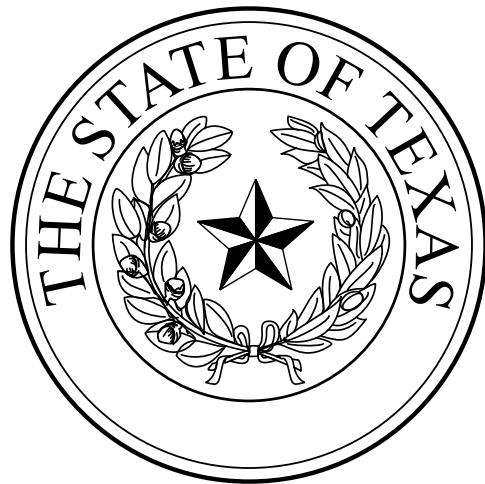


# **Condensed Analyses of Proposed Constitutional Amendments**

**87th Regular Session  
November 2, 2021, Election**



Texas Legislative Council

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## **Proposition 1 (H.J.R. 143)**

The constitutional amendment authorizing the professional sports team charitable foundations of organizations sanctioned by the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association to conduct charitable raffles at rodeo venues.

### **Summary Analysis**

The proposed constitutional amendment expands the events for which the general law enacted under Section 47(d-1), Article III, Texas Constitution, may permit a professional sports team charitable foundation to conduct a charitable raffle at the home venue of the professional sports team associated with the foundation by authorizing the conduct of charitable raffles at rodeo events and expands the definition of "professional sports team" to include an organization sanctioned by the Professional Rodeo Cowboys Association or the Women's Professional Rodeo Association.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- State law already allows charitable raffles to be held at many professional sporting events, including NASCAR races, PGA events, and games hosted by professional baseball, basketball, hockey, soccer, and football teams. Charitable raffles should also be permitted at professional rodeo events.
- Sports teams' raffles are benefiting many worthy charities, such as the American Cancer Society and the YMCA.
- The proposed amendment is limited to charitable raffles and does not authorize any other type of game of chance.

#### **Comments by Opponents**

- No opposition to the proposed constitutional amendment was expressed during legislative consideration of the proposal.

## **Proposition 2 (H.J.R. 99)**

The constitutional amendment authorizing a county to finance the development or redevelopment of transportation or infrastructure in unproductive, underdeveloped, or blighted areas in the county.

### **Summary Analysis**

Section 1-g(b), Article VIII, Texas Constitution, authorizes the legislature to establish by general law the authority of a municipality to issue bonds or notes to finance the development or redevelopment of an unproductive, underdeveloped, or blighted area in the municipality and to pledge for the repayment of those bonds or notes increases in revenue from ad valorem taxes imposed on properties located in the area. This type of financing for public projects is referred to as tax increment finance (TIF). The constitutional amendment proposed by H.J.R. 99 amends Section 1 g(b) by extending the authority to use TIF to counties and imposing limitations on bonds or notes issued by counties for transportation projects under that authority.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Counties need better ways of financing transportation projects locally as current levels of state transportation funding are far too low to keep pace with rapid population growth.
- Reinvestment zones using TIF are an effective means of generating funding for a range of local projects on the basis of expected property value increases without the need to impose a new tax or raise fees. Counties should have access to this funding mechanism since municipalities have already demonstrated its effectiveness to finance many types of projects, including much-needed road projects.
- The 2007 legislation that initially created the transportation reinvestment zone (TRZ) model using TIF was intended to apply to both counties and municipalities, and some counties have previously formed TRZs. However, several attorney general opinions have indicated that the associated use of county tax revenue to fund transportation and other projects using TIF may exceed counties' constitutional powers unless they are provided with clearer authority. The amendment is necessary to validate the counties' use of this valuable development tool.
- Financing a project through a TRZ decreases the waiting time between planning and execution of the project because the source of ongoing funding is provided for in advance.
- The proposed amendment prohibits the use of county property taxes generated by a county TRZ for toll road projects, ensuring that taxes are used only to fund transportation infrastructure open to everyone.

#### **Comments by Opponents**

- The TIF authority for counties proposed by the amendment is not limited to transportation projects but can be used for much broader development purposes, further increasing the burdensome public debt owed by local governments.
- Once a TRZ is established, financial decisions are made by an unelected board with no requirement to seek voter approval for particular projects. Counties should not be given this level of discretionary spending power, nor should they be authorized to issue debt for such projects.
- The potential range of applicable projects would significantly increase counties' power to condemn property for purposes of those projects.
- There are insufficient controls to ensure that determinations of which areas are unproductive, underdeveloped, or blighted would be made consistently.
- The proposed amendment could have the unintended result of diverting local resources to state highway projects.

## **Proposition 3 (S.J.R. 27)**

The constitutional amendment to prohibit this state or a political subdivision of this state from prohibiting or limiting religious services of religious organizations.

