

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 2004-11325

DIVISION "C"

FORUM FOR EQUALITY PAC, ET AL.

Versus

CITY OF NEW ORLEANS, ET AL

**MEMORANDUM IN OPPOSITION TO PLAINTIFFS'**  
**PERMANENT INJUNCTION AND DECLARATORY JUDGMENT ACTION**

***MAY IT PLEASE THE COURT:***

Defendant McKeithen presents this memo to the Court to oppose Plaintiffs' Petition for a Permanent Injunction and Declaratory Judgment and incorporates by reference, herein, the Memorandums previously filed in Opposition to Plaintiffs' Preliminary Injunction.

**I. Procedure: The People's Right to Propose any Amendment to their Constitution through their Elected Representatives**

**A Constitutional Amendment May Eliminate Rights Contained In The Pre-existing Constitution Being Amended**

Plaintiffs admit in memorandum that they are seeking to overturn the precedent and jurisprudence of the Supreme Court of Louisiana—*viz.*, *Police Jury of the Parish of Washington v. All Taxpayers, Property Owners and Citizens of Industrial District No. 1 of Washington Parish*, 278 So.2d 474 (La. 1973)—in claiming that the state constitution should be interpreted so that certain rights therein can never be amended out of it. The Orleans Parish Civil District Court is obligated to follow the precedent of the Supreme Court of Louisiana and may not fail to do so. *Louisiana Electorate of Gays and Lesbians, Inc. [LEGAL], etc., et al. v. State, etc., et al.*, 2001-2106 (La. 3/28/02) at page 5, 812 So.2d 626, 629. Thus, this Honorable District Court must follow the Supreme Court of Louisiana's precedent and cannot overrule that precedent and line of jurisprudence. The plaintiffs will have to wait until they appeal this case all the way to the Supreme Court of Louisiana and only then try to argue for overruling that state supreme court precedent.

For all purposes of this lawsuit, therefore, in this district court, there is no limitation on the power of people of Louisiana to amend their constitution in any respect, providing the amendment does not conflict with the United States Constitution. Such is the precedent and jurisprudence of the Supreme Court of Louisiana. *Washington Parish Police Jury v. All*

*Taxpayers, etc., supra; Louisiana Ry. & Nav. Co. v. Madere*, 124 La. 635, 50 So. 609 (La. 1909); and the cases and authorities cited therein.

Not only is it the precedent and jurisprudence of the Supreme Court of Louisiana, but it is also the general rule applied throughout Louisiana's sister states. "There is no limitation on matters which can be the subject of a constitutional amendment in Florida," *Lane v. Chiles*, 698 So.2d 260, 263 (Fla. 1997). A constitutional amendment necessarily annuls any and all former provisions of the same constitution which conflict with it. *Ward v. Harding*, 860 S.W.2d 280 (Ky 1993). "Even a principle that is rooted in the constitution can, of course, be abrogated by constitutional amendment. See *In re Interrogatories Propounded by Senate*, 189 Colo. 1, 536 P.2d 308, 318 (1975)," *Fonfara v. Reapportionment Commission*, 222 Conn. 166, 172, 610 A.2d 153, 157 (Conn. 1992). "A basic tenet of constitutional law is that only the people of a state are vested with the power of amendment and *this power is plenary*," *Chevron USA, Inc. v. State of Mississippi*, 578 So.2d 644, 649 (Miss. 1991) (on rehearing) (emphasis added). "A constitutional amendment will supersede any inconsistent portions of antecedent constitutional or statutory provisions, as 'the latest expression of the will of the people,'" *State of West Virginia ex rel. City of Princeton v. Buckner*, 180 W.Va. 457, 462, 377 S.E.2d 139, 144 (W.Va. 1988).

"No part of the Constitution...is inviolable. To hold to the contrary would give absolute finality to a portion of the Constitution and would thwart the express will of the people when they retained the right to amend their Constitution. The people specifically reserved this right to themselves in [Article XIII] of the [Louisiana] Constitution.

\* \* \*

"If it then be contended that even if Initiative 300 is an amendment to our Constitution, it conflicts with that same Constitution, we find that position without merit. We agree with the Massachusetts Supreme Judicial Court, which stated in a footnote simply that '[i]t is difficult to comprehend how the proposed constitutional amendment can be "unconstitutional" under our Constitution.' *Answer of the Justices*, 375 Mass. 847, 849 n. 2, 377 N.E.2d 915, 916 n. 2 (1978).

