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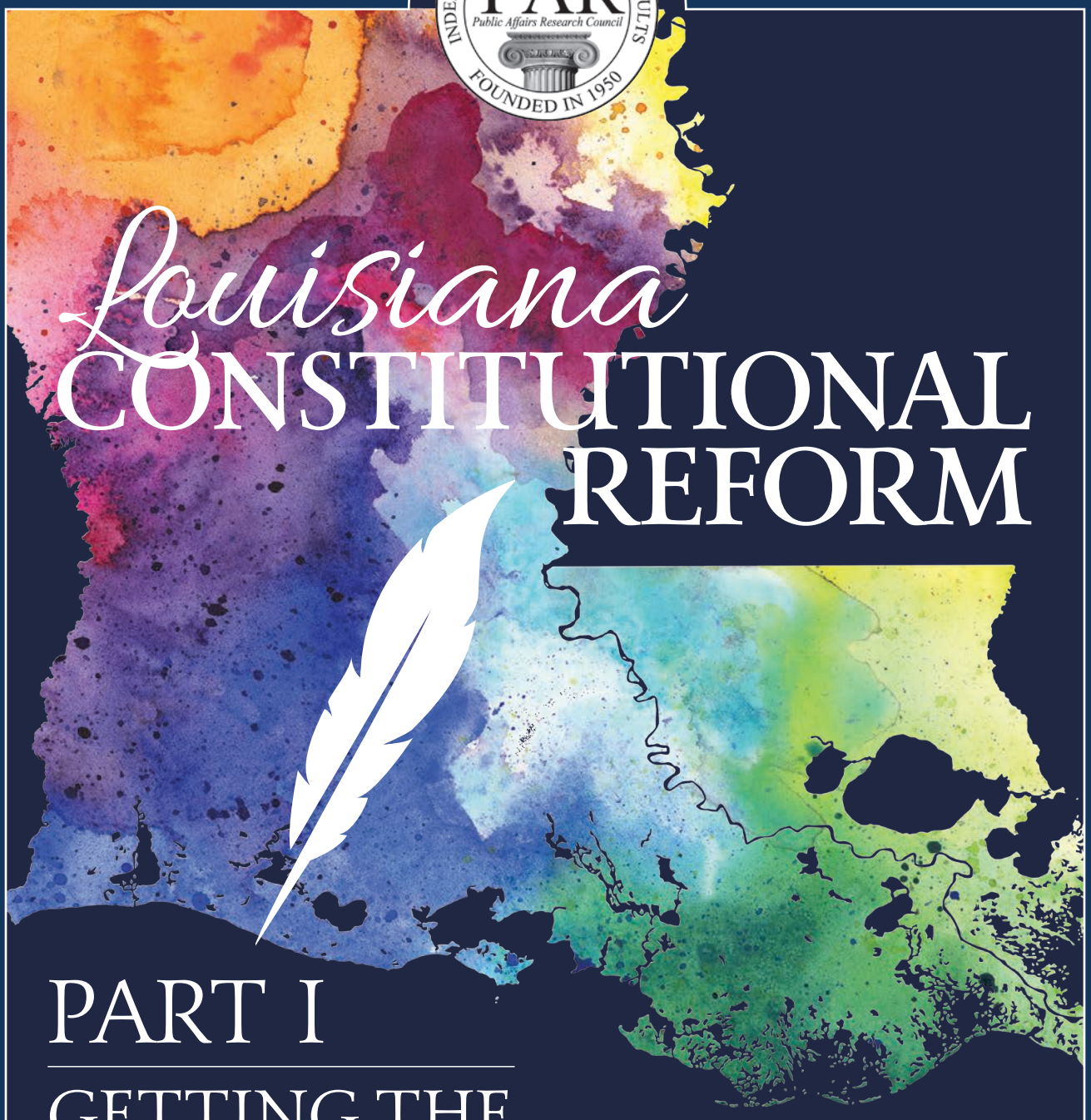
Louisiana CONSTITUTIONAL REFORM



PART I

GETTING THE FOUNDATION RIGHT

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Louisiana CONSTITUTIONAL REFORM

PART I
GETTING THE FOUNDATION RIGHT

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The Public Affairs Research Council (PAR) is a private, nonprofit, non-partisan public policy research organization focused on pointing the way toward a more efficient, effective, transparent and accountable Louisiana government. PAR was founded in 1950 and is a 501(c)(3) tax-exempt organization supported by PAR members, individual and corporate donors, and foundational grants.

