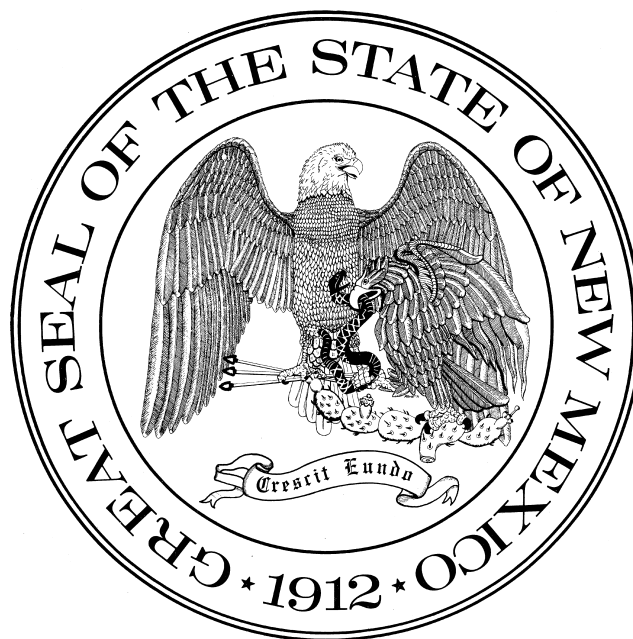


BRIEF ANALYSES
AND
ARGUMENTS FOR AND AGAINST
THE
CONSTITUTIONAL AMENDMENTS

PROPOSED BY THE LEGISLATURE
IN 2009 AND 2010



APPEARING ON THE NOVEMBER 2, 2010
GENERAL ELECTION BALLOT

New Mexico Legislative Council Service
411 State Capitol
Santa Fe, New Mexico 87501
www.nmlegis.gov
July 2010
202.182482

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FOREWORD

On November 2, 2010, five proposed constitutional amendments will appear on the New Mexico general election ballot as the result of passage of joint resolutions by the New Mexico Legislature in its 2009 and 2010 regular legislative sessions.

LAWS	SUBJECT
CA 1 (2009)	Allow the establishment of a college scholarship program for New Mexico military war veterans.
CA 2 (2010)	Allow county officials to serve three consecutive terms instead of two.
CA 3 (2010)	Modernize language regarding qualified electors by defining mental incapacity for voting purposes; adopting federal requirements; and restricting felons from voting except when voting rights are restored by statute.
CA 4 (2010)	Provide a property tax exemption for property of a veterans' organization.
CA 5 (2010)	Allow for the appointment of certain former members of the legislature to certain civil offices.

For adoption, a constitutional amendment requires ratification by a majority of those voting on the constitutional amendment. 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 legislature's joint resolutions proposing constitutional amendments. Each joint resolution states whether the proposed constitutional amendment amends an existing section of the constitution, 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. The title of the joint resolution, appearing in capital letters, is the language that will be shown on the ballot. Following the text of each proposed amendment are 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 suggestions of Legislative Council Service staff of 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.

CONSTITUTIONAL AMENDMENT NO. 1

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 9, SECTION 14 OF THE CONSTITUTION OF NEW MEXICO TO PERMIT THE ESTABLISHMENT OF A COLLEGE SCHOLARSHIP PROGRAM FOR NEW MEXICO MILITARY WAR VETERANS.

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

Section 1. It is proposed to amend Article 9, Section 14 of the constitution of New Mexico to read:

"Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad except as provided in Subsections A through [F] G of this section.

A. Nothing in this section prohibits the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.

B. Nothing in this section prohibits the state from establishing a veterans' scholarship program for Vietnam conflict veterans who are post-secondary students at educational institutions under the exclusive control of the state by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "Vietnam conflict veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces from New Mexico or who has lived in New Mexico for ten years or more and who has been awarded a Vietnam campaign medal for service in the armed forces of this country in Vietnam during the period from August 5, 1964 to the official termination date of the Vietnam conflict as designated by executive order of the president of the United States.

C. The state may establish by law a program of loans to students of the healing arts, as defined by law, for residents of the state who, in return for the payment of educational expenses, contract with the state to practice their profession for a period of years after graduation within areas of the state designated by law.

