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STATEWIDE BALLOT ISSUES

Six proposals have been placed on the November 5th statewide ballot, including two statutory initiatives, one referendum, one legislative referendum, and two constitutional amendments. See "The Ballot Proposal Process in Michigan: A Synopsis" on Page 8.

PROPOSAL A: POLITICAL BINGO

Proposal A is a referendum on Public Act 118 of 1994 which, if approved, would prohibit political organizations from conducting bingo games.

Public Act 382 of 1972 regulates bingo and other similar games of chance by establishing a licensing procedure and by specifying what types of organizations are legally qualified to conduct such games. Originally, qualified organizations were limited to nonprofit religious, educational, senior citizen, fraternal, veterans', and other service organizations. However, in 1981, the Legislature amended the bingo law to include candidate

PROPOSAL B: JUDICIAL QUALIFICATIONS

Proposal B is a proposed amendment to the Michigan Constitution submitted to the people by the Legislature which, if approved, would require prospectively that a person have been admitted to the practice of law for at least five years before being eligible to serve in a judicial office.

The Case For Proposal B. There are two arguments in favor of Proposal B. First, it is the responsibility of courts to interpret the law and then to apply it to particular cases and controversies in order to effect their resolution in accordance with established legal principles. Given the significance of this responsibility,

PROPOSAL C: VETERANS' TRUST FUND

Proposal C is a proposed amendment to the Michigan Constitution submitted to the people by the Legislature which, if approved, would establish the Michigan Veterans' Trust Fund and Trust Fund Board of Trustees constitutionally and restrict use of the principal and earnings of the trust fund to those purposes authorized by the Board of Trustees.

Background. In 1943, a $50 million postwar fund "for the purpose of liquidating Michigan's obligations... to its returning service men, their widows or dependents, or any other post-war obligations of the state of Michigan," was established by Public

PROPOSAL D: BEAR HUNTING RESTRICTIONS

Proposal D, which is a statutory initiative placed on the ballot by Citizens United for Bear (CUB), would prohibit the use of bait piles and dogs for hunting black bear in Michigan.

Background. Since 1990, the Michigan Department of Natural Resources (DNR) has utilized an "area and quota" system to manage the state's black bear population, which is estimated to be approximately 10,000, excluding bear cubs. With this system, the state is divided into ten bear management units, seven of which are located in the Upper Peninsula and three in the northern Lower Peninsula. Within each unit, a desired

PROPOSAL E: CASINO GAMBLING IN DETROIT

Proposal E is a statutory initiative which would, if approved, establish the Michigan Gaming Control and Revenue Act that would provide for casino gaming operations in the City of Detroit.

Background. While there is no constitutional prohibition against casino gambling in Michigan, state law prohibits gambling, except for licensed pari-mutuel horse racing, the state lottery, and bingo games. Furthermore, casino gambling on Indian reservations is also permitted in Michigan since it is regulated by federal law and not subject to state law or lo ordinances. Approval of Proposal E would make Michigan the 11th state to authorize casino gambling.

PROPOSAL G: HUNTING REGULATION

Proposal G is a legislative referendum on Public Act 377 of 1996 which would, if approved, vest exclusive authority for all hunting regulations, including bear hunting, in the Michigan Natural Resources Commission.

Background. Prior to 1992, the responsibility of managing and protecting the state's natural resources, wildlife, and environmental quality rested almost exclusively with the Natural Resources Commission, a seven-member commission appointed by the governor to four-year terms. The Natural Resources Commission was responsible for appointing the director of the

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PROPOSAL A: POLITICAL BINGO (Continued)

committees. A candidate committee is one which the state campaign finance act requires a candidate for public office to establish for the purpose of accepting contributions and making expenditures on his or her behalf.

In 1994, the Legislature returned to the status quo which existed prior to 1981 by again limiting bingo games to nonprofit service organizations. Public Act 118 of amended the bingo statute to exclude all political activity committees from the list of organizations authorized to conduct bingo games and increased the aggregate value of prizes that can be awarded.

In recent years, net revenues from political bingo have been a fairly insignificant percentage of overall net bingo revenues. (See Table.)

