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————— special report —————

CONSTITUTIONAL AMENDMENTS PROPOSED FOR NOVEMBER 2007 BALLOT: A Condensed Version

Sixteen proposed amendments to the Texas Constitution are on the November 6, 2007, ballot for voter consideration. This special report includes analyses of the 16 proposed amendments, including a brief digest of each amendment and arguments for and against. It is a condensed version of House Research Organization Focus Report Number 80-8, *Constitutional Amendments Proposed for November 2007 Ballot*, August 24, 2007, found at <http://www.hro.house.state.tx.us/focus/amend80.pdf>.

Proposition 1: Transferring constitutional facilities funding for Angelo State University

Prop. 1 would move the Higher Education Fund (HEF) listing for Angelo State University (ASU) from under the Texas State University System to the institutions grouped after Texas Tech University. During its 2007 regular session, the 80th Legislature transferred ASU from the governance of the Texas State University System and its board of regents to the Texas Tech University System and its board of regents, beginning September 1, 2007.

Supporters say

Prop. 1 would be the last step in implementing the wishes and desires of ASU students, the residents and business community of San Angelo, and the Texas Legislature to realign ASU from the Texas State University System to the Texas Tech University System. The HEF is a constitutional fund for Texas public higher education institutions outside the University of Texas and Texas A&M University systems. This fund can be used only for capital purposes, including acquiring land, constructing and equipping buildings, and repairing and renovating buildings and facilities, and for debt service on HEF bonds. Prop. 1 is needed to ensure that ASU's HEF funding will continue now that ASU's governance has moved to the Texas Tech system.

Transferring ASU to the Texas Tech system will expand educational opportunities and offer more collaboration with a top-tier university system that shares its regional and philosophical interests. ASU's input in the Texas Tech System will be more valuable than in the Austin-based Texas State University System, of which ASU's student enrollment is only 5 percent. Affiliating ASU with Texas Tech will not mean higher tuition rates. Other factors, including increasing energy costs, faculty salaries, and other factors could lead to tuition increases no matter what system the university belonged to.

Opponents say

By locking into the Constitution the transfer of ASU from the Texas State University System to the Texas Tech University System, Prop. 1 would serve neither higher education nor the fiscal interests of this state, nor would it promote the best academic interests of ASU students. ASU students have benefited from being part of the Texas State University System, including having access to expanded and enhanced facilities and low tuition rates. The Texas Tech System's cost of doing business per full-time student is about three times higher than the Texas State System's, which could mean sharply increased tuition for ASU students. ASU has been important to the Texas State University System in fulfilling its "Closing the Gaps" mission of promoting student affordability.

Proposition 2: Authorizing general obligation bonds to finance student loans

Prop. 2 would authorize the Legislature to allow the Texas Higher Education Coordinating Board (THECB) to issue up to \$500 million in general obligation bonds to finance educational loans to college and university students, in addition to those already authorized by the Constitution.

Supporters say

Prop. 2 would authorize bonds that are needed for the THECB to meet the growing demand for student financial assistance and to help meet the workforce needs of an expanding Texas economy. THECB administers the Hinson-Hazlewood College Student Loan Program, which is intended for students with insufficient resources to finance a college education and uses general obligation bonds to finance low-interest loans to eligible students seeking an undergraduate, graduate, or professional education at public and private higher education institutions in Texas. From August 1996 through March 2007, this program made loans totaling more than \$1.7 billion to more than 290,000 students.

Between 1965 and 1998, Texas voters have approved constitutional amendments authorizing a total of \$1.4 billion in general obligation bonds to help finance student loans. The last vote, in 1999, authorized \$400 million in bonds, and all but \$175 million of the bond authorization will be exhausted by the spring of 2009. The additional \$500 million in bonds authorized by Prop. 2 would give the THECB a total of \$675 million in available bonding authority, which would satisfy loan demands through 2015.

This program has a demonstrated record of success and is self-supporting, depending not on tax dollars but on money from student loan repayments, federal subsidies, and other sources. While Hinson-Hazlewood bonds represent state debt, the borrowed funds are repaid by students, not by taxpayers, and the loan interest is recycled to help future students. The bonds do not affect the state's constitutional debt limit for taxpayer-funded bonds, because the Bond Review Board classifies college student loan bonds as self-supporting.