D. Nothing in this section prohibits the state or a county or municipality from creating new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses if this assistance is granted pursuant to general implementing legislation that is approved by a majority vote of those elected to each house of the

legislature. The implementing legislation shall include adequate safeguards to protect public money or other resources used for the purposes authorized in this subsection. The implementing legislation shall further provide that:

(1) each specific county or municipal project providing assistance pursuant to this subsection need not be approved by the legislature but shall be approved by the county or municipality pursuant to procedures provided in the implementing legislation; and

(2) each specific state project providing assistance pursuant to this subsection shall be approved by law.

E. Nothing in this section prohibits the state, or the instrumentality of the state designated by the legislature as the state's housing authority, or a county or a municipality from:

(1) donating or otherwise providing or paying a portion of the costs of land for the construction on it of affordable housing;

(2) donating or otherwise providing or paying a portion of the costs of construction or renovation of affordable housing or the costs of conversion or renovation of buildings into affordable housing; or

(3) providing or paying the costs of financing or infrastructure necessary to support affordable housing projects.

F. The provisions of Subsection E of this section are not self-executing. Before the described assistance may be provided, enabling legislation shall be enacted by a majority vote of the members elected to each house of the legislature. This enabling legislation shall:

(1) define "affordable housing";

(2) establish eligibility criteria for the recipients of land, buildings and infrastructure;

(3) contain provisions to ensure the successful completion of affordable housing projects supported by assistance authorized pursuant to Subsection E of this section;

(4) require a county or municipality providing assistance pursuant to Subsection E of this section to give prior formal approval by ordinance for a specific affordable housing assistance grant and include in the ordinance the conditions of the grant;

(5) require prior approval by law of an affordable housing assistance grant by the state; and

(6) require the governing body of the instrumentality of the state,

designated by the legislature as the state's housing authority, to give prior approval, by resolution, for affordable housing grants that are to be given by the instrumentality.

G. Nothing in this section prohibits the state from establishing a veterans' scholarship program, for military war veterans who are post-secondary students at educational institutions under the exclusive control of the state and who have exhausted all educational benefits offered by the United States department of defense or the United States department of veterans affairs, by exempting such veterans from the payment of tuition. For the purposes of this subsection, a "military war veteran" is any person who has been honorably discharged from the armed forces of the United States, who was a resident of New Mexico at the original time of entry into the armed forces or who has lived in New Mexico for ten years or more and who has been awarded a southwest Asia service medal, global war on terror service medal, Iraq campaign medal, Afghanistan campaign medal or any other medal issued for service in the armed forces of this country in support of any United States military campaign or armed conflict as defined by congress or by presidential executive order or any other campaign medal issued for service after August 1, 1990 in the armed forces of the United States during periods of armed conflict as defined by congress or by executive order."

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 No. 1 proposes to amend Article 9, Section 14 of the Constitution of New Mexico to create a new exception to the "anti-donation clause" in order to allow the state to establish a veterans' college scholarship program for military war veterans of conflicts that began after August 1, 1990. The scholarship would exempt those veterans from payment of tuition and would be administered in a similar manner as the scholarship for Vietnam conflict veterans. In order to be eligible for the scholarship, military war veterans must exhaust all educational benefits offered by the United States Department of Defense or the United States Department of Veterans Affairs, have been honorably discharged, have been a resident of New Mexico at the original time of enlisting or have lived in New Mexico for 10 years and awarded a campaign medal for service after August 1, 1990.

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendment. They represent suggestions of the Legislative Council Service staff of arguments in support of and in opposition to the proposed amendment. 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. Currently, the constitution allows the state to establish a scholarship program only for Vietnam veterans. The anti-donation clause prohibits other veterans from receiving that scholarship. The amendment takes a step in the right direction toward equal treatment for all veterans who served in a conflict. The equal protection clauses of the federal and state constitutions require that similarly situated individuals be treated in an equal manner. Constitutional Amendment No. 1 would treat more veterans of other conflicts similarly to those who served in Vietnam.
2. State institutions already provide statutorily or constitutionally created scholarships, grants and loan-for-service programs to many other groups. Veterans who served in a conflict after 1990 are equally deserving of a scholarship program at state institutions. Affording those veterans a scholarship program is a small payback for the enormous debt owed by the state for their service.
3. Supplementing existing federal educational programs and providing veterans the opportunity to start and finish their education at any time will provide additional opportunities to veterans, help them earn a higher income, establish a more educated work force and attract economic development to New Mexico.
4. The residency requirement in this proposed amendment is identical to the residency requirement for those veterans of the Vietnam conflict who might be seeking a scholarship. That long-standing residency requirement has not been challenged, and there is no reason to believe that this requirement will be challenged.

