

State's constitution ain't broke, so we should not try to fix it

Jim Baron , Call Columnist

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It's one of those things that seems like a really good idea, until you give it some thought.

Referendum Question 2 on the November ballot would call a constitutional convention. Rhode Islanders would elect delegates who would give the constitution a looking over and recommend changes that would be on the ballot two years from now.

Sounds great, doesn't it?

Rhode Island's best and brightest citizens gathering in a room and putting forth their ideas to straighten out the way the state is run. They could deliver us Good Government.

The problem is, it won't happen that way.

Remember back in 2000, when Rick Pitino was the head coach of the struggling Boston Celtics and he felt compelled to tell reporters: "Larry Bird is not walking through that door. Kevin McHale is not walking through that door. Robert Parish is not walking through that door"?

That's kind of how I feel about Question 2.

Just because we call a constitutional convention, James Madison isn't going to walk through that door. Alexander Hamilton is not going to walk through that door. Thomas Dorr is not going to walk through that door.

No, while watchdog groups like Operation Clean Government (which advocates strongly for a constitutional convention), and good government types like Common Cause (they're against the idea) would probably get a handful of their members elected, for the most part a constitution convention would be made up of the cronies and coholders of people already in power. That's how it worked last time there was a constitutional convention, in 1986. That was a debacle people are still talking about.

If we had an engaged, involved and well-informed electorate that took its role in our government seriously -- by, for example, bothering to show up to vote and then selecting only the best, most public-spirited people to be delegates -- then maybe we could think about it. But you and I know that the turnout for the convention election would be squat and only people who thought they might have something to gain -- politically, personally or ideologically -- would put their names forward as delegates.

We need to become better citizens before we go fancying ourselves framers of a modern-day constitution.

Amending a constitution is serious business and should only be done when absolutely necessary. Throwing the entire document open to wholesale change is something to be avoided if at all possible.

As Steven Brown, head of the Rhode Island ACLU, said Friday, "having a group meet to tinker with the constitution is not appropriate. Constitutions are not meant to be fiddled with by people

with nothing better to do."

Why do you think there hasn't been a federal constitutional convention since the 1790s? Because some things are better left, as Donald Sutherland says in the orange juice commercial, "un-fooled-around with."

The idea of a constitution is to establish the structure of government and secure individual rights. The U.S. Constitution is very solid in those areas, and the Rhode Island Constitution is even a bit stronger in some areas of individual rights (for instance, no mealy-mouthing about well-regulated militias; Rhode Island's constitution says "The right of the people to keep and bear arms shall not be infringed."Period.).

The rights of minorities, immigrants, gays and any other marginalized group would be in grievous danger the moment the opening gavel of a constitutional convention sounded.

Steve Brown again: "The disasters that can occur are enormous.

"A constitution is supposed to be a protection against the tyranny of the majority," Brown noted. "A constitutional convention works the opposite way. The reality is it is a political animal with fewer checks or balances than the legislature."

In the General Assembly, he points out, there are two chambers that have to pass each measure.

A convention would be one group of people. And the governor would not be able to veto anything; whatever the convention passed would go straight to the ballot.

Common Cause's Phil West agreed, saying that citizens have been successful in getting "significant constitutional amendments through the General Assembly."

The legislative process, West notes, allows for hearings and extended debate, with opportunities for public input. A constitutional convention would guarantee none of those things.

West points to the separation of powers debate. Yes, he says, it was a struggle, but he believes the version passed in 2003 that will be on the ballot in November was stronger than the one the Senate passed in 2002, and it was the extra year of debate and public input that made that happen.

The Common Cause board of directors is "skeptical" about a convention, West said.

"I think there are some dangers," West explained. "Some real harm could come out of it." He called the notion that a constitutional convention would provide citizens with a forum for improving and fine-tuning government is "sincere but probably wrong."

Proponents of a convention would say that no amendment would become effective unless voters ratified it. That is true as far as it goes. But one can only guess what would actually be put to voters and in what form.

Recall the several constitutional changes that passed in 1994. That wasn't the result of a convention, but it was a slew of constitutional changes that had to be approved by voters.

We were bamboozled in that process.

Anger was high back then about legislative pensions. People wanted to get rid of legislative pensions. So a measure went on the ballot to eliminate legislative pensions.

The problem was, if a voter wanted to approve the elimination of the pensions, he or she also had to approve a legislative pay raise, and downsizing of the legislature, and replacing the lieutenant governor as president of the Senate with a senator elected by the body. It was a package deal; you only got one vote on four separate and distinct changes to the constitution. You had to eat them all or reject them all.

