HOUSE
RESEARCH
ORGANIZATION

focus report

Texas House of Representatives

September 7, 2017

CONSTITUTIONAL

Amendments Proposed

for November 2017 Ballot

Amending the Constitution

Texas voters have approved 491 amendments to the state Constitution since its adoption in 1876, according to the Legislative Reference Library. Seven more proposed amendments will be submitted for voter approval at the general election on Tuesday, November 7, 2017.

Joint resolutions

The Texas Legislature proposes constitutional amendments in joint resolutions that originate in either the House of Representatives or the Senate. For example, Proposition 1 on the November 7, 2017, ballot was proposed by House Joint Resolution (HJR) 21, introduced by Rep. Cecil Bell and sponsored in the Senate by Sen. Brandon Creighton. Art. 17, sec. 1 of the Texas Constitution requires that a joint resolution be adopted by at least a two-thirds vote of the membership of each house of the Legislature (100 votes in the House, 21 votes in the Senate) to be presented to voters. The governor cannot veto a joint resolution.

Amendments may be proposed in either regular or special sessions. A joint resolution includes the text of the proposed constitutional amendment and specifies an election date. The secretary of state conducts a random drawing to assign each proposition a ballot number if more than one proposition is being considered.

If voters reject an amendment proposal, the Legislature may resubmit it. For example, the voters rejected a proposition authorizing $300 million in general obligation bonds for college student loans at an August 10, 1991, election, then approved an identical proposition at the November 5, 1991, election after the Legislature readopted the proposal and resubmitted it in essentially the same form.

Ballot wording

The ballot wording of a proposition is specified in the joint resolution adopted by the Legislature, which has broad discretion concerning the wording. In rejecting challenges to the ballot language for proposed amendments, the courts generally have ruled that ballot language is sufficient if it describes the proposed amendment with such definiteness and certainty that voters will not be misled and if it allows a voter of average intelligence to distinguish one proposition from another on the ballot. The courts have assumed that voters become familiar with the proposed amendments before reaching the polls and that they do not decide how to vote solely on the basis of the ballot language.

Election date

The Legislature may call an election for voter consideration of proposed constitutional amendments on any date, as long as election authorities have enough time to provide notice to the voters and print the ballots. In recent years, most proposals have been submitted at the November general election held in odd-numbered years.

Publication

Texas Constitution, Art. 17, sec. 1 requires that a brief explanatory statement of the nature of each proposed amendment, along with the ballot wording for each, be published twice in each newspaper in the state that prints official notices. The first notice must be published 50 to 60 days before the election. The second notice must be published on the same day of the following week. Also, the secretary of state must send a complete copy of each amendment to each county clerk, who must post it in the courthouse at least 30 days before the election.

The secretary of state prepares the explanatory statement, which must be approved by the attorney general, and arranges for the required newspaper publication. The estimated total cost of publication twice in newspapers across the state for the November 7 election is $114,369, according to the Legislative Budget Board.

Enabling legislation

Some constitutional amendments are self-enacting and require no additional legislation to implement their provisions. Other amendments grant discretionary authority to the Legislature to enact legislation in a particular area or within certain guidelines. These amendments require "enabling" legislation to fill in the details of how the amendment would operate. The Legislature often adopts enabling legislation in advance, making the effective date of the legislation contingent on voter approval of a particular amendment. If voters reject the amendment, the legislation dependent on the constitutional change does not take effect.

Effective date

Constitutional amendments take effect when the official vote canvass confirms statewide majority approval, unless a later date is specified. Statewide election results are tabulated by the secretary of state and must be canvassed by the governor 15 to 30 days following the election.

Previous Election Results

Analyses of the seven proposals on the November 3, 2015, ballot appear in House Research Organization Focus Report No. 84-6, *Constitutional Amendments Proposed for November 2015 Ballot*, July 30, 2015.

