Council Comments:

Citizens Research Council of Michigan
625 SHELBY STREET, SUITE 1B, DETROIT, MI 48226-3220
(313) 961-5377 • FAX (313) 961-0648
1502 MICHIGAN NATIONAL TOWER, LANSING, MI 48933-1738
(517) 485-9444 • FAX (517) 485-0423

CITIZENS RESEARCH COUNCIL OF MICHIGAN IS A 501(C)(3) TAX EXEMPT ORGANIZATION

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CONSTITUTIONAL AMENDMENTS AND THE RULE OF COMMON SENSE

The Michigan Constitution provides two methods whereby amendments to it may be proposed: by two-thirds of the members in each house of the state Legislature or by petitions containing the signatures of registered voters equal in number to at least ten percent of the votes cast for all gubernatorial candidates at the preceding general election. Since the present state Constitution took effect on January 1, 1964, a total of 49 amendments have been proposed. Michigan voters have approved only 16 of these. This suggests that voters are reluctant to alter the contours of the state's fundamental law unless they are convinced that such alterations are warranted. However, it may be that considerations other than constitutional reverence are also at work.

In 1819, John Marshall, Chief Justice of the United States Supreme Court, made an enduring observation concerning the nature and purpose of constitutions. In **McCulloch v Maryland,** (17 US (4 Wheat) 316, 406), Marshall noted that

> [a] constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires, that only its great outlines should be marked, its important objects designated, and the minor ingredients which composed those objects be deduced from the nature of the objects themselves. ... [W]e must never forget that it is a constitution we are expounding. (Emphasis in original.)

While Marshall's focus in McCulloch was the federal Constitution, his observations merit consideration regarding constitutions generally and constitutional amendments as well. Just as a constitution does not derive its meaning from the convention which drafted it, but rather from the people who ratified it, neither should a proposed constitutional amendment be written in so technical a manner as to render its meaning unintelligible to the general public.

It is noteworthy that of the 49 amendments proposed to the state Constitution, 14 have dealt with school finance, or property taxation, or both. And of these proposed amendments, only one was approved by the voters. It is generally the case that proposed constitutional amendments which concern school financing or property taxation tend to be lengthy and extremely difficult to understand. In Marshall's words, such amendments tend to "partake of the prolixity of a legal code." With respect to proposed constitutional amendments generally, and with respect to those concerning school finance or property taxation in particular, it may be that voters apply a common sense variation of the rule enunciated by Marshall so long ago: namely, that a proposed constitutional amendment which they cannot reasonably understand does not warrant their approval.