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CONSTITUTIONAL CONVENTION****REPORT ON DELEGATE SELECTION PROCEDURES**

On Election Day, 2017, New York State voters will face the following question on the ballot: “Shall there be a convention to amend the constitution and revise the same.” New York’s constitution requires that this question be placed on the ballot every 20 years. Voters last considered this question in 1997, and voted against convening a convention. However, much has changed in the past 20 years, and it remains to be seen if the New York electorate feels the time is right for such a convention. While there have been amendments to the constitution, the last extensive revisions to the constitution took place in response to a constitutional convention held in 1938.<sup>1</sup>

Should voters approve calling a convention this time around, delegates to the convention would be elected in 2018 and the convention would begin its work in April, 2019.<sup>2</sup> The results of the convention’s deliberations would then be placed before the voters for approval.

In anticipation of the 2017 vote, the New York City Bar Association created a Task Force to consider both the procedural and substantive aspects of calling a convention, including legislative actions that should be taken with respect to delegate selection, whether to support or oppose the calling of a convention and, should a convention be convened, what proposed changes should be made to the constitution. The Task Force’s first step was to consider the procedure for selecting delegates to the convention and determine whether to recommend changes to that procedure. The constitution requires that there be three delegates elected from each state Senate district (there are 63 Senate districts) and an additional fifteen delegates elected at-large (statewide). Regardless of how long the convention lasts, each delegate receives compensation equivalent to the full annual salary that a member of the state Assembly receives, currently \$79,500.<sup>3</sup>

The Task Force considered a number of aspects of this process and developed the following set of recommendations which we believe will make the process more open, less subject to the control of political leaders and more likely to result in a convention reflective of

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<sup>1</sup> There was a constitutional convention held in 1967 but voters turned down the convention’s recommendations, which were posed as a single ballot question.

<sup>2</sup> The convention most likely will run for several months. The 1967 convention ran from April 4 to September 26.

<sup>3</sup> N.Y. Const. Art. XIX, § 2.

the will of the State's population. In developing these recommendations, the Task Force focused on changes that could be accomplished by statute. Theoretically, there is the possibility that proposed changes to the constitution regarding delegate selection could be placed on the 2017 ballot, at the same time the voters will be considering whether to call a convention.<sup>4</sup> We believe that such a scenario would cause confusion among voters faced with two (or possibly more) convention-related questions. Moreover, voters would not know whether the delegate selection changes ultimately would be adopted, even as they are casting their ballot as to whether they favor a convention. Therefore, the Task Force opted to accept as a given the delegate selection procedures currently in the constitution.

The Task Force recognizes that the delegate selection process is a factor voters would consider in deciding whether to vote for or against a convention, and therefore urges that its recommendations be adopted by the Legislature before the 2017 convention vote. However, while the Task Force believes that whether or not its recommendations are enacted before the convention vote should be a factor when considering whether to recommend a constitutional convention, that should not be a determining factor. Indeed, while the recommendations can and should be adopted before the vote, should the electorate call for a convention in November 2017, statutory changes to the delegate selection procedure can still be enacted in 2018, prior to the election of delegates.

## **RECOMMENDATIONS**

### **1. Judges, legislators and other state and local government officials should have the opportunity to run for constitutional convention delegate.**

The Task Force first considered whether any public officials should be excluded from running for delegate. In past conventions, legislators, judges and other officials have run for and served as delegates. We are aware of the argument that legislators are the one group that has had the power to pass amendments to the constitution, and a vote to call a convention may reflect voter sentiment that the Legislature has not performed this function as well as it should have. However, the Task Force believes no class of individuals currently eligible to serve should be excluded from running for delegate. The voters should be able to determine for themselves whether a particular legislator, judge or local official should serve. We note that of the 186 delegates elected to the last constitutional convention, 13 delegates were legislators and 24 were judges.<sup>5</sup>

### **2. Though the Task Force has concerns about whether government officials elected as delegates should be able to accept the delegate salary in addition to the salaries they earn from their government position, current constitutional provisions lead to the conclusion that all public officials should be entitled to collect delegate salaries in addition to their other salaries, as has been done at past conventions.**

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<sup>4</sup> Proposed constitutional amendments must be passed in two consecutive legislative sessions, and thus could be passed in 2016 and 2017 and placed on the ballot in November, 2017.

<sup>5</sup> See *The Delegate Selection Process: The Interim Report of the Temporary New York State Commission on Constitutional Revision*, Appendix 7, at 121 (March 1994).

Under the state constitution, the salaries of judges and members of the Legislature may not be reduced during their terms of office. As the constitution also provides that convention delegates are to receive the salary Assembly members receive, the double-salary provision is built into the constitution. And, as we already recommended that legislators and judges be allowed to serve as delegates, we accept they will be paid both salaries, though the notion of their receiving both salaries is a concern. While legislators and judges would be guaranteed their double salaries, there is no constitutional requirement that other public officials be paid for both their regular service and service as delegate. However, we believe it would be unfair that some public sector delegates receive both salaries and others do not, so we recommend that those other public officials also not be denied either of their salaries.<sup>6</sup>

**3. Service as a constitutional convention delegate should not count as credited time under any public pension system.**

While the constitution provides for double salaries for some public officials serving as delegates, we do not see any constitutional provision requiring that public officials concurrently serving as delegates receive pension credit for both their regular and delegate service. A statute was enacted prior to each of the last two conventions, in 1938 and 1967, providing that pension credit be given for time served as a delegate in addition to the time accrued by public officials in their regular positions. Thus, during the term of the convention public officials serving as delegates effectively received double pension credit. We believe this double-counting is inappropriate and urge the Legislature not to provide for such double-counting should a convention be convened.

