



WARWICK BEACON

Warwick Online



NEWS

SPORTS

EDITORIALS

COLUMNS

LIFEBEATS

SOCIETY

OBITUARIES

HOME

CALENDAR

CLASSIFIEDS

LEGAL NOTICES

SURVEY

PEOPLE TO PEOPLE

PHOTO GALLERY

THE BEACON

GENERAL INFO

HISTORY

SERVICES

SUBMIT CLASSIFIEDS

SUBSCRIBE

STAFF/CONTACT US

THE RING

WARWICK INFO

ABOUT WARWICK

COMMUNITY

BUSINESS

CITY HALL

MAPS

PRIME TIME
Magazine

Editorials Search Results

[RETURN TO SEARCH CRITERIA](#)

WARWICK

09/30/2004

Opinion Editorial

By JUSTICE ROBERT FLANDERS

In my opinion, the single greatest need for a constitutional convention is to propose an amendment that would provide that the state constitution is judicially enforceable by the courts through the award of traditional legal, equitable, and declaratory remedies for any proven violations of the constitution. The need for such an amendment may seem surprising. So many people assume, as a matter of course, that the courts may apply and enforce the various substantive rights, duties, and liberties set forth in our state constitution — even without an express clause in the constitution authorizing them to do so. But in a 1998 case, *Bandoni v. State*, the Rhode Island Supreme Court ruled otherwise. The court held that without legislation authorizing the courts to entertain any claim seeking relief under the so-called Victim Rights Amendment to our constitution, the provision in question was not self-executing. In other words, the courts could not enforce the particular constitutional right in question (namely, the right of a crime victim to address the court before the sentencing judge meted out the punishment to the criminal) unless and until the General Assembly first passed a law allowing the courts to do so.

As I argued in my dissent in that case, such a principle, if extended to other constitutional rights and provisions, would give the General Assembly a veto over the state constitution. No one could enforce the fundamental rights and liberties enshrined in that document if the General Assembly failed to pass legislation allowing the courts to hear claims alleging violations of constitutional rights.

Thus, absent a constitutional amendment authorizing the courts to enforce our state constitution by awarding traditional legal and equitable remedies for any violations thereof, the present status of the law in Rhode Island is that our state constitution is not self executing and cannot be enforced in a court of law without the General Assembly passing legislation authorizing the courts to entertain such claims. As a consequence, merely by doing nothing, the General Assembly can convert the constitution — the supreme law of our state — into a dead letter, thereby preventing the people from enforcing their constitutional rights in court.

For this reason alone, even if there were no other grounds to convene a constitutional

convention, I would urge voters to approve the ballot question calling for a state constitutional convention. Moreover, the last convention occurred almost twenty years ago and much has happened since then that cries out for the people to exercise their right of popular sovereignty by taking a close look at whether to change this and various other aspects of our state constitution.

Our state constitution provides in Article I, section I that the "basis of our political system is the right of the people to make and alter their constitution of government." Thus, while the government officials who administer our government are public servants, the people are their masters.

In addition to adding an express provision authorizing the courts to remedy violations of the constitution, a convention should be convened to consider, among other issues, the following:

- (1) Should the ethics commission be allowed to enact regulations banning dual office holding by legislators and other public officials to prevent potential conflicts of interest?
- (2) Should the people's constitutional right to bear arms include the right to carry a weapon for self-defense and other lawful purposes (subject to reasonable licensing requirements), or should it be limited to service in the military?
- (3) Should a person's state constitutional right against being compelled to "give self incriminating evidence" apply to forced extractions of his or her DNA, blood, urine, and other body parts, fluids, and functions?
- (4) Should the ban on lotteries, except those run by the state, include casinos and the various types of gambling activities that occur in such establishments?
- (5) Should the method of proposing amendments to the state constitution be expanded to include methods that do not require legislative approval (e.g., initiative, or referendum)?
- (6) Should the constitutional language barring any member of the General Assembly from taking any fee or from being of counsel in any "case" pending before either house, under penalty of forfeiture of his or her seat, be amended to change the word "case" to "matter"?

The people and their elected delegates should address these and other important issues at a constitutional convention. At a minimum, certain wording in the state constitution should be clarified to eliminate or reduce the ambiguity that presently exists in the above-cited provisions.

RETURN TO SEARCH CRITERIA

A constitutional convention is nothing to fear – and deserves support

It was Franklin Roosevelt who told America that “we have nothing to fear but fear itself.” The same could be said about a constitutional convention for Rhode Island.

Opposition to a constitutional convention generally is not based upon the notion that no changes to our constitution are necessary; rather, the opposition mainly comes from those who are scared of what a convention might try to change. There are worries of amendments pro-life or pro-choice, or a pro or anti-gun, or pro or anti-gay rights – and the list goes on. One could note that this position sounds very similar to the argument against voter initiative itself.

Like voter initiative, however, the answer to the objection rests on one's view of direct democracy of the people v. reliance on the one-party General Assembly.

If you trust the people – or at least believe they will better address (through delegate selection and amendment ratification) the significant constitutional issues pending in our State – then you should favor a Convention.

