CC397 Proposed Constitutional Amendments State of Nebraska General Election November 2000

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State of Nebraska

General Election
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by
A.L. (Roy) Frederick

The 2000 general election will be on November 7, 2000. At that time, Nebraskans will vote on nine proposed amendments to the Nebraska Constitution. Seven of the proposed amendments have been placed on the ballot by action of the Nebraska Legislature. The remaining two are the result of initiative petitions of the people.

To make an informed decision on the proposed amendments, voters should study each issue prior to election day. The purpose of this publication is to 1) present the "ballot language" (explanatory statement and ballot title as supplied by the Secretary of State); 2) offer background information; and 3) list arguments being made by both proponents and opponents of each of the proposed amendments.

Arguments for and against the proposed amendments were gleaned from several sources: official records of hearings and floor debate in the Nebraska Legislature; editorial columns in Nebraska newspapers; and letters to the editor and other public statements made by Nebraska citizens. In presenting these arguments, an attempt has been made to be fair, factual and balanced. This does not imply that the number of arguments for and against a proposed amendment will always be equal. In a qualitative sense, some arguments may be more important than others, thereby offsetting a greater number of arguments on the other side of the issue.

University of Nebraska Cooperative Extension presents this information as a public service. In the discussion that follows, neither Cooperative Extension nor the author intend to take a position on any of the proposed amendments. Citizens should determine for themselves the relative merits of the arguments for and against each of these proposals.

Assistance from the offices of the Secretary of State and the Clerk of the Legislature is gratefully acknowledged.

Proposed Amendment Number 1

Explanatory Statement

A vote FOR this proposal will provide that the candidates for Governor of each party, as chosen in the primary elections, shall choose a person to be their running mate (candidates for Lieutenant Governor) on the general election ballot, and at the general election in November the voters shall cast one vote jointly for the two.

A vote AGAINST this proposal will continue the present system whereby each party's candidates for Governor and Lieutenant Governor are chosen separately at the primary elections to run as a team at the general election.

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Ballot Title

A constitutional amendment to change the method of nominating and electing the Lieutenant Governor.

For _____ Against

Background Information

Currently, nominees for lieutenant governor in each political party are selected by voters at the primary election. Nominees are then paired with the nominee for governor in the same party, and they run as a team in the general election.

If the amendment is adopted, each party’s nominees for governor and lieutenant governor still will run as a team in the general election. However, because the nominee for governor would select his or her running mate under the proposed amendment, nominees for lieutenant governor would no longer be determined at the primary election.

Furthermore, in legislative deliberations prior to placing this proposal on the ballot, the Legislature made it clear that the nominee for governor is not required to select someone from the same party as his or her running mate.

Arguments by Proponents and Opponents

Those who support the amendment make the following arguments:

1. The two-person team determined by the primary election may or may not be personally and politically compatible, notwithstanding the fact that they run as a team in the general election.

2. If the nominee for governor could choose his or her running mate, they would be a more effective team if elected.

3. Diversity may be enhanced if the nominee for governor selects a running mate to “balance” the ticket.

Those who oppose the amendment make the following arguments:

1. No compelling reason exists for making a change. We ought to leave the process for electing a lieutenant governor as it is.

Proposed Amendment Number 2

Explanatory Statement

A vote FOR this proposal, which would add a new section 10 to Article XVII (the Schedule Article), would require the language of the State Constitution to be “gender neutral,” and would direct the Secretary of State to revise and reprint the State Constitution implementing this provision as soon as practicable after the approval of this statement.

A vote AGAINST this proposal will retain in the State Constitution those provisions not currently gender neutral.

Ballot Title

A constitutional amendment to state that the language in the Constitution shall be construed to be gender neutral and to direct the Secretary of State to revise and reprint the Constitution to implement such construction.

For _____ Against

Background Information

The Nebraska Constitution was approved prior to the time that women had been granted the right to vote. That reality and the implicit assumption by some that any reference to “he” also means “she” have kept the constitution from making specific references to women.