(That's why Keven McKenna may be right and we should probably vote separately on each change to the constitution in the upcoming separation of powers amendment, which is Question 1 on the ballot. A referendum that doesn't seek a separate vote for each change to the constitution shortchanges the electorate and is something less than legitimate, no matter what the Supreme Court says.)

Speaking of separation of powers, a constitutional convention dominated by flunkies of the powers that be could turn about and gut separation of powers without any incumbent politicians getting their fingerprints on the knife. You could pass separation of powers with a vote on Question 1 and set in operation its downfall with Question 2.

The Rhode Island Constitution ain't broke. We shouldn't be trying to "fix" it.

Jim Baron covers politics and the State House in Rhode Island for The Times of Pawtucket and The Call. He can be reached at: polasus@lycos.com

Reformers part ways on Question 2

Jim Baron

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PROVIDENCE -- Question 2 on the November ballot, a referendum on calling a constitutional convention, is splitting the reform community in the state.

On one side is Operation Clean Government (OCG), the government watchdog group which asserts that a convention would "empower people to have a direct impact on their government."

OCG's usual ally, Common Cause, is part of a coalition of groups that say a convention is not necessary, would be costly and could imperil civil rights and liberties.

If voters approved a convention in November, vows OCG Chairman Robert Arruda, it will be far different from the last one, held in 1986.

The 1986 conclave, Arruda acknowledges, was "controlled by the majority party" in the General Assembly.

The difference this time, he believes, is "we've got a very healthy and I would even say powerful reform movement in the state." If the powers that be try to dominate the convention this time, he said, "they will not be unopposed."

"We won't sit by passively when the only people running are those with a personal agenda" or following the lead of the legislature, Arruda said Monday on a visit to The Times to campaign for passage of Question 2.

"We are a very powerful group with a far reach in this state and we intend to see to it that this is going to be a people's agenda. We have an agenda and intend on pursuing that agenda."

The only items on that agenda, he said, are "accountability and transparency in government. We are going to raise the bar in government."

OCG, he said, will try to translate some of that grass-roots clout into recruiting and coaching reform-minded citizens to run effectively as delegates to the convention.

If Question 2 is approved, 75 delegates, one from each state representative district, will be elected on a non-partisan basis to participate in the convention.

Arruda said OCG has been working for years now to gather lists of people willing to run and it will hold a special session of its Candidate's School to educate potential delegate on how to run a political campaign, how to raise money and other aspects of getting elected.

"They will be trained how to run and we will give them the tools to run," Arruda said.

"I have a lot more faith in the people than I do in the legislature," Arruda said, answering arguments made by Common Cause's H. Philip West Jr. that amending the constitution through the legislative process has been successful recently, bringing reforms such as separation of powers, judicial selection and downsizing the legislature.

The General Assembly, Arruda said, "cared about CVS and Harrah's. They didn't care about us. They threw us a bone" by passing the separation of powers amendment that will be Question 1 on the ballot.

Arruda rejected what he called the "Band-Aid approach" where constitutional amendments are passed only after a scandal or a crisis. "I want to look at the constitution as a cohesive document. A state constitution is more of a living document that should reflect the will of the people generationally."

As for the opponents' worry that a constitutional convention would be a threat to civil rights, Arruda said "I don't believe the people of Rhode Island will vote to take away anyone's civil liberties."

Opponents of Question 2, including Common Cause, the state affiliate of the American Civil Liberties Union, Ocean State Action and Planned Parenthood, gathered at the historic Old State House Monday to urge Rhode Islanders to reject the convention.

ACLU Executive Director Steven Brown said a convention could present "a danger to civil rights" and would not be "as accountable to the public" as proponents claim.

Constitutional conventions, he asserted, "will always be mired in raw political wheeling and dealing."

Former Sen. Lila Sapinsley told a morning press conference that when she was elected a delegate to the 1986 convention, she believed that "good government issues were going to be discussed in a non-partisan way. I was extremely naïve."

Instead of getting resolutions on a line item veto, separation of powers, changing judicial selection and teaming the governor and lieutenant governor, Sapinsley said, "before I was named chairman (of the government committee) the decisions were already made on what would and would not pass."

If another convention is called, Sapinsley warned, "I guarantee you that once again it will be a fiasco."

Toby Ayers of the Civil Rights Roundtable worried what a convention would do to individual liberties and minorities. "Civil rights are for all," Ayers said. "They should not be given or taken away by majority rule."

