



2023 CABL Recommendations for October Ballot

CONSTITUTIONAL AMENDMENTS

Amendment #1 No Money from Sources Outside of Government to Help Fund Elections

Amendment #2 Extending the Freedom to Worship

Amendment #3 Use More of Budget Surpluses to Pay Off Retirement System Debt

Amendment #4 Allow for the Denial of Property Tax Exemptions for Nonprofit housing that endangers public safety

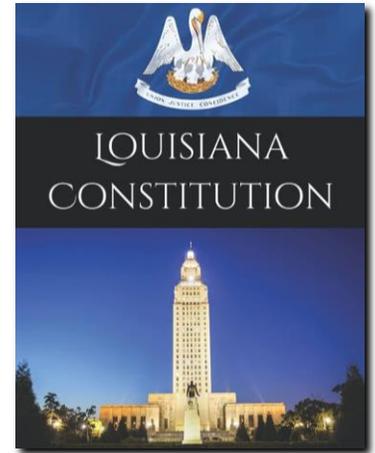
CABL has reviewed and analyzed each of the amendments, and here are our recommendations. Don't forget to cast your vote. Early voting runs from September 30-October 2. Election Day is October 14.



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COUNCIL FOR A BETTER LOUISIANA

2023 Constitutional Amendments Require Thoughtful Consideration



This fall there are eight constitutional amendments on the ballot for voters to decide, a slight decrease from the 11 amendments on the ballot in 2022. This document covers the four that will be decided on October 14. We will be releasing information on the other four in advance of the November 18 ballot. As always, these amendments are something we believe voters need to pay attention to.

Four generally deal with clean up, clarifications, or additions to existing constitutional language. Two deal with property tax changes, one touches on religious freedom, and another on elections.

It is interesting to note that five of the eight amendments up for consideration seek revisions to Article VII of the constitution which deals with state and local fiscal issues. That is hardly surprising since we see similar patterns year after year, especially with proposals to adjust and expand various property tax exemptions.

We should remember that ideally our constitution is the framing document that states our basic principles and outlines the powers and duties of the government. But reading through these amendments, it is easy to see how we have taken that notion much further, prescribing things in our foundational document that would more appropriately be placed in statute and decided by our elected leaders.

Be that as it may, almost every year voters are asked to approve a significant number of changes to the constitution and this year is no different. One thing to keep in mind is that in most cases these amendments are not as simple as they seem. There is a backstory, of sorts, to all of them and it soon becomes apparent that context is important. The ballot language is usually kept short and simple, but rarely does it tell you what you need to know to make an informed decision.

Once again CABL has analyzed the amendments and offered our thoughts and recommendations. But mostly, we hope voters will use this guide and other resources that are available to familiarize themselves with the issues before they cast their votes.

Changing our constitution is not something we should undertake lightly. If we make a mistake, it is often difficult to repair in short order. Nevertheless, deciding constitutional matters is one of our important responsibilities as citizens, and we hope voters will consider these proposals thoughtfully and make their voices heard.

Amendment #1 No money from sources outside of government to help fund elections.

What It Does: Prohibit the use of funds, goods, or services donated by a foreign government or nongovernmental source to help conduct elections in Louisiana.

Background: This is one of a series of bills the Legislature has considered on this issue in recent years. It seems to stem from donations that the national nonprofit Center for Tech and Civic Life made to more than 2,500 election jurisdictions across the country beginning in 2020. They came during the U.S. presidential election at the height of the early COVID outbreak and were mostly targeted to assist with efforts to mitigate election disruptions caused by the pandemic. Jurisdictions used them for a variety of things including extra pay for poll workers, expanded early voting, additional ballot drop boxes, security, and administration of mail-in ballots.



But they generated considerable controversy because the funding to the nonprofit that awarded the grants was provided through contributions from Facebook CEO Mark Zuckerberg and his wife, large philanthropic foundations, and corporations such as Google. That spawned allegations that the money was aimed at boosting Democratic turnout and other concerns some labelled as conspiracy theories.

While the Secretary of State initially encouraged local election officials to apply for grants to support their election efforts, Attorney General Jeff Landry raised concerns about the legality of the program and Louisiana appears to be the only southern state where no funds were received or distributed.

Comments: Legislation similar to this was considered by lawmakers three times before. It was vetoed by the governor in 2020 and 2021, and then failed to pass the Senate in 2022. But that legislation was different in two respects. One is that those earlier versions mentioned only the use of funds from non-governmental or private sources – not foreign governments. The other is that they were not constitutional amendments, only proposed state statutes.

According to the National Conference of State Legislatures, 24 states have laws on their books prohibiting or limiting the use of private funds to help conduct elections. They typically include prohibitions on the use of such funds for voter education, registration, or outreach, as well as other unspecified election expenses. Many of those include exceptions which would allow their use in certain circumstances with certain oversight, and none mention anything about foreign governments.

This amendment passed largely along party lines, barely getting the two-thirds vote needed for approval.

