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PUBLIC AFFAIRS RESEARCH
COUNCIL OF LA., INC.

October 21, 1995 and November 18, 1995

Guide to the Proposed Constitutional Amendments



VOTER DECISION



PRIMARY ELECTION - OCTOBER 21, 1995

No. 1 Abolish Forced Heirship

A vote **for** would abolish forced heirship in Louisiana, except when a child is younger than 24 or is mentally or physically disabled and unable to care for himself. A vote **against** would retain the requirement that a portion of a parent's estate be reserved for the children.

No. 2 Term Limits for Legislators

A vote **for** would limit legislators to three consecutive terms in the house in which they serve. A vote **against** would continue unlimited terms for legislators.

No. 3 State and Local Liability Limit

A vote **for** would allow the Legislature to limit the awards in lawsuits against the state or local governments. A vote **against** would continue to allow the courts alone to determine the amount of such damages.

No. 4 Mandatory Retirement for Judges

A vote **for** would raise the mandatory retirement age for judges from 70 to 75. A vote **against** would continue to require judges to retire at age 70.

No. 5 Baker and Rapides Parish School Districts

A vote **for** would allow the City of Baker and Wards 9, 10, and 11 in Rapides Parish to form their own school districts. A vote **against** would retain parish-wide school districts in East Baton Rouge and Rapides parishes.

No. 6 Two-thirds Vote for Fees

A vote **for** would require two-thirds approval by each house of the Legislature to enact or increase a state fee or civil fine. A vote **against** would continue to allow the Legislature, by majority vote, to enact or raise fees and fines or authorize state agencies to do so.

No. 7 Limit Local Tax Votes

A vote **for** would limit a local tax proposition to one election in a six month period, unless the taxing body declares an emergency. A vote **against** would continue to allow a tax proposal to be resubmitted within six months.

No. 8 Local Hunting or Fishing Laws

A vote **for** would allow the Legislature to enact local hunting and fishing laws that apply to only parts of the

state. A vote **against** would continue to prohibit such laws.

No. 9 Mineral Rights of Restored Coastal Lands

A vote **for** would allow the state to relinquish to previous owners mineral rights of coastal land it restores. A vote **against** would continue to require the state to retain such mineral rights.

No. 10 Mineral Revenue Fund Use

A vote **for** would limit the use of monies in the Mineral Revenue Audit and Settlement Fund to early repayment of state debt. A vote **against** would continue to allow some uses that may not result in early debt reduction.

No. 11 Oilfield Site Restoration Fund

A vote **for** would constitutionally protect the existing Oilfield Site Restoration Fund. A vote **against** would retain the Fund statutorily, subject to legislative change.

No. 12 Oil Spill Contingency Fund

A vote **for** would constitutionally protect the existing Oil Spill Contingency Fund. A vote **against** would retain the Fund in the statutes, subject to legislative change.

No. 13 Veterans' Civil Service Preference Points

A vote **for** would allow the Legislature to determine which military conflicts qualify veterans for civil service preference points. A vote **against** would retain the need for a constitutional amendment to add a conflict.

No. 14 Redeeming New Orleans Property

A vote **for** would reduce from three years to 18 months the time allowed an original owner to redeem abandoned or blighted property sold at tax sales by the City of New Orleans. A vote **against** would continue to allow the original owners three years to reclaim such property.

No. 15 Donating Abandoned Homes

A vote **for** would allow the City of New Orleans to donate abandoned and blighted housing to nonprofit groups for renovation. A vote **against** would continue the general ban on donations of publicly-owned property.

GENERAL ELECTION - NOVEMBER 18, 1995

No. 1 Jury Instruction

(See Page 10 for discussion.)

No. 1 Abolish Forced Heirship

Current Situation: The constitution prohibits any law that abolishes forced heirship but permits laws that provide grounds for disinheritance in special circumstances. Louisiana is the only state that prohibits parents from disinheriting children of any age or ability unless just cause is proved. The law lists 12 specific reasons for which a child may be disinherited, including cruel treatment, failure to communicate for two years without just cause, neglect and conviction of a felony punishable by death or life imprisonment.

Louisiana law prescribes the portion of the deceased parent's estate that is reserved for the children. If there is one child, the forced portion is 25 percent of the estate. If there are two or more children, 50 percent of the estate is divided evenly among them. If there is a surviving spouse, the deceased's estate is only 50 percent of most of the property accumulated during the marriage because Louisiana is a community property state; the other 50 percent belongs to the surviving spouse.

