



RESEARCH BRIEF

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Smart Election Date for Constitutional Amendments Would Save Money and Encourage Voter Participation

SUMMARY

Any proposed changes to the Louisiana Constitution this year should be placed before the voters on the Nov. 6 statewide ballot rather than the Dec. 1 ballot to save taxpayer money and to take advantage of high turnout to promote the greatest voter input.

The concern stems from a new Louisiana system for fall election dates beginning in 2012 and continuing in even-numbered years in the future. This system

creates a new context for decision-making about the election dates for constitutional amendments in years of presidential and congressional elections.

We have seen recently the costly result of the lone constitutional amendment on the Nov. 19, 2011, ballot, which

caused polls to be open that otherwise could have been closed. The unnecessary cost was \$735,000. While that situation may have been difficult to foresee (See “Odd-Numbered Years” on page 3), we can anticipate such circumstances in Louisiana’s fall election cycle in even-numbered years.

A conscientious and fiscally prudent approach to the placement of proposed amendments on election ballots could save the state potentially millions of dollars while also ensuring maximum voter participation on resolutions affecting the state’s legal foundation.

BACKGROUND

A constitution is a state’s fundamental law that contains the essential elements of governmental organization, the basic principles of governmental powers

and the enumeration of citizen rights. A constitution is meant to have permanence. Statutory law, on the other hand, provides the details of governmental operation and is subject to more frequent change by the Legislature as authorized by the state Constitution.

The Legislature has proposed 239 amendments since Louisiana’s 1974 Constitution went into effect. About 70 percent of them have passed.

To amend Louisiana’s constitution, at least a two-thirds majority of both the House and Senate must agree on a joint resolution proposing the change. The governor cannot veto proposals for constitutional amendments. To be ratified and become part of the Constitution, the proposals must be approved by a majority of voters on a statewide ballot. In some cases with special local impact, additional approval is needed by a majority vote in affected municipalities or parishes.

The state Constitution says a joint resolution for an amendment must specify a statewide election date. The secretary of state, who oversees elections, cannot assign or reassign an election date for a constitutional amendment. He must abide by the date stated in the resolution passed by the Legislature. After joint resolutions are passed by the Legislature and election dates for the constitutional amendments are set, the secretary of state has discretion to determine the order in which the proposed amendments will appear on a ballot.

When assigning dates for voting on a proposed amendment, the Legislature normally chooses from among the state’s fall election days for political officeholders. From the standpoint of cost savings and voter

The voting dates for amendments will be seen in a new light under the revised election cycle in even-numbered years.

participation, some election dates for amendments are more preferable than others. Because constitutional amendments require statewide voting, the best dates for them are when all precinct voting polls across the state already are expected to be open for the election of political offices. If amendments are assigned to an election day in which some parishes or precincts would not otherwise have to conduct elections, then the proposed amendments result in inconvenience to voters and unnecessary expenses to operate those polls and employ voting commissioners.

LOUISIANA'S OPEN PRIMARY

Louisiana uses an open primary system for elected offices. This method of election has been used for many years and will continue to be used for the foreseeable future.

In the open primary method, Louisiana's state and local elections begin with a primary in which any number of candidates from any party can enter. The two top vote-getters in the open primary then move to a decisive runoff election unless a candidate wins outright with more than half the vote in the primary.

Candidates often win elections outright in the open primary, meaning that a runoff in the race is unnecessary. Louisiana's seats for the U.S. House and Senate also are decided this way.

The Rarity of Runoffs

Runoffs for congressional seats are rare in Louisiana. Under the open primary system from 1982 to 2006, only 15 out of 96 U.S. House races went to a runoff. By this historical precedent, the chance that a congressional district will require a runoff is only 16 percent.

No U.S. House or Senate runoffs occurred in 1982, 1994, 1998 and 2000. In no election year did the number of House congressional runoffs reach more than three districts.

From 1982 to 2006, Louisiana held eight open primaries for U.S. Senate seats. Four of those went to a runoff. A runoff for a U.S. Senate seat would be significant because it would require a fully statewide election. The next Senate seat election in Louisiana will be in 2014.

ELECTIONS IN EVEN-NUMBERED YEARS

In every even-numbered year, national elections are held in early November for U.S. House seats. Presidential elections join that ballot every four years. U.S. Senate offices also are elected in even-numbered years, with terms of six years on a staggered timeline. In Louisiana, many judgeships, local offices and Public Service Commission seats also are decided in even years.

