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TEXAS LEGISLATIVE COUNCIL

Analyses of Proposed Constitutional Amendments Appearing on November 4, 1980, Ballot

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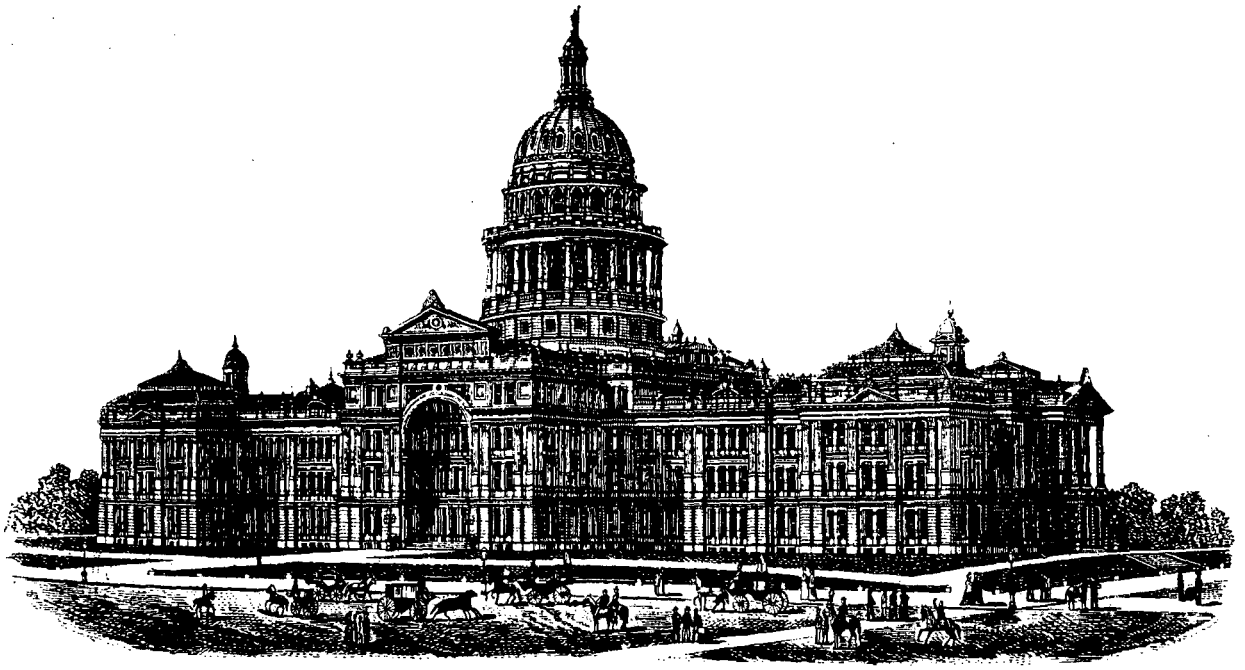

ANALYSES OF PROPOSED CONSTITUTIONAL AMENDMENTS

For Election November 4, 1980

Prepared by the Staff

of the

Texas Legislative Council

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TABLE OF CONTENTS

Page

INTRODUCTION 1

ANALYSES OF PROPOSED AMENDMENTS

Amendment 1 3

Unmanned teller machines

Amendment 2 5

State's right of appeal in criminal cases

Amendment 3 7

Counties' participation in the single property tax appraisals and boards of equalization

Amendment 4 9

Bingo games for charitable purposes

Amendment 5 11

Budget execution powers for the governor

Amendment 6 13

Removal of certain appointed officials

Amendment 7 15

County road work on private roads

Amendment 8 17

Jurisdiction and authority of the courts of civil appeals

Amendment 9 20

Conversion of marital community property into separate property

APPENDIX

Texts of Resolutions Proposing Amendments

Amendment 1 (S.J.R. No. 35) 25

Amendment 2 (H.J.R. No. 97) 27

Amendment 3 (H.J.R. No. 98) 28

Amendment 4 (S.J.R. No. 18). 30

Amendment 5 (H.J.R. No. 86) 32

Amendment 6 (S.J.R. No. 8). 33

Amendment 7 (H.J.R. No. 121) 34

Amendment 8 (S.J.R. No. 36). 35

Amendment 9 (H.J.R. No. 54) 42

INTRODUCTION

In the 1979 regular session, the Texas Legislature proposed 12 constitutional amendments for voter consideration. The nine proposals that will be submitted to voters at the general election on November 4, 1980, concern: (1) unmanned teller machines, (2) the state's right of appeal in criminal cases, (3) counties' participation in the single property tax appraisals and boards of equalization, (4) bingo games for charitable purposes, (5) budget execution powers for the governor, (6) removal of certain appointed officials, (7) county road work on private roads, (8) jurisdiction and authority of the courts of civil appeals, and (9) conversion of marital community property into separate property. The provisions of these amendments and arguments for and against them are discussed in detail in the following pages. The complete text of each joint resolution as passed by the legislature is also included.

The other three amendments which were proposed by the 66th Legislature were voted on in the November, 1979, election. Two of the three were approved by voters:

Amendment No. 1--authorizing the legislature to provide terms of offices of notaries public and to specify the appointment of notaries public for the state instead of for each county (House Joint Resolution 108, passed by vote of 291,006 for and 153,371 against);

Amendment No. 2--providing for legislative review of the process of rulemaking by agencies in the executive department (House Joint Resolution 133, failed by vote of 208,168 for and 227,290 against); and

Amendment No. 3--authorizing the legislature to provide for the guarantee of loans for purchase of farm and ranch real estate for qualified borrowers by the sale of general obligation bonds of the State of Texas (Senate Joint Resolution 13, passed by vote of 240,605 for and 201,212 against).

Since adoption of the present Texas Constitution in 1876, the document has been amended 235 times while 378 proposed amendments have been submitted to voters. The nine proposals approved by the legislature for vote in 1980 bring the total number of amendments submitted to 387.

The following table lists the years in which constitutional amendments have been proposed by the Texas Legislature, the number of amendments proposed, and the number of those adopted.

1876 CONSTITUTION —

AMENDMENTS PROPOSED AND ADOPTED

year proposed	number proposed	number adopted
1879	1	1
1881	2	0
1883	5	5
1887	6	0
1889	2	2
1891	5	5
1893	2	2
1895	2	1
1897	5	1
1899	1	0
1901	1	1
1903	3	3
1905	3	2
1907	9	1
1909	4	4
1911	5	4
1913	8*	0
1915	7	0
1917	3	3
1919	13	3
1921	5**	1
1923	2+	1
1925	4	4
1927	8**	4
1929	7**	5
1931	9	9
1933	12	4
1935	13	10
1937	7	6
1939	4	3
1941	5	1
1943	3**	3
1945	8	7
1947	9	9
1949	10	2
1951	7	3
1953	11	11
1955	9	9
1957	12	10
1959	4	4
1961	14	10
1963	7	4
1965	27	20
1967	20	13
1969	16	9
1971	18	12
1973	9	6
1975	12++	3
1977	15	11
1978	1	1
1979	3	2

TOTAL PROPOSED 378++ TOTAL ADOPTED 235

Notes:

* Eight resolutions were approved by the legislature, but only six were actually submitted on the ballot; one proposal which included two amendments was not submitted to the voters.

** Total reflects two amendments which were included in one joint resolution.

+ Two resolutions were approved by the legislature, but only one was actually submitted on the ballot.

++ Total reflects eight amendments which would have provided for an entire new Texas Constitution and which were included in one joint resolution.

AMENDMENT NO. 1

Senate Joint Resolution 35, proposing a constitutional amendment permitting the legislature to authorize banks to use unmanned teller machines within the county or city of their domicile on a shared basis to serve public convenience.

The proposed amendment authorizes the legislature to permit state and national banks to establish and operate electronic teller machines located away from the banks' buildings. A bank would assign to each participating customer a unique form of identification, such as a card or identification number, so that the customer could use the machine to communicate with the bank in confidence. Without the assistance of a bank employee, the customer could withdraw or deposit money, transfer money between accounts, or perform any other banking function. The use of a machine permits a bank to provide services for its customers at convenient locations away from the bank building and at times other than normal banking hours.