### **Summary Analysis**

The proposed amendment adds Section 6-a, Article I, Texas Constitution, prohibiting this state or a political subdivision of this state from enacting, adopting, or issuing a statute, order, proclamation, decision, or rule that prohibits or limits religious services, including religious services conducted in churches, congregations, and places of worship, in this state by a religious organization established to support and serve the propagation of a sincerely held religious belief.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- The right to freely exercise one's religious beliefs is enshrined in both the United States Constitution and the Texas Constitution. Allowing public officials to limit in-person religious gatherings infringes on this constitutional right.
- Closing houses of worship negatively impacts individuals who rely on church services as a means of combating their isolation and stress.
- While some houses of worship have the ability to transition to virtual meetings to reach their congregations, others do not. Without the ability to meet in person, many churches, mosques, and synagogues that lack the capacity to meet virtually have no means by which to meet.
- Houses of worship are able to make their own decisions about how best to protect their members in the event of a disaster or public health emergency. State or local government officials do not need to dictate the measures to be taken.

#### **Comments by Opponents**

- Worship and other religious activity can be done safely without large public gatherings. Allowing places of worship to remain open during public health emergencies could place all Texans in danger.
- The ability of state and local officials to balance public safety with religious freedom is recognized in other areas, such as fire and building safety codes that churches must follow, and should not be curtailed when it comes to protecting public health.
- While protecting religious freedom is important, the language is overly broad and would prohibit governmental entities from enacting any measure that could impact religious services even in the event of building safety concerns.

## **Proposition 4 (S.J.R. 47)**

The constitutional amendment changing the eligibility requirements for a justice of the supreme court, a judge of the court of criminal appeals, a justice of a court of appeals, and a district judge.

### **Summary Analysis**

The proposed constitutional amendment amends Section 2(b), Article V, Texas Constitution, to change the eligibility requirements for serving as the chief justice or a justice on the Texas Supreme Court. Section 2(b) as amended requires a person serving on the supreme court to be at least 35 years of age, licensed to practice law in Texas, a citizen of the United States and a resident of this state at the time of election, and either a practicing lawyer in this state for not less than 10 years or a practicing lawyer and state court or county court judge for not less than 10 years and that during those years the person's state license has not been revoked, suspended, or subject to probated suspension. Sections 4 and 6, Article V, Texas Constitution, provide that any eligibility requirement for serving as the chief justice or a justice on the supreme court also applies to a person serving as a judge on the court of criminal appeals or a justice of a court of appeals in this state. The proposed amendment also amends Section 7, Article V, Texas Constitution, changing the eligibility requirements for serving as a state district judge. Section 7(b) as amended requires that for election or appointment to serve as a district judge in this state, a person must be licensed to practice law in Texas, be a citizen of the United States, be a resident of this state, for the two years preceding the election and during the term of office be a resident of the district, and have been a practicing lawyer, a judge or justice of a court of this state, or a combination of both for not less than eight years and that during those years the person's state license has not been revoked, suspended, or subject to probated suspension.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Requiring appellate court justices and judges to have practiced law and been licensed in Texas for at least 10 years would ensure these individuals have the necessary experience dealing with state law and would avoid a situation in which a lawyer who moves to Texas could be elected or appointed to serve on one of the state's highest courts without adequate expertise in Texas law and practice.
- Doubling the length of time that a district judge candidate must have practiced law in Texas to eight years would better ensure that these judges have sufficient legal experience to preside over important trials.
- It is important to ensure that those who have been subject to disciplinary action for violating standards of ethical conduct for practicing law in Texas during the required period of licensure are not eligible for service as a district judge or an appellate court justice or judge.
- The Texas Commission on Judicial Selection and the Texas Judicial Council have recommended that the minimum qualifications of judges be increased to ensure higher quality in the state judiciary.

#### **Comments by Opponents**

- It is unnecessary to revise qualifications for the judiciary because current constitutional provisions are working to ensure voters can make choices among qualified judicial candidates.
- A person having more legal experience does not necessarily lead to the person being a better judge. Requiring more experience could reduce voter choice and exclude younger lawyers and lawyers with more diverse backgrounds from judicial appointments or races.

## **Proposition 5 (H.J.R. 165)**

The constitutional amendment providing additional powers to the State Commission on Judicial Conduct with respect to candidates for judicial office.

### **Summary Analysis**

The proposed constitutional amendment adds Subsection (13-a) to Section 1-a, Article V, Texas Constitution, to give the State Commission on Judicial Conduct (SCJC) the authority to accept complaints and reports and conduct investigations regarding the conduct of, and to take certain disciplinary actions against, candidates for judicial offices in the same manner as Section 1-a, Article V, Texas Constitution, authorizes SCJC to take those actions with respect to persons already holding those judicial offices.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- While all candidates for judicial office are subject to certain ethics restrictions established by the Code of Judicial Conduct intended to preserve the impartiality and integrity of the courts, those who are already sitting judges are subject to enforcement of those standards by SCJC through sanctions and other disciplinary actions. This situation creates uneven standards among candidates, in effect permitting a judicial candidate to take certain actions such as commenting on a current case or legal issue that a sitting judge could not.
- Allowing SCJC to investigate and, if necessary, sanction judicial candidates who are not yet judges for breaches of the Code of Judicial Conduct will make elections fairer without sacrificing the existing controls on campaign finance, contributions, and other ethical matters.

