

LWVLA Voter's Guide, Fall 2018

Guide to the Proposed Constitutional Amendments

Six constitutional amendments will be on the November 6, 2018 ballot. The first two amendments are to Article I of the constitution, which addresses individual rights and due process, and Amendments 3 through 6 are to Article VII of the constitution, which addresses state and local revenue and finance (i.e., taxes).

The Louisiana Secretary of State's office provides a summary of the six amendments at <https://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/ProposedConstitutionalAmendments2018Summaries.pdf>.

The League's summary and commentary is provided through the links below:

[Proposed Amendment No. 1:](#) "Do you support an amendment to prohibit a convicted felon from seeking or holding public office or appointment within five years of completion of his sentence unless he is pardoned?"

[Proposed Amendment No. 2:](#) "Do you support an amendment to require a unanimous jury verdict in all noncapital felony cases for offenses that are committed on or after January 1, 2019?"

[Proposed Amendment No. 3:](#) "Do you support an amendment to permit, pursuant to written agreement, the donation of the use of public equipment and personnel by a political subdivision upon request to another political subdivision for an activity or function which the requesting political subdivision is authorized to exercise?"

[Proposed Amendment No. 4:](#) "Do you support an amendment to remove authority to appropriate or dedicate monies in the Transportation Trust Fund to state police for traffic control purposes?"

[Proposed Amendment No. 5:](#) "Do you support an amendment to extend eligibility for the following special property tax treatments to property in trust: the special assessment level for property tax valuation, the property tax exemption for property of a disabled veteran, and the property tax exemption for the surviving spouse of a person who died while performing their duties as a first responder, active duty member of the military, or law enforcement or fire protection officer?"

[Proposed Amendment No. 6:](#) "Do you support an amendment that will require that any reappraisal of the value of residential property by more than 50%, resulting in a corresponding increase in property taxes, be phased-in over the course of four years during which time no additional reappraisal can occur and that the decrease in the total ad valorem tax collected as a result of the phase-in of assessed valuation be absorbed by the taxing authority and not allocated to the other taxpayers?"

The Public Affairs Research Council of Louisiana also provides an independent, non-partisan analysis of each of the six proposed amendments that is comprehensive and written in easy-to-understand language:

<http://parlouisiana.org/wp-content/uploads/2018/09/PAR-Guide-to-2018-Constitutional-Amendments.pdf>.

Proposed Amendment No. 1

[Act 719 of the 2018 Regular Session of the Louisiana Legislature](#) proposing to add Article I, Section 10.1 to the Louisiana Constitution.

“Do you support an amendment to prohibit a convicted felon from seeking or holding public office or appointment within five years of completion of his sentence unless he is pardoned?”

Description

Public Affairs Research Council of Louisiana, or PAR, paraphrases this amendment as follows:

“Prohibit felons from public office for five years after serving a sentence.”

A **vote for** the proposed amendment would “Constitutionally prohibit convicted nonpardoned felons from seeking or holding public office until five years after completion of sentence.”

A **vote against** the proposed amendment would “Continue to allow convicted felons to qualify to hold office after serving a sentence.”

For close to two decades persons with felony convictions were required to wait 15 years after completion of their sentences before they could run for public office or hold certain unspecified appointed offices. The law was overturned by the Louisiana Supreme Court in 2016 due to a mismatch between the language of the proposed constitutional amendment and its presentation on the ballot. This means that there is no current prohibition keeping a felon from immediately seeking elective or appointed public office after completing the original sentence.

The proposed amendment would reinstate a required “cleansing period”—this time of 5 years instead of 15. This would allow the person time to demonstrate a full commitment to assuming the responsibilities of citizenship before taking on the larger responsibilities of public office.