Similarly, in *Floridians Against Casino Takeover v. Let's Help*, 363 So.2d 337, 341-42 (Fla. 1978), the Supreme Court of Florida stated:

'[C]onflict' with existing articles or sections of the Constitution can afford no logical basis for invalidating an initiative proposal. Such an assertion ignores established patterns of constitutional construction. When a newly adopted amendment does conflict with preexisting constitutional provisions, the new amendment necessarily supersedes the previous provisions. Otherwise, an amendment could no longer alter existing constitutional provisions and the amendment process might, in every case, be frustrated by the judicial determination that a given proposal conflicts with other provisions.

“It would completely subvert our role as one of the three branches of government established by the people in the Constitution to expand our jurisdiction to tell the voters of this state that although the Constitution states that the people have reserved the power to amend that Constitution, they may only amend it in ways that we determine are fundamental or have something to do with our ‘organic’ law.

*Omaha National Bank v. Spire*, 223 Neb. 209, 216, 222-223, 389 N.W.2d 269, 274, 278, (Neb. 1986).

There is nothing in La. Const. (1974) art. 1, §1, or any other provision, to the contrary. In his law review article at 21 *Loyola L. Rev.* 9 (1975), Mr. Woody Jenkins actually never says that the state constitution cannot be amended subsequently to provide for different rights than those in the “Declaration of Rights” article [La. Const. (1974) art. 1] or to repeal any of those rights. Nor does he say that a subsequent constitutional amendment to another article in the constitution that conflicted with a provision in Article 1 would not have the effect of superseding it. The only thing he says is that in the provisions in the other articles dealing only with the structure and organization of government, as a matter of constitutional interpretation, the courts should not take a provision which merely grants a general governmental power to some governmental department and which does not conflict with any provision in Article 1 and interpret it so as to unnecessarily conflict with an individual right secured in Article 1. Mr. Jenkins says nothing of subsequent constitutional amendments by which the people of the state intend to change their constitution in a way that conflicts with a previous provision, regardless where that provision may be situated in the constitution.

Even if there were any provision in the pre-existing constitution that purported to limit the substantive content of any future constitutional amendment, that provision, too, would be subject to a later amendment, either explicitly or implicitly. It is the latest expression of the people’s will for their constitution that takes precedence. Just as “[t]he legislative department of the state has no power to pass any irrevocable law [citing *Cooley’s Const. Lim.* (7th Ed.) p. 174],” *Louisiana Ry. & Nav. Co., supra*, 124 La. at 642-643, 50 So. at 611, the people cannot adopt by their ratification any “irrevocable” constitutional provision that cannot be changed by a subsequent ratification.

## **II. Form of Proposal: The Germaneness Test**

### **The Proposed Constitutional Amendment Has A Single Object Within the Meaning of La. Const. (1974) art. 13, §1**

Plaintiffs also attack the constitutional amendment proposal under La. Const. (1974) art. 13, §1, on the grounds that it allegedly lacks a single object. One of the plaintiffs wants to vote

for one of the sentences and against another. However, that is not the constitutional test for determining whether the legislature complied with the single object requirement.

La. Const. (1974) art. 13, §1, provides for the manner of amending the constitution when the legislature shall present a proposed amendment to the people voting at referendum for ratification. In this situation, the constitutional provisions allocate certain functions to the legislature and certain other functions to the people. Allocated to the legislature, *inter alia*, is the power, discretion, and responsibility for drafting the proposed amendment and setting the election date for the people's referendum. The people must vote on the constitutional amendment and either ratify it or reject it, but the people are given no power whatsoever to draft the amendment or even assist in the drafting. In fairness to the people's vote, the only requirement is that the amendment have a single object. There is no requirement that it not have multiple parts. There is no requirement that the people get to vote on each of its parts separately. It is sufficient if the constitutional amendment presents a single plan with multiple parts which are all at least germane to one another.

Thus, no plaintiff has a real and actual legal interest in voting on each sentence separately of a proposed constitutional amendment. The people must vote on what is proposed by the Legislature; they do not have the right to draft the constitutional amendment by voting on each sentence, phrase, part, or whatever of it. Nearly everyone has things they like about any constitutional amendment proposal and things they do not like about it; they must weigh the pros and cons on balance and decide whether to vote for it or against it. The state constitution vests the power and discretion in the Legislature to draft the constitutional amendment proposals; the only requirement put on them in doing so is the single object requirement, which requires only that a single plan be drafted, although it can have multiple parts that are germane to one another.

