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LOUISIANA CONSTITUTIONAL AMENDMENTS ARE ANY REALLY NECESSARY?

We love our elections in Louisiana. Or, at least our public officials sure do. We have already had four election dates this year, and guess what? We still have three more elections to go. And what little interest there was seems to be waning. The forty percent turnout being ballyhooed by elections officials a few weeks ago could well drop in the 30 percent range.

What about all of these constitutional amendments? Are any of them really necessary? There are thirteen constitutional amendments on the ballot this Saturday, with eight more to go on the November ballot. That means the 1974 Louisiana Constitution has been amended 127 times so far, and we still haven't gotten it right.

Have you read over the various proposals to consider on Saturday (assuming you are one of the numbers who will actually cast your vote)? The language is confusing, there has been little explanation even from the good government groups, and we all know that the devil is in the details. So are any of these proposals really necessary? Could many of these issues be handled in the Legislature? Of course they could. But many interest groups want to get their "niche" in the constitution.

A number of the proposals being offered for consideration deal with the "what if" scenario. There may be no real problem now, but circumstances could develop in the future that might require certain protections. Is that what constitutional amendments are for? Anticipating problems that have not even surfaced yet? The Legislature passing a law is one thing. It can be repealed the following year, or even in a special session called by the Governor. But once a proposal is embedded in the constitution, we are, for all practical purposes, stuck with it. So what's being proposed that requires immediate action? Let's take a look:

Amendment 1 – Coastal Fund

We all know there is a tremendous problem with Louisiana wetlands. Basically, this amendment says any federal offshore money will go into a protection fund. It seems like a good idea. But you can drive a Mack truck through the loopholes in the constitutional language. The money can be used for not only coastal restoration, but also for hurricane protection, highways and other public facilities that are in any way affected by the fund. So you can build new buildings, roads, higher levees, all that have nothing to do with wetlands conservation. The amendment is poorly written if your goal is to restore the coastline. The idea sounds good, but needs a lot more work. So why put it in the constitution when there are so many loopholes?

Amendment 2 – Coastal Monies

Louisiana reaped a windfall in a 1998 settlement of a lawsuit against the tobacco companies. It was to reimburse Louisiana for the public cost of healthcare for those who suffered from smoking related illnesses. It seems only logical that any monies from the settlement would go to improving the health of Louisiana citizens, who rank dead last on surveys year after year in being healthy. Diverting tobacco funds for coastal wetlands has no correlation. Why not spend the funds in prevention of smoking or treating victims of tobacco-related diseases? Spending tobacco settlement money on coastal erosion and not using these funds towards the health of Louisiana citizens is a copout.

Amendment 3 – Levee Boards

There is almost unanimous opinion that the Levee Board in New Orleans has failed its mission to emphatically protect the levees. Most neutral observers feel that this amendment is little more than a compromise that merely “patches” the problem. The New Orleans Levee Board would be abolished, but then more new Super Boards are created. Here is the question. Why have any levee boards at all? The state will still be left with 22 levee boards. Most of the states up and down the Mississippi have no levee boards. This amendment certainly improves the present situation, because the current members, appointed by the Governor, are removed. But such a new proposal should go farther and abolish all levee boards.

Amendment 4 – Fair Market Value

If you are a land owner, beware of this one. This amendment would prohibit future value from being considered when your property is taken. References are made to “hurricane protection,” but there is no definition of the public good, or what hurricane projects mean. There’s really been no problem with the present system. This amendment is nebulous, confusing and needs a lot more work.

Amendment 5 – Government Expropriation

This amendment supposedly restricts the purposes for which government bodies in Louisiana can take land from unwilling property owners. But about all this amendment does is keep your property from being seized to build a Burger King. This supposed ban doesn’t cover your property that is taken by port authorities, for industrial development projects, and for a whole list of other possibilities including convention centers, museums and parks. If the Legislature was seriously trying to give you as a homeowner more protection, they really missed the boat on this one.

Amendment 6 – Transferring Expropriated Property

Supposedly, if your property is seized for any number of questionable purposes, the government has to offer it back to the original landowner, but it could be at a much higher price. What's fair about that? The Legislature could have handled this by statute.

Amendment 7 – Investments in Medicaid Trust Fund

The state maintains several trust funds for specific purposes, and the State Treasurer is in charge of investing those funds. This amendment allows 35 percent of the Medicaid trust fund to be invested in stocks and bonds. Should government be rolling the dice on the stock market? Just look at the returns. Standard & Poor's 500 indexes of stocks show an annual return in the past five years of 3.97 percent. But the Aggregate bond average has a return of 5.11 in the past five years. So what's the big stampede for savings? They just don't always exist. The facts speak for themselves.

