

State Constitutional Convention: Holy Grail or Pandora's Box?

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With a legislature now routinely shaken by major indictments, pressing issues left perpetually unresolved, and voter dissatisfaction with state government on the rise, some see a constitutional convention as perhaps the only way to bypass the legislature and institute serious reform. It just so happens that in 2017 voters will get to decide whether to have such a convention.

"A lot of the reforms people want to see don't need a convention to be instituted, but political will on the part of the legislature," said Blair Horner of The New York Public Interest Research Group, who was involved in the last conversation about holding a constitutional convention.

"The constitutional convention becomes a vessel that some pour their hopes into," says Horner. But, as supporters of a convention discovered in 1997, public support for conventions has proven to be unreliable when it comes time to vote to hold one.

This summer, a July 15 Siena College poll found 90 percent of New York voters feel government corruption is a serious problem. The same poll found that 69 percent of voters surveyed supported having a constitutional convention, which could reconfigure the state's governing document.

The poll results have boosted the hopes of those who see a constitutional convention, which would occur in 2019 if approved by voters in 2017, as the only real chance to fix state government. And yet [the poll](#) also contains chilling, bad news for those advocates: 75 percent of voters surveyed say they haven't heard anything about a constitutional convention.

Delegates could examine an untold number of changes to the constitution, but some of the areas advocates express interest in are better balancing the power between the executive and legislature; changing term limits; creating a full-time legislature; making pay-to-play politics illegal; and changing the redistricting process.

It's a familiar position for advocates who were involved the last time the topic came up in a serious way. Public

support for constitutional conventions has proved to be a fragile thing in the past. "I think in general there was a lot of public discontent with state government not meeting budget deadlines; the business community was more upset than about taxes, as the government was less responsive to their concerns, and there was deep concern about local government issues," said professor Gerald Benjamin, who was appointed by Governor Mario Cuomo as Research Director of the Temporary State Commission on Constitutional Revision during the last discussion of a constitutional convention.

"There was a broad, but not deep, willingness to have a convention--but it dissipated when groups who were opposed to it for various reasons attacked it," Benjamin says.

State law requires that voters be asked every two decades whether they want a constitutional convention. The last such vote was in 1997. If the voters' answer is yes, they elect delegates to represent them at the convention, and any convention-negotiated changes are then put in front of voters as ballot referendums.

The last convention occurred in 1967 and was actually called by the legislature. Voters at that time said no to the proposed changes. The last voter-called convention occurred in 1938; voters rejected conventions in 1957, 1977, and 1997.

In 1997 initial public support for a convention was dissolved by the efforts of groups that were concerned measures they favored in the constitution would be done away with by conservative delegates. The League of Women Voters led opposition, attacking the delegate selection process for being accessible only to politicians and other connected individuals. "The League successfully argued that the convention would essentially be run by the same people who run the capital," said Horner.

But the League wasn't the only group opposed. Public labor unions poured considerable cash into the opposition movement, fearing pension guarantees could be stripped away. Environmental groups joined the opposition movement in fear that provisions that keep state parks "forever wild" would be excised. That fear stems in part from the fact that convention delegates are elected based on state Senate districts, which are drawn in favor of Republicans (the Assembly has Democrat-friendly lines).

"Some view the constitutional convention as putting state parks and other constitutional issues at risk," said Horner. "Last time there was public support, as Mario Cuomo created the rationale for a fourth term around a convention. And [Governor] Pataki later supported it, but it went down in flames because of the efforts of those who opposed it based on what they could lose over the efforts of those who had hopes for what they could gain."

Former Assembly Member Richard Brodsky, now a senior scholar at Demos who calls himself "the last surviving progressive supporter" of a constitutional convention, said that the fears of many of these groups are well founded. "Those issues should weigh very heavily on the conversation," said Brodsky. "There is a lot of good stuff in the constitution we don't want to lose. However, voters in this state are by and large thoughtful and educated. Those issues are likely to be supported again."

Horner said it is far too early in the current process to tell if the pro-convention side will have funds that match those of the opposing sides.

New York City voters have historically had the most say over whether there is a constitutional convention as mayoral elections fall at the same time as the ballot question is put to voters. That makes it easier for those for and against the convention to target the city's generally liberal voting base in the lead up to a convention vote. This time the vote will likely coincide with Mayor Bill de Blasio's re-election bid.

Convention supporters like Brodsky have proposed legislation that could alleviate concerns about delegate selection. One Brodsky-backed measure would have created a public financing system for delegates so that average citizens could run. It also would have changed the way voters selected delegates, making voters select individual delegates rather than a ticket.