Michigan Net Bingo Profits: 1992-95
(millions of dollars)

	Political Bingo	Total Bingo	Political Bingo As % of Total
1992	$2.3	$41.7	5.5
1993	2.1	39.0	5.2
1994	1.7	32.3	5.3
1995	1.3	28.4	4.6

Source: Michigan Lottery. Excludes revenues from charity games, millionaire parties, and raffles.

PROPOSAL B: JUDICIAL QUALIFICATIONS (Continued)

it is important that those who serve in judicial office not only be learned in the law but also have requisite experience. Presently, the Michigan Constitution imposes but two qualifications for judicial office.

Section 19 of Article 6:

— prohibits a person from being elected or appointed to judicial office after attaining the age of 70 years.

— requires that justices of the Supreme Court and judges of courts of record be licensed to practice law in the state.

However, simply requiring that judicial candidates be licensed to practice law is not sufficient to ensure the legal experience and judgment necessary to serve in judicial office.

Second, Proposal B would assist voters in making informed decisions in judicial elections by limiting the number of candidates from whom voters would have to choose to those with at least five years experience. While it might be argued that whether a given candidate has sufficient experience should be a matter for voters to resolve through the electoral process, the reality is that the ability of voters adequately to familiarize themselves with the qualifications of judicial candidates is greatly hampered by the sheer number of offices in existence.

Michigan voters are asked to elect 618 members of the judicial branch of state government: seven Supreme court justices; 28 court of appeals judges; 181 circuit court judges; 260 district court judges; 107 probate court judges; 29 Detroit recorder's court judges; and 6 municipal court judges. Given the plethora of judicial offices and of the number of individuals who wish at any given time to occupy them, voters often have little more to distinguish one judicial candidate from another than a well-known surname. However, were Proposal B adopted, voters could rest assured that all judicial candidates would satisfy minimum experience qualifications.

The Case Against Proposal B. There also are two principal arguments as to why Proposal B should not be adopted. First, the proposal would do nothing to achieve its expressed objective of ensuring that candidates for judicial office are experienced in the law. It is noteworthy that Proposal B would not require that judicial candidates actually have *engaged* in the practice of law for at least five years, only that candidates have been *admitted* to the practice of law for that minimum length of time.

Indeed, by treating five years time elapsed since admission to the practice of law as synonymous with legal experience, Proposal B might have the ironic effect of excluding highly qualified judicial candidates in favor of those with less experience. For example, presumably an individual who had been admitted to practice four years earlier and had represented clients involved in major litigation would have more knowledge of the law than another individual who, having been admitted to practice ten years earlier, had been employed continuously in a non-legal occupation. Nevertheless, Proposal B would render ineligible for judicial office the first individual, but not the second. In short, just as the current state constitutional requirement that judges be licensed to practice law in the state is not sufficient to ensure experience, neither would be a requirement that judicial candidates have been admitted to the practice of law for five years.

The second argument against Proposal B is that it is unnecessary because passing upon the qualifications of candidates should be the responsibility of voters, especially in Michigan where

judicial offices are filled not by appointment (except in the case of vacancies) but through popular election. While it might at first appear that the vast number of judicial offices in Michigan would pose an obstacle for voters when attempting to weigh the qualifications of judicial candidates, the actual number of such offices any one voter is asked to decide upon in any given year is relatively modest. Furthermore, the fact that a given judicial candidate had been admitted to the practice of law only recently no doubt would be brought to the attention of voters by opposing candidates for the same office.

PROPOSAL C: STATE VETERANS' TRUST FUND (Continued)

Act 4. Public Act 9 of 1946 (Extra Session) formally established the Michigan Veterans' Trust Fund and transferred the funds in the reserve fund established by Public Act 4 of 1943 into this fund. Act 9 states that the $50 million is to remain in the fund and all interest and earnings above this amount shall be available for the needs of Michigan veterans and their wives and dependents.