The purpose of this proposed amendment is to bring greater gender neutrality and inclusiveness to the constitution. It would do so in two ways: 1) A new section would be added to the constitution to provide that wherever the masculine gender is used, it also be construed to include the feminine gender; and 2) the Secretary of State would be instructed to change outdated gender references in the current constitution to clearly include both genders.

The “bottom line” is to ensure that all provisions in the constitution apply equally to both men and women.

Arguments by Proponents and Opponents

Those who support the amendment make the following arguments:

1. The constitution does not intend to treat people differently, so that should be made abundantly clear.
2. The Secretary of State is being asked only to remove references to the male gender alone. Sometimes that may be accomplished by adding "or she." In other cases, wording may be altered so that neither the "he" nor "she" pronoun is used. Other than assuring gender neutrality, this amendment would make no substantive changes in the constitution.

3. Language can be a powerful tool in reinforcing or eradicating long-standing gender biases. The biases reflected in our constitution are not trivial matters.

4. We have had to pass laws to protect women in certain situations. A starting point against discrimination is to be certain that the constitution gives women equal status in our society.

Those who oppose the amendment make the following arguments:

1. We should not fool with something (the Nebraska Constitution) that has been working well for a long time.

2. Words like "mankind" include both genders. Everybody understands that. Thus, why is there a need to make changes in the constitution when everyone knows that "he means she"?

3. Millions of other documents do not have to be "fixed" so that we know we are referring to both men and women. So why does the Nebraska Constitution need to be fixed?

4. The Anglo-Saxon version of the English language has been around 600 years. What we talking about doing here disrespects the language. We will be going from good English usage to poor English usage. Stated differently, we are attempting to fix something that isn't broken.

Proposed Amendment Number 3, Part A

Explanatory Statement

A vote FOR this proposal will add a new section to Article XVI (the Amendments Article), to change the procedure used to amend the Constitution. The change will require two separate votes at two separate elections by the people before an amendment can take effect. The first vote will be to adopt the amendment. If the first vote is affirmative, the second vote will be at a subsequent election to ratify the amendment.

A vote AGAINST this proposal will leave the election procedures for constitutional amendments unchanged.

Ballot Title

A constitutional amendment to change election procedures for constitutional amendments to require two separate votes by the electorate.

____ For

____ Against

Background Information

At the heart of this proposed constitutional amendment is this question: How easy (or difficult) should it be to amend the Constitution of the State of Nebraska?

Voters must approve any constitutional amendment, whether it reaches the ballot by action of the Nebraska Legislature or by initiative petition of the people.

This proposal would require all subsequent proposed amendments to be approved twice by voters. The first could be thought of as a vote to approve the amendment; the second would ratify it.

Arguments by Proponents and Opponents

Those who support the proposed amendment make the following arguments:

1. The constitution is the most basic document we have in state government, and therefore it should not be changed easily.

2. Proposed constitutional amendments sometimes do not receive the attention before an election that candidates do. The latter often are campaigning, advertising, and in other ways vying for the public's attention. Because proposed constitutional amendments may receive less attention, it is appropriate to take a second look at such proposals before putting them in the constitution.

3. This proposal applies both to proposed constitutional amendments that reach the ballot through action of the Nebraska Legislature and to those that come from initiative petitions. In short, there is no discrimination against initiative petitions relative to proposals that come from the Legislature.
4. In the case of initiative petitions, citizens would be required to gather the necessary signatures to put a proposed amendment on the ballot only once. The only thing different from the current process would be the two separate votes.

5. Paid petitioners have made it seem like the constitution is for sale. If you have enough money, you can buy your way onto the ballot. This proposal slows down the amending process so careful consideration is more likely to be given to any proposed constitutional change.

6. The Legislature must approve all proposed statutes three times before passage. A certain amount of time is mandated between votes to allow thoughtful reflection. Why shouldn’t a constitutional amendment be voted on twice, again with the idea of giving the proposal additional thought?

7. People who don’t get their way with regard to statutes are going to buy their way into the constitution. It’s too easy to amend the constitution now. The damage of going down the current path is not going to come in one year; it will be 10 years or more.

8. Constitutional amendments proposed by initiative petition tend to be considered separately, one at a time, out of context of the budget and the resources of the state. There’s little chance to set priorities. A second vote would help to put issues in context.

