

AMENDING THE STATE CONSTITUTION: WHAT VOTERS NEED TO KNOW ABOUT THE
BALLOT QUESTION
January 20, 2012

The North Carolina Constitution provides two ways in which it can be amended: by convention of the people or by legislative initiative. Historically, North Carolina's constitutional amendments have come by legislative initiative, i.e., a proposal from the General Assembly. The State Constitution sets forth the procedure by which the General Assembly may initiate and the people may ratify or reject an amendment:

A proposal of a new or revised Constitution or an amendment or amendments to this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time *and in the manner prescribed by the General Assembly*. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

N.C. CONST. art. XIII, § 4 (emphasis added). The General Assembly prescribes the time and manner the proposed amendment is submitted to voters by setting out such particulars in the session law adopting the proposed amendment. The General Assembly picks the date for the vote on the amendment. Most recently, the General Assembly decided to submit the so-called Marriage Amendment to voters at the May 2012 primary elections. The proposed amendment states in full: "Marriage between one man and one woman is the only domestic legal union that shall be valid or recognized in this State. This section does not prohibit a private party from entering into contracts with another private party; nor does this section prohibit courts from adjudicating the rights of private parties pursuant to such contracts."

The General Assembly, as part of its constitutional duty to prescribe the manner in

which a proposed amendment will be submitted to voters, also drafts the ballot question. The ballot question is exactly what one might assume from the name; it is the question which appears on the ballot and in response to which voters cast their voters to ratify or reject the proposed amendment. The ballot question is *not* the actual amendment. The language of the proposed amendment appears nowhere on the ballot unless the General Assembly decides to use the amendment as the ballot question—a move seldom done. Consider the 2004 amendment creating Article V, § 14, an amendment known at the time as Amendment One because of its place on the ballot. Amendment One was ratified by voters in response to the following 132-word ballot question:

The question to be used in the voting systems and ballots shall be:

“ FOR AGAINST

Constitutional amendment to promote local economic and community development projects by (i) permitting the General Assembly to enact general laws giving counties, cities, and towns the power to finance public improvements associated with qualified private economic and community improvements within development districts, as long as the financing is secured by the additional tax revenues resulting from the enhanced property value within the development district and is not secured by a pledge of the local government’s faith and credit or general taxing authority, which financing is not subject to a referendum; and (ii) permitting the owners of property in the development district to agree to a minimum tax value for their property, which is binding on future owners as long as the development district is in existence.”

The text of the 432 words-long amendment which is now Article V § 14 states:

Sec. 14. Project development financing.

Notwithstanding Section 4 of this Article, the General Assembly may enact general laws authorizing any county, city, or town to define territorial areas in the county, city, or town and borrow money to be used to finance public improvements associated with private development projects within the territorial areas, as provided in this section. The General Assembly shall set forth by statute the method for determining the size of the territorial area and the issuing unit.

This method is conclusive. When a territorial area is defined pursuant to this section, the county shall determine the current assessed value of taxable real and personal property in the territorial area. Thereafter, property in the territorial area

continues to be subject to taxation to the same extent and in like manner as property not in the territorial area, but the net proceeds of taxes levied on the excess, if any, of the assessed value of taxable real and personal property in the territorial area at the time the taxes are levied over the assessed value of taxable real and personal property in the territorial area at the time the territorial area was defined may be set aside. The instruments of indebtedness authorized by this section shall be secured by these set-aside proceeds. The General Assembly may authorize a county, city, or town issuing these instruments of indebtedness to pledge, as additional security, revenues available to the issuing unit from sources other than the issuing unit's exercise of its taxing power. As long as no revenues are pledged other than the set-aside proceeds authorized by this section and the revenues authorized in the preceding sentence, these instruments of indebtedness may be issued without approval by referendum. The county, city, or town may not pledge as security for these instruments of indebtedness any property tax revenues other than the set-aside proceeds authorized in this section, or in any other manner pledge its full faith and credit as security for these instruments of indebtedness unless a vote of the people is held as required by and in compliance with the requirements of Section 4 of this Article.