Opponents say

Texas should not add to its debt by issuing additional bonds. Even though the program is self-supporting, it would add to state debt because the bonds are considered an obligation of the state, which would take ultimate responsibility for repayment if revenue was insufficient to cover debt service costs for the bonds. If an economic downturn or a catastrophic event caused a high rate of default on the student loans, the cost to the state could be considerable. Also, the program competes with private lenders who are at a disadvantage because they must make a profit to stay in business, which is not true of the government.

Proposition 3: Annual 10 percent cap on increases in homestead taxable value

Prop. 3 would amend the Texas Constitution to limit to 10 percent or more the increase in taxable value for residence homesteads from one appraisal to the next, regardless of the interval between appraisals. The Constitution currently allows the Legislature to limit the average annual increase in the taxable appraised value of residence homestead property to 10 percent or more. Most appraisal districts determine the taxable value of property on an annual basis, but some appraise every three years, allowing an increase in taxable value as high as 30 percent – an average maximum increase of 10 percent for each of the three years between appraisals.

Supporters say

Prop. 3 would prevent sticker shock for some owners of residence homesteads by ensuring that the maximum increase in taxable value could not exceed 10 percent, regardless of the interval between appraisals. Most people assume that the 10-percent annual cap on the increase in the taxable appraised value of their homes applies each time a new appraisal occurs, but in those districts that appraise every three years, the maximum increase can be as high as 30 percent. Prop. 3 simply would align the law so that it works as originally intended and the way that most people assume.

Most appraisal districts already value property in either one or two-year cycles, so this change would have little impact on local revenue. Encouraging local districts to appraise property annually would have the further benefit of more accurate appraisals, especially in areas with fluctuating property values. School districts need more accurate, up-to-date appraisals because state education aid is based on local property values. The cost of more frequent appraisals would be spread among the various local taxing units.

Opponents say

This change is unnecessary for most larger appraisal districts, which already determine taxable values on an annual basis. To avoid losing revenue when property values are increasing, smaller districts that now appraise property less frequently would be compelled to appraise property on an annual basis, resulting in greater expense. Annual appraisals may backfire in areas where property values are dropping, causing more immediate revenue reductions that could lead to tax increases to make up the difference.

To the extent that a lower property cap reduced the tax burden for taxpayers who own residence homesteads, it would shift the burden to other taxpayers such as commercial property owners, which are not subject to the cap, and owners of homestead property that is not increasing in value as rapidly as those benefiting from the cap.

Other opponents say

A maximum cap of 10 percent on taxable appraised value increases between appraisals still is too high to protect homeowners from large increases in their property tax bills. The cap should be reduced to as low as 3 percent, or local governments at least should have the option of setting a lower cap.

Proposition 4: General obligation bonds for state agency construction and repair projects

Prop. 4 would allow the Legislature to authorize the issuance of up to \$1 billion in general obligation bonds for equipment purchases or maintenance, improvement, or construction projects at certain state agencies, including the Texas Youth Commission (TYC), Texas Department of Criminal Justice (TDCJ), and Texas Department of Public Safety (DPS). The Legislature has authorized \$717.3 million in bond funding for specific projects in the fiscal 2008-09 state budget if voters approve the proposed constitutional amendment.

Supporters say

Prop. 4 would authorize the use of bonds for capital improvements, which would be an appropriate way to stretch state dollars to pay for long-term projects such as construction and repair. These are crucial maintenance and construction projects that otherwise would not be funded during the current budget cycle.

The largest portion of the bonding authority in Proposition 4 is reserved for prison construction. The Texas prison system is now operating at full capacity. Even with new beds and the diversion and treatment programs funded by the 80th Legislature, the state likely will need additional prison capacity in the next five years. Otherwise, the state could be forced to implement unacceptable ways of managing the prison population, such as loosening parole criteria to release more inmates or leasing large numbers of beds from Texas counties and elsewhere.

Bond proceeds for the Texas Youth Commission would help implement reforms to the agency that were enacted during the past legislative session. They would fund the construction of a new TYC facility in a major metropolitan area so that youths could be housed closer to their families and needed services. Prop. 4 also would provide funding for essential repairs at state parks. Texas cannot afford to neglect these and other needed facilities, including mental health facilities, county courthouse renovations, and DPS regional offices and a new crime lab.

