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The Covid-19 pandemic upended life for virtually every Louisiana family, and gave rise to polarizing public debates about individual rights and the government's responsibility to safeguard the public. These debates are reflected in some of the constitutional amendments that voters are asked to consider on their statewide ballots. On the Oct. 14 statewide ballot, Louisiana voters will decide whether local election officials can get donations from nonprofit organizations, whether churches should get an extra layer of constitutional protection, how the state should allocate surplus money, and whether cities should have the right to take away a lucrative property tax break from landlords that have serious code violations.

Note: This is the first of a two-part guide to Louisiana's 2023 constitutional amendments. Part 2 will be published before the Nov. 18 runoff elections.

AMENDMENT 1: ELECTION DONATIONS

Do you support an amendment to prohibit the use of funds, goods, or services from a foreign government or a nongovernmental source to conduct elections and election functions and duties unless the use is authorized by the secretary of state through policies established in accordance with law? (Adds Article XI, Section 6)

What it does: Current state law allows foreign entities and private organizations, such as charitable foundations, to donate money or equipment to help the Secretary of State conduct elections. This amendment would essentially ban such donations unless the Legislature passes a law to allow them.

Analysis: This proposed constitutional change grew from the lies and misinformation about election security that erupted after former President Donald Trump lost the 2020 election.

As the Covid-19 pandemic raged, local election officials scrambled to pay for the personal protective equipment and other measures needed to keep their staff - and the voting public - safe during the election season. A nonprofit organization financed by Facebook founder Mark Zuckerberg, the Center for Tech and Civic Life, offered grants to help offset some of those costs. But Attorney General Jeff Landry, a close Trump ally, objected to the grants and cautioned local officials against applying for the aid, saying they raised ethical issues.

The sponsor of the amendment is Rep. Blake Miguez of Erath, who tried three times to pass a state law restricting such donations. Two of the measures made it to Gov. John Bel Edwards' desk, where they were vetoed. The third bill failed to make it out of the state Senate. By putting the measure in a constitutional amendment, supporters were able to bypass the governor's office and take the issue straight to voters.

The National Conference of State Legislatures reports that 24 states currently prohibit or regulate the use of private or philanthropic funds to administer elections.

A 2018 report from the United States Commission on Civil Rights on barriers to voting in Louisiana identified the closure and consolidation of voting locations in low-income and majority minority communities as one of the biggest threats to fair and equitable elections in the state. State and local election officials identified a lack of human and financial resources as the primary reason for the closures.

AMENDMENT 2: RELIGIOUS PROTECTIONS

“Do you support an amendment to provide that the freedom of worship in a church or other place of worship is a fundamental right that is worthy of the highest order of protection? (Adds Const. Article XII, Section 17)”

What it does: This proposed constitutional change would raise the burden of proof for the state if it wants to restrict or limit in-person religious services.

Analysis: This amendment is a response to Gov. John Bel Edwards’ restrictions on public gatherings, including religious services, in the early days of the Covid-19 pandemic. The lockdowns drew strong opposition from many conservatives, and high-profile defiance from some religious leaders.

Freedom of religion is established in the U.S. Constitution and in Article 1, Section 8 of the Louisiana Constitution. This amendment would add a new layer of protection for in-person worship by requiring the state to show a “compelling state interest” before it could restrict such gatherings in the future.

It’s unclear if the amendment is needed, as the state Supreme Court has already sided with churches in a high-profile test of Louisiana’s rights to regulate religious services during a public health emergency.

The case involved the Rev. Tony Spell, who earned national media attention and six criminal misdemeanor charges when he defied state lockdowns by holding worship services at his Life Tabernacle Church in Central during the early days of the pandemic. In 2022, the state Supreme Court ruled 5-2 that the lockdown’s ban on religious gatherings violated both the United States and Louisiana constitutions.

The ruling came after a multi-year legal battle in state and federal courts. Supporters of the amendment say including specific protections for in-person worship in the state constitution would expedite future challenges to such restrictions, providing a legal express lane to the state’s highest court.

