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Constitutional Amendment on November 2002 Ballot

In the November 5, 2002, general election, Texas voters will be asked to approve or reject an amendment to the Texas Constitution that would allow counties to declare long-vacant constable offices dormant. The 77th Legislature proposed the measure, which will appear on the ballot as Proposition 1, by adopting HJR 2 by Chisum/Madla. If approved by voters, the amendment would take effect when the official vote canvass confirmed statewide majority approval. The governor must canvass statewide election results 15 to 30 days following the election.

The Legislature proposes constitutional amendments in joint resolutions that may originate in either the House or the Senate. To be presented to voters, a joint resolution must be adopted by at least a two-thirds vote of the membership of each house (Tex. Const., Art. 17, sec. 1). The joint resolution also specifies the ballot wording of the proposition and the election date.

On November 6, 2001, voters approved all 19 of the other amendments proposed by the 77th Legislature (see House Research Organization *Interim News* Number 77-3, December 7, 2001). Voters have amended the Constitution 409 times since its adoption in 1876.

***Texas voters will decide in November
whether to allow counties to declare dormant
constable offices that have remained vacant for
many years.***

Background on constable offices

Constables in Texas originated with the establishment of Stephen F. Austin's colony in the 1820s. The constitutions of 1836, 1845, and 1861 created constables who were elected biennially from each militia captain's precinct. In 1846, the First Texas Legislature adopted a bill entitled "Defining the Office and Duties of Constables."

Art. 5, sec. 18 of the Constitution requires that constables be elected to four-year terms by the voters from each county, except for Mills, Reagan, and Roberts counties, where the office has been abolished by constitutional amendment. Constables are elected from precincts that vary in number, depending on the county's population.

The Penal Code and the Code of Criminal Procedure classify constables as peace officers. In 1997, voters amended the Constitution to authorize the Legislature to establish qualifications for constables. Local Government Code, sec. 86.0021 requires that constables be licensed as permanent peace officers by the Texas Commission on Law Enforcement Officer Standards and Education no later than the 270th day after they take office.

As local peace officers, constables have general jurisdiction in their home counties over criminal and civil law enforcement matters. Although constables primarily serve as officers of justice of the peace courts, they have the same authority as other peace officers in Texas. Their salaries and office budgets are set by county commissioners courts. Constables may name deputy and reserve deputy constables.

The statutory duties of constables mainly involve attending justice of the peace courts and serving court papers. Constables must act as bailiffs for justice courts held in their precincts and must serve warrants, lawsuits, subpoenas, and other legal papers directed to them and delivered by lawful officers. Constables can serve legal papers throughout the counties in which their precincts are located and in other locations as provided by law. They also can perform any act or service — including serving citations, notices, warrants, subpoenas, or writs — anywhere in the counties in which their precincts are located. Under the Local Government Code, constables also may serve civil process in contiguous counties, and the Texas Rules of Civil Procedure allow them to serve citations and other notices anywhere in the state.

Although no official count exists, an estimated 20 counties have no constable. Larger counties, however, may employ many constables in court and law enforcement matters. In 1995, voters approved an amendment to Art. 5, sec. 18 abolishing the constable offices in Mills, Reagan, and Roberts counties.

Under Art. 16, sec. 17 of the Constitution, all officers continue to perform their official duties until their successors are duly qualified.

Digest of Proposition 1

Proposition 1 would allow a commissioners court to declare a constable office dormant if no one had been elected or appointed to the office for more than seven years since the end of the term of the last person to hold the office. During those seven years, no one could have been elected to fill the office, or a person elected to the office would have had to have failed to meet the qualifications necessary to hold the office or failed to assume the duties of the office. The previous officeholder would not continue to hold the office under Art. 16, sec. 17.

No one could be elected or appointed constable for a dormant office unless the position was reinstated by a vote of the commissioners court or by a county-wide election. Commissioners would have to call a reinstatement election if they received a petition signed by at least 10 percent of qualified voters in the previous constable's precinct. Approval by a majority of the precinct's voters would reinstate the office. Proposition 1 also would require the transfer of records from a dormant constable's office to the county clerk's office.

The ballot proposal reads: "The constitutional amendment authorizing the commissioners court of a county to declare the office of constable in a precinct to be dormant if the office has not been filled by election or appointment for a lengthy period and providing a procedure for the reinstatement of the office."

Supporters say

Proposition 1 would enable counties to save money and avoid potential liability by declaring dormant constable offices that have been vacant for many years. It represents an innovative compromise agreement among county judges, county commissioners, constables, and other county officials that would not abolish any current

Supporters say Proposition 1 would enable counties to save money and avoid potential liability for constables' actions in certain circumstances.

constable's office nor establish any mechanism for abolishing an office. Rather, it would allow the office to be declared dormant and would establish a way to reinstate the office if either the public or local political authorities deemed it necessary.

