

CONSTITUTIONAL AMENDMENTS

**PROPOSED BY THE LEGISLATURE
IN 2003 AND 2004**

**APPEARING ON THE NOVEMBER 2, 2004
GENERAL ELECTION BALLOT**

**BRIEF ANALYSIS
AND
ARGUMENTS FOR AND AGAINST**
(Revised September 22, 2004)



New Mexico Legislative Council Service
411 State Capitol
Santa Fe, New Mexico 87501
May 2004
151916

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TABLE OF CONTENTS

Foreword	1
Constitutional Amendment 3	2
Brief Analysis	3
Arguments For	3
Arguments Against	4
Constitutional Amendment 4	6
Brief Analysis	6
Arguments For	7
Arguments Against	8
Constitutional Amendment 5	10
Brief Analysis	11
Arguments For	11
Arguments Against	11

FOREWORD

On November 2, 2004, three proposed constitutional amendments will appear on the general election ballot as the result of passage of joint resolutions by the legislature in its 2003 and 2004 regular legislative sessions. Although the legislature passed four joint resolutions during the 2003 session, only two proposed constitutional amendments appeared on the ballot in the September 23, 2003 special election. The two remaining constitutional amendments from 2003 will appear on the upcoming general election ballot. One additional joint resolution was passed by the legislature in the 2004 legislative session and that proposed constitutional amendment will also appear on the upcoming general election ballot.

LAWS

CA 3 (2003)

CA 4 (2003)

CA 5 (2004)

SUBJECT

Permit municipalities to hold runoff elections

Expand veterans' property tax exemption to include veterans who did not serve in times of armed conflict

Change name of New Mexico school for the visually handicapped to New Mexico school for the blind and visually impaired

For adoption, constitutional amendments require ratification by a majority of the electors voting on the question. Proposed constitutional amendments become effective upon approval by the voters unless an effective date is provided within the text of the proposed amendment.

This publication contains the full text of the joint resolutions proposing the constitutional amendments. Each joint resolution states whether the proposed amendment amends an existing section, adds a new section or repeals an existing section. When an existing section is being amended, new material is shown by underscoring and language to be deleted is shown within brackets.

Following the text of each proposed amendment is a brief analysis of the amendment and summaries of arguments for and against the amendment. These arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendments. Instead, they represent the suggestions of legislative council service staff of possible arguments in support of and in opposition to the proposed amendments. No claim is made for the validity or consistency of these arguments. Cogent and valid arguments may have been omitted by oversight. No attempt has been made to have the same number of arguments for or against a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

(HJR 1, 2003)

CONSTITUTIONAL AMENDMENT 3

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 7 OF THE CONSTITUTION OF NEW MEXICO TO ALLOW RUNOFF ELECTIONS FOR MUNICIPALITIES HAVING A POPULATION OVER TWENTY THOUSAND AND FOR CERTAIN OTHER ELECTIONS AS PROVIDED BY LAW.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 7, Section 5 of the constitution of New Mexico to read:

"A. All elections shall be by ballot [~~and the~~].

B. The legislature may provide by law for runoff elections for all elections other than municipal, primary or statewide elections. If the legislature does not provide for runoff elections, the person who received the highest number of votes for any office, except as provided in this section, and except in the cases of the offices of governor and lieutenant governor, shall be declared elected [~~thereto~~] to that office. The joint candidates receiving the highest number of votes for the offices of governor and lieutenant governor shall be declared elected to those offices.

C. In a municipal election, the candidate that receives the most votes for an office shall be declared elected to that office, unless the municipality has provided for runoff elections. A municipality may provide for runoff elections as follows:

(1) a municipality that has not adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico may provide by ordinance for runoff elections;

(2) a municipality that has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico, and prior to the adoption of this amendment the charter provided for runoff elections, shall hold runoff elections pursuant to the charter; or

(3) a municipality that adopts or has adopted a charter pursuant to Article 10, Section 6 of the constitution of New Mexico may, subsequent to the adoption of this amendment, provide for runoff elections as provided in its charter."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Brief Analysis