Argument for the proposed amendment

The Supreme Court’s ruling was based on a technicality; it should not prevail when voter sentiment was clearly in favor of some restriction on office seekers with felony convictions. The 5-year ban would allow community members and voters adequate time to assess the rehabilitation of the office seeker and his merit for office. A 5-year time limit instead of 15 would allow younger offenders convicted of lower level crimes to serve the community sooner. This turnaround period is essential to the voters’ trust and faith that, in spite of its long history of corruption, Louisiana recognizes that those seeking public office have to be held to a higher standard in the future.

Argument against the proposed amendment

Persons who have completed their original sentences should have the full rights of citizenship restored, including running for public office. Studies have shown that formerly incarcerated persons have a better chance of success if they are immediately re-integrated into the community, and a ban on seeking public office, even if only 5 years, shows that the community still views them with distrust. The 5-year ban

would be an unfair extension of punishment beyond the original sentence. The proposed amendment does not prohibit post-sentence offenders from being employed by the state or a local government, demonstrating the state's faith in their rehabilitation, so it should not apply to those seeking office. It should be up to the voters to decide who is a worthy candidate.

Proposed Amendment No. 2

[Act 722 of the 2018 Regular Session of the Louisiana Legislature](#) proposing to amend Article I, Section 17(A) of the Louisiana Constitution.

“Do you support an amendment to require a unanimous jury verdict in all noncapital felony cases for offenses that are committed on or after January 1, 2019?”

Description

Public Affairs Research Council of Louisiana, or PAR, paraphrases this amendment as follows:

“Require a unanimous jury verdict in all felony cases.”

A **vote for** the proposed amendment would “Require unanimous jury decisions for verdicts in noncapital felony cases for offenses committed after 2018.”

A **vote against** the proposed amendment would “Maintain that at least 10 of 12 jurors must agree for verdicts in noncapital felony cases.”

From its earliest days as a U.S. Territory then state, Louisiana required unanimous juries (i.e., agreement on a verdict by all 12 members of a jury), adhering to the common belief that a unanimous 12-man jury was a fundamental right that protected citizens from the tyranny of the state. It wasn’t until 1880, following the Reconstruction era, that the state changed its Code of Practice to allow for split-jury verdicts. In 1898, 9-3 split-jury verdicts (requiring agreement by only 9 of the 12 jurors) in serious felony trials were ratified in the state Constitution. This was done ostensibly to make the courts more efficient and “to relieve the parishes of the enormous burden of costs in criminal trials.” In reality it was an attempt to limit the political power of African-Americans to the extent that it could be legally and constitutionally done. The split-jury law remained intact until 1973 when state convention delegates raised the number of jurors required for a verdict from 9 to 10, once again invoking efficiency.

Section 17(A) of Article I of the 1974 Louisiana Constitution provides in part:

A criminal case in which the punishment may be capital (death) shall be tried before a jury of 12 persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of 12 persons, 10 of whom must concur to render a verdict.

In 2018, Louisiana is one of only two states that allow for split-jury decisions in felony trials, putting it and Oregon outside of mainstream legal traditions in the country, though even Oregon requires a unanimous decision in all murder trials (not just those that may end in a death sentence).

Argument for the proposed amendment

Requiring unanimous juries in all felony cases would give Louisianans the same protections of their rights that exist in 48 other states and the federal courts. Prosecutors in every state except Louisiana and Oregon have the burden of convincing all members of a jury of an accused’s guilt before taking

away his freedom. Prosecutors here do not have to clear that hurdle; they have only to persuade 10 jurors, even when the sentence is life without parole. By allowing verdicts of 10-2 or 11-1, Louisiana breaks with one of the core principles of our legal system, that guilt must be proved beyond a reasonable doubt. The 10-2 rule “holds Louisiana to a lesser standard of justice, which can only diminish the stature of the legal system.” –*Baton Rouge Advocate* Editorial, April 22, 2018¹

An analysis by *The New Orleans Advocate*² this year found that the split-jury system has a disproportionate impact on African-American defendants and perpetuates racial discrimination at every stage of the legal process, including how jurors are summoned, how jurors are picked, and how voices of dissent can be ignored in the deliberation room. *The Advocate* found that 40% of some 993 felony convictions over a 6-year-period came from split juries. Defendants were African-Americans in 75% of these cases and they were 30% more likely than whites to be convicted. African-Americans make up 32% of Louisiana’s population, 66% of state inmates, and 74% of people serving life sentences.

