



**NORTH CAROLINA CENTER FOR
PUBLIC POLICY RESEARCH INC.**

News Release

Pro and Con Arguments on Three Constitutional Amendments Before the Voters on November 5, 1996

For release on Monday, October 14, 1996:

May be broadcast Monday a.m. and may appear in Monday newspapers.

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On election day on November 5th, North Carolina citizens will cast votes not only for their elected representatives, but for or against three amendments to the North Carolina Constitution on (1) gubernatorial veto power, (2) crime victims' rights, and (3) alternative criminal punishments. To encourage public education and debate, the North Carolina Center for Policy Research released a report today offering pro and con essays on each of the amendments.

(1) The Gubernatorial Veto Amendment

For the first time in the state's history, voters will have a chance to ratify an amendment to the North Carolina Constitution that would grant veto power to the governor. If ratified by voters on election day, the amendment would require most statewide legislation to be submitted to the Governor. State and federal constitutional amendments, local legislation, joint resolutions, and appointments would be exempt. If the Governor vetoes a bill, the General Assembly could override the veto by a three-fifths vote of the members of each house present and voting. The amendment provides a basic, no-frills, general veto power -- not a line-item veto.

North Carolina is the only state in the nation that does not grant some form of veto to the governor. Yet only 5.5 percent of the bills passed by legislatures in the United States are vetoed by governors. Legislatures override gubernatorial vetoes in only 3.5 percent of the cases, according to the Council of State Governments in Lexington, Kentucky.

The Center presents five arguments why veto power is needed for North Carolina governors: (1) veto power would make the governor a full partner in the legislative process; (2) veto power could serve as a check against the passage of legislation which has been rushed through the General Assembly without full deliberation or which is not in the public interest; (3) it could be used to negate unconstitutional legislation; (4) it would restore a proper balance of power between the executive and legislative branches; and (5) it has worked well in practice at the federal level and in all other 49 states.

"The most compelling argument for veto power is that we in North Carolina do not require our governor to be involved in every important issue and to be held accountable for that involvement," says former Gov. James G. Martin, who supports the amendment along with former Governors James E. Holshouser Jr., Robert W. Scott, and Terry Sanford. Gov. James B. Hunt Jr. is a supporter of the amendment, as is his November election opponent, Rep. Robert C. (Robin) Hayes, the Republican gubernatorial candidate.

Opponents of veto power argue that if the system "ain't broke, don't fix it." The North Carolina governor, because of combined formal and informal powers, is already very powerful. Opponents argue that veto power would create too powerful a governor, weaken the legislature as a co-equal branch of government, and thus diminish the balance of power among our three branches of government. They also say vetoes would increase conflict and bitterness between the governor and the legislature and reduce the need for the governor to rely on persuasion and logic in dealing with the legislature.

"If the citizens of North Carolina grant our governor veto power, the chief executive of North Carolina also will become the chief legislator of North Carolina -- and our North Carolina system of separation of powers will be irretrievably torn asunder," argue Al Adams and Abraham Holtzman, who both are against gubernatorial veto power.

THE QUESTION ON THE BALLOT ON NOVEMBER 5, 1996

Constitutional amendments granting veto power to the Governor.

[] FOR

[] AGAINST

VETO POWER: A SUMMARY OF THE ARGUMENTS

PRO	CON
Veto power is needed in order to make the governor a full partner in the legislative process.	Veto power would create an all-powerful governor and weaken the legislature as a co-equal branch of government.
Veto power could serve as a check against passage of legislation which has been rushed through the General Assembly without full deliberation or which is not in the public interest.	Veto power would increase conflict and bitterness between the governor and the legislature and would reduce the need for the governor to rely on persuasion and logic in dealing with the legislature.
Veto power could serve as a check on unconstitutional legislation.	Veto power would diminish the balance of powers among the three branches of government. Deciding the constitutionality of statutes passed by the legislature is a judicial function.
Veto power would restore the proper balance of power between the executive and legislative branches.	A serious imbalance does not exist between executive and legislative power because the wide range of informal powers available to the governor tends to balance the structural weaknesses.
Veto power has worked well in practice at the federal level and in all 49 other states.	If the system ain't broke, don't fix it. North Carolina has a reputation for good government, and change is risky.

