

THE CITIZENS' GUIDE
TO A
MODERN CONSTITUTIONAL
CONVENTION

PREPARED FOR THE PENNSYLVANIA
CONSTITUTIONAL CONVENTION
COMMISSION

BY
THE CIVIC RESEARCH ALLIANCE



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The Pennsylvania Constitutional Convention Commission

The Commission is a venture of non-partisan organizations, spanning the state's political culture, united in the exploration of how to conduct a modern constitutional convention that effectively serves the public's interests. This exploration encompasses technological and communication opportunities not previously available for such an event. It also explores the history of constitutional conventions in Pennsylvania and other states, delegate selection alternatives, citizens' opportunities for input in convention development and proceedings, management concerns, and a range of possible responses to convention recommendations.

The Commission is comprised of Common Cause/Pennsylvania, The Commonwealth Foundation, Democracy Rising Pennsylvania, and the League of Women Voters of Pennsylvania Citizen Education Fund. The Common Cause Education Fund served as the project director and administrative agent.

These organizations have a history of observing Pennsylvania's governing structures and procedures. While collectively these organizations do not always agree on the nature of remedies needed (in fact, they are at times viewed as adversaries), they do agree that the time has come for the citizens of Pennsylvania to thoroughly review all structures and procedures of state and local government to find ways to make government serve them better.

The Civic Research Alliance

The Civic Research Alliance addresses a crucial niche in Pennsylvania: Providing objective and nonpartisan research/strategic services to nonprofit, private, and public policy entities seeking to better serve their communities, schools, regions and the Commonwealth. Emphasis is placed upon *independent* research and strategic planning services that support decision making for those contemplating change. Such changes may include public policy considerations, resource sharing, streamlining operations, or thinking through alternatives to traditional ways of doing business in Pennsylvania.

The Alliance is free from politics, ideological predisposition, specific points of view, or research outcomes based upon anything but fact and objective analysis. Its studies provide viable options for decision makers, helping them think through new ideas and approaches.

For additional information visit www.civicresearchalliance.com.



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PREFACE

BY

THE PENNSYLVANIA CONSTITUTIONAL CONVENTION COMMISSION

PENNSYLVANIA CONSTITUTION, ARTICLE 1, DECLARATION OF RIGHTS

POLITICAL POWERS

Section 2. All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

RIGHT OF PETITION

Section 20. The citizens have a right in a peaceable manner to assemble together for their common good, and to apply to those invested with the powers of government for redress of grievances or other proper purposes by petition, address or remonstrance.

RESERVATION OF POWERS IN PEOPLE

Section 25. To guard against transgressions of the high powers which we have delegated, we declare that everything in this article is excepted out of the general powers of government and shall forever remain inviolate.

Constitutions are important. They are contracts specifying the terms and conditions by which we the people permit our elected and appointed officials to govern us. They are the blueprints for our great and unique experiment in self-government.

Yet they are not carved out by the finger of God. They are creations of humans; and the sage drafters of our state and national constitutions realized that, as our society evolves, a vigilant citizenry would be required to ensure accompanying changes in our representative democracy properly serve the people.

In early 2006, a variety of public interest organizations began a discussion, in very broad and sweeping terms, about the way Pennsylvania state and local governments function (or malfunction), about how all the elements interrelate, and alternatives for making improvements. The discussions encompassed governing structures, mechanisms, culture and customs; and explored administrative, regulatory, statutory and constitutional options for reform.

Over recent years there has been increasing discussion, both inside and outside the capitol, about the possible necessity for a constitutional convention. There has been a growing sense that the range, depth and interrelatedness of the problems currently confronting Pennsylvania's governmental structures are too complex to deal with in a piecemeal manner. Indeed, a comprehensive review and rewrite may be necessary for the Keystone State to achieve more effective, more efficient, more nimble, open, responsive and accountable government. Yet there also is acknowledgement that

changing the structure of government alone will not solve all the problems. While establishing effective structures and mechanisms is essential to a properly functioning government, getting the right people to run the machinery is important as well.