#### **Comments by Opponents**

- H.J.R. 165 could significantly increase the responsibilities and workload of SCJC by expanding the list of individuals potentially subject to a complaint or investigation.

## **Proposition 6 (S.J.R. 19)**

The constitutional amendment establishing a right for residents of certain facilities to designate an essential caregiver for in-person visitation.

### **Summary Analysis**

The proposed constitutional amendment adds Section 35 to Article I, Texas Constitution, to establish the right of residents of certain facilities, residences, and living centers to designate an essential caregiver with whom the facility, residence, or center may not prohibit in-person visitation. The amendment also authorizes the legislature by law to provide guidelines for a facility, residence, or center to follow in establishing essential caregiver visitation policies and procedures.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Essential caregivers are vital in providing hands-on care and social and emotional support to long-term care facility residents that supplement care provided by facility staff. In-person visitation by essential caregivers of the resident's choice should never be completely restricted as it was during the COVID-19 pandemic.
- Without outside visitation and stimulation, residents can become isolated, their social and emotional skills can deteriorate, and their overall mental and physical health can suffer.
- Ensuring that residents have an essential caregiver of their choice to visit with in person can prevent these residents from having to die alone.

#### **Comments by Opponents**

- Stripping a long-term care facility of its ability to temporarily halt or otherwise limit in-person visitation as a means of mitigating the risks of a public health emergency could cause more harm than good to facility residents and put the staff at risk as well.
- Allowing a resident to designate only one essential caregiver for in-person visitation could lead to other friends and family members being denied the opportunity to visit their loved one before they pass away. The right to receive in-person visitation should not be limited.

## **Proposition 7 (H.J.R. 125)**

The constitutional amendment to allow the surviving spouse of a person who is disabled to receive a limitation on the school district ad valorem taxes on the spouse's residence homestead if the spouse is 55 years of age or older at the time of the person's death.

### **Summary Analysis**

Section 1-b(d), Article VIII, Texas Constitution, currently provides for a limitation on the total amount of ad valorem taxes that a school district may impose on the residence homestead of a person who is 65 years of age or older or who is disabled. In addition, that subsection provides that if a person who is 65 years of age or older dies, the surviving spouse of the person is entitled to continue to receive the limitation if the surviving spouse is 55 years of age or older. The constitutional amendment proposed by H.J.R. 125 amends Section 1-b(d) to provide that the surviving spouse of a person who is disabled is also entitled to continue to receive the homestead school tax limitation provided by that subsection if the surviving spouse is 55 years of age or older when the disabled person dies.

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- The proposed amendment was originally intended to accompany legislation already passed by the 86th Legislature in 2019 providing for a property tax limitation, or "tax freeze," on school district taxes on the homesteads of eligible surviving spouses of disabled individuals. This limitation protects these surviving spouses from a large increase in their school district tax liability soon after losing their loved one.
- The reimbursement provisions of H.J.R. 125 will compensate people who were eligible for the statutory limitation in the 2020 and 2021 tax years but who lived in school districts where the limitation was not applied because of the absence of express constitutional authority.

#### **Comments by Opponents**

- No opposition to the proposed constitutional amendment was expressed during legislative consideration of the proposal.

## **Proposition 8 (S.J.R. 35)**

The constitutional amendment authorizing the legislature to provide for an exemption from ad valorem taxation of all or part of the market value of the residence homestead of the surviving spouse of a member of the armed services of the United States who is killed or fatally injured in the line of duty.

### **Summary Analysis**

Section 1-b(m), Article VIII, Texas Constitution, currently authorizes the legislature to provide that the surviving spouse of a member of the armed services of the United States who is “killed in action” is entitled to an exemption from ad valorem taxation of all or part of the market value of the surviving spouse’s residence homestead if the surviving spouse has not remarried since the death of the service member. The constitutional amendment proposed by S.J.R. 35 amends Section 1-b(m) to substitute for the requirement that the member of the armed services have been “killed in action” in order for the surviving spouse to be entitled to the exemption a requirement that the member have been “killed or fatally injured in the line of duty.”

### **Summary of Comments**

The following comments supporting or opposing the proposed amendment reflect positions that were presented in committee proceedings, during house or senate floor debate, or in the analysis of the resolution prepared by the House Research Organization (HRO) when the resolution was considered by the House of Representatives.

#### **Comments by Supporters**

- Members of the U.S. armed forces who are killed in accidents in the line of duty or who die as a direct result of injuries they receive in the line of duty have given their lives in service to the country. That sacrifice is equally as deserving of a property tax exemption for the member’s surviving spouse as a death that occurs during active combat.
- Federal data indicates that fewer than 10 individuals per year would qualify under the expanded exemption. This would not have a significant financial impact on taxing units in Texas.

#### **Comments by Opponents**

- Authorizing an additional property tax exemption for one group of people will increase the tax burden on other property owners. The legislature should instead work to lower the property tax burden on all Texans.