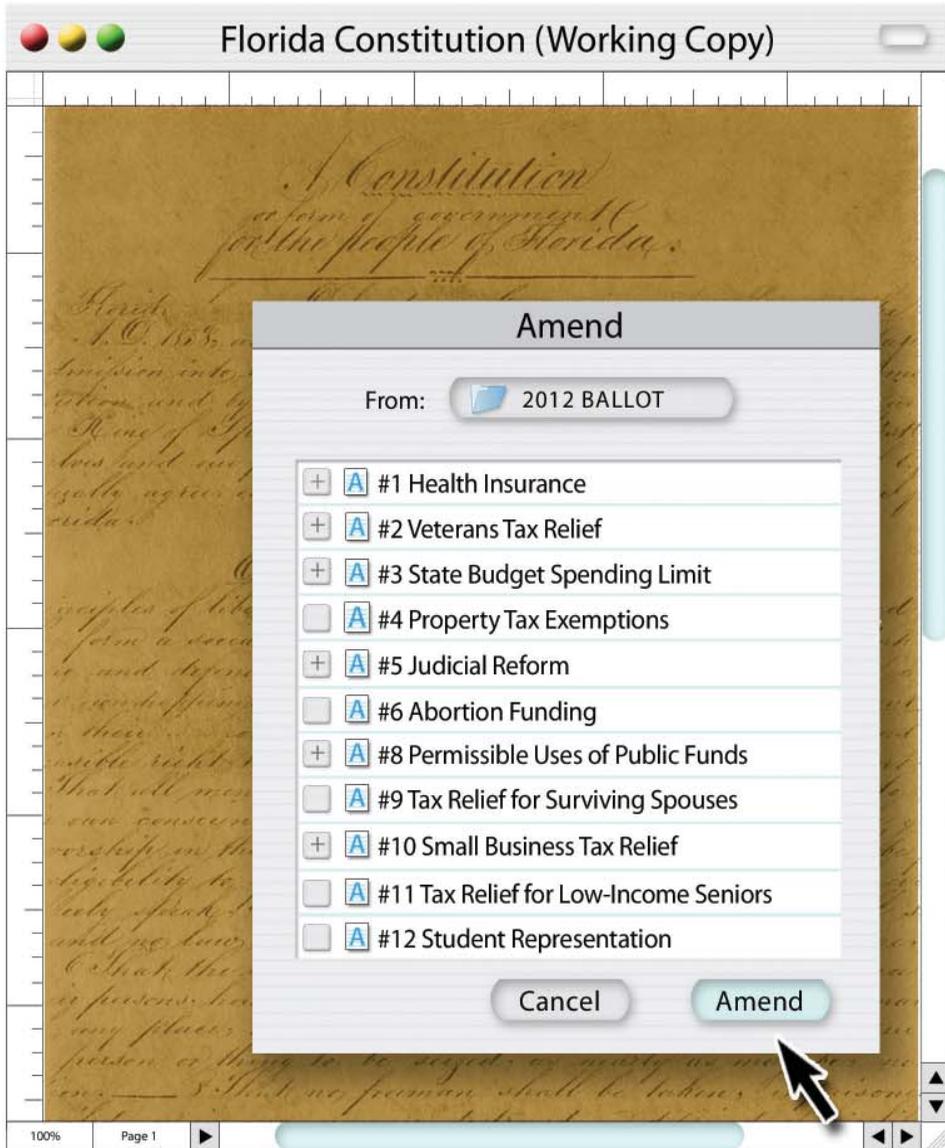


THE  
**JOURNAL**  
OF THE JAMES MADISON INSTITUTE

Fall 2012



**2012 Florida Voters' Guide to  
Proposed Constitutional Amendments**

# THE JAMES MADISON INSTITUTE

*Trusted Solutions for a Better Florida*

*Founded in 1987 by Dr. J. Stanley Marshall, The James Madison Institute is a non-partisan policy center dedicated to advancing the free-market principles of limited government, individual liberty, and personal responsibility.*

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## **THE JOURNAL OF THE JAMES MADISON INSTITUTE**

*The Journal* is published three times a year. It is provided to members of The James Madison Institute, to members of the Legislature, and to others who affect public policy in Florida. *The Journal* is intended to keep Floridians informed about their government, to advance practical policy solutions, to stimulate civil discussion of major issues, and to recognize individuals who exemplify civic responsibility, character, and service to others. Opinions expressed in *The Journal* are those of the authors and do not necessarily reflect the views of The James Madison Institute, its staff, or its Board of Directors. All rights reserved.

### **Publisher:**

J. Stanley Marshall

### **Editor:**

Robert F. Sanchez

### **Publication Design and Cover Art:**

TypeStyle Graphics Studio, Tallahassee

# THE JOURNAL

## OF THE JAMES MADISON INSTITUTE

SPECIAL EDITION: FALL 2012 • NUMBER 52

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*The James Madison Institute is a Florida-based, nonpartisan, nonprofit research and educational organization dedicated to advancing such timeless ideals as economic freedom, limited government, federalism, traditional values, the rule of law, and individual liberty coupled with individual responsibility.*

*The opinions expressed in The Journal of The James Madison Institute are those of the authors and do not necessarily reflect the views of The James Madison Institute, its staff, or its Board of Directors.*

FROM THE EDITOR'S DESK

# AN INTRODUCTION TO THE 2012 CONSTITUTIONAL AMENDMENTS

BY ROBERT F. SANCHEZ

The ballot that Florida voters will see this fall includes 11 proposed amendments to the state Constitution. Several are very important to Florida's future, but discussion of them is often drowned out by the "static" generated from the well-financed campaigns waged by candidates for public office. That's especially true in a presidential election year.

Therefore, in recent years as a service to voters in search of reliable information, *The Journal of The James Madison Institute* has published a guide to the constitutional amendments.

This year all of the amendments were sent to the voters by the Florida Legislature. On the ballot the 11 amendments are numbered 1 through 12—an oddity that occurred because the Florida Supreme Court removed the original version of Amendment 7 on the grounds that

the some of the language in the ballot summary was misleading. It was replaced by Amendment 8, a clarified version of the same amendment.

This year's large number of amendments is not an anomaly. Since the current state Constitution was adopted in 1968, voters have ratified 121 amendments to it and rejected 34 others. In addition, the Florida Supreme Court removed 12 other amendments from the ballot.

Contrast this with the U.S. Constitution, crafted in 1787 and amended only 27 times. Moreover, most of those 27 amendments came in clusters at critical points in our nation's history. The 10 Bill of Rights amendments were added in 1791 and two other changes were made prior to 1805. Three amendments followed right after the Civil War. Four others, including the widely ignored Prohibition amendment, arrived during the

so-called “Progressive era” early in the 20th Century. Ratification of the amendment repealing Prohibition was rushed through in 1933, and only six other amendments have been added in the 79 years since then.

Perhaps the notion that Florida’s Constitution was too easy to alter led to the passage of an amendment in 2006 requiring that future proposed amendments receive at least 60 percent of the votes cast in order to take effect. That standard will apply to all of the amendments on this year’s ballot. Therefore, this batch of amendments may face more of a struggle to pass.

Similarly, perhaps, the Institute’s policy staff has struggled to reach a consensus on some of these proposals, particularly those offering tax breaks to various groups. We strongly believe that a comprehensive overhaul of Florida’s tax structure is desirable. Until that occurs, however, piecemeal changes will continue to be proposed. We do not think this is a wise approach to creating a tax structure that is both fair and adequate.

Therefore, we are offering no up-or-down recommendation on three of the five amendments offering tax breaks. Instead, with regard to those, we encourage our readers to consider the pros, cons, and analyses we present, and then to decide for themselves. (The lone exceptions where we make a recommendation on the amendments in the tax break category: Amendment 2, which corrects an inequity caused by a previous amendment, and Amendment 10, which does not affect real

estate taxes but instead will help small businesses.)

Meanwhile, on certain of the other amendments—Amendment 1 questioning the reach of the Affordable Care Act and Amendment 3 placing a more effective cap on the growth of the state budget—the Institute has conducted extensive research, so we are in a position to offer firm recommendations, and we do.