AMENDMENT 3: USE OF SURPLUS DOLLARS

“Do you support an amendment to require that a minimum of twenty-five percent of any money designated as nonrecurring state revenue be applied toward the balance of the unfunded accrued liability of the state retirement systems? (Amends Article VII, Section 10(D)(2)(b)(ii) and (iii))”

What it does: Surpluses occur when the state government collects more money through taxes and fees than it spends on goods and services during a fiscal year (July 1-June 30). The current state constitution says that surplus dollars can only be spent on one-time, or “nonrecurring” uses such as early repayment of state-issued bonds, road and bridge construction, coastal protection or deposits in the state Rainy Day Fund.

The current constitution requires that at least 10% of any surplus be used to pay down debt in the state retirement systems for teachers and state workers. The proposed amendment would raise that minimum threshold to 25%. It also would allow surplus money to pay down debt in any of the four state retirement systems - the Teachers Retirement System of Louisiana (TRSL), the Louisiana State Employees Retirement System (LASERS), the Louisiana School Employees Retirement System (LSERS) and the Louisiana State Police Retirement System (LSPRS).

Analysis: The Legislative Fiscal Office reports that as of June 30, 2022, the four retirement systems have a combined \$17 billion in “unfunded accrued liability,” or debt, which is the difference between the estimated cost of future benefits and the money that’s been set aside to pay those benefits.

Retirement benefits are constitutionally guaranteed to the public employees who participate in the systems, who need those benefits in their retirement years as they do not pay into Social Security. There is virtually no chance that the state will shrink from this obligation. With or without this amendment, teachers, state workers and other public employees will get the retirement benefits they have earned.

But the state's historic failure to set aside enough money to pay all these benefits could mean higher costs to the state in future years, making it harder to afford pay raises for state workers and crowding out other important needs. So it makes sense for the state to use some surplus dollars to prepay those retirement obligations, in the same way it makes sense to pay down a balance on a high-interest credit card if you receive a holiday bonus.

The state, however, is already on track to pay off a large chunk of its retirement debt - the so-called "initial unfunded accrued liability" - by 2029, as part of a constitutional amendment that voters passed in the late 1980s. Regardless of what happens with this amendment, the pressure on the state budget from retirement costs will soon lighten. The state also has other options available to reduce the remaining retirement debt that don't involve surplus dollars.

Meanwhile, the state has many other important needs besides paying retirement debt, and those priorities can change from year to year. Louisiana's roads, bridges and other infrastructure are in constant need of repairs and upgrades. Our coastal restoration efforts have been badly underfunded, and will get worse in the coming years when recovery money from the BP oil spill dries up. And natural disasters sometimes create the need for targeted aid to a specific region. This amendment would take away some of the flexibility that policymakers need by prioritizing retirement debt over other uses.

Without this amendment, policymakers would still have the option to direct as much surplus money as they wish to the state's retirement systems. But they would also have the flexibility to invest those funds into one-time projects that may have a more immediate positive impact on the state.

AMENDMENT 4: REVOKING TAX BREAKS FOR SLUMLORDS

"Do you support an amendment to deny a property tax exemption to a nonprofit corporation or association that owns residential property in such a state of disrepair that it endangers public health or safety? (Amends Article VII, Section 21(B))"

What it does: Louisiana's Constitution lets nonprofit corporations such as churches, charities, fraternal and labor organizations be exempt from paying property taxes. This amendment would give local governments the right to revoke the property tax exemption for rental housing units owned by nonprofits if the units are cited for at least three serious code violations within a 12-month period. Nonprofits could get their tax exemption back if they fix the code violations.

Analysis: This amendment was motivated by a TV news investigation into dangerous living conditions at New Orleans-area apartments owned by a Tennessee-based religious nonprofit, Global Ministries Foundation. It is designed to give city officials a tool they could use to hold nonprofits accountable when rental properties they own fall into dangerous disrepair.

While this proposed amendment was inspired by events in New Orleans, it would have statewide impact. As the Bureau of Governmental Research has reported, Louisiana's property tax exemptions for nonprofits are broader than what most states allow, and it has resulted in significant amounts of land being off the tax rolls. According to the Orleans Parish Assessor's 2020 valuation, about 4,400 properties, with an estimated total value of \$3.9 billion, are tax exempt. Approving this amendment is not likely to substantially change those figures.