Constitutional amendment election, November 3, 2015

Prop. 1: *Increasing the homestead property tax exemption*

FOR	*1,371,018*	*86.4%*
AGAINST	*216,032*	*13.6%*

Prop. 2: *Property tax exemptions for surviving spouses of certain disabled veterans*

FOR	*1,435,079*	*91.4%*
AGAINST	*134,885*	*8.6%*

Prop. 3: *Repealing requirement that statewide elected officials live in Austin*

FOR	*1,022,536*	*66.1%*
AGAINST	*525,042*	*33.9%*

Prop. 4: *Allowing professional sports team foundations to conduct charitable raffles*

FOR	*1,075,393*	*69.4%*
AGAINST	*473,852*	*30.6%*

Prop. 5: *Raising population cap for counties that may build private roads*

FOR	*1,279,936*	*82.7%*
AGAINST	*266,783*	*17.3%*

Prop. 6: *Establishing right to hunt, fish, harvest wildlife*

FOR	*1,261,941*	*81.0%*
AGAINST	*294,973*	*19.0%*

Prop. 7: *Dedicating a portion of sales tax revenue to the state highway fund*

FOR	*1,296,356*	*83.2%*
AGAINST	*261,019*	*16.8%*

Source: Secretary of State's Office

Homestead exemption for partially donated homes of disabled veterans

1 Proposition

HJR 21 by Bell (Creighton)

Background

Texas Constitution, Art. 8, sec. 1-b establishes exemptions from taxation on part of the market value of a residence homestead, thereby lowering the total property tax levied on a home if the tax rate stays the same.

Subsection (l) allows the Legislature to provide a partial homestead exemption for a partially disabled veteran if that homestead was donated by a charitable organization at no cost to the disabled veteran. The amount of the exemption is the percentage of the value of the home equal to the percentage of disability of the veteran. Tax Code, sec. 11.132 uses the authority granted by that constitutional provision to create the exemption.

Digest

Proposition 1 would amend Texas Constitution, Art. 8, sec. 1-b(l) to allow the Legislature to provide a partially disabled veteran a partial property tax exemption on a homestead that was donated at some cost to the veteran, in addition to those that were donated at no cost, as long as the homestead was donated for less than its market value.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of part of the market value of the residence homestead of a partially disabled veteran or the surviving spouse of a partially disabled veteran if the residence homestead was donated to the disabled veteran by a charitable organization for less than the market value of the residence homestead and harmonizing certain related provisions of the Texas Constitution."

Supporters say

Proposition 1 would fix an unintended consequence of current law that increases the financial burden on a partially disabled veteran who paid some amount of the cost of a donated home. Unlike a partially disabled veteran whose home is donated in full, a veteran who paid part of the cost of a donated home cannot receive the property tax exemption created by Tax Code, sec. 11.132. This can lead to an unanticipated property tax burden that the veteran may not have the income to offset. Veterans in this situation can be at risk of losing a donated home to unpaid property taxes, even if that home was built or renovated specifically for the individual with features such as wheelchair accessibility.

Veterans have made considerable sacrifices for the nation and the state, and the Legislature should afford them certain benefits and attempt to address injustices when it finds them. No disabled veteran should be at risk, due to an ongoing, unaffordable property tax burden, of losing a home that is specifically donated to accommodate the veteran's needs. In this spirit, Proposition 1 would clarify the intent of existing law and provide the same well-earned property tax exemption to a greater number of partially disabled veterans who receive donated homes.

Opponents say

Proposition 1 would continue a pattern of giving tax exemptions to specialized groups, when instead the Legislature should focus its efforts on reducing the aggregate property tax burden. Exempting a specific category of people, regardless of how deserving they may be, erodes the tax base and results in an increased tax burden on other homeowners.

Notes

Proposition 1's enabling legislation, HB 150 by Bell, will take effect January 1, 2018, if voters approve the proposed amendment. HB 150 would expand Tax Code, sec. 11.132 to extend to a partially disabled veteran a partial property tax exemption for a homestead that was donated at some cost to the veteran, as long as the veteran's cost was no more than 50 percent of the home's estimated market value. The veteran would be entitled to an exemption from taxation of a percentage of the market value of the home equal to the veteran's disability rating.