Constitutional Amendment 3 proposes to amend Article 7, Section 5 of the constitution of New Mexico to permit municipalities to provide for runoff elections to resolve those elections that do not produce a candidate who has received a statistically significant portion of the vote. The amendment gives effect to provisions of existing municipal charters that provide for runoff elections. The amendment also permits a municipality to adopt a charter containing provisions for runoff elections, to add runoff election provisions to an existing charter or to provide for runoff elections by ordinance if the municipality has not adopted a charter. Note that while the title of the proposed amendment states that it would allow runoff elections in municipalities with populations greater than twenty thousand, in fact the amendment would allow any municipality to provide for runoff elections, regardless of its population.

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendments. They represent the suggestions of the legislative council service staff of possible arguments in support of and in opposition to the proposed amendments. No claim is made for the validity or consistency of these arguments. Cogent and valid arguments may have been omitted by oversight. No attempt has been made to have the same number of arguments for or against a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

Arguments For:

1. The proposed constitutional amendment gives all municipalities express authority to provide for runoff elections. Whether by ordinance or by charter, a municipality would have a mechanism to incorporate runoff elections, if desired, into the election law for that community. This approach respects the autonomy of municipalities and leaves the ultimate decision regarding runoff elections with the municipality.
2. Municipal elections are nonpartisan, and any person who can obtain the required number of qualified petition signatures can become a candidate. In some communities, this means that there are often more than two candidates. When more than two popular and fairly well-known candidates run against one another in an election, there is a high probability that no one person will receive a majority of the votes. In fact, two popular candidates could split the vote and a third, less popular candidate could win the election. This process does not ensure that our officials are elected with maximum support so that they can conduct the public business as true representatives of their communities.
3. Under the current election system, a voter will often support one of the top two candidates to avoid wasting a vote on a preferred candidate who has little prospect of prevailing in the primary. Runoff elections, however, give voters an incentive to support their favorite candidate in the first round rather than casting a strategic vote for a frontrunner. This simplifies the voting process.

4. The green party has become an active force in New Mexico politics. With three "major" parties fielding candidates for office, it is likely that no candidate will obtain a majority of the votes. Therefore, it is wise to have runoff elections in those races where no candidate receives a majority.

5. Elections that have only two candidates are already decided by a very small percentage of the voting age population, and three-way races are decided by even fewer voters. Having a runoff election maximizes the voice of the majority. According to the federal election commission, in New Mexico about 77 percent of the voting age population registers to vote, although in 2000, only 47.4 percent of the voting age population actually turned out for the general election. Therefore, in that election, anyone elected by a simple majority was elected by less than 24 percent of the voting age population. If runoff elections are not permitted, even fewer voters will make the decision of who governs and what policies are supported by government offices.

6. Although this amendment has some limitations, it is a first step in providing for runoff elections, especially in municipal elections where there is a high likelihood that mayoral races and other nonpartisan races will result in a person with less than a majority of the votes being elected.

Arguments Against:

1. Elections are costly undertakings for municipalities, and runoff elections will increase those costs. Electronic and other enhanced voting mechanisms will require increased expense to maintain the integrity of the runoff elections. Municipalities should keep the current system for deciding elections and not incur the cost of runoff elections.

2. Runoff elections are costly for candidates who must raise funds for two elections instead of one, thereby undermining one of the goals of campaign finance reform. A candidate who exhausts campaign funding in the general election will be in an untenable position in a runoff election.

3. Voter turnout tends to decrease in runoff elections, so the candidate elected might not be the candidate supported by the majority of the populace.

4. Runoff elections might make it difficult for a member of a minority group to be elected in a race where most of the voters are of a different background. A minority candidate might run strongly in the first election, only to lose in the runoff election if the majority votes against the minority candidate.

5. If runoff elections are important, then this amendment to the New Mexico constitution does not go far enough. It does not apply to statewide races for the election of a governor, New Mexico supreme court justice or court of appeals judge, secretary of state, attorney general, state auditor, state treasurer or any other race that is not conducted by district. These are some of the most influential policymakers elected by New Mexicans. These elections could see fields of

three candidates or more and the winner could therefore be elected by fewer than 50 percent of the voters. It is illogical that these important offices should be filled by less than a majority of the voters, while other offices are required to have runoff elections.

