“Shall there be a convention to amend the constitution and revise the same?”  
Art. XIX, §2 NYS Constitution

Ithaca Rotary  
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Two Different Documents

• The United States Constitution
  – 8,160 words
  – Limited Powers
  – 1 Convention; 1 Constitution; 27 Amendments
    • only 17 since the Bill of Rights in 1791

• The New York State Constitution
  – 51,700 words
  – Plenary Powers
  – 9 Conventions; 4 Constitutions; Current 1894
    Constitution Amended More Than 225 times
Oaths of Office

• U.S. Constitution

• NYS Constitution
  – Barge Canal
  – Savings Bank Charters
  – A public cemetery in the Town of Keene
  – Mineral sampling for wollastonite in the Town of Lewis
  – Public Pension Protections
  – Home Rule
  – Rights of Labor
Amending the NYS Constitution Relatively Easy, Frequent

• Legislative Initiative
  – Approval by two separately-elected legislatures
    • Simple majorities in Senate and Assembly
    • No role for the governor
  – Approval by the voters

• Constitutional Convention
  – Approval by the voters to convene
  – Election of Delegates
  – Approval by the voters
NY Constitutional Conventions

• Nine constitutional conventions
  – 1777, 1801, 1821, 1846, 1867, 1894, 1915, 1938, and 1967
  – Constitution adopted in 1846 required that the voters be asked every 20 years whether or not to call a constitutional convention
  – Our current constitution was adopted as a single package in 1894
  – Calls for a convention rejected in 1977 and 1997; next referendum in 2017
Potential Issues

• Legislature
  – Terms of Members
  – Term Limits of Members and Leadership
  – Increase power of individual members
  – Restrict Messages of Necessity
  – External Independent Redistricting Commission
  – Prohibit All Forms of Gerrymandering
  – Combine Senate and Assembly into a Single House of Delegates
Potential Issues

• Bill of Rights
  – Expanded Anti-Discrimination
  – Right to Privacy
  – Electronic Searches and Seizures
  – Elimination of Capital Punishment
  – Limited Use of Bail in Nonviolent Crimes

• Suffrage
  – Encourage Voter Participation
  – Facilitate Candidacy for Public Office
  – Campaign Finance Reform
Potential Issues

• Executive Branch
  – Governor’s Power to Reorganize
  – Budgetary Authority viz. a viz. the Legislature
  – Powers of Comptroller and Attorney General
  – Role and Responsibility of the Board of Regents

• Public Officials
  – Ability to reduce or eliminate pensions for officials convicted of violating the public trust while in office
  – Emphasis on code of ethics, fiduciary responsibility
Potential Issues

• Judiciary
  – Structure of the Courts
  – Selection of Judges
    • Qualifications
    • Appointment vs. Election
    • Nominating Conventions
    • Primaries
    • Tenure
  – Discipline
Structure of the Courts

• A Report by the Special Commission on the Future of the New York State Courts
• February 2007

• New York State has the most archaic and bizarrely convoluted court structure in the country. Antiquated provisions in our state Constitution create a confusing amalgam of trial courts: an inefficient and wasteful system that causes harm and heartache to all manner of litigants, and costs businesses, municipalities and taxpayers in excess of half a billion dollars per year.

• Other states have long ago streamlined their court systems to make them efficient, attractive to business and sensitive to the needs of litigants. New York, on the other hand, continues to operate a blizzard of overlapping courts: Supreme Courts, County Courts, Family Courts, Surrogate’s Courts, a Court of Claims, New York City Criminal and Civil Courts, District Courts, City Courts, and Town and Village Justice Courts.

• New York has eleven separate trial courts; by contrast, California, a state that has twice our population, has only one.
Potential Issues

• Local Government, Home Rule and Local Finances
• Education
• Environmental Protection and Conservation
• Health, Social Services and Housing
• Community and Economic Development
• State Taxation, Debt Financing
Reasons for Caution

• Pandora’s Box
  – Can’t Predict Outcomes
  – Uncertain Political Environment

• Possible Legislative Dominance
  – Existing Legislature Can Pass All Needed Amendments
  – Legislators Have Campaign Advantage
  – The Same Lobbyists Who Control Albany Now Will Control the Convention As Well

• Cost, Especially if Product Is Rejected
Reasons for Optimism

• Nothing in the state constitution can diminish rights guaranteed by the U.S. Constitution
• Only a constitutional convention can deal with the fundamental structure and powers of the legislature
• New York’s history shows no record of Pandora’s Box phenomena
• Lobbyists will have less influence over many delegates who will never run for office again
Preparing for a Convention - 2016

• Efforts to generate public discussion and awareness
  – Rockefeller Institute of Government in Albany
  – League of Women Voters
  – State, County and City Bar Associations
  – Governor Cuomo has proposed creating a nonpartisan preparatory commission
If Call of a Convention is Approved
What Happens Next?

