

Three YES – Seven NO

Texas Constitutional Amendments

Election day: Nov 5th, 2019

By Ken Casper

The following is my assessment of the proposed changes to the Texas Constitution. First, a few words about the Constitution itself. It was originally adopted in 1876 and was 23,000 words long. It has had 498 amendments and has grown to 86,936 words. Contrast that with the U.S. Constitution which was 4,543 words long. It is now 7,591 words long after 27 amendments, including the first ten, the Bill of Rights.

Why is the Texas Constitution so long? For several reasons: One is that it is incorrectly being used for legislation instead of foundational principles. Another is that once put in the constitution it is more difficult to rescind or change than mere legislation; and third, unlike legislation, there is no penalty for violating it. Have you ever heard of anyone being arrested, going to jail or being fined for violating the constitution?

Trivia: The Texas Constitution is not the longest in the union. That distinct honor goes to Alabama. Theirs is 388,882 words.

This year we have 10 propositions for changes to the Texas Constitution on the November 5th ballot. Passing a proposition requires 50% + 1 of the voters casting ballots in an election. Last time we had an election, 6% of the registered voters went to the polls. If you want to lose your liberty, don't vote. It's as simple as that. There are plenty of groups with agendas who are organized enough to take over the governance of the state. Our forefathers never anticipated that people wouldn't vote. Yet today, despite the variety of ways in which one can vote (early voting, voting by mail, absentee voting, even curbside voting if you're disabled), 94% of today's citizens don't care enough to vote at all.

Here are the factors I considered in evaluating these proposed amendments:

What is the nature of the change, this amendment proposes?

Why are these changes necessary now? What has happened since the last election, that makes it necessary to change the most fundamental document of our republic/state?

Can this change be effectively done simply by legislation? (If it can and isn't, it means its proponents can't get enough legislators to support it.)

Is the change itself constitutional with regard to the U.S. Constitution and the rest of the Texas Constitution itself?

What long-term effects will this change have? Beware of unintended consequences, especially when it comes to money. How easy is it going to be for the legislature to put its own spin on the words used? Remember: the lottery revenue was supposed to go exclusively to education. They lied.

PROPOSITION 1 (HJR 72) – “THE CONSTITUTIONAL AMENDMENT PERMITTING A PERSON TO HOLD MORE THAN ONE OFFICE AS A MUNICIPAL JUDGE AT THE SAME TIME.”

Explanation: This amendment permits a municipal judge, whether appointed or elected, to serve as a municipal judge in more than one municipality at the same time.

Discussion: We are told this amendment is needed to help small towns where there simply aren't enough candidates to fill municipal judge positions. (Municipal judges are the ones who adjudicate traffic tickets and other regulatory provisions.) First: what is a small town? This needs defining. Second: This should be a temporary measure therefore it needs a sunset clause. There isn't one. Third: Why now, after 143 years, is this a problem? With our growing population, why do we suddenly need to double up on positions when in the past we apparently didn't? Is it because with a larger, less established population, we have more violations? Or could this be a way for the “good ole boy” network to keep its power?

Recommendation: NO

PROPOSITION 2 (SJR 79) – “THE CONSTITUTIONAL AMENDMENT PROVIDING FOR THE ISSUANCE OF ADDITIONAL GENERAL OBLIGATION BONDS BY THE TEXAS WATER DEVELOPMENT BOARD IN AN AMOUNT NOT TO EXCEED \$200 MILLION TO PROVIDE FINANCIAL ASSISTANCE FOR THE DEVELOPMENT OF CERTAIN PROJECTS IN ECONOMICALLY DISTRESSED AREAS.”

Explanation: This amendment authorizes the Texas Water Development Board to issue additional general obligation bonds, in an amount that does not exceed \$200 million, for the economically distressed areas program. These bonds can only be used to provide financing for the development of water supply and sewer service projects in those economically distressed areas as defined by law.

Discussion: Note the phrases “development of certain projects in economically distressed areas.” Who decides what certain projects are? What is an economically distressed area? This is much too vague. What this really refers to is “colonias,” small settlements that spring up are without water and sewage treatment plants (as well as paved roads or access to electrical power). County and state regulations do not require developers to provide basic services if the land doesn't exceed certain numbers of lots. The solution is for those county and state regulations to be fixed, not pile more debt on other people.