Pennsylvania has not had a full constitutional convention since the 1870s, and not even a limited convention since 1968. So most institutional knowledge of how to develop, manage and respond to a convention resides in dusty archives. Furthermore, over the nearly 140 year span of time since the last full convention, nearly everything in our society has changed – especially technology, communications, large meeting management practices, the role of government and the ability for citizens to be active participants in building and managing their governments.

Surprisingly, the current Pennsylvania constitution is silent on constitutional conventions. There is no reference whatsoever as to when, if, or how a constitutional convention can or must be called or convened; to delegate selection; to scope of issues a convention can address; to funding; to legislative opportunities to modify results; or to citizens' rights to approve, modify or reject a convention's recommendations.

The groups that assembled to create the Pennsylvania Constitutional Convention Commission sometimes disagree on key public policies and are occasional adversaries. Therefore, this study will not discuss specific governmental reforms. In fact, among the members of the Constitutional Convention Commission, only one currently has adopted a position in support of convening a constitutional convention. Nevertheless, all agreed it is time to explore the tools for accomplishing major governmental reforms – including a constitutional convention.

This study has been restricted to examining how a constitutional convention could most effectively be developed, managed and responded to in our 21st century high tech world to broadly engage the people of Pennsylvania, to diminish the impact of traditional power brokers, and do so in a manner that enhances the probability of creating governing mechanisms that truly serve the people in our times and well into the future. It is designed to offer options for an effective modern constitutional convention. The only preconception imposed on the research team was that Article I of the Pennsylvania Constitution, often called Pennsylvania's Bill of Rights, is more than just feel-good boilerplate language; rather it is the operational standard for our government.

We offer this report as a catalyst for broad public debate on how to improve and modernize state and local government, and how such reforms can best be accomplished.

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§ ————— EXECUTIVE SUMMARY ————— §

A constitutional convention is among the rarest political events in Pennsylvania. After the original constitutions authored by the Commonwealth’s 1776 and 1789 conventions, citizens of Pennsylvania witnessed only three subsequent conventions over the past 220 years. This infrequency provides scant experience, but a rich history, to guide the next convention in Pennsylvania, *should one occur*. In preparation, the Constitutional Convention Commission commissioned this study to explore a process not used in Pennsylvania since the limited convention in 1967-1968, and not fully used for over a century.

Pennsylvania’s landmark 2006 and 2008 elections for the state House and Senate have fueled dialogue for meaningful government reform. From quiet conversations among Capitol Hill insiders to public debates, editorials, and legislative hearings, the idea of a constitutional convention has injected itself solidly into recent political debate. Further, there now are movements towards constitutional conventions in several large states, including New York and California.

This study does not include a recommendation for or against a constitutional convention. The chapters that follow present a framework of options for planning and implementing a convention *if and when* one is called.

STUDY HIGHLIGHTS

Calling a Constitutional Convention in Pennsylvania

The Pennsylvania constitution is silent regarding conventions. The procedures for calling a convention are the invention of the General Assembly and the Pennsylvania Supreme Court. The court has decreed that conventions are an acceptable way to change the constitution (if only because the current constitution does not specifically prohibit them), and that conventions can be called only by the General Assembly through special statute. Hence, the prerequisite for a convention in Pennsylvania appears to lie within the General Assembly’s prerogative to enact legislation that takes the approval for a convention to the voters.

Decisions to call a constitutional convention are controversial everywhere, and Pennsylvania is no exception. Some view a convention as an unnecessary or expensive alternative to the use of legislature generated amendments or focused statutes. Others see a constitutional convention, with its ability to comprehensively respond to the intricacies of twenty-first century policy issues, and impacts across state and local government, as the preferred solution to revamp the constitution. A position “pro” or “con” often stems from one’s *purpose* to revisit the constitution: *adjustments* can be made by individual amendments, but *reform* requires a convention. Following is a sample of pro-convention statements matched with the responding con statements.