Notwithstanding the provisions of Section 2 of this Article, the General Assembly may enact general laws authorizing a county, city, or town that has defined a territorial area pursuant to this section to assess property within the territorial area at a minimum value if agreed to by the owner of the property, which agreed minimum value shall be binding on the current owner and any future owners as long as the defined territorial area is in effect.

The sheer length of the ballot question relative to the text of the amendment underscores the difference between the two. The ballot question summarizes the amendment. Like any summary, a ballot question leaves some things out. A ballot question which merely summarizes a proposed amendment is unable to capture the full import of the proposed amendment. In 2004, the ballot question used just 132 words to describe the 432-word amendment. It is logical to wonder, even worry, about what was omitted in the 300-word difference.

“Constitutional and statutory provisions customarily require that a description of a proposed law or measure be printed upon the ballot, and any such requirement is mandatory. As a general rule, however, it is not essential to print the full text of the proposed law or amendment on the ballot; it is sufficient if enough is printed to identify the matter and show its character and purpose.” 26 Am. Jur. 2d Elections § 295. *See also Fla. Ass’n of Realtors v. Smith*, 825 So. 2d 532, 536 (Fla. 1st Dist. Ct. App. 2002) (“A court may declare a ballot summary invalid only if it appears that the summary is clearly and conclusively defective.”); *Smith v. Calhoun Community Unit School Dist.*, 16 Ill. 2d 328, 335, 157 N.E.2d 59, 63 (1959) (“The substance of a public measure is adequately set forth if the ballot gives a fair portrayal of the chief features of the proposition in words of plain meaning, so that it can be understood by persons entitled to vote. In our view, this does not require that the complete proposition be set forth in the official ballot”) (citations omitted). Indeed, as the Supreme Court of South Carolina has stated:

The Courts are slow to strike down either the legislative proceedings or the election incident to the adoption of a constitutional amendment, and will indulge every reasonable presumption in favor of their validity. As was said in *State ex rel. Corry v. Cooney*, 70 Mont. 355, 225 P. 1007, 1009: “The question is not whether it is possible to condemn the amendment, but whether it is possible to uphold it, and we shall not condemn it unless in our judgment its nullity is manifest beyond a reasonable doubt”.

It is not necessary that the question on the ballot include the full text of the proposed amendment; it is sufficient that it describe the amendment plainly, fairly, and in such words that the average voter may understand its character and purpose. . . .

The question is sufficiently propounded to the voters by printing on the ballot the title of the proposing resolution, if such title fairly shows the purpose of the amendment. . . .

Where the ballot is challenged because of the form of the question proposed, rather than its substance, evidence that the voters were in fact misled may be required to overcome the presumption to which we have referred.

Ex parte Tipton, 229 S.C. 471, 476-77, 93 S.E.2d 640, 643 (1956).

Indeed, in a challenge to the ratification of Article V, § 14, based largely on an allegedly misleading ballot question discussed above, the courts ruled that the plaintiffs could not sustain their lawsuit because, in part, they did not claim they themselves were misled, only that other voters might have been misled.

This well-established principle that the full text of a proposed constitutional amendment need not be printed on the ballot is grounded, at least in part, in the presumption already noted *supra*: people are presumed to know the law.

Voters are presumed to be familiar with the content of the actual proposed amendment summarized on a ballot. A ballot adequately describes a proposed amendment if it gives fair notice to the voter of average intelligence by directing him to the amendment so that he can discern its identity and distinguish it from other propositions on the ballot. The ballot language must show the character and purpose of the amendment, but it need not show all the relevant details. Exactitude is not required, since it would often be impracticable to print an entire amendment on the ballot.

Hardy v. Hannah, 849 S.W.2d 355, 358 (Tex. App. Austin 1992)(citations omitted).

In conclusion, it must be emphasized that constitutional minimums are not best practices. Just because the text of an amendment does not necessarily have to appear on the ballot does not mean that it *should* not. Quite the opposite, the best solution to concerns about the potential for a ballot question to mislead voters is also the obvious and easiest solution: print the text of the proposed amendment on the ballot instead of a summary ballot question.