Recommendation: NO

PROPOSITION 3 (HJR 34) – “THE CONSTITUTIONAL AMENDMENT AUTHORIZING THE LEGISLATURE TO PROVIDE FOR A TEMPORARY EXEMPTION FROM AD VALOREM TAXATION OF A PORTION OF THE APPRAISED VALUE OF CERTAIN PROPERTY DAMAGED BY A DISASTER.”

Explanation: The amendment allows the legislature to prescribe the method of determining the amount of the tax exemption and the duration of the exemption. It also allows the legislature to create any additional eligibility requirements for the tax exemption.

Discussion: Again note the terms: temporary exemption and a portion and certain property. This is too vague. How long is temporary? What is certain property? It also smacks of choosing winners and losers by exempting one and not another. Furthermore, doesn't the legislature already have this authority? If not, then there are no exemptions for any properties in a disaster.

Recommendation: NO

PROPOSITION 4 (HJR 38) – “THE CONSTITUTIONAL AMENDMENT PROHIBITING THE IMPOSITION OF AN INDIVIDUAL INCOME TAX, INCLUDING A TAX ON AN INDIVIDUAL’S SHARE OF PARTNERSHIP AND UNINCORPORATED ASSOCIATION INCOME.”

Explanation: Contrary to popular belief, the Texas Constitution does not explicitly prohibit an individual income tax. A 1993 amendment authorized the Legislature to impose a personal income tax if a statewide referendum is approved by voters and if the new revenue goes to school property tax cuts and education programs.

This amendment would add the additional requirement of a *2/3 supermajority of both chambers before it goes to the voters*, making it much harder to impose a State income tax.

Discussion: This is one of those cute word games the legislature is so fond of playing. If you don't want a state income tax, you vote YES. If you do want a state income tax, you vote NO. Once we get a state income tax, “Katie, bar the door.” The legislature will have a bottomless pit of tax money to spend however they darn well please. Remember, rescinding a constitutional amendment is harder than making one. The politicians in Austin are counting on that. Remember, too, that only 6% of our registered voters bother to go to the polls.

Recommendation: **YES** (This means **you do not want** a state income tax.)

PROPOSITION 5 (SJR 24) – “THE CONSTITUTIONAL AMENDMENT DEDICATING THE REVENUE RECEIVED FROM THE EXISTING STATE SALES AND USE TAXES THAT ARE IMPOSED ON SPORTING GOODS TO THE TEXAS PARKS AND WILDLIFE DEPARTMENT AND THE TEXAS HISTORICAL COMMISSION TO PROTECT TEXAS’ NATURAL AREAS, WATER QUALITY, AND HISTORY BY ACQUIRING, MANAGING, AND IMPROVING STATE AND LOCAL PARKS AND HISTORIC SITES WHILE NOT INCREASING THE RATE OF THE STATE AND USE OF TAXES.”

Explanation: A specified portion of the tax revenue received from sales of sporting goods is supposed to go to the Texas Parks and Wildlife Department (TPWD) and the Texas Historical Commission (THC).

Currently, however, a significant portion of those funds is misappropriated by the Comptroller of Public Accounts to certify the biennial state budget, that is, balance the books.

Discussion: The intent of this amendment is to ensure all sales tax revenue from sporting good sales goes to the TPWD and THC. Good intent, but don’t expect this amendment to make any difference. The Comptroller is not following the law now. There’s no reason to think making it a constitutional amendment will make any difference. Remember, breaking a law is criminal and accountable. Violating the Constitution is not.

Recommendation: NO

PROPOSITION 6 (HJR 12) – “THE CONSTITUTIONAL AMENDMENT AUTHORIZING THE LEGISLATURE TO INCREASE BY \$3 BILLION THE MAXIMUM BOND AMOUNT AUTHORIZED FOR THE CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS.”

Explanation: This amendment increases the maximum bond amount for the Cancer Prevention and Research Institute of Texas (CPRIT) from \$3 billion to \$6 billion. CPRIT was created in 2007 to promote and fund cancer research in Texas. CPRIT uses bond proceeds to award grants for cancer research and prevention. Under the Texas Sunset Act, CPRIT expires in September 2023.

Discussion: There’s a lot wrong with this proposal. \$6 billion debt to start with. Picking winners and losers is another. Who benefits from this? Mostly colleges and universities that are already flush with endowment funds. (Question: If Dr Z at Texas A&M were to win the Nobel Prize for a cancer cure, would he or she be required to give the prize

money to the state for financing him or her?) Cancer research, while laudable, is not a state function. There are plenty of state obligations, like infrastructure, that would benefit from a \$3 billion or \$6 billion infusion.