PRO CONVENTION STATEMENTS	RESPONDING CON STATEMENTS
The constitution presents too broad a range of issues to be addressed piecemeal; It is better to institute multiple reforms simultaneously.	Similar results can be achieved though a less drastic or threatening way, such as multiple amendments and incremental statutes.
The current Pennsylvania constitution of 1874 is a product of that time; 21 st century realities (economic, social, and political) mandate a new constitution.	There is no guarantee (and even less confidence in some circles) that a convention will provide a better or more modern constitution.
The interrelatedness, depth and breadth of needed changes demand a change at the constitutional level.	Most problems (political and otherwise) present today in Pennsylvania are not a direct product of the current constitution.

However, pro or con, a convention can be high risk if not properly planned and managed, or when strong leadership is lacking. All who come to a constitutional convention will have an agenda, and each will bring fears of what could happen. But, as public initiatives and referendums in other states, and the constitutional amendment process in Pennsylvania show, similar apprehension can be applied to every method of changing government policies and structures when one's agenda is highly focused.

The Purpose of a Constitutional Convention

The fundamental purpose of a constitutional convention is to adopt structures and operations that make state government “work.” A second purpose is to make sure the constitution remains relevant, providing meaningful and practical solutions to evolving circumstances. A constitution can hinder effective and efficient state government by clinging to provisions that may be decades or more out of synch with contemporary economics, social mores, and political practice.

Conventions can also provide an efficient vehicle for creating long-term solutions and avoiding problems often produced by the (often unintentional) ripple effects of a series of single amendments. Further, a constitutional convention can address many issues, problems, and challenges during a single point in time—a process more difficult, and perhaps less effective, under the legislative amendment process.

Preparing for a Constitutional Convention

The role of convention planning and precise logistics cannot be overstated. The first order of business is setting the time, place, and duration of a convention. At the very least, logistics will include speaker coordination, setting up public meetings, preparing and disseminating materials, managing facility needs, providing for communications, and handling post conference reports, archives, and other follow up activities. All of this, of course, requires funding sufficient for doing an effective job.

However, in Pennsylvania no convention structure is provided by the constitution. This omission presents two major consequences for convention planning. First, planning cannot begin until the convention structure is framed by legislation. Second, if approved by the voters, preparations must begin immediately and be completed in a limited amount of time.

The first action is assigning responsibility for planning the convention. The 1967-1968 convention employed, by statute, a Preparatory Committee. Other options include:

- Establishing a temporary state agency;
- Creating and funding a Preparatory Commission;
- Authorizing the convention leadership to directly hire temporary staff; or
- Contracting with a professional events management company.

Any deliberative body, including a constitutional convention, needs a governance structure to promote the orderly and methodical work of its participants. This requirement is even more important when business must be completed in a limited amount of time. The breadth and depth of convention preparation is underscored by the following sample of prerequisite activities:

- Electing officers
- Setting meeting times and daily agendas
- Establishing the role of the president and other convention officers (powers and duties)
- Agreeing to the rights and duties of convention delegates
- Setting rules of order and operating standards
- Identifying experts to present information and analysis to delegates
- Sending invitations to address the convention, and devising rules for debate or presentations
- Creating committee procedures
- Establishing a committee on rules and organization
- Adopting standing rules, with the ability to suspend or amend such rules
- Assigning official recorders or reporters for convention activities
- Providing quality research teams
- Providing communication systems (including Internet and storage/retrieval systems for the delegates and the public)
- Setting procedures and taking the roll
- Establishing committees by topic and for general convention support (such as rules, public relations, reporting, etc.)
- Developing a system for submitting proposals, recommendations, or petitions to the convention

Delegate Selection

For many, the decision to support or to not support a constitutional convention is directly linked to the citizen's perception that an open and fair process of delegate selection will first take place. Delegate selection can be accomplished through election, by appointment, by random selection of citizens, or through the use of a Citizen Assembly. In addition, eligibility of delegates must be determined. Generally, convention delegates must meet the same eligibility requirements as members of the General Assembly. In addition, specific characteristics may prevent an individual from serving as a delegate (e.g., prohibiting lobbyists or legislators from serving as delegates).