Those who oppose the proposed amendment make the following arguments:

1. Two votes would make it less likely that the constitution would be amended. This would be unfair to citizens who attempt to amend the constitution by initiative petition.

2. A second vote would require the proposed change to be published again in the state’s newspapers. This would be an additional cost to taxpayers.

3. Multiple (two) votes would only confuse the public. Some would wonder why they were voting on the same issue twice.

4. If approved, this amendment would slow subsequent attempts to amend the constitution. In the event something needed to be changed quickly, it would be difficult to do so. A special election could be called, but that would be costly.

5. The cost of initiative petitions sometimes can be extremely high. The cost of bringing a petition successfully through two votes—because of increased advertising and promotion costs—almost always will be higher than for one vote.

6. The current constitution was formed with one vote; if the amendment is approved, all constitutional amendments in the future will require two votes. That may not be fair or logical.

Proposed Amendment Number 3, Part B

Explanatory Statement

A vote FOR this proposal will amend sections 1 and 5 of Article III (the Legislative Power Article) and section 25 of Article V (the Judicial Article), by specifically defining the powers of the initiative (to propose statutes or constitutional amendments) and referendum (to approve or reject such proposals), and will remove some obsolete language pertaining to the former two-house Legislature.

A vote AGAINST this proposal will not state the specific definitions mentioned above and will retain the obsolete provisions contained in these sections of Articles III and V.

Ballot Title

A constitutional amendment to identify the powers of initiative and referendum and to remove obsolete language.

_____ For

_____ Against

Background Information

This proposed amendment is intended to define and clarify the powers of initiative and referendum. It is not intended to change those powers as they presently exist.

In addition, this proposed amendment removes obsolete language from the constitution, much of it applying to the two-house legislature that existed in Nebraska prior to the adoption of a unicameral legislature in 1937.

During legislative debate, no arguments for or against this proposed amendment were advanced. Attention was directed almost wholly to Parts A and C of
Proposed Amendment Number 3. Thus, the arguments that follow are hypothetical arguments only.

Arguments by Proponents and Opponents

Those who support the proposed amendment could make the following arguments:

1. Language in the Constitution should be as clear, understandable and relevant as possible.

Those who oppose the proposed amendment could make the following arguments:

1. No specific problems have been identified with the current language. Why change something that is not broken?

Proposed Amendment Number 3, Part C

Explanatory Statement

A vote FOR this proposal will amend section 2 of Article III (the Legislative Power Article, initiative and referendum provisions) by increasing from four to nine months the time within which initiative petitions filed with the Secretary of State shall be submitted to the state's electors at a general election.

A vote AGAINST this proposal will retain the present time of not less than four months.

Ballot Title

A constitutional amendment to change filing requirements for initiative petitions.

_____ For

_____ Against

Background Information

Those who circulate initiative petitions to bring items to the ballot must do so within a carefully prescribed time span. Currently, the allotted time is between the last general election and four months prior to the next general election.

If this proposal is approved, the period for circulating and filing petitions would be reduced to the time from the previous general election to nine months before the next general election.

Arguments by Proponents and Opponents

Those who support the proposed amendment make the following arguments:

1. With only four months between the time that petitions are required to be filed and the election, county election officials have little time to verify signatures on petitions. A longer time span would make verification easier.

2. Increasing the filing time to nine months before the election would give the public more time for contemplation regarding the merits of proposals that are to be voted on in an upcoming election.

3. The Legislature would be in session when the petition is filed. Thus, it would be possible to develop an alternative to the initiative petition if the Legislature decided it wanted to do so. (Both versions would appear on the ballot.)

4. Even though the filing time for an initiative petition would be moved up, plenty of time would still be available to gather signatures.

Those who oppose the proposed amendment make the following arguments:

1. This takes away some of the power reserved for (granted to) the people because less time will be available to gather the necessary signatures to put a measure on the ballot.

Proposed Amendment Number 4

Explanatory Statement

A vote FOR this proposal will amend section 19 of Article III (Legislative Power Article) by providing that changes in the compensation of judges will take effect at the same time for all judges rather than on a court-by-court basis.