Arguments Against

1. The amendment might invite a potentially disruptive legal challenge. As proposed, the amendment requires veterans to reside in New Mexico for 10 years or at the time they enlisted to be eligible for the scholarship. Establishing a residency requirement for veterans to receive a scholarship is not an acceptable basis on which to grant or deny state benefits. The United States Supreme Court has prohibited similar restrictions on benefits offered to veterans, citing violations of the equal protection and the right-to-travel protection clauses of the United States Constitution.
2. The exclusion of veterans who served in conflicts between 1975 and 1990 might violate the equal protection clauses of the federal and state constitutions. The proposed amendment falls short of providing equal protection for all military veterans who served in a conflict.
3. The anti-donation clause of the Constitution of New Mexico was enacted to avoid the historical and unscrupulous practice of politicians using state taxpayers' resources to enrich interest groups to win political support. While veterans have served their country and are deserving of honor and support, a change to the anti-donation clause will enrich only this one

specific group. It begs the question as to whether politicians will be able to amend the constitution any time they wish to benefit a particular interest group in order to win its support.

4. While veterans have served our country admirably, it is a sacrifice that the federal government has called on them to make. Providing education for our veterans is a federal responsibility, and the state should not relieve the federal government of that responsibility. Veterans are already eligible to receive tens of thousands of dollars in grants for higher education under various federal GI bills. The amendment is a nice gesture, but it ignores more pressing needs and seeks to address a nonexistent problem. If the state voluntarily provides educational benefits to veterans, this will only encourage the federal government to shift more of its responsibilities to the state.
5. At a time when the state is facing huge decreases in revenue, and with cuts in programs and funding for higher education and other essential services and programs, it is irresponsible to add to the state's financial problems by approving another unfunded program that will result in increased tuition for other students or increased taxes for New Mexico residents.

CONSTITUTIONAL AMENDMENT NO. 2

A JOINT RESOLUTION

PROPOSING TO AMEND ARTICLE 10, SECTION 2 OF THE CONSTITUTION OF NEW MEXICO TO ALLOW COUNTY OFFICIALS TO SERVE THREE CONSECUTIVE TERMS INSTEAD OF TWO.

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

Section 1. It is proposed to amend Article 10, Section 2 of the constitution of New Mexico to read:

"A. In every county all elected officials shall serve four-year terms, subject to the provisions of Subsection B of this section.

B. In those counties that prior to 1992 have not had four-year terms for elected officials, the assessor, sheriff and probate judge shall be elected to four-year terms and the treasurer and clerk shall be elected to two-year terms in the first election following the adoption of this amendment. In subsequent elections, the treasurer and clerk shall be elected to four-year terms.

C. To provide for staggered county commission terms, in counties with three county commissioners, the terms of no more than two commissioners shall expire in the same year; and in counties with five county commissioners, the terms of no more than three commissioners shall expire in the same year.

D. All county officers, after having served [~~two~~] three consecutive four-year terms, shall be ineligible to hold any county office for two years thereafter."

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 No. 2 proposes to amend Article 10, Section 2 of the Constitution of New Mexico to allow county officials to serve three consecutive terms instead of two.

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at

the time of the passage of the proposed amendment. They represent suggestions of the Legislative Council Service staff of arguments in support of and in opposition to the proposed amendment. 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. This amendment strikes a balance between those who want to ensure that a county officer will not take advantage of incumbency and those who recognize the value of having public officers who are experienced and knowledgeable. County officers are currently limited to serving only two consecutive four-year terms, after which they must wait two years before becoming eligible to run for or hold any county office again. Under this proposed amendment, there would still be term limits, but those officials that earn the support of the voters will be allowed the chance to run for and serve in office for one additional term before being barred from holding county office for a two-year period.
2. Adding an additional term to provide for 12 years of service for county officials will expand voter choice. The pool of eligible and capable individuals within a county, especially in New Mexico's many low-population counties, is often quite small. Term limits artificially limit the choice of available and qualified candidates for elective office. Incompetent or corrupt officeholders may always be voted out. The choice to retain or vote out a county official is best left in the hands of voters rather than to an automatic and impersonal operation of law.
3. County officials must learn complex systems in order to be effective. A limit of two terms unnecessarily deprives counties of badly needed expertise. County governments in New Mexico have the oldest and most restrictive term limits in the United States, according to the National Association of Counties. In 44 states, elected county officials have unlimited terms of office. County officials must be permitted to gain and use the expertise that three consecutive terms afford.
4. Unelected officials, such as long-time career bureaucrats, gain power when elected officials leave office after only two terms. Citizens should have elected officials who have greater power than unelected bureaucrats.