• Delegates to be elected in 2018 – a gubernatorial election year
  – 15 at-large, elected statewide
  – 3 from each senatorial district, 189 total
  – 204 total delegates

• Legislature can adopt special rules for delegate elections; otherwise existing provisions apply

• Possible Voting Rights Act challenges to multi-member districts
Political Party State Committees

• Nominate at-large slates
• Balance geography, demography, expertise
• Cross-endorsements possible
• For example, in 1966 the Republican at-large slate included U.S. Senator Jacob Javits, former Lt. Gov. Frank Moore and Farm Bureau president William Bensley
• Democrats nominated former NYC mayor Robert Wagner, UN Ambassador Marietta Tree
Senatorial District Slates

- 3-member slates often negotiated by party leaders
- Primary challenges possible, especially in one-party majority areas
- Independent candidacies possible, but difficult due to ballot signature requirements
- Under existing law, voters cast 3 votes and top 3 win. Some people argue for “limited voting,” casting one vote with top 3 recipients winning
Who Can Run to Be a Delegate?

• Citizen of the United States
• 21 years of age
• Resident of the state for five years
• Resident of the senate district for 12 months prior to the election
• No restriction on governors, legislators, judges, other officials
• Only exception: sheriffs
Will Sitting Legislators Dominate?

• Maybe; Maybe Not
• Depends on Who is Elected, and Why
• Only 13 out of 186 delegates in 1967 were sitting legislators.
• Many were unwilling to run for two different offices simultaneously
• Some did not want to be accused of “double-dipping”
  – Delegate salary same as Assembly Member
  – Pension accrual dependent on legislation
What About Judges?

• 1894 Constitution has no restriction on judicial participation
• Chief Judge of the Court of Appeals was the president of the 1938 Convention
• Two sitting Court of Appeals judges and the retiring chief judge were elected in 1967
• Other judges came from Supreme Court, Family Court, Civil Court, County Court
Local Officials, Business, Labor, Academics and “Citizens”

• The 1967 Convention had many different interests represented
  – Member and former Member of Congress
  – Former and future mayors of New York City
  – Former president of the Buffalo City Council
  – Mayors of Rochester and Albany
  – Sitting and former members of Congress
  – Social worker, school teacher, automobile dealer
The Rules of the Game

State constitutions have four principal functions:

• To establish the structure of state government and its subsidiary entities, such as local governments and public authorities;

• To establish the framework for the relationship between and among these governmental units;

• To affirmatively state the responsibility of government to perform certain activities on behalf of the people; and

• To set limits on the power of government and the actions of public officials.
The NYS Constitution

• The most important words in the New York State Constitution:

• “We The People ... Do Establish this Constitution.”

  – From the very beginning of our state’s history, the constitution affirms that its source is not the legislature, not the governor, not the judges, but the people themselves.

  – Nothing can be inserted in the constitution without the approval of the voters.
Dullea’s First Law of Constitutional Revision Dynamics

• “For every group passionately committed to the reform of a particular constitutional provision, there is an equal and opposite group fiercely determined to preserve that same provision, which has provided it with either an important benefit or protection over the years.”
On November 7, 2017, voters will go into voting booths throughout New York State and, as they are every 20 years, be faced with the Constitutionally mandated question, “Shall there be a convention to revise the constitution and amend the same?” (N.Y. Const., Art. XIX, sec. 2).

In only nine instances in New York State’s history have we convened a Convention to consider how the State Constitution might be altered, potentially changing how government in Albany works.

Recognizing the importance of this opportunity, the Rockefeller Institute, the Government Law Center at Albany Law School, the League of Women Voters of New York State, and the Siena Research Institute have joined forces with other organizations from around the state to conceive and implement a multiyear campaign designed to ensure that each of New York’s voters, made aware of this work, goes to vote with a clearer sense of what a Constitutional Convention could achieve.