Opponents say

Prop. 4 would give a blank check to the Legislature to issue bonds for future state building construction. Voters would have no say over how the bond proceeds were allocated or spent on individual projects because the proposed amendment is worded as a vote on the entire bond issue. Of the proposed \$1 billion, only \$717 million would be used for specific projects during the upcoming budget period, leaving nearly \$300 million on the table for future expenditures decided without any input from voters.

Bonds should not be issued to finance repair and maintenance projects. Repairs are a predictable cost for which agencies can and should budget. The state has failed to keep up with repairs and should not borrow money to make up for past shortfalls. Unlike construction projects, repairs have too short a useful life to justify incurring long-term debt to finance them.

The state budget would finance three new prisons using the bonds authorized by Prop. 4, if it is approved by the voters. The prison system already has adequate prison diversion and treatment programs for nonviolent offenders and the ability to contract for beds as needed to avoid committing scarce resources to building new prisons that are unlikely to be needed and expensive to operate.

Proposition 5: Allowing temporary property tax freeze for smaller city redevelopment

Prop. 5 would authorize the Legislature to allow cities with fewer than 10,000 inhabitants to hold an election permitting them to enter into agreements with owners of real property in or near areas targeted for state redevelopment programs to freeze their taxes for five years. This authority would apply only to designated areas of cities receiving funding through the Texas Department of Agriculture's (TDA's) Downtown Revitalization Program or the Main Street Improvement Program. The tax freeze would apply to property taxes imposed by any local government entity on the property covered by the agreement with the city.

Supporters say

Prop. 5 would give small communities a way to create an incentive for property owners to improve downtown buildings in line with local revitalization efforts. The temporary tax freeze would be tailored to apply only to smaller municipalities that are unable to use economic development tax incentives available to larger cities.

TDA's local revitalization programs are aimed at improving infrastructure such as roads, sidewalks, and drainage systems in the downtown centers of smaller cities to boost economic development and make them more attractive tourist destinations. However, private owners often are reluctant to renovate downtown buildings in order to avoid higher property taxes when their property value increases.

Prop. 5 would allow the Legislature to enact a law allowing cities with fewer than 10,000 residents to ask their voters to permit them to reach an agreement with these property owners that would freeze their property taxes for five years in exchange for renovating downtown structures. The city would benefit from preservation of historic structures and enhanced economic development, and the property owner would benefit from increased revenues during the tax freeze period that would justify the renovation costs. With relatively few properties affected by the tax freeze, the fiscal impact is likely to be minor and would last only five years. If other local taxing authorities objected to authorizing the city to freeze taxes, they could seek to convince local voters to reject granting this authority.

Opponents say

Prop. 5 would allow the Legislature and smaller cities to grant certain property owners in and around downtown areas a double benefit – infrastructure improvements funded by state tax dollars through TDA's revitalization programs and a five-year property-tax freeze. Those who benefit from improvements that enhance the value of their property should have to pay their fair share of taxes on that increased value. Any tax break shifts the tax burden to other taxpayers, and this shift can be more pronounced in smaller communities where the burden is spread among fewer taxpayers. Property owners who may have been planning to renovate their property anyway would be encouraged to hold out for a five-year tax freeze incentive that would be unnecessary. Also, any property tax-freeze agreement reached between the owner and the city also would apply to the school district, the county, and other local taxing authorities that would have no say about losing this tax revenue.

Proposition 6: Property tax exemption for a personal vehicle used for business activities

Prop. 6 would authorize the Legislature to allow an individual to exempt from ad valorem taxation one motor vehicle that was used in the individual's occupation and also used for personal activities.

Supporters say

Prop. 6 would eliminate the requirement that an individual pay property taxes on a personal vehicle used for business purposes. Many independent entrepreneurs such as realtors, farmers, salespersons, and other small-business people use a personal vehicle in the execution of their professional duties. Because they are unable to receive a exemption for personal use, individuals are taxed on the vehicle's entire value. A recent attorney general's opinion questioned an earlier attempt by the Legislature to make this change by statute, and a constitutional amendment would clarify legislative authority and ensure that a personal vehicle used for businesses purposes was not taxed

Prop. 6 would limit the exemption to one vehicle per person, so that an individual could not benefit from the exemption of an entire fleet of vehicles.