The Supreme Court of Louisiana explained in *Miller v. Greater Baton Rouge Port Comm.*, 225 La. 1095, 74 So.2d 387 (La. 1954):

The establishment of the Port and its administration is a single plan and only one object has been dealt with. As pointed out in *Graham v. Jones*, 198 La. 507, 3 So.2d 761, *where an amendment may be logically viewed as parts of a single plan, it may be submitted as one amendment.* Where an act of the Legislature or an amendment to the Constitution embodies a single plan and every provision therein is *germane* to that plan, it is not violative of the Constitution. Similar amendments have been approved in the cases of *Hotard v. New Orleans*, 213 La. 843, 35 So.2d 752; and *Orleans Parish School Board v. New Orleans*, La.App., 56 So.2d 280.

*Miller, supra*, 225 La. at 1105, 74 So.2d at 390 (emphasis added) and the authorities cited therein.

In *Graham v. Jones, supra*, the language in the opinion regarding the multiplicity of objects in the constitutional amendment therein could be considered *obiter dicta*, because the *ratio decidendi* of the case was that the Legislature had failed to designate the date of the referendum election for the constitutional amendment, as required by the constitution, and the secretary of state's setting of the date was considered a violation of the separation of powers doctrine. Moreover, the objects were considered multiple in that case because several different discrete articles and sections of the constitution were sought to be amended by the one constitutional amendment. Such was not the case in *Miller, supra*, nor is it the case herein. The situation in this case is like the one in the *Miller* case, not like the situation in the *Graham* case. Thus, *Graham* has been modified, explained, and refined by the subsequent *Miller* case, which has set forth the "germaneness" rule for a single object when there is one single plan with multiple parts. The constitutional amendment in this case properly follows the current law on the single object requirement.

In this case, there is but a single plan—*viz.*, to provide that marriage shall be between a man and a woman and that all alternative relationships of whatever nomenclature that mimics or contains incidents unique to marriage between persons other than a man and woman are not given formal legal recognition. All of the provisions together in this proposed constitutional amendment are clearly germane to one another. All of the provisions support the idea that marriage is between a man and a woman and enforce that one concept by specifically providing that the one-man, one-woman marriage shall be given legal approbation and that alternative "marriage-type" unions and relationships shall not be given legal approbation.

### **III. Ratification: The Congressional Primary Election is a Statewide Election**

#### **The Referendum Called For Ratification of This Constitutional Amendment Is A Statewide Election**

La. Const. (1974) art. 13, §1, provides that the legislature shall have the power and discretion to set the date for the people's referendum for ratification of a constitutional amendment proposed by the legislature. The legislature is *explicitly* given the power to authorize by law even a special election for this purpose. The requirement of a "statewide election" in this constitutional provision is simply to assure (1) that all of the registered voters in the state get the opportunity to vote for or against ratification of the proposed constitutional amendment and (2) that they must vote all at the same time, that is, on the same day in the same election. The legislature cannot call for a "partial-state" or "half-state" referendum for ratification of a

constitutional amendment; it must be a referendum conducted throughout the whole state. Under the constitutional provision, there is no pre-set statewide election date that the legislature must choose; but, as required by Article XI, Sec. 1, the legislature has adopted an election code which sets forth the conduct of all elections in Louisiana. Under the Election Code, there are pre-set statewide election dates, which are the gubernatorial and congressional elections as set forth in R.S. 18:402(A) and (B). They are statewide election dates because the legislature has provided for the costs of such elections to be paid for by the state, whether or not a gubernatorial or congressional candidate appears on the ballot [R.S. 18:1400.1 -1400.4], providing for the conduct of such elections by the state on a statewide basis.

In *City of Donaldsonville v. State*, 1999-1582 (La.App. 1 Cir. 6/23/00), 764 So.2d 339, writ den. 2000-2257 (La. 10/27/00), 772 So.2d 654, the legislature passed a statute calling for gaming referendums throughout the state. The court held that the statute was not a local law but had general state concern because the referendums were held throughout the state in a statewide election. The court explained,

“All persons throughout the state of Louisiana were affected by the passage of section 1300.21. *Every voter in the state was given the opportunity to cast a ballot on whether to prohibit or allow video draw poker devices within his parish, and the election was held throughout the whole of the state.* The statute affected the state as a whole, persons throughout the state were affected, and the statute operated on a subject of statewide concern. *See Polk*, 626 So.2d at 1136. Of particular note, the statute was adopted pursuant to the state's police power. As held in *Kotch* and recognized in *Polk*, 626 So.2d at 1136-37, laws adopted for the benefit of the entire state and pursuant to the state's police power are general. Louisiana courts have consistently recognized that the legislature's authority to regulate gaming constitutes a legitimate exercise of police power. *Polk*, 626 So.2d at 1137. Section 1300.21, mandating a *statewide election* to determine whether to prohibit or allow video draw poker devices, constituted a general law rather than a local or special law.

