Voting and Election Law in the Louisiana Constitution

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Introduction

Prior to the adoption of the Louisiana Constitution of 1974, voting and election laws were a confusing combination of constitutional and statutory provisions. In an effort to concisely define voting rights and regulations, the Louisiana Constitutional Convention divided into two sections the issues associated with voting: article I, section 10 announces the right of citizens to vote; article XI groups together the remaining issues associated with voting.

Part I of this article explores the history and development of article I, section 10 of the 1974 Louisiana Constitution, along with current legal issues surrounding the area of the voting rights. Part II presents an outline of the judicial treatment given article XI and the effect of that jurisprudence on current legal development.

I. THE RIGHT TO VOTE

States have broad powers in regulating an individual's right to vote in state elections. Federal election procedure is also a matter of state law, since the federal government has chosen not to regulate the process. Consequently, both state and federal election procedure is subject to federal scrutiny only to the extent that state voting qualifications and electoral practices by state officials contravene the provisions of the United States Constitution.

The United States Supreme Court has ruled that "where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined," and "if a challenged state statute grants the right to vote to some . . . and denies the franchise to others,

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1. See Proceedings, Sept. 8, at 1203-10.
3. La. Const. art. XI.
the Court must determine whether the exclusions are necessary to promote a compelling state interest."\textsuperscript{8} Hence, any qualification Louisiana places on voting must first be tested under state statutory and constitutional law, then under the Equal Protection Clause of the federal Constitution and the Voting Rights Act.\textsuperscript{9}

In 1974, after Louisiana adopted its new constitution, residency requirements, character, and literacy tests were no longer constitutionally imposed qualifications on the right to vote.\textsuperscript{10} Article I, section 10 provides that every citizen, upon reaching the age of eighteen, has a right to register to vote. The only circumstances under which this right can be denied are "while a person is interdicted and judicially declared mentally incompetent or is under an order of imprisonment for conviction of a felony."\textsuperscript{11}

Originally, section 10 was intended to be a self-operative restriction on voting for those imprisoned or interdicted.\textsuperscript{12} In Fox \textit{v. Municipal Democrat Executive Committee},\textsuperscript{13} however, the second circuit held that, unless the right to vote was specifically suspended by legislative means, it was not automatically forfeited. The legislature reacted to this decision by passing legislation\textsuperscript{14} which expressly denies the right to vote to persons under an order of imprisonment for conviction of a felony and to persons interdicted and judicially declared mentally incompetent.\textsuperscript{15}

Because article I, section 10 establishes a right to register as well as to vote, it is implicit that the State has the power to make registration a prerequisite to voting.\textsuperscript{16} Article XI, section 1, provides: "The legislature shall adopt an election code which shall provide for permanent regis-

\begin{itemize}
\item 11. La. Const. art. 1, § 10.
\item 12. See Proceedings, Sept. 8, at 1203.
\item 13. 328 So. 2d 171 (La. App. 2d Cir. 1976).
\item 15. The procedure for denying the right to vote is established in La. R.S. 18:171, 172 and 176. (1979 & Supp. 1986). La. R.S. 18:171 (1979) provides that "the clerk ... shall record ... each order of imprisonment ... [and] shall transmit to the registrar of voters for his parish a certified copy of the judgment." La. R.S. 18:172 (1979) pertains to interdiction and provides that "the clerk ... shall record ... each judgment of interdiction for mental incompetence ... [and] shall transmit to the registrar of voters for his parish a certified copy of the judgment." La. R.S. 18:176 (Supp. 1986) provides for cancellation of voting rights based on La. R.S. 18:171 and 172: "Immediately upon receipt of a report required by Sections 171 or [172] of this Chapter, the registrar shall cancel the registration of each person listed ... ."
\item 16. Hargrave, supra note 10.
\end{itemize}
tration of voters and for the conduct of elections."17 Louisiana Revised Statute 18:52118 requires that all voters be registered before the right to vote may be exercised.

The only constitutionally authorized qualifications to vote in Louisiana are those expressed in article I, section 10 and implemented by Louisiana Revised Statute 18:102,19 and the registration requirement set forth in Louisiana Revised Statute 18:521.