Proposed Change: The proposed amendment abolishes forced heirship for all persons older than 23 who are able to care for themselves. Parents would be prevented from disinheriting children 23 or younger or those of any age who are unable to care for themselves due to a physical or mental handicap.

Companion legislation (Act 1180 of 1995), defining forced heirs and specifying the portion of the estate reserved for them, would go into effect if this amendment is adopted. If the amendment passes, persons with a will could distribute their estate as they choose. The estate of a person without a will, would still be divided among the children, subject to use by the surviving spouse.

Comment: In 1989, the Legislature passed a law to redefine forced heirs as children younger than 23 or those unable to care for themselves due to mental or physical disability. The law was declared unconstitution-

al because it, in effect, abolished forced heirship for all persons older than 22.

Forced heirship is viewed by some as promoting family solidarity, preventing intra-family litigation, reducing the state's costs for caring for children of deceased parents and protecting the rights of children estranged from their parents due to divorce. However, forced heirship prevents parents from choosing how to dispose of all their property and wealth. Some argue this makes Louisiana less attractive to retirees.

The age and ability requirements in the proposal were included to protect children unable to care for themselves. If such children were to become wards of the state, the state could seek reimbursement from the estate.

Legal Citation: Act 1321 (Representative Brun and Senator Barro) of the 1995 Regular Session, amending Article XII, Section 5.

No. 2 Term Limits for Legislators

Current Situation: There are no limits on the number of terms a Louisiana legislator can serve. Of those now serving, 56% of senators, 33% of representatives and 40% of Louisiana legislators overall have served three or more terms.

Proposed Change: The proposed amendment would limit legislators to three consecutive terms (12 years) in the house in which they serve. The limit would begin in 1996 with legislators elected this fall. Those now serving could serve three more terms.

Serving for more than half a term would be considered a full term under the proposed change. Legislators could serve three consecutive terms in one house then three consecutive terms in the other. They could also serve three consecutive terms in one house, sit out the next term, and then return to the same house for three more consecutive terms. They could run for other state or local offices.

Comment: Nationally, the term limits movement is a backlash against long-serving legislators who

are perceived as entrenched in office and out of touch with constituents. The rationale for term limits is that limited tenure would make elected officials more responsive to constituents and less concerned about winning re-election. Term limits are a recent phenomenon; as a result, their effect is unclear.

Twenty states limit legislative terms. Some states limit the number of terms a legislator can serve in each house while others limit the total number of years of legislative service. Many states with term limits restrict legislators to eight years in

the house in which they serve. Louisiana's governor is limited to two consecutive four-year terms.

Term limit proponents argue that term limits provide non-incumbents a better chance to win elections, result in more frequent leadership turnover, make legislators more

receptive to change and reduce the power of special interests. Also, term limits promote a "citizen" as opposed to "professional" legislature.

Opponents argue that term limits are undemocratic because voters are denied the right to elect the person of their choice; experienced, good legis-

lators would be forced out of office with the bad; and legislators with less experience would have to rely more on lobbyists and legislative staff.

Legal Citation: Act 1326 (Representative Vitter) of the 1995 Regular Session, adding Article III, Section 4 (E).

No. 3 State and Local Liability Limit

Current Situation: Under the traditional concept of "sovereign immunity," a person could not sue the state. Prior to 1974 in Louisiana, one could sue the state but only with its permission. The 1974 constitution, however, provided that the state and local governments were no longer immune from suits.

In 1985, a \$500,000 statutory limit was placed on the damages that could be awarded in suits against the state in addition to medical costs and loss of earnings or support. In 1993, the state Supreme Court ruled the limit unconstitutional as it violated the prohibition against sovereign immunity. Since this ruling, the courts have awarded damages well above the former limit in some cases.

Proposed Change: The amendment would authorize the Legislature by law to limit the liability of the state, its agencies and political subdivisions in suits against them. It would allow the Legislature to limit the kinds and amounts of damages that could be recovered. Such limits would apply to existing as well as future claims.

Companion legislation (Act 828) would place a \$750,000 cap on damages (in excess of medical costs,

support) in personal injury or wrongful death suits. The cap would be adjusted annually to reflect the change in the consumer price index.

