



From the Desk of
Representative
Dan Flynn



The Flynn Report

October 7, 2005

Greetings constituents, supporters and friends:

By now most of you are aware that a very important election is approaching on November 8th. Texans have the opportunity to vote on nine Constitutional Amendments that were approved by the 79th Legislature. We should take this opportunity very seriously as passage of each of these proposed amendments rest in the hands of the people of Texas. All of us hold the power with our vote to accept or reject these changes to the Texas Constitution.

During the regular session members worked hard on all of these propositions and I served as the author or joint author on three of them; propositions 2, 5 and 7 and would urge you to give special consideration to each.

I believe Proposition 2 will protect traditional marriage from court decisions that strike down state laws defining marriage being between one man and one woman. Opponents of traditional marriage cannot win legislatively because the majority of Americans support marriage between one man and one woman. Those who want to redefine marriage are using the courts and activist judges to obtain their goals. Passage of this amendment will prevent that from happening. The Amendment will provide that marriage in Texas is solely the union of one man and one woman, and that the state and its political subdivisions can not create or recognize any legal status identical to or similar to marriage, including such legal status relationships created outside of Texas.

I believe Proposition 5 will clear up complicated and antiquated language in Texas law that prevents Texas-based commercial lenders from making the same loans as their out-of-state counterparts. If adopted, Prop 5 will give commercial lenders an incentive to relocate to Texas, creating new jobs, increasing tax revenues for local communities. Prop 5 will also make it easier for Texas companies to do business with Texas-based lenders as opposed to out-of-state lenders.

I believe Proposition 7 is another tool for seniors financial planning and feel a reverse mortgage is one of the safest; most consumer friendly forms of consumer credit. It gives convenient and safe access to the equity in ones home. Prop 7 would bring Texas in line with options offered seniors in all other sates while preserving the consumer protection in our Texas Constitution.

Amendments as they appear on the ballot:

AMENDMENT NO. 1 (H.J.R. No. 54)

The constitutional amendment creating the Texas rail relocation and improvement fund and authorizing grants of money and issuance of obligations for financing the relocation, rehabilitation, and expansion of rail facilities.

SUMMARY: The proposed amendment would create the Texas rail relocation and improvement fund. The amendment would provide for the Texas Transportation Commission to issue and sell obligations to fund the relocation and improvement of privately and publicly owned passenger and freight rail facilities for the purposes of relieving congestion on public highways, enhancing public safety, improving air quality, and expanding economic opportunity. The obligations would be payable from the money in the Texas rail relocation and improvement fund. The amendment would also authorize the legislature to dedicate to the fund state money that is not otherwise dedicated by the constitution.

ARGUMENTS FOR: Traffic congestion on state highways has increased in recent years. The ability to ship more goods using railroads would decrease the number of trucks traveling on highways, thereby reducing congestion. The relocation of rail lines from congested urban areas would improve efficiency, encourage investment, and promote safety. Right-of-way obtained by relocating railroads out of cities could be used for the placement of commuter rail lines or highways, each of which could provide economic opportunities for private investment along its corridors. Freight rail is more fuel-efficient per ton-mile than trucks and would help Texas comply with federal air quality standards. Also, relocating rail lines out of urban areas would reduce the amount of hazardous materials shipped through highly populated areas.

ARGUMENTS AGAINST: The railroad industry is not a state-regulated industry, and the state should play no part in the industry's investment decisions. The debt service on the bonds issued could cost the state \$87.5 million per year beginning in fiscal year 2007. The amounts needed to pay off the debt must be collected eventually. The Texas Department of Transportation's primary duties involve planning and making policies for the location, construction, and maintenance of state highways. The authority of the agency over railroad issues is limited, and the department should use its resources to carry out its primary duties.

AMENDMENT NO. 2 (H.J.R. No. 6)

The constitutional amendment providing that marriage in this state consists only of the union of one man and one woman and prohibiting this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage.

SUMMARY: The proposed amendment would amend Article I, Texas Constitution, to declare that marriage in this state consists only of the union of one man and one woman, and to prohibit this state or a political subdivision of this state from creating or recognizing any legal status identical or similar to marriage. The joint resolution in which the amendment is proposed also includes a nonamendatory provision recognizing that persons may designate guardians, appoint agents, and use private contracts to adequately and properly appoint guardians and arrange rights relating to hospital visitation, property, and the entitlement to proceeds of life insurance policies, without the existence of any legal status identical or similar to marriage.