Finally, a word about The James Madison Institute for those for whom this Special Edition of our *Journal* is their introduction to our work. Founded in 1987, JMI is a non-partisan, not-for-profit organization supported by its members throughout the state. JMI conducts academic research on issues affecting public policy. In support of the principles of limited government, individual liberty, personal responsibility, and federalism, JMI applies free-market solutions to societal problems. We take very seriously our motto, which is also our mission: “Trusted Solutions for a Better Florida.”

Finally, a note about the purpose of this special edition of *The Journal*: It is not intended “to tell people how to vote”; rather, the purpose is to provide information to help voters make up their own minds on these issues. ∞

### Editor’s Note:

*The Journal* welcomes readers’ letters via e-mail or “snail mail.” Complete contact information is listed inside the front cover of each issue.

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*Florida. In Convention assembled at the  
S. C. Bldg. and of the Independence of the United States  
Admission into the Union as one of the United States of Amer-  
tation, and by virtue of the Treaty of Amity, Settlements and  
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THE JAMES MADISON INSTITUTE  
2012 VOTERS' GUIDE  
FOR AMENDMENTS TO  
FLORIDA'S CONSTITUTION

**NOTE:** *The opinions expressed in the following analyses of the Constitutional amendments on the ballot this fall are those of JMI's professional policy staff and do not necessarily reflect the views of JMI's Board of Directors.*

## AMENDMENT 1

**TITLE:** Health Care Services

**REFERENCE:** Article I, Section 28

**BALLOT LANGUAGE:** Proposing an amendment to the State Constitution to prohibit laws or rules from compelling any person or employer to purchase, obtain, or otherwise provide for health care coverage; permit a person or an employer to purchase lawful health care services directly from a health care provider; permit a health care provider to accept direct payment from a person or an employer for lawful health care services; exempt persons, employers, and health care providers from penalties and taxes for paying

directly or accepting direct payment for lawful health care services; and prohibit laws or rules from abolishing the private market for health care coverage of any lawful health care service. Specifies that the amendment does not affect which health care services a health care provider is required to perform or provide; affect which health care services are permitted by law; prohibit care provided pursuant to general law relating to workers' compensation; affect laws or rules in effect as of March 1, 2010; affect the terms or

conditions of any health care system to the extent that those terms and conditions do not have the effect of punishing a person or an employer for paying directly for lawful health care services or a health care provider for accepting direct payment from a person or an employer for lawful health care services; or affect any general law passed by two-thirds vote of the membership of each house of the Legislature, passed after the effective date of the amendment, provided such law states with specificity the public necessity justifying the exceptions from the provisions of the amendment. The amendment expressly provides that it may not be construed to prohibit negotiated provisions in insurance contracts, network agreements, or other provider agreements contractually limiting copayments, coinsurance, deductibles, or other patient charges.

**IN BRIEF:** Amendment 1 prohibits laws or rules compelling anyone to buy health insurance.

**ANALYSIS:** Amendment 1 is essentially a referendum on the Affordable Care Act. If you favored the ACA, you would want to vote against Amendment 1. If you opposed the ACA, you would want to vote for Amendment 1.

As many voters may already know, The James Madison Institute has grave concerns about the ACA, considering it an infringement on individual liberty, an abandonment of free-market principles, and a usurpation of states' rights under the

U.S. Constitution's Tenth Amendment, and such a costly imposition on employers that it is likely to result in a loss of jobs.

That is why JMI filed an amicus brief with the U.S. Supreme Court challenging the portion of the ACA that would have forced states to participate in a vast expansion of Medicaid, the federal-state program offering healthcare services to low income families, or else risk losing all of the federal matching funds the states receive to underwrite the cost of the current Medicaid program.

A 7-2 majority of the justices agreed with JMI and others with regard to forcing states to participate in an enormous and costly expansion of Medicaid. Despite this ruling, however, it should be noted that many of the onerous provisions of the ACA remain in force, so attempting to insulate Floridians from their impact—even as a futile gesture—would put the state's voters on record in a manner that various public opinion polls cannot.

**PRO:** Legislative critics of the Obama Administration's Affordable Care Act (ACA) placed this amendment on the ballot in June of 2011, almost a year before the U.S. Supreme Court ruled 5-4 that portions of the ACA are constitutional. The purpose, evident from the wording, was to confer on Floridians a right under the state Constitution to refuse to comply with any "individual mandate" requiring everyone to buy health insurance. Although ACA proponents now argue that

the U.S. Supreme Court’s June 2012 ruling has rendered this proposed amendment moot (see their views below), supporters nonetheless offer two arguments in favor of Amendment 1. First, they say a substantial vote of support will “send a message” conveying Florida voters’ opposition to the ACA. Second, in the event the ACA were to be repealed or significantly modified, the amendment would prevent Florida’s own state government at some future point from adopting a similar requirement at the state level, as was done in Massachusetts.

**CON:** Under the U.S. Constitution’s “supremacy clause,” federal law trumps state law on these kinds of issues. Although the U.S. Supreme Court backed away from using

the federal government’s power to regulate interstate commerce as the rationale for upholding most of the ACA, it relied instead upon the federal government’s unquestioned power to tax. Therefore, opponents of Amendment 1 argue that the ACA, having been upheld in large part, is unlikely to go away. As a result, adding this amendment to the state Constitution would amount to little more than shaking a fist at the federal government in order to vent anger about the ACA. Some among the opponents of Amendment 1 also argue that when Floridians become fully acquainted with the ACA as its numerous different provisions gradually take effect, they’ll grow to like it.

**RECOMMENDATION ON  
AMENDMENT 1: YES.**



**AMENDMENT 2**

**TITLE: Veterans Disabled Due to Combat Injury;  
Homestead Property Tax Discount**

**REFERENCE: Article VII, Section 6; Article XII, Section 32**

**BALLOT LANGUAGE:** Proposing an amendment to Section 6 of Article VII and the creation of Section 32 of Article XII of the State Constitution to expand the availability of the property discount on the homesteads of veterans who became disabled as the result of a combat injury to include those who were not Florida residents when they entered the military and schedule the amend-

ment to take effect January 1, 2013.

**IN BRIEF:** Under Amendment 2, about 74,000 more veterans disabled in combat would qualify for a property tax break prorated based on their percentage of disability

**ANALYSIS:** Opponents of Amendment 2 do make a valid point. Property taxes in Florida are overly

complex and characterized by numerous breaks for politically influential groups. Florida's property taxes also can be extremely inequitable; because of the "Save Our Homes" amendment, for instance, neighbors residing in homes of identical market value may pay substantially different sums for essentially identical government services. During the real estate boom, this inequity also had the unintended consequence of immunizing the most politically active voters—long-time residents who own their own homes—from the impact of inordinate increases in government spending. Those increases were mostly borne by new homeowners, renters, and the owners of commercial property. These same property tax inequities may also be retarding the recovery of Florida's real estate market by inflating the tax-related costs borne by new homebuyers and by retarding job creation by the small businesses that are disproportionately burdened by the growth in the property taxes imposed on commercial property.

Because of this growing assortment of inequities and other problems, Florida's property tax structure obviously needs a top-to-bottom review; moreover, critics argue that the last thing it needs right now is the additional complications that would be inflicted by this year's five amendments tinkering with the property tax structure.

Unfortunately, however, another comprehensive review of the state's entire tax structure may be years away. In the meantime, therefore, there is no reason to make this particular subgroup of disabled veterans pay for

the system's current flaws by denying them this additional tax exemption, which is modest, will have a minimal fiscal impact, and is already available to some of their former comrades in arms. On balance, then, Amendment 2 deserves support.

**PRO:** This amendment corrects an inequity. Veterans who are now Florida residents and who suffered disabling injuries during combat while in service to our country deserve a break on their property taxes, even if they were not Florida residents when they entered the service. (A previous amendment allowed veterans who were already Florida residents when they entered the military to be eligible for this property tax break.)

**CON:** There is no known organized campaign in opposition to Amendment 2. However, critics of enshrining tax policy in the state Constitution point out that this is but one of no less than five tax-related amendments on the ballot this fall. All propose tax breaks for various groups. The drawback, critics say, is that when such amendments diminish the revenue derived from these sources by the cities, counties, school districts, water management districts, and other governmental entities that rely on property taxes, they often compensate by raising the tax rates of those property owners who are not in the groups awarded favorable treatment.