A vote AGAINST this proposal will keep the current provision regarding the different effective dates for changes in compensation for judges.
Ballot Title

A constitutional amendment to change the effective date of compensation changes made by the Legislature for the judiciary to allow the changes to take effect for all judges at the beginning of the full term of any judge of any court in the state.

___ For

___ Against

Background Information

The Legislature determines salaries (and salary increases) for judges and justices in the Nebraska judicial system.

Currently, judicial salary increases take effect within the Supreme Court, Court of Appeals, district and juvenile courts, workers' compensation court, and county courts at different times, depending upon when a vacancy arises or when a retention vote is held. Thus, a judicial pay raise may take effect much later in one court than another. For example, a judicial pay raise enacted by the Legislature in 1999 took effect shortly thereafter in district courts and county courts, but will not take effect for the state Supreme Court until 2001.

Under the proposed amendment, the first time any judge is replaced or stands for retention, judicial salary increases would be triggered for the entire judiciary, regardless of the court in which that judge serves.

Arguments by Proponents and Opponents

Those who support the amendment make the following arguments:

1. It is only fair that an increase in compensation for judges take effect at the same time irrespective of the court in which they serve.

2. Persons who perform equivalent work should receive pay increases at the same time.

Those who oppose the amendment make the following arguments:

1. Occasionally, judges abuse the authority granted to them. A no vote might help send a message about such abuses.

Proposed Amendment Number 5

Explanatory Statement

A vote FOR this proposal (which will amend section 9 of Article III of the State Constitution—The Legislative Power Article) will provide that a member of the Legislature elected to any other state or local office prior to the end of the member's legislative term shall resign from the Legislature before the start of the legislative session during which the term of the other state or local office will begin, except as otherwise provided by law.

A vote AGAINST this proposal will not require such resignation of a member of the Legislature if elected to another state or local office.

Ballot Title

A constitutional amendment to require the resignation of members of the Legislature elected to other state or local offices except as otherwise provided by law.

___ For

___ Against

Background Information

The legislative sponsor of this proposed amendment says it is a "response to a number of situations that have occurred in the past 10 years or so dealing with the membership of the Legislature." It occurs when a member of the Legislature has been elected to another position in government but the official swearing in to the new position occurs after the Legislature meets and organizes. For various reasons, the member may be reluctant to resign from the Legislature prior to assuming the new position.

Interpersonal tensions may develop within the Legislature when a member has been elected to another office but waits until after the organization of the Legislature (including the election of leaders for the new legislative session) before resigning. Essentially, the member is a "lame duck," who will participate in few, if any, of the substantive issues of the forthcoming legislative session.

The Nebraska Constitution prohibits persons from holding other elected state or federal offices while also holding membership in the Legislature. In addition, legislators cannot accept civil appointments to other state offices while serving in the Legislature.
Arguments by Proponents and Opponents

Those who **support** the amendment make the following arguments:

1. This proposed amendment would protect a newly appointed member of the Legislature and his or her constituents, when the new member will succeed someone who is resigning to take another elected position. With a timely resignation of the retiring member, the new member can be involved in pre-session orientation and in leadership elections that occur the first day of the session.

2. The Legislature would no longer have the situation where a member could vote on the leadership and rules for a legislative session, knowing that within a day or two he or she would no longer be serving in the Legislature.

3. Adoption of the amendment will eliminate the ill will that may be created when members of the Legislature extend their membership in the body as long as possible before resigning to serve in another elected office.

Those who **oppose** the amendment make the following arguments:

(No substantive arguments were made against this proposal during legislative debate.)

**Proposed by Initiative Petition Measure 415**

**Explanatory Statement**

*A vote **FOR** this proposal will amend the Nebraska Constitution so as to limit members of the Nebraska Legislature to two consecutive terms. Under this amendment, no person will be eligible to serve as a member of the Nebraska Legislature for four years after the completion of two consecutive terms. Legislative service prior to January 1, 2001 will not be counted for the purpose for calculating consecutive legislative terms, and service in office for more than one-half of a legislative term will be considered service for a full term. A vote **AGAINST** will not amend the Nebraska Constitution in the manner described above.*

**Ballot Title**

Shall the Nebraska Constitution be amended to provide that no person shall be eligible to serve as a member of the Nebraska Legislature for four years after the expiration of two consecutive legislative terms? Legislative service prior to January 1, 2001, will not be counted for the purpose for calculating consecutive legislative terms, and service in office for more than one-half of a legislative term will be considered service for a full term.