The fear of a “runaway convention” is quite overstated. Simply put, if a convention proposes an amendment that the people do not like, *they can simply vote it down*. Substantive amendments to the Constitution would be presented to the people on an issue by issue

Your View

Joseph S. Larisa, Jr.

basis. If you don't like it, don't vote for it.

The trouble is that without a constitutional convention we are left to the General Assembly alone to propose amendments to the Constitution – not even the governor has a role.

As Gov. Almond's point person on separation of powers, I can attest to the time and resources that even the most meritorious constitutional amendment requires. It took more than 10 years and two Supreme Court cases, two gubernatorial advisory questions to the public (both of which passed by huge margins) and tons of work by our office and good government groups to get even the most fundamental good government amendment (the law in 49 other states) on the Rhode Island ballot as an amendment.

We still don't have even the most modest voter initiative amendment on the ballot. Other key changes, such as fixing the role of the lieutenant governor, increasing the percentage necessary for a veto override, line item budget veto power for the governor

and many more all deserve to be debated and possibly presented to the voters directly for their final say.

None have come out of the General Assembly yet. Instead, what almost came out was a last-minute proposed change to the constitution without notice or debate to allow a private entity to operate a Rhode Island casino.

The other objection to a constitutional convention is that it would be controlled by the legislature. To that I say, that's no worse than right now, where any and all constitutional amendments are controlled by the legislature.

At least with a constitutional convention there is a fighting chance for public spirited elected delegates and proposals to the voters of meritorious constitutional reforms ignored by the legislature for years. Again, if the amendments emanate from the convention are ill-advised, the people can simply vote them down.

If you fear legislative inaction on important constitutional issues more than you worry about action directly by the people on those issues, then you should favor a convention.

Joseph S. Larisa Jr. is the former chief executive counsel to Gov. Lincoln Almond and now serves as Charlestown's assistant solicitor in charge of Indian affairs.

Westerly Sun

Oct. 4, 2004

THE SUN

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The Westerly Sun publishes seven days each week, an afternoon edition Monday through Friday, and a morning edition on Saturday and Sunday.

October 5, 2004

General Assembly's own actions provide reasons to vote for constitutional convention

In early July, the 12-member Bi-Partisan Preparatory Commission for a Constitutional Convention was formed. I was one of four public members; the remaining eight were Rhode Island legislators.

Over the next five weeks, the commission held six public hearings in Newport, West Warwick, Woonsocket, Bristol, Westerly and Providence. Only six hearings were possible, in view of the requirement that the commission file a final report by Aug. 20. The necessity to hold hearings on short notice, at the height of summer activity, undoubtedly limited the audience. Nevertheless, approximately 70-75 testified. They were well-prepared, articulate and passionate in expressing their views. Having embarked upon the process without knowing what to expect, the hearings proved to be an enlightening experience.

The purpose of the commission was to prepare a report that would recommend issues to the Constitutional Convention of sufficient importance to justify the

Your View

Harry Staley

convening of a Constitutional Convention. Whether or not to hold a convention would be determined by the voters on Nov. 2.

As the hearings progressed, a substantial number of potential issues were heard, some repeatedly. Occasionally, a new issue, or an interesting variation, was raised. Regardless of one's personal view, it was heartening to meet face-to-face with fellow citizens who expressed their views with conviction, and in the interest of the common good.

The most surprising issue, however, centered around the basic question: Should there be a Constitutional Convention? It seemed clear that, a substantial majority of those who testified favored a Constitutional

Convention. There was testimony to the contrary, including that of representatives of Common Cause and the ACLU. The major concern was that a constitutional convention, once convened, would be unrestrained as to the issues it chose to address and might careen out of control, resulting in one or more "off the wall" recommendations that would pose a serious threat to democratic ideals and/or institutions. The potential cost of a convention, the learning curve required of delegates, and the time and energy required of the effort were other expressed concerns.

Convention opponents suggested that the legislative process provides a better and more accountable process for working constitutional change. It was felt that the legislature could be relied upon to do the kind of background study, interpretation and drafting that would ensure a more orderly and secure amendment process.

It is this latter point that causes OCG, the Rhode Island Shoreline Coalition and others to reach a different conclusion con-

cerning the proposed constitutional convention. The issue is, quite simply, "In whom do we repose the greater trust, the Assembly or the people?"

One must begin by recognizing that the General Assembly is a one-party legislative body. The most recent session of the Legislature, particularly the last minute actions taken without adequate public input, makes the strongest and most convincing case for our position.

In a last-minute effort to save a clearly unconstitutional law, the Senate proposed an amendment to the constitution that would have bypassed an adverse Supreme Court decision and paved a way for a private corporation to build a casino in West Warwick.

In the wake of a public outcry at this tawdry episode, the amendment was withdrawn. So much for the careful "background study, interpretation and drafting" that opponents of the Constitutional Convention stated would insure a more orderly and secure amend-

ment process.


The end-of-session actions of the Legislature which resulted in a General Assembly override of the governor's veto of other critical issues, only serves to create additional concern about relying upon a single party Legislature to act in a responsible, above-board manner in its approach to Constitutional change.