Order of Imprisonment

There has long been debate as to the exact meaning of "order of imprisonment" within article I, section 10. The wording originally proposed was "imprisoned."20 It was expanded to "order of imprisonment" to overcome the objection that escapees would not fall within the "imprisoned" terminology.21 Upon presentation to the Constitutional Convention, one delegate (a member of the committee that proposed the language) reported that "order of imprisonment" extended not only to persons imprisoned, but also to persons whose sentences had been suspended and to persons who were on parole.22 A second delegate claimed the definition as proposed would not include parolees and those under suspended sentences, because the language of article I, section 10 was inconsistent with other language (current article I, section 20) in the proposed constitution.23 This difference in interpretation can be traced to the Constitution of 1921, wherein the rights of citizenship, including the right to vote, were not automatically restored after a felon completed supervision following a felony conviction, but only upon pardon by the governor.24 In an attempt to provide for automatic restoration of rights, the Convention adopted current article I, section 20, which provides that all rights of citizenship are automatically restored upon completion of "supervision following conviction." The Convention clearly established that those persons serving a suspended sentence and those on parole did not have their rights restored until completion of their supervision.

At the same time that the Convention adopted the language of Article I, section 20 which provided for greater rights than did the 1921 Constitution, the Convention also sought to provide greater voting rights

21. Hargrave, supra note 10, at 34.
22. Proceedings, Sept. 8, at 1203.
for all citizens. The proposed language of article I, section 10 was designed to provide an absolute right to vote for all citizens with only two limited qualifications—persons deemed mentally incapable of voting and persons who were imprisoned. The Convention then adopted the "order of imprisonment" language within section 10. Had the Convention sought to deny the right to vote to persons supervised during a suspended sentence, it could have chosen the wording of article I, section 20, i.e., "supervision following conviction." Instead, "order of imprisonment" was chosen, thus producing two phrases which seem to create different results. At least one commentator has concluded that article I, section 10 applies to only those in prison and not to those on parole or probation.

In 1975, the Attorney General issued an opinion declaring that "order of imprisonment" includes persons on parole but not persons on probation. His conclusion was based on the language of article I, section 20, and not on the history of section 10. Professor Lee Hargrave, a noted authority, questioned the grounds for this decision and restated his view that "order of imprisonment" extended only to persons in prison. Louisiana Revised Statutes 15:574.7 and 15:574.9, which outline the procedures for revocation of parole, support this interpretation. These statutes provide that a parolee must be arrested and given a hearing before he can be reprimanded. Under the statutory scheme a parolee is not imprisoned or under an "order of imprisonment" until this procedure has been followed.

Nevertheless, in 1976 the legislature enacted the Louisiana Election Code, and included a definition of "order of imprisonment" that parallels the Attorney General's definition. This definition included those people who had been paroled and those whose sentences had been

31. La. R.S. 15:574.7(B)(3) (1981) provides that "the parolee be arrested, and upon arrest be given a prerevocation hearing. . . . Upon receiving a summary of the prerevocation proceeding, the board may order the parolee's return to the institution." (emphasis added).
32. La. R.S. 15:574.9 (1981) addresses "revocation of parole for violation of condition; hearing; duration of reimprisonment and reparole after revocation; credit for time served." La. R.S. 15:574.7 sets up the procedure for the parolee to be reimprisoned after his arrest.
In 1977, an amendment expanded the "order of imprisonment" definition to include those persons "on probation." This definition is contrary to the Attorney General's opinion, the language of article I, section 20, and the definition originally intended.

It is "universally regarded" that once the right to vote has been granted by a state constitution, it may not be denied, abridged, or substantially impaired by the state legislature. Louisiana's state constitution limits the legislature's power to alter constitutional provisions. The legislature can only deny the right to vote to those groups explicitly covered by article I, section 10. Therefore, the legislature's current definition is valid only if it was originally authorized by the constitution or approved by a constitutional amendment.

State courts outside of Louisiana which have interpreted voting statutes have found that "the right to vote should not be taken away due to doubtful statutory construction." The general trend is to construe election statutes in favor of enfranchisement. In Louisiana the definition most favorably supporting enfranchisement is the one which is the most limited—i.e., "order of imprisonment" refers only to those actually imprisoned. The legislature's expanded definition is therefore void as a substantial impairment to the right to vote beyond that authorized by the Louisiana Constitution.

