

## FACTS REGARDING NEW YORK 'S CONSTITUTION AND CONSTITUTIONAL CONVENTIONS

- **WHAT DOES A STATE CONSTITUTION DO?**

- First, the Constitution establishes a basic organizational structure for state government. Like the rules of a game, the Constitution should advise each branch of government and the state's citizens how each branch is organized and how they should generally operate.
- Second, the Constitution serves to establish fundamental rights. Our American system of government is based on the premise of "popular sovereignty" – that the people, not the legislature or the government, are supreme. The constitution establishes that "supreme law" – that the Legislature, the Judiciary and the Executive are prohibited from changing without the specific consent of the people. The people, through their state Constitution, restrain government.
- Thirdly, the Constitution can state the most important policy goals of the people of the State – issues of such great importance that the people seek to make them mandates on the Legislature rather than trust that those subjects will be dealt with in ordinary legislation.

- **HOW DOES THE STATE CONSTITUTION DIFFER FROM THE U.S. CONSTITUTION?**

- The U.S. Constitution presumes the existence of autonomous state governments; it does not create them or dictate their form of government. The U.S. Constitution guarantees every state in the union a "Republican Form of Government," but says almost nothing about structure, functions, procedures or policies of state governments.
- The relationship of the states to the federal government operates under the principle that all rights not ceded to the federal government remain with the states or the people. The autonomy of the states means that where the federal constitution and statutes are silent, the states are free to frame their constitutions or laws. Federal law is only "supreme" in those areas within its Constitutionally granted "spheres of authority".
- The U.S. Supreme Court has interpreted the U.S. Constitution's 14<sup>th</sup> Amendment Equal Protection Clause to require that a "one man, one vote" doctrine be applied in all legislative elections. This may be the most important federal restriction on state government organization.

- **Grant of authority versus restriction of authority.** While the U.S. government is considered a government of limited powers – those expressly granted to it by the states in the U.S. Constitution - state governments are considered governments of broad, residual power. State constitutions, therefore, differ from the U.S. Constitution in that they are generally seen as limiting inherent state power.
  - **Length** – New York’s Constitution contains about 7 times as many words as the U.S. Constitution. On average, state constitutions are about 4 times as long as the U.S. Constitution.
  - **Number of Constitutions and Conventions.** The U.S. has the same Constitution that was adopted in 1787, which has been amended 27 times. Although the U.S. Constitution allows for the constitutional conventions on the call of two-thirds of the states, the states have never called one. By contrast, New York has had 4 constitutions (1777, 1822, 1846 and 1894) and nine constitutional conventions (1777, 1801, 1821, 1846, 1867, 1894, 1915, 1938 and 1967). (The every 20 year submission of the question of a convention dates to 1846.)
  - **Amendments.** New York’s 1894 Constitution (our current constitution) has been amended over 200 times; most by the process of legislation passed by two successive legislatures and ratified by the electorate as opposed to convention amendments. Many attribute the difference between the number of federal amendments and the number of state constitution amendments to the quasi-statutory nature of state constitutions and the changing political views of the states’ policy objectives.
- **FUNCTION ONE OF THE STATE CONSTITUTION: THE ORGANIZATION OF STATE GOVERNMENT**
    - New York has the traditional three branches of government and the duties and powers of each is described. Other parts of the structure of government are dealt with separately.
      - Legislative power is vested in the Senate and the Assembly (Article III).
      - Executive power is vested in the Governor (Article IV).
      - The remainder of the structure of state government is detailed in Article V, Officers and Civil Departments.

- “Judicial power” is not expressly vested, but the organization of the courts system is outlined in detail (Article VI).
  - In Article XI, Education, the Constitution continues the University of the State of New York and the regents system.
  - In Article XII, Defense, the Constitution provides for the maintenance of an organized state militia.
  
- The Constitution defines the qualifications for public office in the Articles dealing with each branch of government:
  - Qualifications of members of the legislature (Art. III, sec. 7).
  - Qualifications of the Governor & Lt. Gov. (Art. IV, sec. 2).
  - Qualifications for judges (Art. VI, sec. 20).
  - Note: the qualifications for Comptroller and Attorney General are not specifically stated in the sections dealing with those offices (Art V, sections 1 & 4).
  - The oath of office, term of office, filling of vacancies, removal of officers and compensation issues for most public officers is contained in Article XIII, Public Officers.
  