The Advocate’s research showed that without the need for unanimity, jurors are less careful in their deliberations and less likely to consider all views, including those of minority jurors, increasing the risk of wrongful convictions. This point was discussed in a U.S. Supreme Court decision:

The dynamics of the jury process are such that often only one or two members express doubt as to (the) view held by a majority at the outset of deliberations. A rule which insists on unanimity furthers the deliberative process by requiring the minority view to be examined and, if possible, accepted or rejected by the entire jury. The requirement of jury unanimity thus has a precise effect on the fact finding process, one which give particular significance and conclusiveness to the jury’s verdict. Both the defendant and society can place special confidence in a unanimous verdict. –Justice Anthony Kennedy³

Throughout the criminal justice system, the State of Louisiana has an overwhelming advantage: harsh sentencing practices, punitive multiple-offender laws and, with the split jury, a lower bar for conviction. All of these dynamics factor into an accused person’s decision on whether to go to trial in a system weighted in favor of the state or to accept a plea bargain. Requiring unanimous juries could restore some of the balance among all interests and provide greater confidence in the outcome and Louisiana’s criminal justice system.

Prosecutors have broad discretion in fixing charges. Eliminating non-unanimous jury verdicts could change the practice of “up-charging” or “overcharging” the accused when the original charge is unlikely to result in a conviction. For example, defendants charged with simple robbery are tried by a 6-member jury (which requires that all 6 jurors agree on the verdict), while a charge of second-degree robbery must be tried by a 12-member jury, only 10 of whom must agree. The Advocate’s analysis of more than 1,800 trials with 12-member juries found that 81% ended with convictions, well above the national conviction rate of 71%.

¹ https://www.theadvocate.com/baton_rouge/opinion/our_views/article_05716d58-4431-11e8-bded-ef9abfe5a2ea.html

² https://www.theadvocate.com/new_orleans/news/courts/article_85b28154-3492-11e8-bfd2-07fee9f093d2.html

³ *United States v. Lopez*, 581 F.2d 1338, 1341 (9th Cir. 1978).

The *Advocate's* research also showed that even a 50% increase in hung juries would not result in large numbers of additional retrials. They estimated that requiring unanimous juries would likely result in only four additional retrials due to hung juries each year, with the rest resulting in pleas or dismissals.

The proposed constitutional amendment has gathered bipartisan support from across the state, starting with its passage in the Legislature this spring. Since then, a broad range of groups and organizations—liberal and conservative—have endorsed the measure, and they are working together to educate the public on the importance of ending the use of non-unanimous juries in criminal cases.

Argument against the proposed amendment

Unanimous juries are not mandated by the U.S. Constitution. In a pair of rulings in 1972, the U.S. Supreme Court determined that Sixth Amendment and Fourteenth Amendment rights were not violated by non-unanimous verdicts, that in fact, the U.S. Constitution makes no mention of how large juries should be or what vote is needed for conviction. Despite repeated challenges, the U.S. Supreme Court has resisted attempts to overturn these rulings. And the Louisiana Supreme Court has repeatedly followed suit.

Throughout the history of laws and Constitutional provisions providing for split-jury verdicts, lawmakers have claimed that the provision would make the courts more efficient by saving jurors' time and by avoiding costly retrials caused by hung juries. A similar argument was made recently by the Executive Director of Louisiana's District Attorney's Association when he stated that Louisiana and Oregon have fewer mistrials than the other 48 states.⁴ He predicted that requiring unanimity would increase the number of mistrials here by 50%, increasing costs and leaving victims waiting longer for justice.