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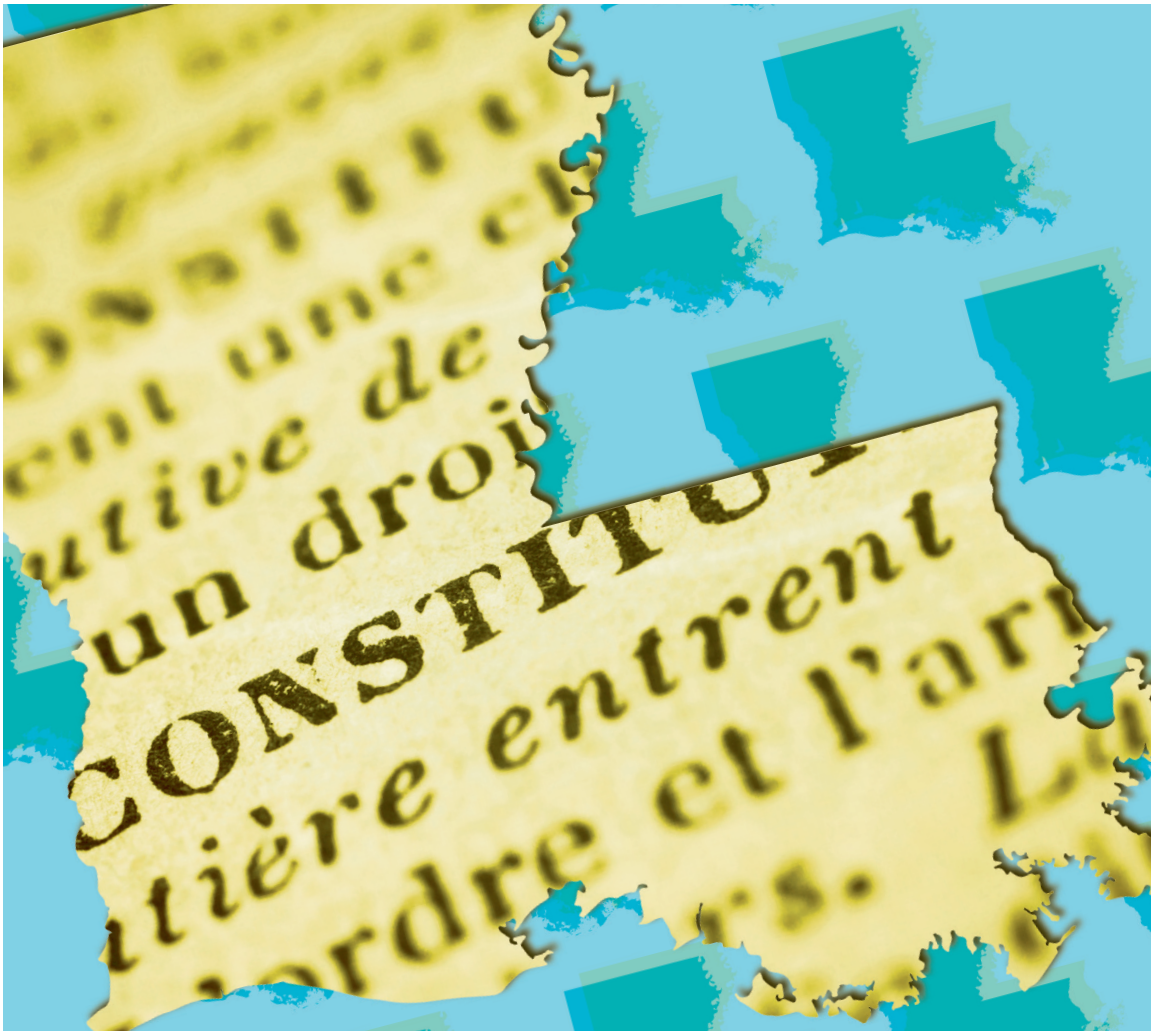