Opponents say

Vehicles exempted under this proposed amendment should be taxable and treated as any other personal property that generates income. The Legislature traditionally has taxed property associated with the production of income, and Prop. 6 would weaken this longstanding policy.

Other opponents say

The limitation that an individual could exempt only one vehicle used for both personal and professional purposes would be too strict. Many individuals have two or three vehicles that they use for both purposes. Under Prop. 6, a person who owned more than one personal vehicle used for professional purposes still could be taxed on those additional vehicles.

Proposition 7: Selling property acquired through eminent domain to former owner at original price

Prop. 7 would authorize governmental entities to sell land taken through eminent domain back to the former owner, the owner's heirs, or other successors, at the price the entity paid at the time of acquisition if:

- the public use for which the property was acquired had been canceled;
- no actual progress was made toward the public use during a prescribed period of time; or
- the property was unnecessary for the public use.

Supporters say

Prop. 7 would allow the Legislature to enact laws that would help ensure the fair treatment of landowners whose property was taken through eminent domain but not used. These property owners should be able to repurchase property at the price they were paid for it, but current constitutional and statutory restrictions prohibit this type of transaction and require that land sold back to original property owners be sold for current fair market value.

The proposed amendment would allow the Legislature to remedy situations that occur when land was taken through eminent domain, never used, and the original owner could not afford to repurchase the land because it had appreciated in value or the original owner was not given the opportunity to buy it back. Allowing property owners to reclaim their land along with equity that accrued should not be viewed as "double recovery," but as a kind of damage payment for a taking that was not put to public use.

Prop. 7 is permissive and would allow, but not require, governmental entities to sell unused property back to the original owner at the acquisition price. It would allow the Legislature in the future to close a loophole in the law so that repurchases at the original price also could be authorized or required if no progress was made on a project or property was unnecessary for a public use. Entities using eminent domain responsibly by taking only land necessary for specific projects that are implemented in a reasonable time would not be affected by this change.

Opponents say

Property owners who were fairly compensated when their property was taken through eminent domain should not be allowed "double recovery" by repurchasing property at less than fair market value. The current constitutional restrictions on the Legislature's granting public money to private individuals were designed to protect the taxpayers from governmental entities giving away what belongs to the public, and allowing property owners to reap profit from appreciation in a property's value would violate this principle. Under current eminent domain requirements, these owners would have been fairly and equitably compensated at the time of the taking, and they are not owed anything else. A former owner who repurchased property at the original acquisition price would obtain equity from appreciation of the value of the property without having paid property taxes, maintenance expenses, and other costs normally incurred as part of property ownership.

Proposition 8: Revisions to home equity loan provisions

Prop. 8 would amend constitutional provisions regarding home equity loans. It would:

- specify that the 12-day waiting period for loan closing could begin on the date an oral loan application was submitted;
- require that any designation of homestead property for agricultural use be determined at the time of closing;
- prohibit the use of a preprinted check unsolicited by the borrower to obtain an advance under a home equity line of credit;
- require that blanks relating only to substantive terms of the agreement be completed by the borrower before receiving the loan;
- require that the borrower receive a copy of the final loan application and all associated documents at least one business day before the closing date; and
- allow the borrower to secure a second home equity loan within one year on a homestead located within an officially declared disaster area.

Supporters say

Prop. 8 would make several important clarifications to home equity lending practices while increasing consumer protection. By requiring that a homeowner receive a copy of the final loan application and other related documents at closing, Prop. 8 would help ensure that the homeowner understood the loan terms and that the loan application did not contain misinformation. It also would continue to protect the borrower from signing an instrument in which important terms were unspecified while removing the administrative burden on the lender to label all nonsubstantive blanks as “not applicable.”

Recognizing the financial ramifications of hurricanes Rita and Katrina, Prop. 8 would allow homeowners in official disaster areas to obtain a subsequent loan on their homesteads in less than the current one-year waiting period. It also would protect homeowners against unwanted solicitations by lenders to use preprinted checks, which can lead to identity theft when checks that arrive by mail are stolen from mailboxes of borrowers who do not expect to receive them.