Louisiana's Attorney General argues that no change in the jury system is necessary because there is no current rule that disenfranchises African-American jurors. Indeed, it has been claimed that changing the Constitution from a 9-3 verdict requirement to a 10-2 requirement in effect erased any historical racist intent. Some have argued that there is insufficient data to prove any disproportionate (racial) impact or that non-unanimous juries' verdicts are any less reliable than those of unanimous juries.

Other arguments made in favor of maintaining the 10-2 non-unanimous jury system are that unanimous juries could make it harder for prosecutors to procure convictions, and the drop in incarceration rates could leave parish jails struggling to fill work release programs that fund rural sheriffs' operations.

In addition, even though the proposed amendment does not become effective until 2019 and is not retroactive, a court challenge could determine that it should be applied retroactively, which could bring every case decided by a non-unanimous jury back into court to be retried. This would bring tremendous instability and unpredictability to the legal system.

⁴ https://www.theadvocate.com/new_orleans/news/courts/article_9bb913bc-32d7-11e8-85d5-c3d3cc0c599d.html

Proposed Amendment No. 3

[Act 717 of the 2018 Regular Session of the Louisiana Legislature](#) proposing to amend Article VII, Section 14(B) of the Louisiana Constitution.

“Do you support an amendment to permit, pursuant to written agreement, the donation of the use of public equipment and personnel by a political subdivision upon request to another political subdivision for an activity or function which the requesting political subdivision is authorized to exercise?”

Description

Public Affairs Research Council of Louisiana, or PAR, paraphrases this amendment as

“Allow political subdivisions to exchange public equipment and personnel for authorized activities.”

A **vote for** the proposed amendment would “Allow donations of the use of public equipment and personnel from one political subdivision to another under the Constitution.”

A **vote against** the proposed amendment would “Continue to require that local governments receive comparable value for any donation provided to another governmental entity.”

This amendment would allow a political subdivision to loan equipment and personnel to another political subdivision, for an action that the recipient is authorized to do, after entering into a written agreement. The amendment was proposed to alleviate the problem that arose when Denham Springs was reprimanded by the state legislative auditor for loaning equipment to Walker following the flood in 2016. The action was a possible violation of the Louisiana Constitution, which prohibits the donation of public funds (current law requires receiving something of comparable value for such loans).

Argument for the proposed amendment

The amendment allows a city (or other political subdivision) to share resources with another city (or political subdivision), which can save funds for the recipient and can quicken recovery following a crisis. This allows intergovernmental cooperation and allows local entities to determine the best use of their funds without statutory limitation. That can be especially useful in times of crisis, when funds are extraordinarily strained while spending is extraordinarily high.

Argument against the proposed amendment

Because equipment and personnel would be allowed to be shared between political subdivisions without required compensation from the recipient, there is potential for a political subdivision to demonstrate irresponsible use of taxpayer dollars by over-lending its resources. No amount limits are specified in the amendment.

Proposed Amendment No. 4

[Act 720 of the 2018 Regular Session of the Louisiana Legislature](#) proposing to amend Article VII, Section 27(B)(1) of the Louisiana Constitution.

“Do you support an amendment to remove authority to appropriate or dedicate monies in the Transportation Trust Fund to state police for traffic control purposes?”

Description

Public Affairs Research Council of Louisiana, or PAR, paraphrases this amendment as

“Prohibit using money in the Transportation Trust Fund by state police for traffic control purposes.”

A **vote for** the proposed amendment would “Remove the authority to use money in the Transportation Trust Fund by state police for traffic control purposes.”

A **vote against** the proposed amendment would “Continue to allow a portion of the Transportation Trust Fund to be used by state police for traffic control purposes.”

State gas tax dollars are currently allotted into the Transportation Trust Fund (TTF). Money in the TTF can be used only for the costs associated with construction and maintenance of roads and bridges, flood control, ports, airports, transit, and Louisiana State Police for traffic control purposes. Present constitution further provides that state generated tax monies appropriated for ports, Parish Transportation Fund, Statewide Flood-Control Program and state police for traffic control purposes shall not exceed 20% annually in the state generated tax revenues in the trust fund.