- The Constitution’s Articles on State and Local Government Finances and Taxes are a mixed treatment – part structure and procedure and part important state policy.
  - Article VII, State Finances, describes the state budget process, limits what can be in appropriations bills, prohibits gifts of state assets, authorizes the nature, use, authorized investment of and manner of payment of state debt.
  - Article VIII, Local Finances, prohibits gifts of local government assets, provides for the limitation on local government debt, provides for a limitation on local real property taxes and provides for the purposes for which various entities may incur debt.
  - Article XVI, Taxation (added after the 1938 convention) provides for the state supervision of real property assessment, specifically protects village tax assessment, levy and collection, and protects

public employee pensions from taxation (amended 11/2001) along with a few other technical provisions.

- Constitution has two articles that are procedural in nature, dealing with the document itself and the procedure for amending the same.
  - Article XIX, Amendments to Constitution, deals with the procedure for amending the constitution.
  - Article XX, When to Take Effect, provides the effective date of the amended constitution.
  
- **FUNCTION TWO: THE ESTABLISHMENT OF FUNDAMENTAL RIGHTS**
  - While thought of as the second major purpose of a state constitution, New York deals with these issues in the first two articles of its Constitution.
    - Article I is New York's Bill of Rights. In some respects, the state bill of rights mirrors the rights contained in the U.S. Constitution's first ten amendments.
      - Freedom of worship, religious liberty, freedom of speech, and the right to assembly provided here are commonly thought of as (U.S. Constitution) 1<sup>st</sup> Amendment rights.
      - Security against unreasonable searches and seizures, provided here, is in the 4<sup>th</sup> Amendment to the U.S. Constitution.
      - Compensation for taking private property is also dealt with in the 5<sup>th</sup> Amendment to the U.S. Constitution.
      - The right to bail, habeas corpus, and trial by jury are provided in the 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> Amendments to the U.S. Constitution.
      - Equal protection of the laws and the prohibition of discrimination are also subjects of the 14<sup>th</sup> Amendment to the U.S. Constitution.

- The subjects that the state Bill of Rights addresses that have no parallel in the U.S. Constitution are: lotteries, horse racing, games of chance, bingo, and lotto; damages for injuries causing death; the right of labor to organize and bargain collectively and the protection of workers' compensation.

- **FUNCTION THREE: TREATMENT OF IMPORTANT POLICY GOALS**

- At least four of the articles of the state Constitution fall into this category (Conservation, Canals, Social Welfare and Housing). An argument can be made that Corporations, Education and Defense belong under this heading as well.
  - Article XIV, Conservation, contains so called "Forever Wild" provision protecting the state forest preserves. This article also deals with reservoirs, protection of natural resource and development of agricultural land. A couple of the sections specifically start off by declaring the policy of the state.
  - Article XV, Canals, specifically prohibits the sale, abandonment or disposition of the Erie, Oswego, Champlain and Seneca and Cayuga canals.
  - Article XVII, Social Welfare, establishes the care of the needy, the protection of public health, and the care and treatment of those suffering from mental disease or defect as public concerns. The article also requires systems of probation and parole and a state commission on corrections. Loans for hospital construction are exempted from the prohibition of the use of local government credit for private purposes if authorized by the Legislature.
  - Article XVIII, Housing, was a new article adopted by the 1938 convention. It specifically authorizes the Legislature power to provide for low income housing and nursing homes. Similarly, the Legislature is authorized to empower local governments to fund or assist with the development of low income housing or nursing homes. The balance of the article deals with the treatment of debt for these purposes, restrictions on occupancy and condemnation issues.
  - Article X, Corporations, deals with the formation of corporations and certain rights of corporations; bank charters; public corporation creation, powers and obligations; state thruways bonds; obligations of the port of New York authority and economic development bonds.

Most of these subjects could be dealt with in regular legislation; placing matters as to different types of bonds and financial obligations in the Constitution gives the financial markets greater security that those obligations will not be impaired.

- Article XI, Education, contains two important policies: requiring a system of free common schools and a prohibition on the use of state credit or funds to aid religious schools.
  - Article XII, Defense, states the policy declaration that the defense and protection of the state and the United States is an obligation of all persons within the state.
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- SPECIFIC FACTS CONCERNING THE 1938 CONVENTION:
    - Convention met from 4/5/1938 to 8/26/1938 (about 20 weeks)
    - Of the 153 district delegates, there were 84 Republicans, 68 Democrats and 1 member of the American Labor party.
    - Of the 15 at-large delegates, 8 were Republicans and 7 Democrats
    - Two-thirds of the delegates were party or public officials, included among them were the Governor, a U.S. Senator and Robert Moses.
    - The convention considered issues of a Labor “Bill of Rights”, Equal Protection, anti-discrimination, welfare, housing and local government finance. It was considered a “middle of the road” convention considering that it took place during the Great Depression as there were many factions among Democrats and a Republican majority. Its product basically dealt with matters already the subject of existing state legislation.
  
