

STATE CONSTITUTIONS AND FISCAL POLICY

Most Americans likely know very little about their state’s constitution, yet these documents have significant effects on our day-to-day lives. State constitutions often contain provisions that pressure states to spend more or that require them to limit spending. A new study for the Mercatus Center at George Mason University helps policymakers understand how state constitutions impose both fiscal pressures and fiscal restraints on state governments. Its author, political scientist [David M. Primo](#), argues that important policy debates should be conducted through the legislative process rather than through constitutional tinkering, and that constitutions should instead provide overarching fiscal limits on the scope of government.

To read the entire study and learn more about its author, see [“State Constitutions and Fiscal Policy.”](#)

BACKGROUND ON STATE CONSTITUTIONS

State constitutions vary in length and in how frequently they are amended. They often include vague provisions, and sometimes contain fiscal restraints such as balanced budget requirements and tax and expenditure limits. All of these features can affect a state’s fiscal health.

States allow legislatures to propose amendments subject to ratification by voters, and 18 states allow voters to propose amendments via the initiative process. It is easier to change a state constitution than the federal Constitution: simple majority votes in the legislature and by voters are often sufficient to amend state constitutions, whereas amending the federal Constitution requires the approval of a supermajority of the states and of Congress. Because they are easy to change, state constitutions tend to become more complex over time, with conflicting or outdated provisions that create challenges for effective governance.

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FISCAL PRESSURES AND FISCAL RESTRAINTS

A *fiscal pressure* is a provision in a constitution that guarantees a “positive” right: a right that imposes an affirmative duty on the government to undertake certain actions. Fiscal pressures impose floors on spending.

- For example, state constitutions include a positive right to education. This right is typically vaguely worded and has been the subject of extensive litigation. Courts have often forced legislatures to increase or reallocate education spending on constitutional grounds.
- Fiscal pressures may be indirect. For example, a constitutional provision ensuring the right to collective bargaining may lead the government to spend more on salaries and benefits.
- Substantive policy matters are better left to legislatures because policy preferences may change over time. Imposing policy priorities on future generations may increase overall spending beyond the state’s fiscal capacity or force substantive policy choices at odds with current preferences.

A *fiscal restraint* is a constitutional provision that limits the scope of the legislature’s behavior. Fiscal restraints impose a ceiling on the legislature’s ability to spend.

- Direct fiscal restraints include bounds on state expenditures, taxation, and debt, as well as balanced budget rules.
- Indirect fiscal restraints include executive line-item veto power, citizen initiatives, and term limits. While these do not specifically limit spending, they sometimes have (or are thought to have) the effect of constraining spending.
- Fiscal restraints can be evaded and manipulated by the legislature. For example, rainy day funds that lack stringent withdrawal rules can be used by legislators to raid savings rather than serving as emergency funds.
- Restraints may have unintended consequences or may not work as anticipated. For example, supermajority rules for tax increases may lead to coalition building that actually increases pork-barrel spending in order to entice legislators to support a tax increase.

PRINCIPLES FOR CONSTITUTIONAL REFORM

Policymakers can promote fiscal health by following several principles related to state constitutions:

- *Legislate policy issues rather than mandating them in the constitution.* Substantive policy matters (i.e., education, health care, pensions) should be kept out of constitutions to give legislators more flexibility to react to the needs of constituents and adapt to changes in government priorities.
- *Insert budget rules into constitutions with caution, because they can have unintended consequences, especially if poorly designed.* While some fiscal restraints in state constitutions are warranted, more is not better when it comes to such rules. In many cases there may be little

or no advantage to provisions that go beyond limits on the overall scope of government, especially if those limits are well designed and effectively enforced.

- *Pay attention to the details and structure of the constitution.* Legislators should “sweat the details” and ensure that provisions are carefully written to avoid unintended consequences, evasion, and encouraging the use of budget gimmicks. No two states are identical, and the effect of a rule must be considered in the context of other provisions to avoid unanticipated “institutional interactions.”
- *Balance the extremes of constitutional amendments and conventions with a constitutional commission.* Amendments may add more complexity to a constitution already in need of reform, but proposing a constitutional convention tends to evoke fears that the entire document will be rewritten. Reformers should consider the experience of Florida, where a constitutional revision commission can offer sets of changes to voters for their approval.