Arguments Against

1. While it may make sense to allow officials in sparsely populated counties to serve more than two consecutive terms due to the limited pool of qualified candidates in those counties, the same cannot be said when it comes to our state's larger counties. The proposed amendment makes no distinction between large and small counties, and it does not recognize the wisdom in preventing public officers from taking advantage of incumbency.

2. When term limits are longer, politicians establish ties to special interests and take advantage of their incumbency. Longer terms of service allow official and special interests to become more entrenched. Moreover, new thinking and innovation comes with greater turnover of county officials.
3. The current term limits allow county officers eight years of continuous service, just as for the governor, public regulation commissioners and many other public officers elected on a statewide basis. Extending that limit to 12 years would not provide any more time to gain experience, but it would limit the ability of those with new ideas and energy to compete against officeholders who can use the advantage of incumbency to defeat most newcomers.

CONSTITUTIONAL AMENDMENT NO. 3

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 7, SECTION 1 OF THE CONSTITUTION OF NEW MEXICO TO MODERNIZE LANGUAGE ON QUALIFIED ELECTORS BY REMOVING LANGUAGE DENIGRATING PERSONS WITH DEVELOPMENTAL DISABILITIES, ADOPTING FEDERAL REQUIREMENTS TO VOTE, DEFINING MENTAL INCAPACITY FOR VOTING PURPOSES AND RESTRICTING FELONS FROM VOTING EXCEPT AS RESTORED BY STATUTE.

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

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

~~"[Every citizen of the United States who is over the age of twenty-one years and has resided in New Mexico twelve months, in the county ninety days, and in the precinct in which he offers to vote thirty days, next preceding the election, except idiots, insane persons and persons convicted of a felonious or infamous crime unless restored to political rights, shall be qualified to vote at all elections for public officers.]~~ Every person who is a qualified elector pursuant to the constitution and laws of the United States and a citizen thereof shall be qualified to vote in all elections in New Mexico, subject to residency and registration requirements provided by law, except as restricted by statute either by reason of criminal conviction for a felony or by reason of mental incapacity, being limited only to those persons who are unable to mark their ballot and who are concurrently also unable to communicate their voting preference. The legislature may enact laws providing for absentee voting by qualified electors. All school elections shall be held at different times from other elections.

The legislature shall have the power to require the registration of the qualified electors as a requisite for voting and shall regulate the manner, time and places of voting. The legislature shall enact such laws as will secure the secrecy of the ballot and the purity of elections and guard against the abuse of elective franchise. Not more than two members of the board of registration and not more than two judges of election shall belong to the same political party at the time of their appointment."

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 No. 3 proposes to change several provisions in Article 7, Section 1 of the Constitution of New Mexico that control who may vote in New Mexico's elections. The amendment proposes to alter six provisions that determine voter qualifications and expand legislative authority to set certain of those qualifications. Below are two summaries, one as Article 7, Section 1 currently stands and the second as the proposed amendment would revise it.

Currently, Article 7, Section 1:

1. guarantees that persons over 21 years of age cannot be denied to vote based upon their age;
2. guarantees the right to vote to otherwise qualified electors if they have lived in the state for 12 months, the county for 90 days and the precinct in which the voter offers to vote for 30 days prior to the election;
3. guarantees New Mexico residents who are otherwise qualified electors the right to vote in all elections for public officers;
4. prohibits convicted felons from voting unless restored to political rights;
5. guarantees qualified electors the right to vote only in elections for public officers; and
6. prohibits "idiots" and "insane persons" from voting.

