

# Pennsylvanians for Modern Courts Forum Examines Threats to Pennsylvania's Constitution

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By Deborah Gross

Pennsylvania's most "recent" Constitution was adopted in 1968 after the 1967 Constitutional Convention. Since that time, there has not been another Constitutional Convention, but there have been many proposed constitutional amendments, some of which have been adopted.

Recently, the constitutional amendment process is increasingly being used by the legislature. This past legislative session has already seen more than 80 bills proposing constitutional amendments.

Unfortunately, there is very little information available to Pennsylvanians about the proposed amendments, their impact, or the process. As a result, Pennsylvanians for Modern Courts joined with Common Cause Pennsylvania, PA Budget and Policy Center and The New Pennsylvania Project to hold a program on this topic, entitled "Threats to Pennsylvania's Constitution."

Judge Frederica Massiah-Jackson was the moderator for a panel comprised of Professor Bruce Ledewitz of Duquesne University School of Law, Professor Craig Green of Temple University Beasley School of Law and Professor Rogers Smith of the University of Pennsylvania Carey Law School. More than 200 Pennsylvanians registered for this program.

Green started off explaining some history – *Did you know that beginning in 1776, five versions of the Pennsylvania Constitution did not allow for constitutional amendments, and instead there had to be a constitutional convention.* This was intentional in the desire to make it much more difficult to change the constitution than it would be to change ordinary legislation, as the constitution was intended to protect individuals' rights and remove them from politics.

However, now the constitution amendment process enables "really big changes through a relatively easy mechanism," Green said. In fact, Green even posited the question: Do we need a constitution? The process now is such that there can be a constitutional amendment to implement anything, to weaken or eliminate one branch of government. Should the answer be – do we need to change the constitutional amendment process?

- We are one of 17 states that requires a simple majority vote in each legislative chamber – should a super majority be required?
- Should there be legislative hearings, expert testimony, and opportunities for the public to be heard on the proposals, where now no such requirements exist?
- Should the Governor be included in the process, where now that branch is not involved at all?
- Should there be a requirement that any ballot referendum be placed only on the November ballot where there is greater voter turnout?

Ledewitz emphasized that the Pennsylvania constitutional amendment process is much easier than the federal process, which requires real consensus to be adopted. And the proof is in the pudding, "since the current version of the 1968 PA Constitution, 49 amendments have been adopted. In contrast, in the entire history of the U.S. Constitution, from 1788, only 27 amendments have been adopted." What is also obvious in Pennsylvania, Ledewitz said, is that since 1968, most of the amendments adopted have

changed the executive branch and overturned several Pennsylvania Supreme Court decisions, but significantly fewer constitutional amendments have limited the Legislature's authority. Clearly, this is because the Legislature has the authority to propose the amendments and to control the process in terms of public hearings and testimony.

While Ledewitz concluded that the current process may not represent a flaw or defect in governance, because of the current politicized and polarized environment, the "constitutional amendment process has begun to warp and now threatens to undermine the basic structure of the Pennsylvania Constitution." One of the most serious concerns is the proposed shifts in power to the legislative branch, creating "a system without effective checks on that power, in contravention of the fundamental principles of American constitutional government," Ledewitz said.

Smith noted that many governments do not rely on written constitutions, including England, and that America's "revolutionary generation was the first in the world to create written constitutions to empower and limit their state and national governments" and "to put people's rights and government structures and powers in writing to make them harder to violate."

Smith, too, supported his presentation with some remarkable numbers – as of 2021, 11,969 national constitutional amendments have been formally proposed, but only 27 have been ratified. By contrast, across the country, 11,635 state-wide constitutional amendments have been proposed, and 7,695 have been ratified state-wide.

Smith discussed the advantages and disadvantages of referendums as democratic decision-making – yes, they can spark or encourage debate and deliberation, but they can also be confusing and misleading to the voter and overly complicated, resulting in voters making uninformed choices or not voting at all. They also can lead to decision making based on the intense preference of a small minority of voters who turn out to cast ballots, and thus don't reflect which "side's view is more popular, as much as it does which side is richer." Smith also emphasized that in polarized partisan politics, democratic decision-making can be damaging because people vote along party lines as opposed to whether the amendment itself is a good idea.

Education of Pennsylvanians about the amendment process, as well as the substance of each proposed amendment, is truly crucial to ensuring that the democratic system of checks and balances, upon which this country was created, and will continue to protect individual's rights as well as our democratic institutions.

You can watch the full program on PMC's website, [www.pmconline.org](http://www.pmconline.org), under the Resources and Program Recordings tab.

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Source:

<https://philadelphiabar.org/?pg=PhiladelphiaBarReporter&pubAction=viewIssue&pubIssueID=15172&pubIssueItemID=54447>

Also see:

Threats to the PA Constitution Symposium | Judge Massiah-Jackson, C. Green, B. Ledewitz, R. Smith  
<https://www.youtube.com/watch?v=EeO5m9O4rAQ>