

# MERCATUS ON POLICY

## Florida, High-Speed Rail, and the Perils of Policymaking by Constitution

David M. Primo and Jake Jares

November 2017



**MERCATUS CENTER**  
George Mason University

3434 Washington Blvd., 4th Floor  
Arlington, Virginia 22201  
[www.mercatus.org](http://www.mercatus.org)

**STATE CONSTITUTIONS CAN AFFECT FISCAL** policy either by acting as fiscal restraints that limit the scope of government or by imposing fiscal pressures that expand or place demands on government.<sup>1</sup> One concern with using state constitutions to place demands on government is that those demands are often inflexible, limiting the ability of policymakers to adapt as voter preferences or circumstances change.<sup>2</sup> In this piece, we will focus on a high-speed rail plan in Florida to illustrate the perils of policymaking by constitution.

### THE FLORIDA MONORAIL AMENDMENT

In 2000, Florida voters narrowly approved the Florida Monorail Amendment to the state constitution. The provision required the state to initiate construction of a high-speed rail system no later than November 1, 2003. The amendment read,

To reduce traffic congestion and provide alternatives to the traveling public, it is hereby declared to be in the public interest that a high speed ground transportation system consisting of a monorail, fixed guideway or magnetic levitation system, capable of speeds in excess of 120 miles per hour, be developed and operated in the State of Florida to provide high speed ground transportation by innovative, efficient and effective technologies consisting of dedicated rails or guideways separated from motor vehicular traffic that will link the five largest urban areas of the State as determined by the Legislature and provide for access to existing air and ground transportation facilities and services. The Legislature, the Cabinet and the Governor are hereby directed to proceed with the development of such a system by the State and/or by a private entity pursuant

to state approval and authorization, including the acquisition of right-of-way, the financing of design and construction of the system, and the operation of the system, as provided by specific appropriation and by law, with construction to begin on or before November 1, 2003.<sup>3</sup>

This amendment clearly stipulated that Florida's government begin the construction of a high-speed rail system by November 1, 2003, and that the system have certain features (link five cities and provide access to existing air and ground transportation services). By placing the system into the constitution, high-speed rail became privileged over other, non-constitutionally-mandated government programs. In addition, this commitment was in essence open-ended, as there was no limit on costs included in the amendment.

Moreover, the demand was inflexible. If this were a piece of legislation, the legislature could simply modify, eliminate, or delay the program if private-sector funding didn't materialize or if tax increases or spending cuts needed to make the system viable were infeasible. The amendment also did not allow for exigencies such as changes in state economic conditions.<sup>4</sup> The only way to alter the program was through constitutional change—the route ultimately chosen (more on that later).

The passage of the amendment spurred extensive debate over how much high-speed rail would cost and who would bear those costs, since neither was specified in the amendment.<sup>5</sup> There was “no credible evidence” that such a system could be “self-sufficient,”<sup>6</sup> meaning that additional taxpayer funding would be needed and would have to come from spending cuts in other areas or higher taxes (perhaps through debt financing, which is just delayed taxation).<sup>7</sup> As long as high-speed rail is in the state constitution, “the state is locked into paying for [high-speed rail], whether it can afford to or not.”<sup>8</sup>

Some might argue that this inflexibility is a feature, not a bug, of the constitutional amendment. High-speed rail has been a legislative focus in Florida since 1976, when the state legislature requested that

a study be conducted to determine whether a route between Daytona Beach and St. Petersburg was viable. But none of the many attempts over the past few decades to support high-speed rail really succeeded until the 2000 referendum. As one analysis concluded, “Without institutional buy-in for a project, as well as the authority and responsibility to identify, gather, and manage funding, and the responsibility for and capability of seeing a project through, many HSR projects fail as soon as the key supporter or visionary leaves. Indeed, this frustration led Florida voters to approve the constitutional amendment requiring the building of HSR.”<sup>9</sup>

This argument, however, creates a slippery slope, as similar concerns could be raised by advocates for any proposed government program that fails to muster legislative support. David Primo, in discussing why policy issues are better managed as part of the legislative process, has written, “once one goes down the road of managing the allocation of spending through state constitutions, it is difficult to know where to stop.”<sup>10</sup>

## REFORMS TO FLORIDA'S INITIATIVE PROCESS

In part owing to the high-speed rail experience, Florida has reformed its initiative process in three ways.<sup>11</sup> First, opponents of high-speed rail successfully placed an amendment on the same 2000 ballot as high-speed rail that would require the legislature to create a public cost estimate associated with amendments proposed via the initiative process, in an effort to better inform voters about the fiscal consequences of their votes.<sup>12</sup> The amendment was successful.