Most state constitutions provide a method to elect or otherwise select delegates to constitutional conventions (Pennsylvania is an exception). There are, however, differing *methods* for electing delegates, though each begins by determining the number of delegates per "district," then defining what constitutes a district. Elections can be designed to increase public representation. For instance, a voter, when choosing two candidates from a list, may be required to vote for one woman and one man. This process is common to many organizations, clubs, volunteer agencies, religious groups, nonprofit boards, and political parties.

Another method of choosing delegates is by random selection. This process removes possible bias from delegate selection and provides a statistically accurate representation of the total population of a state. To date, this process is primarily used to call jurors in the United States, but random selection is routinely used to establish citizen commissions and citizen assemblies in countries that include Great Britain and Canada.

Embracing New Technology

Any discussion of a future constitutional convention in Pennsylvania will include a debate of the advantages and disadvantages of a face-to-face versus virtual convention functions. Significant advances in technology and successful use of virtual conventions in the private sector confirm this approach as viable for at least parts of a constitutional convention. A virtual constitutional convention would be a real-time meeting of convention delegates set over a specified period of time with its own online locations. In addition, events leading up to the convention, such as public hearings, could be held in virtual locations. Existing technology can provide convenience, cost savings, attract public attention, and encourage citizen input.

Calling a virtual convention would be controversial. It is becoming a mainstay in the corporate world, but is still “out of the box” for the public sector—due in no small part to the infrequency of state constitutional conventions. However, a virtual convention could attract a limitless audience that transcends age, culture, political affiliation, geography, and points of view. With the recent proliferation of Internet sites and electronic communication devices, a constitutional convention that follows previous formats may not seem important or interesting to a majority of Pennsylvanians who have direct access to many competing choices for the their time and involvement.

Virtual conventions can combine the best of a face-to-face convening of delegates with the convenience of preparation online. The challenge for convention planners is understanding how best to match available technology with convention activities. The options include:

- Planning and holding a completely virtual convention;
- Using technology for some convention preparatory work with delegates (with simultaneous access for voters and organizations);
- Maximizing public interactions (message boards, webinars, official convention websites);
- Substituting a virtual application whenever costs can be reduced or convenience increased; and
- Providing access to convention materials from any location at any time for reference by the delegates and by the public.

Citizen Participation

Citizen participation is, in one sense, built into the traditional constitutional convention process. For instance, normally voters must approve a call for a convention, must then vote for delegates, and must vote to approve or disapprove the proposals generated by a convention. However, the opportunity for citizen participation in the next convention will be important on two levels. First, there is need for educational programs to assist the general public with understanding, evaluating, and judging the issues placed before the convention. Second, without an organized educational program, Pennsylvania voters will be asked to adopt or reject convention proposals they may not fully understand.

Opportunities to increase citizen participation during a constitutional convention include:

- Exploiting all possible methods of communication—brochures, articles, internet sites—to teach the history, purpose, and issues of the convention
- Using of new technologies, especially computers and telecommunications
- Creating a statewide speakers bureau
- Establishing an official convention website
- Holding regional and town hall meetings
- Offering public hearings with debate and input for the delegates
- Contracting with experts to participate in regional hearings, and for the convention
- Asking statewide organizations to assist in the sharing of information among their members
- Conducting public polling
- Assembling focus groups
- Providing interviews and prepared programs for radio and television stations
- Creating public service announcements for all media
- Involving universities, law schools, and colleges in the dissemination of information
- Distributing study guides for the public and for students

Moderating Convention Influence by those Currently in Power

It is certain that the public, either directly or as members of organizations, will carefully watch for any hint of misconduct or lack of transparency during convention proceedings. Certain groups will take the role of watchdog; others will observe presentations and debates in efforts to discover allies and adversaries.

In the end, there is only one absolute way to moderate the influences that will be drawn to a constitutional convention: Pennsylvania voters must identify and elect delegates who are capable of carefully analyzing and evaluating efforts of outside influences. The corollary is nominating delegates who will put constitutionalism and the needs of the Commonwealth before their own interests. Beyond that, the public is dependent upon open media coverage; independent, objective expert testimony; polling results; and public hearings.