Comment: The proposed amendment would establish the Legislature's right to cap awards in suits against the state and local governments. The companion legislation would cap general damages in personal injury and death suits. These damages are commonly known as "pain and suffering" awards. The cap would not affect actual medical costs or actual and future lost income or support.

State and local governments are often considered "deep pocket" defendants and, without limits, awards can be very large. The size of these judgments has become a significant concern. Judgments against the state totaled \$100 million in fiscal year 1994 with about three-fourths of the awards going to 14% of the cases. In fiscal 1995, the state paid out more than \$140 million. Suits currently filed against the state pose an estimated potential liability of roughly \$2 billion. The proposed \$750,000 cap would save the state an estimated \$9 million or more each year.

Excessive awards can bankrupt

their costs of joining a risk management group. These extra costs reduce funds available to provide services.

The amendment would protect other statutory provisions related to suits against the state regarding the use of juries, constructive notice, and prejudgment interest. These provisions currently face court challenge on the same grounds used to strike down the limit.

Louisiana is currently one of only 11 states that have no liability cap. Of the 39 states with caps, only four exceed \$500,000.

Opposition to limiting awards came mainly from trial lawyers who assert the injured person's right to have a court determine the appropriate damages in his case. They argue that awards for pain and suffering are justified compensation, not simply a bonus for being injured. However, the Louisiana Trial Lawyers Association proposed the \$750,000 statutory cap as a compromise to re-instituting the earlier \$500,000 limit.

Legal Citation: Act 1328 (Representative Ackal) of the 1995 Regular Session, amending Article

No. 4 Mandatory Retirement for Judges

Current Situation: Judges are required to retire by their seventieth birthday. The state has 341 judges, 385 constables and 385 justices of the peace. Approximately 60 can serve until age 75 because they were already serving when the mandatory retirement age was lowered from 75 to 70 in 1975. The Judiciary Commission may remove incompetent judges of any age.

Proposed Change: This amendment would raise the mandatory retirement age for judges from 70 to 75.

Comment: The state's 1921 constitution established the mandatory retirement age for judges at 80. In 1960 it was lowered to age 75. The 1974 constitution lowered it again to age 70. As the mandatory retirement age has decreased, life expectancy

has increased. Proponents argue that judges often begin serving later in their careers; that age alone should not be an impediment to serving; and mechanisms exist to remove incompetent judges.

Legal Citation: Act 1317 (Representative Murray) of the 1995 Regular Session, amending Article V, Section 23 (B).

No. 5 Baker and Rapides Parish School Districts

Current Situation: Baker is part of the East Baton Rouge Parish school district. Wards 9, 10 and 11 of Rapides Parish are part of the Rapides Parish school district. Wards 9, 10, and 11 comprise the section of Rapides Parish northeast of the Red River, including the cities of Pineville and Ball. Both parishes' school districts are under a federal court order that requires busing students parish wide to achieve a racial balance in the schools.

Sixty-four of Louisiana's 66 school systems are parish districts. The constitution allows only two municipalities, Bogalusa and Monroe, to operate separate municipal school districts.

Proposed Change: This amendment would allow the City of Baker and Wards 9, 10, and 11 of Rapides Parish to form their own school districts separate from their respective parishes. The new districts would have the same authority as parish school districts, including the ability to raise certain local revenues.

Companion legislation (Act 973 of 1995) would take effect only if voters approve the amendment. This legislation would provide for the creation of the new school districts,

the reapportionment of East Baton Rouge and Rapides Parish school districts, and the elections for new school board members.

Comment: Those seeking separate school districts do so to achieve greater local control, neighborhood schools, less busing of students and more parental involvement. In creating these smaller school districts, these areas face a number of hurdles and unresolved questions.

The new districts would require the approval of the federal judge who oversees the desegregation court order. The new districts would substantially change the racial makeup of the schools. For example, the five schools within the City of Baker now enroll 3,010 students—68% black and 32% non-black. The proposed Baker district would include 2,220 students—50% black and 50% non-black.

Another potential problem is changes would require approval by the U.S. Justice Department for compliance with the Voting Rights Act. This act requires that the creation of new public bodies or reapportionment of existing ones does not result in diminished minority representation or voting strength. Rapides

Parish population, for example, is about 28% black while Wards 9, 10, and 11 fall primarily in House of Representatives District 27, a district that is only 8% black.