The proposed amendment to Article 7, Section 1 would:

1. replace the language regarding persons over 21 years of age with the federal constitutional standard, which guarantees that "[t]he right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.";
2. remove the durational residency requirements, which are already effectively preempted by federal law, and would authorize the legislature to determine those requirements in accordance with federal law;
3. replace the provision that guarantees New Mexico residents the right to vote in all elections for public officers with a provision guaranteeing persons who are United States citizens and otherwise qualified to vote under federal law the right to vote in all elections in New Mexico, subject to residency and registration requirements enacted by the legislature;
4. allow the legislature to determine if convicted felons will be able to vote or not, regardless of whether the convicted felons have served the entirety of their sentences;
5. guarantee that qualified electors will be eligible to vote in all elections in New Mexico rather than just elections for public officers, which would presumably prohibit voter eligibility

restrictions based upon property ownership or other restrictions currently in effect for some special district elections; and

6. remove the constitutional restriction on "idiots" and "insane persons" but allow the legislature to restrict citizens from voting by reason of mental incapacity, which is limited to "persons who are unable to mark their ballot and who are concurrently also unable to communicate their voting preference".

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendment. They represent suggestions of the Legislative Council Service staff of arguments in support of and in opposition to the proposed amendment. 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 right of citizens over the age of 18 to vote is established by the 26th Amendment to the United States Constitution, and the imposition of durational residency requirements is limited by federal law. New Mexico already complies with federal law governing voting rights. Eliminating provisions in Article 7, Section 1 that conflict with federal requirements will bring the Constitution of New Mexico into accord with federal law and New Mexico statutes. The state should strive to clarify its laws by eliminating antiquated language in all constitutional provisions and statutes. Doing so will help ensure that residents of the state are adequately informed of current law.
2. Despite a title that indicates the opposite, the proposed amendment eliminates the current constitutional provision that prohibits voting by convicted felons that have not been restored to political rights. Removing this prohibition will allow the legislature to decide whether to extend the right to vote to some of the most disenfranchised citizens of the state, while maintaining the flexibility to limit the right of felons to vote if the legislature deems it appropriate.
3. The terms "idiots" and "insane persons" may not have been considered offensive in 1912, but today they are an embarrassment. "Idiot" is a misleading and insulting term, which in modern parlance never applies to individuals with mental retardation or other disabilities. It characterizes some individuals as permanently incapable of reason and fails to account for temporary disabilities. In addition to the other proposed changes, this amendment would replace "idiots" and "insane persons" with "mental incapacity", defined as persons who cannot mark a ballot and are unable to communicate their voting preference.

Arguments Against

1. The amendment invites a potentially disruptive legal challenge because the ballot title does not accurately reflect the language and provisions contained in the body of Constitutional Amendment No. 3. A ballot title should be intelligible, impartial and free from any misleading tendency, whether by fallacy or omission. The title indicates that felons will be restricted from voting, except as restored by statute. In reality, the amendment removes the current restriction on voting by convicted felons that have not been restored to political rights. The title also fails to alert voters of the expansion of elections in which qualified electors may participate or of the expansion of legislative powers to restrict the electorate by reason of residency and registration requirements, felony conviction or mental incapacity. The ballot language can lure voters to cast their votes based on the provision to remove language denigrating persons with developmental disabilities, rather than on all of the other provisions.
2. Constitutional Amendment No. 3 invites a potentially disruptive legal challenge because it proposes more than one independent measure in violation of Article 19, Section 1 of the Constitution of New Mexico. The various proposed measures of Constitutional Amendment No. 3 lack a rational lynchpin of interdependence or necessary connection in order to be presented together. Not all elements of this amendment are necessary to effectuate the desired reform. Granting the right to vote to convicted felons, except as provided by statute, is not necessary to bring the state constitution's language into conformance with federal law. Similarly, neither of those two provisions is necessary to modernize language that denigrates persons with mental disabilities. Because a voter must accept more than one proposal or none at all, rather than having the choice of voting on each proposal separately, Constitutional Amendment No. 3 is an unconstitutional use of logrolling, which is the practice of including several propositions in one measure or proposed constitutional amendment so that the voters will pass all of them, even though the propositions might not have passed if submitted separately.
3. Limitations on the power of the legislature to determine who may or may not vote should remain part of the constitution. Constitutional Amendment No. 3 gives the legislature too much power to determine the eligible electorate. For example, the amendment as proposed indicates that all citizens of the United States have a right to vote in all New Mexico elections, unless restricted by statute. Residency restrictions and limits on the types of elections in which a person may vote should remain part of the constitution. The legislature should not be given the power to decide the qualifications of the electorate.
4. While removal of the archaic "idiots" and "insane persons" language is commendable, replacing it with terms that do not accurately reflect contemporary understanding of mental health is not a good change. The amendment defines mental incapacities as physical limitations. It is not wise to remove entirely the state's ability to pass legislation disqualifying persons from voting on grounds of mental unsuitability. Denying persons with severe mental deficiency or dementia the right to vote is good public policy. Section 1-4-24