The role of the trust fund is to fund an emergency grant program to Michigan veterans and, since 1966, a tuition grant program. (A veteran is defined as a person who served in the active military forces during a period of war or during an emergency condition and who was honorably discharged, or a person who died in active military forces.) The 1994 Trust Fund Annual Report shows that emergency grant purposes included utility payments, rent and mortgage payments, food, taxes, medical bills, home repair, transportation, and clothing costs. Emergency grants must be temporary — something that would help a veteran for a short period of emergency need only. The tuition grant program pays all fee and tuition costs at any state educational or training institution of a secondary or college grade for children of a disabled or deceased veteran, or of a veteran who is missing in action. These programs are administered by the Veterans' Trust Fund Board of Trustees, composed of representatives of veterans service organizations (American Legion, Veterans of Foreign Wars, Vietnam Veterans of America, etc.), and committees in each of the 83 counties. The state Board of Trustees appoints representatives of the veterans service organizations residing in the county to each county committee. These committees accept applications, determine eligibility, and render decisions on emergency grants. The proposed amendment would not affect the role of the trust fund or the make up of the Board of Trustees.

Provisions of Proposal C

Proposal C would limit the purposes for which the principal or earnings of the trust fund may be used. This amendment is proposed because the principal (corpus) of this trust fund has been diverted on occasion for purposes other than those stated above.

Diversion of the Trust Fund.

The more controversial diversions have come during two different periods of state fiscal hardship during periods of deep recessions, when the legislative and executive branches, in their need to balance the budget, liquidated the corpus of this trust fund. Fiscal Year 1959 ended with a $95.5 million deficit. Due in part to the liquidation of the Veterans' Trust Fund, FY60 ended with a $25 million surplus.

In 1976, during a subsequent recession, the state made several adjustments. Among these were: numerous reductions in appropriations; consolidation of eight business taxes into the single business tax; a change of the closing date of the state's fiscal year from June 30 to September 30; and the "borrowing" of $67 million from the Motor Vehicle Accident Fund and the Veterans' Trust Fund. The state ended FY76 with a $3.8 million surplus.

In the case of both liquidations, a loan repayment schedule to replenish the trust fund was adopted: 12 years in the case of the 1959 liquidation; 15 years in the case of the 1976 liquidation. In both cases, repayments were extended over a longer period so that the funds otherwise meant for repayment could be used for other purposes.

In addition, money in the trust fund, or scheduled to be repaid to the trust fund, has been diverted to purposes other than those laid out in the act. While not specifically falling into the purposes set out in the act, these diversions, for the most part, have been related to veterans affairs. In 1970, 1973, 1980, and 1992, capital improvements to a veterans' nursing care facility in Grand Rapids and the D. J. Jacobetti Veterans' Facility were funded through

money otherwise designated for the trust fund. The only diversion that was clearly not to aid veterans was in 1976, when $3 million was used to establish a Special Assessment Revolving Fund to enable people on fixed incomes to borrow against their property to pay special assessments. An appropriation has been made for FY97 to make the final repayment against this amount.

"In Lieu Of" Payments.
When the corpus of the Michigan Veterans' Trust Fund has been less than $50 million, a General Fund appropriation has been made to provide the difference between the actual interest earnings of the partial corpus and what would have been earned had the corpus been complete. There is some disagreement over whether the payments received represented full amount that would have been earned with a complete corpus.

Issues

Establishment of the fund in the Constitution is meant to guarantee that the principal and earnings cannot be used to fund programs unless authorized by the Trust Fund Board of Trustees. Doing so would not result in additional tax burden for state taxpayers, as the $50 million corpus is already in place. Establishing the Veterans' Trust Fund in the Constitution would simply ensure that the fund is used as it was intended when enacted in 1946.

There are three issues to consider in evaluation of this proposed amendment: the fact that these funds would be constitutionally earmarked; the question of who was negatively affected when the corpus was diverted; and the question of whether this amendment would prevent all potential diversions.

Earmarking.
By establishing this fund in the Constitution, it would be judged to hold an importance above many other functions of state government. School funding, state revenue sharing, transportation funding, the natural resources trust fund, and health care have all gained constitutional importance over time, but many others have not received such designation.

