

Myths and realities of a constitutional convention

Updated October 14, 2017 6:01 AM By The Editorial Board

By now, you've seen the lawn signs. Or the bumper stickers. Or the posts on Facebook.

And you've said to yourself: What's a con-con?

You're not alone. It's election season, and you've stumbled into what might be the hottest issue on November's ballot. ≈ Con-con is shorthand for constitutional convention, a gathering of delegates from around New York State who would meet to revise the state constitution. Every 20 years, according to that constitution, New York voters must be asked whether they want to hold one. This is year 20.

What a moment it is. Voters are angry, for lots of reasons. Mostly they're fed up with:

- government that no longer seems to work for them
- big campaign donors getting favors from elected officials;
- lawmakers who use their influence to line their pockets;
- voting laws that protect incumbents;
- rules that make it difficult to cast a ballot, or to run for office without the backing of a party machine;
- and, perhaps most frustrating of all, a state government that refuses to address these ills or pass laws supported by most New Yorkers.

So voters become cynical and learn to distrust the system. And they drop out. Or, they look to rebel.

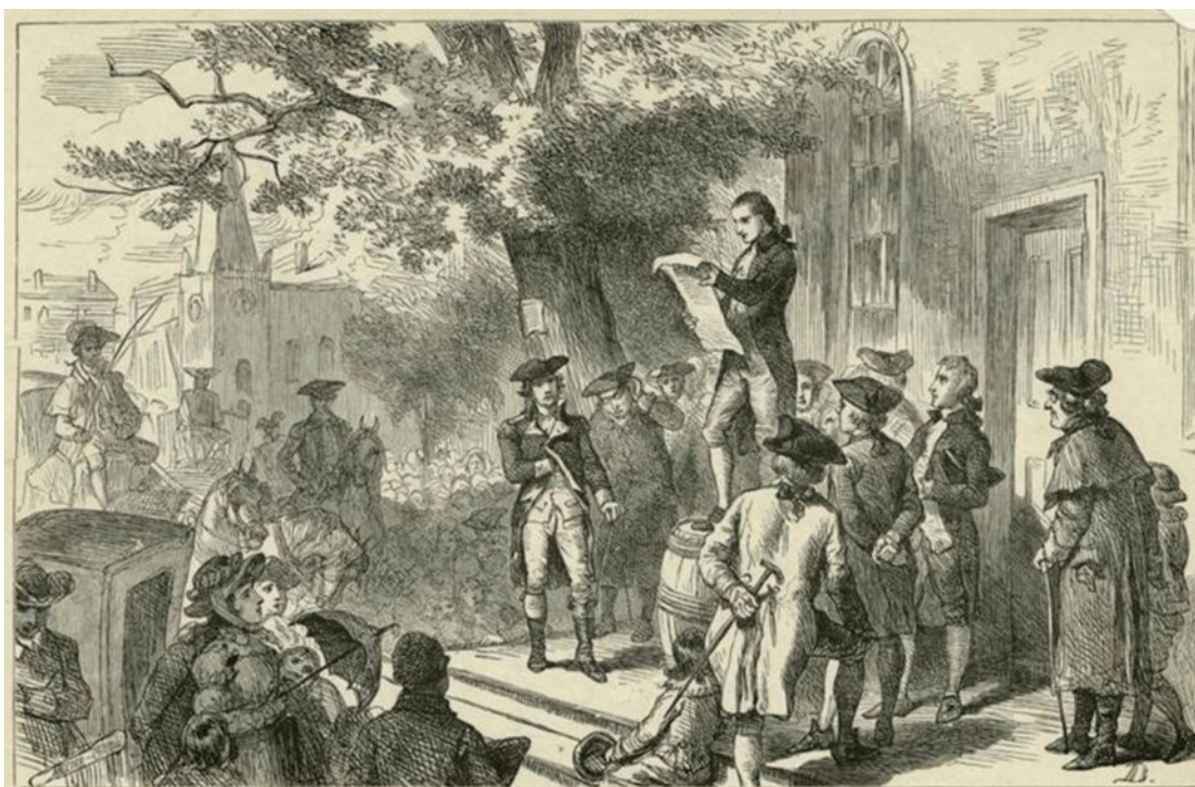
And now comes the prospect of a constitutional convention, a vehicle for a constituency ready for change.

At the moment, however, opponents of a convention are flooding the zone with political advertising. Some of their arguments are erroneous. Most are based on fear — the fear of the unknown. No one knows for sure what would happen in a constitutional convention, they say. And they're right.