NMSA 1978 provides that an individual who is determined to be legally insane shall have the individual's voter registration canceled. Adoption of the proposed amendment will make this statutory provision unconstitutional and permit persons who are legally insane to vote.

CONSTITUTIONAL AMENDMENT NO. 4

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 8 OF THE CONSTITUTION OF NEW MEXICO TO PROVIDE A PROPERTY TAX EXEMPTION FOR PROPERTY OF A VETERANS' ORGANIZATION CHARTERED BY THE UNITED STATES CONGRESS.

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

Section 1. It is proposed to amend Article 8 of the constitution of New Mexico by adding a new section to read:

"The legislature shall exempt from taxation the property of a veterans' organization chartered by the United States congress and used primarily for veterans and their families. The burden of proving eligibility for the exemption in this section is on the person claiming the exemption."

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 No. 4 proposes to amend Article 8 of the Constitution of New Mexico by adding a new section to exempt from taxation the property of a veterans' organization chartered by the United States Congress and used primarily for veterans and their families.

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Arguments For

1. Property belonging to churches and charitable organizations is not taxed. Therefore, the property of veterans' associations, which are also charitable organizations, should not be taxed. Veterans' organizations provide a meeting place where veterans and their families gather to provide moral and spiritual support for their members, just as churches do. Since state courts have not allowed veterans' organizations tax-exempt status under current exemptions for charitable organizations, the constitutional amendment is necessary to provide the property tax exemption.
2. Veterans' associations provide a place for veterans and their families to gather and socialize, and they provide other valuable services to their members. This amendment ensures that only legitimate veterans' organizations chartered by the U.S. Congress will receive the property tax exemption. Because the burden to prove eligibility is on the organization, resources spent by the state to verify eligibility will be minimal. The state should encourage the establishment and continued existence of these associations by exempting their property from taxation.
3. While providing important tax relief to organizations benefiting our veterans, exempting the few congressionally chartered veterans' organizations in the state will have a minimal fiscal impact. The Veterans' Services Department reported 175 veterans' organizations statewide. The property tax exemption affects a relatively small amount of taxes that can easily be absorbed by other property owners in the state.

Arguments Against

1. The proposed amendment would provide another property tax-related benefit to veterans and their families. Veterans currently receive several specific tax benefits provided by the Constitution of New Mexico and the Property Tax Code. Residents of the state have already shown their appreciation and concern for our veterans by providing them with the current benefits.
2. Raising property taxes on everyone else in the state during the worst recession this nation has experienced since the Great Depression in order to exempt social clubs is not wise public policy. The proposed exemption would reduce the net taxable value of property in the state. Local government tax rates would adjust upward to offset the impacts on revenues and shift that property tax liability to the rest of the taxpayers in a county. Any property tax exemption for one group of taxpayers has the effect of raising property tax rates for all other taxpayers.
3. Allowing property tax exemptions for veterans' associations does not support a public benefit. The Constitution of New Mexico already exempts property used for education or charitable purposes from taxation. Allowing veterans' organizations to receive this benefit without the burden of demonstrating a substantial benefit to the public goes against current public policy. The activities of the veterans' organizations benefit the membership of the organization and not the general public. Moreover, the property tax exemption would not

benefit individual veterans directly. Allowing organizations to have tax exemptions that only benefit themselves is against public policy and, moreover, suggests to other organizations that they could achieve a similar outcome.