### **RECOMMENDATION ON AMENDMENT 2: YES.**



## AMENDMENT 3

### TITLE: State Government Revenue Limitation

REFERENCE: Article VI, Sections 1 and 19; Article XII, Section 32

**BALLOT LANGUAGE:** This proposed amendment to the State Constitution replaces the existing state revenue limitation based on Florida personal income growth with a new state revenue limitation based on inflation and population changes. Under the amendment, state revenues, as defined in the amendment, collected in excess of the revenue limitation must be deposited into the budget stabilization fund until the fund reaches its maximum balance, and thereafter shall be used for the support and maintenance of public schools by reducing the minimum financial effort required from school districts for participation in a state-funded education finance program, or, if the minimum financial effort is no longer required, returned to the taxpayers. The Legislature may increase the state revenue limitation through a bill approved by a super majority vote of each house of the Legislature. The Legislature may also submit a proposed increase in the state revenue limitation to the voters. The Legislature must implement this proposed amendment by general law. The amendment will take effect upon approval by the electors and will first apply to the 2014-2015 state fiscal year.

**IN BRIEF:** Amendment 3 caps growth in state spending at no more than the rate of inflation and population growth instead of the current cap, which is based on growth in personal income.

**ANALYSIS:** Although the recession slowed the rapid growth in state government's total spending for the past three years, prior to that state spending had been growing faster than it would have grown if this amendment had been in effect rather than the current limitation imposed in 1994. Proponents of the tighter limitation on spending also note that the amendment's requirement that revenues collected in excess of the limit—a situation to be expected, given the volatility of the economy and a Florida tax structure heavily reliant on sales taxes—can be placed in reserve for the lean years. This mandate to place excess tax collections in reserve until the so-called “rainy day fund” reaches its maximum, then use any remaining excess to aid school districts or else offer refunds to taxpayers, persuasively counters the opponents' concerns about future financial emergencies. The amendment also has a provision allowing for the Legislature to temporarily suspend the cap in

the event of an extended financial emergency. Therefore, this amendment actually may have the effect of leaving the state government better prepared to cope with future economic downturns. It is, therefore, worthy of support.

**PRO:** Government spending has been growing too fast for many years, often outstripping the rate of growth in the economy's private sector, whose taxes support the government. Proponents of limiting the rate of growth in the cost of state government thought they had found a useful limit years ago: a cap on state spending linked to the rate of growth in Floridians' personal income. However, this limitation, which voters enacted in 1994, has turned out to be ineffective in limiting the rapid growth in state spending, which the amendment's supporters note has continued regardless of which political party controlled the governorship and the Legislature. Therefore, Amendment 3 proposes a different formula in which the rate of growth in the state government's spending would be capped based on the rate of inflation and population growth. Proponents argue that this would provide sufficient funding for the state government to keep pace with

growth and with any increases in the cost of goods and services.

**CON:** When legislators place these kinds of limitations in the state Constitution, it is akin to saying "Stop me before I spend again." Nothing in the previous cap based on growth in personal income required legislators to keep pace with that factor, only that they couldn't exceed it. Moreover, opponents warn that amending the state Constitution to place a stricter cap on the rate of growth in state spending would tie the hands of future legislators. Those future lawmakers might someday be confronted with grave fiscal problems related to recessions, to natural disasters, or even to abrupt reductions in federal aid in the unlikely event Congress suddenly discovers a need to reduce federal deficits and start paying down the national debt. Opponents also warn that limiting state spending may well cause certain expenses now funded in whole or in part by the state government to be dumped onto cities, counties, and school districts that rely heavily on property taxes and various fees to fund their services, so the savings for Florida's taxpayers may be illusory.

**RECOMMENDATION ON  
AMENDMENT 3: YES.**



## AMENDMENT 4

### **TITLE: Property Tax Limitations; Property Value Decline; Reduction for Nonhomestead Assessment Increases; Delay of Scheduled Repeal**

**REFERENCE:** Article VII, Sections 4 & 6; Article XII, Sections 27, 32, & 33

**BALLOT LANGUAGE:** (1) This would amend Florida Constitution Article VII, Section 4 (Taxation; assessments) and Section 6 (Homestead exemptions). It also would amend Article XII, Section 27, and add Sections 32 and 33, relating to the Schedule for the amendments. (2) In certain circumstances, the law requires the assessed value of homestead and specified non-homestead property to increase when the just value of the property decreases. Therefore, this amendment provides that the Legislature may, by general law, provide that the assessment of homestead and specified non-homestead property may not increase if the just value of that property is less than the just value of the property on the preceding January 1, subject to any adjustment in the assessed value due to changes, additions, reductions, or improvements to such property which are assessed as provided for by general law. This amendment takes effect upon approval by the voters. If approved at a special election held on the date of the 2012 presidential preference primary, it shall operate retroactively to January 1, 2012, or, if approved at the 2012 general election, shall take effect January 1, 2013.

(3) This amendment reduces from 10 percent to 5 percent the limitation on annual changes in assessments of non-homestead real property. This amendment takes effect upon approval of the voters. If approved at a special election held on the date of the 2012 presidential preference primary, it shall operate retroactively to January 1, 2012, or, if approved at the 2012 general election, takes effect January 1, 2013. (4) This amendment also authorizes general law to provide, subject to conditions specified in such law, an additional homestead exemption to every person who establishes the right to receive the homestead exemption provided in the Florida Constitution within 1 year after purchasing the homestead property and who has not owned property in the previous 3 calendar years to which the Florida homestead exemption applied. The additional homestead exemption shall apply to all levies except school district levies. The additional exemption is an amount equal to 50 percent of the homestead property's just value on January 1 of the year the homestead is established. The additional homestead exemption may not exceed an amount equal to the median just value of all homestead

property within the county where the property at issue is located for the calendar year immediately preceding January 1 of the year the homestead is established. The additional exemption shall apply for the shorter of 5 years or the year of sale of the property. The amount of the additional exemption shall be reduced in each subsequent year by an amount equal to 20 percent of the amount of the additional exemption received in the year the homestead was established or by an amount equal to the difference between the just value of the property and the assessed value of the property determined under Article VII, Section 4(d), whichever is greater. Not more than one such exemption shall be allowed per homestead property at one time. The additional exemption applies to property purchased on or after January 1, 2011, if approved by the voters at a special election held on the date of the 2012 presidential preference primary, or to property purchased on or after January 1, 2012, if approved by the voters at the 2012 general election. The additional exemption is not available in the sixth and subsequent years after it is first received. The amendment shall take effect upon approval by the voters. If approved at a special election held on the date of the 2012 presidential preference primary, it shall operate retroactively to January 1, 2012, or, if approved at the 2012 general election, takes effect January 1, 2013. (5) This amendment also delays until 2023, the repeal, currently scheduled to take effect in 2019, of constitutional amendments

adopted in 2008 which limit annual assessment increases for specified non-homestead real property. This amendment delays until 2022 the submission of an amendment proposing the abrogation of such repeal to the voters.

**IN BRIEF:** Amendment 4 includes several elements. One caps the rate of increase in the assessed value of non-homestead property such as businesses and rental properties. Another deals with a situation caused by the “recapture rule,” in which the assessed (taxable) value of a home could increase even if the home’s actual market value has declined. The third provision provides new homebuyers with a large additional homestead exemption that is gradually phased out.

**ANALYSIS:** Amendment 4 is a grouping of disparate features linked only by the fact that they all deal with issues related to property taxes. The owners of non-homestead real estate—small businesses, landlords of rental property—were hit hard—and disproportionately hard—by excessive property tax increases during the real estate boom, when government spending escalated, and much of the burden shifted to non-homestead property because a 3 percent cap on annual increases protected the owners of homestead properties from bearing the costs.

Tax relief for the owners of non-homestead property is overdue—not only as a matter of fairness, but also

because many of these small businesses are Florida's most important job creators. Moreover, renters—who include many low-income families who cannot afford to purchase a home—may also benefit from placing a lower cap on the amount property appraisers may increase their landlords' tax burden—costs ordinarily passed along to tenants.

