

New York constitutional convention vote raises hopes, fears

August 26, 2017 By Michael Gormley michael.gormley@newsday.com



The 1777 convention, which wrote the first state constitution, rejected an attempt to end slavery. Member's of New York's first constitutional convention assemble in front of the courthouse in Kingston on April 20 of that year to listen to the convention secretary as he read the new constitution to the public. (Credit: NY Public Library)

ALBANY — New York voters will soon decide whether to authorize a constitutional convention to confront issues long mired in political gridlock, such as additional guarantees

for abortion, repeal of the 2013 gun control law, measures to combat the influence of big-money campaign donors, improvements to mass transit in New York City and on Long Island, and anti-corruption measures.

If voters call for a reboot of the highest law of New York, a constitutional convention also could take on popular structural proposals that usually don't raise a peep in Albany. Those options include legislative term limits, eliminating the Senate or Assembly to reduce cost and partisan standoffs; curbs on the extensive power of governors in crafting state budgets; and banning outside jobs by lawmakers.

"Politicians in office cannot or will not sufficiently regulate themselves," said Gerald Benjamin, distinguished professor of political science at SUNY New Paltz. "Maybe we can find a better way at a constitutional convention."

Voters will make the decision Nov. 7 in a yes or no vote. If approved, months later three delegates will be elected from each of 63 State Senate districts statewide. Another 15 "at large" delegates will be elected from anywhere in the state for a total for 204.

The delegates would draw a salary for months of public work that would begin in 2018. Their recommendations would then be subject to a referendum on an election day, probably in 2019, after a series of public hearings, speeches and advertising blitzes from all sides.

Gov. Andrew M. Cuomo has said he supports a convention but only if delegates aren't dominated by elected officials who could protect the status quo. Assembly Speaker Carl Heastie (D-Bronx) and Senate Majority Leader John Flanagan (R-East Northport) opposed a constitutional convention.

Supporters of a constitutional convention argue it is the only way to reform Albany's ethical behavior and to reduce the influence of wealthy corporations and individuals on policymaking. Many opponents, however, fear that politicians and incumbents, who could become delegates, would hijack the citizens' convention to unravel current protections in the constitution, such as the guarantee of pensions for teachers and other public workers and environmental protections.

Another camp opposed to a convention fears that incumbent legislators would take control of it, costing taxpayers millions and making sure no substantive work to curb corruption is passed.

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The stakes are high.

A constitutional convention in 1846 placed caps on borrowing as well as punished the bribery of public officials for the first time. In 1866, one created free public schools and gave African-American men who owned property the right to vote. In 1894, a convention established "forever wild" areas of the Adirondacks and Catskills and founded the State University of New York. The 1938 convention required the state to care for those who couldn't care for themselves under "articles on care of the needy," and banned discrimination based on "race, color or creed."

However, opponents also note that other conventions made far less progressive decisions. The 1777 convention, which wrote the first state constitution, rejected an attempt to end slavery. The 1801 convention weakened the governor's power over appointments and spending and created a spoils system for the legislature that led to rampant corruption. The 1894 convention denied the vote to women.

"We need bold, systemic change now that will take direct aim at the culture of corruption, dysfunction and cronyism that has brought shame to our state for decades," said Bill Samuels, a veteran of New York political campaigns and founder of the New York People's Convention group.

Samuels' People's Convention group also supports non-ethics measures including full civil rights protection for lesbian, gay, bisexual and transgender New Yorkers, more funding for underperforming poor urban and rural schools, and the legalization of marijuana.

Proponents see hope in the anger of voters who feel ignored by politics as usual that helped elect Donald Trump president, just as the Progressive Era fueled the 1915 convention and the Great Depression forced the 1938 convention.

"To me, the most important thing of all is we have to have public financing of elections and we are not going to get it legislatively," said Richard Ravitch, the former Democratic lieutenant governor who has played major historical roles in New York's mass transit system, New York City's fiscal crisis, and in health care reform.

Other supporters also have policy goals. For example, the state Bar Association calls for restructuring the "byzantine" court system to make it easier for lawyers and clients to navigate as well as consolidating trial courts. The Committee for a Constitutional Convention, which includes good-government groups such as New York City-based Citizens Union, wants public financing of campaigns and restoring some power of self-governance to New York City, much of

which was lost to Albany when the state bailed the city out of financial crisis in the 1970s.

Ravitch said he understands the fears of opponents — for example, the concern of losing guaranteed pensions for public workers — but he doesn't believe such elements of the current constitution are in serious danger. He and other supporters of a convention, such as Samuels, insist the risks are worth changing how Albany operates.

Hal Peterson is one of the New Yorkers who has caught the constitutional convention fever.

"Many of our elected officials are unlikely to rain on their own parade," said Peterson, of Rockville Centre, a former corporate executive turned good-government advocate in retirement. He is trying to get legislators to commit to positions on reform issues and has developed a website (reformalbanynowregistry.com).