Revising home equity loan provisions

SJR 60 by Hancock (Parker)

2
Proposition

Background

Home equity lending in Texas is governed by several subsections of Art. 16, sec. 50 of the Texas Constitution. These home equity loans are extensions of credit secured by a lien on a homestead. Under sec. 50(a)(6), the outstanding principal on all debt secured by a home may not exceed 80 percent of a home's fair market value. Home equity loans may not be secured by homesteads designated for agricultural use, except those used primarily for milk production. Other provisions in Art. 16, sec. 50 govern numerous aspects of home equity loans, consumer notices, refinancing, and including the fees that lenders may charge.

Specific restrictions apply to home equity lines of credit, which are open-ended accounts that borrowers may debit from time to time. Art. 16, sec. 50 outlines certain conditions on these lines of credit, including requiring all advances to be at least $4,000 and prohibiting the use of a credit or debit card to obtain an advance. In addition to other restrictions, no advances may be taken on a line-of-credit loan if the outstanding principal exceeds 50 percent of the home's fair market value. Home equity lines of credit are held to the requirement of all home equity loans that the principal amount borrowed when added to the total outstanding principal balance on all debt secured by the home may not exceed 80 percent of the home's fair market value.

Digest

Proposition 2 would amend Texas Constitution, Art. 16, sec. 50 to revise the cap on fees that may be charged when making a home equity loan, allow the refinancing of home equity loans into non-home equity loans, revise a provision governing home equity lines of credit, and amend the list of the types of approved lenders.

The proposed amendment would lower the cap on fees charged to borrowers and revise the type of fees that count toward the cap. The cap would be lowered from 3 percent to 2 percent of the principal of the loan.

The following would be excluded from the calculation of the fee cap:

- appraisals by third-party appraisers;
- property surveys by state registered or licensed surveyors;
- state base premiums for title insurance with endorsements; and
- title examination reports if they cost less than the state base premiums for title insurance without endorsements.

Proposition 2 also would allow home equity loans to be refinanced as non-home equity loans and secured with a lien against a home if certain conditions were met. The refinancing:

- would have to occur at least a year after the home equity loan had closed;
- could not include additional funds, other than funds to refinance another type of debt outlined in the Constitution or costs and reserves required by the lender to refinance the debt; and
- would have to be of an amount that, when added to the total outstanding principal balances of other indebtedness secured by the home, was not more than 80 percent of the fair market value of the home.

The lender would be required to give the owner a written notice, prescribed in the Constitution, within three business days of a loan application being submitted and at least 12 days before the loan was closed. The notice would specify differences between home equity and non-home equity loans.

Proposition 2 would repeal a current restriction on home equity lines of credit that prohibits additional advances on a loan from being made if the principal amount outstanding exceeds 50 percent of the home's fair market value. The proposed amendment also would repeal a prohibition on home equity loans for homesteads designated for agricultural use.

The current list of entities that may make home equity loans would be expanded to include subsidiaries of banks, savings and loan associations, savings banks, and credit unions that met other requirements in the Constitution.

The ballot proposal reads: "The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads."

Supporters say

Proposition 2 would adjust the state's home equity lending framework to help make loans more accessible, lower costs for borrowers, and give consumers more choice. The proposed amendment would be consistent with the goal Texas set when it developed home equity loans to protect consumers within a stable housing market.

Proposition 2 would balance consumer protection with an appropriate standard for lenders by lowering the ceiling on fees that may be charged while removing certain fees from the calculation of the cap. These changes would address problems that have surfaced, especially for smaller loans and those in rural areas. It can be difficult for lenders to put together a loan under the fee cap, resulting in some being reluctant to make such loans. The fees that would be excluded from the cap are assessed by third parties and do not go to lenders. Some of the fees are for documents or services that used to be optional but now are required, and the cost of many of them has increased outside of lenders' control.