They prefer no change to the status quo, and would rather seek the change they want by continuing to work with a State Legislature that has refused to do just that. They are rejecting an opportunity to take the reins away from the corrupt status quo and purge the system of its rot. They'd rather deal with the devil they know, while acknowledging there are a lot of devils in Albany. And they have disingenuously rallied under the misleading banner of "New Yorkers Against Corruption."

One victim of this heated rhetoric is the truth. There is a lot being said that is simply not fact. To make a good decision on whether to support a constitutional convention, one needs to understand what is myth and what is reality.

MYTH: The people will not be part of the process.



(Credit: The 1777 convention / NY Public Library)

MYTH: The people will not be part of the process.

REALITY: The people will be involved every step of the way. Voters will decide next month whether to hold a constitutional convention. If they say yes, they'll vote in November 2018 on which delegates to send. After the convention, which would begin in April 2019, the public will vote one more time on whether to accept or reject whatever changes to the constitution are proposed by the convention.

MYTH: There already is a process to amend the constitution and it works.

freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election. And no person of color shall be subject to direct taxation unless he shall be seized and possessed of such real estate as aforesaid.

§ 2. [Exclusion from right of suffrage.]—Laws may be passed, excluding from the right of suffrage all persons who have been or may be convicted of bribery, larceny, or of any infamous crime; and for depriving every person who shall make, or become directly or indirectly interested in, any bet or wager depending upon the result of any election, from the right to vote at such election.

§ 3. [Right of suffrage not affected by certain occupations and conditions.]—For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this state, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse or other asylum, at public expense; nor while confined in any public prison.

§ 4. [Registration of voters.]—Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established.

§ 5. [Elections to be by ballot.]—All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

ARTICLE III.

Section 1. [Legislative power.]—The legislative power of this state shall be vested in a senate and assembly.

§ 2. [Senate and assembly, how constituted.]—The senate shall consist of thirty-two members, and the senators shall be chosen for two years.

The assembly shall consist of one hundred and twenty-eight members, who shall be annually elected.

§ 3. [Senate districts.]—The state shall be divided into thirty-two districts, to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to thirty-two, inclusive.

District number one (1) shall consist of the counties of Suffolk, Richmond, and Queens.

District number two (2) shall consist of the county of Kings.

District number three (3) , number four (4) , number five (5), and number six (6) , shall consist of the city and county of New York; and the board of supervisors of said city and county shall, on or before the

(Credit: The fourth page the New York Constitution of 1846 / NY State)

MYTH: There already is a process to amend the constitution and it works. The State Legislature can propose an amendment by voting for it in two consecutive sessions and submitting it to the public for its vote.

REALITY: It's true that the constitution has been amended more than 200 times since it was rewritten at the 1894 convention. And there are two amendments on the November ballot. One would help communities in the protected Adirondack Park area with needed road-related projects. The second would strip state pensions from public officials with felony corruption convictions. And the legislature was basically shamed into doing that, despite more than two dozen elected state officials being hauled into court on corruption charges in the last decade. Only after the former leaders of the State Senate and Assembly were exposed as self-dealers who deceived

the residents of this state did they agree to put the measure on the ballot. Meanwhile, ethics and voting reforms and other issues supported by large majorities of New Yorkers don't come close to seeing the light of legislative day. So yes, there is a process, but most often it doesn't work all that well.

MYTH: A non-vote on November's ballot will be counted as a yes vote.



(Credit: AFP / Getty Images)

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REALITY: That's preposterous. If you don't vote, you're not counted, as in every other election. This seems to be a scare tactic.

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MYTH: Legislators will seek to be the delegates and hijack the process.





(Credit: Getty Images / Daniel Barry)

MYTH: Legislators will seek to be the delegates, they'll win election and they'll hijack the process.

REALITY: Legislators can indeed run, but consider this. Delegates to the convention must be paid an Assembly member's salary of \$79,500. That means that lawmakers, who also will be running for their legislative seats in 2018, would be trying to collect a second salary while working one job. Double-dipping never sits well with voters. It's hard to imagine many legislators exposing themselves to voters like that. As for controlling the process, why would lawmakers who dance to the tune of special interests that support them do anything those very same interests don't want?

MYTH: Gerrymandered districts means the deck will be stacked in GOP favor.





(Credit: Barry Sloan)

MYTH: Electing delegates by Senate districts that are gerrymandered to keep Republicans in control means the constitutional convention deck will be stacked in their favor.

REALITY: This is absurd. Voters will elect 204 delegates -- three from each of the Senate's 63 districts plus 15 statewide. The GOP holds 31 Senate seats (the party maintains control with help from one Democrat who caucuses with them plus a group of breakaway Democrats). Some Democratic districts are heavily Democratic and could elect three Democratic delegates. Some Republican districts lean only slightly that way and Democrats could pick up one or even two delegates in those districts. Many minor parties across the political spectrum likely will field their own candidates, and true independents can run if they get the required number of signatures on their petitions. Campaigns are likely to be spirited, and mere citizens not bound by major party dictates could run and win. All of which means that in a state in which registered Democrats outnumber Republicans by more than 2 to 1, GOP control of a constitutional convention is unlikely.