The amendment would permit a bank to place machines in the county or city in which the bank is located or, if the bank is located in a city that lies in two or more counties, to place machines in both the county and the city in which it is located. The amendment provides that a bank must be allowed to share with other banks in the use of a machine that is located in its area if the machine is not located at another bank's office, and that a bank may share in the use of a machine with savings and loan associations or credit unions located in the same area.

BACKGROUND

Article XVI, Section 16, of the Texas Constitution, prohibits state and national banks[1] from participating in branch banking, which is engaging in the business of banking at more than one location. That prohibition, which dates from 1904, is the result of a distrust of branch banking based on reasons that include concern for the stability of banks, fear that many banks could fail in a short period, desire to control the influence of large banking interests, and fear of a banking monopoly.[2]

The federal courts have ruled that an electronic device that performs banking functions and that is installed away from the primary location of a bank is a branch bank. Texas courts if faced with that issue probably would reach the same result. An opinion of the attorney general indicates that the use of machines to perform banking functions is branch banking and is therefore unconstitutional.

The legislature passed this proposed amendment to lift the constitutional ban on the use of unmanned teller machines and enacted legislation for the use of those machines in anticipation of the adoption of the amendment.

---

[1] While national banks are subject to the paramount authority of the United States, they are also subject to the laws of the state in which they are located unless the state's laws impair or destroy the national banks' efficiency as federal agencies or conflict with the laws of the United States. The United States Supreme Court has held that a state may prohibit national banks from participating in branch banking in the state.

[2] Distrust of financial organizations is shown by the fact that before 1904 the Texas Constitution prohibited the incorporation of banks by the state.

ARGUMENTS

FOR:

1. Unmanned teller machines allow customers to transact business at convenient locations and at any time.

2. Because each bank has the right to share in the use of the machines, a bank will be able to serve a larger area than it currently serves. Competition among banks will increase.

3. The use of unmanned teller machines allows banks to better compete with savings and loan associations, which currently may have more than one business location while banks are restricted to a single location.

AGAINST:

1. The cost of installing a network of unmanned teller machines would probably be passed on to the consumer, raising the costs of services currently provided by the banks.

2. The amendment provides a method to circumvent the long-standing prohibition on branch banking in Texas.

3. Instead of increasing competition among banks, the use of unmanned teller machines will allow a large bank to serve the entire community and to force banks operating on a small profit margin out of business, ultimately decreasing competition.

AMENDMENT NO. 2

House Joint Resolution 97, proposing a constitutional amendment to grant the state the right of appeal in criminal cases from certain rulings of the trial court.

The proposed amendment of Article V, Section 26, of the Texas Constitution grants the state and the defendant in a criminal case the right to appeal before the conclusion of the trial from a pretrial ruling of the trial court on certain motions or on the constitutionality of a statute.

The constitution currently denies the state any right of appeal in criminal cases. The main purpose of the amendment is to grant the state a limited right of appeal. The state's appeal will always precede the conclusion of the trial. The defendant's right of appeal is also affected by permitting appeal of those same matters preceding the conclusion of the trial, whereas under existing law the defendant must wait until the conclusion of the trial to appeal.

BACKGROUND

Article V, Section 26, has been construed to deny appeals by the state not only from acquittals but from pretrial rulings as well. Even if the section were repealed, an appeal by the state from an acquittal would be prohibited by the double-jeopardy clauses of the state and federal constitutions. The prohibition of a state appeal in criminal cases developed from the English common law along with the guarantee against double jeopardy and eliminated the question of what kinds of appeals would be permissible without invoking double jeopardy.

The state was afforded a limited right of appeal in criminal cases during part of the last century. The 1876 constitution was the first Texas constitution to prohibit appeals by the state in criminal cases.

ARGUMENTS

FOR:

1. Granting the state this limited right of appeal provides the only effective way of testing the constitutionality of certain statutes and the legality of certain pretrial practices. The state, like the defendant, should be afforded a fair trial free of error.

2. The amendment will provide a criminal defendant with a method of terminating the criminal action at any early stage if the defendant's contentions on appeal are meritorious.

3. Granting the state a right of appeal will eliminate to some extent the tendency of some judges to rule in favor of the defense, when in doubt, to avoid appellate review of their rulings.

AGAINST:

1. The duration of a criminal trial will be substantially lengthened when the state makes an appeal. The trauma and expenses incurred by criminal defendants and their families will be increased.

2. The amendment would cause an increased case load for the court of criminal appeals and a greater work load for prosecuting authorities and court-appointed attorneys. It would accordingly increase the cost of the criminal justice system.

3. Granting the defendant a right to appeal before the conclusion of the trial is a mistake because frivolous appeals may be used as a stalling device.

AMENDMENT NO. 3

House Joint Resolution 98; proposing a constitutional amendment to require a single appraisal and a single board of equalization within each county for ad valorem tax purposes.

This proposed amendment of Article VIII, Section 18, the constitutional provision that requires equalization of property values for tax purposes, would eliminate the requirement that the county commissioners court sit as a board of equalization. It would also require the legislature to enact a law providing a single entity in each county to appraise property for the taxing purposes of the county and of all cities, school districts, and special districts within the county. That entity could appraise property outside the county when a city, school district, or special district has territory located outside the county or when two or more counties choose to consolidate appraisal services and use only one appraisal office. The amendment would also require a single board of equalization for each county and disqualify elected officials from serving on the board of equalization.

BACKGROUND

Article VIII, Section 18, of the constitution now requires the county commissioners court to sit as a board of equalization, and under the statutes, they do so for the state and county and for other political subdivisions that tax on the basis of the county tax roll. Another section of the constitution, Article VIII, Section 14, requires the county tax assessor-collector to appraise property for county taxation.

Currently, cities, school districts, and many special districts are permitted to have their own tax offices to appraise property for taxation and many of them do so. Those political subdivisions that do their own appraising also have a separate board of equalization. Thus most properties in the state are appraised at least twice, and some are appraised by as many as five separate offices. When a property is appraised more than once, the owner, if he wants to challenge the values given his property, has to appear before a different board of equalization for each appraisal.

In 1979, the legislature enacted a new Property Tax Code to take effect in 1982 and eliminate most of the duplication of appraisals and board of equalization hearings. It establishes an appraisal district for each county, which will provide for appraisal of property for all political subdivisions and will appoint a single board to hear taxpayer challenges to the appraisals. Because of the constitutional provisions relating to the county tax assessor-collector and to the commissioners court's board-of-equalization duties, counties will not be required to participate. They are authorized to participate voluntarily, and approximately 215 of the 254 counties have already voluntarily joined the appraisal district.

The proposed amendment would require the legislature either to eliminate the exemption counties now have from participating in the appraisal districts in 1982 or to choose some other entity to make the appraisals for all political subdivisions, including the county, within each county.

ARGUMENTS

FOR:

1. Separate appraisal offices and separate boards of equalization for different political subdivisions covering the same territory wastes tax dollars, confuses taxpayers, and obstructs taxpayers' efforts to be treated fairly. Adoption of this constitutional amendment will allow the legislature to complete the job it has already begun of eliminating this wasteful duplication.

2. A board of equalization should be a neutral, fact-finding body, making decisions based solely on evidence presented to it. County commissioners are highly political, as are elected members of governing bodies of other political subdivisions, and are too subject to political pressures to be expected to make impartial decisions. A board of equalization should be composed of citizens who do not run for office and have no political friends to reward or political enemies to punish.

3. Since most counties have already joined the appraisal districts established by recent legislation, this amendment would make little significant change outside those few remaining counties that chose to continue the wasteful, inefficient duplication of appraisals.

AGAINST:

1. Counties now have the option of joining the appraisal district or of having the county tax assessor-collector make the appraisals and the commissioners court equalize them. Most have joined the district voluntarily and the goal of eliminating duplicate appraisals and duplicate equalization hearings has been largely achieved voluntarily. The state should not compel those counties that have not joined because of their particular local problems just on principle when it will have little statewide impact in streamlining tax administration.