Unfortunately, however, this desirable tax relief measure is linked to two less desirable proposals. One adds yet another complication to the homestead exemption rules. The other gives legislators a chance to exacerbate the inequities caused by the Save Our Homes amendment.

Proponents will argue that rejecting Amendment 4 because of these two worrisome components would amount to tossing the proverbial baby out with the bath water. Even so, opponents have a valid point when they counter that, with the real estate market's recovery quite slow, the need to cap increases on the taxable value of non-homestead property is not as urgent as it was during the real estate boom and, thus, that there is time for the Legislature to come back in 2014 with a "clean" amendment providing tax relief for non-homestead property. Opponents could add that if lawmakers still wished to add the other tax breaks to the state constitution, they could be offered as separate amendments so that voters could judge each on its own merits rather than as a package.

**PRO:** This amendment addresses

several problems with Florida's current property tax system. First, it caps at 5 percent rather than the current 10 percent the annual amount a local property appraiser may increase the taxable value of properties other than homesteaded properties, which are already capped at 3 percent or the rate of inflation, whichever is less. This provision attempts to address a problem that arose during the pre-recession real estate boom, when property values for all kinds of Florida real estate were skyrocketing, allowing inordinate increases in the property-tax burden imposed on the owners of unprotected (non-homestead) property. These unprotected properties include small businesses and the owners of rental properties, who must pass along their costs to their tenants. Another provision in Amendment 4 raises the permissible homestead exemption for new homebuyers who qualify for the homestead exemption. Finally, the amendment would let the Legislature address the "recapture rule" under which a homeowner's assessed value—the amount subject to the property tax—may increase, even in a year when the actual value had decreased.

**CON:** As noted above in relation to Amendment 2, opponents of "enshrining tax policy in the state Constitution point out that this is but one of no less than five tax-related amendments on the ballot this fall. All propose tax breaks for various groups. The drawback, critics

say, is that when such amendments diminish the revenue derived from these sources by the cities, counties, school districts, water management districts, and other governmental entities that rely to some extent on property taxes, these governmental entities often compensate by raising the tax rates, with the greatest impact on those property owners who are not in the groups awarded favorable treatment.

Moreover, opponents of Amendment 4 also point out that there is an additional reason for concern. Unlike Amendment 2's extension of an existing property tax break to another group of

veterans who became disabled while in combat, where the amount of revenue at stake was relatively minuscule, local governments would suffer a much larger loss of revenue—more than \$200 million next year, even more later—if Amendment 4 were to pass. This loss of revenue would be felt even more keenly if Amendment 3 places a stricter limit on state spending, with a resultant decrease in state aid to cities, counties, and—especially—local school districts.

**RECOMMENDATION:**  
The Institute is not taking a position on Amendment 4.



## AMENDMENT 5

**TITLE: State Courts**

**REFERENCE:** Article V, Sections 2, 11, & 12

**BALLOT LANGUAGE:** Proposing a revision of Article V of the State Constitution relating to the judiciary. The State Constitution authorizes the Supreme Court to adopt rules for the practice and procedure in all courts. The constitution further provides that a rule of court may be repealed by a general law enacted by a two-thirds vote of the membership of each house of the Legislature. This proposed constitutional revision eliminates the requirement that a general law repealing a court rule pass by a two-thirds vote of each house, thereby providing that

the Legislature may repeal a rule of court by a general law approved by a majority vote of each house of the Legislature that expresses the policy behind the repeal. The court could readopt the rule in conformity with the public policy expressed by the Legislature, but if the Legislature determines that a rule has been readopted and repeals the readopted rule, this proposed revision prohibits the court from further readopting the repealed rule without the Legislature's prior approval. Under current law, rules of the judicial nominating commis-

sions and the Judicial Qualifications Commission may be repealed by general law enacted by a majority vote of the membership of each house of the Legislature. Under this proposed revision, a vote to repeal those rules is changed to repeal by general law enacted by a majority vote of the legislators present. Under current law, the Governor appoints a justice of the Supreme Court from a list of nominees provided by a judicial nominating commission, and appointments by the Governor are not subject to confirmation. This revision requires Senate confirmation of a justice of the Supreme Court before the appointee can take office. If the Senate votes not to confirm the appointment, the judicial nominating commission must reconvene and may not renominate any person whose prior appointment to fill the same vacancy was not confirmed by the Senate. For the purpose of confirmation, the Senate may meet at any time. If the Senate fails to vote on the appointment of a justice within 90 days, the justice will be deemed confirmed and will take office. The Judicial Qualifications Commission is an independent commission created by the State Constitution to investigate and prosecute before the Florida Supreme Court alleged misconduct by a justice or judge. Currently under the constitution, commission proceedings are confidential until formal charges are filed by the investigative panel of the commission. Once formal charges are filed, the formal charges and all further

proceedings of the commission are public. Currently, the constitution authorizes the House of Representatives to impeach a justice or judge. Further, the Speaker of the House of Representatives may request, and the Judicial Qualifications Commission must make available, all information in the commission's possession for use in deciding whether to impeach a justice or judge. This proposed revision requires the commission to make all of its files available to the Speaker of the House of Representatives but provides that such files would remain confidential during any investigation by the House of Representatives and until such information is used in the pursuit of an impeachment of a justice or judge. This revision also removes the power of the Governor to request files of the Judicial Qualifications Commission to conform to a prior constitutional change. This revision also makes technical and clarifying additions and deletions relating to the selection of chief judges of a circuit and relating to the Judicial Qualifications Commission, and makes other non-substantive conforming and technical changes in the judicial article of the constitution.

**IN BRIEF:** Amendment 5's main features include Senate confirmation of the Governor's nominees for the Florida Supreme Court and more legislative oversight over judicial rules.

**ANALYSIS:** This is the ultimate "inside baseball" amendment. It has

arisen, at least in part, because some of Florida’s elected officials have seen their legislation overturned by what they regard as judges who have overstepped their bounds. Moreover, there are arguably legitimate concerns about some of the Florida Supreme Court’s rulings, notably in the *Bush v. Holmes* case where the Court engaged in tortured reasoning to hold the Opportunity Scholarships school voucher program unconstitutional.

Whether any of the provisions included in Amendment 5 would have changed any of these results is arguable. However, the most important change—requiring Senate confirmation of gubernatorial nominees for the Florida Supreme Court—conforms Florida to a pattern that our nation’s founders established for the U.S. Supreme Court. Granted, U.S. Senate confirmation hearings have become a bit of a circus ever since the nomination of Robert Bork was “Borked,” but nobody has suggested that this President or any other person ought to have unbridled power to make whomever he wishes a justice of the nation’s highest court. This amendment, which rectifies that situation with respect to the Florida Supreme Court and provides additional legislative oversight of court rules, deserves support.

**PRO:** Amendment 5, while preserving the judiciary’s role as an independent branch of government, would enhance the authority of elected officials to impose proper

oversight on a branch of government whose upper levels – the Florida Supreme Court and district courts of appeal—consist of appointees who are not subject to term limits and who tend to remain in office until they either reach the mandatory retirement age (70), choose to resign, or are removed for malfeasance or misfeasance. In particular, in emulation of the process through which federal judges are appointed, this amendment adds a provision that the Senate must confirm gubernatorial appointees to the state’s highest court—an additional check and balance. This would also allow for much greater public scrutiny of the nominees than now occurs during the deliberations of the judicial nominating commissions that consider applicants for these vacancies and send slates of candidates to the governor for appointment.

**CON:** Amendment 5 would undermine the independence of the judicial branch. In particular, the requirement that gubernatorial nominees go through a confirmation process in the state Senate would mean that nominees who have been selected by the Governor—a person elected by voters statewide—could be subjected to the whims of a Senate President and/or a Senate Judiciary Committee chairman who represents the parochial interests of one small portion of the state.

In addition, critics—including many respected lawyers active in the Florida Bar Association – argue that it is a bad idea to grant more

authority over the judicial branch’s rulemaking to a legislative branch sorely deficient in continuity because its composition and leadership frequently change due to eight-year term limits. Far preferable is preserving the much more stable judicial

branch’s current rule-making authority, which—as the ballot language acknowledges—is already subject to legislative review.