4. While veterans have served our country admirably, it is a sacrifice that our federal government has called on them to make. This amendment ignores the many groups with organizations of their own that have made sacrifices. Schoolteachers, firefighters, police officers and other public servants all deserve recognition as well for their service to the state. It begs the question as to whether all organizations whose members serve the state should receive a tax benefit. Providing benefits for veterans is a federal responsibility, and the state should not relieve the federal government of its responsibility.

CONSTITUTIONAL AMENDMENT NO. 5

A JOINT RESOLUTION

PROPOSING AN AMENDMENT TO ARTICLE 4, SECTION 28 OF THE CONSTITUTION OF NEW MEXICO TO ALLOW THE APPOINTMENT OF CERTAIN FORMER MEMBERS OF THE LEGISLATURE TO CIVIL OFFICES IN THE STATE IN A LIMITED SITUATION.

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

Section 1. It is proposed to amend Article 4, Section 28 of the constitution of New Mexico to read:

"~~No~~ A. Except as provided in Subsection B of this section, a member of the legislature shall not, during the term for which [he] the member was elected, be appointed to any civil office in the state, nor shall [he] the member within one year thereafter be appointed to any civil office created, or the emoluments of which were increased during such term [nor shall any].

B. A member of the legislature may be appointed to a civil office during the term of the legislature for which the member was elected if:

(1) the member resigns from the legislature prior to the appointment; and

(2) during that term, prior to the member's resignation, the civil office to which the appointment is to be made was not created or the emoluments of which were not increased.

C. A member of the legislature shall not, during the term for which [he] the member was elected, nor within one year thereafter, be interested directly or indirectly in any contract with the state or any municipality thereof, which was authorized by any law passed during such term."

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 No. 5 proposes to amend Article 4, Section 28 of the Constitution of New Mexico to allow a member of the legislature to be appointed to a civil office during the term of the legislature for which the member was elected in limited situations. A member of the legislature may be appointed to civil office if that member resigns from the legislature prior to

the appointment and if the civil office was not created, nor the salary for the position increased, during the term from which that member resigned.

Disclaimer

The following arguments do not necessarily reflect legislative deliberations undertaken at the time of the passage of the proposed amendment. They represent suggestions of the Legislative Council Service staff of arguments in support of and in opposition to the proposed amendment. 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. Legislators gain a great deal of expertise in statecraft and in learning how state government works. Vacancies in other branches of government might be difficult to fill because of the scarcity of relevant expertise, especially in states with small population, such as New Mexico. A former legislator may fill a great need for such expertise in civil offices.
2. This exception to the current prohibition on the appointment of legislators to civil office during their terms of office still protects the public against self-dealing politicians and recognizes that legislators should not be punished by preventing them from obtaining an existing job in government for which they would otherwise be qualified.
3. State lawmakers are unpaid citizen legislators whose only compensation is per diem and mileage for their service. Current law does not allow a legislator to resign to accept an appointive position, paid or unpaid, in any civil office. This proposed amendment recognizes that while a legislator should not be allowed to hold a civil office when serving in the legislature, the legislator, after resigning, should not be barred from a position in government.

Arguments Against

1. Prohibiting a legislator from resigning in order to be appointed to civil office prevents the possibility of undue influence over the legislator by the appointing official. While quid pro quo is illegal under other provisions of law, it is very difficult to prove such conduct. Consequently, the state's constitution makes certain that even the temptation to provide legislative favors in exchange for appointment to a civil office is eliminated. Removing this restriction would make such temptation possible and could lead to corruption. Several other states' constitutions have the same provision to avoid the risk of having legislators use their privileges while in office to obtain powerful and lucrative positions after leaving office.
2. The prohibition on appointing a legislator to a civil office during the term for which the

legislator is elected has been in the state constitution since its adoption in 1912. The provision protects against corruption in the appointive process. It is doubtful whether conditions have changed such that the appearance of corruption in the appointive process is no longer a threat to the integrity of the executive or legislative branches of government.

3. The amendment allows a select few individuals to become, in effect, "power brokers" with a "corner" on the influence and privileges of political office. If legislators are allowed to resign and then be appointed to civil offices, an appointing official may appoint a legislator in order to influence the outcome of legislation. The same individuals who have held legislative office may use their fame and influence to move into a civil office in more than one branch of government and restrict the circle of officials from expanding to include new individuals in the sphere of influence.