2. Currently, county ad valorem taxes are relatively low. They are low because county property values are determined by the county tax assessor-collector, who is elected, and are equalized by the county commissioners court, members of which are also elected. Adoption of this constitutional amendment would eliminate direct control by the electorate of the officials who appraise and equalize, ensuring that county taxes would increase.

3. If this amendment is adopted and county appraisal and equalization functions are transferred to the recently created appraisal districts, rural taxes will increase. County commissioners courts and tax assessors-collectors have been sympathetic to the problems of agricultural Texas, but the appraisal district boards will be dominated by urban cities and school districts and will not understand those problems.

AMENDMENT NO. 4

Senate Joint Resolution 18, proposing a constitutional amendment to authorize bingo games for charitable purposes on a local option election basis.

The proposed amendment of Article III, Section 47, of the Texas Constitution would authorize the legislature to pass a law permitting and regulating bingo games conducted by a church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs. The law must permit the voters of a county, justice precinct, or incorporated city or town to determine whether the bingo games may be held in the county, justice precinct, or city or town.

The law enacted by the legislature also must require that:

(1) the proceeds from the bingo games are spent in this state for a charitable purpose of the organization conducting the games;

(2) the games are limited to one location on property owned or leased by the organization;

(3) the games are conducted, promoted, and administered by members of the organization; and

(4) the organization must report quarterly to the comptroller of public accounts about the proceeds collected from the games and about the purposes for which the proceeds are spent.

BACKGROUND

Each Texas Constitution adopted before the 1876 Constitution contained the following provision: "No lottery shall be authorized by this State; and the buying or selling of lottery tickets within this State is prohibited." This provision was omitted from the 1876 Constitution. In its place, the 1876 Constitution contained Article III, Section 47, which has remained unchanged since its adoption. This section directs the legislature to pass laws prohibiting the establishment of lotteries and gift enterprises. The legislature has carried out this duty by passing penal laws prohibiting lotteries and gift enterprises. The present relevant penal laws are contained in Chapter 47 of the Penal Code.

The courts of the state have held that a game is a lottery if:

(1) a prize is awarded in the game;

(2) the distribution of the prize is determined by chance; and

(3) a participant in the game pays a consideration for the opportunity to play the game.

A bingo game at which a prize is awarded and at which a consideration is charged for the opportunity to play the game clearly is a lottery.

The attorney general of Texas has ruled that a law exempting churches, veterans organizations, or other nonprofit charitable organizations from prosecution under the lottery

statute violates Article III, Section 47. (Tex. Att'y Gen. Op. No. M-965 (1971).) As a result, an amendment of Section 47 is necessary to permit an organization to conduct bingo games.

ARGUMENTS

FOR:

1. The charitable purposes for which churches, synagogues, religious societies, volunteer fire departments, veterans organizations, fraternal organizations, and medical research or treatment organizations are organized are of great benefit to society. The revenue from the bingo games would be limited to use in this state for the charitable purposes of these organizations. As a result, the public welfare would benefit substantially from the bingo games.

2. The attitudes of persons about bingo games vary greatly from one community to another. The proposed amendment would allow, according to a law to be passed by the legislature, each community to decide for itself whether to permit bingo games conducted by charitable organizations.

3. In spite of the present prohibition of lotteries, it is a current practice in many communities for charitable organizations to conduct bingo games to promote their charitable purposes. The law enforcement authorities in some communities have given tacit approval to the games by failing to enforce the prohibition. The proposed amendment would allow the legislature to pass a law that simply permits a community to legalize, within limitations, the current practice in the community.

4. Bingo games provide an opportunity for entertainment, social gathering, and relaxation for a significant part of a community's members. For example, the social life of many elderly persons revolves around the charitable organizations to which they belong. If charitable organizations are prohibited from conducting the games, many persons are deprived of a primary source of social activity.

AGAINST:

1. A problem that is inherent in bingo games is the possibility of fraud. A regulatory scheme to prevent fraud in the games would be very difficult to administer, and therefore, safeguards would be ineffective.

2. Persons engaged in organized crime often have become involved in other forms of legalized gambling and there is no reason to expect that legalized bingo games would be any different. Organized crime is a growing problem in the state. The legalization of bingo would present organized criminals with an opportunity to make further advancements into the state.

3. If bingo games are legalized, the number of the games would dramatically increase. Following this increase, persons with low incomes would become the most frequent participants in the games because they are the most vulnerable to the ill-advised hope of winning money or prizes in this form of gambling. Thus the games would take money from poor people and bring additional hardship to them.

4. The people of this state believe in the work ethic. People work hard at their jobs and expect fair compensation for their labor. Bingo games conflict with this ethic. The games would discourage hard work and encourage people to try to make the "easy" dollar through gambling.

AMENDMENT NO. 5

House Joint Resolution 86, proposing a constitutional amendment authorizing the legislature to grant budget execution powers to the governor, subject to approval by a budget execution committee.

The proposed amendment would empower the legislature to authorize or direct the governor to exercise fiscal control over the expenditure of appropriated state funds (excluding constitutionally dedicated funds). This power, commonly called "budget execution authority," would exist only to the extent granted by law and would be subject to procedures, conditions, and limitations provided by law. Further, any action of the governor would be subject to approval of a budget execution committee composed of the governor, the lieutenant governor, the speaker of the house, and the chairmen and vice-chairmen of the house appropriations committee and of the senate finance committee.

BACKGROUND

Under the constitution and the statutes of Texas, the governor presently has various powers and duties with respect to the preparation, enactment, and execution of the state budget. Article IV, Section 9, of the constitution requires him to account to the legislature for all public funds received and paid out by him, and requires him at the beginning of each regular session to present "estimates of the amount of money required to be raised by taxation for all purposes." Under Article IV, Section 24, all officers in the executive department are required to report semiannually to the governor with respect to all funds received and disbursed by them; the governor is empowered to require an accounting from them at any time; and the governor is authorized to inspect their books and accounts. Much more important, however, is the veto power (Article IV, Section 14). He can veto the entire appropriations bill or any one or more items of appropriation within it. However, he cannot *reduce* an appropriation for a particular purpose; nor, according to rulings of the courts and of the attorney general, may he veto provisions (riders) that place qualifications, limitations, or conditions on the expenditure of appropriated funds. It has also been ruled that the legislature may not grant the governor prior-approval power over particular expenditures from appropriated funds.

By statute (Article 689a-1 et seq., Vernon's Texas Civil Statutes), the governor is "the chief budget officer of the State." He is responsible for compilation and submission of a proposed state budget to the legislature every two years. Customarily, however, the legislature works from a budget recommended by one of its own agencies, the Legislative Budget Board.

These powers under the current constitution and laws, while substantial, fall far short of the power of control over spending of appropriated state funds. This power, if granted, might include:

--Power to order that all or part of the funds appropriated to an agency for one purpose be spent for another authorized purpose;

--Power to order an agency to limit total expenditures to a specified amount or to limit expenditures for one or more specific programs;

--Power to order that all or part of the funds appropriated for a particular purpose be expended for that purpose; and

--Power to take funds appropriated to one agency and transfer them to another agency.

Under the proposed constitutional amendment, the legislature could grant some or all of the above powers to the governor. Any specific exercise of these powers would be subject to approval of the budget execution committee.

It is noted that budget execution authority was recommended by the Constitutional Revision Commission in 1973, by the legislature in its proposed constitutional revision in 1975, and by the Joint Advisory Committee on Government Operations (the Hobby Commission) in 1977.

ARGUMENTS

FOR:

1. With no central direction or control, the State of Texas spends over $10 billion a year of the taxpayers' money. The time has come to put someone in charge, and this amendment provides a good way to do so.

2. The amendment would be a long-range solution to the spiraling cost of state government by enabling the governor to cut unnecessary spending and to bring increased efficiency and effectiveness to programs for which money is needed.

3. Although appropriation of funds is a legislative function, budget execution is properly an executive function that should be in the hands of the chief executive, who is elected by the people, rather than largely in the hands of numerous appointees who spend billions of dollars a year without having to answer to the people.

4. As chief executive, the governor has a unique vantage point from which to study and improve the cost-effectiveness of government operations. This perspective should be fully utilized to the advantage of the taxpayers of the state.