_____ For

_____ Against

**Background Information**

This will be the fourth time since 1992 that Nebraskans have voted on term limits. Successful initiative petitions placed proposed amendments on the ballot in 1992, 1994, 1996, and again this year. The proposed amendments passed each of the first three times they reached the ballot. However, all subsequently were voided by judicial action.

In 1992, the Nebraska Supreme Court declared the amendment unconstitutional because too few signatures appeared on the initiative petition. Two years later, the Nebraska Supreme Court said the state could not attempt to change provisions in the federal Constitution regarding eligibility to serve in Congress. In 1996, the U.S. District Court, District of Nebraska, blocked enforcement of portions of the amendment.

The proposed amendment in 2000 does not address terms limits at the federal level. Nor does it apply to the executive branch of state government. It applies strictly to a limit on continuous service in the Nebraska Legislature.

Arguments by Proponents and Opponents

Those who **support** the amendment make the following arguments:

1. No one should have the idea that elected offices are tantamount to permanent positions.

2. Even if challengers are well qualified, incumbents have an advantage in elections because of name recognition.

3. Incumbents often are capable of raising more campaign funds than their challengers. This makes it difficult for challengers to win.
4. Plenty of good candidates could be recruited to run for office if it were not for the inherent advantages of incumbents. The rate of re-election of incumbents is very high.

5. The public would benefit by the new ideas and perspectives brought by new office holders.

6. The scope of the proposed amendment is limited, applying only to the Nebraska Legislature.

7. Eighteen states already have imposed term limits on state lawmakers.

Those who oppose the amendment make the following arguments:

1. Term limits would mean that some dedicated, highly capable people could no longer serve in the Nebraska Legislature. Institutional history and perspective, which can be important in making laws and responding to other public needs, would be lost.

2. Institutional history and perspective are at least as important in law-making as the "new ideas" brought to the Legislature by newly-elected members.

3. Voters can always make a change at the next election. In fact, elections are the ultimate way of implementing term limits.

4. The proposed amendment has a "foot-in-the-door" quality to it. If successful, subsequent proposed amendments may apply to other elected offices, again with the potential of disqualifying dedicated, highly capable people after a few years of service.

5. It is not necessary to impose eight-year limits on members of the Nebraska Legislature because the average tenure of legislators is only eight years at present.

**Proposed by Initiative Petition Measure 416**

**Explanatory Statement**

A vote **FOR** will amend the Nebraska Constitution to provide that only a marriage between a man and a woman shall be valid or recognized in Nebraska, and to provide that the uniting of two persons of the same sex in a civil union, domestic partnership or other similar same-sex relationship shall not be valid in Nebraska.

A vote **AGAINST** will not amend the Nebraska Constitution in the manner described above.

**Ballot Title**

Shall the Nebraska Constitution be amended to provide that only marriage between a man and a woman shall be valid or recognized in Nebraska, and to provide further that the uniting of two persons of the same sex in a civil union, domestic partnership, or other similar same-sex relationship shall not be valid or recognized in Nebraska?

_____ For

_____ Against

**Background Information**

Same-sex marriages currently are not legal in any state and only Vermont recognizes civil unions.

In general, constitutional provisions are more difficult to change than statutes.

**Arguments by Proponents and Opponents**

Those who support the proposed amendment make the following arguments:

1. If placed in the constitution, prohibitions against same-sex marriages, civil unions, domestic partnerships, and other same-sex relationships would be less likely ever to be recognized than if such relationships were prohibited only by statutory law.

Those who oppose the proposed amendment make the following arguments:

1. If the amendment passes, it likely will preclude domestic partner "A" from ever being eligible for health insurance and other employment benefits of domestic partner "B."

2. The proposed amendment has a harshness about it that is unnecessary, given that current law does not recognize relationships of the type specified.