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TIMES HERALD-RECORD

To convene or not? Advocates, opponents tackle constitution question



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Jeff Storey For the Times Herald-Record

SUNY New Paltz political scientist Gerald Benjamin co-edited and contributed to a book about New York state’s “broken constitution” last year. Now he is spending a lot of his time traveling around the state, trying to convince voters to seize what he says is a rare chance to fix the state’s unwieldy foundational document.

Every 20 years, the state must ask voters if they want to call a convention to amend the constitution. If they vote yes Nov. 7, delegates will be selected next year, and they will convene in April 2019. To become law, any proposals they make would have to be ratified in another referendum.

Benjamin was research director of a temporary commission created by Gov. Mario Cuomo to prepare before the last vote, in 1997. But voters rejected the constitutional convention proposal that year by a large margin. If they do so again this year, the next vote won’t be until 2037.

In addition to working on the book, Benjamin said he has attended 25 to 30 debates, presentations and strategy sessions during the latest campaign for a “Con-Con.” He has written opinion columns and a law review article.

“This is my last chance to help achieve genuine structural reform for New York state in my professional lifetime,” said Benjamin, who is 73. “It is desperately needed.”

However, convention advocates like Benjamin face formidable opposition from the labor movement and other nonprofit groups that argue a convention would be a waste of money and put at risk cherished rights now embedded in the constitution.

Leaders of the state Assembly and Senate oppose a Con-Con. Gov. Andrew Cuomo initially expressed support for the idea but backed off, saying he has reservations about the delegate-selection process.

Nevertheless, Benjamin says that the increasingly contentious race is “competitive” because public confidence in state government is at a low ebb among New Yorkers, who regard it as corrupt and dysfunctional.

Thirty state lawmakers have left office since 2000 for criminal offenses or ethical misconduct. Good-government activist William Samuels, who has pledged \$500,000 to the campaign for a convention, said rank-and-file legislators are bored because they have little to do in Albany, where decisions are made, or not made, by the governor and legislative leaders.

“I’ve given up on Albany,” Samuels said.

“Political and personal self-interest has blocked serious reform for decades,” Benjamin told the New York Law Journal last year. He said the Legislature “has a consistent record over decades of indifference to serious reform of the structure and processes of government, except to benefit its members or itself as an institution.”

Unions' concerns

Benjamin, who intends to run to be a delegate, believes hundreds of amendments would be offered at a convention. One compilation has summarized 106 ideas for constitutional change.

Among the most frequently mentioned suggestions are an independent agency to enforce the ethics of public officials; term limits; fair redistricting; campaign finance reform; easier voting; court reform; more authority for local governments; a constitutional right to clean air and water; strengthened civil rights; education guarantees; and aid to the needy.

Some ideas are more offbeat, including the division of the state into autonomous regions; the legalization of marijuana; and the creation of a unicameral legislature to replace the current two-house version.

But none of these ideas will be discussed unless voters support the Nov. 7 proposition. A coalition of nonprofit advocacy groups, spearheaded by labor unions, has mounted an aggressive campaign in an effort to prevent that. One group, which calls itself New Yorkers Against Corruption, had raised \$1.36 million as of Oct. 6. That compares to a total of \$446,044 for the two principal advocacy groups, N.Y. Peoples Convention and Committee for a Constitutional Convention.

Unions have organized frequent phone banks to mobilize their members to vote no on Con-Con. Around 20 people from several unions showed up recently at the headquarters of the Hudson Valley Area Labor Federation in Rock Tavern. They called 1,600 union members in three hours, working off a script that warned, “the stakes for working people ... are high.”

Rich Steger, president of the Valley Central Teachers Association, said members of his New York United Teachers Union local are “solidly behind” the campaign. But he added that many people are not aware of the issues.

Union leaders say they are concerned by the open-ended, unpredictable nature of a process in which the entire constitution would be open to change.

“I don’t know what would happen,” said Mario Cilento, president of the state AFL-CIO, adding that pensions, prevailing wage rates for construction and workers compensation all could be “on the chopping block.”

The argument that current pension benefits could be threatened apparently has struck a chord among at least some local retirees.

“You can’t trust them,” said Marie Decker of Liberty. “I don’t feel safe.”

A pension is “not a gift,” said former Monroe-Woodbury teacher Paul Ellis-Graham. “People have worked for it.”