Constitutional Reform Part I: Getting the Foundation Right

Reform requires a review of principles before tackling the details

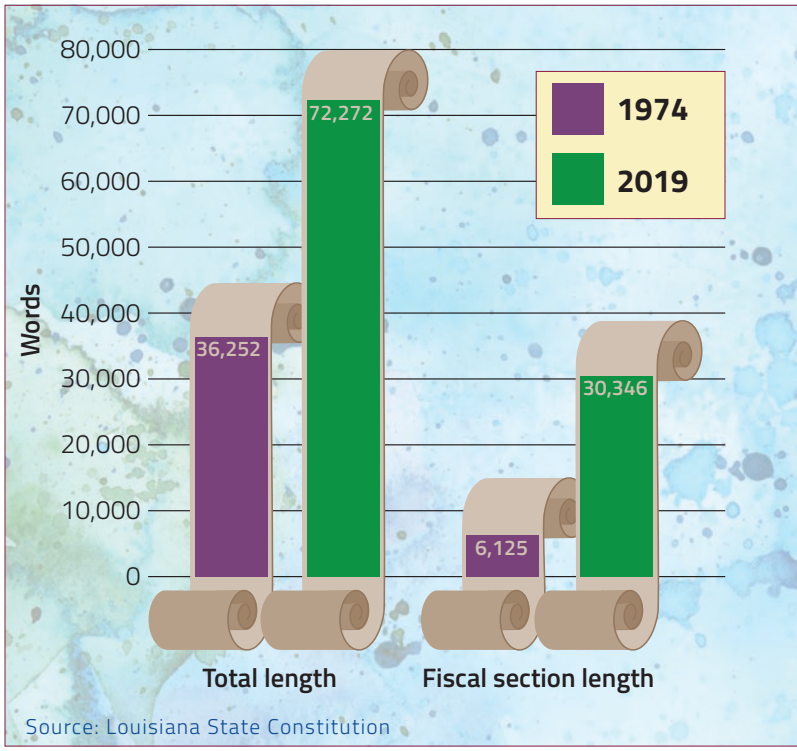
The Public Affairs Research Council of Louisiana (PAR) has embarked on a two-part project to provide guidance to those seeking to reform the Louisiana Constitution. This first part includes a discussion of constitutional principles, including the purpose and function of a constitution, as well as more specific subject-matter principles regarding what an ideal constitution should contain. The principles developed in Part I will set the stage for the in-depth analysis that will come later in Part II.

Throughout its history, PAR has offered research, commentary and recommendations to fuel public discourse on important policy matters. As part of that work, PAR regularly provides guidance and analysis of proposed changes to Louisiana laws, including changes to the Constitution. Since the 1974 Constitution was adopted, PAR has published an objective, independent review and analysis of every proposed constitutional amendment. PAR's amendment guides have not recommended how to vote, but have helped voters develop informed opinions about the merits of each proposed change.

Interest in a constitutional convention has been growing. Historically, bills calling for a convention have been rare, but over the past three years, there has been a significant uptick in the number of such bills from a diverse group of legislators.

While legislators are focused on the mechanics of how a convention should work or how the delegates should be chosen, there has been too little discussion of substantive matters, e.g., problems in the current constitution and what needs to be changed.

Length of Louisiana's Constitution



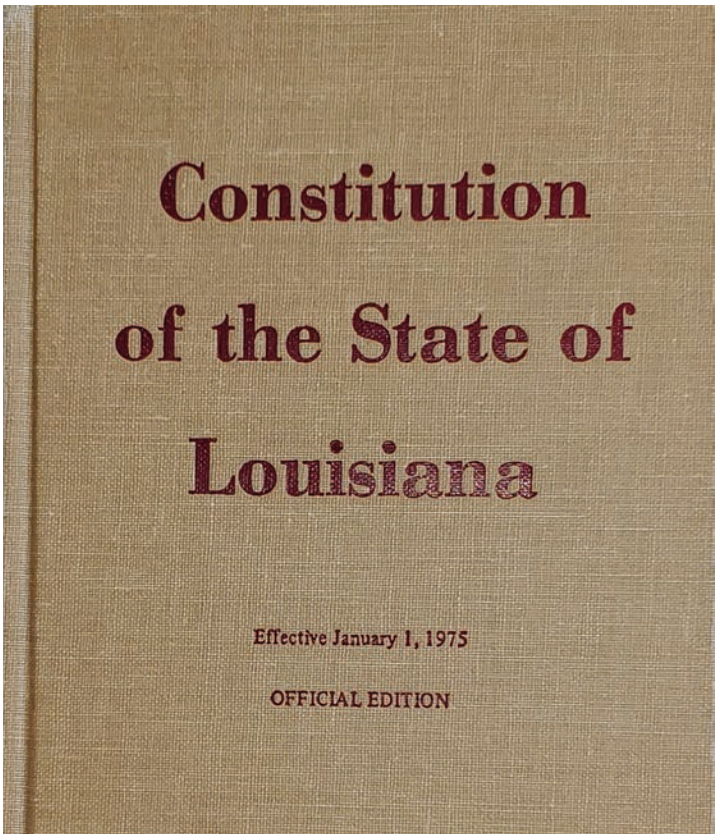
Source: Louisiana State Constitution

During the 2018 Regular Session, Rep. Neil Abramson (D-New Orleans) introduced House Bill 500 calling for a limited constitutional convention in 2020 with authority to address only fiscal matters. Senator Troy Carter (D-New Orleans) offered Senate Bill 218 calling for a limited constitutional convention in 2021. Despite significant behind-the-scenes enthusiasm, there was scant committee testimony from non-legislators or stakeholders for either bill. Ultimately, neither bill garnered the necessary ⅔ vote of each legislative chamber to move the proposal forward.