(2) Victims' Rights Amendment

The Victims' Rights Amendment would add to Article I of the state Constitution a list of basic rights for victims of crime. It would guarantee victims: (1) the right to be informed of and present at court proceedings; (2) the right to be heard at sentencing; (3) the right to receive restitution; (4) the right to information about the crime, the criminal justice system, the rights of victims, and services for victims; (5) the right to information about the conviction, final disposition, and sentence of the accused; (6) the right to be notified of the criminal's escape, release, proposed parole or pardon, or commutation of his or her sentence; (7) the right to present their views and concerns to the governor or agency considering the release of the criminal; and (8) the right to confer with the prosecution. Failure of the state to observe the rights created by the amendment would not create a claim for money damages.

Advocates for victims' rights want victims to have equal status in the state constitution with criminals. Proponents for the amendment argue that it would provide crime victims with the essential right of participation. Second, they say the amendment would increase victims' access to the criminal justice system by granting them an opportunity to see and hear how their cases are handled and to have their concerns heard by decision-makers. Third, it would provide a secure base for victims' rights by removing these protections from the political arena, granting victims constitutional recognition while retaining the flexibility necessary to operate an efficient justice system.

Catherine Gallagher Smith, executive director of the NC Victim Assistance Network, says, "the amendment's passage will signify the intent of the people to afford victims basic rights and due dignity that shall not be diminished by legislative or judicial action."

Opponents think that the rights of victims can be adequately protected by state statutes and that constitutions should be amended only when absolutely necessary. They contend that the amendment is merely symbolic since the rights are modified by the phrase "as prescribed by law" -- which means the legislature really will define the eight rights the amendment affords victims. And, opponents say allowing victims to testify at sentencing or to present victim impact statements will prejudice the sentencing process if sentences imposed are based only on sympathy for the victims. Finally, to the extent that the commitment of resources necessary to pass the proposed amendment takes away from resources that could go to crime reduction and prevention or to prisons, opponents say this amendment is a needless expenditure that may cost up to \$10 million to implement.

"Nothing in this set of rights requires a constitutional amendment," says Henderson Hill, an opponent of the victims' rights amendment. "Everything therein could be accomplished by legislation. Provisions that 'put a finger on the scales of justice' to achieve more guilty verdicts should not be adopted in the name of victims' rights."

THE QUESTION ON THE BALLOT ON NOVEMBER 5, 1996

Constitutional amendment adding Victims' Right Amendment, giving crime victims basic rights to participate in the justice system.

[]FOR

[]AGAINST

CRIME VICTIMS' RIGHTS: A SUMMARY OF THE ARGUMENTS

PRO	CON
The amendment would affirm the public policy of North Carolina regarding victims' rights, guiding decisions by the General Assembly and the judiciary in the future.	The amendment is merely symbolic since the rights are modified by the phrase "as prescribed by law" -- which means the legislature really will define the rights.
Basic rights should be protected by the state's constitution. A statutory bill of rights is inadequate because statutes are subject to changing legislatures and changing courts.	A constitutional amendment is unnecessary; all of the rights afforded by the amendment could be enacted into statutes. Constitutions should be amended only when absolutely necessary because they derive their importance from their permanence.
The justice system should protect and serve the rights of victims.	A criminal case is brought by the state on behalf of the citizens of North Carolina, not the victim. Victims have remedies in civil courts to protect them.
The costs of this amendment have only been estimated. Even if it raises the costs of the criminal justice system, the purpose of the system is to protect citizen's rights. The costs, therefore, should not matter.	The cost of this amendment has been estimated at up to \$10 million. Such resources would be better spent on crime reduction and prevention.
Victims should have a right to be heard at sentencing.	Allowing victims to testify at sentencing or to present victim impact statements would prejudice the sentencing process if sentences imposed are based only on sympathy for the victims.
The rights of those accused and convicted are protected by the constitution. Victims should have equal status with criminals in the constitution.	Constitutional guarantees to victims may override constitutional provisions designed to protect those accused from a deprivation of their life or liberty, which is fundamental to our system of justice.

(3) The Alternative Punishments Amendment

Since 1868, the state constitution has limited the punishments judges may impose on criminals to "death, imprisonment, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State." Because this list is exclusive, prisoners have been able to elect to serve prison time instead of receiving an alternative punishment. With prison space at a premium, some criminals think they will be released earlier if they are sentenced to a prison term instead of serving an alternative punishment. This amendment would expand the criminal punishments the constitution allows judges to impose.