Some have suggested passing the bill as a constitutional amendment was a political ploy to avoid another gubernatorial veto. If so, that is not a good reason to add it to the constitution. The first two efforts were to place this law in statute, just as all of the other states have done. That would be the right place for it.

As mentioned, many states do not have iron clad prohibitions against the use of private funds and leave room for such donations to be used to support elections if they are handled in specific ways with oversight and transparency. The constitutional amendment does seem to allow the possibility of some exceptions if they are placed in the election code. But that would seem to require future legislative action and might not be responsive to opportunities that could arise where additional funding would benefit the state or save local jurisdictions money.

Ultimately, it is fair for the Legislature to be concerned about the use of unrestricted and unaccountable dollars being used to support state or local elections. But the rules for regulating this practice should not be a part of the state's foundational governing document and should more appropriately be placed in statute.

Position: OPPOSE

Amendment 2 Extending the freedom to worship

What It Does: States that the freedom to worship is a fundamental right that is worthy of the highest order of judicial protection.



Background: This amendment stems out of executive orders issued by the governor in March of 2020 at the outset of the COVID pandemic when there were concerns over surging cases of the disease. The first order limited the size of most gatherings in the state to 50. The second reduced the size of gatherings to 10 people and included a stay-at-home order for many people.

While houses of worship were included in these orders, many businesses deemed “essential” for various reasons were given exceptions. Not long after those executive orders were issued, the pastor of a church in Baton Rouge was charged with six misdemeanor citations for violations. He challenged those charges and the case eventually made its way to the state Supreme Court. In May of 2022 the court ruled that the executive orders were an unconstitutional “infringement of the fundamental right of the free exercise of religion.”

This amendment further codifies that right in the constitution. It says freedom to worship is a right “of the highest order of protection,” and if for any reason a state or local government places restrictions on this right and is challenged “the court shall apply strict scrutiny” to protect that right unless there is a higher level of protection that can be applied.

Strict scrutiny is a legal term which means that if the government places a restriction on a fundamental right, it must 1) serve a compelling governmental interest and, 2) must be narrowly tailored to serve that compelling interest. The argument in the Louisiana Supreme Court case was that the executive orders were not narrowly tailored. They provided exceptions for some businesses and activities that the church argued were not essential during the time of the pandemic and that those businesses did not

enjoy the fundamental constitutional right given to the freedom to worship. In a 5-2 decision, the court agreed with that argument.

Comments: The guarantee of religious freedom currently provided for in the state constitution is short and direct: “No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof.”

But as with other basic rights, there can be exceptions based on individual circumstances. This amendment further clarifies that the freedom to worship is a right of the highest order of protection and that courts must apply strict scrutiny if that right is infringed upon unless there is a higher level of protection that can be applied.

That language actually tracks the language the state Supreme Court used in deciding the religious freedom case that was before it. The court applied the standard of strict scrutiny saying that “the infringement of the fundamental right of the free exercise of religion, whether in times of crisis or calm, must always be strictly scrutinized by our courts... (and) the state bears a ‘heavy burden’ of proving the law’s validity under the strict scrutiny standard.” It went on to say, “strict scrutiny is the most rigorous test for determining a law’s constitutionality.” It is worth noting that this amendment is also similar to language lawmakers already put into state statutes in the 2010 Preservation of Religious Freedom Act.

All of this raises the question of whether this additional language needs to be in the constitution. On the one hand the freedom of religion and worship are pillars of the constitution and clarifying or strengthening that right within that document may well be the appropriate place to do so. On the other hand, the language in the amendment closely echoes the language the Supreme Court used in deciding the case. A majority of the justices felt the current wording in the constitution made clear that this fundamental right deserved “the most rigorous” level of protection.

In addition, the strict scrutiny standard is a legal term that is well defined, but some worry about the vagueness and uncertainty of what “a higher level of protection or scrutiny” might mean.

CABL clearly supports the right of religious freedom, and we believe the language in our constitution protecting it is strong and clear. We wish this amendment was shorter, more direct, and worded more like a constitution than a statute. After all, the first amendment of the U.S. Constitution is only 45 words and besides providing for the freedom of religion also addresses freedom of speech, the press, and the right of peaceable assembly and redress of government grievances.

The state Supreme Court has effectively set the precedent for this issue going forward and it has interpreted the current language in the constitution in a way that essentially mirrors the same language as this amendment. For that reason, it seems unnecessary. That said, we are not opposed to the intent of this amendment should voters choose to add it to our constitution.

Position: NO POSITION



Amendment # 3 Use more of budget surpluses to pay off retirement system debt

What It Does: Increases the amount of non-recurring revenues that must be used to retire liabilities in state retirement systems from 10% to 25%.