Prop. 8 would require that the designation of property for agricultural use, for which home equity loans are prohibited, be determined at the date of closing on the loan. This would prevent any subsequent redesignation of the property as agricultural from being used to shelter it from foreclosure if the borrower defaulted on the loan. Also, while Prop. 8 would not exclude oral applications from lending practices, it would require that the borrower receive a written copy prior to closing so that the borrower could confirm the accuracy of the information included in the loan application.

Opponents say

Prop. 8 should disallow the use of oral applications because only written and electronic applications adequately protect against mortgage fraud by allowing the borrower to confirm the information that was used as the basis of the home equity loan determination when the application was submitted. Providing a written copy of a loan application only a day before closing would give lenders too much flexibility to make mistakes or perpetrate fraud, because borrowers would be less likely to want to correct a mistake if it could delay closing.

Proposition 9: Exempting residence homesteads of totally disabled veterans from property taxation

Prop. 9 would authorize the Legislature to exempt from ad valorem taxation all or part of the market value of the residence homestead of a veteran certified by the federal Veterans Administration (VA) as 100 percent disabled as a result of military service.

Prop. 9 also would authorize the Legislature to amend the property tax exemption for disabled veterans now provided for in the Texas Constitution by changing the formula used to calculate the value of the property tax exemption for disabled veterans, which is based upon a veteran's disability rating as determined by the VA. Currently, the threshold for determining a disabled veteran's tax exemption is "rounded down" for a veteran who has a disability classification that falls on the cusp of a greater exemption category. For example, the bottom range for a veteran to be granted a property tax exemption valued up to \$7,500 is *more than* 30 percent disabled, which results in a veteran with a disability rating of 30 percent receiving a lower exemption of \$5,000. Under Prop. 9, the threshold would be "rounded up," meaning that a veteran who had a disability classification that fell on the cusp of a greater exemption category could receive the larger tax exemption. In the example, the veteran with *at least* a 30 percent disability classification would receive a \$7,500 exemption.

Supporters say

Prop. 9 would align the state's disabled veteran property tax exemption with the procedures used by the VA in calculating a veteran's disability rating to ensure the veteran received the exemption to which he or she was entitled. It also would allow veterans classified as totally disabled a full exemption from property taxes on their residence homesteads. Both changes would provide a token of gratitude from the state of Texas to those who have fought to defend our freedom.

The revenue loss to local governments from the exemption change would be relatively slight, but the benefit to many disabled veterans, especially those on fixed or limited incomes, could be significant.

Opponents say

Restructuring the disabled veterans property tax exemption to give more people larger tax breaks would cost local governments, including school districts, cities, counties, and community college districts, leaving other taxpayers to make up the loss. This revenue reduction could be exacerbated by an influx of new disabled veterans returning from Iraq and Afghanistan, where comparatively low fatality rates due to medical advances tragically are offset by larger numbers of military personnel who come home with permanent debilitating injuries. Also, totally disabled veterans already are eligible for a school property tax freeze and a local-option tax freeze by other taxing units.

Proposition 10: Deleting constitutional references to county office of inspector of hides and animals

Prop. 10 would remove the office of inspector of hides and animals from Texas Constitution, Art. 16, secs. 64 and 65(a), which specify certain conditions of service for county officials.

Supporters say

Prop. 10 would remove from the Texas Constitution out-of-date references concerning an office that no longer serves a purpose in Texas. The county office of inspector of hides and animals was established in 1871 to aid in the prevention of cattle theft by thoroughly inspecting the brands on hides and animals shipped out of the county. The Legislature long has exempted counties from electing inspectors as the need for the office continued to shrink, and today the office has few, if any, remaining duties.

The 78th Legislature in 2003 removed from the Agriculture Code the remaining powers and duties of the office of inspector of hides and animals, but the office still is mentioned in the Constitution, and candidates occasionally seek election to the position. While the Legislature also should remove all of the remaining statutory provisions mentioning this office, Prop. 10 would delete archaic references to this office from the Constitution.

Opponents say

While the ballot language for Prop. 10 says that the proposed amendment would abolish the constitutional authority for the office of inspector of hides and animals, it only would remove certain constitutional references to this obsolete office. To actually abolish the office and prevent candidates from filing for election to the post, the Legislature also would have to delete all remaining statutory references to the office, which it failed to do last session.