While it is the court's duty to uphold the constitutionality of a statute whenever possible unless it is clearly arbitrary, unreasonable, and capricious, statutes involved with fundamental rights are to be strictly scrutinized. Given the importance of the right to vote, and that the original language of article I, section 10 was "imprisoned," any doubts as to the meaning should be construed to favor the right to vote. A constitutional amendment is the only valid means available to the leg-

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35. As originally worded La. R.S. 18:2(2) read: "'Under an order of imprisonment' means a sentence of confinement, whether or not suspended, with or without supervision, and whether or not the subject of the order has been paroled."
36. 1977 La. Acts No. 544 § 1, codified in La. R.S. 18:2 (1981), now provides: "'Under an order of imprisonment' means a sentence of confinement, whether or not suspended, whether or not the subject of the order has been placed on probation, with or without supervision, and whether or not the subject of the order has been paroled."
37. Wilkinson v. Queen, 269 S.W.2d 223 (Ky. 1954).
40. See, e.g., Cirac v. Lander County, 602 P.2d 1012 (Nev. 1979).
41. Id. See also 29 C.J.S. Elections § 7(1) (1955).
42. State ex rel. Palag v. Regan, 113 Mont. 343, 126 P.2d 818 (1942).
islature to accomplish what it has attempted to accomplish by statutes.\textsuperscript{45}

Article I, section 10 must also be consistent with federal constitutional requirements. In \textit{Richardson v. Ramirez},\textsuperscript{46} the United States Supreme Court found that a state could deny the right to vote to convicted felons who had completed their sentences and paroles.\textsuperscript{47} This restriction was found not to violate the Equal Protection Clause or any other provision of the federal Constitution.\textsuperscript{48} Thus, Louisiana's voting restriction found in article I, section 10 is clearly within \textit{Richardson}'s constitutional bounds.

\textit{Interdicted and Judicially Declared Mentally Incompetent}

Every state, either through its constitution or legislation, denies the right to vote to mental incompetents.\textsuperscript{49} Many states have been challenged to precisely define terms such as "lunatic," "insane," and "under guardianship."\textsuperscript{50} Louisiana attempted to avoid this problem by formulating clear and concise language without denying the right to vote to qualified persons.\textsuperscript{51} Denial of voting rights based solely on commitment to a mental institution was considered too drastic a measure, as the procedure for commitment was too simple.\textsuperscript{52} (Commitment can be accomplished voluntarily, or involuntarily for reasons such as alcohol and drug abuse.) Because a person can be interdicted for reasons other than mental incompetence, interdiction as the sole basis for exclusion would have denied the right to vote to those who were competent to exercise that right.\textsuperscript{53} The committee settled for a formula in article I, section 10 that requires both an interdiction and a judicial declaration of mental incompetence before the right to vote can be denied.\textsuperscript{54}

Interdiction has remained procedurally unchanged for decades. Under Louisiana Civil Code articles 389-426,\textsuperscript{55} interdiction is a formal procedure affecting a person's civil and property rights.\textsuperscript{56} An interdicted person is a state ward and subject to court supervision.\textsuperscript{57} Interdiction is a harsh

\begin{footnotesize}
\begin{enumerate}
\item 418 U.S. 24, 94 S. Ct. 2655 (1974).
\item Id. at 54-55, 94 S. Ct. at 2671.
\item Id.
\item See generally Annot., 80 A.L.R.3d 1116, 29 C.J.S. Elections § 7 (1955).
\item See, e.g., Boyd v. Board of Registrars of Voters, 334 N.E.2d 629 (Mass. 1975); Lafayette v. Chippewa Falls, 70 Wis. 2d 610, 235 N.W.2d 435 (1975).
\item Hargrave, supra note 10, at 33.
\item Id.
\item Id. Interdiction may be imposed due to a physical handicap.
\item La. Const. art. I, § 10.
\item Vance v. Ellerbe, 150 La. 387, 90 So. 735 (1922).
\item Fuqua v. Fuqua, 311 So. 2d 568 (La. App. 3d Cir. 1975).
\end{enumerate}
\end{footnotesize}
remedy, one that is to be imposed only where proof is clear and conclusive that an individual is unable to care for his person or property. In 1981 the legislature added a form of limited interdiction governed by the same procedures but with limited restrictions on civil and property rights which fit the particular needs of the interdict. This addition reduced some of the harshness of the former scheme.