*Id.*, at pp. 6-7, 772 So.2d at 344 (emphasis added).

Even under previous election laws, the courts have held,

“[O]ur statutes and jurisprudence clearly reflect that there be a distinction between statewide or multiparish or district races and those which are purely local in nature. In the former situations it is the Secretary of State who tabulates the results. In the latter case the local committee compiles and tabulates the result.”

*LeCompte v. Bd of Election Commissioners of Parish of Terrebonne*, 331 So.2d 173, 176 (La. App. 1<sup>st</sup> Cir. 1976).

A statewide election is one conducted by the State through the Board of Election Supervisors of each parish. *Burgess v. City of Shreveport*, 448 So.2d 861, 863 (La.App. 2 Cir. 1984) *aff'd*, in pertinent part, 471 So.2d 690 (La. 1985). The legislature has provided by law for the gubernatorial and congressional election dates provided for in R.S. 18:402(A) and (B) to be held throughout the state, with the costs to be paid for by the state, whether a gubernatorial or congressional candidate appears on the ballot. R.S. 18:1400.1 – 1400.4. Contrast the conducting of such gubernatorial or congressional elections with local elections, which dates are specifically provided for in R.S. 18:402(C) and (D) and which election costs are specifically provided for in paragraphs (C) of R.S. 18:1400.1-1400.4, as being the responsibility of the governing authority that relates to the character of the office or the issue involved in such election.

More specifically, the Louisiana Election Code is set up to require the state to pay *all* the costs of elections for gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot, in La. R.S. 18:1400.1, 18:1400.2, 18:1400.3 and 18:1400.4, and these elections are considered statewide elections. It is only when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot that locals share in the costs of such elections. We will introduce evidence at the hearing that will establish that the gubernatorial and congressional elections set forth in the Louisiana Election Code are budgeted by the Department of State as statewide elections, which include the September 18, 2004 election.

La. R.S. 18:402(B) provides that the congressional primary election shall be held on the first Saturday in October of an election year and the congressional general election shall be held on the first Tuesday after the first Monday in November of an election year. The court in *Love v. Foster*, 147 F.3d 383 (5<sup>th</sup> Cir. (La.) July 16, 1998) upheld the ruling of the District Court which fashioned a remedy consistent with the U.S. Supreme Court and the U.S. Fifth Circuit rulings which held that members of congress from Louisiana could not be elected prior to the first Tuesday following the first Monday in November of an election year. The remedy fashioned by the District Court and affirmed by the U.S. Fifth Circuit in *Love* ordered the adjustment of the election dates for members of congress to be held on the first Tuesday after the first Monday in November. which is November 2, 2004 for this election year, with any general election being

held on the December date provided for by the election code. [R.S. 18:512(C)]. The court's decision in *Love* did not alter the dates for the state and local elections that are established in La. R.S. 18:402. Nor has the Louisiana Legislature amended the Louisiana Election Code to change the date of the congressional primary election and therefore, pursuant to the provisions of the Louisiana Election Code, the September 18, 2004 election is the congressional primary election for state elections.

“Absent action by Congress, any further changes that might be made therein [to the Louisiana Election Code] are the exclusive province of the Louisiana Legislature and Governor, as are any refinements or valid significant changes they may wish to make as a consequence of today's resolution.”

*Love*, 147 F.3d at 387.

LSA-Const. Art. 13, §1 was adopted by the voters as part of the Louisiana Constitution in 1974 and it provides that each joint resolution proposing the amendment of the constitution shall specify the statewide election at which the proposed amendment shall be submitted, and also provides that special elections for submitting proposed amendments *may be authorized by law*. Since 1974, the Louisiana Legislature has authorized elections for proposed constitutional amendments on election dates that were not gubernatorial or congressional elections. *See*, Act 2, 1989 First Extraordinary Session of the Louisiana Legislature authorizing the special statewide election for April 29, 1989; Act 613, 1989 Regular Session of the Louisiana Legislature authorizing the special statewide election for October 7, 1989; and Act 233, 1993 Regular Session of the Louisiana Legislature authorizing the special statewide election for October 16, 1993, certified copies of which will be introduced at the hearing. This evidences that the Louisiana Legislature has recognized that election dates, other than the gubernatorial and congressional dates, set forth in the Louisiana Election Code are not considered statewide elections for purposes of Article 13, §1, and that a specific act of the legislature is required to place a proposed constitutional amendment on the ballot for such a special election date.