Following the 2018 legislative sessions, PAR recognized that momentum for a constitutional revision was likely to continue. A significant rewrite of the Constitution, especially to provide greater fiscal flexibility, will be a major issue for the 2019 gubernatorial race as well as for the House and Senate races that will usher in one of the largest legislative turnovers in our state's history. Although a rewrite of our Constitution could help our state and local governments become more fiscally sound, there has been insufficient discussion about intended goals and outcomes. To be successful, reformers must harness the energy for a revamp to first develop thoughtful shared values, goals, and solutions that will guide the leaders of a future revision, whether brought about through a conven-tion or through piecemeal amendments presented to voters.

To fill this gap in the dialogue, in mid-2018, PAR launched the Louisiana Constitution Project to provide sound principles to guide the drafting of a new constitution and to identify recommended changes and innovative options in clearly defined terms. PAR convened a 14-member Constitutional Advisory Council consisting of individuals with backgrounds in law, policy, state finances, economic develop-ment and related issues. Over the past year, the Council has advised the PAR research team in developing principles and specific proposals for revision of the Constitution. Topics such as how delegates should be selected and how the convention should operate procedurally are not within the scope of this PAR project. Instead, PAR is focused on the substantive potential outcome of a convention.

In addition to receiving guidance and input from the Advisory Council, PAR has sought stakeholder engagement to gather perspective from industry and member associations, local governments, subject-matter experts, current and former public officials and others regarding both the need for a constitutional revision as well as specific recommendations for how the Constitution should be revised. This stakeholder engagement will be ongoing throughout the course of the project.



A significant rewrite of the Constitution, especially to provide greater fiscal flexibility, will be a major issue for the 2019 gubernatorial race as well as for the House and Senate races that will usher in the largest legislative turnover in our state's history.

Foundational Principles

Purpose and Function of the Constitution

Some of the problems with the Louisiana Constitution stem from disagreement over what its purpose is.

Should the constitution be reserved only for fundamental provisions, or is there a need to constitutionalize details about the everyday operation of government? Is the primary objective of a constitution to enable the operation of government through broad grants of authority, or instead to prohibit or mandate certain types of legislative action? What is the role of a state constitution in dictating how local governments operate?

Without a common set of key principles to guide the development of a revised constitution, any attempt at reform is over before it begins. Scholars and researchers who study constitutions generally agree on several principles that should govern the construction and purpose of state constitutions.

Having been amended only 27 times since its adoption in 1789, the U.S. Constitution satisfies most of the above-outlined criteria for a sound constitutional document. It is a concise, 7,500-word document that outlines broad, basic principles of authority and governance. And while the U.S. Government of the 21st Century is far different than that of the 1790s, the document is broad and flexible enough to remain both relevant and effective.

By contrast, the Louisiana Constitution has become an unwieldy and restrictive document that governs through narrow rules and restrictions rather than broad grants of authority. Since it was adopted by a constitutional convention and ratified by voters in 1974, the current Louisiana Constitution has been amended 195 times. Ninety-nine of those amendments have been to Article VII, which covers revenue

Foundational Principles

- **A state constitution should be a foundational document that defines basic rights guaranteed to a state's citizens and outlines the powers and responsibilities granted to the state's branches of government.**
- **A state constitution should be brief and limited to general principles that provide a basic framework for the scope and operation of government. Policy details should be defined in statutory law.**
- **A state constitution should grant authority to specific institutions but decisions regarding how those agencies and institutions exercise that authority should be the role of elected or appointed officials operating within the law.**
- **A state constitution should provide for orderly change but should not be so narrowly written as to require continual revisions to meet contemporary needs.**

and finance matters, including the state budget process and taxation. Each change has occurred separately through the piecemeal amendment process provided for in Article XIII, which authorizes an amendment if approved by ⅔ of each legislative chamber and a majority of voters in a statewide election.

Louisiana's Constitution is three times the length of the average state constitution (26,000 words) and nearly 10 times longer than the U.S. Constitution. At over 72,000 words, our constitution now ranks as the fourth longest constitution in the United States, trailing only Alabama (approx. 376,000 words), Texas (approx. 87,000 words) and Oklahoma (approx. 82,000 words).