Second, in 2004, voters passed an amendment requiring proposed amendments to get approved for the ballot by February 1st of a general election year, as a way to make sure there is sufficient debate over a proposal's merits. (As the head of Florida's Chamber of Commerce told a reporter, the high-speed rail proposal “popped up 91 days ahead of the 2000 election.”<sup>13</sup>)

Third, in 2004, voters approved an amendment to the constitution mandating a 60 percent

---

## Prioritizing one set of policies (those in constitutions) over others (those outside of constitutions) limits legislative flexibility if voter preferences or priorities change.

---

supermajority of voters casting ballots on the measure in order for amendments to be approved. The only other states requiring a supermajority to approve constitutional amendments are New Hampshire<sup>14</sup> and Colorado, which recently began requiring 55 percent supermajorities to add to the constitution while still maintaining a simple majority requirement for repealing a provision of the constitution.<sup>15</sup>

None of these reforms can completely prevent fiscal pressures from making their way into state constitutions, but they do make it more difficult. They may, of course, have the side effect of preventing measures that would impose fiscal restraints from being placed in state constitutions as well. However, given that many fiscal restraints are ineffective or have unintended consequences, this may be an acceptable tradeoff.<sup>16</sup>

### WHAT OTHER STATES CAN LEARN FROM FLORIDA

Other states, regardless of whether they have an initiative process for amendments, can learn from Florida's experience about the perils of inserting policy into state constitutions. First, prioritizing one set of policies (those in constitutions) over others (those outside of constitutions) limits legislative flexibility if voter preferences or priorities change. In fact, the very reason high-speed rail had difficulty gaining traction without an amendment—that there lacked a consistent champion for it—is perhaps the best evidence that support for a government-driven high-speed rail was far from intense. And yet, legislators may have needed to make cuts in other areas, like education and health care, in order to fund high-speed rail.<sup>17</sup>

Second, economic, fiscal, or other circumstances may change, especially with regard to infrastructure, as New York State's history shows. When New York's 1846 constitution was written, the state's finances were weighed down partly because it had spent so much on the construction of its canal system. This experience led to a new constitutional debt limit.<sup>18</sup> Nevertheless, believing in the canal system's economic importance, the state doubled down in its new 1846 constitution, going so far as to protect state canals from being sold off or otherwise disposed of.<sup>19</sup> Traffic peaked on the Erie Canal in the mid-1800s, but then declined as railroads and, later, highways and the St. Lawrence Seaway rendered the canal a "historical curiosity."<sup>20</sup> Canal protections remain in New York's constitution, and canal maintenance remains a drag on state finances.<sup>21</sup>

The constitution won't protect high-speed rail in Florida in the same way, as voters decided in 2004 to repeal the high-speed rail amendment, thereby returning high-speed rail to the realm of a statutory policy area. Over a decade later, high-speed rail is slated to become a reality in Florida with the privately funded Brightline high-speed rail system that initially will connect West Palm Beach and Ft. Lauderdale, with plans to include Miami and Orlando in the coming months and years.<sup>22</sup> Whether the program survives ultimately will be decided by economics and politics, not by the state's constitution.

### NOTES

1. Some examples and/or concepts in this paper were first presented in David M. Primo, "State Constitutions and Fiscal Policy" (Mercatus Research, Mercatus Center at George Mason University, Arlington, VA, August 2016). For a similar argument in the context of Florida's

