td>
<td>Majority vote on amendment</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>(1971)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Surrounding States

- **Tennessee**
- **Alabama**
- **Arkansas**
- **Georgia**
- **Kentucky**
- **Mississippi**
- **Missouri**
- **North Carolina**
- **Virginia**

Each state has its own processes for amending its constitution, as outlined in the table above. The processes vary significantly, including the number of votes required and the timing of ratification. Some states allow for conventions to be held for amendments, while others rely solely on legislative action.