The Attorney General's Office has indicated that the two new districts must be considered as one constitutional amendment by the judge and the Justice Department. That means that if one district meets the standards for approval but the other does not, both will be rejected.

The smaller school districts would, to some extent, reduce student choices and access to programs such as specialized high schools. Of the 765 students who would live in the proposed district but now attend schools outside of Baker, 290 do so by choice.

Unresolved questions include whether the new districts would have to purchase their school buildings from the parish, how the costs of outstanding bond issues would be split and how tax sources and state and federal funding would be affected.

Louisiana's parish-wide school districts are considered by many to be a positive force in achieving more equitable distribution of financial resources, in providing specialized programs and comprehensive high

schools, and in easing desegregation. The greater local autonomy gained by smaller districts would likely involve some tradeoffs.

To take effect, the amendment must be approved by voters in East Baton Rouge Parish, Rapides Parish and the state as a whole.

Legal Citation: Act 1323 (Senator Cross) of the 1995 Regular Session, amending Article VIII, Section 13 (D).

No. 6 Two-thirds Vote for Fees

Current Situation: Most of the state's numerous agencies impose fees or assess penalties of various kinds. These range from a nickel-per-page copying charge to college tuition. Civil fines range from a \$10 late-filing penalty to a \$1 million maximum penalty for violating environmental laws. The Legislature, by simple majority vote, sets the amount of most regulatory fees or fines by law or sets a maximum or a range within which an agency may assess them.

Some agencies are authorized to set fees by rule, usually with legislative oversight. Several agencies must set fees annually or more often at a level sufficient to pay the related cost of administration. For example, bank fees are adjusted twice a year to cover the budgeted cost of bank regulation.

Fees have been a growing source of agency and state funding in recent years. Louisiana's amount of state fees-per-capita (\$202) is the highest of any southern state and exceeds all but nine other states. From fiscal years 1988 to 1995, state fees rose from \$427 million to \$934 million, nearly 118%, while total state revenues rose only 43%. When university and vo-tech tuition (about one third of the total) is removed, fees rose 153%.

A 1995 act restricted the fee-setting authority of most state agencies by requiring that any new or increased fees be expressly author-

rized by a statutory fee schedule or federal law or rule and by limiting any increases to 5%.

Proposed Change: The amendment would require a two-thirds vote of each house of the Legislature to approve any new or increased fee or civil fine imposed or assessed by the state or any state board, department or agency, except a constitutionally-created department headed by a statewide elected officer (the departments of justice, state, treasury, agriculture, insurance and elections).

Comment: The amendment would treat fees and fines the same as taxes which require a two-thirds legislative vote to be enacted or increased. This would remove the incentive to call a revenue measure a fee rather than a tax to avoid the two-thirds vote requirement. The amendment would also ensure that the people's elected representatives are involved in decisions to raise fees and fines.

While the amendment might serve to control the growth in fees, how it would affect existing agency authority is unclear. Would college tuition be covered? Would agencies which have not set fees at the maximum now authorized be able to do so without further legislation? Would agencies now authorized to reset fees to produce the revenue needed to operate a related program be unable to

Would fees for services or goods with a measurable cost, such as dormitory rent, require legislation? How would changes in minor fees and fines—copying charges or library fines—be treated?

The higher education management boards, for example, presently have constitutional authority to set student tuition. Tuition has been increased to offset recent budget cuts enacted by simple majority vote of the Legislature. The amendment could delay or prevent such tuition hikes to offset cuts.

The Department of Environmental Quality may impose a civil fine of up to \$25,000 a day for violating anti-pollution laws. Under the amendment, a defendant might argue that because a lower fine was imposed in a prior case, the maximum fine would be a prohibited increase.

True fees are related to the cost of a government service and are paid by the one requiring or benefiting from the service. If service costs rise and fees are limited, services must either be cut or funded by broad based taxes on those who may not directly benefit. The proposed amendment would likely require the Legislature to consider many additional bills each session to set fees for state agencies.

Legal Citation: Act 1324 (Representatives Gunn and Jenkins) of the 1995 Regular Session, adding

No. 7 Limit Local Tax Votes

Current Situation: Local governments may place a tax proposition on the ballot during the year at any one of six election dates established by law. If the proposition fails, it may be resubmitted to voters on the next election date. An election may be held at an earlier date if the local government declares an emergency and gets approval from the state bond commission and the governor.