Louisiana Revised Statutes 28:51-62 outline the procedure for judicially declaring a person mentally incompetent. The procedure allows for the confinement of a person suffering from a mental illness which will cause him to be a danger to himself and to others or to be gravely disabled.

A 1976 Attorney General opinion declared that the right to vote cannot be denied solely on interdiction or insanity. This double requirement makes it rare for a person to be denied the right to vote based on grounds of mental incompetence. During the 1985 Louisiana Legislature's regular session a bill was proposed, though never passed, that would have established a new form of "limited interdiction." It would have labelled as interdicted, for the sole purpose of denying the right to vote, the mentally retarded or disabled who were judicially declared incapable of voting. Contrasted with the more complicated requirements for interdiction under Civil Code article 389, this proposed type of interdiction would have been based solely on the ability to vote. The bill was designed to reduce the difficulty in disfranchising mental incompetents.

However laudable the desired result, the legislation had severe constitutional infirmities and should serve as a warning to ill-conceived legislation in the future. Because the right to vote is constitutionally protected, and the constitution restricts the legislature's power, only a constitutional amendment can substantially impair the right to vote. Any statutory attempt to do so is void.

Legislation such as this erodes the soundness of the constitution by leaving it vulnerable to misinterpretation. The Constitutional Conven-

63. This conclusion was based on prior La. R.S. 18:42(4) (1969).
64. 1921 La. Const. of 1921.
68. State ex rel. Palagi, 113 Mont. 343, 126 P.2d 818 (1942).
tion's overall objective was to reduce the constitution to a form that would be clear and concise; this type of legislation defeats that purpose by attempting to change the intent and purpose of the constitution, creating ambiguities.

II. ELECTIONS

Article XI of the 1974 Constitution compiles five sections relating to the election process. The Constitutional Convention "attempted to constitutionalize basic, fundamental matters pertaining to the right to vote; to make sure that the legislature could never change it." Two sections of article XI have had the greatest impact: section 1, the constitutional mandate to provide an election code; and section 4, the prohibition against the use of public funds.

Article XI, section 1

The legislature shall adopt an election code which shall provide for permanent registration of voters and for the conduct of all elections.  

In adopting an election code, the legislature eliminated former requirements relating to literacy, property, and lengthy residency. An elector is qualified solely by being a resident of the state. Unlike previously, there are no time requirements to qualify as a resident. "Residence" has been liberally interpreted to mean where an individual lives, sleeps, and eats. Although a person may have only one domicile, he may have several residences.

The residency requirement, along with the general registration requirement, is found in section 101 of the election code. Citizens are required to register to vote a short period of time before an election so that a list of eligible voters can be prepared. This registration period has a less restrictive effect than time requirements found in other states. That a voter must be registered in order to exercise the right to vote makes registration, outside of article I, section 10, the only qualification to vote.

70. Proceedings, Oct. 5, at 1638.
71. La. Const. art. XI, § 1.
Because article XI, section 1, encompasses "all elections," local government elections must be consistent with the state election code. In cases where the "Parish Charter is silent, the State Election Code controls the holding and conduct of a parish-wide election." Each parish police jury has the duty to establish and publish the location of polling places for voting within its parish. In addition to this duty, the police jury may be exposed to liability to citizens who are injured due to defective conditions of the locations selected.

Article XI, section 4

No public funds shall be used to urge any elector to vote for or against any candidate or proposition, or be appropriated to a candidate or political organization. This provision shall not prohibit the use of public funds for dissemination of factual information relative to a proposition appearing on an election ballot.