ARGUMENTS FOR: The equal protection clause and other provisions of the Texas Constitution are similar to those in other state constitutions and could be interpreted by courts to permit same-sex marriage or to require the recognition of a legal status identical or similar to marriage. Adoption of the proposed amendment would prevent potential legal challenges to Texas' marriage statutes. The union of a man and a woman in the long-standing institution of traditional marriage promotes the welfare of children and the stability of society. The state should ensure that the institution of traditional marriage cannot be undermined by a future court decision or statute of the Texas Legislature. The amendment would not discriminate against any person. Approval of the amendment by the voters would not prevent same-sex couples from pursuing their lifestyles, but would only ensure that the union of same-sex couples is not sanctioned by the state.

ARGUMENTS AGAINST: A constitutional prohibition is unnecessary because Texas law already prohibits same-sex marriage and prohibits the recognition by the state or its political subdivisions of a same-sex marriage, a civil union, or a right or claim asserted as a result of a same-sex marriage or a civil union. A constitutional prohibition is inappropriate because it limits future state legislators' flexibility to promote the health and safety of families in whatever form those families may take. The language in the proposed amendment prohibiting the creation or recognition of "any legal status identical or similar to marriage" is vague. While the state's Defense of Marriage Act narrowly defines a "civil union," the amendment contains broader language that has the potential for being interpreted to nullify common law marriages or legal agreements, including powers of attorney and living wills, between unmarried persons.

AMENDMENT NO. 3 (H.J.R. No. 80)

The constitutional amendment clarifying that certain economic development programs do not constitute a debt.

SUMMARY: The proposed amendment amends Section 52-a, Article III, Texas Constitution, to provide that a program created or a loan or grant made as provided by that section, other than a program, loan, or grant secured by a pledge of ad valorem taxes or financed by the issuance of bonds or other obligations payable from ad valorem taxes, does not constitute or create a debt for the purpose of any provision of the Texas Constitution.

ARGUMENTS FOR: Agreements between municipalities and private persons under Chapter 380, Local Government Code, provide a variety of economic development programs that attract new business, and any uncertainty regarding the legality of these agreements is a disincentive for a business to enter into such an agreement in this state because the business cannot predict whether the municipality will be able to perform the municipality's obligations under the agreement. Economic development agreements between municipalities and private persons providing for the rebate of certain taxes are legal under current law; the proposed amendment would clarify the original intent.

ARGUMENTS AGAINST: Adopting the proposed amendment would undermine the constitutional protections for taxpayers regarding the creation of public debt. If the constitution is amended to provide that any long-term economic development agreement that is not secured by a pledge of ad valorem taxes or financed by the issuance of bonds does not create debt, future governing bodies may be bound by agreements that were entered into without the constitutional requirements regarding the issuance of debt. It is unnecessary to take the step of amending the state constitution to address concerns raised by a single lower-court case. The recent district court ruling that an agreement under Chapter 380, Local Government Code, created an "unconstitutional debt" applies only to the narrow circumstances of that case. Furthermore, the district court's ruling is subject to appeal.

AMENDMENT NO. 4 (S.J.R. No. 17)

The constitutional amendment authorizing the denial of bail to a criminal defendant who violates a condition of the defendant's release pending trial.

SUMMARY: The proposed amendment would permit a district judge to deny bail pending trial under the conditions described by Section 11b, Article I, Texas Constitution, to a person accused of a felony who is released on bail and whose bail is subsequently revoked or forfeited for a violation of a condition of release. Before the judge may deny bail, the judge must determine at a hearing held on the issue of setting or reinstating bail that the person violated a condition of release related to the safety of a victim of the alleged offense or the safety of the community.

ARGUMENTS FOR: Under current law, a person accused of a felony that is released on bail pending trial may violate the conditions of release and subsequently have bail reinstated. The proposed amendment would ensure that if the person violates a condition of release related to the safety of a victim or the community, the person may be denied bail and precluded from the opportunity to commit additional acts that threaten the safety of a victim or the community. The amendment would protect the public while also protecting the due process rights of the accused. Before a district judge may deny bail, a hearing would have to be held at which the judge determines that the person violated a condition of release related to the safety of a victim of the alleged offense or the safety of the community.

ARGUMENTS AGAINST: The proposed amendment is unnecessary. Under current law, a parole panel or court may impose conditions on a person who is released on parole, mandatory supervision, or community supervision, including the condition that the person not commit an act that threatens the safety of a victim of the alleged offense or the safety of the community. If the person commits an act that threatens the safety of a victim or the community, the parole panel or court may order the person to be confined in prison or jail awaiting a revocation hearing. For a defendant who is not under some form of supervision at the time the defendant is charged with the commission of a new offense and who is released on bail, after forfeiture or revocation of that bail, a judge can set or reinstate bail with new conditions that better protect the victim and the community. Innocent persons may be detained unnecessarily and unfairly. The amendment authorizes the denial of bail only on a determination by a judge that the person committed an act that threatened the safety of the victim or the community. This standard does not require proof of guilt beyond a reasonable doubt before the person is held in custody.