**RECOMMENDATION ON  
AMENDMENT 5: YES.**



**AMENDMENT 6**

**TITLE: Prohibition on Public Funding of Abortions;  
Construction of Abortion Rights**

**REFERENCE:** Article 1, Section 28

**BALLOT LANGUAGE:** This proposed amendment provides that public funds may not be expended for any abortion or for health-benefits coverage that includes coverage of abortion. This prohibition does not apply to an expenditure required by federal law, a case in which a woman suffers from a physical disorder, physical injury, or physical illness that would place her in danger of death unless an abortion is performed, or a case of rape or incest. This proposed amendment provides that the State Constitution may not be interpreted to create broader rights to an abortion than those contained in the United States Constitution. With respect to abortion, this proposed amendment overrules court decisions which conclude that the right of privacy under Article I, Section 23 of the State Constitution is broader in scope than that of the United States Constitution.

**IN BRIEF:** Amendment 6 would address a situation complicated by previous court rulings and would clarify that the state Constitution’s privacy provision should not be construed to allow taxpayer funding of abortions.

**ANALYSIS:** By way of explanation of our nuanced views with regard to Amendment 6, we first will echo what we said in 2008 with respect to another proposed amendment involving a so-called “social issue.” The Florida Marriage Protection Amendment was on the ballot that year as Amendment 2 and sought to bar same-sex marriage in Florida. Here is a portion of what we said: “JMI takes no formal institutional position on Amendment 2 because it’s an issue outside of the Institute’s core mission. At the same time, however, JMI does recognize that ethical behavior rooted in

a strong sense of morality is essential for the survival of a free society. Therefore, there will be instances in which certain issues involving personal morality interface with JMI's core mission, and JMI will articulate a position. ...

“Moreover, it also must be noted that JMI has repeatedly deplored the kind of ‘judicial activism’ wherein judges’ policy preferences and personal viewpoints are imposed on society in lieu of a strict reading of the law. It is likewise clear that Amendment 2 would not even be on the Florida ballot in November [of 2008] were it not for the egregious examples of judicial excess in Massachusetts and other states where judges have redefined ‘marriage.’

“JMI will continue to urge that policy decisions be made by the people’s elected representatives. ... Nonetheless, on Amendment 2 [of 2008], JMI offers no formal recommendation, given that this issue is not within the purview of JMI’s core mission.”

Some will argue that the aforementioned case of *Roe v. Wade* was a prime example of a type of deplorable judicial activism. The result has been that abortion continues to be a highly divisive issue in the political arena, as evident during this summer’s respective political party conventions. Nonetheless, it

is not an issue related to the core mission of the Institute. Therefore, we will present, in brief, the arguments offered by supporters and opponents of Amendment 6, but we will not be offering a formal recommendation.

**PRO:** Even though current federal and state statutes prohibit using public funds for abortions except under certain circumstances such as when terminating a pregnancy is deemed necessary to spare the life of the mother, placing such a prohibition in the state Constitution would provide another layer of protection. It would also counteract Florida Supreme Court rulings that citing the state Constitution’s privacy right as a reason to allow public funding of abortions.

**CON:** Because Amendment 6 could allow the state Constitution’s parental consent provision (Article 10, Section 22) to trump its broader privacy clause (Article 1, Section 23), it could be interpreted to affirm the state’s authority to require parental consent for abortions to be performed on their dependent minors. Therefore, opponents contend, it is an infringement on the rights guaranteed by the U.S. Supreme Court’s decision in *Roe v. Wade* and on the privacy rights guaranteed by the state Constitution.

**RECOMMENDATION:**  
The Institute is not taking a position on Amendment 6.



## AMENDMENT 7

**NOTE:** Amendment 7 was removed from the ballot by the Florida Supreme Court, which ruled that some of the language in the ballot summary was misleading. It was replaced by Amendment 8, which clarified the language.



## AMENDMENT 8

**TITLE:** Religious Freedom

**REFERENCE:** Article 1, Section 3

**BALLOT LANGUAGE:** Proposing an amendment to the State Constitution providing that no individual or entity may be denied, on the basis of religious identity or belief, governmental benefits, funding or other support, except as required by the First Amendment to the United States Constitution, and deleting the prohibition against using revenues from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

**IN BRIEF:** Amendment 8 repeals the so-called “Blaine Amendment,” which prohibits the appropriation of public funds, directly or indirectly, in aid of religion. Repeal would allow faith-based entities to receive public funds for providing public services.

**ANALYSIS:** School voucher programs may be affected, but at present they are not the central issue with Amendment 8, despite the

disinformation campaign being waged against it on behalf of the teachers union and other groups. The so-called Blaine Amendment was not cited as the reason the Florida Supreme Court ruled that the Opportunity Scholarships voucher program violated the state Constitution. According to the Court majority’s tortured reasoning in *Bush v. Holmes*, those vouchers enabling parents of pupils assigned to chronically failing public schools to choose another school for their children violated the Constitution’s requirement that the state operate a “uniform” system of public schools. Granted, as advocates of Amendment 8 note, it is conceivable that the Blaine doctrine could be cited to block school vouchers in the future if it remains in the state Constitution.

Meanwhile, yet to be adequately litigated is the issue what constitutes “aid” to a religious group. If a religious group is providing goods or services of a value commensurate with the public funds being

provided, is that religious group really receiving “aid”? Consider an illustrative analogy: A traveler arrives by taxi at a hotel. He needs to make change to tip the driver and the bellhop. On the sidewalk nearby he spots Sister Sarah of the Salvation Army ringing a bell while standing beside that religious group’s iconic red kettle. He asks her if she can break a bill. She agrees. He hands her a \$20 bill, and she hands him four fives. Has he aided religion? Of course not. Likewise, it can be argued that granting public funds to a religious group that provides a public service does not constitute aid and thus does not violate the state Constitution’s Blaine provision.

However, as proponents of Amendment 8 point out, it would be foolish to count on the current Florida Supreme Court and/or all future Florida Supreme Courts to embrace this understanding of what constitutes giving “aid” to a religious group. Therefore, as a precaution against future judicial misjudgment, Amendment 8 deserves approval.

**PRO:** A provision in Florida’s state Constitution currently goes well beyond the U.S. Constitution’s First Amendment “establishment clause,” which has been interpreted as erecting a “wall of separation” between church and state but nonetheless did not prevent the U.S. Supreme Court from ruling that tax-funded school vouchers allowing children to attend church-operated schools are constitutional. Florida’s current state Constitution, adopted in 1968, includes a provision

carried over from the 1885 Constitution. It prohibits spending public funds, “directly or indirectly,” in “aid” of religion. Amendment 8 would remove this prohibition, which is known as the “Blaine Amendment,” and which many of Amendment 8’s supporters consider a relic of the years of anti-Catholic bigotry common in the United States after the Civil War, when many immigrants from predominantly Catholic countries were arriving in large numbers and settling in places formerly dominated by Protestants.

Proponents of Amendment 8 also cite concerns that unless this prohibition is removed, lawsuits may challenge existing state programs involving the use of public funds for scholarships enabling students to attend church-operated schools ranging from the voluntary pre-kindergarten program to church-affiliated colleges and universities attended by students who receive Bright Futures scholarships. In addition, there are concerns in some quarters over whether challenges will arise concerning the use of public funds for purposes such as faith-based prisons or for hospitals, homeless shelters, substance-abuse programs, and soup kitchens operated by religious groups.

**CON:** Removing the state Constitution’s prohibition against using public funds to aid religion would open the door for government officials to try to provide some religious groups with tax money while denying aid to others. Here’s but one of the potential scenarios illustrating the potential problems: Would the

Florida Legislature really approve using public funds for school vouchers that enable pupils to attend a mosque-operated madrasah where young children would study the Quran at the taxpayers' expense rather than be in a public school where they would be exposed to civics and the social contract that binds Americans together? Not likely. Yet how could lawmakers legally refuse to do so if they had previously approved the use of school vouchers for students to attend schools operated by other religious groups? They could not. If they tried, the lawsuits would be filed immediately.