Assembly Minority Leader Brian Kolb, a Republican, has advocated banning delegates from being elected officials or lobbyists. "Our first priority must be to eliminate politics from the delegate selection process," said Kolb in a statement. "My "Peoples Convention To Reform New York Act" would require any elected or party official to vacate their office in order to serve as a delegate; and prohibit delegates from accepting contributions from PACs or party campaign committees. It is imperative that political influence is removed."

Horner said he expects a spike in debate over the convention in 2016 as reformers introduce bills to change the delegate selection process. "The problem some see is regular people--a teacher, a cop--would lose their career track if they ran as a delegate. They don't have the flexibility of a lawyer or a career politician. And who has the apparatus to run as a delegate other than an elected official?"

Barbara Bartoletti of The League of Women Voters said her group is focused on public education and has yet to take a position this time around. Her organization and other groups are teaming with the Rockefeller Institute for a series of public forums to inform New Yorkers about delegate selection and what issues are likely to come up.

"We want to make this more a people's convention than a politicians' convention," said Bartoletti. "I've lost a lot of faith in what the legislature will do. So we want to make sure we capture the public's imagination on how important this is. The more the public is involved, the better checks and balances we will have on the governor and legislature."

Many scholars and good-government groups are currently working on formulating proposals on how to reform the delegate process and how best to revamp the constitution, but many groups have yet to take a firm position.

"What we are really looking at is citizen education and at the end of 2016 we will come up with a position if we think enough changes have been made around the delegate selection process," said Bartoletti.

Brodsky said that voter education is key at this stage in the process and is encouraged that it has begun so early. "We have to start with very basic things, instead of focusing on ethics or reform of government. What is really important here is the social content: the rights of working people, the right to wilderness, a bill of rights - things that have a tremendous impact on people's daily lives."

Brodsky said that unlike the federal constitution, which is a "how-to document," most state constitutions are "what-to-do documents."

"The public needs to become aware of the social impact, the daily-life impact of the constitution," Brodsky argues. "We need to focus on questions like: 'Are the state's privacy laws adequate,' 'Should there be a right to higher education,' 'Should the state be able to use authorities to give public tax dollars to private corporations?'"

Brodsky says these are issues that may galvanize public interest, rather than questions of process and procedure.

Kolb stressed that while delegates would set the agenda, he would "hope that a Constitutional Convention would address areas such as ethics reform, government spending, debt accumulation, and unfunded mandates – just to name a few."

Meanwhile, many interested parties are watching to see how much energy Gov. Andrew Cuomo expends on the issue of holding a convention.

"Reformers were remarkably reticent due to concerns about who might be elected as delegates," said Professor Benjamin of efforts related to the 1997 ballot question. "The legislature was presumptively hostile, was hands-off, but the one thing we did have was the great advocate for constitutional change in Mario Cuomo. Had he been re-elected I believe we would have had a larger conversation, as gubernatorial involvement has been shown to make the question of a convention much closer."

Gov. Andrew Cuomo expressed support for a convention during his 2010 run for governor but has been quiet on the topic recently. Benjamin points out that most governors are opposed to the status quo, but this time reformers have

Cuomo's budget powers in their sights.

In an interview earlier this year, Brodsky told Gotham Gazette that he thought one of the prime questions facing a constitutional convention would be the governor's considerable budget powers, which basically allow the governor to enact the executive budget through extenders, without legislative approval.

Cuomo spokesperson Richard Azzopardi told Gotham Gazette that Cuomo still supports a constitutional convention.

Talk of a possible convention started earlier than normal this cycle as advocates began calling for a convention in light of the 2009 Senate coup, which was enabled in part by Gov. Eliot Spitzer's abrupt resignation. State law did not specifically allow for Gov. David Paterson to name his successor as Lieutenant Governor. The Lieutenant Governor would have theoretically been able to break the coup by voting with Senate Democrats. Paterson eventually did name Richard Ravitch to the position at the urging of good government groups, and the appointment held up in the courts. Regardless, the drama did lead to conversation about a convention.

Mario Cuomo suggested in 2009 that rank-and-file legislators could support a convention as a means of regaining credibility with the public. "Why are people afraid of fundamental change?" Cuomo [asked The New York Times](#) rhetorically. "You don't like three men in a room, or three women in a room? Then change it."

by David King, Albany editor, Gotham Gazette
[@DavidHowardKing](#)

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