Additionally, the requirement for a statewide election in Article 13, §1 is not limited to an election where there is a statewide candidate on the ballot. The Report of the Secretary of State for the years 1982, 1994 and 1998 will be introduced at the hearing which will show that proposed constitutional amendments have previously been placed on the ballot for the following elections where there was no statewide candidate on the ballot: September 11, 1982, October 1,

1994, and October 3, 1998. In addition, after the ruling in *Love, supra*, the Report of the Secretary of State for the year 1998 will indicate that proposed constitutional amendments were put before the voters on October 3, 1998 and this election did not include the election of members of Congress. Again, the Louisiana Legislature has clearly recognized that the congressional election dates set forth in the Louisiana Election Code are statewide elections for purposes of Article 13, §1, including the election held on October 3, 1998 that did not have congressional candidates on the ballot, which is factually the same as this case before this Court.

In sum, since the Louisiana Election Code statutorily provides that the September 18, 2004 election is the congressional primary election, it is a statewide election and the Louisiana Legislature was correct in its determination that the election was a statewide election and that no specific act of the legislature was required to place the proposed constitutional amendment on the September 18, 2004 ballot. Thus, the referendum election that the legislature has set for ratification of this proposed constitutional amendment meets all of the criteria for a statewide election, and there can be no doubt that the statewide election called for complies with the requirement that it be a statewide election within the meaning of La. Const. (1974) art. 13, §1.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the above and foregoing has been served upon opposing counsel of record by fax and by depositing the same in the United States Mail, postage prepaid, and properly addressed, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, as follows:

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ROY A. MONGRUE, JR.

CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS

STATE OF LOUISIANA

NO. 04-11325 DIVISION "C"

FORUM FOR EQUALITY PAC, a registered Louisiana political  
action committee, LAURENCE E. BEST, JEANNE M. LEBLANC  
and WILLIAM A. SCHULTZ

versus

CITY OF NEW ORLEANS and THE HONORABLE  
W. FOX MCKEITHEN, in his official capacity  
as SECRETARY OF STATE OF LOUISIANA only,  
and not individually

STATE OF LOUISIANA  
PARISH OF EAST BATON ROUGE

BEFORE ME, the undersigned notary public, came and appeared

**WADE O. MARTIN, III**

who did depose and state:

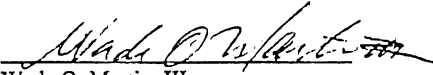
1. I am the Commissioner of Elections for the Department of State.
2. I am charged with the responsibility of overseeing the conduct of the September 18, 2004 election, which includes the proposed constitutional amendment in Act 926 of the 2004 Regular Session.
3. The Secretary of State's office received Act 926 of the 2004 Regular Session on June 18, 2004 and began preparation for the election in accordance with the Louisiana Election Code.
4. For the September 18, 2004 election, the following actions have been or are being taken by the Secretary of State's office:
  - a. The statement of proposed constitutional amendment has been printed and shipped to each parish Clerk of Court and Registrar of Voters.
  - b. The paper absentee ballots for the proposed constitutional amendment have been printed and will be shipped to each parish registrar of voters on August 26, 2004.
  - c. The paper machine ballots are presently being printed.
  - d. The IVotronic voting machine electronic ballots are being programmed. They are used in all 64 parishes for absentee voting in person and used in the parishes of Tangipahoa and Ascension on Election Day. The deadline for making any program changes to the electronic ballot for the September 18, 2004 election is August 25, 2004 for use in absentee voting in person, and September 3, 2004, for use on Election Day.

