

Changing constitution not easy in Massachusetts

By Steve LeBlanc/Associated Press
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BOSTON -- The year was 1992 and term limits were on the lips of disgruntled voters across the country. In Massachusetts that anger took the form of a proposed constitutional amendment.

Supporters gathered the needed signatures, but -- in what's become a familiar story on Beacon Hill -- legislative leaders opposed to the measure killed it by simply adjourning a special joint session of the House and Senate without voting.

From abortion rights to education funding -- and now gay marriage and health care -- lawmakers routinely deny voters the chance to vote on proposed amendments.

Critics say lawmakers are slowly eviscerating one of democracy's key pressure valves -- the ability of citizens to change their constitution directly.

"The people have a right to amend the constitution. That right has been taken away in Massachusetts by the Legislature. It's on paper only," said Dorothea Vitrac, who led the term limits effort ultimately stymied by then-Senate President William Bulger. "They know they can get away with it. They know there is no consequence for them at the ballot box."

But defenders of the Legislature say there's nothing in the Massachusetts Constitution guaranteeing voters the right to amend the state's most important civic document.

"People do not have the rights that they think they have. What they have is a process," said state Rep. Byron Rushing, D-Boston. "The Legislature has always been asked to stand between the people and the ballot when it comes to amending the constitution."

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Getting a proposed amendment on the ballot is deliberately daunting. Supporters must quickly gather tens of thousands of signatures. The amendment then heads to a joint session of the House and Senate known as a constitutional convention.

The amendment must win the backing of a quarter of the 200-member Legislature, or 50 lawmakers. The process is repeated when the next Legislature takes office.

What the constitution doesn't do is bar lawmakers from using all the parliamentary maneuvers they typically use to kill bills. They can send a proposed amendment to a study committee to die -- or more typically simply recess or adjourn without voting.

Lawmakers last week voted 109-87 to recess the constitutional convention without taking a vote on the anti-gay marriage question. Leaders, fearing they didn't have the 151 votes needed to kill the amendment outright, only needed a simple majority to delay action.

They are scheduled to reconvene on Jan. 2, the last day of the legislative year, but few expect them to take up the question.

Fearing the worst, supporters of the question, including Gov. Mitt Romney, are asking the state's highest court to intervene -- either by ordering lawmakers to vote or by circumventing the legislature and placing the question on the 2008 ballot.

John Hanify, an attorney for Romney and others who support the measure, say the court must restore faith in the constitution by reining in lawmakers.

"This defect in practice has become almost institutionalized," he said. "It's clearly now very broken and the only way to fix it is to recruit the court's intervention." Barbara Roop agrees. Roop is a member of the Committee for Health Care for Massachusetts, which is pushing a constitutional amendment guaranteeing access to affordable health care.

Unlike the anti-gay marriage amendment, Roop's proposed amendment made it through a first constitutional convention in 2004, with the backing of 153 lawmakers, far more than the needed 50. But when the amendment came back for a second vote, lawmakers instead voted to send it to a "study committee" to die.

Roop's group filed its own lawsuit asking the Supreme Judicial Court to order the question onto the 2008 ballot given the Legislature's actions.

"They are essentially being allowed to nullify a section of the constitution," she said. "For all practical purposes they've repealed that section of the constitution without the people's consent."

Not everyone agrees.

Lawrence Friedman, a professor in constitutional law at the New England School of Law, said it's unlikely the court will either order the Legislature to vote or order the question onto the ballot.

"I'm not sure we'd want a system when a judge could order the Legislature to do this," he said.

The trail to the ballot box is littered with the remains of proposed amendments.

In 1982, a measure intended to reform the way the Legislature debated the state budget died when lawmakers adjourned the constitutional convention without taking up the issue.

In 1990 lawmakers killed two proposed amendments again by adjourning. The first would have added the right to quality public education to the constitution. The second dealt with abortion.

In 2002, another anti-gay marriage question died when lawmakers adjourned without a vote.

In 1994, a measure calling for a graduated income tax eventually did make it to the ballot, but was defeated.