- constitution, see Ryan Maloney, "Smoking Laws, High-Speed Trains, And Fishing Nets a State Constitution Does Not Make: Florida's Desperate Need for a Statutory Citizens Initiative," *University of Florida Journal of Law and Public Policy* 14, no. 1 (2002).
2. Primo, "State Constitutions and Fiscal Policy."
  3. Fl. Const. art. X, § 19.
  4. Maloney, "Smoking Laws, High-Speed Trains, And Fishing Nets," 102-3.
  5. For a nice overview of the funding debate, see Allison L. C. de Cerreño, Daniel M. Evans, and Howard Permut, "High-Speed Rail Projects in the United States: Identifying the Elements for Success" (Mineta Transportation Institute, San Jose, CA, October 2005).
  6. Cerreño, Evans, and Permut, "High-Speed Rail Projects in the United States," 47.
  7. The tradeoffs involved in state funding or financing of high-speed rail was a major issue in the debate over high-speed rail. See, for example, Jill Krueger, "High-speed Rail: More Options Than Answers," *South Florida Business Journal* (2001): 22A and Jack Lyne, "Derailed: Florida Amendment for \$25B Bullet Train Bites Dust in Vote," *Site Selection*, November 8, 2004.
  8. Maloney, "Smoking Laws, High-Speed Trains, And Fishing Nets," 103.
  9. Cerreño, Evans, and Permut, "High-Speed Rail Projects in the United States," 4.
  10. Primo, "State Constitutions and Fiscal Policy," 30.
  11. Unlike most states with the initiative process, Florida permits voters to propose constitutional amendments for a vote but does not permit voters to propose statutes, leading to suggestions that this may explain the use of constitutions for policymaking purposes and creating the need for initiatives to be statutory, as well. See Maloney, "Smoking Laws, High-Speed Trains, And Fishing Nets," for further discussion.
  12. Noelle C. Haner, "High Drama over High-Speed Rail," *Orlando Business Journal*, October 25, 2004.
  13. Quoted in Haner, "High Drama over High-Speed Rail."
  14. Council of State Governments, *The Book of the States* (Lexington, KY: Council of State Governments, 2016).
  15. See David M. Primo and Jake Jares, "Too Much of a Good Thing? Initiatives and the 'Cluttered' Colorado Constitution" (Mercatus on Policy, Mercatus Center at George Mason University, Arlington, VA, November 2017) for a broader discussion of the effects of the initiative process on fiscal policymaking.
  16. For a discussion of the challenges of designing effective constitutional fiscal restraints, see Primo, "State Constitutions and Fiscal Policy."
  17. Krueger, "High-Speed Rail: More Options Than Answers."
  18. Robert P. Kerker, "Bonded Indebtedness," in *The Encyclopedia of New York State*, ed. Peter R. Eisenstadt (Syracuse, NY: Syracuse University Press, 2005), 193-96.
  19. Noble E. Whitford, *History of the Canal System of the State of New York*, vol. 1 (Albany, NY: Brandow Printing Company, 1906), ch. 3.
  20. George M. Walsh, "After 190 Years, NY's Erie Canal a Relic with a Hefty Cost," Associated Press (wire story obtained via Lexis-Nexis), August 9, 2015.
  21. Walsh, "After 190 Years, NY's Erie Canal a Relic with a Hefty Cost."
  22. Heidi Mitchell, "A Florida Rail Project Breaks New Ground," *Wall Street Journal*, June 21, 2017.

### About the Authors

David M. Primo is the Ani and Mark Gabrellian Professor and an associate professor of political science and business administration at the University of Rochester. He is also a senior affiliated scholar with the Mercatus Center. Primo is the author of three books, including *Rules and Restraint: Government Spending and the Design of Institutions* (University of Chicago Press, 2007).

Jake Jares graduated magna cum laude from the University of Rochester in 2017 with a BA in Economics and Mathematics. He served as a research intern at the Mercatus Center in 2014 and 2015 and is currently an economic consultant.

### About the Mercatus Center

The Mercatus Center at George Mason University is the world's premier university source for market-oriented ideas—bridging the gap between academic ideas and real-world problems.

A university-based research center, Mercatus advances knowledge about how markets work to improve people's lives by training graduate students, conducting research, and applying economics to offer solutions to society's most pressing problems.

Our mission is to generate knowledge and understanding of the institutions that affect the freedom to prosper and to find sustainable solutions that overcome the barriers preventing individuals from living free, prosperous, and peaceful lives.

Founded in 1980, the Mercatus Center is located on George Mason University's Arlington and Fairfax campuses.

---

*Views and positions expressed in the Mercatus on Policy series are the authors' and do not represent official views or positions of the Mercatus Center or George Mason University.*