It is often questioned whether the information disseminated is purely "factual," and therefore complies with this section, or "urges" a stand on an issue, thus violating these provisions. "Urge" should be understood to mean promote, or take a favored position. The first circuit has held that the word "urge" does not render the provision vague or uncertain. "Factual information" relates to the use of all empirical data required to decide whether to vote for or against an issue. The provision relating to dissemination of factual information was designed primarily to aid the public school system in raising money from tax elections. Previously, the school system was unduly restricted from disseminating information. This provision allows the school system to make available to the public all facts that show the need for funds. In Godwin v. East Baton Rouge Parish School Board, however, a local school board went beyond merely stating facts; it distributed brochures...
supporting the proposal, conducted public opinion polls, and required teachers to attend promotional sessions to urge the support of tax proposals. The first circuit found that these actions avoided section 4.92

Godwin illustrates other principles which may be derived from this section. One such principle is that, while this section does prohibit using public funds to promote an issue, it does not preclude public officials from doing so with their own money.93 Further, included in the prohibition against the use of public funds are advertisements by a parish using the name or picture of one of the members of the parish police jury.94 Use of public funds without due care and reasonable diligence and with reckless disregard is considered conduct in bad faith.95 Thus, knowledge and reasonableness of the use of public funds are relevant in determining whether the use is in good faith. A finding of bad faith conduct may subject a public official to liability for reimbursement of funds to a public body.96

One exception to the general prohibition disallowing the use of public funds are student newspapers.97 The Attorney General has ruled that First Amendment rights attach to student newspapers and to the educational process in general.98 This opinion was based on Bazaar v. Fortune,99 wherein the fifth circuit determined that, once a university recognizes elements of free speech in a student activity, special circumstances must be present before the university can control the student publication. Finding that funding for student newspapers was through a number of sources including advertisements and was not only from public funds, the Attorney General concluded that no special circumstances supported denying funding where the publication included political information.100

In Reineke v. Cobb County School District,101 a federal district court in Georgia concluded that school officials could not deny funding to a university publication if the denial amounted to a restraint of or substantial interference with that publication. The court required the school officials to find financing for the publication which would allow it to operate without the persistent threat of no funding.102 The decision

92. Id. at 1064.
93. Id. at 1063.
95. 372 So. 2d 1060.
96. Id.
98. Id.
99. 476 F.2d 570 (5th Cir.), reh'g en banc, 489 F.2d 225 (5th Cir. 1973).
102. Id.
parallels the position taken in Louisiana by the Attorney General that regulations of this kind infringe on the free speech of student newspapers.

Conclusion

PART I

The Convention’s attempt to clarify and simplify voting laws was fairly successful. There has been almost no litigation over article I, section 10 since the constitution was adopted. Nevertheless, the Convention did fail to clarify the definition of “order of imprisonment” and left it open to misinterpretation. Originally, there was confusion as to whether persons on parole and persons on probation were included within the “order of imprisonment” terminology. The legislature’s expansion of the definition to include persons whose sentences have been suspended has added to the confusion. This expanded definition is not only broader than that originally contemplated by the Convention, but it also runs afoul of the specific language of article I, section 20, under which all rights of citizenship are returned upon suspension of a sentence. The proper course of action is to use the definition which makes voting most accessible. That definition is the one which denies the right to vote only to those persons who are actually in prison. Any change in this definition should be left to a constitutional amendment.

Unlike the imprisonment terminology, there has been no debate concerning persons denied the right to vote because of mental incompetence. The only concern is whether the provision is underinclusive by allowing a person to vote who should be denied the right. The Convention struggled with this problem, but settled on a formula requiring both an interdiction and a judicial declaration of incompetence before the right to vote can be denied. As with the imprisonment language, any change to the mental incompetence provisions should be by constitutional amendment.

PART II

Sections 2 through 5 of article XI represent the areas of election law that the Convention wanted to be beyond statutory change. Since those sections constitutionalized only certain well established ideas (secret ballot, no proxy voting, and legislator’s privilege from arrest while in session), there has been little alteration or litigation in this area. The section 4 prohibition against the use of public funds has produced the greatest number of questions. However, if public bodies avoid taking a stand on issues, they should encounter no problems with this provision.

Because section 1 is a mandate for legislation, it has produced few constitutional questions. Nevertheless, it does provide a constitutional cause of action for violations of an individual’s right to vote.


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