  - SPECIFIC FACTS CONCERNING THE 1967 CONVENTION (Called pursuant to Chapter 371 of the Laws of 1965 which also provided that the Election Law procedures would govern the elections of delegates and set aside prohibitions in any general or local laws barring public officers’ service. Chapter 443 provided for a state study commission in preparation for the convention. Chapter 124 of the Laws of 1967 provided specifics, such as the time (12 noon) and place (Assembly Chamber) of convening, designation of the Secretary of State as the temporary presiding officer and other procedural issues. Chapter 7 regulated lobbyists and Chapter 827 protected retirement benefits of delegates or employees of the convention.

- Political context. In 1964, the Democrats gained control of both houses of the legislature in the Lyndon Johnson landslide over Barry Goldwater so they thought it safe to call for a 1965 referendum. The referendum passed on the strong favorable vote from NYC.
- Public Support. There had been some prior “grass-roots” efforts to have a convention, led by the Democrats’ 1962 gubernatorial candidate, Howard Samuels and a Citizens Commission for a Constitutional Convention as a result of U.S. Supreme Court decisions on reapportionment.
- Primaries for delegates. There were 17 for the Democrats, 7 for the Republicans and 2 for the Conservative delegates.
- Political Make-up of Delegates. Of the 186 delegates elected, 102 were Democrat or Liberal, 83 Republicans and 1 Conservative.
- Delegate demographics. Among the delegates, there were 11 women, 11 African-Americans and 7 Hispanics.
- Delegate occupations. Two-thirds were lawyers, one-fourth were judges, only 1 was a farmer, 13 were sitting members of the legislature (who collected both salaries) and 32 were former state legislators or Congressmen.
- Convention period. The convention met from April 4, 1967 to September 26, 1967.
- Leadership. Assembly Speaker Travia was the Convention President and Senate Majority Leader Brydges was the “Minority Leader”.
- Rules. The Convention adopted the rules of the Assembly and committee chairs were chosen along party lines.
- Staff. Existing legislative staff and facilities were utilized.
- Issues.
  - Repeal of the “Blaine amendment”. Article XI, §3 of the Constitution prohibited the state from advancing money or credit to assist educational institutions controlled by religious denominations. There was broad support for its repeal, but it was a “hot button” issue. To appease opponents the proposal would allow citizens standing to sue for the use of state funds for sectarian purposes.

- Voting rights. The convention sought to repeal the literacy test and to lower the voting age from 21 to 18.
- Legislature. A federal “one man, one vote” reapportionment system was proposed with a separate Redistricting Commission to draw lines. (Note: A call for a 150 member uni-cameral legislature was rejected in committee.)
- Governor. The convention proposed to make it simpler for the Governor to effect reorganization of state government.
- Criminal Justice. A separate Department of Criminal Justice Services was proposed.
- Judiciary. The plan called the central administration under the direction of the Court of Appeals; would reduce the number of appeals of right to the Court of Appeals and would reform Court financing.
- State debt. The convention proposed to allow issuance of state debt, without a public referendum, with certain limits.
- Welfare. The delegates considered the state assumption of local welfare costs.
- Education. The delegates also considered an amendment calling for free higher education.

Defeat by the Voters. The new and simple Constitution was presented as one document and not as separate subject-based articles and was soundly defeated at the polls.

Opposition. Majority of the press, the League of Women Voters, the New York Civil Liberties Union, the NAACP and most Republicans opposed the new Constitution. Governor Rockefeller and most Democrats were non-committal.

#### OTHER CONSTITUTIONAL AMENDMENTS<sub>2</sub>

- Outside of the convention process, the state Constitution has been amended by the Legislature over 200 times since 1894 by legislation subsequently approved by referendum.

#### RECENT CALLS FOR CONSTITUTIONAL CONVENTIONS<sub>2</sub>

- There are currently three bills calling for a Constitutional Convention:



- A4271 (Brodsky) – the question presented calls for a full Constitutional Convention, but other language it sound as if he really wants the convention restricted to structural reforms of government.
- S6065 (Golden) – the question presented calls for a full Constitutional Convention, but the sponsor particularly seeks changes to the convention process and amendments to the Election Law.
- S6088 (LaValle) – calls for a Constitutional Convention to consider only the issues of choosing a Lt. Governor and real property tax reform.
- At a press event yesterday with Senator LaValle, Assemblyman Thiele called for a full Constitutional Convention instead of the limited one LaValle seeks.
- Former Governor Mario Cuomo called for a Constitutional Convention in a paper entitled, “Real Reform, It’s Time For a People’s State Constitutional Convention (September 1994).
- Assemblyman Richard Brodsky has also written on the subject in “Agenda For Constitutional Reform” (1997).