Proposition 11: Requiring legislators to cast record votes on final passage

Prop. 11 would amend the Texas Constitution to require that a vote taken in either house of the Legislature be by record vote if it were on final passage of a bill, a resolution proposing or ratifying a constitutional amendment, or any other resolution, other than a resolution of a purely ceremonial or honorary nature. A vote on final passage would mean a vote on:

- third reading;
- second reading, if the applicable house suspended or otherwise dispensed with the requirement for three readings;
- whether to concur in the amendments of the other house; or
- whether to adopt a conference committee report.

Each member's vote would have to be recorded in the appropriate journal and be made accessible to the public on the Internet for at least two years. Either house by rule could make an exception for bills applying to only one district or political subdivision.

Supporters say

Prop. 11 would require legislators to be accountable for their votes. Texas is one of only 10 states that does not require record votes on final passage of legislation. Forty other states require this, and their legislatures have not ground to a halt. Although the House Rules currently require final votes to be recorded, the requirement should be written in the Constitution because the rules can be changed each session.

Prop. 11 appropriately would require record votes on third reading or final passage because the vote on final passage puts the bill into effect. For votes at earlier stages of the legislative process, such as on second reading or amendments, an inflexible requirement for record votes is unnecessary and could slow down the legislative process during sessions when time is limited. Any House member or any three members of the Senate can require a record vote on any matter, so any significant vote at any stage of the process is likely to be recorded.

Opponents say

Prop. 11 would be largely symbolic and is not necessary because both the House and the Senate already require these votes to be recorded. Legislators need the flexibility to determine how much time should be devoted to counting and recording votes during the brief biennial sessions. The House Rules require record votes on third reading and final passage, and any member can ask for a record vote on any measure or amendment at any time. The Senate also records all votes on final passage, and any three senators can request a record vote on any matter.

Other opponents say

Prop. 11 also should require record votes on second reading, which is the most important stage in the legislative process and where most of the substantive debate takes place. Votes cast during the second reading of a bill carry significant importance because amendments can be adopted at this stage with a simple majority, rather than the two-thirds vote required to amend a bill on third reading. The ability to view record votes on second reading would provide true transparency and allow the public to determine how their legislators voted on a bill prior to final passage.

Proposition 12: Authorizing \$5 billion in general obligation bonds for highway improvements

Prop. 12 would allow the Legislature to authorize the Texas Transportation Commission to issue up to \$5 billion in general obligation bonds for highway improvement projects.

Supporters say

Prop. 12 would help the state finance badly needed highway infrastructure to meet its transportation and development needs. The state has a funding gap between transportation needs and available funding of at least \$77 billion. While toll roads increasingly have been used as an alternative to finance highway construction, this funding source is limited. For example, the Legislature recently enacted a two-year moratorium preventing the state from entering an agreement with private firms to build toll roads and receive up-front payments that could be used for other transportation projects.

The Texas Department of Transportation has been moving in a new direction since 2001, when voters approved a constitutional amendment to modify the state's "pay-as-you-go" policy toward highway improvements and allow transportation officials to borrow money to construct new roads. Although the state has dedicated transportation funding sources, including motor fuel taxes and vehicle registration fees, bonds supported by general revenue likely would have a lower interest rate because the revenue stream is more consistent than that of other revenue sources, including the State Highway Fund (Fund 6). Other states and local governments use bonding authority backed by general funds for transportation projects under the rationale that it is appropriate that infrastructure projects built to last for the long term be financed with long-term borrowing through the issuance of general obligation bonds.

Opponents say

Long-term borrowing to pay for state highway improvements through the issuance of state general obligation bonds would require the state to spend money it cannot afford to cover the cost of debt service. Borrowing would increase the state's costs as a result of foregone interest earned on cash balances and interest charges for new borrowing. Texas has a longstanding policy of funding transportation projects solely through dedicated funds and minimizing obligations of general revenue for debt service. Borrowing money for construction increases costs and passes them on to future taxpayers and legislatures. Texas should continue to pay for the amount of highway construction it can afford, using funds dedicated for this purpose such as those in Fund 6, rather than encumbering scant resources that should be devoted to other purposes, such as education and children's health care.

Other opponents say

Rather than using strained resources to incur more debt, the state should put more money into Fund 6 by raising motor fuel tax rates, vehicle registration fees, or both, or by dedicating other revenue streams to Fund 6, such as motor-vehicle sales taxes or vehicle inspection fees.