Background: Each year the Revenue Estimating Conference is required to designate whether funds brought into the state treasury are recurring or non-recurring revenues. Usually that involves surplus funds which are dollars that the state did not spend after the close of a fiscal year because revenues exceeded projections. Because those revenues will not necessarily be there next year, it is wise to avoid using them for ongoing expenses, so the state constitution limits how they can be spent. It restricts their use to six general, non-recurring areas:

1. Replenishing the state's Budget Stabilization Fund ("Rainy Day" Fund).
2. Reducing the debt in the state's retirement systems.
3. Reducing other state-bonded indebtedness.
4. Capital outlay which includes a variety of state construction projects.
5. Highway construction.
6. Coastal restoration and protection.



The constitution further requires that 25% of all surplus funds be placed into the Rainy Day Fund until it reaches its cap and 10% be used for reducing debt in the state's two largest retirement systems. This amendment would increase the percentage dedicated to overall pension debt to 25%.

Since Louisiana has four retirement systems with varying degrees of liability, it allows the Legislature to determine how to allocate surplus funds to each system. If it does not do that, the funds would be distributed to each system based on their level of overall liability. The amendment also prohibits the use of any of these revenues to fund cost-of-living increases for retirees.

Comment: The state's four retirement systems have accrued a massive amount of debt over the course of decades. The most recent actuarial reports peg that at about \$17 billion. That debt is a combination of two factors. One is old debt that has been around since the inception of the retirement systems, when for many years the Legislature inadequately funded state pensions. A constitutional amendment in 1987 required the state to fix that problem and since then we have been paying off that debt through added charges to every agency for each employee in the system. That debt is scheduled to be paid off by 2029. When it is, the current constitutional requirement of allocating 10% of budget surpluses to retirement systems goes away.

But while the state was reducing that debt over the last 35 years, it was adding to it elsewhere. That's largely because of years of setting unrealistic assumptions about how well pension system investments would perform. This amendment would require that 25% of budget surpluses be used to help retire that more recently acquired debt on into the future.

Increasing the percentage of surplus funds required to pay off pension debt has very little downside, except that it could reduce funds that might be available for other uses. But CABL believes that is a reasonable trade off. Retirement debt eats up huge amounts of revenue that state agencies, local school

boards, and colleges could use for providing services. Reducing that debt ultimately helps all of them and strengthens the retirement systems, as well.

We already earmark 25% of surplus funds for the Rainy Day Fund because that is a fiscal priority. Directing the same amount to the pension debt is arguably just as important.

Position: SUPPORT

Amendment #4 Allows for the denial of property tax exemptions for nonprofit housing that endangers public safety

What It Does: Allows local governing authorities to revoke property tax exemptions to nonprofit organizations that own housing properties that are in such a state of disrepair that they endanger public health or safety.



Background: Owners of most properties in Louisiana are required to pay taxes on their property which are used to provide various local services to the public. But the state constitution grants many types of exemptions, including a full exemption for properties owned by a nonprofit organization that uses it for one of many purposes. These include religious purposes, cemeteries, charitable purposes, housing, educational purposes, fraternal organizations, and promotion of trade and commerce.

This amendment would allow a local governing authority to revoke that exemption and require the nonprofit owner to pay property taxes if the property is found to be in such poor condition that it endangers public health or safety. It applies only to property that is being leased to tenants to provide housing.

The parameters for losing the exemption are drawn fairly tightly. For the local governing authority to revoke the exemption the property must have been cited three or more times for sustained health and safety code enforcement violations over the prior 12 months. It defines these violations to include:

- Properties with structural instability due to deterioration.
- Contaminated or inoperable water supplies.
- Holes, breaks, or mold in walls.
- Roof defects that admit rain.
- Overhangs in danger of collapse.
- Hazardous electrical systems.
- Improper connection of fuel-burning appliances.
- Inoperable fire detection systems.

The amendment allows for the tax exemption to be reinstated if the governing authority determines the owner has corrected the deficiencies for which the property was cited.

Comment: This amendment was brought because of some specific issues in New Orleans, but it would apply statewide. In New Orleans local officials have wrestled with housing properties owned by an out-of-state nonprofit that received a considerable amount of media coverage over the conditions of

their housing units. News reports showed residents living in apartments with partially collapsed roofs, water damage, and moldy walls. The owner of these units is said to own additional housing properties in other parts of the state.

Local leaders testified that because these properties are owned by nonprofits, they are limited in what they can do in terms of enforcement because they do not pay property taxes. They believe the authority granted by this amendment would provide an additional and more effective tool than any they currently have to help deal with housing properties that present serious safety issues.

The amendment passed without opposition in the Senate, but some conservative members in the House raised concerns about the potential for governmental overreach.

From CABL's perspective that is a familiar concern, but this amendment seems to do its best to avoid that. To lose the tax exemption the property must have three health and safety related violations within a year. And the nature of those violations is well-defined to include only things of a serious or potentially dangerous nature, not a broken fence or cracks in the sidewalk.

Receiving a tax exemption is a privilege and to maintain that privilege it is not unreasonable for a property owner to provide a certain level of maintenance and repair to assure that residents of their complex, which often include young children, are safe and protected. This proposal is presented as a constitutional amendment because property tax exemptions are provided for in the state constitution. Adjusting an exemption requires a change in the constitution.

Position: SUPPORT

