

The State of Texas



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John Steen
Secretary of State

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Election Law Opinion JS-1

RE: Process for Addressing Identical Joint Resolutions for
November 5, 2013 Constitutional Amendment Election

On May 21, 2013, House Joint Resolution 147 ("HJR 147") was filed with this office, and on May 22, 2013, its companion resolution, Senate Joint Resolution 54 ("SJR 54") was filed with this office. See Tex. H.R.J. Res. 147, 83d Leg., R.S. (2013); Tex. S.J. Res. 54, 83d Leg., R.S. (2013). Both of these joint resolutions propose the repeal of Article IX, Section 7 of the Texas Constitution which limits the taxing authority of a hospital district in Hidalgo County to ten cents per one hundred dollars valuation. The proposed ballot language is *identical* in each joint resolution. Therefore, an apparently unique situation has occurred necessitating the issuance of this opinion.

I. Issue Presented

The Texas Constitution provides that the Legislature, with approval of two-thirds of the members of each House, may propose constitutional amendments to be voted upon by certain qualified voters. TEX. CONST. art. XVII, § 1. Proposed amendments take the form of a joint resolution in the Legislature and, upon passage by both chambers, are filed with the Secretary of State. See TEX. H.R. RULE 9, § 1, Tex. H.R. 4, 83d Leg., R.S., 2013 H.J. OF TEX. 53-168 (2013); TEX. S. RULE 10.01, Tex. S.R. 4, 83d Leg., R.S., 2013 S.J. OF TEX. 26-28, 33 (2013). Further, the Texas Election Code (the "Code") requires that "each proposition must appear on the official ballot." TEX. ELEC. CODE § 274.002(e). Additionally, the Code requires this office to hold a ballot drawing for placement of the propositions on the ballot, provide notice to voters, and to certify, in writing, the wording of the proposition submitting the amendment. TEX. ELEC. CODE §§ 274.002-274.003.

Therefore, the filing of identical proposed amendments gives rise to several questions:

- (1) As an initial matter, can one of the resolutions be pulled back or "unfiled" in order to resolve the situation?
- (2) If not, must both propositions be presented to the voters?
- (3) If not, how will the language of the proposition be certified and placed on the ballot for consideration by the qualified voters of Texas? How will the ballot drawing be conducted, and how will the identical resolutions be identified in notices to voters and official documentation, such as explanatory statements?

The Office of the Secretary of State has decided to address this question of general importance within the context of an official election law opinion, which is rendered under the Secretary's authority to obtain and maintain uniformity in the interpretation of election laws. TEX. ELEC. CODE § 31.003 and § 31.004.

II. Opinion and Statutory Authority

(1) The Office believes the answer to the first question is in the negative. Texas has followed the "enrolled bill doctrine" since at least 1892. See Williams v. Taylor, 83 Tex. 667, 19 S.W. 156 (1892). The doctrine states that once a bill is signed in the presence of both houses in accordance with Article III, Section 38 of the Constitution, it is then presumed to be passed in accordance with all of the Constitution's rules. No one may look to the Journal of either chamber to cast doubt on the enactment. See Op. Tex. Att'y. Gen. Nos. M-419 (1969), V-1199 (1951). The Attorney General's office also rendered an informal opinion to Secretary Roger Williams in 2005 that an enrolled bill filed with the Secretary's office may not be recalled for correction nor may it be substituted or altered. See letter dated June 24, 2005 from the Office of the Attorney General, General Counsel Division to Secretary Williams, copy attached.

(2) The Office also believes that the same proposition language should not be presented to the voters twice. The Code specifically states that a "proposition shall be printed on the ballot in the form of a single statement and may appear on the ballot only once." TEX. ELEC. CODE § 52.072(b). Further, Chapter 274 of the Texas Election Code gives this office discretion to supply a missing proposition if the Legislature fails to include the language in a joint resolution. TEX. ELEC. CODE § 274.001. By implication, this Office has the authority to prevent putting a proposition on the ballot twice.

Additionally, this Office has discussed the legislative intent of these two joint resolutions with their authors, and confirmed that it is the authors' intent that the proposed amendment language found in HJR 147 and SJR 54 should be placed upon the ballot only once.

Finally, placing the proposition on the ballot twice could lead to the absurd result of one proposition passing and one failing during the same election. It is the philosophy of this Office to provide accurate, reliable, and timely service with the highest standards of ethics, accountability, efficiency, and openness. In addition, the mission of the State of Texas' government is to be limited, efficient, and completely accountable. To honor the public trust, state officials must seek new and innovative ways to meet state government priorities in a fiscally responsible manner. Therefore, both this agency's philosophy and the mission of the Texas government require that resources be expended only to the extent necessary to place this issue in front of the voters one time for a vote as expressed by the will of the 83rd Legislature.

(3) Finally, the Office faces the mechanical questions of how to properly present these two identical propositions on the certified ballot, how to conduct the drawing for placement on the ballot, and how to represent them in notices and official documents.

In terms of ballot language, both of the resolutions propose the following language to be voted on: "The constitutional amendment repealing Section 7, Article IX, Texas Constitution, which relates to the creation of a hospital district in Hidalgo County." Precisely this language will be

presented to the voters of Texas for a decision. In terms of the ballot drawing, HJR 147 and SJR 54 will be represented together as "HJR 147 (SJR 54)," and the proposition's order on the ballot determined by the results of the drawing. Finally, the two will be noted as "HJR 147 (SJR 54)" in all notices to the public and other official documentation. Thus, in substance, both resolutions will be given effect by this office in ensuring that the proposition is voted on in the upcoming election.

In conclusion, for the reasons stated above, the Office of the Secretary of State believes that both of these resolutions must remain filed with this office, and that the identical propositions in companion joint resolutions HJR 147 and SJR 54 shall appear on the November 5, 2013 constitutional amendment election ballot only once.

Prepared by Keith Ingram
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APPROVED:
OPINION COMMITTEE
Wroe Jackson, General Counsel
Keith Ingram, Chair
Ashley Fischer
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APPROVED:

A handwritten signature in black ink, appearing to read "John Steen". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke extending to the left.

John Steen
Secretary of State