Limited Conventions in Pennsylvania

The General Assembly of Pennsylvania in 1967 called a “limited” convention, setting four specific issues for consideration by the convention delegates. Designating a limited constitutional convention sends one clear signal to the delegates: *There are specific issues you are to address, but you are not authorized to write a new constitution.*

The argument for limiting a convention is the need to avoid opening Pandora’s Box,” or a “runaway convention.” More specifically, organized groups of all types and motivations try to limit conventions to preserve prior legislative successes (often hard fought). An open Pennsylvania convention, with its risk of change to any Article or Section, puts past political victories in jeopardy. For some the *level* of risk seems inconsequential; the very chance of change, no matter how remote, is sufficient for some to support a limited convention.

In Pennsylvania, the call for a limited constitutional convention is included in the ballot question put before the voters to approve or reject a convention. This approach was decreed constitutional by the Pennsylvania Supreme Court in the late 1960s.

Conventions may be limited not only by subject matter, but also by time. Again, legal precedent in Pennsylvania allows enacting legislation that provides a convention start and end date. This guides planning, budgeting, and management of the convention. Knowing a convention will adjourn sine die on a date certain provides incentive for the delegates to complete assigned activities in a timely manner. It also allows the convention to be in sync with the Pennsylvania election cycle—both for the pre-convention election of delegates and for the post-convention voter approval of convention resolutions.

SUMMARY OF RESEARCH FINDINGS

Lessons learned from Pennsylvania’s past constitutional conventions

Pennsylvania has convened five constitutional conventions in its history, beginning in 1776 and followed by 1789, 1837, 1872-1873, and 1967-1968. Additional calls for a convention were defeated by the electorate six times between the 1870s and 1960s. The following circumstances appear crucial to the approval or defeat of a call for a convention in Pennsylvania:

- *Timing* – Moments in history when a constitution convention often is most needed is when the electorate is the least interested, or is distracted (including after World War I and during the Great Depression). Public support for a convention is strongly correlated with *general* discontent among the electorate, not only with government but with a range of institutions.
 - *Need for Catalysts*—Generally, the calling of a convention was approved when publicly supported and endorsed by a coalition of groups. Conversely, conventions supported or endorsed by a narrow group (including individual Governors and/or Commissions) fared badly with the electorate.
 - *Need for strong, prominent leadership*—Strong endorsements from Governors, former Governors, legislative leaders, political party leaders, and statewide organizations played a major role when the electorate approved a convention.
 - *Need for substantial preparatory work and convention support*—The 1967-1968 convention was assigned a Preparatory Committee that began work one full year before the convention was called to order. All together, 216 staffers were hired during the convention to manage and facilitate activities.
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There is slight written history of the behind-the-scene workings of a convention. However, they were not the politics-free or lobbying-free idealistic events described by some written accounts. Often the primary source of convention records is found in the personal notes of delegates. Even the 1967-1968 convention has no filmed record.

Primary Outcomes by Individual Constitutional Convention in Pennsylvania

Constitutional conventions can produce significant change in state government structure and operations. The following table summarizes major contributions of each convention in Pennsylvania's history.

CONVENTION	CONTRIBUTIONS TO THE CONSTITUTION AND TO PENNSYLVANIA'S HISTORY
1776	<ul style="list-style-type: none"> • Opened delegate selection to citizens from more varied walks of life and from all parts of the Commonwealth • Moved quickly to take advantage of the excitement over the Declaration of Independence and the presence in Philadelphia of prominent state leaders • Established apportionment of representation among Commonwealth counties
1789-1790	<ul style="list-style-type: none"> • Created a bicameral state legislature • Moved to a single executive in the form of a Governor • Began unification of the Commonwealth judicial system
1837	<ul style="list-style-type: none"> • Addressed public discontent following the economic panic of 1837 • Prepared for a public education system in Pennsylvania • Added a process to amend the constitution
1872-1873	<ul style="list-style-type: none"> • Provided overall, general reform of state government structures • Doubled the size of the General Assembly • