

The Breakfast Club

Constitutional Minute for 12 December 2023

Amending the Virginia Constitution

There is warranted consternation over Virginia Democrats' new project to enshrine a "right" to abortion into the state Constitution, similar to what was done last month in Ohio.ⁱ Let's take a look at what's involved.

For almost a hundred years, Virginia had no process spelled out in its Constitution for amendment. This led in part to Virginia often changing its constitution instead of simply amending it when amendments were warranted. For those who have not taken my Virginia Constitution course (that's most of you), we Virginians enacted constitutions in 1776, 1830, 1851, 1864 (of challenged legality and therefore omitted from some lists), 1870, 1902 and 1971 (our current one). An amendment process was first added to the 1870 Constitution. Thomas Jefferson suggested people enact new constitutions every 19 years,ⁱⁱ and the 1870 Constitution included a provision (not carried forward in 1902) that *every 20 years* the people vote on whether to call a new constitutional convention. As you'll see, a constitutional convention is still one of two methods for amending the document (discussed in [Section 2](#) of Article XII, which you can read on your own).

[Eighteen state constitutions](#) contain a provision Virginia does not have: citizen constitutional initiative, whereby the people themselves, without acting through their elected representatives can initiate a constitutional amendment.

The current wording in our Constitution, [Article XII, Future Changes](#), reads:

Section 1. Amendments:

"Any amendment or amendments to this Constitution may be proposed in the Senate or House of Delegates, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, the name of each member and how he voted to be recorded, and **referred to the General Assembly at its first regular session held after the next general election of members of the House of Delegates**. If at such regular session or any subsequent special session of that General Assembly the proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the General Assembly to submit such proposed amendment or amendments to the voters qualified to vote in elections by the people, in such manner as it shall prescribe and not sooner than ninety days after final passage by the General Assembly. If a majority of those voting vote in favor of any amendment,

it shall become part of the Constitution on the date prescribed by the General Assembly in submitting the amendment to the voters.” (Emphasis added)

Instead of adding amendments at the end of the document as we do with the U.S. Constitution (now standing at 27 Amendments), Virginia’s amendments result in “pen and ink” changes to the Constitution itself. This makes tracking them a little more challenging, but [here is a list](#) of all the amendments approved by referendum since 1971, courtesy of Randolph-Macon College.ⁱⁱⁱ Every state but one (Delaware) requires the citizens to approve constitutional amendments.

Notice, that amendment referendums can only be placed on the ballot (assuming it has passed with a majority vote in two assembly sessions) “after the next general election of members of the House of Delegates.” There is no talk in Section 1 about “odd-years” or “even-years;” but since Delegates are only elected in odd years (2021, 2023) amendment referendums will only be introduced in even years (2024). Why does Virginia elect its House of Delegates in odd years? Glad you asked; the answer harkens back to 1869 and is explained in [this article](#).

A bill to propose an amendment on the ballot is considered a “normal” bill and not a resolution, therefore the Governor must approve the referendum bill. The Governor has the power, therefore, to veto the referendum bill, although this has never happened (probably due to the Governor’s fear of being accused of “thwarting the will of the people”).

What the Democrats propose:

HJ1/SJ1: Constitutional amendment (first reference); fundamental right to reproductive freedom. Provides that every individual has the fundamental right to reproductive freedom and that the right to make and effectuate one's own decisions about all matters related to one's pregnancy cannot be denied, burdened, or otherwise infringed upon by the Commonwealth, unless justified by a compelling state interest and achieved by the least restrictive means. The amendment prohibits the Commonwealth from penalizing, prosecuting, or otherwise taking adverse action against an individual for exercising the individual's right to reproductive freedom or for aiding another individual in the exercise of such right, unless justified by a compelling state interest.

HJ2/SJ2: Constitutional amendment (first reference); qualifications of voters; right to vote; persons not entitled to vote. Provides that every person who meets the qualifications of voters set forth in the Constitution of Virginia shall have the fundamental right to vote in the Commonwealth and that such right

shall not be abridged by law, except for persons who have been convicted of a felony and persons who have been adjudicated to lack the capacity to understand the act of voting. A person who has been convicted of a felony shall not be entitled to vote during any period of incarceration for such felony conviction, but upon release from incarceration for that felony conviction and without further action required of him, such person shall be invested with all political rights, including the right to vote. Currently, in order to be qualified to vote a person convicted of a felony must have his civil rights restored by the Governor or other appropriate authority. The amendment also provides that a person adjudicated by a court of competent jurisdiction as lacking the capacity to understand the act of voting shall not be entitled to vote during this period of incapacity until his capacity has been reestablished as prescribed by law. Currently, the Constitution of Virginia provides that a person who has been adjudicated to be mentally incompetent is not qualified to vote until his competency is reestablished.

SJ3: Constitutional amendment (second reference); real property tax exemption; surviving spouses of soldiers who died in the line of duty. Expands the current tax exemption for real property available to the surviving spouses of soldiers killed in action to the surviving spouses of soldiers who died in the line of duty with a Line of Duty determination from the U.S. Department of Defense.

Notice that SJ3 is “second reference” while SJ1 & SJ2 are “first reference.” This means SJ3, presuming it passes its second vote in the upcoming session, will likely appear on the 2024 ballot.

SJ1 and SJ2 will need to pass in the 2024 session and again in “**the first regular session held after the next general election of members of the House of Delegates.**” The next general election of the House of Delegates will be November 2025, which means the earliest this could appear on an election referendum is November 2026, but only if the Democrats maintain their majority in both chambers in the November 2025 election and the bills pass in the 2026 assembly session.

The foregoing should not be taken to diminish the immediacy of this initiative. November 2026 may seem a long way away, but it is not. The “Party of Death” wants unrestricted abortion, even infanticide to be the law of the land.^{iv} Thwarted by the repeal of *Roe v Wade* they are carrying on the fight in the states. They have already announced this will be made the prime issue in the 2024 election, with Republicans painted as wanting to jail (or worse) every pregnant woman who wants to abort their

baby. This worked in Ohio and will work everywhere there are low-information voters....which means it will work everywhere.

How do we fight this in Virginia? Everyone who wants the killing of unborn life to be minimized or even eradicated in this country will have to become as informed as possible, armed with facts and moral arguments, because there will have to be millions upon millions of conversations on this topic over the next couple of years. Second, support for alternatives to abortion such as [Peninsula CareNet](#)^v must increase; this is not an issue where you can “sit on the sidelines.” CareNet needs our donations and our volunteer hours. Finally, this is a fundamental issue of life, speaking to the very character of our humanity. Will we value life, all life, or only some life? We must ask God to intervene on the side of life; which means prayer and lots of it.

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ⁱ <https://apnews.com/article/ohio-abortion-amendment-election-2023-fe3e06747b616507d8ca21ea26485270>

ⁱⁱ *Thomas Jefferson to James Madison, September 6, 1789*, in Julian P. Boyd, ed., *The Papers of Thomas Jefferson*, 31 vols. (Princeton, N.J.: Princeton University Press, 1950), 15:396. Accessed at: <https://founders.archives.gov/documents/Madison/01-12-02-0248>.

ⁱⁱⁱ https://amendments.rmc.edu/?page_id=30

^{iv} <https://www.nationalreview.com/2020/02/born-alive-abortion-survivors-protection-act-democrats-justify-infanticide/>

^v <https://cnpeninsula.org>