6. The proposed amendment gives the legislature the task of enacting a law to specify which offices would have runoff elections. However, the wording of the amendment does not require the legislature to enact such a law, so there is no guarantee that legislation providing for runoff elections will be adopted. Even if the legislature did pass a runoff election law, there is no guarantee in this amendment that it would provide for runoff elections in all elections.

7. The proposed amendment's restriction of the legislature's ability to provide for certain runoff elections is a burdensome imposition upon the legislature's power to formulate public policy.

(HJR 2, 2003)

CONSTITUTIONAL AMENDMENT 4

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 8, SECTION 5 OF THE CONSTITUTION OF NEW MEXICO TO APPLY THE EXEMPTION FROM PROPERTY TAXATION TO ALL HONORABLY DISCHARGED VETERANS WHO SERVED IN THE UNITED STATES ARMED FORCES.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 8, Section 5 of the constitution of the New Mexico to read:

"The legislature shall exempt from taxation the property of each head of the family [to] in the amount of two thousand dollars (\$2,000). The legislature shall also exempt from taxation the property, including the community or joint property of husband and wife, of every honorably discharged member of the armed forces of the United States [~~who served in such armed forces during any period in which they were or are engaged in armed conflict under orders of the president of the United States~~] and the widow or widower of every such honorably discharged member of the armed forces of the United States, in the sum of [~~two thousand dollars (\$2,000) in tax years prior to 2003; two thousand five hundred dollars (\$2,500) in 2003~~] three thousand dollars (\$3,000) in 2004; three thousand five hundred dollars (\$3,500) in 2005; and four thousand dollars (\$4,000) in 2006 and each subsequent year. Provided, that in every case where exemption is claimed on the ground of the claimant's having served with the armed forces of the United States as aforesaid, the burden of proving actual and bona fide ownership of such property upon which exemption is claimed, shall be upon the claimant."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Brief Analysis

Constitutional Amendment 4 proposes to amend Article 8, Section 5 of the constitution of New Mexico to expand eligibility for exemption from the property tax to all honorably discharged veterans of the armed forces of the United States. Without the amendment, eligibility for the exemption is limited to honorably discharged veterans who served in times of armed conflict.

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendments. They represent the suggestions of the legislative council service staff of possible arguments in support of and in opposition to the proposed amendments. No claim is made for the validity or consistency of these arguments. Cogent and valid arguments may have been omitted by oversight. No attempt has been made to

have the same number of arguments for or against a particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

Arguments For:

1. The constitution of New Mexico distinguishes honorably discharged veterans on the basis of whether they served during periods of armed conflict for the purpose of allowing them to claim a property tax exemption. However, members of the armed services have no control over whether they will serve during a period of armed conflict. Further, all members of the armed forces serve and protect the country by putting themselves in harm's way and risking their lives if necessary. In addition, some members, while they do not engage in combat, serve during times of high alert, such as during the cold war and the Cuban missile crisis. The fact that all veterans were at some point ready and able to engage in armed conflict should be sufficient to grant them equivalent benefits. Their service is needed and should be rewarded.
2. Providing property tax exemptions to all honorably discharged veterans encourages enlistment and good conduct in the United States military.
3. The expansion of the veterans' property tax exemption is a small token of appreciation for all those who served their country in the military. The expanded exemption might especially benefit elderly veterans who are now or will soon be living on fixed incomes, since their property taxes may keep rising even though their income does not.
4. The proposed amendment will eliminate the time and resources the state must expend in verifying whether a specific veteran claiming the exemption served during a time of armed conflict.
5. The relatively low dollar level of this exemption means that the expansion to include all veterans will not be particularly costly. It is estimated that the amendment will reduce the residential property tax base by no more than one percent. In addition, any impact on either state or local revenues will be minimal because the loss in tax base will be largely offset by rate increases for residential taxpayers.
6. A veteran who has served during a time of armed conflict has not necessarily better served the country than a veteran who served at a time during which armed conflict did not occur. Favorable tax treatment for veterans who served during a time of armed conflict misrepresents the comparative value of service provided. The proposed constitutional amendment equalizes tax benefits for veterans.
7. The special exemption for veterans was established in 1921 as a way of recognizing the special contribution and sacrifice of those who served in our armed forces during World War I. Since that time, the nation's need for a permanent army has expanded, and it is appropriate to extend this exemption to all veterans, whether or not the country was engaged in armed conflict during their period of service.