5. Without meaningful budget execution powers, the chief executive is deprived of one of the essential tools of executive leadership--control of state spending.

AGAINST:

1. Under our present system, which has been in effect for more than 100 years, state spending has been kept under reasonable control while our citizens' tax burden has continued to be among the lowest in the country. Additional controls on spending are much less needed in Texas than in most other states.

2. With the item veto, the governor already has an enormous amount of power over state spending. Under the proposed amendment, he and the budget execution committee would have a "continuing veto."

3. Both the legislature and the governor already have--and use--adequate means for checking on how state agencies spend their money and for calling to account those who are responsible for executing agency budgets.

4. Under the amendment, every attempt of the governor to exercise fiscal control will be subject to approval of a committee composed of the very legislative leadership that steered passage of the appropriations bill. This committee is likely to thwart any substantial tampering with its own work.

AMENDMENT NO. 6

Senate Joint Resolution 8, proposing a constitutional amendment to authorize the governor to remove appointed officers with the advice and consent of the senate; and allowing the governor to call a special session of the senate for this purpose.

This proposed constitutional amendment would add Section 9 to Article XV of the Texas Constitution. The new section would authorize the governor who appoints an officer to remove that person from office with the approval of two-thirds of the senators present. It also would authorize the governor to call a special session of the senate to act on a proposed removal. The removal session could not last more than two days.

BACKGROUND

A public officer differs from a public employee in that an officer is either elected to a position by the public or appointed to it, holds the position for a fixed time (e.g., two years or six years), and cannot be discharged by a superior during the term of his office. The constitution now provides that an officer may not be removed unless charges specifying cause for removal are brought and the officer is given the opportunity to defend against the charges in a trial or a trial-type hearing. (A charge that an individual does not legally hold an office differs from removal. That issue, too, requires a trial, however.)

In the case of state officers, including appellate judges, and of district judges, removal requires impeachment proceedings, address proceedings, or either. District judges may also be removed by the supreme court after a hearing on the charges brought as grounds for the removal. (A statute authorizes the governor to remove officers appointed by the governor or elected by the legislature "for good and sufficient cause." Most legal authorities believe the statute is invalid because it omits the constitutionally required trial, however, and consequently, removal under that statute apparently has never been attempted.)

Both impeachment and address are legislative proceedings. Impeachment requires trial in the senate of charges brought by the house and conviction by vote of two-thirds of the senators present. Address requires a determination by vote of two-thirds of the members of each house, after a hearing, that the charges brought as grounds for removal are true and constitute sufficient reason to remove the officer. A statute prescribes a procedure for convening the house to consider impeachment and for convening the senate to try impeachment charges, but address proceedings may be instituted and completed only if the legislature is meeting in regular or special session.

The proposed amendment would provide an additional method of removal that eliminates the requirements that cause for the removal be specified and that a trial or other opportunity for the officer subject to removal to answer charges be held. Unlike present removal procedures, the proposed procedure would permit the governor, rather than the legislature, to initiate the removal. It is narrow in scope, however. A governor may remove only officers appointed by him, not those appointed by his predecessors, and only gubernatorial appointees, including appointees to fill vacancies in elective offices, may be removed. Officers appointed by an official other than the governor and officers elected to office are not subject to removal under the proposed new section.

ARGUMENTS

FOR:

1. Current methods for removing officers are time-consuming, expensive, and difficult. Consequently, they are rarely used. The governor appoints hundreds of officials each year, and a simpler, quicker method for removing those who are incompetent, neglectful, or otherwise inadequate for their tasks should be available.

2. Although the governor is the head of the executive branch of state government and is held accountable by the public for its actions, he has little formal control over actions of executive agencies. The executive branch is composed of more than 200 agencies headed by appointed or elected officials who are independent and not subject to direct control by the governor. This proposed amendment would give the governor some power to control the actions of his many subordinates, and it avoids abuses by requiring two-thirds of the senate to agree to a proposed removal.

AGAINST:

1. Assuming the governor needs more control of the executive branch of government, this amendment does little to give him that control. A governor will be able to remove only his own appointees, although most offices will be filled by appointees of his predecessors or other officials or by elected officers, and the requirement that two-thirds of the senate concur in a proposed removal effectively eliminates control over his own appointees.

2. The governor already can control the general direction of a state agency by careful selection of appointees. This proposed amendment would give the governor too much control over an agency's day-to-day activities, subjecting all agencies to the threat of increased political influence.

AMENDMENT NO. 7

House Joint Resolution 121, proposing a constitutional amendment relating to the authority of a county to perform private road work.

The proposed amendment, by adding Section 52f to Article III of the Texas Constitution, would authorize any county with a population of 5,000 or less to build and maintain private roads if the county "imposes a reasonable charge for the work." Revenue collected by the county could be used only for construction and maintenance of public roads. The legislature would be authorized to limit the authority conferred by the amendment.

BACKGROUND

Several provisions of the Texas Constitution are designed to prevent state or local governments from aiding private individuals or using public funds for other than public purposes. These restrictions have inspired a great number of proposed constitutional amendments, including the present one dealing with private road work by small counties.

It is not unusual that counties are occasionally asked to provide their equipment and personnel for private road work, particularly in remote areas where there are few, if any, private contractors able or willing to perform the work. Some county governments have performed private road work in the past; others, doubtful of their legal authority, have declined to do so. Except for a couple of "bracket laws" of doubtful constitutionality,[1] no statutes expressly authorize counties to perform private road work. A bill introduced in 1975 would have given all counties authority to perform such work. It would have required the county to charge the "prevailing rate" for the work and to use the proceeds for public road work in the commissioner precinct where the private work was done. This bill died in committee, however, after the attorney general stated in a letter advisory (LA No. 92, 1975) that the proposed law violated sections of the constitution prohibiting the use of public funds for private purposes and limiting the role of the commissioners court to carrying out "county business."

If the proposed amendment is adopted, the attorney general's 1975 letter advisory will be superseded as far as counties with a population of 5,000 or less are concerned.

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[1] Article III, Section 56, of the state constitution prohibits, for the most part, laws applicable only to specific localities. A "bracket law" is an attempt to evade this prohibition by enactment of a statute that, rather than naming the place to which it applies, states that it applies to all units of government in a given population bracket. The bracket is often so narrow that it includes only one unit of government. In such a case, the courts have little difficulty seeing through the evasion and declaring the law unconstitutional. The population bracket laws dealing with counties doing private road work are Articles 6812d and 6812e, Vernon's Texas Civil Statutes. Neither statute has been challenged in court.

ARGUMENTS

FOR

1. In many remote rural counties it is impossible or infeasible to hire a private contractor to perform private road work. By permitting counties to do the work for a reasonable charge, the amendment will alleviate this problem.

2. Small counties must maintain expensive road construction and maintenance equipment even though it may not be required on a full-time basis. They could recoup a part of their investment with the revenue received from private road work. This would help defray the increased costs of their public road programs and might avoid the need for tax increases.

3. The amendment is permissive, not mandatory. Counties need not perform private road work if they so choose, but those counties desiring to perform such work are provided necessary legal authority.

AGAINST

1. Provisions of the Texas Constitution prohibiting the use of public funds for private purposes are a valuable protection against the squandering of public funds. The proposed amendment would undermine this protection by opening the door to a variety of possible abuses. The amendment requires only that counties make a "reasonable charge" for private road work; county governments may be tempted to reward friends with cheap road work.

2. Counties' engaging in the private construction business is an encroachment on private enterprise. Counties will be in direct competition with private construction contractors at a time when the construction industry is financially depressed in many areas.

3. The proposed amendment's population ceiling of 5,000 is rigid and artificial; it is inappropriate for a constitutional provision. If the amendment is adopted, another constitutional amendment will be required if more populous counties are to be included.

AMENDMENT NO. 8

Senate Joint Resolution 36, proposing a constitutional amendment to change the names of the courts of civil appeals and the names and qualifications of the justices of the supreme court and to prescribe the jurisdiction and authority of the appellate courts.