Additionally, it is possible that removing the trust fund from the appropriations process in this way would result in a lack of oversight. Although this Trust Fund was created for the benefit of veterans, it is still money collected from state taxpayers. The oversight otherwise provided by the appropriations process, and the aim to achieve economy and efficiency in the administration of this fund, would be diminished.

Who was Hurt by Diversion?
Both times the fund was used to balance the budget, the state was deep in an economic recession. The alternative to transferring the trust fund dollars to the General Fund would have been further raising taxes, further cutting expenditures, or both. The borrowed money was repaid in full and payments were made in lieu of the interest that would have been earned. Furthermore, the diversions of money from the trust fund were primarily for capital reasons related to veterans' nursing facilities. It is possible that a Board of Trustees would have authorized such a use as a benefit to veterans whether or not the fund was provided for in the Constitution.

Preventing Future Diversions.
Although the Veterans' Trust Fund would be established in the Constitution, the legislature and executive branches would still have some discretion over this fund. The purpose of the fund could be changed statutorily, as it was in 1966 with the addition of the tuition grant program, and the governor could appoint trustees who feel that making loans to the General Fund for a limited period of time is a worthwhile purpose.

Proposal D: Bear Hunting Restrictions (Continued)

black bear population is determined based on the number of bears the surrounding habitat will support. Before each bear hunting season, the DNR establishes a desired "harvest quota" for each unit. Once these quotas are established, anticipated hunter success rates determine the number of bear hunting permits issued for each unit. Bear hunting permits, which are awarded through a lottery process, allow the taking of one bear per calendar year. However, hunters are prohibited from taking a bear cub or a female bear accompanied by a bear cub. In 1995, of the 23,645 bear hunting permit applications processed by the DNR, 5,652 permits were issued, resulting in a registered harvest of 1,458 bears.

Provisions of Proposal D

Proposal D would place several restrictions on bear hunting in Michigan. First, the proposal would prohibit the use of dogs and bait piles in hunting bear. While stalking methods are used to hunt black bear in Michigan, approximately 80 percent of bear hunters utilize baiting methods and 15 percent utilize radio-collared dogs. Second, the proposal would prohibit bear hunting from March 1 through August 31. This provision, however, likely would have little effect, since bear hunting season in Michigan historically has run from early September to late October. Third, the proposal would prohibit the taking of bear by any means during open hunting season for deer, bobcat, and raccoon if dogs or baiting is permitted during these seasons. Consequently, this restriction would shorten the bear hunting season to three weeks in September, assuming the open hunting seasons for deer, bobcat, and raccoon are not shortened.

Issues

In addition to these restrictions, Proposal D creates penalties for those who violate the terms of this proposal, including the temporary or permanent denial of hunting permits, and allows any person who suffers damage or loss to take civil action against violators for compensatory damages. Furthermore, this proposal provides for the forfeiture of radio collars and similar tracking devices used in connection with the violation to the prevailing party, in this case the individual property owner who has suffered damages or loss. While a number of civil forfeiture statutes in Michigan provide for property to be forfeited to governmental units, Proposal D would apparently be the first instance in which property could be forfeited to private parties.

Finally, as stated on the petition circulated to voters, Proposal D would add these provisions to Public Act 256 of 1988, the Wildlife Conservation Act. However, this act was repealed by Public Act 57 of 1995 and recodified in Part 401 of the Natural Resources and Environmental Protection Act, Public Act 451 of 1994. In other words, the proposal cites a nonexistent law. While there is some question as to the validity of the proposal due to the incorrect statutory citation, no legal action had been taken prior to the release of this publication to challenge the legality of Proposal D.

PROPOSAL E: CASINO GAMBLING IN DETROIT (Continued)

Indian Gambling in Michigan. In 1988, Congress passed the Indian Gaming Regulatory Act which authorized Indian tribes to operate casino gambling under certain terms and conditions. In general, a federally recognized tribe may operate casinos provided that a compact has been agreed upon by the tribes and the state. Indian gambling has existed in Michigan since 1984. Presently, seven tribes operate 16 gambling casinos in Michigan.