Proposed Change: The amendment would prohibit a parish, municipality or other political subdivision from submitting to the voters the same tax proposition more than once

in a six month period, except in an emergency as determined by the governing body.

Comment: Occasionally, voters will defeat a proposed local tax only to face the same proposition again at the next regular election date. In some cases the vote may come even earlier at a special election called by the local government. Proponents argue the proposal would require the taxing bodies to do a better job of educating voters before an election and would reduce spending on elections.

For the local government, a tax vote may be a true emergency, par-

ticularly if it is to renew an existing tax. The tax may be the sole funding for a special district. A six month delay in approval could make it too late to place the tax on the rolls for the next year.

This amendment would have no effect, however, if the taxing body were willing to declare an emergency.

Legal Citation: Act 1329 (Senator Bean and Representative Jenkins) of the 1995 Regular Session, amending Article VII, Section 30.

No. 8 Local Hunting or Fishing Laws

Current Situation: The constitution prohibits the Legislature from enacting local laws that define a crime. Despite this prohibition, the Legislature routinely enacts local hunting, fishing and habitat preservation laws. In addition, the Department of Wildlife and Fisheries adopts rules and regulations that affect only particular areas of the state.

Proposed Change: This amendment would allow the Legislature to enact local laws regulating hunting,

fishing and habitat preservation. It would also retroactively make current laws and regulations constitutional.

Comment: Wildlife and aquatic life management problems differ throughout the state. Proponents believe such problems would be handled best through local laws.

In 1978, the Legislature enacted a law banning gill nets in two parishes. The Supreme Court declared the law unconstitutional because it applied

only to those parishes. The ruling leaves in question the constitutionality of similar laws and regulations enacted since. The proposed amendment would make such laws and regulations constitutional. It would not allow local governments to enact local laws regulating hunting, fishing and habitat preservation.

Legal Citation: Act 1318 (Representatives Roach and Patti) of the 1995 Regular Session, adding Article III, Section 12 (C).

No. 9 Mineral Rights of Restored Coastal Lands

Current Situation: Land lost due to coastal erosion becomes state property. The former owner loses all rights to it, including the mineral rights. The landowner may reclaim the land and its mineral rights by paying to have the land restored. If the land is restored by the state, it

remains state property. The former owner may reclaim surface rights to state-restored coastal property through negotiations. However, the constitution prohibits the state from relinquishing mineral rights of state property, except when the property is confiscated due to unpaid taxes.

Proposed Change: This amendment would allow the state to relinquish mineral rights of land it restores through coastal restoration projects to the former landowner. Legislation would be required to specify the conditions under which the mineral rights could be

relinquished and the procedures for doing so.

Companion legislation establishing a mineral rights settlement plan was introduced during the 1995 session but failed to pass.

Comment: Since 1921, approximately 789,000 acres of the Louisiana coastline have been lost due to coastal erosion. At the current rate, approximately 35 square miles of wetlands are lost per year. The federal government helps fund restoration projects by providing \$3 for every \$1 spent by the state. In 1989 voters approved a constitutional amendment to establish and dedicate funds to the Coastal Wetlands Conservation and Restoration Fund for restoration projects.

Restoration of the coast is not occurring as quickly as desired by the Department of Natural Resources

(DNR). DNR cites the activities of some landowners denying access to eroding land as being a major impediment. These landowners deny access because they are not willing to lose the rights to restore the eroded land and reclaim the mineral rights without being compensated. However, without some action all of the land will erode and become state waterbottoms. DNR wants to create a process in which some of the mineral rights would be given back to the property owner in exchange for access to the property.

The State Land Office views relinquishing mineral rights as a state give-away program that benefits property owners whose land is being protected from erosion. The Land Office would rather the state appropriate a temporary right of way and retain all mineral rights to the reclaimed land.

Legal Citation: Act 1332 (Senator Nunez) of the 1995 Regular Session, amending Article IX, Section 4 (A).

No. 10 Mineral Revenue Fund Use

Current Situation: The Mineral Revenue Audit and Settlement Fund was created by constitutional amendment in 1991 to receive one-time settlement money coming to the state. Use of this money was limited to early repayment of state debt or to pay down the unfunded accrued liability (debt) of the public retirement systems.

The provision allows the Fund to be used to make the annual scheduled payment on the retirement debt and to make further payments as the Legislature decides.