8. In years past, many of the veterans who served during periods of armed conflict did so by conscription. Since the end of the draft, however, the military has been comprised of those who have chosen to serve their country, and the exemption is an expression of appreciation for their choice.

Arguments Against:

1. This amendment removes an appropriate distinction between those who have served during times of armed conflict and those who have not. Veterans who were willing to risk their lives deserve special recognition. To be meaningful as an expression of the state's gratitude, the exemption should continue to be restricted to those veterans who have served during a period of armed conflict.

2. State and local governments should not have to bear the expense of compensating an individual for service to the nation. This is a national responsibility, not a state or local responsibility. More generous military retirement benefits are the appropriate way to reward veterans. The 2004 estimated budget for veterans' federal benefits and services is already \$62 billion. If we believe more compensation is due to a veteran and his or her spouse, we should ask our representatives in congress to provide it.

3. This exemption may have made sense in the days when the military draft was in effect, but today we have a volunteer military. There is no longer any reason to treat persons who served in the military differently than others. We should not extend a special benefit to someone who happens to choose the armed forces as a job.

4. The special exemption for veterans was established in 1921 as a way of recognizing the special contribution and sacrifice of those who served in our armed forces during World War I and at a time when veterans did not receive benefits from the federal government. Today, veterans receive \$62 billion in federal benefits. Eliminating the armed conflict requirement removes the basis for the veterans' exemption and provides an unnecessary additional benefit to veterans who receive federal money.

5. By expanding this property tax exemption, the property tax bills of other New Mexico residents will increase. The tax burden is shifted to all other taxpayers.

6. Tax relief measures should be targeted to individuals based on need. There is no evidence that veterans as a group have lower income or a greater need for tax relief than other groups of taxpayers. Is it good public policy for wealthy veterans with large, high-value homes to be relieved from contributing their share? If additional property tax relief is to be granted, it might be better targeted to low-income taxpayers who spend a disproportionate share of their income on property taxes.

7. The property tax is based on the value and nature of the property, not on the personal characteristics of the owner. Creating an exemption for certain individuals is a departure from

the underlying principle of property taxation and could set a precedent for other groups to seek similar exemptions.

8. This amendment may prove more costly than anticipated, since many New Mexicans have served some period of time in the armed forces, and the exemption also applies to widows and widowers.

(HJR 5, 2004)

CONSTITUTIONAL AMENDMENT 5

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 12, SECTION 11 OF THE CONSTITUTION OF NEW MEXICO TO CHANGE THE NAME OF THE NEW MEXICO SCHOOL FOR THE VISUALLY HANDICAPPED TO THE NEW MEXICO SCHOOL FOR THE BLIND AND

VISUALLY IMPAIRED.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. It is proposed to amend Article 12, Section 11 of the constitution of New Mexico to read:

"The university of New Mexico, at Albuquerque; the New Mexico state university, near Las Cruces, formerly known as New Mexico college of agriculture and mechanic arts; the New Mexico highlands university, at Las Vegas, formerly known as New Mexico normal university; the western New Mexico university, at Silver City, formerly known as New Mexico western college and New Mexico normal school; the eastern New Mexico university, at Portales, formerly known as eastern New Mexico normal school; the New Mexico institute of mining and technology, at Socorro, formerly known as New Mexico school of mines; the New Mexico military institute, at Roswell, formerly known as New Mexico military institute; the New Mexico school for the blind and visually [handicapped] impaired, at Alamogordo, formerly known as New Mexico [~~institute~~] school for the [blind] visually handicapped; the New Mexico school for the deaf, at Santa Fe, formerly known as New Mexico asylum for the deaf and dumb; the northern New Mexico state school, at El Rito, formerly known as Spanish-American school; are hereby confirmed as state educational institutions. All lands, together with the natural products thereof and the money proceeds of any of the lands and products, held in trust for the institutions, respectively, under their former names, and all properties heretofore granted to, or owned by, or which may hereafter be granted or conveyed to, the institutions respectively, under their former names, shall, in like manner as heretofore, be held in trust for, or owned by or be considered granted to, the institutions individually under their names as hereinabove adopted and confirmed. The appropriations made and which may hereafter be made to the state by the United States for agriculture and mechanical colleges and experiment stations in connection therewith shall be paid to the New Mexico state university, formerly known as New Mexico college of agriculture and mechanic arts."

Section 2. The amendment proposed by this resolution shall be submitted to the people for their approval or rejection at the next general election or at any special election prior to that date that may be called for that purpose.

Brief Analysis

Constitutional Amendment 5 proposes to amend Article 12, Section 11 of the constitution of New Mexico by changing the name of the New Mexico school for the visually handicapped to the New Mexico school for the blind and visually impaired.

Disclaimer

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undertaken at the time of the passage of the proposed amendments. They represent the suggestions of the legislative council service staff of possible arguments in support of and in opposition to the proposed amendments. No claim is made for the validity or consistency of these arguments. Cogent and valid arguments may have been omitted by oversight. No attempt has been made to have the same number of arguments for or against any particular amendment, and the number of arguments does not indicate the weight that should be ascribed to each.

Arguments For:

1. The proposed amendment provides a politically correct alternative to the name of the New Mexico school for the visually handicapped.
2. The term "handicapped" no longer appears in federal law applicable to blind and visually impaired persons. It is appropriate and necessary to amend our state constitution so that we are consistent with the federal law.
3. The term "handicap", though often thought to mean impairment or disability, is not necessarily synonymous with those terms. An impairment, such as the loss of a leg, that is not compensated for, as with a prosthetic device, will result in a disability. A handicap is more of a socially, environmentally and personally specified limitation, which may or may not be the result of an impairment or disability. Thus, not all blind or visually impaired people are handicapped, though we often tend to assume as much. In short, the current term, "visually handicapped", does not accurately describe all those who are served by the school.
4. What we call ourselves and how we define ourselves is central to our well-being, and the fact that the use of the term "handicapped" is often offensive to the people so labeled is enough reason to substitute "blind and visually impaired" for "visually handicapped" in the constitution of New Mexico. Names do matter, and more accurately describing the purposes of the institution that serves the blind and visually impaired shows an appreciation of that fact and respect for those served by that institution.

Arguments Against:

1. The use of words and phrases certainly may change over time, but this is usually a gradual process. The connotation of commonly used words does not so totally change in the course of a few years that an institution must be renamed twice in 40 years to avoid the appearance of insensitivity. The New Mexico school for the blind was renamed the New Mexico institute for the visually handicapped in 1960. Now it is proposed to be renamed the New Mexico school for the blind and visually impaired. This might not be necessary, considering that even organizations founded to promote issues concerning the visually impaired, such as the national association for the visually handicapped, have not felt compelled to change their names.
2. The money required to change the name of this institution could be better spent on education and services. We should not spend scarce tax dollars simply to change a term to be fashionable unless it is so outdated and offensive that it is shocking to those it serves. The term "handicapped" does not have such a reputation.

3. It is not appropriate to amend the state constitution every time a new terminology is deemed to be more politically correct. The constitution is a venerable document and the bedrock of our system of laws. It should not be subjected to a passing fancy.

4. The amendment is not sufficiently comprehensive. If it were, the amendment would also contemplate changing the name of the New Mexico school for the deaf to the "New Mexico school for the hearing impaired".

5. Changing the name of the New Mexico school for the visually handicapped might confuse people and cause problems for those who obtained a degree from the school, as it might appear that the school no longer exists.

- 12 -