Compact agreements in Michigan provide income for the state, local governments, and the tribes. Compact provisions stipulate that payments to state and local governments will continue as long as the "tribes collectively enjoy the exclusive right to operate electronic games of chance in the State of Michigan." A total of ten percent of net winnings from the casinos is paid to state and local governments: two percent to local units in the immediate vicinity of the casinos and eight percent to the Michigan Strategic Fund. Estimated payments for FY 1995-96 to the state are $34.1 million, and $8.5 million to local governments.

Provisions of Proposal E

Proposal E, if adopted, would allow up to three casinos in a city: 1) with a population of at least 800,000; 2) located within 100 miles of any other state or country in which gambling is permitted; and 3) in which a majority of voters in the city have expressed approval of casino gambling in the city. Based on these criteria, Detroit is the only city in Michigan that would qualify.

Further, the proposal would create a five-member State Gaming Control Board, appointed by the Governor to four year terms, with the advice and consent of the Senate. The board, located in the Department of Treasury, would have authority to regulate all aspects of licensing and operations of casinos, their suppliers, and casino employees.

In addition, Proposal E provides for a wagering tax of 18 percent to be imposed on the gross income of the casinos as well as other licensing and other fees on casino operations. Proponents project $100 million in annual revenues from this casino tax when all three casinos are fully operational. The proposal specifies that 55 percent of these revenues be distributed to the city, and 45 percent earmarked to the School Aid Fund to provide "additional funds for K-12 classroom education."

Issues

At the center of the debate over Proposal E are the economic development arguments for and the moral arguments against casino gambling. Often overlooked in this debate are at least four public policy issues.

1) Entry Into Market. Under Proposal E, the backers of the 1994 referenda would receive preferential treatment in competing for licenses to operate the three casinos. According to the proposal, the selection of a "suitable" casino operator may result from either a competitive bid process or be awarded to those who previously had a proposal adopted by the voters. It remains an open question whether strict limitation on the number of casinos would have the greatest overall economic impact.

2) Licensing Concerns. Licensing casino operations is central to casino regulation and requires a thorough check on criminal, financial, and personal backgrounds of prospective operators. While Proposal E stipulates that background checks must be performed, critics claim that the 90-day time period to complete these checks is too short a time frame.

3) Infrastructure Improvements. Proposal E provides a total of $18 million for infrastructure improvements ($6 million per casino). Given the demands for additional roads, sewers, and other improvements, these funds may not prove to be adequate for improvements in an urban setting.

4) Impact on Indian Monopoly. Approval of Proposal E would nullify the current Indian gaming compact with the State of Michigan which provides the tribes a monopoly to operate electronic games of chance in the state. Proponents argue that the anticipated revenues from three Detroit casinos would exceed the current revenue from Indian casinos, which would benefit the state, and the City of Detroit. Further, short of renegotiating compacts, cities in the vicinity of Indian casinos would be adversely affected, and the Indian tribes would retain all revenue realized from their casino operations in lieu of the eight percent tax to the State of Michigan.

Detroit Gambling Referenda

The rapid expansion of Indian gambling in Michigan, combined with the opening of Casino Windsor, has intensified demand for casino gambling in the City of Detroit. Consequently since 1976, the question of legalization of casino gambling has been before the Detroit voters on five occasions:

- In both 1976 and 1981, Detroiters rejected proposals that would have allowed casinos;

- In 1988, an initiated ordinance to prohibit casino gambling in the city was approved;

- In 1993, a proposal to repeal the 1988 ordinance was defeated; and

- In 1994, two separate proposals were approved by Detroiters in an attempt to compete with the newly opened Casino Windsor. Since opening in May 1994, Casino Windsor reported almost 19,000 average daily visitors - 76 percent from the United States - resulting in average daily revenues of $1.3 million.

The first 1994 proposal repealed the 1988 ordinance prohibiting casino gambling and authorized the Atwater Recreation and Entertainment District, which featured a permanently docked riverboat gambling and entertainment facility. The second proposal repealed the 1988 ordinance and approved an Indian casino in Greektown, backed by 400 Monroe Associates. These same two groups, Atwater Entertainment Associates and 400 Monroe Associates, placed Proposal E on the statewide ballot.