Proposed Change: The amendment would prohibit the use of the Mineral Revenue Audit and Settlement Fund to make the required annual payments to reduce the debt of the public retirement systems. The Fund could be used to make payments in addition to the annual requirements but such payments could not be used, directly or indirectly, to pay cost-of-living increases for retirees.

Comment: The intent of the 1991 amendment was to keep nonrecurring revenues from mineral settlements from being used to fund recurring expenditures in the state operating budget. Using one-time money to prop up or expand spending creates a fiscal problem in the following year when replacement funds must be found.

The constitutional provision creating the Fund, however, included a major loophole that allows the use of

Voting on Louisiana Proposed Constitutional Amendments

	Number of Amendments		Average Percent of Registrants Voting
	Proposed	Approved	
1921 Constitution	802	536	—
1974 Constitution			
November 7, 1978	1	1	29.9
October 27, 1979	3	3	37.5
November 4, 1980	4	4	55.7
September 11, 1982	8	4	24.9
October 22, 1983	3	3	44.2
November 6, 1984	5	0	53.7
September 27, 1986	7	2	39.3
November 21, 1987	5	5	32.3
October 1, 1988	1	0	27.5
April 29, 1989	1	0	46.8
October 7, 1989	13	5	28.3
October 6, 1990	15	14	46.9
October 19, 1991	8	5	47.1
October 3, 1992	5	2	29.4
November 3, 1992	7	0	53.7
October 16, 1993	6	6	18.1
October 1, 1994	4	4	30.9
TOTAL	96	58	

SOURCE: Official Promulgation, Secretary of State.

the Fund to make the scheduled annual retirement debt payments. Using the Fund to make such payments would free up an equal amount of general fund money to be spent on operating programs.

Also, if additional payments are made to reduce the retirement debt

early, half of any resulting gain in interest earnings would go to help pay cost-of-living increases for retired state employees and teachers rather than to reducing debt.

The proposal would limit use of the mineral settlement money to

early retirement of public debt only.

Legal Citation: Act 1325 (Representative Stine) of the 1995 Regular Session, amending Article VII, Section 10.5 (C).

No. 11 Oilfield Site Restoration Fund

Current Situation: In 1993 the Oilfield Site Restoration Fund was created statutorily to clean up, close and restore "orphaned" oilfield sites. When a responsible party cannot be located or fails to or cannot afford to restore a site, the well is determined to be "orphaned."

A fee on producing oil and gas wells and certain non-producing wells is placed in the Fund. The fee is to be lifted when the fund balance reaches \$10 million and reinstated when it falls below \$6 million.

The Commission has identified 2,528 orphaned well sites, mostly in north Louisiana. Eleven sites have been restored and closed at a cost of \$486,760. Currently 46 sites are being cleaned at a cost of \$882,206 and another 12 are under contract to be cleaned. The fund balance is \$6,550,552, not including funds for ongoing contracts.

Proposed Change: This amendment would create the Oilfield Restoration Fund in the constitution and dedicate the fee to the Fund.

Companion legislation (Act 297 of 1995) would implement the amendment.

Comment: Supporters desire constitutional dedication to protect the Fund from being used for other state purposes. Opponents believe that all constitutional dedications should be avoided.

Legal Citation: Act 1325 (Senator Nunez and Representative Jenkins) of the 1995 Regular Session to amend Article VII, Section 10.6.

No. 12 Oil Spill Contingency Fund

Current Situation: In 1991 the Oil Spill Contingency Fund was created to pay for the prevention of and response to oil spills. The costs of administration, prevention, containment and replacing and restoring natural resources lost due to a spill are paid for with Fund monies once federal funds are exhausted.

Each time crude oil is transferred to or from a vessel at a marine terminal, a per-barrel fee is collected and deposited into the Fund until the balance reaches \$15 million. The fee is then suspended until the Fund balance drops below \$8 million, a large oil spill occurs or expected expenditures reduce the balance by more than half.

As of 1995 the Fund balance was

has been spent on oil spills or prevention, but approximately \$1.4 million has been spent researching oil spill response issues.

Proposed Change: This amendment would constitutionally create the Oil Spill Contingency Fund and dedicate the fee to the Fund.

Companion legislation (Act 740 of 1995) would implement the amendment.

Comment: Supporters desire constitutional dedication to protect the Fund from being used for other state purposes. Opponents believe that all constitutional dedications should be avoided.