The pension argument is “not grounded in legal reality,” counters Benjamin.

“It’s a lie,” said Evan Davis, Mario Cuomo’s former counsel, about the pension argument. Davis is managing the pro Con-Con committee and also plans to run for delegate.

Benjamin, Davis and other convention advocates insist that the pensions of current retirees would be protected by the clause of the federal Constitution that prohibits states from passing any law that impairs the “Obligation of Contracts.” The benefits of new workers could be changed, they say, but that is true now.

The unions and other opponents of a convention argue that Con-Con would be dominated by “insiders” – corporate lobbyists, politicians and elected officials – “the kind of people who got us into this mess,” said Jordan Marks, manager of New Yorkers Against Corruption.

Hijacked by outside forces?

State Sen. John Bonacic, a Republican, favors a convention “because it provides the only opportunity for New Yorkers to directly make changes to the way our state government operates.”

Bonacic said in a statement that he understands and sympathizes with concerns raised about a Con-Con. “It is important to remember that New Yorkers will have a direct say on who serves as delegates, and will have a vote on any proposed changes that come from the convention,” he said. “I trust the will of the people.”

Some opponents suggest that “dark money” from rightist billionaires outside New York would flood into the state in an attempt to influence the convention.

“It won’t be a people’s convention,” said Anthony Adamo, president of the CSEA local at SUNY New Paltz and the union’s statewide political action coordinator.

Davis said that it is more likely that many delegates would be people who have been “energized” by the need for change and to resist policies of Donald Trump. Benjamin added that the suggestion that Con-Con would be hijacked by allies of Trump is “absurd.”

The unions have stressed that a potentially endless convention would cost “hundreds of millions of dollars,” with no guarantee that anything would be achieved. That money would be better spent elsewhere, they argue. Union literature also highlights that officeholders who sit as delegates could double dip, earning \$79,500 as delegates on top of their taxpayer-funded salaries, plus added pension credits.

Benjamin estimates that the cost would be \$70 million for a four- to five-month convention (out of a \$163 billion state budget), which he says is consistent with the amounts corporations routinely spend to update their operations.

Right now, “billions are being wasted each year” in Albany, he said.

Whatever the actual amount, Cilento said that New York already has a method to amend the constitution that costs nothing and has been frequently used successfully, such as in the legalization of casino gambling. Cilento said “it’s ironic” that there are two constitutional amendments on this year’s ballot, in addition to the Con-Con proposition.

Benjamin responds that most of the amendments initiated by the Legislature have dealt with largely unimportant matters. “They are not addressing the structural operations of government.”

'Everybody is at risk'

Almost all of the financial muscle behind the anti-convention push is coming from the unions, but numerous nonlabor groups - including advocates of civil and reproductive rights, the environment, and the needy - share the concern that Con-Con deliberations could open a Pandora's box.

"We're not monolithic," said Jordan Marks, manager of New Yorkers Against Corruption. "Nobody is protected in a constitutional convention. Everybody is at risk."

Many nonprofit agencies share that fear.

For example, Environmental Advocates of New York and the Adirondack Council are concerned a convention would undermine a constitutional mandate that the Adirondack and Catskill Forest Preserves be kept “forever wild.”

Planned Parenthood Action New York says on its website that it does not see a convention as “a safe way” to protect reproductive rights at a time when they are being threatened by Washington. “We see this process as vulnerable to insiders and conservative outsiders with big wallets that can make us as a state go backward instead of forward,” it says.

According to its website, the New York Civil Liberties Union “firmly opposes” the convention because “it would place in serious danger our state protections for civil rights and civil liberties. That’s because the process is rigged to favor the interests of the powerful.”

Con-Con advocates are confident that the convention’s decisions would be consistent with what Benjamin calls “the broad values” of New Yorkers, as have the proposals of previous conventions. And if the convention does go rogue, they say, the voters still can reject its proposals.

According to a Siena College poll released Oct 8, 44 percent of registered voters supported the Con-Con, a decline from the previous month, and 39 percent opposed it. But 17 percent still hadn’t framed an opinion. Benjamin and others are expecting a very low election turnout.

Marks compared a Con-Con to the election last fall of President Donald Trump.

"If it has shown us anything, it has shown that elections are unpredictable," he said.

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