Recommendation: NO

PROPOSITION 7 (HJR 151) – “THE CONSTITUTIONAL AMENDMENT ALLOWING INCREASED DISTRIBUTIONS TO THE AVAILABLE SCHOOL FUND.”

Explanation: This amendment increases the amount of money that can be transferred each year from the Permanent School Fund (equivalent to a savings account) year to the Available School Fund (the checking account) from \$300 million to \$600 million. It also allows the State Board of Education, the General Land Office, and other entities that manage revenue from land or other properties held in the permanent school fund to distribute certain revenue to the available school fund.

Discussion: Our schools don't have a funding problem. They have a spending problem. This amendment would make it easier for them to spend more and deplete the Permanent School Fund faster. On the surface this would not affect our school taxes, but when they have spent the available money, they'll be back for more—thus higher school taxes. This is a bad idea that will raise school taxes and ultimately lead to bankruptcy.

Recommendation: NO

PROPOSITION 8 (HJR 4) – “THE CONSTITUTIONAL AMENDMENT PROVIDING FOR THE CREATION OF THE FLOOD INFRASTRUCTURE FUND TO ASSIST IN THE FINANCING OF DRAINAGE, FLOOD MITIGATION, AND FLOOD CONTROL PROJECTS.”

Explanation: This amendment creates the flood infrastructure fund as a special fund in the state treasury, using money appropriated from the economic stabilization fund (Rainy Day Fund) to mitigate flood damage. It also authorizes the Texas Water Development Board to create separate accounts to seek the input of those most likely to be affected by a casualty to public and private property along the Gulf Coast. It would establish regional Flood Control Districts where necessary for counties to resolve joint flooding issues and provide funds to complete these projects.

Discussion: This authorizes raiding the Rainy Day Fund, establishing more bureaucracy and paying more consultants. All of this can be done through legislation. It doesn't require a constitutional amendment. Of course, then they would have to go on record for deleting the Rainy Day Fund.

Recommendation: NO

PROPOSITION 9 (HJR 95) – “THE CONSTITUTIONAL AMENDMENT AUTHORIZING THE LEGISLATURE TO EXEMPT FROM AD VALOREM TAXATION PRECIOUS METAL HELD IN A PRECIOUS METAL DEPOSITORY LOCATED IN THIS STATE.”

Explanation: In 2015, during the Obama administration, the state created the Texas Bullion Depository, which is actually owned and operated by a private company, Lone Star Tangible Assets. This amendment authorizes the legislature to exempt privately owned precious metal stored there. Taxing these metals would first require that they be registered—a very bad idea.

Discussion: Private precious metals stored in the TBD are not currently being taxed, nor should they be. Taxes were paid on them when they were bought. They should not be taxed again. If you need a secure place to store them, that’s your responsibility. Keep them out of government hands. Making them subject to taxation would also mean registering your ownership of them, a bad idea and a very slippery slope. A more reasonable change would be to abolish the Texas Bullion Depository, which is less than 10 yrs old.

Recommendation: YES

PROPOSITION 10 (SJR 32) – “THE CONSTITUTIONAL AMENDMENT TO ALLOW THE TRANSFER OF A LAW ENFORCEMENT ANIMAL TO A QUALIFIED CARETAKER IN CERTAIN CIRCUMSTANCES.”

Explanation: This amendment authorizes the legislature to allow a state agency or political subdivision to transfer a law enforcement animal to the animal’s handler or another qualified caretaker at no cost, upon the animal’s retirement or at another time if the transfer is determined to be in the animal’s best interest.

Discussion: This is a no-brainer. Why is it even being considered for inclusion in the Texas Constitution? Legislation can and should cover this. Who would vote against it? This cheapens our constitution and shows our legislators to be shallow and petty. Okay, this puts dogs in our constitution. Do we put the cats in next time?

Recommendation: YES

Summary:

Proposition 1: NO

Proposition 2: NO

Proposition 3: NO

Proposition 4: YES

Proposition 5: NO

Proposition 6: NO

Proposition 7: NO

Proposition 8: NO

Proposition 9: YES

Proposition 10: YES

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CRN appreciates the work Ken Casper put into this article.

Until next time.....

Kat Rowoldt

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