Moreover, how much time would pass before the private schools and other entities operated by religious groups begin to discover onerous

strings attached to the public funds they receive? Such strings could go well beyond the understandable auditing requirements ensuring that public funds are used properly and could easily intrude into matters such as the curriculum content for schools and/or the religious content of social services such as 12-step substance abuse programs. For these reasons, allowing the use of public funds to aid religion is not only a bad deal for taxpayers; it is also a risky bet for religious groups because there is truth in the adage, "He who pays the piper calls the tune." Therefore, the state Constitution's prohibition should remain in place.

### **RECOMMENDATION ON AMENDMENT 8: YES.**



## **AMENDMENT 9**

### **TITLE: Homestead Property Tax Exemption for Surviving Spouse of Military Veteran or First Responder**

**REFERENCE:** Article VII, Section 6; Article XII, Section 32

**BALLOT LANGUAGE:** Proposing an amendment to the State Constitution to authorize the Legislature to provide by general law ad valorem homestead property tax relief to the surviving spouse of a military veteran who died from service-connected causes while on active duty or to the surviving spouse of a first responder who died in the line of duty. The amendment authorizes the Legislature to totally exempt or partially exempt

such surviving spouse's homestead property from ad valorem taxation. The amendment defines a first responder as a law enforcement officer, a correctional officer, a firefighter, an emergency medical technician, or a paramedic. This amendment shall take effect January 1, 2013.

**IN BRIEF:** Amendment 9 would grant an additional tax exemption to the surviving spouses of veterans

and of first responders such as police officers and firefighters.

**ANALYSIS:** It is unclear from the ballot language whether this tax break for the surviving spouses of these classes of high-risk occupations would apply to, say, the surviving spouse of a New York City police officer or firefighter who perished in terrorist attack on the World Trade Center. Regardless of that, because Amendment 9 won't diminish property tax revenues very much, there won't be much of a shift of the cost of government to other taxpayers. So, when it comes to the practical effect of this amendment, there is no reason to oppose it on the grounds that it would cost too much or make other people pay much more.

When it comes to the optimum principles of taxation, however, Amendment 9—along with the four other amendments related to property taxes on the ballot this fall—takes Florida even further away from one of the soundest principles of taxation: that taxes ought to be structured so that they are borne by a broad base paying low rates. However, because comprehensive reform of Florida's tax structure is unlikely to occur prior to the state's next fiscal emergency, and because the fiscal impact on local governments and other taxpayers will be relatively negligible, the surviving spouses might as well receive a tax break. Nonetheless, as property tax exemptions—granted for one reason or another to constituencies likely to engender public sympathy—contin-

ue to multiply, the day will come when the state will be forced to take another comprehensive look at its inequitable tax structure.

**PRO:** Amendment 9's ballot language is very straightforward. It would allow the Legislature to totally or partially eliminate property taxes on the homestead properties owned by the surviving spouses of people who died while on duty in certain high-risk occupations and in the military. The estimate of the amount of revenue that would be lost is very small—less than \$1 million statewide. Therefore, this is the least a grateful state could do to help these survivors.

**CON:** Who can be against a tax break for widows and orphans? Even so, as noted in the discussion of Amendment 2 and again on Amendment 4, "critics of enshrining tax policy in the state Constitution point out that this is but one of no less than five tax-related amendments on the ballot this fall. All propose tax breaks for various groups. The drawback, critics say, is that when such amendments diminish the revenue derived from these sources by the cities, counties, school districts, water management districts, and other governmental entities that rely on property taxes, they often compensate by raising the tax rates of those property owners who are not in the groups awarded favorable treatment."

**RECOMMENDATION:**  
The Institute is not taking a position on Amendment 9.



## AMENDMENT 10

### TITLE: **Tangible Personal Property Tax Exemption**

REFERENCE: Article VII, Section 3; Article XII, Section 32

**BALLOT LANGUAGE:** Proposing an amendment to the State Constitution to: (1) Provide an exemption from ad valorem taxes levied by counties, municipalities, school districts, and other local governments on tangible personal property if the assessed value of an owner's tangible personal property is greater than \$25,000 but less than \$50,000. This new exemption, if approved by the voters, will take effect on January 1, 2013, and apply to the 2013 tax roll and subsequent tax rolls. (2) Authorize a county or municipality for the purpose of its respective levy, and as provided by general law, to provide tangible personal property tax exemptions by ordinance. This is in addition to other statewide tangible personal property tax exemptions provided by the Constitution and this amendment.

**IN BRIEF:** Amendment 10 would grant approximately 150,000 Florida businesses, many of them small, an increase in the tax exemption on "tangible personal property" (machinery, office equipment, furniture, etc.) to \$50,000 from the current \$25,000.

**ANALYSIS:** The modest savings that businesses would gain from this doubling of the exemption on tangible personal property aren't likely to fund

the creation of many new jobs, especially at small businesses. Yet taken together with the eventual impact of the property tax relief that commercial property would enjoy if Amendment 4 (not recommended because of other provisions) were to pass, some of the financial impediments that have deterred businesses from expanding their payrolls would be cleared away. At a time when the foundering economy and "jobs, jobs, jobs" are the principal issues in national, state, and local elections, passage of the tax breaks authorized by Amendments 4 and 10 could well clear the way for additional hiring. That, in turn, would reduce dependency on government programs. In addition, the taxes paid by newly hired might well offset the revenues lost through the enactment of these amendments. Granted, tax breaks "for business" lack the sentimental appeal of the tax breaks other amendments on this year's ballot promise for wounded warriors, the surviving spouses of police and firefighters, and low-income senior citizens. Yet until Florida is forced to undertake a comprehensive reform of its entire tax structure, the hard-working entrepreneurs who take the risks necessary to run a business are no less deserving of a break.

**PRO:** Of all the constitutional amendments tinkering with Florida's

tax structure, this is the one most likely to result in collateral economic benefits for persons other than the direct recipients of this tax break. Small businesses are the most important generators of jobs in the U.S. economy. At present, businesses must pay a property tax on their tangible property, down to and including items such as office furniture, computers, and copiers, with only the first \$25,000 of value tax exempt. Amendment 10 would exempt the value of tangible property up to \$50,000. Not only would this spare businesses—especially small ones—a cost, but also the major hassle involved in calculating the values of ordinary business equipment, which tends to be subject to depreciation and other factors making such calculations much more complex than, say, calculating the value of real estate, where appraisers can more easily examine the prices paid for comparable properties.

**CON:** To paraphrase the late Sen.

Everett Dirksen, “a million here, a million there, and pretty soon you’re talking about real money.” This exemption, along with others pending or already enacted, will cost local governments hundreds of millions of dollars at a time when Florida’s cash-strapped state government has been dumping more responsibilities on those local governments. The inevitable result will be either a reduction in the services provided by those local levels of government or else a shift of the tax burden to others in order to make up for the forgone revenue. Moreover, even though this amendment has been touted as a stimulus for job creation, there is no persuasive evidence that small businesses now worrying about the daunting new costs imposed by the Affordable Care Act will use these modest tax savings to hire more workers.

**RECOMMENDATION ON  
AMENDMENT 10: YES.**



## AMENDMENT 11

**TITLE: Additional Homestead Exemption; Low-Income Seniors Who Maintain Long-Term Residency on Property; Equal to Assessed Value**

**REFERENCE:** Article VII, Section 6

**BALLOT LANGUAGE:** Proposing an amendment to the State Constitution to authorize the Legislature, by general law and subject to conditions set forth in the general law, to

allow counties and municipalities to grant an additional homestead tax exemption equal to the assessed value of homestead property if the property has a just value less than

\$250,000 to an owner who has maintained permanent residency on the property for not less than 25 years, who has attained age 65, and who has a low household income as defined by general law.

**IN BRIEF:** Amendment 11 would allow local governments to grant a substantial property tax break to low-income seniors—currently defined as those earning less than \$27,030 a year—and residing for at least 25 years in homes whose values have risen as high as \$250,000, thereby making their tax bills beyond their means.

**ANALYSIS:** Floridians of limited means, perhaps living in a modest home in a rural area of Florida, may well wonder why a senior citizen living in a home worth as much as \$250,000 needs what could conceivably amount to a total exemption from paying property taxes to support the city and county supplying services such as fire and police protection, parks, and even programs for senior citizens. The younger neighbors of these tax exempt seniors might well wonder the same thing; if the senior citizens have lived in their home for many years, they've already had the protection of the Save Our Homes amendment, so they're already being taxed less than their new neighbors. This is yet more evidence of a tax structure increasingly characterized by loopholes and other inequities—and in need of a total overhaul. In the meantime, amend-

ments such as this one will only worsen the inequities.