The proposed amendment would increase consumer choice by allowing the refinancing of home equity loans into non-home equity loans, something currently prohibited. This option should be available to consumers who want to combine a home equity loan with a purchase money loan, perhaps to get a lower interest rate on the total amount borrowed and have one payment. Proposition 2 would establish reasonable parameters on such refinances, including retaining the requirement for home equity loans that the total amount secured by the homestead could not exceed 80 percent of the home's value. The proposed amendment would require that consumers receive a notice explaining the difference between the two types of loans, including that a non-home equity loan would permit lenders to foreclose without a court order and that lenders would have recourse against other assets. Knowledge of each type of loan would help borrowers make informed choices to protect them from aggressive lending practices. Borrowers would retain the option of refinancing a home equity loan as another home equity loan.

Proposition 2 would repeal an unnecessary restriction on home equity lines of credit that has resulted in consumers being unable to access funds for which they were approved. In such instances, owners must repay funds in order to access the remaining line of credit. This can give consumers an incentive to take out larger loans than they would like and result in them having to pay more interest. The proposed amendment would eliminate the 50 percent limit on the amount that may be outstanding before making additional withdrawals, but lines of credit would continue to be covered by provisions that limit loans to 80 percent of fair market value.

Proposition 2 also would grant the owners of agricultural homesteads the same choice as other Texans by allowing them to take out home equity loans on their agricultural homesteads. There have been no problems in the more than 20 years of home equity lending in Texas that would support continuing a prohibition on loans to one class of homestead owners. In addition to shutting out owners of larger farms and ranches from home equity loans, the current prohibition keeps smaller, hobby agricultural homesteads from having the option of taking out home equity loans.

The proposed amendment would update the types of approved lenders that can make home equity loans by including subsidiaries of entities that already are allowed to make the loans. All of the lenders that would be added by Proposition 2 are highly regulated and would be held to the same standards as others who make home equity loans.

Opponents say

Proposition 2 could raise costs for borrowers and roll back important consumer protections. These protections should be continued because they have worked for both consumers and lenders while contributing to a stable housing market that was not as seriously affected by the recent housing bubble as those in other states.

The proposed changes to the fee cap would raise, not lower, costs for consumers and could create incentives to lenders to make loans just to generate more income from fees. While Proposition 2 would lower the overall cap, it also would exclude major charges from the cap calculation. Borrowers would continue to pay these charges for appraisals, surveys, title insurance, or title examination reports. Lenders then would have room under the cap to raise or add upfront fees. The costs to borrowers easily could be higher than current costs under the 3 percent cap. Lenders instead should focus on home equity loans as a package, with fees, interest rate, and consumer protections taken into consideration, not just on the level of fees they may charge.

Allowing home equity loans to be refinanced as non-home equity loans would run counter to the ideas and protections embedded in Texas home equity laws. These laws deliberately encompass the idea of "once-a-home-equity-loan, always-a-home-equity-loan" so that homeowners who borrow against the equity in their homes have certain protections. These include requiring judicial foreclosure on home equity loans and making home equity loans non-recourse so that a borrower's other assets are not at risk in a default. Requiring judicial foreclosure is especially important because it ensures the involvement of a court and that homeowners are given certain rights in the foreclosure process.

The type of refinancing contemplated under the proposed amendment also could incentivize lenders to encourage the refinancing of loans both to earn the fees and to bring a loan out from under the protections given to home equity borrowers. Home equity loan borrowers interested in refinancing their loans already can do so with a new home equity loan that carries with it all the protections, and this would be a better option than the change proposed in Proposition 2.

3 Proposition

Limiting terms for certain appointees of the governor

SJR 34 by Birdwell (Geren)

Background

The governor makes certain appointments to state boards, commissions, and councils that carry out the laws and direct the policies of state government. The governor also names members of task forces that advise the governor or executive agencies on specific issues and policies. Many appointments are volunteer positions, but such appointees may be entitled to travel and per diem expenses to attend meetings and conduct official business.

According to the governor's office, members of most boards and commissions serve six-year, staggered terms, with one-third of the terms expiring every two years and most terms expiring in odd-numbered years. The appointment process for most boards and commissions requires Senate confirmation of the nominee. The Senate may consider confirmations during regular or special legislative sessions.

Texas Constitution, Art. 16, sec. 17, requires all officers within the state to continue to perform the duties of their offices until their successors are duly qualified.

