Thank you, members of the Bipartisan Preparatory Commission.

Before I talk about specific issues a convention might address, I need to say three words about how I hope delegates will be elected: INSTANT RUNOFF VOTING.

In November 1985, 562 candidates ran for 100 seats in the 1986 convention.
Many districts drew between six and ten candidates.
Many delegates were elected by far less than majorities in their districts.

INSTANT RUNOFF VOTING provides an answer to that problem.
IRV allows voters to rank their first, second, third, and fourth choices.
If your first choice isn't elected, your vote transfers to your second choice.
It's like going into an ice cream store and saying:
If I can't get coffee ice cream, I'll take blueberry.
I may not get my first choice, but I'll get one that I want.

IRV has been established and tested in four American cities—
San Francisco, Oakland, Berkeley, and Minneapolis.
It's also well established in many other countries.
It allows voters to rank their choices.
http://www.fairvote.org/reforms/instant-runoff-voting/what-is-irv/
http://www.fairvote.org/reforms/instant-runoff-voting/where-instant-runoff-is-used/

Whatever this commission recommends regarding specific issues
I hope you will urge the General Assembly to establish a process that ensures that all delegates are elected by majorities of voters in their districts.

The Board of Elections is planning to get new optical scan voting machines, hopefully in the fall of 1985, and I hope this commission will urge that we get the software capacity to handle INSTANT RUNOFF VOTING.

I'm grateful for an opportunity to suggest 3 topics that I believe we must take to a constitutional convention because the General Assembly has been unable or unwilling to deal with them over many years.

Ten years ago, in 2004, Gary Sasse and I argued in an opinion piece that there was no need for a constitutional convention.
We cited questions the General Assembly had placed questions on the ballot that allowed voters to amend the Constitution—even when the amendments curtailed cherished prerogatives of the legislature itself.

But since then the General Assembly has repeatedly blocked
vitally important constitutional questions. Today I'll mention only three.
Each would require a constitutional amendment.

1. BRING THE GENERAL ASSEMBLY BACK UNDER JURISDICTION OF THE ETHICS COMMISSION.

A majority of Supreme Court justices issued a 2009 decision
in *Irons v. RIEC* (973 A2d 1124, 29 Jun. 2009) that was based on a false premise.
They overturned a quarter-century of jurisprudence.
They destroyed the Ethics Commission's authority
to advise legislators about conflicts of interest or
to investigate any complaint involving what the majority
called legislators' "core legislative acts."

Justice Paul Suttell filed an articulate dissent in which he focused
on the clear intent of the framers at the 1986 Constitutional Convention and
on the will of the voters who approved the Ethics in Government Amendment.

In five full legislative sessions since *Irons v. Ethics Commission*
the General Assembly has proved unwilling or unable to pass a simple amendment
that would **let the people decide who writes ethics rules.**
This year, the Senate passed a possible amendment
that would have done even worse damage to the Ethics Commission.

I understand why legislators don't want to be subject to the Ethics Commission—
many love their bubble of immunity—
but it's time to let the people decide.
I believe the people in overwhelming numbers will agree with Justice Suttell.

THE BOTTOM LINE:
Only a constitutional convention can repair the damage done
by the Supreme Court's flawed reasoning in *Irons v. Ethics Commission*
and the General Assembly's determination to escape accountability
under ethics rules for all the other public officials in Rhode Island.

2. RESTORE THE INDEPENDENCE AND JURISDICTION OF THE JUDCIAL NOMINATING COMMISSION.

In the early 1990s I was deeply involved in trying
to establish merit selection for all Rhode Island judges.
The governor and leaders in both the House and Senate resisted that reform
as if it were poison until the summer of 1993, when scandal
forced the resignation of the second chief justice in seven years.

Scandal created a brief opportunity for reform.

People across the state agreed it was time
to squeeze some of the political deal-making out of judicial selection…

After a fierce political struggle in the spring of 1994,
the General Assembly enacted a new system
for choosing judges in the lower courts.
It took a constitutional amendment to end
the election of Supreme Court justices "in Grand Committee."
The General Assembly put that question on the ballot as Question 1.

Seventy per cent of state voters approved.
But from the very beginning, governors and legislative leaders
resisted the new process and sought to disable it.

From the beginning, they appointed lobbists, friends and law partners
as members of the Judicial Nominating Commission.

Under the law and the Constitution, the Judicial Nominating Commission
must present to the governor "not less than three and not more than five
highly qualified persons for each vacancy."