**PRO:** Some low-income seniors, many of whom survive on a modest pension or other form of fixed income, are at risk of being taxed out of the homes where they have lived and raised a family. This problem has been particularly acute in areas where enclaves of low-income retirees are close to trendy areas such as Key West or South Beach, where international fame caused real estate prices to boom even beyond the levels other locales experienced during the real estate bubble. Despite the “Save Our Homes” amendment’s limiting of the annual increases for a homestead property’s assessed value to 3 percent or the rate of inflation, whichever is less, a home that was on the tax rolls valued at \$100,000 in 1995 would likely be assessed today at more than \$150,000 and rising. Moreover, the amount on which taxes would be due—the assessed valuation minus homestead exemption—would have more than doubled. Rather than tax elderly low-income Floridians out of their homes and force them into renting or moving into an assisted living facility or a nursing home, a prudent tax policy would encourage them to remain as long as possible in the familiar surroundings of the homes they own.

**CON:** Amendment 11 is yet another example of politicians offering tax relief to a group likely to receive public

sympathy and, incidentally, to vote in large numbers. Together with the other tax breaks in this year's batch of amendments, Amendment 11 will either add to the loss of revenue that Florida's local governments are facing at a time of significant fiscal challenges involving pensions, public safety, and

other issues, or else it will exacerbate the shifting of the tax burden to those residents who have not yet managed to qualify for a tax break.

**RECOMMENDATION:**  
The Institute is not taking a position on Amendment 11.



## AMENDMENT 12

**TITLE:** Appointment of Student Body President to Board of Governors of the State University System

**REFERENCE:** Article IX, Section 7

**BALLOT LANGUAGE:** Proposing an amendment to the State Constitution to replace the president of the Florida Student Association with the chair of the council of state university student body presidents as the student member of the Board of Governors of the State University System and to require that the Board of Governors organize such council of state university student body presidents.

**IN BRIEF:** Amendment 12 changes the procedure the state Constitution currently provides for selecting the student representative on the Florida Board of Governors, which oversees the State University System. Instead of designating the head of the Florida Student Association (a group that not all state universities join) the representative would be chosen by a council comprising the student body presidents.

**ANALYSIS:** It is useful for students to have a seat at the table when the Florida Board of Governors is exercising its authority over the entire State University System. It is even more useful for students to have a seat at the table, as they do, for the deliberations of the individual universities' respective Boards of Trustees, where the issues discussed are likely to be more directly relevant to situations with which they are familiar and informed. As for the Board of Governors, how the students' representative is selected is arguably less important than that there be such a representative. Even so, it is troubling to some that the BOG's student seat is reserved for a person heading a group that does not include all of the state's universities.

**PRO:** This seemingly inconse-

quential amendment wouldn't likely be on the ballot were it not for the fact that the state Constitution's provision creating the Board of Governors (BOG) to oversee the state's university system stipulated that one of the seats on the BOG should be filled by the President of the Florida Student Association (FSA). The reform provided in Amendment 12 is desirable because it makes the representation more broadly inclusive. That is because every state university has a student body president, democratically elected, whereas not every state university chooses to participate in the Florida Student Association (FSA), an organization that has experienced funding controversies sufficient to cause some major universities to withdraw from membership.

**CON:** The Florida Student Association (FSA) argues that just because one or more universities might choose to withdraw from the FSA is not a good reason to tinker with the state Constitution and a well-thought-out method of providing student representation on the Board of Governors.

**RECOMMENDATION:**  
The Institute is not taking a position on Amendment 12. ∞



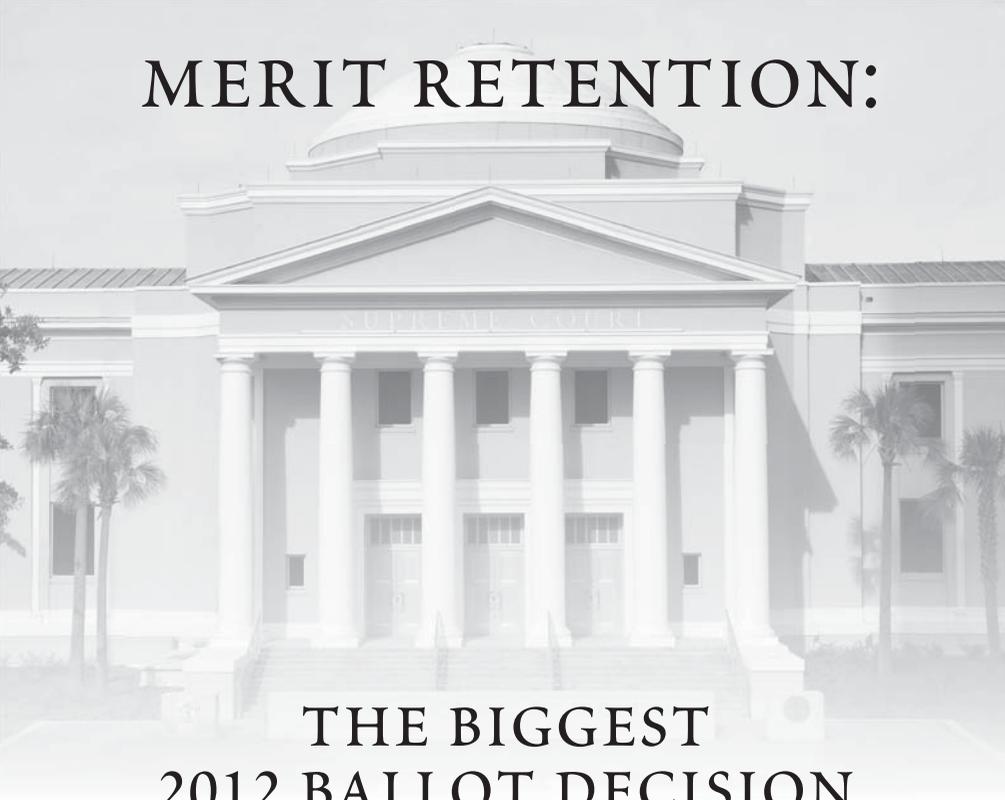
## Worthy Words

*“Economic liberty and creative entrepreneurship are the basis of any solution to today’s social and economic difficulties. Blaming business, setting wages, and attempting to run the economy by decree from Washington only exacerbates the problems. Consider the minimum wage. It seems so simple: Tell business to pay its workers more. But a hike in the minimum wage is essentially a tax, punishing precisely those companies that hire workers with the least skills.”*

– DOUG BANDOW

*“If the provisions of the Constitution can be set aside by an Act of Congress, where is the course of usurpation to end? The present assault upon capital is but the beginning. It will be but the stepping-stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich; a war growing in intensity and bitterness.”*

– JUSTICE STEPHEN J. FIELD



# MERIT RETENTION:

## THE BIGGEST 2012 BALLOT DECISION THAT YOU MIGHT NOT HAVE HEARD OF

BY WILL PATRICK

**D**espite the presence of what is arguably one of the most significant Presidential elections in a generation on the ballot this fall, one particular down-ballot issue in Florida is deservedly gaining visibility: the merit retention vote on three justices of the Florida Supreme Court.

As outlined in the state Constitution, merit retention is a process whereby the state's appeals court judges, who are initially appointed

by the Governor, are periodically evaluated by voters during general elections.

This fall voters will decide whether to retain or dismiss three of Florida's seven Supreme Court justices, as well as 15 appellate judges. No Florida judge subjected to this process has ever failed to be retained. However, because of an increase in public awareness of the issues, this election cycle could be different.

This year, Supreme Court Justices Peggy Quince, Fred Lewis, and Barbara Pariente will appear on the ballot with a simple “Yes” or “No” beside their names. Only a simple majority vote is required for their retention. Each justice is subjected to a retention vote during the first election cycle after being appointed to the court, then every six years thereafter.