More important than the length of our constitution is its effectiveness. As the number of constitutional funds and detailed restrictions in the Louisiana Constitution has increased, so too has the inability of our state and lawmakers to address current and pressing fiscal concerns. Nearly two-thirds of all state general fund dollars are already committed to specific priorities and programs as a result of mandates and restrictions contained in our constitution, leaving the governor and Legislature little flexibility to deploy funds on other pressing priorities. It is not surprising that over the last four years, the Legislature has held seven special sessions solely to craft a workable state budget.

Louisiana's Constitutions

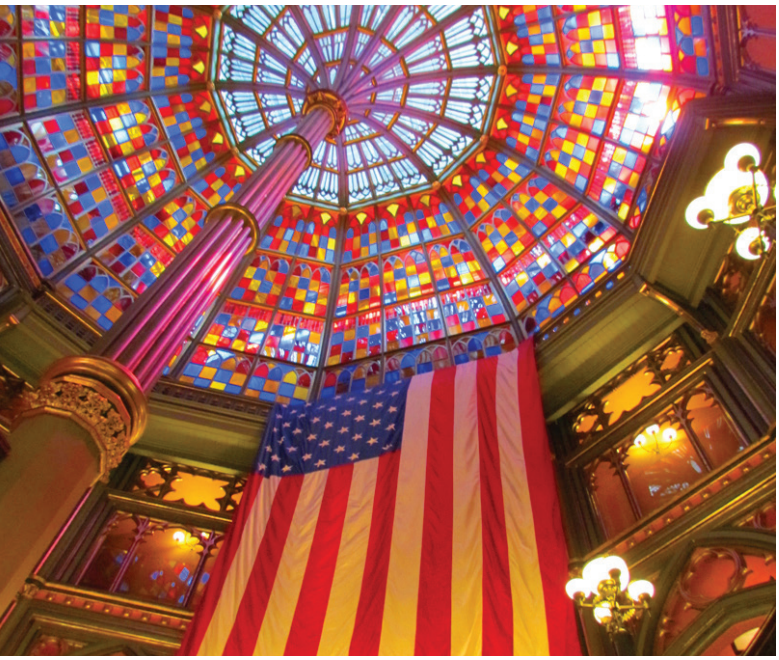
Original Word Count and Number of Amendments Passed

	1921 Constitution	1974 Constitution
Original Word Count	48,378 (unofficial)	36,252
Final/Current Word Count	255,500	72,452
Number of Amendments (to date)	536	195
Key Facts	1970 – Voters rejected 53 amendment proposals	36,200 words added since Jan. 1975 24,221 words added to Art. VII alone

Constitutional Principles

Reforming Louisiana's Constitution

Following Louisiana's 1921 Constitutional Convention, constitutional researcher Dr. Alden Powell lamented that "the Legislature apparently had so little understanding of the factors involved in drafting a constitution that it made no provision at all for the preparation of studies in constitutional problems for the guidance of the delegates." He went on to observe that the delegates "had little to rely upon save their own collective general knowledge and experience and suggestions and recommendations of the numerous lobbyists who roamed freely through the convention hall." Although the 1921 Constitution remained in place for 53 years, the document was amended an extraordinary number of times and ultimately grew into a 255,000-word document that necessitated another convention to revise and condense. PAR seeks to ensure that unlike the 1921 convention, delegates at a future constitutional convention are armed beforehand with vetted ideas and recommendations.



The principles for constitutional revision listed on page 6 are meant to serve as guideposts to help assist lawmakers or future convention delegates design and adopt sound changes to our constitution. The principles are intended to be consistent with the broader foundational principles outlined above.