The proposed amendments of Article V, Sections 1 and 2, of the Texas Constitution would change the name of the courts of civil appeals by deleting the word "civil" and the name of associate justices of the supreme court by deleting the word "associate." The proposed amendment of Section 2 also would change the qualifications of the justices of the supreme court by requiring them to retain a license to practice law in this state while serving in the office and would clarify the authority of the governor to fill a vacancy in the office of the chief justice. The proposed amendment of Section 3 would delete the provisions that give the supreme court appellate jurisdiction of questions of law arising in the courts of civil appeals and substitute appellate jurisdiction in all cases except in criminal law matters and as otherwise provided in the constitution and by law. The proposed amendment of Section 5 would clarify the appellate jurisdiction and writ power of the court of criminal appeals, would provide that all cases in which the death penalty is assessed shall be appealed directly to the court of criminal appeals, with all other criminal cases to be appealed to the courts of appeals, and would grant authority to the court of criminal appeals, in its discretion, to review a decision of a court of appeals in a criminal case. The proposed amendment of Section 6 would provide for supreme judicial districts in each of which there would be a court of appeals with appellate jurisdiction of all cases, civil and criminal, for which the district and county courts have original or appellate jurisdiction. Section 6 would also include transitional provisions relating to the justices of the present courts of civil appeals and to the supreme judicial districts. The proposed amendment of Section 16 would conform the provisions in that section to the other amended sections by deleting provisions that require the appeal of certain civil cases to the court of civil appeals and certain criminal cases to the court of criminal appeals. S.J.R. No. 36 also proposes the repeal of archaic provisions in several of the amended sections of Article V and specifies that the amendments would become effective September 1, 1981.

BACKGROUND

The courts of civil appeals were created originally by an amendment of the Texas Constitution in 1891 when the docket of the supreme court remained overcrowded despite the fact that the supreme court, in 1876, was relieved of all criminal jurisdiction and some civil jurisdiction. The legislature began by creating three courts of civil appeals and subsequently created a total of 14 courts, 2 of which include the same geographical area. Recent constitutional and statutory changes have made the courts of civil appeals more flexible and capable of adjustment to different and fluctuating case loads. Prior to an amendment of Article V, Section 6, adopted in 1978, each of the courts of civil appeals was limited to a chief justice and two associate justices, and the supreme court was authorized to equalize dockets between the courts of civil appeals only by transferring cases and not by transferring justices. Since the adoption of that amendment, legislation has authorized the chief justice of the supreme court to assign active or retired justices to a court of civil appeals on a temporary basis regardless of whether a vacancy exists on the court. Also, the legislature, which now is authorized to increase the membership of a court of civil appeals from the original three-justice court to a chief justice and two or more associate justices, has increased the membership of each of the courts of civil appeals that sit in Houston and Dallas to a chief justice and five associate justices; beginning January 1, 1983, the membership of the court of civil appeals that sits in Fort Worth also will be increased to a chief justice and five associate

justices. Each of the courts with a membership of six justices may sit in panels of not less than three justices.

The court of criminal appeals originated in 1876 as the court of appeals, with three judges, to relieve the supreme court of all criminal appeals and all civil appeals from courts below the district level. The constitutional amendment that created the courts of civil appeals in 1891 also changed the name of the court of appeals to the court of criminal appeals and changed the jurisdiction of that court to include only criminal cases. The court of criminal appeals was then, and still is, the only state court in Texas with jurisdiction of criminal cases appealed from the trial courts of this state. When the work load became too great for the three-judge court, a commission of appeals, composed of two attorneys, was created by statute to perform the functions of the judges of the court of criminal appeals, except that the members of the commission were not permitted to vote. The constitution was amended in 1966 to increase the membership of the court of criminal appeals to five judges by making the commissioners members of the court. Subsequently, the number of criminal cases appealed from the trial courts has continued to overwhelm the court of criminal appeals. In 1969, a commission to aid the five-judge court was recreated and, in 1977, the constitution was amended again to increase the membership of the court from five judges to nine judges, with authority to sit in panels of three in most cases. As the only state appellate court in Texas for criminal cases, the work load of the court of criminal appeals may be so great that no expansion of the court can solve the problem. In recent years, more criminal cases have been appealed to the one court of criminal appeals than all the civil cases that were appealed to the 14 courts of civil appeals.

ARGUMENTS

FOR:

1. It is unrealistic to expect only one criminal appellate court in a heavily populated state to administer criminal justice that is both the speedy justice needed to deter crime and the quality of justice that should be accorded the accused and the state.

2. The Texas system of intermediate appellate courts for civil cases has been durable with little change and from its inception solved the supreme court's case-load problem. Although the decisions of the intermediate courts in civil cases are reviewable by the supreme court, in fact most of the decisions of the courts of civil appeals are final.

3. The heavy work load of appeals in criminal cases that presently falls on the one statewide court of criminal appeals would be shared by the 14 regional courts of appeals. The legislature already has authority to make adjustments as needed in the size of a specific court of civil appeals, and the supreme court has authority to equalize dockets among the courts of civil appeals by transferring cases and temporarily transferring justices.

4. Appellate courts with jurisdiction in both civil and criminal matters may attract and develop better justices that have benefitted from experience with a variety of legal problems.

5. Certain changes in Article V of the Texas Constitution proposed by this amendment would avoid problems in the future by clarifying such questions as qualifications of a justice of the supreme court and a vacancy in the office of chief justice. The proposed amendment also would improve the constitution by changing the title of the present associate justices of the supreme court and by repealing archaic provisions.

AGAINST:

1. A one-step appellate review for all criminal cases is the most efficient system to achieve criminal justice with the least delay and expense.

2. An additional court in the appellate process creates a double appeal that is more complex and costly and will delay a final adjudication in cases where the court of criminal appeals reviews the decision of a court of appeals.

3. Because of the present crime rate, the addition of a large number of criminal cases to the civil case loads of the present courts of civil appeals may create new case-load problems in those courts.

4. A judge cannot develop great expertise in every kind of law. A system where some appellate courts specialize in criminal cases and some in civil cases allows the judges of each court to specialize in criminal law or civil law without the necessity of being familiar with both criminal and civil law.

5. The present provisions relating to the title and qualifications of a justice of the supreme court and a vacancy in the office of chief justice and the archaic provisions in Article V of the Texas Constitution have remained unchanged for many years without serious consequences.

AMENDMENT NO. 9

House Joint Resolution 54, proposing a constitutional amendment relating to the conversion of marital community property into separate property.

The proposed amendment of Article XVI, Section 15, of the Texas Constitution would allow spouses to agree in writing that the income or property arising from one spouse's separate property will be the separate property of that spouse. An agreement could encompass both property existing at the time the agreement is made and property to be acquired in the future. The proposed amendment also would allow property to be acquired in the future to be included in a written partition of marital property into separate interests, permit persons to partition property before being married, and create a presumption in the constitution that the scope of a gift of property from one spouse to another includes all income or property that might arise from the property that is the subject of the gift.

BACKGROUND

The proposed amendment would change some of the legal effects of the Texas marital community property system and create new procedures for deviation from that system.

The central concept of the body of marital property rights law called the community property system is that all property acquired during a marriage, other than property specifically exempted by law, becomes the community, or shared, property of both spouses.

The notion of marital community property rights originated with Germanic tribes, was taken by conquering Goths to Spain and France, and was subsequently exported to Spanish and French colonies in the New World, where it was the law of Texas during the periods of both Spanish and Mexican domination. Texas adopted Spanish law when it became a republic in 1836 and elected to retain it with regard to land and slaves when a statute was enacted in 1840 adopting English common law as the general body of legal principles for all other purposes. The constitution adopted at the time Texas became a state applied the community property system to all property, real and personal, and that system has survived virtually intact to the present, excepting some changes in management and disposition of marital property as a result of statutes and judicial interpretations and excepting the allowance of partitioning as a result of the adoption of a constitutional amendment in 1948. Seven other states (Arizona, California, Louisiana, Nevada, New Mexico, Oregon, and Washington) determine rights in marital property through some variant of the community property system.