Amendment 8 – Homestead Exemption

Again, we have a proposed solution where it's hard to find a problem. We all know that to have a homestead exemption, you have to occupy a home. And many people have not been able to occupy their homes post Katrina and Rita. This amendment requires the assessor to keep the homestead exemption for any homeowner who signs an affidavit saying they are rebuilding. But be realistic. What assessor in his right mind is going to jerk the homestead exemption from someone whose home has been devastated, and needs some time to rebuild? Again, this is a solution just searching for a problem.

Amendment 9 – School Spending Mandates

This idea shows the strength of local school boards. State educational mandates requiring some spending by local school boards would be prohibited unless the school board approves. So the Legislature becomes impotent, and local school boards can dictate the minutia in spending irregardless of legislative intent. There is also a major drafting error in this amendment, so for a number of reasons, this amendment is to be deep sixed.

Amendment 10 – Same reasoning here as in Amendment 7. The educational fund, as structured in this amendment, could just as likely loose money.

Amendment 11 – Homestead Exemptions-Revocable Trusts

First of all, raise your hand if you have any idea what a revocable or irrevocable trust is? The powers to be, as well as the good government groups, did a poor job here of explaining what the heck the problem is, and what alternatives are on the table. Under present law, homeowners are allowed to transfer their home to their children, but keep their homestead exemption. This amendment allows for property to be switched back and forth at will and the homestead exemption stays with the property. Look, any homeowner can choose what they do with their property but the law as it is should be left alone.

Amendment 12 – Statewide Elected Office Vacancy

Again, this is a solution looking for a problem. Right now, if the Lieutenant Governor's office becomes vacant, the Governor can appoint someone to fill the post for the remainder of the term. Now we have to have another election – even if it costs more than four million dollars. As even present Lieutenant Governor Mitch Landrieu jokes, he's looking around for something else to do. . So why should we waste all of this money to fill a position that doesn't do a heck of a lot anyway? This obviously was proposed on a slow day at the Capitol, and really isn't necessary.

Amendment 13 – Judges Qualifications

Minimum qualifications for judges would be changed, requiring much longer periods for practicing law. The current law is five years, but some lawyers would have to have been practicing for 10 years to run for certain courts in Louisiana. So we are relating experience with qualifications. Just because someone has been hanging around for a while practicing law doesn't give them any particular additional expertise to be a judge. Just look at the breakdown of the criminal justice system in New Orleans. While hundreds of defendants sat in jails, judges down there, many who have been on the bench for a number of years, have been off to Jamaica and other locations for "seminars." This is what we get from experience; and a few more years in law practice doesn't particularly equate to being a better judge. In rural areas, it is often hard to get lawyers who have built up a good client base to give all this up to run for judge. There has been no evidence that younger judges have caused any particular problems. We have term limits in the Legislature, because we want new blood. Rather than making it harder to be a judge, and leaving the old guys in office, it might be a better idea to put term limits on the judiciary. In any event, this is another amendment that is not grounded in sound reasoning.

The bottom line, after looking over all 13 amendments, is that the immediacy factor is not present in any of the proposals listed. Yes there are problems throughout the list that ought to be addressed. But the Legislature needs to take a deep breath, settle down, take some time to research and study long-term effects of many of these ideas, and confect solutions that will stand the test of time. Half of these proposals could be cleaned up by legislation. And problems like levee board reorganization need more attention, with a complete restructuring of the present system. No crisis will take place if all of these amendments are rejected. The message will be simply this. We expect our Legislature to reevaluate what has been offered to the voters to see if these proposals are really necessary, Then come back and offer amendments that will directly impact our lives, and hold up well for the next century. If basic tests like these cannot be met, it's better not to waste your time as well as ours.

Go back to the drawing boards. You can do a lot better.

Why don't they pass a constitutional amendment prohibiting anybody from learning anything? If it works as well as prohibition did, in five years Americans would be the smartest race of people on Earth.

- Will Rogers

Peace and justice.

Jim Brown

Jim Brown's weekly column appears each Thursday here at Politicsla.com, and in a number of newspapers throughout the State of Louisiana. You can read Jim's Blog, and take his weekly poll, plus read his columns going back to the fall of 2002 by going to his own website at <http://www.jimbrownla.com>.

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