Based upon the sordid history of Rhode Island's legislative leadership, the ill-advised, 11th-hour actions of the Legislature, and the overwhelming power and influence of a one-party system, those who favor a Constitutional Convention do so because "We trust the people, more than we trust the Legislature."

We urge the citizens of Rhode Island to vote for a constitutional convention on Nov. 2.





Harry L. Staley is president of the Rhode Island Shoreline Coalition and a member of the 2004 Bi-Partisan Preparatory Commission for Constitutional Convention.

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Warwick Online

[NEWS](#)

[SPORTS](#)

[EDITORIALS](#)

[COLUMNS](#)

[LIFEBEATS](#)

[SOCIETY](#)

[OBITUARIES](#)

[HOME](#)

[CALENDAR](#)

[CLASSIFIEDS](#)

[LEGAL NOTICES](#)

[SURVEY](#)

[PEOPLE TO PEOPLE](#)

[PHOTO GALLERY](#)

THE BEACON

GENERAL INFO

HISTORY

SERVICES

SUBMIT CLASSIFIEDS

SUBSCRIBE

STAFF/CONTACT US

THE RING

WARWICK INFO

ABOUT WARWICK

COMMUNITY

BUSINESS

CITY HALL

MAPS

PRIME TIME

Editorials Search Results

[RETURN TO SEARCH CRITERIA](#)

WARWICK

10/26/2004

Question 2: A safe route for reform

To the Editor:

Rhode Island's 2004 political dialogue is hearing the loudest citizens' voices since Thomas Dorr's rebellion in 1843. Whereas Thomas Dorr put guns into the dialogue of his day, the new citizen activism uses sophisticated communications to make its points. The busiest such group, Operation Clean Government, is crossing the state with public forums co-sponsored by local newspapers that support its issues. OCG members are linked electronically for strong response to their representatives. The group raises money to promote its views. Radio talk show hosts discuss the group's ideas supportively. Currently, OCG is using 250,000 newspaper inserts statewide to inform citizens about the key issues on the upcoming ballot. The newspaper insert is called "RI Citizen Alert."

The key issue motivating this high level of citizen reform activism is the same one that activated Thomas Dorr and his followers in 1843: the state constitution. Dorr's frustration was more serious: no constitution at all. Today's problem is a constitution that has not been reviewed for a generation – that is, since 1986.

Rhode Island's political situation adheres to democracy's most persistent tragedy: inside exploiting government for selfish purposes while the public is absorbed by the personal concerns of earning a living and raising families. Citizen activists are the one-tenth of one percent of people who view this with alarm and try to warn their preoccupied neighbors.

The focus of OCG's 2004 activism is Question 2 on the November 2 ballot: Shall there be a state constitutional convention? Or not? The present document itself requires citizens consider a review at least every 10 years.

Coincidentally, this once-a-decade chance to review the Constitution comes up at the same time as citizen approval is asked for an amendment to establish separation of powers in the Constitution, which is Question 1 on the ballot. Question 1 took a decade of citizen activism and lobbying to reach the ballot.

A constitutional convention takes time, work and money. Would it be a fishing expedition or are drop-dead issues at stake? You decide.

Right now, according to Justice Robert Flanders, who just resigned from the Supreme

Court, your State Constitution is not "self-executing." Translation: it can't do anything for you unless the legislature passes a specific law permitting it to be applied to your case. Is that enough of a drop-dead issue for you?

Or this: Our governor, a former successful CEO businessman, is now the CEO of a state with a multi-billion dollar budget. He has no line item veto. Every budget sent to him by the legislature comes with a built-in suicide clause: approve or reject it in total or there is no budget. A business CEO would never perform with such terms.

Dozens of other issues cry for resolution by an overdue constitutional convention. Most of them seek to prevent another long-standing habit: State House insiders controlling government while they themselves are being controlled by special interests.

It's not surprising then, to see who opposes a constitutional convention: present legislators, special interests and other insiders such as the lobbyists who work closely with legislators. They are all comfortable with this status quo.

At its most fundamental level, Question 2 is a contest between insiders and outsiders. Citizens and their activist leaders, of course, are outsiders. You are not welcome in the back rooms of power.

Convention opponents try to scare citizens with undocumented stories about hot-button social issues related to marriage, guns, birth control, etc. Yet, every decision reached in convention must pass the muster of your ballot vote months later. There are no surprises such as the "midnight massacre" legislation typical of every Assembly session. Many legislators favoring a convention say the convention is a safer road for initiating reform than is the political process of an Assembly dominated by one party.

A constitutional convention is an adventure in basic democracy. You should experience it at least once in your lifetime. Young people especially should be exposed to the process which will remind them of their democratic responsibilities.

After every government disaster Ocean State citizens express their resigned cynicism with a sad little saying: "Only in Rhode Island." A constitutional convention would be a timely airing of our system. It might help end that resignation to failure. You owe it to yourself to approve Question 2 and then get involved in the convention process next year. As the first constitutional convention held with a strong citizen activist movement in force it could be "A People's Convention" – your convention.

Will Barbeau

Barrington

Mr. Barbeau is a member of Operation Clean Government's Board of Directors.

RETURN TO SEARCH CRITERIA