From 1991-2015, an average of \$32 million (M) per year has been moved from the TTF to the State Police for traffic control.⁵ Over the last 5 years the amounts spent on the State Police were \$68.9 M in Fiscal Year (FY) 14, \$62.4 M in FY 15, \$43.2 M in FY 16 and \$0 in FYs 17 and 18. This diversion of funds from direct road and bridge construction and maintenance has generated much criticism given Louisiana’s multi-billion dollar backlog of road and bridge projects. This amendment removes the Louisiana State Police from the list of allowable TTF expenditures. It would reallocate Transportation Trust Fund monies amongst the remaining eligible users of the fund.

Argument for the proposed amendment

In prior years proposed increases in the state fuel tax have failed due in part to skepticism that the revenue raised by the tax would be used for roads. Reducing diversions of funds to other purposes could make it easier to raise the additional taxes needed to fund solutions to our infrastructure problems. This amendment would keep funds for an under-funded State Highway Department for badly needed maintenance, repairs and construction.

⁵ https://www.theadvocate.com/baton_rouge/news/politics/legislature/article_bfb72d52-4c56-11e7-a645-7ffe3f41f5ba.html

Argument against the proposed amendment

Because no TTF monies have been diverted to the State Police over the last two years, this amendment would have no immediate effect fiscal impact. However, it would permanently lock up funds and restrict budget flexibility for the executive and legislative branches in future fiscal years. The more restrictions that are placed on how monies are allocated or used, the less discretion the legislature (and in this case the agency's administration) has in setting priorities. By specifying dedicated funds in the constitution, the fund cannot be used for any other purpose except by a vote of the people to rescind the constitutional provision.

In this case the Department of Transportation had used monies in the Transportation Trust Fund to cover costs incurred by the State Police. If the legislature had allocated sufficient funds for the State Police then this would not have occurred. The legislature could fix this problem by raising revenue to sufficiently fund both transportation needs and the State Highway Patrol. This amendment does not solve the underlying funding problem.

Proposed Amendment No. 5

[Act 721 of the 2018 Regular Session of the Louisiana Legislature](#) proposing to add Article VII, Sections 18(G)(6), 21(K)(4) and (M)(4) of the Louisiana Constitution.

“Do you support an amendment to extend eligibility for the following special property tax treatments to property in trust: the special assessment level for property tax valuation, the property tax exemption for property of a disabled veteran, and the property tax exemption for the surviving spouse of a person who died while performing their duties as a first responder, active duty member of the military, or law enforcement or fire protection officer?”

Description

Public Affairs Research Council of Louisiana, or PAR, paraphrases this amendment as **“Allows special assessments for certain homes held in trust.”**

A **vote for** the proposed amendment would “Extend eligibility for certain special property tax treatments to property held in trust.”

A **vote against** the proposed amendment would “Keep eligibility for certain special property tax treatment restricted to the owner of the property.”

The Louisiana Constitution allows special assessments for several groups of homestead owners: those over age 65, disabled veterans, surviving spouses of military members killed in action, and the totally disabled. Special assessments put a freeze on the value of a primary residence if the owner(s)' income is below a certain level, the owner applies for the special assessment, and if the owner continues to meet the eligibility requirements. The bill does not add any categories of homeowners eligible to participate, nor does it reduce the amount of the special assessment. According to the sponsor of the bill, the Attorney General issued an opinion that such an owner who puts the primary residence into a trust loses the special assessment.⁶

Argument for the proposed amendment

All special assessments counted together make up 15% of the total number of homestead exemptions, and seniors 65 and older hold 91% of the total number of special assessments. The amendment would not affect a large number of homeowners or increase government expenses.⁷

Families eligible for or already receiving the special assessment sometimes want to create a trust in the present time in order to avoid the larger costs their heirs would otherwise pay in the succession process. Homeowners who set up a trust for the primary residence would not lose the special assessment and would not pay more taxes because of the trust in the years before death.