Moving Forward

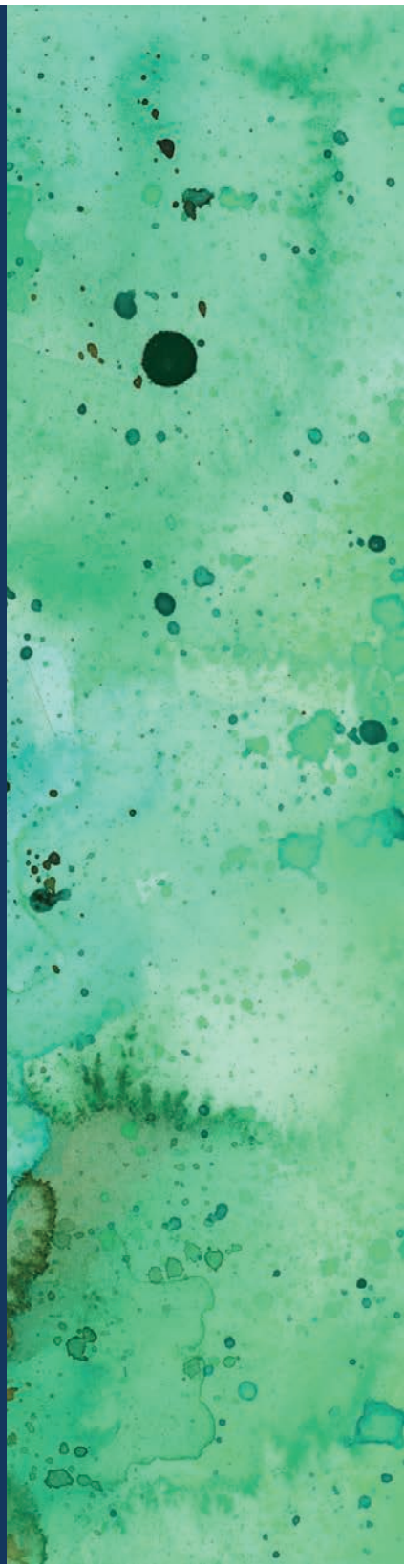
This principles document is designed to kick off, not complete, a robust dialogue about the goals and objectives of a major revision of the Louisiana Constitution. Whether such a revision occurs legislatively or through a convention, there is a pressing need for meaningful discussion about the limitations of our current constitution and the opportunities to create a more effective governing charter. This PAR document is not intended to answer every question or to provide a detailed recommendation for every section of Louisiana's Constitution. Rather, it is intended to serve as a starting point for the type of thoughtful discussion and dialogue that must occur for any constitutional rewrite to be successful.

In the upcoming months, PAR will release a more comprehensive publication that provides an in-depth analysis of each constitutional subject area that might need to be addressed through a rewrite of the constitution. That publication will serve as an educational resource. It also will go beyond basic principles and provide a more detailed overview of our current constitution's strengths and deficiencies as well as recommend changes to create a more flexible framework to govern our future state.

Getting Louisiana's Foundation Right

Constitutional Principles

- The Constitution should be understandable and accessible to the state's citizens.
- The Constitution should be limited to foundational matters such as those that
  - protect basic fundamental or natural rights of the state's citizens (e.g., free speech, due process, access to courts), **and**
  - are necessary to enable the basic operation of state government. These items may include such things as the structure of government and the general and specific grants of power to the branches of government (i.e., separation of powers).
- The Constitution should be a stable and static document that reflects long-term, enduring values of the state and its citizens. Policy provisions that reflect shifting attitudes or are responses to temporary external factors should generally be placed in statute.
- The Constitution should contain requirements and provisions that the state's officials and lawmakers are able to understand and implement through practical, transparent means.
- To the extent a particular subject-matter or issue is considered to be so fundamental and enduring that it warrants constitutional preservation, caution should still be exercised in including detailed policy preferences in the implementation language of the Constitution.
- Constitutional budget rules should be reserved for those matters that are essential to the normal operation of state government or address matters that affect the long-term sustainability of the state and well-being of its citizens.
- The Constitution should reflect the values of the entire state by granting heightened protection only to those concerns or issues that affect the well-being of all citizens, not individual special interests or alliances.
- The Constitution should be clear and concise, with sufficient detail to avoid the need for judicial interpretation, but should not be so detailed that it places excessive restrictions upon the branch of government tasked with implementing the provision.
- The Constitution should not legislate policy matters that can be adequately addressed in statute.
- Constitutional amendments should receive substantial legislative scrutiny before being presented to voters for approval.
- The Constitution should require a high level of review and engagement from voters to amend by imposing stringent requirements on voter ratification of proposed amendments.
- The Constitution should not allow constitutional amendments through an initiative or referendum process.



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State and Local Revenue and Taxation

Articles VI (Local Government) and VII (Revenue and Finance) set forth the basic structure and operation of Louisiana's tax and spending system. Broadly speaking, the Constitution authorizes both state and local governments to impose and collect certain categories of taxes, including income taxes, sales taxes and property taxes. Yet the Constitution also imposes important limitations on government's ability to raise revenue, primarily through mechanisms like numerical caps on the level of taxation and mandatory exemptions, credits and deductions that are available to many categories of individual and corporate taxpayers.