AMENDMENT NO. 5 (S.J.R. No. 21)

The constitutional amendment allowing the legislature to define rates of interest for commercial loans.

SUMMARY: The proposed amendment amends Section 11, Article XVI, Texas Constitution, to allow the legislature to exempt commercial loans from the maximum interest rate limits established under that section. The amendment defines a commercial loan as a loan made primarily for business, commercial, investment, agricultural, or similar purposes and not primarily for personal, family, or household purposes.

ARGUMENTS FOR: Usury laws are meant to protect borrowers in weak bargaining positions from coercive and unscrupulous practices by lenders. In commercial transactions, however, both parties have the bargaining power necessary to protect against those practices. Application of usury laws to commercial transactions limits the parties' ability to structure the transactions in flexible and imaginative ways that could benefit both parties. Most other states do not have the stringent restrictions on commercial lending that exist in Texas. Federal law that allows certain banks to apply the interest rate laws of the state where the banks are domiciled and contractual provisions

that are used by other lenders to apply another state's law to the transaction result in many commercial loans being made to borrowers in this state by lenders from outside the state. Removal of the usury restrictions would allow Texas lenders to compete more equally with out-of-state lenders.

ARGUMENTS AGAINST: Not all commercial lenders and borrowers have equal sophistication and bargaining power. Owners of small businesses and other borrowers that need small amounts for commercial purposes may not be able to bear the cost of obtaining legal counsel to protect against disadvantageous contractual provisions. The proposed amendment does not limit the exception from usury laws to large commercial transactions. Although the legislature has adopted enabling legislation setting the minimum size of a loan to which the exemption applies, the minimum may not be high enough to ensure that only borrowers with adequate sophistication and bargaining power are included. Moreover, the legislature in the future could lower or altogether remove the minimum loan size.

AMENDMENT NO. 6 (H.J.R. No. 87)

The constitutional amendment to include one additional public member and a constitutional county court judge in the membership of the State Commission on Judicial Conduct.

SUMMARY: Sections 1-a(2) and (5), Article V, Texas Constitution, currently specify the composition and requirements for proceedings of the State Commission on Judicial Conduct. The proposed amendment amends Section 1-a(2) to add one member to the commission who is a constitutional county court judge and one additional public member to the commission who is a citizen of at least 30 years of age, is not licensed to practice law, and does not hold a salaried public office or employment, for a total of 13 members. The proposed amendment also amends Section 1-a(2) to add the justice of the court of appeals, the district judge, and the members of the State Bar of Texas serving on the commission to the list of members who may not reside or hold a judgeship in the same court of appeals district as another member of the commission. The proposed amendment makes conforming changes to Section 1-a(5) to increase the number of members required for a quorum from six to seven and to require seven affirmative votes on recommendations for retirement, censure, suspension, or removal of certain judges.

ARGUMENTS FOR: Constitutional county court judges should be represented on the body charged with governing their conduct. A constitutional county court judge would understand the duties and responsibilities of the position and is qualified to evaluate the appropriateness of the conduct of other constitutional county court judges. Increasing the number of public members on the commission would allow for greater public oversight of the judiciary. Increasing the membership of the commission would bring more human resources to the commission by allowing for wider distribution of the commission's workload and a potential decrease in the amount of time necessary for the commission to resolve a complaint or issue sanctions. Additional members may provide for greater professional and geographic diversity on the commission.

ARGUMENTS AGAINST: The addition of a constitutional county court judge to the membership of the commission is unnecessary because the interests and perspectives of these judges are represented by the county court at law judge and other lower court judges already serving on the commission. Four public members are sufficient to protect the interests of the public. Matters of judicial conduct may arise in highly technical areas, and trained members of the judiciary and legal profession are best suited to evaluate the conduct of judicial officials. The addition of two members may make the commission unwieldy, may lessen the likelihood of its reaching a decision on a complaint or disciplinary action in a timely manner, and may necessitate greater financial resources for the commission to operate.

AMENDMENT NO. 7 (S.J.R. No. 7)

The constitutional amendment authorizing line-of-credit advances under a reverse mortgage.

SUMMARY: The proposed amendment amends Section 50, Article XVI, Texas Constitution, by providing that a reverse mortgage may be in the form of a line of credit, allowing repayment of a line-of-credit reverse mortgage and subsequent advance of amounts repaid, providing that advances on a reverse mortgage may not be obtained by credit card, debit card, preprinted solicitation check, or similar device, prohibiting transaction fees in connection with a reverse mortgage debit or advance made after the time the extension of credit is established, and prohibiting unilateral amendment of a reverse mortgage extension of credit by the creditor.

