

Marijuana and Abortion Amendments Failed in Florida, Even With Majorities. Blame Pregnant Pigs

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[\[Link\]](#)

Despite receiving majority support, Florida's abortion and recreational marijuana amendments fell just short of passage Tuesday after months of campaigning, millions of dollars spent, and hundreds of thousands of petitions signed.

The reason they failed: pregnant pigs.

The [weed](#) and [abortion](#) amendments [were well-supported](#) among a broad swath of the electorate, receiving approximately 56% and 57% support, respectively.

But Florida's 60% threshold, one of the highest in the country, came out of backlash to a 2002 amendment that protects pregnant pigs from not being able to turn around freely. It's a rule that often receives renewed attention after popular amendments fail, as it did from supporters of Amendments 3 and 4 this week.

Some critics have pointed to the fact that the rule itself, which passed as a constitutional amendment in 2006, received only 57.8% of the vote at the time, about the same as this year's abortion amendment.

"They both received almost the same amount of votes Donald Trump received, and we're talking about Donald Trump having a 'landslide' victory," said Sen. Lori Berman, D-Boynton Beach. "It's extraordinarily disappointing."

Others say that the rule protects the Florida constitution from superfluous amendments and the influence of wealthy donors. It also protects against rule by the tyranny of the majority, regardless of what the majority wants.

"The thought is, if you're going to restrict the will of the people, you should do so by more than just a bare majority," said Michael Morley, a constitutional law professor at Florida State University. "If you're purporting to adopt an expression of the state's fundamental values, it should be something that represents broad consensus rather than just a bare majority."

'No person shall confine a pig'

Floridians approved the 60% rule in 2006. But its origins really date four years earlier to a 2002 amendment about the treatment of pregnant pigs.

"It all started with Amendment 10 in 2002," said Mark Wilson, president of the Florida Chamber of Commerce and one of the main proponents of the rule at the time.

The amendment, which passed by a simple majority, stated that “no person shall confine a pig during pregnancy in a cage, crate or other enclosure, or tether a pregnant pig, on a farm so that the pig is prevented from turning around freely.”

Wilson said he and others saw the pig amendment as an example of the muddying of the Florida constitution, something that lawmakers needed to keep in check. So he worked with them to pass a bill that placed the 60% threshold amendment on the ballot.

At the time, Florida’s Legislature was majority Republican, though Wilson said the rule received bipartisan support and maintained that it is not a partisan issue. Rather, he said, the amendment has simply served to protect against money’s role in the constitutional amendment process.

“To the extent that you have well-financed special interests trying to push through a pet project, it becomes much harder if they have to put together a 60 percent coalition,” Morley said.

But others say the amendment’s origins had more to do with protecting businesses from the uncertainty of the public’s whims. Ironically, wealthy donors also [helped to finance](#) the amendment, including the National Association of Home Builders, Blue Cross and Blue Shield, and Publix.

“Through their lobbying and campaign contributions, (businesses) can pretty much keep the Legislature from acting on issues that cause them heartburn,” said Ben Wilcox, who served as the director of Florida Common Cause, one of the main opponents, in 2006.

He and other opponents, including the Florida ACLU and League of Women Voters, argued at the time that the amendment would reduce voters’ power.

“I felt like it imposed restrictions on the people’s voice,” Wilcox said. “That’s what the citizens initiative process is. Direct democracy where citizens are able to weigh in on public policy without having to go through filter of legislature and government.”

Opposition to the rule was bipartisan, reflecting the fact that it isn’t only progressive groups who wanted citizens to have more power at the time. Some conservatives who opposed the 60% rule at the time had their own ambitions thwarted for citizen-led initiatives, including a 2008 amendment to ban same-sex marriage, the Sarasota Herald-Tribune [reported](#).

‘Tyranny of the majority’?

Florida is now one of the strictest states in the country when it comes to the threshold for passing amendments. Only New Hampshire has a higher threshold, of 66%, according to the website Ballotpedia.

Of all 49 states, only 11 require a supermajority or other threshold to pass an amendment, and most of those 11 states still allow a simple majority as long as a certain percentage of people vote in favor. Other states have additional requirements, such as Nevada, which requires citizen-led ballot initiatives to pass twice.

The vast majority of states with recreational marijuana amendments did not achieve 60% when those amendments passed, according to Zack Kobrin, a partner at Saul Ewing Cannabis Law. And of the few that did, most were passed by the legislature, not citizens.