Legal Citation: Act 1331 (Senator Nunez and Representative Jenkins) of the 1995 Regular Session

No. 13 Veterans' Civil Service Preference Points

Current Situation: The constitution requires state and local civil service departments to grant honorably discharged veterans a five-point preference on a competitive exam for an original civil service job appointment. The constitution specifies military conflicts and dates during which a veteran must have served to qualify for the preference points. A constitutional amendment is required each time another conflict is added to the list.

Proposed Change: The amendment would eliminate the need for a constitutional amendment each time a conflict is added to the list.

preference points are granted. Honorably discharged veterans of a congressionally-declared war, a peacetime campaign in which campaign badges are authorized or a conflict designated by a two-thirds vote of each house of the Legislature would receive the preference points.

Companion legislation (Act 1051 of 1995) specifies the conflicts that would qualify veterans for the

preference points. These include the Korean and Vietnam wars, which are listed in the constitution. The companion legislation also specifies the Persian Gulf War, which is not currently included in the constitution.

Comment: Persian Gulf War veterans have received their civil service preference points even though the conflict is not listed in the consti-

tution. The proposal would list in the statutes all the conflicts that would qualify veterans, eliminating the need to ask voters to approve constitutional amendment each time a new conflict must be added.

Legal Citation: Act 1327 (Representative Downer) of the 1995 Regular Session, amending Article X, Section 10 (A) (2).

No. 14 Redeeming New Orleans Property

Current Situation: The constitution presently guarantees owners of property sold for nonpayment of taxes the right to redeem the property within three years of the tax sale by paying the sale price plus costs, penalties and interest. The person purchasing property at a tax sale is at risk of losing any investment made in renovations or improvement of the property before the three-year period has passed.

Most of the 37,000 vacant housing units in New Orleans are privately owned and potentially liable to tax sale.

Proposed Change: The amendment would shorten from three years to 18 months the period during which abandoned or blighted residential or commercial property seized by the City of New Orleans and sold for nonpayment of taxes could be redeemed by the original property owner.

Comment: The amendment would apply early redemption only in New Orleans and only to abandoned or blighted property. Shortening the redemption period for abandoned or blighted property is one proposal in the mayor's program to rehabilitate New Orleans housing and

The purchaser at a tax sale is unlikely to risk making expensive improvements in property while it can still be redeemed, and simply maintaining property for three years is costly. Also, abandoned property already in bad shape could deteriorate further and become entirely worthless in three years.

A shorter redemption period would encourage developers and individuals to begin rehabilitation of the properties earlier, improve neighborhoods and provide families with better housing.

Some original owners who want to redeem the property but need more time to obtain financing could be harmed. However, tax sales do not take place until well after taxes become delinquent and abandoned property is seldom redeemed.

The proposal requires approval by voters both in New Orleans and statewide.

Legal Citation: Act 1319 (Representative Clarkson and Senator Bagneris) of the 1995 Regular Session, amending Article

No. 15 Donating Abandoned Homes

Current Situation: Except for certain specified purposes, the state constitution prohibits the donation of public funds or property to any person or organization, public or private. This prohibition prevents the City of New Orleans from donating blighted housing which it owns.

Some of the 37,000 vacant housing units in the city are owned or may be acquired in the future by the City of New Orleans. The mayor's housing program calls for donating these homes to nonprofit organizations which could renovate and sell them to needy families.

Proposed Change: The amendment, applicable only in New Orleans, would add an exception to the constitutional prohibition against the donation of public funds or property. This would allow the City of New Orleans to donate abandoned and blighted housing property to a nonprofit organization which agrees to renovate and maintain it until conveyed to another owner.

Comment: This proposal is part of a housing package developed by the mayor of New Orleans.

housing is "killing the great city of New Orleans" by destroying neighborhoods, promoting crime, reducing the housing stock and lowering adjacent property values. It is argued that the city is not well equipped to manage or develop properties itself.

At present, the city can only dispose of real estate it owns by selling it at public auctions. The aim of the mayor's housing plan is to

encourage nonprofit groups to renovate homes and make them available for purchase by poor families. Donation to a non-profit group, rather than sale, can make such projects more feasible.

Additional city ordinances and regulations would be required to ensure that the nonprofit organizations properly carried out the renovation and sale of the property. The

amendment would not change the city's expropriation powers.

The proposal must be approved by voters both in New Orleans and statewide for adoption.

