

N.Y. / REGION

# A Constitutional Convention for New York? This May Be the Year

By LISA W. FODERARO JULY 5, 2017

ALBANY — Every 20 years, New Yorkers have the chance to vote whether they want to hold a constitutional convention to amend, tweak or otherwise improve the founding document of the state.

For the past half-century, voters have demurred. This year, however, academics, good-government groups and others believe the outcome of the ballot question in November may be different. And — perhaps no surprise — it has something to do with the current occupant of the White House.

“Trump’s election emphasizes how valuable it is for states to chart their own course,” said Peter J. Galie, author of “Ordered Liberty: A Constitutional History of New York” and a professor of political science at Canisius College in Buffalo. “We can put a right to clean air and water in our Constitution. If we want to add more labor protections, we can do it. That’s the beauty of federalism.”

But before voters confront the ballot question, they will no doubt be barraged by campaigns for and against a constitutional convention, affectionately called Con-Con.

Nonprofit groups interested in issues including campaign finance reform, redistricting, term limits and the legalization of marijuana have come out in favor of a convention. They argue that the state Legislature is unlikely to take up these thorny, politically treacherous topics. At the same time, unions like the United Federation of Teachers and state legislative leaders have argued against a convention, saying it could repeal hallowed protections.

There are some offbeat — some might say flaky — positions that advocates say could come about only during a constitutional convention. They include calls for a unicameral Legislature — doing away with the Assembly or Senate — and the division of the state into autonomous regions, with separate regional governors and legislatures.

The last constitutional convention held in the state was called by the Legislature in 1967. That convention's recommendations, which voters had to approve in a subsequent ballot, were ultimately turned down. The last convention that voters actually requested themselves occurred nearly 80 years ago, in 1938, when a number of protections were added to the Constitution.

Gerald Benjamin, a professor of political science at the State University of New York at New Paltz, has long advocated a constitutional convention. Former Gov. Mario M. Cuomo appointed a commission to prepare for a vote in 1997 on such a convention, appointing Professor Benjamin research director. But when Gov. George E. Pataki came into office, he expressed a distinct lack of interest, and voters turned it down.

“We have a convergence of opportunities and circumstances,” said Professor Benjamin, who is co-editor of a new book, “New York’s Broken Constitution: The Governance Crisis and the Path to Renewed Greatness.” “We have a government with very serious challenges and problems, some of which are visible and some are not, and we have an aroused public that is angry about government in general.”

Professor Benjamin believes that a constitutional convention could correct a number of problems endemic to the 50,000-word state Constitution, including the administration of elections, campaign finance and the structure of the judiciary. He

also thinks the state Legislature would be more effective with one house, instead of an Assembly and Senate, also known as unicameralism.

“I don’t like a three-way negotiation,” the professor said, referring to talks between the leaders of the Assembly and Senate and the governor. “Two-way is simpler and it’s easier to come to outcomes.”

If voters approve a convention, delegates would be elected in 2018, with the convention held the next year.

But just as some academics, advocates and Gov. Andrew M. Cuomo have asserted that a constitutional convention could spawn long-overdue changes, others fear that existing rights could be repealed. Both the leaders of the Assembly and Senate have gone on record against a convention.

Mike Whyland, the spokesman for the Democratic-controlled Assembly, said that a convention could jeopardize hard-won labor protections. “It has the potential to roll back important worker protections and other rights, and that’s not something we’d be open to,” he said.

Similarly, Scott Reif, spokesman for the Senate majority leader, John J. Flanagan, a Republican, said a convention would be a waste of money.

“A constitutional convention will cost hardworking taxpayers millions of dollars that could be better invested in schools, road and bridge construction, and tax cuts,” he said. “In addition, the possibility exists that radical New York City interests could seize control of the process, spend huge sums of cash and cause irreparable damage to our state government.”

The clash between upstate and downstate interests has resulted in one of the more peculiar issues to surface in advance of the convention ballot.

John Bergener Jr., a retiree who lives outside Albany, would like to see the separation of New York City from the rest of the state. As chairman of Divide NYS Caucus, a political committee, he believes a constitutional convention is the best mechanism to achieve that.

Upstate areas, he said, have suffered economically from excessive business regulations and unfunded mandates. His vision — and he claims thousands of supporters — calls for two or three autonomous regions, each with its own regional governor and legislature. (The upstate region, north of the lower Hudson Valley, would be called New Amsterdam.) A statewide governor would be titular, with the same “powers as the queen of England.”

Other groups like Citizens Union and the New York State Bar Association are pushing for more mainstream provisions, such as ethics reform and restructuring the judiciary. Another issue is home rule — the tenet that counties and municipalities control their own destinies. Under the current state Constitution, any function or power not expressly accorded to municipalities defaults to the state. Bill Samuels, founder of Effective NY, a nonprofit research center, said the Constitution should state just the opposite.

He asserts that upstate lawmakers have no place deciding on policies that affect New York City. “Why should upstate Republicans, or Democrats, be voting on a plastic bag ban or congestion pricing or mayoral control of schools?” he asked rhetorically.

Whether delegates get to debate and possibly remake the Constitution remains to be seen. A coalition of more than a hundred disparate groups, called New Yorkers Against Corruption, has formed to dissuade voters from approving a convention. Its website claims that “politicians, lobbyists and special interest groups will hijack a constitutional convention and game the system for themselves.”

The coalition brings together such odd bedfellows as anti-abortion and abortion-rights organizations, environmental groups and gun-rights advocates, as well as the state’s Conservative Party and the left-leaning Working Families Party. “Every value that we hold is at risk here,” said Jordan Marks, the coalition’s campaign manager.

But convention proponents say that any fear of lost rights is misplaced. Dr. Galie said no constitutional convention in state history had resulted in the loss of a major right or protection. Rather, the conventions have added new ones. The convention of

1938, he said, created a constitutional safety net for the poor, as well as a so-called labor bill of rights.

He insists that the torpor in the state capital demanded that citizens make an end-run around lawmakers. “There are many issues the Legislature simply doesn’t take up,” he said. “It buries these things in the bowels of Albany.”

***Correction: July 5, 2017***

An earlier version of this article misidentified the website for the coalition New Yorkers Against Corruption. Its website is [www.nyagainstcorruption.com/](http://www.nyagainstcorruption.com/), not [nonewyorkconvention.org](http://nonewyorkconvention.org).

A version of this article appears in print on July 6, 2017, on Page A17 of the New York edition with the headline: A Chance to Change New York’s Constitution.