Digest

Proposition 3 would amend Texas Constitution, Art. 16, sec. 17 to create an exception to the requirement that state officers continue to perform their duties until their successors are duly qualified. The exception would apply to officers appointed by the governor with the advice and consent of the Senate who did not receive a salary. The period for which an appointed officeholder would be required to continue to perform duties would end on the last day of the first regular session of the Legislature that began after the officer's term expired.

The ballot proposal reads: "The constitutional amendment limiting the service of certain officeholders appointed by the governor and confirmed by the senate after the expiration of the person's term of office."

Supporters say

Proposition 3 would address concerns about some gubernatorial appointees being held over in their positions long after their terms have expired. Under the Texas Constitution, appointees with expired terms continue to serve until they are reappointed or replaced. Although this is a safeguard to ensure that positions remain filled until new appointees are in place, it has at times been used to extend unduly a person's term in office. Amending the Constitution to limit how long an appointee with an expired term could continue serving would ensure that these non-salaried positions were rotated among qualified Texans. The proposed amendment also would help ensure that the Texas Senate had adequate time to consider and confirm nominees during regular legislative sessions.

The wording of the proposal would provide sufficient time for the governor's office to nominate replacements. The terms of most appointees expire during the first three months of odd-numbered years, and the proposed resolution would allow them to serve, if necessary, until the last day of the next regular legislative session.

Opponents say

Proposition 3 could result in important appointed offices remaining vacant if a successor had not been duly qualified within the time limits specified by the proposed amendment. The governor's office has thousands of appointed positions to fill during each four-year term, and the current constitutional provision allows flexibility for appointees to continue serving under certain circumstances until qualified replacements can be found. For example, resources might need to be directed to filling vacancies arising from unexpected resignations.

The current provision also provides a safeguard by allowing current appointees to remain to provide continuity for special circumstances and projects. For example, the governor might decide that members of an agency governing board who were involved in hiring a new executive director should remain after their terms expire in order to complete the hiring process.

4 Proposition

Court notice to attorney general of constitutional challenge to state laws

SJR 6 by Zaffirini (Schofield)

Background

Government Code, sec. 402.010(a) requires courts to notify the attorney general when a party to a lawsuit files a petition, motion, or other pleading that challenges the constitutionality of a Texas statute. Under sec. 402.010(b), a court must wait 45 days after giving this notice before entering a final judgment that holds a Texas statute unconstitutional.

The requirement to give this notice does not apply if the attorney general is a party to or counsel involved in the lawsuit challenging the constitutionality of a state law. Parties in the lawsuit must file a form with the court identifying which pleading in the case is challenging the constitutionality of a state law.

In *Ex Parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013), the Texas Court of Criminal Appeals held that Government Code, secs. 402.010(a) and 402.010(b) violated the separation of powers provision in the Texas Constitution, Art. 2, sec. 1. The provision states that the powers of the Texas state government are divided into the legislative, executive, and judicial branches and that no branch shall exercise any power properly attached to either of the others, except in the instances expressly permitted.

Digest

Proposition 4 would amend Texas Constitution, Art. 2, sec. 1, authorizing the Legislature to require courts to notify the attorney general when a party to litigation filed a petition, motion, or other pleading challenging the constitutionality of a state statute if the party notified the court of the challenge. The proposition also would authorize the Legislature to establish a period of up to 45 days after a court gave the required notice during which the court could not enter a judgment holding the statute unconstitutional.

Proposition 4 includes a temporary provision that would make current Government Code, sec. 402.010 validated and effective upon approval of the proposed amendment. That section would apply only to a petition, motion, or other pleading filed on or after January 1, 2018.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional."

Supporters say

Proposition 4 would ensure that the state has an opportunity to defend Texas laws from constitutional challenges. In 2013, the Texas Court of Criminal Appeals struck down a Texas law requiring courts to notify the attorney general of such challenges, and the proposed amendment is needed to restore this law. Proposition 4 would amend the Constitution to make it clear that the Legislature may require courts to provide notice of a constitutional challenge and may establish a reasonable period for the attorney general to respond after receiving such notice.