Voter approval of Proposition 1 would greatly reduce the need for the Legislature to address the issue of unneeded constable positions each session by asking voters to abolish constable offices in individual counties. This would avoid cluttering the ballot with amendments abolishing constable offices in the 251 counties that retain the office. Voters across the state should not have to decide repeatedly on a case-by-case basis what essentially is a local issue.

Several West Texas constable positions have been vacant for years, including some that have not had an incumbent in decades. One county has not had a constable in 47 years. Constables have become less important in some counties with small populations and low crime rates. Proposition 1 would grant the constitutional flexibility for these counties to make their own decisions about eliminating constable positions that have been vacant for years, while allowing counties that traditionally have been served by constables to retain those offices.

It would be better to declare an office dormant and take it off the ballot than to leave it on the ballot when there has been no interest in it. If the position of constable remains on the ballot election after election, a person could declare himself a write-in candidate and be elected with a single vote, giving other voters no notice or choice in the matter. In such cases, taxpayers in small counties might have to pay for an official whose duties were unnecessary. Other constitutional offices have not experienced the prolonged vacancies that have occurred with constables and that would warrant establishing a similar procedure. The Constitution already allows counties to abolish the office of county surveyor, and this amendment would address a similar situation.

Proposition 1 would establish reasonable and fair criteria for deciding when a constable office could be declared dormant. The office would have to be vacant for at least seven years to ensure that at least two election cycles passed before an office was declared dormant.

Proposition 1 would create checks and balances by allowing the office of constable to be revived in two ways. County commissioners could vote to reinstate the office, or they could call an election to submit the issue to voters. However, commissioners would have to call a reinstatement election if asked to do so by at least 10 percent of the precinct's qualified voters. Allowing the office to be revived if necessary would give counties more flexibility than simply abolishing the office, as has been done in the past.

The proposed amendment also would clarify legal issues surrounding the potential liability of the last person to hold the office and of counties for the actions of the last constable to occupy a position that is declared dormant. [Attorney General Opinion JC-0140](#) (November 10, 1999) suggests that a county could be liable under certain circumstances if the commissioners were aware of prior torts committed by a holdover constable. Proposition 1 would ensure that in these cases, the last constable could not continue to hold the office, as could be permissible under Art. 16, sec. 17, or any other section of the Constitution, thus ending this potentially open-ended liability for the county.

The scope of Proposition 1 is tailored narrowly to address only vacant constable offices. It would not address concerns about the actions or qualifications of any constables who now hold office. County commissioners and voters have recourse to address problems with any current officeholders. Voters across the state should not have to arbitrate local disputes and personality conflicts between constables and county commissioners by deciding whether to abolish active offices.

Opponents say the office of constable should not be singled out and treated differently from other offices that remain empty if no one files for the position.

Opponents say

It might be better to allow constable positions to remain empty — and therefore available at any time for someone to file for the office — than to create a new type of dormant county office that could be revived only through specific procedures. The constitutional office of constable should not be singled out and treated differently from other constitutional offices that simply remain empty if no one files for the position. People who want to run for constable should be subject to the same requirements as

are people who run for other offices, and they should not have to go through the procedures outlined in Proposition 1 if they want to run for an office that has been vacant for a while. As elected officials, county commissioners should not be given authority to declare the office of another elected official dormant.

A better approach would be to amend the Constitution to allow voters in each county to decide whether an empty constable position should be abolished permanently. That would allow voters to structure their county governments to meet their own needs.

Proposition 1 would not address abuses by unqualified people holding constable offices or by those unwilling to discharge their duties. Local voters and county commissioners should have the authority to eliminate constable positions even if an incumbent holds the office. Concerns about constables in Howard, Lubbock, Potter,

and Randall counties have raised questions about the utility of this office in those counties, but Proposition 1 would not allow local decisions about the future of those constables because the offices in those counties have incumbents and would not be considered dormant.

Other opponents say

Proposition 1 represents another effort to tinker at the margins of an outdated state constitution rather than taking a more comprehensive approach by revising the entire document. To a large extent, counties remain constitutionally and statutorily rural institutions in an increasingly urbanized state. The Legislature should review and revamp the complete structure of county government rather than advancing piecemeal measures such as Proposition 1.

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Capitol Extension
 Room E2.180

P.O. Box 2910
 Austin, Texas 78768-2910

(512) 463-0752
 FAX (512) 463-1962

www.capitol.state.tx.us/hrofr/hrofr.htm

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