**4. Voters should be able to cast votes for up to three candidates in the election of district delegates.**

The standard method of voting for the three delegates to be elected in each Senate district is for voters to be able to vote for up to three candidates. A City Bar task force committee convened prior to the 1997 constitutional convention vote had recommended that each voter should be permitted to cast only one vote for district delegates, to increase the chance that convention delegates would be more diverse, the theory being that permitting voters to cast only one vote would give a substantial minority of voters in a district (political, ethnic or otherwise) a greater chance of electing a delegate who reflects that minority's views. However, the Task Force believes that the greatly increased influence of money in the political process during the past 20 years, bolstered by the U.S. Supreme Court's *Citizens United* decision, creates a greater risk of well-financed single issue candidates. In addition, while the Task Force considered alternate approaches to voting, we believe there is not enough empirical evidence demonstrating that changing from the consistently-used approach of allowing voters to cast votes for up to three delegates would promote minority interests.

**5. There should be no slate voting for the 15 at-large delegates; delegates' names should appear on the ballot. Voters should be able to cast votes for up to 15 of**

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<sup>6</sup> Delegates may decline remuneration for service as a delegate.

**the at-large candidates, with no more than one vote cast for a particular delegate.**

In the past, the names of the at-large statewide delegates did not appear on the ballot. Rather, the electorate voted for slates of delegates identified by party. The Task Force believes that voters should have the opportunity to vote for up to 15 individual delegates of their choice and, to encourage greater scrutiny of the candidates, there should be no space on the ballot to simply designate a slate of candidates.

**6. Petition signature requirements should be reduced for convention delegates; the requirement that at-large delegates collect at least 100 signatures from half of the congressional districts in the state should be eliminated. Petitioning requirements should be further eased.**

Currently, candidates running for district delegate from a political party must collect 1,000 signatures to have a place on the ballot (there are variations depending upon the number of registered voters of a party in a district). A candidate running for district delegate as an independent must collect 3,000 signatures.<sup>7</sup> In practical terms, a candidate would be wise to collect three times the number of signatures required, in case the candidate's signatures are challenged. Collecting such a large number of signatures can be a particular burden on individuals not backed by a party's establishment. The Task Force believes the petition signature requirement for district delegates should be reduced to 500. At-large delegates currently must collect 15,000 signatures, and also must collect at least 100 signatures from half the state's congressional districts. Those requirements favor candidates with substantial resources or party backing. To ease ballot access for statewide delegates, the signature requirement should be reduced to 5,000 and the congressional district collection requirement should be eliminated.

In addition, the Legislature should seek further ways to assure that the election of delegates is an open process, by removing additional requirements that could needlessly impede individuals without substantial party backing who seek to run for delegate. The Legislature has taken steps over time to ease the process, many of which have been recommended by the City Bar's Committee on Election Law. One substantial recommendation that still has not been enacted is to eliminate the requirement that persons circulating petitions reside in the district in which the candidate is running. This makes it difficult for candidates without substantial financing or party support to attract the number of volunteers needed to carry petitions. In addition, voters should be allowed to sign a petition for more than three candidates for district delegate, the current limit, so voters can give multiple candidates the opportunity to compete for votes.

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<sup>7</sup> Gerald Benjamin, Henrik N. Dullea, *Decision 1997: Constitutional Change in New York* (SUNY Press 1997), available at [http://www.lwvny.org/LLresources/SBR\\_StateNews/2015/January/Delegate-Selection-Process\\_Benjamin-Dullea.pdf](http://www.lwvny.org/LLresources/SBR_StateNews/2015/January/Delegate-Selection-Process_Benjamin-Dullea.pdf) ("Subject to certain exceptions contained in Article XIX of the New York State Constitution, the regular election law provisions are applicable to the election of delegates to a constitutional convention... These provisions address such questions as the number of signatures required on petitions, the form and content of petitions, and the like.").

**7. There should not be a shift to nonpartisan elections for convention delegate.**

The Task Force believes that maintaining the party structure would be more familiar to voters in an otherwise completely unfamiliar election, and party affiliation would be a useful reference point for voters in considering the candidates.

**8. While ideally there should be a system for public financing of all state elections, including the election of convention delegates, and such a system has been proposed by the Governor, if there is no state public financing system ultimately put in place, the Task Force believes that the difficulty of setting up a public campaign financing system solely for the delegate election is so great that we cannot recommend such a one-time program be created.**

The City Bar has long been in favor of establishing a system of public financing of campaigns for New York State elective office similar in structure to the system now in place for New York City elections. The Task Force supports, as a general matter, the inclusion of constitutional convention delegates in the public financing legislation contained in the Good Government and Ethics Reform Article VII Legislation in the 2016-17 State Executive Budget, and believes that if a public campaign financing system is in place by the time of the delegate election in 2018 (assuming voters approve calling a convention in 2017) it should include convention delegates. However, the Task Force would not seek to establish such a system solely for the one-time purpose of electing convention delegates.

**9. If the voters choose to hold a constitutional convention, there should be a voter guide printed for the delegate selection election of 2018, and a voter guide also should be prepared for the ballot questions that are submitted to the voters by the constitutional convention.**

The Task Force believes that, given the unusual nature of the delegate selection process, New York voters should be provided with a ballot pamphlet listing and describing the candidates. The guide distributed to New York City voters prior to each municipal election should serve as a model. In addition, given the complexity of issues a constitutional convention would be addressing and putting before the voters, a guide should be prepared describing the ballot question or questions that the convention will be placing before the voters, including statements by organizations for and against the various questions. Again, the method used to present ballot questions in New York City's Voter Guide should be looked to for guidance. Should the voters approve calling a convention, the Legislature and Governor should provide sufficient funding for these voter guides.

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