It is important that the state, through the attorney general, have an opportunity to weigh in when the constitutionality of a law is challenged. Proposition 4 would protect the prerogative of the Legislature to pass laws on behalf of Texans and to have those laws maintained. Without Proposition 4, laws enacted by the Legislature could be struck down without the state having a chance to defend them.

The proposed amendment would not alter the state's separation of powers doctrine nor restrict the ability of courts to strike down on constitutional grounds certain laws enacted by the Legislature. The Government

Code provisions that Proposition 4 would restore were originally enacted in 2011 and amended in 2013 and worked well until the 2013 court ruling. Given the size of the state's decentralized judiciary and the large number of lawsuits filed each year, a statewide law is needed to ensure uniform compliance. Proposition 4 would be in line with a similar rule relating to federal law and would not deny anyone relief in state courts.

The proposed amendment would not alter the authority of the attorney general's office over criminal matters and would not cause confusion. Proposition 4 simply would provide the attorney general's office with information so it could decide whether to take action to defend a state law. Responses by the attorney general's office may include providing information to those involved in a case, monitoring the case, offering assistance, or filing an amicus brief to defend a state law from a constitutional challenge. The attorney general's current system for receiving notices and deciding how to respond to a challenge to Texas law works well, with the office receiving about 60 to 90 notices annually from 2014 to 2016. Proposition 4 would allow that process to continue so that the state knew when its laws were being challenged.

Opponents say

The Texas Constitution should not be amended to undermine the state's separation of powers doctrine, which ensures that each branch of government may exercise its powers without interference from the others. The Legislature should not be authorized to enact laws that might erode the doctrine by establishing a period during which a court may not exercise its power.

The Legislature should not be able to establish procedures that could intrude on the workings of the judiciary and potentially delay relief for those challenging a law as unconstitutional. Texans should be able to receive relief from unconstitutional laws without a legislatively imposed waiting period.

The proposed constitutional amendment could create confusion about the attorney general's role in criminal cases. In these cases, the prosecutor represents the state and may defend the constitutionality of a law. The state prosecuting attorney also is charged with representing Texas before the Court of Criminal Appeals. The attorney general, with a few statutory exceptions that require the consent of local prosecutors, is not authorized under current law to represent the state in criminal cases. If prosecutors feel that they need the attorney general's assistance in a pending case, they easily can request it.

Proposition 5

Amending eligibility requirements for sports team charitable raffles

HJR 100 by Kuempel (Hinojosa)

Background

Texas Constitution, Art. 3, sec. 47 requires the Legislature to prohibit lotteries and gift enterprises in the state, with certain exceptions such as the state lottery, charitable bingo games, and charitable raffles conducted by various nonprofit or religious organizations.

In 2015, voters approved HJR 73 by Geren, which added subsection (d-1) to Art. 3, sec. 47 to allow certain professional sports team charitable foundations existing on January 1, 2016, to conduct charitable raffles at home games under certain conditions specified in the enabling legislation, HB 975 by Geren. HB 975 defined a "professional sports team" as a team organized in Texas that is a member of Major League Baseball, the National Basketball Association, the National Hockey League, the National Football League, or Major League Soccer.

Digest

Proposition 5 would amend Art. 3, sec. 47(d-1) to expand the number of professional sports team charitable foundations eligible to conduct charitable raffles. In addition to those currently allowed under the 2015 provisions from HB 975 by Geren, the proposed amendment would allow the following entities to conduct charitable raffles:

- a Texas team that was a member of the Women's National Basketball Association, National Basketball Association Development League, Minor League Baseball, American Association of Independent Professional Baseball, Atlantic League of Professional Baseball, American Hockey League, East Coast Hockey League, National Women's Soccer League, Major Arena Soccer League, or the United Soccer League;
- a person hosting an event sanctioned by NASCAR, INDYCar, or another nationally recognized motorsports racing association at certain Texas venues;
- an organization hosting a Professional Golf Association (PGA) event; or
- any other professional sports team defined by law.

The ballot proposal reads: "The constitutional amendment on professional sports team charitable foundations conducting charitable raffles."