Legal Citation: Act 1320 (Representative Clarkson and Senator Irons) of the 1995 Regular Session, amending Article VII, Section 14 (B).

GENERAL ELECTION

No. 1 Jury Instruction

Voter Decision: A vote for would allow the Legislature to require the court to instruct a criminal jury that the governor is authorized to reduce sentences and grant pardons. A vote against would continue to prevent judges from advising jurors of the governor's power to alter sentences.

Current Situation: The Constitution grants the governor the final decision in sentencing convicted criminals. Upon recommendation of the Board of Pardons, the governor may reduce the sentence of life imprisonment without benefit of parole to one with the possibility of parole or convert a death sentence to life imprisonment without possibility of parole. He may also release a prisoner sentenced to life imprisonment or death by changing the sentence to time already served or granting a pardon. Since 1989, the Board of Pardons has recommended 1,131 cases to the governor for modification, of which the governor approved 262.

During the sentencing phase of capital criminal trials, jurors are not informed of the governor's authority to suspend or commute sentences or grant pardons. The sentencing phase occurs only after the jury has reached a verdict of guilty.

Proposed Change: The proposed amendment would authorize the Legislature to require a trial court to instruct a criminal jury that the governor has the authority to grant a reprieve, pardon or commutation of a sentence.

Companion legislation (Act 551 of 1995), effective only upon adoption of the amendment, would require the court, in the sentencing phase of a capital case (e.g., first degree murder) to instruct the jury that the governor can alter a sentence of death or life imprisonment.

Comment: A 1993 law required capital juries to be informed of the governor's powers to modify

punishment recommended by the jury. The law was declared unconstitutional by the Louisiana Supreme Court on the grounds it subjected the defendant to cruel and unusual punishment and violated the defendant's rights to a fair trial. It was argued that instructing jurors on the governor's power to reduce or commute sentences would encourage juries to approve harsher sentences than those deserved by the defendant.

The District Attorney's Association and the Citizens Against Crime support the proposed amendment arguing that it provides the jury truth-in-sentencing. The Louisiana Association of Criminal Defense Lawyers opposes the amendment based on the same grounds used to declare the previous law unconstitutional.

Legal Citation: Act 1322 (Representative Windhorst) of the 1995 Regular Session, amending Article I, Section 16.

VOTER CHECKLIST

1995 Proposed Constitutional Amendments

(Mark your choices on this checklist and carry with you to the polls)

PRIMARY ELECTION - OCTOBER 21, 1995

**Ballot
Number**

Yes No

1 ☐ ☐

Abolish forced heirship in Louisiana, except when a child is younger than 24 or is mentally or physically disabled and unable to care for himself.

2 ☐ ☐

Limit legislators to three consecutive terms in the house in which they serve.

3 ☐ ☐

Allow the Legislature to limit the awards in lawsuits against the state or local governments.

4 ☐ ☐

Raise the mandatory retirement age for judges from 70 to 75.

5 ☐ ☐

Allow the City of Baker and Wards 9, 10, and 11 in Rapides Parish to form their own school districts.

6 ☐ ☐

Require two-thirds approval by each house of the Legislature to enact or increase a state fee or civil fine.

7 ☐ ☐

Limit a local tax proposition to one election in a six month period, unless the taxing body declares an emergency.

8 ☐ ☐

Allow the Legislature to enact local hunting and fishing laws that apply to only parts of the state.

9 ☐ ☐

Allow the state to relinquish to previous owners mineral rights of coastal land it restores.

10 ☐ ☐

Limit the use of monies in the Mineral Revenue Audit and Settlement Fund to early repayment of state debt.

11 ☐ ☐

Constitutionally protect the existing Oilfield Site Restoration Fund.

12 ☐ ☐

Constitutionally protect the existing Oil Spill Contingency Fund.

13 ☐ ☐

Allow the Legislature to determine which military conflicts qualify veterans for civil service preference points.

14 ☐ ☐

Reduce from three years to 18 months the time allowed an original owner to redeem abandoned or blighted property sold at tax sales by the City of New Orleans.

15 ☐ ☐

Allow the City of New Orleans to donate abandoned and blighted housing to nonprofit groups for renovation.

GENERAL ELECTION - NOVEMBER 18, 1995

1 ☐ ☐

Allow the Legislature to require the court to instruct a criminal jury that the governor is authorized to reduce sentences and grant pardons.

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