Proposition 13: Allowing judges to deny bail in certain cases involving family violence

Prop. 13 would expand the circumstances under which judges can deny bail to include two types of situations involving family violence. In certain situations, it would authorize a judge to deny bail to a person who was accused of *any* offense involving family violence, not just felonies as allowed under current law. The person also would have to have been released on bail on the misdemeanor family violence charges and have had his or her bond revoked or forfeited for violating a condition of that bond related to the safety of the victim or the community. Prop. 13 also would allow the denial of bail if a court determined that the person had violated certain types of protective orders related to family violence. The standard for deciding whether a person had violated a condition of release on a bond or a protective order would be by a preponderance of the evidence.

Supporters say

Prop. 13 would give judges discretion to deny bail in two narrowly tailored, justifiable circumstances relating to family violence. Victims of family violence, who often are extremely vulnerable, deserve these protections because family violence frequently escalates and can turn deadly and because existing enforcement measures often do not always work to protect them. The Texas Constitution long has recognized that there are exceptions to the requirement that bail generally should be made available to criminal defendants, and the proposed amendment would be in line with current exceptions.

While current law authorizes judges to deny bail to a person accused of a felony whose previous bond on that same charge has been revoked for violating a condition of the bond related to the safety of the victim or the community, not all family violence crimes are felonies. Prop. 13 would expand current law to include all misdemeanor family violence offenses among those that can result in the denial of bail to a person accused of violating certain conditions of release on bond.

The proposed amendment would address another shortcoming in current law, which does not allow the denial of bail for someone arrested for violating a protective order relating to family violence. Violating protective orders in family violence cases currently is a crime, but since it is only a misdemeanor, it does not fit the current circumstances that allow denial of bail.

Opponents say

Prop. 13 would erode the basic tenet that bail should not be denied to criminal defendants except in the most limited circumstances. The purpose of requiring bail is to ensure a defendant's appearance at a subsequent hearing or trial, not to punish someone for an alleged offense or to deter hypothetical, future crimes. Giving judges discretion to deny bail in the broad circumstances described by the proposed amendment could violate the longstanding legal principle that bail should not be used as an instrument of oppression and could lead to a further expansion of the circumstances or crimes in which bail can be denied.

Prop. 13 would continue the trend in Texas of creating legislation specific to family violence. While abhorrent, family violence is a subcategory of violence against a person, which is dealt with adequately in the Penal Code.

Proposition 14: Permitting judges reaching mandatory retirement age to finish their terms

Prop. 14 would allow trial or appellate court judges who reached the constitutionally mandated retirement age of 75 to finish out their terms. A judge elected to serve or fill the remainder of a six-year term who reached the age of 75 during the first four years of the term would have to vacate the office by December 31 of the fourth year of the term.

Supporters say

Prop. 14 would honor the intent of Texas voters by allowing judges to serve out their elected terms. A judge's effectiveness and ability to keep abreast of new developments in the law is not a function of age. If voters decide that a judge's experience and abilities merit election or re-election, then a judge who will reach retirement age should be allowed to serve out the full term. Arbitrarily forcing judges to retire mid-term when they reach a certain age creates disruption in the efficient disposition of cases. Cases must be placed on hold while a temporary judge is selected and may again be delayed if a new elected judge takes over from the appointed replacement.

Mandatory retirement is not the only mechanism available to protect the courts from incompetent judges. The State Commission on Judicial Conduct exists to investigate reports of impropriety and incompetence and may remove judges who were unfit to serve.

Prop. 14 would be a good compromise between those who favor mandatory retirement and those who believe it is arbitrary and unnecessary. The proposed amendment would not eliminate mandatory retirement for judges, but simply would extend the service of these judges until their term ended.

Opponents say

One reason for mandatory retirement is that aging judges can contribute to an increasingly ineffective judiciary and can be difficult to remove because of the protections of incumbency. Prop. 14 would erode the important policy goal of ensuring a vibrant and able judiciary. Allowing judges to serve out their terms past their 75th birthday would delay the entrance of new judges who were potentially more in tune with modern trends and developments in the law.