Supporters say

Proposition 5, along with its enabling legislation, HB 3125 by Kuempel, would expand the number of professional sports team charitable foundations eligible to hold charitable raffles at home sports games. The proposed amendment would allow teams to capitalize on the large and supportive crowds at sporting events to increase the funds available to support their charitable programs. Current charitable raffles have been successful in raising large amounts of money for charity with no abuse of the process.

The proposition, along with HB 3125, its enabling legislation, would work together to allow the charitable foundations of a greater number of professional leagues and their teams to hold charitable raffles for cash prizes at each of their team's home games. Proposition 5 would add sports teams and competitions that represent more rural and suburban communities, bringing charitable revenue to new and different parts of the state and uniting sports teams and their communities to help disadvantaged Texans. Charitable raffles help a team link its fans to community programs supported by its foundation and help raise public awareness of charitable activities in the area.

Proposition 5 only would expand the number of sports teams that could participate in charitable raffles — it would make no other change and would not remove safeguards established to protect against improperly conducted raffles. The protections currently in place, such as requirements that the foundation

be associated with a professional sports team with a home venue in Texas and that it qualify as a charitable organization under federal law, have been successful. Since the law took effect in 2016, no proliferation of profit-making gambling activities has resulted.

Opponents say

The state should be cautious about expanding the number of participants allowed to conduct charitable raffles. Proposition 5 would expand gambling in Texas by increasing the number of sports team foundations that could conduct such raffles, which could prompt other groups to request the authority to offer them.

The current constitutional authorization appropriately applies only to the 10 Texas major league sports franchises that had charitable foundations on January 1, 2016. This limitation in Art. 3, sec. 47(d-1) was established to protect against the creation of entities solely to take advantage of charitable raffles. Proposition 5, along with its enabling legislation, could open the door to further expansion of charitable raffles conducted by the foundations of less well-established teams, an idea that was rejected in 2015 when the Legislature was unambiguous in its choice of teams allowed to hold charitable raffles.

Notes

Proposition 5's enabling legislation, HB 3125 by Kuempel, will take effect December 1, 2017, if voters approve the proposed amendment. HB 3125 would amend the definition of "professional sports team" eligible to conduct charitable raffles at home games to match the list of leagues and competitions specified in Proposition 5. The bill also would make a debit card an acceptable form of payment for buying a charitable raffle ticket.

6 Proposition

Homestead exemption for surviving spouses of certain first responders

SJR 1 by Campbell (Fallon)

Background

Texas Constitution, Art. 8, sec. 1-b establishes exemptions from taxation on part of the market value of a residence homestead, thereby lowering the total property tax levied on a home if the tax rate stays the same.

Subsection (l) allows the Legislature to exempt from property taxes all or part of the market value of the residence homestead of the surviving spouse of a member of the U.S. armed forces who was killed in action, provided that the spouse had not remarried since the service member's death.

Digest

Proposition 6 would amend Texas Constitution, Art. 8, sec. 1-b to allow the Legislature to give a partial or total homestead exemption to the surviving spouse of a first responder who was killed or fatally injured in the line of duty, provided that the spouse had not remarried since the first responder's death. If the surviving spouse moved to a new homestead after receiving an exemption, the Legislature could entitle the spouse to an exemption on the new homestead equal to the dollar amount of the exemption for the previous homestead in the last year in which it was received.

The ballot proposal reads: "The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a first responder who is killed or fatally injured in the line of duty."

Supporters say

Proposition 6 would allow the Legislature to provide valuable tax relief to the families of first responders killed in the line of duty by extending to their surviving spouses the same well deserved property tax exemption currently given to surviving spouses of service members killed in action. The bravery shown by these first responders who made the ultimate sacrifice, just like members of the armed forces killed in action, deserves to be recognized and honored.