In 2007 Gov. Carcieri proposed legislation that would let a governor
consider all nominees for vacancies on the same court
during the previous three years.[1]
Legislators of both parties rushed to oblige him
and raised the three-year "look-back window" to five years.
They multiplied the number of candidates for each vacancy.
The governor and legislative leaders restored backstage candidate swapping
that had been routine before the Supreme Court patronage scandal of 1993.

To make matters worse, the General Assembly began creating "magistrates,"
who wore judicial robes, exercised judicial powers, and took home judicial
salaries. But magistrates were appointed by the chief judges of the various courts
with no scrutiny by the Judicial Nominating Commission.
In 1994, when voters approved merit selection for all state judges,
there were five "masters" in the entire judicial branch.
Renamed "magistrates," their number swelled to twenty-one in 2012.

Most of the newly minted magistrates were relatives or close associates
of top legislative leaders. (You don't want me to read the list today.)

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[1] Edward Fitzpatrick, "Governor asking for more flexibility in picking state judges," PJ, 21 Feb. 2007: B-02. Cf. 07-S 0892, "An Act Relating to Courts and Civil Procedure—Courts—Judicial Selection," by Sens. Blais, Breen, Algiere, and Gibbs, 22 Mar. 2007; 07-H 6324, (same title), by Rep. Watson, 26 Apr. 2007.

Once safe in ten-year magistrate terms,
some began applying for and winning judgeships.
The magistrate process is an end-run around the Revolving Door Law.
It's a sham that mocks the voters who approved
merit selection of all Rhode Island judges.
Many bills have been introduced to end these abuses,
but they never get out of the House and Senate Judiciary Committees.

Only a constitutional convention can address this systemic undermining of what voters approved in 1994 as Merit Selection of Judges.

3. ESTABLISH AN INDEPENDENT REDISTRICTING COMMISSION WITH CONSTITUTIONAL STANDARDS.

In four successive rounds of redistricting—1982, 1992, 2002, and 2012—
reformers have advocated for an independent and nonpartisan process
that would serve communities rather than incumbent legislators.

Over four decades, legislative leaders have crushed every proposal
that might have curtailed their power and protected communities
in the process of drawing House and Senate district maps.
Meanwhile, advances in computer technology
have made it child's play for legislative leaders to draw districts
that protect their allies and eliminate their enemies.
Neither constitutional amendments nor genuine reforms have been enacted.
Decade after decade, legislative power has carried the day.
Communities have suffered the consequences,
and taxpayers have been stuck with many millions in legal bills.

Federal lawsuits filed in 2002 ended in a negotiated settlement
and the redrawing of Senate districts around Providence.[2]
But five East Bay towns that sued in Superior Court over blatant factional
gerrymandering were rebuffed.

Ironically, Sen. President William Irons prevailed in Superior Court[3]
only weeks before scandal engulfed him.

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[2] Edward Fitzpatrick, "New Senate map settles lawsuit over redistricting," PJ, 22 May 2004: A-01. Cf. *Metts v. Almond,* 217 F. Supp. 2d 252 (D.R.I. 2002), which was moving to trial in Mar. 2004 before the U.S. Court of Appeals, 1st Cir. as *Metts v. Murphy,* 02-2204, 30 Mar. 2004, when the settlement came.

[3] 02-4578, *Parella v. Irons,* 8 Oct. 2003.

The Rhode Island Supreme Court later upheld those gerrymanders,[4]
and they shaped the East Bay district maps for a generation
after Irons left the Senate in disgrace.[5]

Other states have developed better approaches.
Iowa has an excellent model that has dramatically reduced gerrymandering.
In California, citizens used voter initiative in 2008 to establish
an independent Citizens Redistricting Commission,
a genuinely independent commission with justiciable standards.
The goal is to draw districts that protect communities rather than incumbents.[6]
With RI's sad history of gerrymandering for factional or partisan advantage,
it's time to consider the California model.

I urge you to list these three issues for a Constitutional Convention:

1. **Bring the General Assembly back under jurisdiction of the Ethics Commission.**
2. **Restore the independence and jurisdiction of the Judicial Nominating Commission.**
3. **Establish an independent redistricting commission with constitutional standards.**

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[4] *Parella v. Montalbano,* 899 A.2d 1226, 9 Jun. 2006.

[5] See Ch. 40. See also
http://www.elections.ri.gov/publications/Election_Publications/Voter_Info/2012_RI_Senate_Districts.pdf

[6] http://wedrawthelines.ca.gov/maps-final-drafts.html