Until recently, Louisiana was in the practice of designating three fall voting dates in even-numbered years. The open primary for judgeships and other non-congressional seats took place on an election date in late September or early October. The runoffs for those races would occur on a November date, which coincided with the national election. The U.S. House and Senate races would hold an open primary on the November date and the runoff on a date in December. (The state temporarily used a three-phase party primary system in 2008 and 2010 for those federal offices.)

In the past the Legislature often placed constitutional amendment proposals on both the first and second of the three fall election dates. No amendments to the 1974 Constitution were ever placed on the third fall ballot date in December.

A NEW SYSTEM

Starting in 2012, Louisiana will move to a new system of dates for fall elections in even-numbered years. The former system of three fall election dates will be consolidated to two. All open primaries will occur in November, coinciding with the national election date, followed by a runoff date in December.

In 2012, the election dates are Nov. 6 and Dec. 1. Because it is a presidential election, the Nov. 6 ballot will require open voting polls for every precinct in the state. All U.S. House congressional districts will be up for election; an open primary will be conducted for each of those districts unless only a single candidate enters a race and therefore wins automatically. This open primary includes many judgeships and local seats.

The Dec. 1 ballot this year is less likely to require a fully statewide election. Based on historical election results, the majority of seats will be decided in the primary and no runoff will be necessary for those offices. Some precincts might have few contests or perhaps nothing to put on a runoff ballot.

The cost of holding elections, voter interest and convenience should be major considerations when deciding where to place constitutional amendment proposals. National election dates in November, particularly for presidential races, tend to encourage stronger voter participation. State officials should consider the potential negative consequences of placing constitutional amendments on the December ballot, which might not be a statewide election for political offices. Many political races are likely to be finished after the open primary.

OPTIONS AND RECOMMENDATIONS FOR FUTURE POLICY

This issue is neither the most alarming nor critical matter facing the state in 2012. But some forethought

about it would be beneficial. Lawmakers promoting changes to the Constitution likely would not want to be in the position of defending their ballot initiative against the criticism that it needlessly added costs for the taxpayers and took place on an election day with relatively low voter turnout.

The most obvious approach is for the Legislature simply to be conscientious and willing to make a coordinated effort, especially toward the end of the session, to prevent constitutional amendment proposals from straying onto the December election date. The Legislature's usual practice has been to assign constitutional amendment resolutions to the first open primary election date unless the sponsor of the resolution requests differently. That practice should continue and any requested changes should be carefully and openly scrutinized. The House Committee on Civil Law and Procedure, which normally acts as a second House panel of review of constitutional amendment resolutions, could assist in monitoring the specified election date. That duty could be assigned by House rule.

Odd-Numbered Years and the Costly 2011 Mistake

In Louisiana, the governor and other statewide elected offices along with the entire Legislature and some other seats are elected every four years following a cycle of odd-numbered years in 2003, 2007, 2011 and so on. An open primary in October is followed by a runoff in November.

In the other odd-numbered years, Louisiana normally avoids statewide elections and has not held such an off-year election for an amendment since 1993. Constitutional amendment resolutions passed by the Legislature in those years usually are placed before voters the following year.

An unusual event occurred in 2011 when no statewide elected seats required a runoff. Five constitutional amendment proposals appeared on the open primary ballot of Oct. 22, when voter turnout was 37.4 percent. All the statewide elected offices were either uncontested or decided by the primary and so none of those contests appeared on the ballot for Nov. 19. Also, there was no national election on Nov. 19. Some legislative and local offices were the only races subject to the runoff.

A single proposal for a constitutional amendment was the only statewide item in the Nov. 19, 2011, election, causing 605 precincts and three parishes to open their polls for no other reason than to list the amendment. The unnecessary cost was \$735,000. Voter turnout was only 22.5 percent statewide and less than 10 percent in those three parishes. Had the Legislature placed the lone amendment with the others on the Oct. 22 ballot, a considerable amount of money and trouble would have been saved.

In the future, a runoff in a competitive governor's race could turn into a major statewide election with high turnout, and so we cannot assume the November date in odd-numbered years will always be an unfavorable one for constitutional amendments. But the lesson from this 2011 event is that the primary date is the more prudent choice for amendments.

Lawmakers could request a fiscal note for joint resolutions designating a December election date. Fiscal notes are prepared by the Legislative Fiscal Office to determine a bill's financial impact on the state. The cost of a December election date would be difficult to forecast conclusively; however, the request for a fiscal note could draw needed attention to the issue.