His seven proposals include a hard limit on state borrowing; eliminating the "LLC loophole" that allows corporations to use limited liability companies to contribute to candidates and parties far above the corporate limit of \$5,000; and term limits and "initiative and referendum," which many other states have, to allow citizens to initiate referenda on issues not taken up by the legislature.

"Can we afford to be indifferent? No!" Peterson said.

Yet opponents warn that big special interests can play an outsized role in a constitutional convention. That concern led even staunch good-government advocates and reform politicians to oppose a vote on whether to hold a convention in 1997, which led to its defeat. The good-government advocates then feared their attempts to rein in corruption would not only be defeated by delegates dominated by state legislators, but more loopholes would be created along with less independent oversight.

Today, however, the groups say the need to clean up Albany overwhelms their fear that ethics legislation could be further eroded.

Opponents of the November referendum on whether to hold a convention say they fear political bosses, public worker unions and big-money donors to campaigns will seize the upper hand in selecting delegates and the agenda. That agenda could decimate unions, eliminate or devalue the state pension guarantee for public workers, or undo the "forever wild" designations in the Adirondacks and Catskills that prohibit development.

The concern over drastic change has joined opponents on both sides of some issues. For example, the New Yorkers Against Corruption coalition fighting the convention includes Planned Parenthood and Right-to-Life groups, the state Conservative Party and the liberal Working Families Party and the progressive Humanists of Long Island; as well as the Lesbian, Gay, Bisexual and Transgender Network and conservative church groups.

"There is no question a constitutional convention could do tremendous damage to the state of New York," said state Sen. Diane Savino (D-Staten Island) and a founding member of the Independent Democratic Conference. None of us can feel safe about a constitutional convention."

A key concern of labor unions and their advocates, such as Savino, is that the possible elimination of the state constitution's guarantee — since the 1938 constitutional convention referendum — that public workers get a lucrative, tax-free pension that can't be "diminished or impaired" for a worker who is vested. Local government leaders, however, blame some of the nation's highest property taxes on this pension obligation.

Construction unions also fear the constitution could strike down legislation that requires union-level wages and protections in all publicly funded construction sites, which has been a boon for unionized companies in landing big contracts.

“We don’t need to rip up the NYS constitution and put everything workers care about at risk to amend the constitution,” states the Facebook posting by the New York State AFL-CIO labor organization. The group says “Albany insiders” will try to take away workers’ rights such as costly pension benefits and legally required union-level wages that must be paid on most publicly funded projects, which drives up costs for taxpayers.

Opposition also comes from the other side of the political spectrum. “It’s a bad idea,” said state Conservative Party chairman Mike Long, who watched the 1967 convention closely and was unimpressed. “The establishment controls the whole convention.” He said, for example, late-term abortion without restrictions could be made the law of the land. “I believe the constitution has served us well.”

Supporters say they need Gov. Andrew M. Cuomo to use his bully pulpit.

As a candidate in 2010, Cuomo said it was critical to create a “constitutional commission” through a governor’s executive order or the legislature to identify who could be delegates and the issues they would weigh. Neither Cuomo nor the legislature has done so.

In June, Cuomo emphasized the drawbacks of a convention. “I said a convention is a good idea,” Cuomo told reporters. “I think the devil is in the details. Who are the delegates? What are the issues? . . . You have to elect delegates who are not currently elected officials.”

Cuomo noted that legislators already have the political apparatus and know-how to collect nominating petitions in each congressional district to become delegates. That expertise and staffing could shut out the political novices and private citizens the constitutional convention is intended to attract.

He said New Yorkers should vote for a constitutional convention in November, but only with “the proviso” that elected officials can’t be delegates.

But Peter Galie, professor emeritus of political science at Canisius College, said he doesn’t believe a constitutional commission could legally bar any group of people, such as lawmakers, from running to become delegates.

“Cuomo’s argument is a counsel of despair or an ostensible but not real reason for his opposition,” Galie told Newsday.

Heastie said, “We should be very, very careful in exposing the constitution to the whims of someone from outside the state who could decide to spend millions of dollars to put forth a position.” Supporters estimate the cost of a convention at \$60 million. Opponents estimate as much as \$500 million.

Flanagan noted the legislature can already propose individual constitutional amendments. “I’m comfortable with the way that works,” Flanagan said. Voters have approved more than 225 amendments proposed by the legislature since 1895, according to the League of Women Voters.

“The legislature is opposed,” said Evan Davis, who supports a convention and had been counsel to former Gov. Mario Cuomo, “and it’s not hard to figure out why.”

Voters, however, seem to like the idea.

A poll in May found New York voters 62-22 percent supported a constitutional convention, said Steven Greenberg of the Siena College Research Institute poll. The support included two-thirds of Democrats, 55 percent of Republicans and 59 percent of independents. But support has already eroded in the face of media campaigns against a convention. In July, a Siena poll found 47 percent of voters supported a convention, although 67 percent of voters said they still

haven't heard enough about the issue.

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