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Constitutional Amendments on the November 2 Ballot

There are four Constitutional Amendments on the ballot in South Carolina for the General Election coming up November 2. We offer the following explanations which you are very welcome to distribute freely.

South Carolina Fair Share Positions on Amendments

Amendment 1 - Vote No. Amendment fixes no known problem and could make it impossible to outlaw unacceptable hunting practices in the future.

Amendment 2 – Vote No. This amendment is just anti-union posturing of doubtful Constitutionality.

Amendment 3 – Vote No. This amendment asks us to put more money into savings at a time when we can't pay for core services. That would reduce the funds available for education, health care and protecting the vulnerable while we climb out of the recession.

Amendment 4 – Vote No. Like Amendment 3 , this amendment asks us to put money into savings before we fund core services. In hard times, it would reduce the funds available for education, health care and protecting the vulnerable.

Amendment 1

Must Article I of the Constitution of this State, relating to the declaration of rights under the state's constitution, be amended by adding Section 25 so as to provide that hunting and fishing are valuable parts of the state's heritage, important for conservation, and a protected means of managing nonthreatened wildlife; to provide that the citizens of South Carolina shall have the right to hunt, fish, and harvest wildlife traditionally pursued, subject to laws and regulations promoting sound wildlife conservation and management as prescribed by the General Assembly; and to specify that this section must not be construed to abrogate any private property rights, existing state laws or regulations, or the state's sovereignty over its natural resources?

It is unclear what, if any, problem this amendment is intended to fix. There is no credible threat that hunting in South Carolina will be curtailed never mind outlawed. Still, this amendment probably would have prevented passage of Act 258 of 2006 which prohibited "computer-assisted remote control hunting". That is a "sport" in which the

“hunter” sits at a computer controlling a rifle over the internet to kill big game in a distant state. This amendment would not repeal that law, but it could prevent stopping the next bizarre form of hunting.

Amendment 2

Must Article II of the Constitution of this State, relating to the right of suffrage, be amended by adding Section 12 so as to provide that the fundamental right of an individual to vote by secret ballot is guaranteed for a designation, a selection, or an authorization for employee representation by a labor organization?

The purpose of this proposed amendment is to keep it hard for labor unions to organize. Although placed in the section of our Constitution declaring the right of citizens to vote, this amendment has nothing to do with suffrage, the public’s right to vote for public officials or on ballot measures.

This amendment is intended to trump a federal bill, the Employee Free Choice Act, which has never passed Congress. That bill would have allowed certification of a labor union as the collective bargaining representative based upon a “card check”. If a majority of the workers had signed cards saying that they wanted a union to represent them, then the union could represent employees in collective bargaining with the employer. Currently, the employer can demand a secret ballot election after a “card check” has shown a majority of the workers support the union. Employer campaigns against unionization frequently produce majorities against union representation in these elections.

If simply passed as a law, this provision would be tossed out in a minute—if Congress ever actually passed the Employer Free Choice Act. Federal law governs labor union issues, not state law. Our so-called Right to Work law is specifically allowed by federal law.

Placing this in the section of our Constitution related to voting, is intended to frame it up as a core individual liberty. Its sponsors look to cases like *Pruneyard Shopping Center et al. v. Robins et al.*, 447 U.S. 74 (June 9, 1980). In that case, Justice Rehnquist recognized “... the authority of the State to exercise its police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution.”

If the Employee Free Choice Act ever passed Congress, there would be a lawsuit over whether the General Assembly had dressed this up enough to overcome federal preemption. South Carolina usually loses these cases after spending lots of taxpayers’ dollars on lawyers.

Amendment 3

Must Section 36(A), Article III of the Constitution of this State be amended so as to increase from three to five percent in increments of one-half of one percent over four fiscal years the amount of state general fund revenue in the latest completed fiscal year required to be held in the General Reserve Fund?

The General Reserve Fund is called a rainy day fund, intended to help cover revenue shortfalls in down economies. But it's more like an underwater fund than a rainy day fund. It can only be used when we are already underwater to cover operating deficits when the state will have spent more money than we take in. At its current Constitutional limit of 3 percent of the General Fund, it is far too small to meaningfully carry South Carolina through as much as one year of a serious economic downturn.

South Carolina's General Reserve Fund also has to be paid back too soon—beginning in the year after it is tapped. Down cycles tend to last two to three years. Despite the ongoing down-cycle that we continue to face, the Constitution requires that we first appropriate funds to refill savings. That's like not fixing your roof after a storm because you have to put money in savings.

This proposed amendment goes a little way, but not very far, in fixing the reality that the General Reserve Fund, as our backstop reserve, is far too small. However, it does not change the fact that it can only be accessed when you are underwater or that it has to be paid back too soon. The state expects very hard budget years for the next several years. By requiring that we first put money in a savings account, we make those budget difficulties more severe rather than less. That's especially true if you increase the amount that you have to set aside.

South Carolina Fair Share has advocated for a real rainy day fund that can see the state through down years. That fund needs to be built to closer to twenty percent of annual general fund revenue over time. It needs to be available to smooth out the ups and downs of economic cycles. Finally, it should only be filled up when the rain has stopped—not while we're still drowning. See our Policy Perspective at [http://scfairshare.org/Rainy Day Funds Policy Perspective November 2008.pdf](http://scfairshare.org/Rainy_Day_Funds_Policy_Perspective_November_2008.pdf).

Amendment 4

Must Section 36(B), Article III of the Constitution of this State be amended so as to provide that monies from the Capital Reserve Fund first must be used, to the extent necessary, to fully replenish the applicable percentage amount in the General Reserve Fund?

The other South Carolina reserve fund is the Capital Reserve Fund. The Capital Reserve Fund is not an ongoing reserve which builds up funds over time. It's really an accounting entry. If revenues look okay for the current fiscal year by March 1, then the General Assembly, with a super-majority vote (two-thirds in each body), draws up a prioritized list of things to fund out of the 2 % of the previous fiscal year's General Fund revenue. Those things can include: (a) financing with cash previously authorized capital improvement bond projects; (b) retiring interest or principal on bonds previously issued; or (c) for capital improvements or other nonrecurring purposes.

If the fiscal year ends with an operating deficit, items are crossed off the list from the bottom up until the deficit is satisfied. This fund is now used to make up revenue shortfalls before we cut agency funding. If this bucket of money, the Capital Reserve Fund, is used up before the operating deficit is eliminated, then the state dips into the General Reserve Fund to cover the deficit.

This amendment would change the process so that funds in the Capital Reserve Fund would first be used to refill the General Reserve Fund if it were not already topped off at its limit. Only then could it be used to pay for education, fund health care, make sure that DSS could have workers protecting children and see that we had enough troopers on the highways. If adopted, we would have to fill up our savings account, the General Reserve Fund, before we provided core services.