

Founding Fathers would fight Measure 104

BY JUAN CARLOS ORDÓÑEZ
CONTRIBUTING WRITER

Poison." That's what Alexander Hamilton called requiring a supermajority to pass laws.



Juan Carlos Ordóñez is communications director for the Oregon Center for Public Policy, a non-partisan, nonprofit institute that does in-depth research and analysis on budget, tax and economic issues. The Center's goal is to improve decision making and generate opportunities for all Oregonians.

It goes against the "fundamental principle of free government," against the common good, James Madison concurred.

The toxin that Hamilton and Madison warned about will appear on the Oregon ballot this November in the form of Measure 104. The measure would require three-fifths of both the Oregon House and Senate to get rid of wasteful tax breaks, allowing as few as 13 Senators beholden to special interests to block the will of the majority.

The Founding Fathers knew first-hand the damage and inequity that result from legislative supermajority requirements like Measure 104. Allowing the minority to stymie legislation contributed to the downfall of our nation's first attempt at a constitution, the Articles of Confederation. So when they scrapped the Articles and replaced them with what is

now the U.S. Constitution, the founders established majority — not supermajority — rule for the legislative branch.

A century went by before the first supermajority requirement to raise taxes emerged. Its place and time reveal much about the nature of supermajority requirements: the South at the dawn of the Jim Crow era.

During the brief period of Reconstruction following the end of the Civil War, Southern

state legislatures, for the first time, began providing schools and other services for the recently freed African American population. Some whites resisted, sometimes violently. They eventually seized control and rolled back the progress. In the power struggle that ensued in Mississippi, a faction of wealthy former slaveholders demanded and won a change to the state's constitution to shield themselves from tax increases — a three-fifths vote requirement for all tax increases that remains in place to this day.

Over the next few decades of the Jim Crow era, Louisiana and Arkansas would follow suit in adopting supermajority requirements for tax increases.

Southern elites realized the same thing Madison and Hamilton knew: Supermajority requirements empower a super-minority to game the system in their favor. The difference between the Founding Fathers and the Southern elites, of course, was that the former sought to create (at least for white males) a representative democracy serving the common good, while the latter sought to preserve a system of privilege built upon racial segregation and oppression.

From its origins in the Deep South, the idea of the supermajority requirement spread west in the late 1970s, spurred on by special interests groups that also recognized the power it confers on the wealthy few. It arrived in Oregon in 1996 in the form of Measure 25, requiring a three-fifths vote of the legislature for any bill to raise revenue. Today, 16 states have some kind of supermajority requirement in taxation.

One of the special interest groups spreading the poison was Grover Norquist's Americans for Tax Reform. Flush with cash from corporations and mega-donors, Americans for Tax Reform made the supermajority requirement a key plank of its agenda.

Supermajority requirements, Norquist candidly admitted, allow deep-pocketed industries to "inoculate themselves from tax hikes."

Hamilton had cautioned that supermajority requirements favor the "corrupt junto" — "junto" meaning a "small, usually secret group united for a common interest." A special interest group, for short.

Madison, in turn, explained that a supermajority requirement allows the minority to "take advantage" and "extort unreasonable indulgences." What is a wasteful tax subsidy if not an unreasonable indulgence procured through the work of lobbyists and campaign donations?

Today, special interests groups are putting big money behind Measure 104. The trigger for this measure was a ruling by the Oregon Supreme Court in *City of Seattle v. (Oregon's) Department of Revenue*, which made it clear that Oregon's Measure 25 supermajority requirement to raise revenue does not extend to legislation to close tax loopholes. The ruling showed that the Oregon legislature's lawyers had been dispensing incorrect advice in telling lawmakers that they needed a three-fifths vote in such circumstances. The Oregon Supreme Court's ruling restored power to the majority in deciding whether to close or reform tax subsidies and loopholes.

Measure 104 is a power play by special interests to regain their advantageous position. It is an attempt to reload the weapon of the elite minority. It is an effort to further game the system in favor of privilege at the expense of the common good.

If the Founding Fathers were alive today, they would not only vote "NO" on Measure 104 — they would also lead the fight against it.

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