If passed, proponents argue that the amendment would legitimize a myriad of alternative punishments that may then be imposed by judges on criminals who are non-violent, non-career offenders. The amendment would extend the list of constitutionally sanctioned and permissible punishments to include suspension of a jail or prison term with or without conditions, restitution, community service, restraints on liberty (such as house arrest), and work programs. If amended in this manner, criminal courts could clearly and unquestionably impose these punishments and penalties without the offender's consent. Proponents say North Carolinians should not allow criminals to veto or determine the sentence they receive. Instead, they say judges should have the power to impose appropriate sentences without asking criminals' permission.

"This amendment," says its sponsor, Sen. Charles Albertson (D-Duplin), "gives judges the authority to sentence criminals to the most appropriate punishment for their crimes. This constitutional amendment will add a powerful weapon to our arsenal in the fight against crime."

Those against the amendment argue that the slight possible improvement in the numbers of criminals who accept rehabilitation programs as part of, say, an electronic parole system, is not significant enough to warrant an amendment to our state constitution. Constitutional amendments should be saved for important constitutional questions. Courts already routinely impose a variety of alternative punishments as conditions of suspended prison terms.

Opponents maintain that the amendment is no longer needed because of the state's new structured sentencing legislation, which abolishes parole, good time, and gain time. Opponents say the state now has truth-in-sentencing: for example, a 10-year minimum active sentence is just that; there is no way a criminal can leave prison earlier than the 10 years imposed by the judge. Rep. Paul Luebke (D-Durham), who opposes the amendment, says, "Now that truth-in-sentencing is the law in North Carolina, this amendment constitutes constitutional overkill."

THE QUESTION ON THE BALLOT ON NOVEMBER 5, 1996

Constitutional amendment to provide that probation, restitution, community service, work programs, and other restraints on liberty are punishments that may be imposed on a person convicted of a criminal offense.

[]FOR

[]AGAINST

ALTERNATIVE PUNISHMENTS: A SUMMARY OF THE ARGUMENTS

PRO	CON
This amendment would clear up all doubts about the courts' ability to impose alternative punishments, with or without the defendant's consent.	Constitutions should be amended only when absolutely necessary. This constitutional amendment involves only a technical change, which is not legally necessary. Furthermore, as a matter of constitutional law, it is not clear that the defendant's consent to an alternative punishment is required.
Prison overcrowding is still at an all time high, and thus prisoners would still decline alternative punishments, elect to serve prison time, and take the chance that they would be moved through the prison system quickly.	Because of the Structured Sentencing Act -- which abolishes parole, good time, and gain time, and establishes truth-in-sentencing -- this amendment is no longer needed.
This amendment would legitimize alternative punishments -- probation, restitution, community service, and work programs for example -- which are especially appropriate for non-violent, non-career offenders.	Prisoners would still be able to refuse to participate in alternative punishments. Thus, the amendment may not solve the problem.
Judges are best able to determine the appropriate sentence for a defendant. Convicted criminals should not be allowed to pick their sentence.	Criminals have rights and should be allowed to refuse alternative punishments.

The North Carolina Center for Public Policy Research is an independent, nonpartisan, nonprofit corporation created to study public policy issues facing North Carolina and to evaluate state government's performance. The Center is supported in part by grants from the Z. Smith Reynolds and Mary Reynolds Babcock Foundations, both in Winston-Salem. Additional funding comes from 14 private foundations, 190 corporate contributors, and more than 900 individual and organizational members. The Center publishes *North Carolina Insight* magazine and book-length research reports. Recent studies by the Center have examined the changing relationship between state and local governments, school vouchers, pesticide regulation, state-owned railroads, and how the state's 16 public universities evaluate and reward teaching performance.

Copies of *Pro and Con Arguments on the Constitutional Amendments Before the Voters on the November 5, 1996 Ballot* are available for \$10 from the N.C. Center for Public Policy Research. To-order the report, write the Center at P.O. Box 430, Raleigh, N.C. 27602, fax your order to 919-832-2847, e-mail orders to rosebud@nando.net, or call Laurita Ray at 919-832-2839.

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