Justices Quince, Lewis, and Pariente have been branded liberal, activist judges by Floridians who are upset with certain rulings in which they comprised most of the court’s majority. One such ruling blocked a 2010 ballot initiative that would have challenged the Affordable Care Act’s individual mandate. Another ruling derailed the Opportunity Scholarship Program, which provided vouchers enabling the parents of students trapped in chronically failing schools to choose another school, public or private.

Several conservative activist groups have also come to view these three appointed justices as the very core of a liberal voting bloc that often stifles conservative reforms approved by the duly elected officials who serve in the Legislature.

Jesse Phillips of Restore Justice 2012, a Central Florida group opposed to retaining Justices Quince, Lewis, and Pariente, told a reporter for The James Madison Institute’s *Capitol Vanguard* news

website that, “Justice Quince said it best, ‘We have a merit retention system to determine if Justices are doing their jobs.’”

To that end, Phillips contends that the only way to tell whether they are “doing their jobs” is to “look at their decisions; are they living up to the Constitution?”

Meanwhile, the justices have

received solid backing from The Florida Bar Association, which represents many of Florida’s attorneys. The FBA is conducting a high-profile “educational” program on their behalf called “The Vote’s in Your Court.”

The retention of these three justices has even received support from

several prominent Republicans, who may well oppose their judicial philosophy but say they support “keeping politics out of the retention process.”

As a result, these justices may very well be secure. It helps that they had also raised nearly \$200,000 apiece in campaign funds as of mid-September.

The three justices will face no opponent on the ballot. Florida did away with contested Supreme Court elections in 1976. After the high court was rocked by a series of embarrassing scandals, voters by a margin of 1,600,944 to 527,056 ratified a constitutional amendment switching the high court (and the district courts of appeal) to the



***“The retention of these three justices has even received support from several prominent Republicans.”***



merit retention system.

One senior attorney who served in the Crist Administration and who declined to be identified said that “attorneys across the state will not speak out against the justices because they’re afraid of ramifications. There are too many interests in support of retaining them.”

Even so, when asked why he thought more businesses aren’t contributing to the campaign opposed to retaining Justices Lewis, Pariente, and Quince, the source said he was surprised. “A little bit of support could yield huge changes in future judicial outcomes. But businesses may be waiting instead to contribute to Gov. Rick Scott’s reelection rather than risk negative publicity in a battle they aren’t likely to win.”

In support of keeping politics out of the merit retention process, Gary Blankenship of *The Florida Bar News* quoted former Florida Supreme Court Chief Justice Major Harding, who spoke about the issue earlier this summer.

“All of the judges in this room who have been on the bench any number of years have had cases that created public interest and emotional responses,” Harding declared. “If judges ever lose the ability to be fair and impartial and respond to those emotional responses, we will be in a sad state of affairs.”



***“If judges ever lose the ability to be fair and impartial ... we will be in a sad state of affairs.”***



A well-respected centrist, Harding laments the fact that the controversy has forced these judges to raise campaign money. “The culture has changed in a significant way,” he said, since he was up for retention in 1992 and 1998. Harding and the others who are opposed to ousting these justices maintain that the merit retention system was intended

to dismiss judges only for wrongdoing or professional misconduct.

Phillips of Restore Justice disagrees. “That argument falls flat. There’s already a process in place to deal with judicial misconduct and ethics. We are not supposed to wait every six years to deal with a judge who did something wrong,” Phillips added.

Given the long odds the recall campaign faces, together with the tepid support it has received from business interests, Restore Justice’s fund-raising has been slow. However, when asked about funding, Phillips said success would have less to do with the amount of money raised and more to do with the level of public awareness raised.

As he told *Capitol Vanguard*, “The fact that we’re having this conversation means we [Restore Justice 2012] have been successful.” ❧

*Will Patrick reports for Capitol Vanguard, the on-line news website of The James Madison Institute.*



## Worthy Words

*“If Congress imposed a 100 percent tax, taking all earnings above \$250,000 per year (the top 2 percent of income earners), it would yield the princely sum of \$1.4 trillion. That would keep the government running for 141 days.”*

– WALTER WILLIAMS

*“If we simply throw low-risk offenders into prison, rather than holding them accountable for their wrongdoing and addressing the source of their criminal behavior, they merely become hardened criminals who are more likely to re-offend when they are released.”*

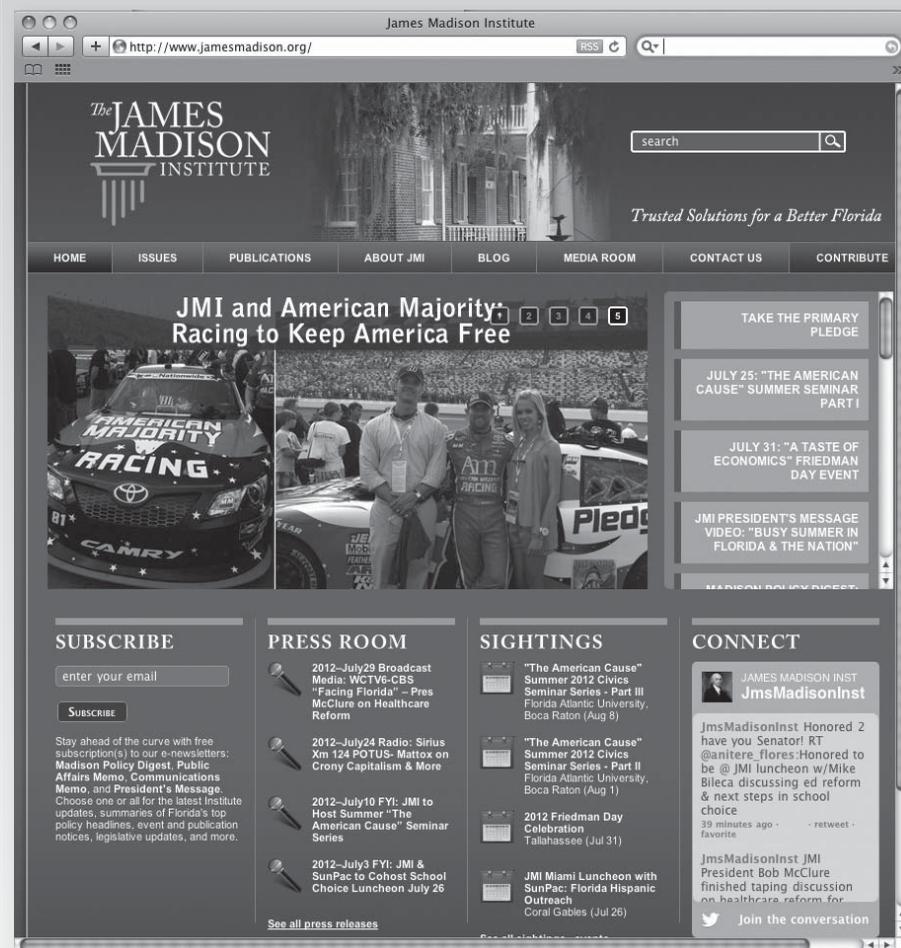
– GEORGIA CHIEF JUSTICE CAROL HUNSTEIN

*“Be not intimidated, therefore, by any terrors, from publishing with the utmost freedom, whatever can be warranted by the laws of your country; nor suffer yourselves to be wheedled out of your liberty by any pretences of politeness, delicacy, or decency. These, as they are often used, are but three different names for hypocrisy, chicanery, and cowardice.”*

– JOHN ADAMS

*“Even if taxes on income were otherwise the most unexceptionable, the adoption of the principle of graduation would make them about the very worst that could be devised. The moment you abandon, in the framing of such taxes, the cardinal principle of exacting from all individuals the same proportion of their income or of their property, you are at sea without rudder or compass, and there is no amount of injustice and folly you may not commit.”*

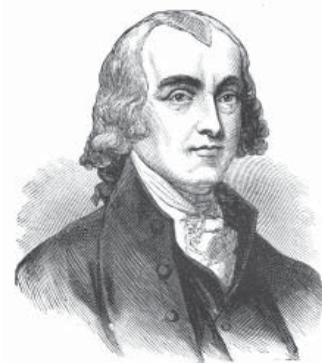
– JOHN RAMSAY McCULLOCH



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