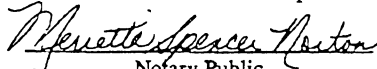
5. The statewide ballots include not only the proposed constitutional amendment, but also any candidate races and/or proposition questions for each applicable precinct. There are 4,124 precincts for the statewide election. There are 7,400 voting machines that will be used at the precinct level for the September 18, 2004 election.
6. The cost of ballot printing and publication is approximately \$58,000.
7. Absentee voting in person begins on September 7, 2004.
8. Paper absentee voting by mail ballots will be shipped to the voters by the registrars of voters upon receipt from the Secretary of State's office, which is scheduled for August 27, 2004.
9. Paper Military/Overseas ballots will be shipped to voters by the registrars of voters upon receipt from the Secretary of State's office, which is scheduled for August 27, 2004.
10. Because of the time required for the programming of the IVotronic voting machines, no program changes can be made after August 25, 2004 for use of the machines in absentee voting in person, and no program changes can be made after September 3, 2004 for use of the machines on Election Day. Thus, if the court orders the Secretary of State to not include the proposed constitutional amendment on the ballot at this time, then after August 25, 2004 and September 3, 2004, it will be physically impossible to include the proposed constitutional amendment on the electronic ballot for absentee voting in person and on election day if a subsequent reviewing court determines that the election should go forward.
11. The gubernatorial and congressional elections set forth in the Louisiana Election Code are budgeted by the Department of State as statewide elections, including the September 18, 2004 election.
12. La. R.S. 18:1400.1, 18:1400.2, 18:1400.3 and 18:1400.4 require the State of Louisiana to pay all of the costs of election expenses for gubernatorial and congressional elections, whether or not a gubernatorial or congressional candidate appears on the ballot, which includes the September 18, 2004 election. It is only when a local or municipal candidate or a local bond, debt, tax, proposition, or question also appears on the ballot, that the state pays for ½ of the election expenses and shares the remaining ½ with the local entities on the ballot.
13. The Report of the Secretary of State for January 1, 1981 – December 31, 1982, pp. 9-15 and Insert C, shows that for the September 11, 1982 election there were eight proposed constitutional amendments on the ballot and there were no statewide candidates on the ballot, as evidenced by a true and correct copy of said report, attached hereto as *Attachment 1*.
14. The Report of the Secretary of State for January 1, 1993 – December 31, 1994, pp. 18-27 and Insert B, shows that for the October 1, 1994 election [congressional primary election date] there were four proposed

- constitutional amendments on the ballot and there were no statewide candidates on the ballot, as evidenced by a true and correct copy of said report, attached hereto as *Attachment 2*.
15. The Report of the Secretary of State for January 1, 1997 – December 31, 1998, pp. 12-17 and pp. 26-33, shows that for the October 3, 1998 [congressional primary election date] election there were eighteen proposed constitutional amendments on the ballot and there were no statewide candidates on the ballot, as evidenced by a true and correct copy of said report, attached hereto as *Attachment 3*.
  16. The Report of the Secretary of State for January 1, 1997 – December 31, 1998, pp. 12-23 and pp. 26-33, shows that for the October 3, 1998 [congressional primary election date] election there were eighteen proposed constitutional amendments on the ballot and there were no congressional candidates on the ballot, as the congressional candidates were on the November 3, 1998 ballot, as evidenced by a true and correct copy of said report, attached hereto as *Attachment 3*.
  17. Since 1974, the Louisiana Legislature has authorized by acts of the legislature the following elections for proposed constitutional amendments on election dates that were not gubernatorial or congressional elections and state election officials conducted the elections as statewide elections:
    - a. Act 2, 1989 First Extraordinary Session of the Louisiana Legislature authorizing a special statewide election on April 29, 1989 to submit a constitutional amendment to the state's electors, as evidenced by a true and correct copy of said act, attached hereto as *Attachment 4*;
    - b. Act 613, 1989 Regular Session of the Louisiana Legislature authorizing a special statewide election on October 7, 1989 to submit constitutional amendments to the state's electors, as evidenced by a true and correct copy of said act, attached hereto as *Attachment 5*; and
    - c. Act 233, 1993 Regular Session of the Louisiana Legislature authorizing a special statewide election on October 16, 1993 to submit constitutional amendments to the state's electors, as evidenced by a true and correct copy of said act, attached hereto as *Attachment 6*.
  18. If the court allows the Secretary of State to include the proposed constitutional amendment on the September 18, 2004 ballot, the election could still be restrained or prohibited by the following mechanisms:
    - a. The voting machines can be locked out at the precinct level by the Secretary of State's office, if the lock outs are set on or before September 10, 2004, so that no votes could be cast for the proposed constitutional amendment.
    - b. Any votes cast for the proposed constitutional amendment could be blocked from being inputted into the Secretary of State's database from the Clerks of Court after the election.

- c. The Secretary of State could not promulgate any votes cast for the proposed constitutional amendment after the election.

Read and signed this 18th day of August, 2004.

  
Wade O. Martin, III  
Commissioner of Elections  
Department of State

  
Notary Public  
Monetta Spencer Norton # 20990