

THE CONSTITUTIONAL QUESTION:

SHOULD NEW YORKERS VOTE FOR A
STATE CONSTITUTIONAL
CONVENTION AND WHAT ARE THE
IMPLICATIONS FOR GOVERNMENT
ETHICS?

Richard Briffault

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THE STATE CONSTITUTION AND STATE CONSTITUTIONAL REVISION

- A. There have been multiple NY State Constitutions – 1777, 1821, 1846, 1894
- B. And even more constitutional conventions – 1771, 1801, 1821, 1846, 1867, 1894, 1915, 1938, 1967
- C. And even more amendments through the standard constitutional amendment process – passage by two separately elected legislatures and approval by the voters

THE CONSTITUTIONAL CONVENTION CALL

- A. The constitution, Art XIX, section 2, provides that every 20 years the voters must be asked: “Shall there be a convention to revise the constitution and amend the same?”
- B. The voters have considered and voted “no” on this question in 1957, 1977, 1997.
 - 1. The last voter-called convention was in 1938
 - 2. The 1967 convention was called by the legislature. The constitutional revision proposed by that convention was rejected by the voters.
- C. The question will be on the ballot this fall, November 2017.

THE CONSTITUTIONAL CONVENTION PROCESS

- A. Vote November 2017 on whether to hold a convention.
- B. Election of Delegates at November 2018 general election
 - 1. 15 delegates are elected state-wide at large
 - 2. 3 delegates are elected from each of the 63 state senate districts
- C. Convention meets April 2019 in Albany
- D. Constitutional amendments or revision submitted to voters at least six weeks after Convention – can be one question, or multiple questions as Convention decides

A DEMOCRACY AGENDA

- I. Political Reform as a major factor behind support for a convention, but what can be accomplished on these issues by constitutional revision?
- II. The Issues
 - A. Voting and the Electoral Process
 - B. Legislative Redistricting
 - C. Campaign Finance Reform
 - D. Government Ethics

VOTING AND THE ELECTORAL PROCESS

- I. New York has extremely low voter turnout
- II. Barriers to Voting in the State Constitution
 - A. Absentee Voting Limited to Physical Absence or Disability; most states provide for no-excuse absentee voting; a few automatically mail ballots to voters
 - B. New York requires that registration be completed ten days before Election Day – this precludes Election Day Registration (EDR), which is now the rule in a dozen or so states

VOTING AND THE ELECTORAL PROCESS

C. Constitutional Revision

1. Debatable whether no-excuse absentee voting, EDR, in-person early voting, automatic voter registration should be mandated in the Constitution
2. But at least constitutional barriers should be removed

VOTING AND THE ELECTORAL PROCESS

D. Reform the Board of Elections

1. Constitution mandates *bipartisan* not non-partisan state and county boards of elections –all seats held by the two top parties – Moreland Commission found the bipartisan structure leads to parallel patronage-based staffs and inhibits effective election law enforcement
2. Constitution creates an even-numbered board which also interferes with effective action
3. Constitution directs that the members shall be chosen by the political parties
4. Replace with Nonpartisan Board

LEGISLATIVE REDISTRICTING

- I. Both chambers are gerrymandered to create non-competitive elections.
- II. 2014 constitutional amendment adopted standards to create more competitive districts, and established an “independent districting commission” – but the commission consists entirely of legislative appointees, and ultimate approval is still up to the legislature.
- III. Real redistricting reform requires a truly independent commission without requirement of legislative approval of the redistricting plan
- IV. Would also be desirable to amend the manipulation of the size of the Senate, as provided by the 1894 constitution.

CAMPAIGN FINANCE REFORM

- I. Constitution is Silent on this Issue
- II. Campaign finance reform agenda has been stalled in the legislature
 - A. Closing LLC loophole
 - B. Public funding for candidates similar to the NYC matching funds program
 - C. Pay-to-play limits on donations
- III. Should these be addressed in the Constitution?

GOVERNMENT ETHICS

- I. Constitution largely silent here, too
 - A. Pension forfeiture amendment to be submitted to the voters this fall
- II. Should the Constitution be amended to ban conflicts of interest? At what level of detail?
- III. Should the Constitution ban or limit legislators' outside income?

AMENDING THE CONSTITUTION TO ESTABLISH NEW (OR IMPROVED) WATCHDOG INSTITUTIONS

- I. Reformed Board of Elections
- II. Truly Independent Districting Commission
- III. Campaign Finance Board
- IV. Reformed, simplified, and constitutionally protected replacement for JCOPE to address legislative ethics
- V. Commission on Judicial Nominations as Possible Model for Selecting Members of these Boards

OTHER ISSUES ON THE CONSTITUTIONAL REVISION AGENDA

- I. Court Reform – structure and selection**
- II. State Budget Process**
- III. Home Rule**
- IV. Term Limits**
- V. Direct Democracy**
- VI. Tax and Debt Limits**

PRINCIPAL CONCERNS OF THOSE OPPOSED TO A CONVENTION

I. Threats to Current Constitutional Provisions

- A. Civil Service protection
- B. “Forever Wild”
- C. Positive Rights Provisions – social welfare and education

II. Undesirable New Provisions

THE DECISION

I. How much are constitutional changes needed?

- A. Is a constitutional convention necessary to achieve them?
- B. Is a constitutional convention likely to approve them? Who are likely to be the delegates? What will the delegate elections look like?

II. What are the risks ?

- A. Loss of current constitutional protections
- B. Addition of undesirable provisions
- C. Protection provided by voter approval requirement?

Election Day is November 7, 2017 !