ARGUMENTS FOR: Reverse mortgages are a popular means by which senior citizens tap the equity in their homes to pay the day-to-day expenses of retired life. Texas is the only state that does not allow some form of line-of-credit reverse mortgage. The proposed amendment would give a senior borrower the flexibility to receive money and to repay the money in conformity with the borrower's needs. The constitution already provides many provisions to protect reverse mortgage borrowers, and the amendment would provide additional protections to limit impulsive use of advances, to limit the expenses of borrowing, and to prevent creditors from changing the terms of the reverse mortgage extension of credit.

ARGUMENTS AGAINST: The ease of obtaining line-of-credit advances may result in a senior borrower accumulating a greater amount of debt than the borrower would under a lump-sum distribution or distributions according to a preset schedule. Because a borrower is not required to pay back any of the debt until the borrower dies or moves, the interest on the advances is also added to the debt against the homestead. Regardless of the existing and newly proposed protections for senior borrowers, reverse mortgages are still not subject to all the extensive safeguards that apply to other loans secured by a borrower's homestead.

AMENDMENT NO. 8 (S.J.R. No. 40)

The constitutional amendment providing for the clearing of land titles by relinquishing and releasing any state claim to sovereign ownership or title to interest in certain lands in Upshur County and Smith County.

SUMMARY: The proposed amendment would amend Article VII, Texas Constitution, by adding Section 2C to relinquish and release any claim of the state of sovereign ownership or title to an interest in approximately 4,600 acres of specifically described land in Upshur County, including mineral rights and surface rights, and nearly 1,000 acres of specifically described land in Smith County, including mineral rights and surface rights, except in certain narrowly described circumstances in which an interest owned by a governmental entity related to a public use is applicable.

ARGUMENTS FOR: The proposed amendment is necessary to clear the title to land held by persons and their successors who in good faith purchased, occupied, and paid taxes on the land and in which the General Land Office and, in most cases, a district court have already determined that the state has no interest. The amendment would save taxpayers money by avoiding the cost of litigation. The amendment is limited to specific land and would have no impact on any other land dispute involving the state.

ARGUMENTS AGAINST: Instead of requiring voters to judge land title disputes affecting relatively few landowners, an ongoing mechanism should be established to settle disputes involving the state without the expense of a constitutional amendment election. The issue relating to defective title has not been finally resolved regarding the Smith County tract. Even in cases where permanent school fund land is held in good faith, it is in the public interest for the state to obtain the land's fair market value before releasing its interest in the land. Furthermore, simply releasing the state's interest without obtaining fair market value under the proposed amendment would provide a special benefit to a small group of landowners. The issue relating to defective title has been resolved regarding the Upshur County tract. The fact that title companies are continuing to place exceptions in title opinions is a private matter between those landowners and their title companies. Resolving this issue through the proposed amendment would provide a special benefit to a small group of landowners. There is no discernable reason to single these landowners out for special treatment.

AMENDMENT NO. 9 (H.J.R. No. 79)

The constitutional amendment authorizing the legislature to provide for six-year staggered terms for a board member of a regional mobility authority.

SUMMARY: The proposed amendment would amend Section 30, Article XVI, Texas Constitution, to allow board members of a regional mobility authority to serve six-year staggered terms.

ARGUMENTS FOR: Six-year staggered terms would provide for consistency and stability in regional mobility authority leadership. Regional mobility authority transportation projects require years of planning and construction, and longer terms for regional mobility authority board members would ensure more experienced boards and greater continuity in the planning and construction of authority projects. Authorizing six-year terms for the boards would maintain the institutional knowledge necessary to carry out the functions of an authority.

ARGUMENTS AGAINST: A six-year term of office may decrease the accountability of the persons appointed to the board of directors of a regional mobility authority. A two-year term of office requires more frequent assessments of the board members' job performances. Six-year terms for regional mobility authority board members are not necessary to carry out the functions of the authority. The staff or employees of an authority will carry out those functions regardless of the length of directors' terms.

To be eligible to vote in this election you must be registered by October 11th. Early voting begins October 24th and lasts through November 4th. Sadly during the last constitutional amendment election in September of 2003, only 12 percent of registered voters turned out to cast their ballot. Be sure and get your family and friends out to vote of these important issues.

My staff and I welcome your input and your questions. You can reach us in our office located in the Capitol extension: E1.324. Mailing address: **P. O. Box 2910, Austin, TX, 78768** phone number **512-463-0880**. **Canton District office** is located in The American National Bank Building in Canton on Highway 243: **P. O. Box 999, Canton, TX, 75103** phone number **903-567-0921**. **Greenville District office** is located in The Paul Mathews Exchange Building, Suite 802, 2500 Stonewall, Greenville phone number **903-455-0971**. Email: **dan.flynn@house.state.tx.us**.

God bless you and God bless Texas,

Dan Flynn
State Representative, District - 2

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