It can be argued that the community property system anticipated in the modern movement toward legal sexual equality by several hundred years, although its early applications may indicate the desire to protect a wife from the excesses of her husband by granting her separate, enforceable property rights as much as they indicate a recognition of the equal contributions that both spouses can make to a marriage. Whatever the motivations of its earliest advocates, in its modern forms the community property system, characterized by treatment of spouses as equal, or nearly equal, partners, is often considered to more accurately reflect prevailing attitudes about marriage than does the English common law system of marital property rights. In Texas, each spouse has an undivided half interest in property acquired during a marriage, except property gained through a gift, bequest, or inheritance to one spouse and except for certain compensation made for personal injuries to one spouse. A spouse may, without the consent of the other spouse but subject to some limitations, manage and dispose of the property that he or she brings into the "community," but the ownership of the property and its sale proceeds reside in the community. In contrast, under traditional common law theory, a woman's personal property becomes her husband's at marriage, and she has no ownership

interest in his property until his death.

The community property system does not, of course, meet the perceived needs of all married Texans, and periodic attempts have been made to create alternative arrangements for the ownership, control, and disposition of marital property. One attempt held unconstitutional by the Texas Supreme Court resulted in the 1948 constitutional amendment authorizing partition of community property into separate property. The courts have construed the amendment narrowly, requiring, for instance, spouses to partition property into separate interests before entering into an agreement creating another form of joint ownership of the property. A partition may include only existing property, and only persons already married are eligible to partition. Although the constitutional provisions in the two states were identical until 1970, Texas and California courts long ago reached opposite conclusions about the nature of income from separate property--Texas courts holding that the income is community property and California courts ruling that it is separate property.

These are the rules that the amendment proposes to change. In addition, the amendment would establish a complementary rule that the fruits of property that is a gift are presumed to be included in the gift.

Persons likely to benefit from the amendment include couples desiring to make separation agreements pending divorce who would be able under the amendment to divide income they anticipate receiving before the divorce. By permitting prenuptial contracts to stipulate that income from separate property is separate, the amendment would allow a previously married person to preserve, before beginning a subsequent marriage, the income of his or her separate property for the heirs of the previous marriage. Also, the presumption that a gift includes any fruits of the gift would enhance the position of spouses seeking favorable federal tax treatment through the process of gifts to each other.

ARGUMENTS

FOR:

1. A system of marital property law should provide general rules for determining rights in property and then allow, as the amendment would do, considerable freedom for persons to make alternative property arrangements when they perceive doing so to be in their best interest.

2. Benefits derived from property should be owned by the spouse who owns the property without which the benefits would not exist, as the amendment would provide and as is the rule in another major community property state.

3. The amendment would reduce the complexity of the process of converting community property to separate property and would eliminate the need for periodic agreements to continue a policy of ownership begun in a previous agreement.

AGAINST:

1. The community property system has served the citizens of Texas well since the time of Spanish rule, providing a system of rights that promotes the welfare of the vast majority of spouses, and no compelling reasons have been given for altering basic rules of the system, as the amendment would do.

2. The degree of deviation from the community property system permitted by the amendment is so great that it could foster the creation of an entirely different system of marital property law in Texas. This would provide considerable confusion for both married persons and administrators of the law, who would be equally unfamiliar with the implications of a new system.

3. Because it requires few formalities as safeguards, the amendment would enable an unscrupulous spouse to extract valuable property rights from the other spouse; it would also encourage the making of irrevocable decisions about property rights based on speculation about future needs and the extent of future assets.

APPENDIX

AMENDMENT NO. 1

S.J.R. No. 35

A JOINT RESOLUTION proposing a constitutional amendment permitting the legislature to authorize banks to use unmanned teller machines within the county or the city of their domicile on a shared basis to serve the public convenience.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article XVI, Section 16, of the Texas Constitution be amended to read as follows:

"Section 16. Corporations with banking and discounting privileges

"(a) The Legislature shall by general laws, authorize the incorporation of corporate bodies with banking and discounting privileges, and shall provide for a system of State supervision, regulation and control of such bodies which will adequately protect and secure the depositors and creditors thereof.

"No such corporate body shall be chartered until all of the authorized capital stock has been subscribed and paid [~~for~~] in full in cash. Except as may be permitted by the Legislature pursuant to Subsection (b) of this Section 16, such [~~Such~~] body corporate shall not be authorized to engage in business at more than one place which shall be designated in its charter.

"No foreign corporation, other than the national banks of the United States domiciled in this State, shall be permitted to exercise banking or discounting privileges in this State.

"(b) If it finds that the convenience of the public will be served thereby, the Legislature may authorize State and national banks to establish and operate unmanned teller machines within the county or city of their domicile. Such machines may perform all banking functions. Banks which are domiciled within a city lying in two or more counties may be permitted to establish and operate unmanned teller machines

within both the city and the county of their domicile. The Legislature shall provide that a bank shall have the right to share in the use of these teller machines, not situated at a banking house, which are located within the county or the city of the bank's domicile, on a reasonable, nondiscriminatory basis, consistent with anti-trust laws. Banks may share the use of such machines within the county or city of their domicile with savings and loan associations and credit unions which are domiciled in the same county or city."

SECTION 2. Should the legislature enact legislation in anticipation of the adoption of this amendment, such law shall not be invalid because of its anticipatory character.

SECTION 3. The foregoing constitutional amendment shall be submitted to a vote of the qualified electors of this state at an election to be held on the first Tuesday after the first Monday in November, 1980, at which election the ballots shall be printed to provide for voting for or against the proposition: "The constitutional amendment permitting the legislature to authorize banks to use unmanned teller machines within the county or the city of their domicile on a shared basis to serve the public convenience."

AMENDMENT NO. 2

H.J.R. No. 97

A JOINT RESOLUTION proposing a constitutional amendment to grant the state the right of appeal in criminal cases from certain rulings of the trial court.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article V, Section 26, of the Texas Constitution be amended to read as follows:

Sec. 26. The State shall have no right of appeal in criminal cases, except as provided by this section. In addition to the rights of appeal provided to an accused by law and subject to the guarantees of the Bill of Rights of this constitution, both the State and the accused shall have the right, in a criminal case, to an interlocutory appeal, as provided by law, from a ruling of the trial court at a pretrial hearing as to the constitutionality of a particular statute or from a pretrial ruling of the trial court on a motion to quash, dismiss, or set aside an indictment or a motion to suppress evidence.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1980. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing appeal of certain pretrial rulings of a trial court in a criminal case by either the state or the accused."

AMENDMENT NO. 3

H.J.R. No. 98

A JOINT RESOLUTION proposing a constitutional amendment to require a single appraisal and a single board of equalization within each county for ad valorem tax purposes.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article VIII, Section 18, of the Texas Constitution be amended to read as follows:

Sec. 18. (a) The Legislature shall provide for equalizing, as near as may be, the valuation of all property subject to or rendered for taxation, [~~(the--County Commissioner's---Court---to---constitute----a----board----of equalization),~~] and may also provide for the classification of all lands with reference to their value in the several counties.

(b) A single appraisal within each county of all property subject to ad valorem taxation by the county and all other taxing units located therein shall be provided by general law. The Legislature, by general law, may authorize appraisals outside a county when political subdivisions are situated in more than one county or when two or more counties elect to consolidate appraisal services.

(c) The Legislature, by general law, shall provide for a single board of equalization for each appraisal entity consisting of qualified persons residing within the territory appraised by that entity. Members of the board of equalization may not be elected officials of the county or of the governing body of a taxing unit.

(d) The Legislature shall prescribe by general law the methods, timing, and administrative process for implementing the requirements of this section.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 4, 1980. The ballot shall be printed to provide for voting for or against the proposition: "The

constitutional amendment requiring a single appraisal and a single board of equalization within each county for ad valorem tax purposes."

AMENDMENT NO. 4

S.J.R. No. 18

A JOINT RESOLUTION proposing a constitutional amendment to authorize bingo games for charitable purposes on a local option election basis.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article III, Section 47, of the Texas Constitution be amended to read as follows:

"Section 47. (a) The Legislature shall pass laws prohibiting [~~the--establishment--of~~] lotteries and gift enterprises in this State[~~,-as-well-as-the-sale--of--tickets in--lotteries,--gift-enterprises-or-other-evasions-involving the-lottery-principle,--established--or--existing--in--other States~~].