MYTH: Wealthy special interests will dominate.





(Credit: President of the 1967 New York State Constitutional Convention / Archive)

MYTH: Wealthy special interests will dominate as big contributors like the conservative Koch brothers or Long Island's own Steve Bannon benefactors, Robert and Rebekah Mercer, will use their money to get their people elected as delegates and dictate a convention's agenda.

REALITY: This worry is especially precious, given that many high-spending special interest groups, including labor unions, are among those spending to oppose a constitutional convention. And these same special interests already contribute heavily to the legislators who vote on constitutional amendments. The unions say they don't have the financial firepower to stand up to big-money interests, but it's union big money that calls many shots in Albany.

MYTH: A constitutional convention would be a monumental waste of money.



(Credit: YouTube / Nassau County PBA)

MYTH: A constitutional convention would be a monumental waste of money. Senate Majority Leader John Flanagan puts the figure at \$350 million, and other projections range as high as \$500 million.

REALITY: This is blatantly false. Estimates for the cost of the last convention, in

1967, range from \$7 million to \$15 million. SUNY New Paltz political scientist Gerald Benjamin adjusted those figures for inflation to estimate that a convention now would cost \$47 million. A reporter mistakenly thought \$47 million was the actual cost of the 1967 convention and adjusted it for inflation a second time, which led to the \$350 million figure, a mistake for which he since has apologized. But convention opponents like Flanagan, knowingly or unwittingly, seized on the higher figure and are using it wrongly in their arguments. Realistic estimates from experts put the cost of a modern convention at somewhere between \$50 million and \$100 million.

MYTH: Public pensions, collective bargaining and the “forever wild” clause could be eliminated.



(Credit: Eli Reyes)

MYTH: Public pensions, collective bargaining and the "forever wild" clause that protects the Adirondacks could be eliminated by a constitutional convention.

REALITY: That's fearmongering. None of those issues are goals for convention proponents. And each is widely supported by New Yorkers who, remember, have to vote on any potential amendments produced by a convention. The right of public workers to a pension came from the 1938 constitutional convention.

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MYTH: A convention would be an opaque exercise in backroom deal-making.

(Credit: New York State's Ninth Constitutional Convention in 1967 / Archive)

MYTH: A constitutional convention would be an opaque exercise in backroom deal-making, with delegates horse-trading support for proposals and producing an unholy mishmash of amendments.

REALITY: This is an epic example of succumbing to the cynicism that Albany is so good at creating. Assuming that a convention would be the spiritual twin of the capital's three-men-in-a-room style of governance ignores that modern technology

should make this the most transparent convention in state history. Every minute could be live-streamed, and probably would be. Social media would guarantee that virtually nothing would be secret. And all votes would be public.

You decide: Do you expect the worst of people or the best?

(Credit: AP / Hans Pennink)

The debate over whether to hold a constitutional convention is in some sense a battle between pessimism and optimism. Do you expect the worst of people or the best? Are you more fearful of the unknown or disgusted by what is known? And, ultimately, do you trust the public that will cast the final judgment?

Those are profound differences.

Either you are consumed by uncertainty and worried about where a convention

might go wrong, or you embrace it as a way to make state lawmakers more responsive to citizens and less beholden to special interests, to open up our democracy to more participation by voters and candidates, and once and for all to get rid of corruption.

A constitutional convention could propose a raft of improvements.

Like making it easier for people to cast ballots with early voting, "no-excuse" absentee voting, combined federal and state primary dates, and simpler ballots.

Like making it easier for candidates to get on the ballot, and giving voters real choices by banning cross-endorsements by political parties.

Like producing election districts that more accurately reflect the voters in them by adopting independent redistricting.

Like instituting real ethics reforms such as limits on outside income for legislators, term limits, a full-time legislature, closing the LLC loophole for campaign contributions, and public campaign financing.

Like adding a constitutional right to clean air and water, and protection from discrimination based on gender and sexual orientation.

A once-in-a-generation opportunity.

(Credit: AP)

A constitutional convention is, literally, a once-in-a-generation opportunity. Every 20 years, you the voter gets to decide: If legislators are not doing what you sent them to Albany to do, you can do it yourself. If you give up that chance, two decades is a long time to wait.

Every New Yorker wants a better state government.

The vote in November is the chance to answer the question:

How do we make that happen?