PROPOSAL G: HUNTING REGULATION (Continued)

Department of Natural Resources, who in turn was responsible for carrying out department policy and program development under the overall direction of the Natural Resources Commission.

However, in 1991, the Governor issued an executive order which created a "new" Department of Natural Resources (DNR) and transferred most of the statutory authority, powers, and, duties of the Natural Resources Commission to the director of this "new" DNR. Consequently, the director of the DNR became responsible for managing and protecting the state's natural resources, wildlife, and environmental protection. With this reorganization, the Natural Resources Commission retained its authority to appoint the director of the department and provide policy guidance and the power to appoint the chair and all other members of the commission remained with the Governor.

Provisions of Proposal G

Proposal G is a legislative attempt to block Proposal D, the statutory initiative which places several restrictions on bear hunting in Michigan, by transferring the exclusive authority of all hunting regulations, including bear hunting, from the director of the DNR to the Natural Resources Commission. In other words, this proposal would transfer the regulation of game hunting back to the Natural Resources Commission, which is where the authority had been vested before the executive order was issued.

Proposal G would also require the Natural Resources Commission to utilize "principles of sound scientific management" in regulating all game hunting and require public meetings prior to the issuance of any orders by the Natural Resources Commission.

Essentially, there are four potential outcomes with regard to these competing ballot proposals:

— Both proposals are adopted; the proposal with the most affirmative votes becomes law.

— Both proposals are rejected; the director of the DNR will continue to regulate bear hunting in Michigan.

— Proposal D is adopted and Proposal G is rejected; the DNR will be limited in its ability to regulate bear hunting.

— Proposal D is rejected and Proposal G is adopted; exclusive authority of all hunting regulations will be vested with the Natural Resources Commission.

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The Ballot Proposal Process in Michigan: A Synopsis

There are four methods whereby a proposal can be placed on the statewide ballot in Michigan: (1) statutory initiative, (2) referendum, (3) legislative referendum, and (4) constitutional amendment.

STATUTORY INITIATIVE is defined by Section 9 of Article 2 of the Michigan Constitution as the power which the people reserve to themselves "to propose laws and to enact and reject laws." The power of initiative extends to any law the Legislature may enact and is invoked by filing petitions containing signatures of registered voters equal in number to at least eight percent of the total votes cast in the last election for governor. The Legislature is required to enact, without modification, or reject any proposed initiative within 40 session days. An initiative not enacted by the Legislature is placed on the statewide ballot at the next general election. A law that is initiated or adopted by the people is not subject to gubernatorial veto and one adopted by voters cannot subsequently be amended or repealed except by the voters or by a three-fourths vote of the Legislature. *Proposal D (Bear Hunting Restrictions) and Proposal E (Casino Gambling in Detroit) are statutory initiatives.*

REFERENDUM is defined by Section 9 of Article 2 of the Michigan Constitution as the power "to approve and reject laws enacted by the legislature." Referendum must be invoked, within 90 days of final adjournment of the legislative session during which the law in question was enacted, by filing petitions containing signatures of registered voters equal in number to at least five percent of the total votes cast for governor in the last general election. The effect of invoking a referendum is to suspend the law in question until voters approve or reject it at the next general election. *Proposal A (Political Bingo) is a referendum*.

LEGISLATIVE REFERENDUM is authorized by Section 34 of Article 4 of the Michigan Constitution, which provides that "[a]ny bill passed by the legislature and approved by the governor, except a bill appropriating money, may provide that it will not become law unless approved by a majority of the electors voting thereon." *Proposal G (Hunting Regulation) is a legislative referendum*.

CONSTITUTIONAL AMENDMENT is authorized by Sections 1 and 2 of Article 12 of the Michigan Constitution and may be proposed either by a two-thirds vote of the Legislature or by filing petitions containing signatures of registered voters equal in number to at least ten percent of the total votes cast for governor in the last general election. *Proposal B (Judicial Qualifications) and Proposal C (State Veterans' Trust Fund) are constitutional amendments proposed by the Legislature.*