Louisiana's current tax system is complex and often hard to navigate because of the large number of exemptions and deductions allowed. Indeed, there are more than 80 individual income tax exemptions and about 200 state sales tax exemptions (many that are temporarily suspended). Most are authorized by statute but others, including many of the more high-value exemptions and deductions, are mandated by the Constitution. In addition to their complexity, exemptions and deductions can cost Louisiana a significant amount of either foregone tax revenue or the opportunity for lower tax rates. In some cases, they result in a more unpredictable and volatile revenue source for the state. The long list of deductions and exemptions embedded within our current tax structure necessitates higher overall tax rates to raise the revenue needed to provide services to citizens. Thus, PAR and many other tax analysts have been calling for an elimination of some exemptions and deductions and lower tax rates across the board. For such changes to have a meaningful fiscal impact, a revision of some portions of the Constitution would be necessary.

Regardless of whether there is consensus on the continued value of each of Louisiana's many tax exemptions and deductions, there is a benefit to providing the Legislature with more flexibility to adjust Louisiana's tax system to respond to changing fiscal circumstances. Less detail in the Constitution, not more, will help achieve greater fiscal flexibility and help prevent the need for continuous constitutional amendments to achieve minor policy changes.

This focus on flexibility is imbedded in the following principles regarding revenue and taxation.

Revenue and Taxation Principles

- Louisiana's Constitution should not contain numerical limits on state or local taxes. To the extent numerical limits are included, they should be clear and allow maximum flexibility for tax policy adjustments within those limits.
- Specific tax exemptions across all forms of taxation should be removed from the Constitution. However, the Constitution may allow the Legislature to create and regulate exemptions in statute.
- Some exemptions in statute could be granted heightened status by requiring a 2/3 vote to change or remove them.
- The Constitution should lift restraints on sales tax collection and administration to allow for a more uniform, streamlined and statutorily authorized system.
- The Constitution should provide the Legislature with greater flexibility to address fiscal and budget matters by allowing a wide array of subject matters during all legislative sessions.

State Spending Mechanisms and Revenue Funds

Article VII of the Louisiana Constitution has been amended nearly 100 times since 1974. Of note, not a single one of those amendments removed an existing fiscal provision from the Constitution. Instead, each amendment has added new fiscal constraints—in most cases, new budget rules or dedicated funds—to the Constitution. Article VII is now nearly as long as the entirety of the original 1974 Constitution and has become a complex set of rules and restrictions that govern how state revenues are appropriated and spent. The original Constitution adopted in 1974 protected fewer than 10 specific funds; today's Constitution protects 33 and references even more.

With each new fund granted constitutional protection, it has become more difficult for our lawmakers to develop a budget that is both balanced and fulfills the state's current priorities and needs. To put this challenge into perspective, the total state budget for the 2018-2019 fiscal year was roughly $34 billion, of which $9.5 billion was State General Fund dollars derived in large part from tax collections. According to Division of Administration data, approximately $4.3 billion of spending was mandated by the Constitution. This mandated spending, which the state has termed "unavoidable" or "non-discretionary spending", includes items such as K-12 education funding through the MFP, debt service on the state's general obligation bonds, and supplemental pay for local law enforcement officers. On top of the non-discretionary spending mandated by the Constitution, the document also siphons off approximately $2.7 billion of revenues that would otherwise flow into the State General Fund. These "constitutional dedications" are spread across each of the 33 separate constitutional funds and even more sub-funds. For each fund, the Constitution defines specific requirements for what type of revenue flows into the fund, as well as how and for what purposes the Legislature may appropriate monies from the fund.

Some of the funds and related budget rules contained in our Constitution are common among state constitutions and are clearly designed to protect the basic fiscal integrity of our state. The Bond, Security & Redemption Fund, for example, was established to ensure that the state satisfies the principal and interest requirements of its bond indebtedness without the uncertainty of the legislative appropriation process. Similarly, the Budget Stabilization Fund, also known as the "Rainy Day Fund," is designed to prevent sudden and volatile

budget inflation and to provide funding during economic downturns and budget shortfalls. Almost every state has a Rainy Day Fund, and most are protected in the states' constitutions. However, other funds in the Louisiana Constitution are designed to protect much narrower interests or sources of revenue that certain interest groups, but not necessarily a statewide constituency, consider fundamental to our state government.

Despite consistent growth in the number of new constitutional funds and therefore the number of restrictions facing the yearly budget process, the Legislature has not engaged in a strong effort to determine which funds still reflect the current priorities and needs of the state. Once an interest group is successful at gaining constitutional protection for its particular stream of funds, there has been little to no risk that the fund will be re-evaluated in the future, even in the face of serious fiscal challenges.

The principles below are designed to provide the state and its lawmakers with greater fiscal flexibility to address current priorities while at the same time ensuring that the state's long-term fiscal stability is adequately protected.