"(b) The Legislature by law may authorize and regulate bingo games conducted by a church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs. A law enacted under this subsection must permit the qualified voters of any county, justice precinct, or incorporated city or town to determine from time to time by a majority vote of the qualified voters voting on the question at an election whether bingo games may be held in the county, justice precinct, or city or town. The law must also require that:

"(1) all proceeds from the games are spent in Texas for charitable purposes of the organizations;

"(2) the games are limited to one location as defined by law on property owned or leased by the church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs; and

"(3) the games are conducted, promoted, and administered by members of the church, synagogue, religious

society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs.

"(c) The law enacted by the Legislature authorizing bingo games must include:

"(1) a requirement that the entities conducting the games report quarterly to the Comptroller of Public Accounts about the amount of proceeds that the entities collect from the games and the purposes for which the proceeds are spent; and

"(2) criminal or civil penalties to enforce the reporting requirement."

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 4, 1980. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to authorize bingo games on a local option election basis if the games are conducted by a church, synagogue, religious society, volunteer fire department, nonprofit veterans organization, fraternal organization, or nonprofit organization supporting medical research or treatment programs and if the proceeds are to be spent in Texas for charitable purposes of the organizations."

AMENDMENT NO. 5

H.J.R. No. 86

A JOINT RESOLUTION proposing a constitutional amendment relating to execution of the state budget.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article IV of the Texas Constitution be amended by adding Section 14a to read as follows:

Sec. 14a. The legislature by general law, or by rider in a general appropriations act not inconsistent with general law, may authorize or direct the governor, with the approval of the budget execution committee, to exercise fiscal control over the expenditure of appropriated funds, excluding funds constitutionally dedicated to specific purposes, in the manner, to the extent, and subject to the conditions and limitations provided by the law or rider. The law or rider is not subject to Article II of this constitution.

The budget execution committee shall be composed of the governor, as chairman, the lieutenant governor, as vice-chairman, the speaker of the house of representatives, the chairman and vice-chairman of the senate finance committee, and the chairman and vice-chairman of the committee on appropriations of the house of representatives.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 4, 1980. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to grant the governor power to exercise fiscal control over the expenditure of appropriated funds as provided by law."

AMENDMENT NO. 6

S.J.R. No. 8

A JOINT RESOLUTION proposing a constitutional amendment to authorize the governor to remove appointed officers with the advice and consent of the senate; and allowing the governor to call a special session of the senate for this purpose.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article XV of the Texas Constitution be amended by adding Section 9 to read as follows:

"Section 9. (a) In addition to the other procedures provided by law for removal of public officers, the governor who appoints an officer may remove the officer with the advice and consent of two-thirds of the members of the senate present.

"(b) If the legislature is not in session when the governor desires to remove an officer, the governor shall call a special session of the senate for consideration of the proposed removal. The session may not exceed two days in duration."

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 4, 1980. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to authorize the governor to remove appointed officers with the advice and consent of the senate."

AMENDMENT NO. 7

H.J.R. No. 121

A JOINT RESOLUTION proposing a constitutional amendment relating to the authority of a county to perform private road work.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article III of the Texas Constitution be amended by adding Section 52f to read as follows:

Sec. 52f. A county with a population of 5,000 or less, according to the most recent federal census, may construct and maintain private roads if it imposes a reasonable charge for the work. The Legislature by general law may limit this authority. Revenue received from private road work may be used only for the construction, including right-of-way acquisition, or maintenance of public roads.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 4, 1980. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment authorizing counties with a population of 5,000 or less to perform private road work."

AMENDMENT NO. 8

S.J.R. No. 36

A JOINT RESOLUTION proposing a constitutional amendment to change the name of the Courts of Civil Appeals and the names and qualifications of the justices of the Supreme Court and to prescribe the jurisdiction and authority of the appellate courts.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article V, Section 1, of the Texas Constitution be amended to read as follows:

"Section 1. The judicial power of this State shall be vested in one Supreme Court, in one Court of Criminal Appeals, in Courts of [~~Civil~~] Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law.

"The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto."

SECTION 2. That Article V, Section 2, of the Texas Constitution be amended to read as follows:

"Section 2. The Supreme Court shall consist of the [~~a~~] Chief Justice and eight [~~Associate~~] Justices, any five of whom shall constitute a quorum, and the concurrence of five shall be necessary to a decision of a case; provided, that when the business of the court may require, the court may sit in sections as designated by the court to hear argument of causes and to consider applications for writs of error or other preliminary matters. No person shall be eligible to serve in the office of Chief Justice or [~~Associate~~] Justice of the Supreme Court unless the person is licensed to practice law in this state and is [~~he be~~], at the time of [~~his~~] election, a citizen of the United States and of this state, and has [~~unless he shall have~~] attained the age of thirty-five years, and has [~~shall have~~] been a practicing lawyer, or a lawyer and judge of a court of

record together at least ten years. Said Justices shall be elected (three of them each two years) by the qualified voters of the state at a general election; shall hold their offices six years, or until their successors are elected and qualified; and shall each receive such compensation as shall be provided by law. In case of a vacancy in the office of the Chief Justice or any Justice of the Supreme Court, the Governor shall fill the vacancy until the next general election for state officers, and at such general election the vacancy for the unexpired term shall be filled by election by the qualified voters of the state. The Justices of the Supreme Court who may be in office at the time this amendment takes effect shall continue in office until the expiration of their term of office under the present Constitution, and until their successors are elected and qualified. [~~The Judges of the Commission of Appeals who may be in office at the time this amendment takes effect shall become Associate Justices of the Supreme Court and each shall continue in office as such Associate Justice of the Supreme Court until January 1st next preceding the expiration of the term to which he has been appointed and until his successor shall be elected and qualified.~~]"

SECTION 3. That Article V, Section 3, of the Texas Constitution be amended to read as follows:

"Section 3. The Supreme Court shall exercise the judicial power of the state except as otherwise provided in this Constitution. Its jurisdiction [~~have appellate jurisdiction only except as herein specified, which~~] shall be co-extensive with the limits of the State and its determinations shall be final except in criminal law matters. Its appellate jurisdiction shall be final and shall extend to all cases except in criminal law matters and as otherwise provided in this Constitution or by law [~~questions of law arising in cases of which the Courts of Civil Appeals have appellate jurisdiction under such restrictions and regulations as the Legislature may prescribe. Until otherwise provided by law the appellate jurisdiction of the Supreme Court shall extend to questions of law arising in the cases in the Courts of Civil Appeals in which the Judges of any Court of Civil Appeals may disagree, or where the several Courts of Civil Appeals may hold differently on the same question of law or where a statute of the State is held void~~]. The Supreme Court and the Justices thereof shall have power to issue writs of habeas corpus, as may be prescribed by law, and under such

regulations as may be prescribed by law, the said courts and the Justices thereof may issue the writs of mandamus, procedendo, certiorari and such other writs, as may be necessary to enforce its jurisdiction. The Legislature may confer original jurisdiction on the Supreme Court to issue writs of quo warranto and mandamus in such cases as may be specified, except as against the Governor of the State.

"The Supreme Court shall also have power, upon affidavit or otherwise as by the court may be determined, to ascertain such matters of fact as may be necessary to the proper exercise of its jurisdiction.

"The Supreme Court shall appoint a clerk, who shall give bond in such manner as is now or may hereafter, be required by law, and he may hold his office for four years and shall be subject to removal by said court for good cause entered of record on the minutes of said court who shall receive such compensation as the Legislature may provide."

SECTION 4. That Article V, Section 5, of the Texas Constitution be amended to read as follows:

"Section 5. The Court of Criminal Appeals shall have final appellate jurisdiction coextensive with the limits of the state, and its determinations shall be final, in all criminal cases of whatever grade, with such exceptions and under such regulations as may be provided in this Constitution or as prescribed by law.

"The appeal of all cases in which the death penalty has been assessed shall be to the Court of Criminal Appeals. The appeal of all other criminal cases shall be to the Courts of Appeal as prescribed by law. In addition, the Court of Criminal Appeals may, on its own motion, review a decision of a Court of Appeals in a criminal case as provided by law. Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion.