“The reality is the 60 percent threshold in Florida is an extremely high bar,” Kobrin said.

Other conservative states that passed abortion amendments Tuesday did not receive 60% of the vote. On Tuesday, the same day that Florida’s abortion amendment was rejected, Missouri’s [passed with only 52%](#).

The results of simple majority states aren’t always skewed in a more progressive direction: also on Tuesday, Nebraska passed an amendment to limit abortion to the first trimester, which succeeded with only 55% of the vote. A competing amendment to expand access failed with 49%.

Wilcox, who personally supported Amendments 3 and 4 this year, says he has changed his stance from when he argued against the 60% rule back in 2006.

At the time, he recalled a number of former state attorneys, who were Democrats, questioning him about “the tyranny of the majority over the minority.” He struggled to come up with a response. Some amendments Wilcox disagreed with this year, such as Amendment 6, which would have shielded political donations from the public, also received a simple majority.

“Over the years I’ve kind of come around to being a supporter of having that higher threshold,” he said.

But Wilcox and others pointed to the fact that the influence of DeSantis and state agencies may have made an already high threshold even harder to reach. Voters who approved the 60% rule in 2006 likely didn’t account for the influence of Florida’s own governor.

Both he and Casey DeSantis held daily news conferences with Surgeon General Joseph Ladapo, local sheriffs, doctors and a mother whose child died from drug use in the weeks leading up to the election. The state [used taxpayer dollars](#) to sponsor controversial government-paid public service announcements, which they were later sued over.

Purchasing records show the state’s media campaign against the marijuana and abortion amendments [cost at least \\$16 million](#), while the Amendment 3 campaign analyzed ad buys and estimated the state likely spent over \$50 million, according to the Orlando Sentinel.

“I think that really crossed a bright line that shouldn’t have been crossed,” Wilcox said. “The citizens’ initiative process is the one chance that people get to weigh in directly on public policy. A lot of times when an amendment is placed on the ballot by the initiative process, it’s because the legislature and state government has refused to act on an issue that has a lot of popular support.”

It’s the citizen-led initiatives that often receive the most attention and backlash. And while lawmakers argued in favor of the 60% rule to keep the constitution un-muddied, Berman pointed out that the majority of the amendments on the ballot this year were proposed by the Legislature, not the citizenry.

“The Legislature is the one that’s filling our constitution with amendments,” she said.

Still, others point to the marijuana amendment as an example of what the 60% threshold was designed to prevent: Companies trying to buy a spot on the constitution. Trulieve and other

marijuana companies funneled over \$100 million into the initiative, which became the most expensive marijuana initiative in the country. Yet Florida's 60% rule, combined with DeSantis' opposition, kept it from succeeding.

A message from the majority

Despite their failure to reach 60% support, the simple majorities on Amendments 3 and 4 suggest that many voters are ready to see fewer restrictions on abortion and marijuana. But will that have any effect in the Republican supermajority Legislature?

Berman thinks some of the more popular "fringe" elements of the amendments could see progress, such as decriminalizing marijuana and looking at whether products are [marketed to children](#). And on abortion, she said, "I would hope they would reexamine this draconian six-week ban."

Already, Trulieve CEO Kim Rivers announced plans to work with legislators in the upcoming session.

Still, others see the results as unlikely to change politicians' priorities. Republican lawmakers already have indicated that they are unlikely to change their priorities, particularly if they will only end in a DeSantis veto, the Tampa Bay Times [reported](#).

"If you're Donald Trump right now, and you won Florida by well north of a million votes, and voters voted down these two initiatives, are you waking up today thinking you would do anything different?" Wilson said.

As for the 60% rule itself, some say that it could get even stricter: For the last several years, lawmakers [have attempted](#) to pass a bill that would propose an amendment requiring two-thirds, or over 66% support, not just 60%, for an amendment to pass. So far, it has failed.

It's unlikely a broad swath of the electorate would agree with lowering or increasing the threshold, experts say. Ironically, it would require a 60% vote to reverse an amendment that only got 58% at the time.

Morley compared the rule to the filibuster in the U.S. Senate; something that gives a segment of voters veto power: "I think you might find the electorate reluctant to give up that check."

"You wouldn't want this process to be for sale," Wilson added. "In any way, in any era, regardless of who is in charge."