Estimating that a convention would cost approximately \$2 million, Karen Malcolm of Ocean State Action said a convention would "siphon money away from more urgent needs. It is too much to pay to curtail civil rights."

West noted that asking once every 10 years whether a constitutional convention should be called, as the constitution now requires, is "a safety valve. The question is, do we need that safety valve now?"

No need now for a constitutional convention

GARY SASSE

H. PHILIP WEST Jr.

ON TUESDAY, Rhode Island voters will decide whether this is the right time to convene a constitutional convention.

We are convinced that a constitutional convention is not needed now. We offer four reasons: the need to fully implement separation of powers; the potential impact on civil liberties; questions of a convention's accountability; and an estimated \$2 million price to amend the state constitution, when more cost-effective ways are working.

There are two ways to amend the state's fundamental law: Either the General Assembly or a constitutional convention can propose amendments. In either case, the people then vote in a general election to approve or reject the proposed amendments.

At first glance, a constitutional convention sounds like a great idea. It's a chance for people to get together and improve our state's most fundamental document, right?

Not necessarily.

In 1986, the voters approved the Ethics in Government Amendment proposed by the constitutional convention, but inadequate constitutional language left the Ethics Commission subject to bureaucratic siege and political manipulation.

Compare that with the record of constitutional reforms that have emerged from the General Assembly in the last 12 years. Public pressure forced four major amendments onto the ballot:

- Four-year terms for statewide general officers.
- Merit-selection of all state judges.
- Legislative modernization.
- Separation of powers.

The Rhode Island Constitution requires that voters be asked at least once every 10 years whether they wish to convene a constitutional convention. This is a useful safety valve. It keeps lawmakers on notice that if they fail to place needed reforms on the ballot, the voters have another way to amend the constitution.

Some think a vote against a constitutional convention means that the constitution could not be changed for another decade. Not so. In fact, a constitutional-convention question or a specific amendment can be placed on the ballot by the General Assembly in any general election.

Last summer, as required under the constitution, a Bi-Partisan Preparatory Commission assembled information to help the voters decide about a constitutional convention. The commission noted that reforms rejected by the 1986 convention had been later placed on the ballot by the General Assembly.

In 1992, the General Assembly asked the voters whether they wished to extend the term of statewide elected officers from two years to four, including a recall process and a two-term limit. The voters approved.

In 1994, the General Assembly placed on the ballot a revised system for the selection of judges, including a Judicial Nominating Commission to propose a short list of highly qualified candidates to the governor. The voters approved.

Also in 1994, the General Assembly proposed an amendment to incorporate major reforms relating to its own structure and operation. These included: reduction in the legislature's size, resolution of the long-simmering legislative-pay issue, and elimination of legislative pensions. The voters approved.

In 2003, the General Assembly placed a separation-of-powers amendment on the 2004 ballot. If approved, this amendment will provide stronger accountability in the executive branch and enhanced public oversight from the legislature.



What further reforms are needed now?

The citizens who testified before the Bi-Partisan Preparatory Commission offered such diverse suggestions for constitutional change as casino gambling, definition of marriage, line-item gubernatorial veto, voter initiative and referendum, an independent redistricting commission, and permission for non-resident property-tax payers to vote in financial town meetings.

Is there a compelling reason to address these questions in a constitutional convention right now? We think not. We see four reasons not to convene a constitutional convention.

First, Rhode Island needs to fully implement the separation-of-powers amendment before attempting further constitutional change. Separation of powers will restructure state government in ways that need to be absorbed and understood before we rush into further changes. For example, should voters desire a line-item veto, its design could be affected by the implementation of the separation-of-powers provisions.

Second, the Bi-Partisan Preparatory Commission estimated that a constitutional convention would cost \$2 million. Is a \$2 million constitutional convention of higher priority than property-tax relief or sustaining a public-transportation system?

Third, a constitutional convention could undermine civil liberties. There are no limits on the issues that the gathering can address, so, as in 1986, it could easily become a battleground over socially divisive amendments that affect basic civil liberties.

Fourth, a constitutional convention is less accountable to voters than the General Assembly. The convention delegates are chosen in off-year elections, when voter turnout is low. And there are no limits on the amount of campaign contributions that the delegates may accept; because they do not have to stand for re-election, the delegates can focus on single interests.

A constitutional convention now could undercut recent reforms and distract from the important work of properly implementing separation of powers. It would cost \$2 million and could do more harm than good.

Gary Sasse is executive director of the Rhode Island Public Expenditure Council; H. Philip West Jr. is executive director of Common Cause of Rhode Island.