⁶ Testimony to Senate Revenue and Finance Committee by Senator Jonathan Perry, video recording, Senate Committee on Revenue and Fiscal Affairs hearing 3/26/18: http://senate.la.gov/video/videoarchive.asp?v=senate/2018/03/032618R~F_0

⁷ Fiscal note for SB163 by Legislative Fiscal Office, April 23, 2018. <https://legis.la.gov/legis/ViewDocument.aspx?d=1089231>

Argument against the proposed amendment

Although adding a benefit to a special assessment does not cause a sharp reduction in the amount of local government revenue for public services, over time special exemptions from property taxes add to local budget deficits.^{5,8}

The constitution should contain fundamental law, not statutory law. It should also be written in clear and simple language. The three new subsections that would be added to the constitution by this proposed amendment are written in technical legal language. Including such specific legal language could lead to further constitutional amendments needed to adjust the issue.

⁸ *Public Affairs Research Council of Louisiana Guide to the 2018 Constitutional Amendments:* <http://parlouisiana.org>

Proposed Amendment No. 6

[Act 718 of the 2018 Regular Session of the Louisiana Legislature](#) proposing to amend Article VII, Section 18(A) and (F) of the Louisiana Constitution.

“Do you support an amendment that will require that any reappraisal of the value of residential property by more than 50%, resulting in a corresponding increase in property taxes, be phased-in over the course of four years during which time no additional reappraisal can occur and that the decrease in the total ad valorem tax collected as a result of the phase-in of assessed valuation be absorbed by the taxing authority and not allocated to the other taxpayers?”

Description

Public Affairs Research Council of Louisiana, or PAR, paraphrases this amendment as

“Require a tax phase-in for primary homes when an assessment increases by more than 50%.”

A **vote for** the proposed amendment would “Require a four-year phase-in of tax liability for homes subject to the homestead exemption when a reappraisal increases assessments by more than 50%.”

A **vote against** the proposed amendment would “Continue to require all homeowners to pay taxes owed on the same basis according to the assessed values.”

Under existing Louisiana law, properties are reassessed every four years by the local taxing authority. The provisions of Amendment 6 apply only to residential properties eligible for the homestead exemption whose reassessed property values result in a tax increase greater than 50%. The Amendment does not apply if the reassessed property value is due to renovations or improvements of the property itself.

If this amendment is approved, a qualifying homeowner with that large a tax increase could apply for a phased-in program that would take place over a four year period. During this period, the owner’s additional tax would be added in 25% increments each year: 25% of the additional tax in year one, 50% in year two, 75% in year three, and 100% of the additional tax in year four.

This phase-in of taxes would be available only for properties that qualify for the homestead exemption. If the property is sold or transferred during the phase-in period, the phase-in would cease and the new owner would be assessed at the full rate. The phase-in would not be cause for reappraisal of the property by an assessor until after the required four-year period.

The total amount of the loss of tax revenue due to the phase-in program would be absorbed by the taxing authority and not result in additional tax liability to other taxpayers.

Argument for the proposed amendment

This amendment would ease the tax burden on residential property owners whose valuations have increased more than 50%, either by improvements or the sale of comparable properties in the area. The

increased property values and resulting increased taxes are typically prompted by factors out of their immediate control. This amendment gives such homeowners time to adjust to the increase.

Argument against the proposed amendment

This amendment does not apply to anyone whose re-evaluation is 50% or less. Many of those owners will be paying more property taxes than an owner with the higher valuation. This makes the amendment unfair to more homeowners than it helps.

If the financial status of the property owner has not improved at the end of the four year phase-in period, then the financial burden of the increased tax will still exist. It is also possible that at the end of the four-year period when the property is re-assessed as required by law, additional increases may be added.

If the property owner refinances the mortgage during the phase-in and the new appraisal increases the property value, then the full ad valorem assessment is triggered and the phase-in ceases.