Spending and Funds Principles

- **The Constitution should enable our state to be economically competitive and flexible enough to respond to the needs of its citizens.**
- **The Constitution should contain only those structural budget rules that are essential to ensure the basic function of state government (i.e., state government would not be able to function effectively if only protected in statute). These protections may include a balanced budget requirement, a Budget Stabilization Fund and a Bond Security & Redemption Fund.**
- **Other constitutional funds that are designed to protect important state interests should be moved to statute but granted some heightened protection (e.g., a 2/3 vote to change or remove).**
- **Any spending limits in the Constitution should allow for catastrophic events and the potential for paying debts and pension obligations in a way that would reduce long-term costs to the state.**
- **Constitutional funds that are designed to protect the same general priority (e.g., healthcare, education, environment) should be merged or consolidated.**
- **The spending priorities of state funds should be re-examined and redesigned to meet the current and future needs of the state.**
- **The Constitution should require the Legislature to periodically re- evaluate the Constitution (including all constitutional funds) to analyze the document's effectiveness and the impact of specific funds and financial provisions on the state budget.**
- **Defunct funds, funds with long-standing zero balances or inactivity, and funds that have been declared unconstitutional should be removed.**

The Relationship Between the State and Local Governments

Louisiana's structure of government is in many respects highly centralized, particularly when it comes to decisions regarding raising and spending revenue. This imbalanced fiscal relationship between the state and local governments is characterized by a complicated system under which state funds are used to pay for many functions that are local in nature. Local governments have come to rely on this funding, while at the same time the state has found it increasingly difficult to develop a workable budget that satisfies both the state's most pressing needs and local government obligations.

Other funding mandates from the state, such as the requirement to fund supplemental pay for local law enforcement officers, are not tied to a specific limitation on local revenue but are simply meant to help local governments fund services that the state believes are critical to the overall well-being of the state.

The Constitution allows local governments to raise their own revenues, primarily through sales and property taxes, but also contains several important restrictions and limitations that affect local governments' ability to manage their own fiscal affairs. The most significant of these constitutionally imposed restrictions is the homestead exemption, which requires local governments to exempt the first $7,500 of assessed value (or $75,000 of the overall value) of a resident's home from property taxes. The homestead exemption was protected in the 1974 Constitution and the current value of $7,500 was set in 1982. Other constitutionally imposed restrictions on local government finances include the constitution's cap of 3% on local sales taxes which can only be increased through a vote of the Legislature, and a list of nearly two dozen separate categories of property that local governments must exempt from taxation.

At least some state-mandated local government transfers and spending requirements are intended to offset the restrictions the state has placed on local governments' ability to raise and manage revenue. The Revenue Sharing Fund, for example, requires the legislature to appropriate to parishes and school districts $90 million from the State General Fund each year through a formula based on population and homesteads. The money is spent on local, not state, priorities. The Fund was established specifically to offset the effect of the homestead exemption on local budgets. Other funding mandates from the state, such as the requirement to fund supplemental pay for local law enforcement officers, are not tied to a specific limitation on local revenue but are simply meant to help local governments fund services that the state believes are critical to the overall well-being of the state. Louisiana local governments also are reliant on the state for funding and operation of community colleges, charity and rural hospitals and

road work that in many other states are regional responsibilities.

This complex relationship between the state and local governments, in which the state has limited the flexibility of local governments while continuing to transfer large sums of money (typically, State General Fund dollars) to local governments, creates perverse incentives for local governments to rely on state rather than local funding sources. Just as important, constitutional requirements that transfer state dollars to local governments have the effect of further tying the hands of the Legislature as they work to develop a budget that funds leading state priorities such as higher education and healthcare with limited State General Fund dollars.

The following principles are aimed at creating a more decentralized and less complex relationship between state and local governments that empowers local governments with greater autonomy and flexibility to manage their finances, while recognizing that no two local governments are the same and therefore any changes to the existing system must be implemented thoughtfully and gradually.

State-Local Government Principles

- **The Constitution's revenue and tax provisions should be revised to foster a more decentralized government that gives more power to local governments.**
- **The Constitution should grant local governments more authority over property taxes, including enhanced flexibility over property tax exemptions.**
- **The Constitution should grant local governments more authority over local sales tax rates, while still protecting the rights and voice of local citizens in the area being taxed.**
- **In conjunction with providing local governments enhanced autonomy over local taxes, the Constitution should minimize state-administered redistributions of revenue back to local governing bodies. This would not eliminate the need for a state-financed distribution of funds to support school districts.**
- **Constitutional changes that affect the fiscal relationship between the state and local governments should be implemented gradually and should include transitional measures to ensure that local governments, particularly those with smaller tax bases, are able to adjust local revenue sources and remain fiscally sound.**