Other opponents say

Prop. 14 would not go far enough. The federal government and many states are abolishing mandatory retirement requirements altogether. With other protections in place to police professional quality, mandatory retirement increasingly represents an antiquated solution. Instead of allowing judges to finish their terms, Texas simply should allow the voters to decide who is fit to serve and abolish the mandatory judicial retirement.

Proposition 15: \$3 billion in general obligation bonds to fund cancer research

Prop. 15 would require the Legislature to establish the Cancer Prevention and Research Institute of Texas to support finding the causes of and cures for all types of cancer and authorize issuance of up to \$3 billion in general obligation bonds for this purpose. No more than \$300 million in bonds could be issued each year. Grant recipients would have to dedicate one-half of the funds for each grant request.

Should the proposed amendment be approved, enabling legislation would establish an oversight committee to govern the institute and a program committee to make grant recommendations. Not more than 5 percent of total grant awards could be used for facility construction and no more than 10 percent used for cancer prevention and control programs.

Supporters say

Prop. 15 would make Texas a global leader in research to find a cure for cancer, the number two killer of Texans. The state already has the infrastructure to support cancer research, and Prop. 15 would provide the funding commitment and direction to leverage the maximum effective use of existing resources. This commitment would accelerate landmark discoveries and translate them into practical applications to treat and prevent cancer. It not only would allow a giant leap toward finding a cure, but also would attract new biomedical businesses to Texas, enhancing economic development and creating new jobs.

The seed money provided by the state would be leveraged and enhanced by the requirement that grant recipients provide a funding match of half of any grant award. By taking the lead in a collaborative effort of both public and private entities by providing a dependable funding source for cancer research, the state government would facilitate a more focused and effective effort that would benefit all Texans afflicted with this disease. Allowing the Legislature to authorize issuance of up to \$300 million in state bonds each year would create greater flexibility to provide the funding needed for cancer research, and much of the cost of financing the bonds would be offset by the new jobs generated, royalties from new discoveries, and the decreased costs of treating cancer patients.

Opponents say

While cancer research is a worthy undertaking, private organizations rather than the state government should take the lead in medical research. Any government assistance for cancer research should be addressed at the national level rather than requiring Texas taxpayers to foot the bill for research that would benefit the entire country. A much larger federal funding commitment has not produced a cure, and the funding added by one state would not likely make a significant difference. The state should concentrate its limited resources on more immediate health priorities such as ensuring coverage for uninsured children.

Other opponents say

If the state wants to demonstrate its commitment to cancer research, it should fund these programs directly rather than having the option to borrow money and increase state debt by issuing state bonds. Funding cancer research directly would save up to \$1.6 billion in long-term financing costs, and royalties and other funding generated by the new institute could assist in paying for cancer research on a cash basis.

Proposition 16: Bonds for water and sewer services to economically distressed areas

Prop. 16 would amend the Texas Constitution to allow the Texas Water Development Board (TWDB) to issue up to \$250 million in general obligation bonds for the Economically Distressed Areas Program (EDAP). EDAP is a program that provides financial assistance in the form of grants and loans to bring water and wastewater services to colonias, which are unincorporated communities developed without basic infrastructure.

Supporters say

Prop. 16 would provide additional funding for the EDAP program, which has been successful in providing essential water and wastewater infrastructure to communities in need. Without additional funding, many residents of unincorporated and economically distressed areas will be forced to continue to live in communities lacking basic infrastructure that most Texans take for granted, threatening their health and safety.

EDAP employs safeguards that require any county or city applying to TWDB to enforce model subdivision rules before receiving assistance for a project under EDAP. These rules ensure that platting requirements are in place to prevent the proliferation of new colonias by unscrupulous developers. These standards have been successful in slowing the growth of these developments while extending vital public services to existing communities that are in need. This program is not confined to border communities but provides infrastructure assistance to qualifying communities statewide.

Opponents say

EDAP should not be expanded. Since EDAP was created in 1989, TWDB has received more than \$500 million in state and federal funds to provide assistance under the program, yet the problem has not gone away. In fact, continuing to extend water and sewer lines to unincorporated areas could prove counterproductive, since effectively it would encourage people to move into areas that are costly to serve. Unlike the state bonds authorized to finance water assistance loans to local communities, which are self-supporting revolving funds, these bonds would not be self-supporting, and the funds borrowed to finance this program would have to be repaid with state general revenue, adding to state debt.