"Subject to such regulations as may be prescribed by law, [~~regarding criminal law matters,~~] the Court of Criminal Appeals and the Judges thereof shall have the power to issue the writ [~~writs~~] of habeas corpus, and, in criminal law matters, the writs of mandamus, procedendo, prohibition, and certiorari. The Court and the Judges thereof shall have the power to issue [~~, and~~] such other writs as may be necessary

to protect its jurisdiction or enforce its judgments. The court shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

"The Court of Criminal Appeals may sit for the transaction of business at any time during the year and each term shall begin and end with each calendar year. The Court of Criminal Appeals shall appoint a clerk of the court who shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for a term of four years unless sooner removed by the court for good cause entered of record on the minutes of said court.

"The Clerk of the Court of Criminal Appeals who may be in office at the time when this Amendment takes effect shall continue in office for the term of his appointment."

SECTION 5. That Article V, Section 6, of the Texas Constitution be amended to read as follows:

"Section 6. The Legislature shall [~~as--soon--as practicable-after-the-adoption-of-this-amendment~~] divide the State into <u>such</u> [~~not-less-than--two--nor--more--than--three~~] Supreme judicial districts [~~and--thereafter--into--such additional-districts~~] as the [~~increase--of~~] population and business may require, and shall establish a Court of [~~Civil~~] Appeals in each of said districts, which shall consist of a Chief Justice and at least two Associate Justices, who shall have the qualifications as herein prescribed for Justices of the Supreme Court. The Court of [~~Civil~~] Appeals may sit in sections as authorized by law. The concurrence of a majority of the judges sitting in a section is necessary to decide a case. Said Court of [~~Civil~~] Appeals shall have appellate jurisdiction co-extensive with the limits of their respective districts, which shall extend to all [~~civil~~] cases of which the District Courts or County Courts have original or appellate jurisdiction, under such restrictions and regulations as may be prescribed by law. Provided, that the decision of said courts shall be conclusive on all questions of fact brought before them on appeal or error. <u>Said courts shall have such other jurisdiction, original and appellate, as may be prescribed by law.</u>

"Each of said Courts of [~~Civil~~] Appeals shall hold its sessions at a place in its district to be designated by the Legislature, and at such time as may be prescribed by law.

Said Justices shall be elected by the qualified voters of their respective districts at a general election, for a term of six years and shall receive for their services the sum [~~of--three--thousand--five--hundred-dollars-per-annum,-until otherwise~~] provided by law. [~~Said-courts--shall--have--such other---jurisdiction,--original--and--appellate--as--may--be prescribed-by-law.~~] Each Court of [~~Civil~~] Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

"On the effective date of this amendment, the Justices of the present Courts of Civil Appeals become the Justices of the Courts of Appeals for the term of office to which elected or appointed as Justices of the Courts of Civil Appeals, and the Supreme Judicial Districts become the Supreme Judicial Districts for the Courts of Appeals. All constitutional and statutory references to the Courts of Civil Appeals shall be construed to mean the Courts of Appeals.

"[~~Until--the--organization--of--the--Courts--of--Civil Appeals-and-Criminal-Appeals,-as-herein--provided--for,--the jurisdiction,--power--and--organization--and-location-of-the Supreme-Court,-the-Court-of-Appeals-and--the--Commission--of Appeals--shall--continue-as-they-were-before-the-adoption-of this-amendment.~~

"[~~All-civil-cases-which-may-be-pending-in-the-Court-of Appeals-shall-as-soon-as-practicable-after-the--organization of--the--Courts--of--Civil--Appeals-be-certified-to,-and-the records-thereof-transmitted-to-the-proper--Courts--of--Civil Appeals--to-be-decided-by-said-courts.--At-the-first-session of-the-Supreme-Court-the-Court-of-Criminal-Appeals-and--such of--the--Courts--of--Civil--Appeals--which--may-be-hereafter created-under-this-article-after-the-first-election--of--the Judges--of--such--courts-under-this-amendment.--The-terms-of office-of-the-Judges-of-each-court--shall--be--divided--into three--classes--and--the-Justices-thereof-shall-draw-for-the different-classes.--Those-who-shall-draw-class-No.--1--shall hold--their--offices--two--years,--those-drawing-class-No.-2 shall-hold-their-offices-for-four-years-and--those--who--may draw--class--No.--3--shall-hold-their-offices-for-six-years, from-the-date-of-their-election-and-until--their--successors are--elected--and-qualified,-and-thereafter-each-of-the-said Judges-shall-hold-his-office-for-six-years,-as--provided--in this-Constitution.~~]"

SECTION 6. That Article V, Section 16, of the Texas Constitution be amended to read as follows:

"Section 16. The County Court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices Court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed $200, and they shall have concurrent jurisdiction with the Justice Court in all civil cases when the matter in controversy shall exceed in value $200, and not exceed $500, exclusive of interest, unless otherwise provided by law, and concurrent jurisdiction with the District Court when the matter in controversy shall exceed $500, and not exceed $1,000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases civil and criminal of which Justices Courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed $20, exclusive of cost, under such regulations as may be prescribed by law. In all appeals from Justices Courts there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases civil and criminal of which the County Court has exclusive or concurrent or original jurisdiction [~~of--civil-appeals-in-civil-cases-to-the-Court of-Civil-Appeals-and-in-such-criminal-cases-to-the-Court--of Criminal--Appeals,--with--such--exceptions--and--under--such regulations~~] as may be prescribed by law <u>and this Constitution</u>.

"The County Court shall have the general jurisdiction of a Probate Court; they shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis and common drunkards, including the settlement, partition and distribution of estates of deceased persons and to apprentice minors, as provided by law; and the County Court, or judge thereof, shall have power to issue writs of injunctions, mandamus and all writs necessary to the enforcement of the jurisdiction of said Court, and to issue writs of habeas corpus in cases where the offense charged is within the jurisdiction of the County Court, or any other Court or tribunal inferior to said Court. The County Court

shall not have criminal jurisdiction in any county where there is a Criminal District Court, unless expressly conferred by law, and in such counties appeals from Justices Courts and other inferior courts and tribunals in criminal cases shall be to the Criminal District Court, under such regulations as may be prescribed by law; and in all such cases an appeal shall lie from such District Court as may be prescribed by law and this Constitution [~~to--the--Court--of Criminal--Appeals~~]. When the judge of the County Court is disqualified in any case pending in the County Court the parties interested may, by consent, appoint a proper person to try said case, or upon their failing to do so a competent person may be appointed to try the same in the county where it is pending in such manner as may be prescribed by law."

SECTION 7. This amendment becomes effective September 1, 1981.

SECTION 8. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 4, 1980. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to change the name of the Courts of Civil Appeals and the names and qualifications of the justices of the Supreme Court and to prescribe the jurisdiction and authority of the appellate courts."

AMENDMENT NO. 9

H.J.R. No. 54

A JOINT RESOLUTION proposing a constitutional amendment allowing spouses to agree that income or property arising from separate property is to be separate property.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. That Article XVI, Section 15, of the Texas Constitution be amended to read as follows:

Sec. 15. All property, both real and personal, of a spouse owned or claimed before marriage, and that acquired afterward by gift, devise or descent, shall be the separate property of that spouse; and laws shall be passed more clearly defining the rights of the spouses, in relation to separate and community property; provided that persons about to marry and spouses, without the intention to defraud pre-existing creditors, may by written instrument from time to time partition between themselves all or part of their property, then existing or to be acquired, or exchange between themselves the community interest of one spouse or future spouse in any property for the community interest of the other spouse or future spouse in other community property then existing or to be acquired, whereupon the portion or interest set aside to each spouse shall be and constitute a part of the separate property and estate of such spouse or future spouse; and the spouses may from time to time, by written instrument, agree between themselves that the income or property from all or part of the separate property then owned by one of them, or which thereafter might be acquired, shall be the separate property of that spouse; and if one spouse makes a gift of property to the other that gift is presumed to include all the income or property which might arise from that gift of property.

SECTION 2. This proposed constitutional amendment shall be submitted to the voters at an election to be held on November 4, 1980. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment allowing spouses to agree that income or property arising from separate property is to be separate property."