Many Texas families have faced financial problems with the rise of property taxes, and some have been taxed out of their homesteads. Spouses of fallen first responders lose a source of income, which can jeopardize their ability to pay property taxes and may ultimately affect surviving spouses' ability to maintain their homesteads. Proposition 6 would help ensure that families in these situations were not forced to sell their homes due to this sudden financial burden. These first responders dedicated and gave their lives for the protection of Texans. Removing this tax burden from their surviving spouses would be a tangible way that Texas could show its gratitude.

Opponents say

Proposition 6 would continue a pattern of giving tax exemptions to specialized groups, when instead the Legislature should focus its efforts on reducing the aggregate property tax burden. Exempting a specific category of people, regardless of how deserving they may be, erodes the tax base and results in an increased tax burden on other homeowners.

Notes

Proposition 6's enabling legislation, SB 15 by Huffines, will take effect January 1, 2018, if voters approve the proposed amendment. SB 15 would entitle the surviving spouse of a first responder who was killed or fatally injured in the line of duty to a total homestead exemption if the spouse had not remarried since the first responder's death. The exemption would apply regardless of the date of the first responder's death and could follow the surviving spouse to a new homestead, but it would be limited to the dollar amount of the exemption for the first qualifying homestead in the last year it was received.

Authorizing Legislature to allow banks to hold raffles promoting savings

HJR 37 by E. Johnson (Hancock)

7
Proposition

Background

Texas Constitution, Art. 3, sec. 47 requires the Legislature to prohibit lotteries and gift enterprises in the state, with certain exceptions, including the state lottery, charitable bingo games, and charitable raffles conducted by various nonprofit or religious organizations.

Digest

Proposition 7 would amend Art. 3, sec. 47 of the Texas Constitution to allow the Legislature to permit credit unions and other financial institutions to conduct promotional activities to encourage savings. Prizes could be awarded to one or more of the institution's depositors selected by lot.

The ballot proposal reads: "The constitutional amendment relating to legislative authority to permit credit unions and other financial institutions to award prizes by lot to promote savings."

Supporters say

Proposition 7 would authorize the Legislature to allow banks and credit unions to host savings promotion raffles, also known as prize-linked savings accounts (PLSAs), which offer incentives to save rather than spend or gamble away earnings. Savings incentives are needed in the state, as more than one-third of Texas households lack a savings account, and about half do not have a three-month emergency fund.

Many states have removed legal barriers to PLSAs, which have led to millions of dollars in consumer savings and thousands of new accounts. These savings allow households to endure financial emergencies such as car repairs or medical bills or to accumulate wealth over time to pursue retirement, higher education, or home ownership. Savings also reduce reliance on sometimes destructive short-term lending.

Savings promotion raffles are not gambling, as they require no form of payment or consideration. They are unlike other raffles because they directly benefit the consumer even if the consumer does not win a prize. Depositors could withdraw their money at any time and thus could not lose as in a raffle in any other industry.

While the enabling legislation, HB 471 by E. Johnson, probably would not be subject to constitutional challenge, Proposition 7 is nonetheless necessary and would head off any constitutional questions. When the 84th Legislature in 2015 passed a similar measure, HB 1628 by E. Johnson, the governor vetoed the bill on the grounds that it would violate Art. 3, sec. 47.

Opponents say

Proposition 7, along with the enabling legislation, HB 471 by E. Johnson, would be a carve-out for one industry to conduct a raffle, which would be the only non-charitable raffle allowed in the state. The state should consider the equity of allowing a single industry to conduct such raffles.

Other opponents say

Proposition 7 is unnecessary because the Texas Constitution requires the prohibition of lotteries, which involve some form of payment or consideration to enter. Because a savings promotion raffle merely requires a deposit into an ordinary savings account, it would not be subject to the constitutional prohibition or challenge, and thus Proposition 7 would have no functional effect.

Notes

Proposition 7's enabling legislation, HB 471 by E. Johnson, would take effect on the date voters approved the proposed amendment. HB 471 would allow credit unions and financial institutions to hold savings promotion raffles, where individuals could enter the

raffle by depositing a certain amount of money in a savings account or other savings program. The bill would establish criteria for such raffles, including that account fees, premiums, withdrawal limits, and interest or dividends on accounts eligible for the raffle be consistent with these features on accounts that were not eligible.

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