A couple of complicating factors should be taken into consideration. It is not unusual for as many as 10 to 15 proposed amendments to appear on a single ballot, and on one occasion a ballot had 18. An argument can be made that voters might have difficulty educating themselves about often-complex amendment proposals if a large number of them are assigned to a single ballot. Of course the best answer to this potential problem is to keep constitutional amendments to a minimum.

Another consideration is a circumstance that could arise in the event a large number of proposed amendments are assigned to a single ballot. Those proposed amendments, along with potential local referendums and tax proposals, could take up more space than is available on the ballot sheets of most electronic voting machines currently in use in Louisiana. Although this scenario is unlikely, it is possible under these circumstances that some amendment proposals or local ballot items would need to spill over into another election date simply because they all would not fit. Or, perhaps, an alternative to those voting machines might be used. The Legislature could consider passing rules that regulate steps to take under this scenario. Those rules would need to conform to the constitutional requirement that resolutions specify an election date. Members of the staff of the House and Senate and the Secretary of State's Office have discussed these issues.

A more ambitious solution for these situations would be to let the secretary of state under some circumstances assign election dates for constitutional amendments. This option would face some serious challenges and could be in conflict with the Constitution itself. While this option might appear practical, the Legislature would have a strong and legitimate argument that it should not cede a piece of its authority to a member of the executive branch. Other alter-

natives might be considered that could provide for a structured delegation of authority to the secretary of state to address this potential problem.

In summary, the placement of constitutional amendment proposals will be considered in a new light under the revised election cycle for even-numbered years in Louisiana. Statewide or nearly statewide elections for political offices could occur in December, but the November date provides the more likely scenario for a full statewide election.

Some additional planning and forethought by state officials could save taxpayer dollars, encourage voter participation and avoid aggravation at the polls.

Possible 2012 Election Date Change

State officials might change the December election date this year.

Louisiana currently is scheduled to hold two fall elections in 2012. The first is Nov. 6, which is the date of the presidential election and will serve as the open primary for congressional and local elections in Louisiana. The second election is Dec. 1, which will serve as the runoff for races that are not already decided.

The secretary of state is seeking to move the Dec. 1 election to Dec. 8. This change will be proposed during the spring legislative session. The comments in this research brief about the Dec. 1 election also would apply to an election on Dec. 8.

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Voting on Louisiana Proposed Constitutional Amendments 1974-2011

Table 1

Since Louisiana put its current Constitution into effect in 1974, the Legislature has proposed 239 amendments of which 167 have passed in statewide elections. Normally the Legislature has scheduled amendment proposals on the fall ballots for political offices. Many of those proposals have been placed appropriately on the same date as the national elections in even-numbered years.

Amendments	Proposed	Approved	Average Percent of Registrants Voting
1974 Constitution (Total)	239	167	----
7-Nov-78	1	1	29.9
27-Oct-79	3	3	37.5
4-Nov-80	4	4	55.7
11-Sep-82	8	4	24.9
22-Oct-83	3	3	44.2
6-Nov-84	5	0	53.7
27-Sep-86	7	2	39.3
21-Nov-87	5	5	32.3
1-Oct-88	1	0	27.5
29-Apr-89	1	0	46.8
7-Oct-89	13	5	28.3
6-Oct-90	15	14	46.9
19-Oct-91	8	5	47.1
3-Oct-92	5	2	29.4
3-Nov-92	7	0	53.7
16-Oct-93	6	6	18.1
1-Oct-94	4	4	30.9
21-Oct-95	15	13	46.9
18-Nov-95	1	1	53.2
21-Sep-96	2	2	36.1
5-Nov-96	3	3	54.4
3-Oct-98	18	14	19.6
3-Nov-98	2	2	26.4
23-Oct-99	10	5	31.9
20-Nov-99	6	6	23.1
7-Nov-00	4	0	51
5-Nov-02	12	6	35.7
4-Oct-03	15	11	38.1
18-Sep-04	1	1	27.8
2-Nov-04	4	4	50.6
30-Sep-06	13	13	22.3
7-Nov-06	8	8	28.7
20-Oct-07	4	3	46.6
4-Nov-08	7	3	53.5
2-Oct-10	2	2	23.4
2-Nov-10	10	8	44.2
22-Oct-11	5	3	37.4
19-Nov-11	1	1	22.5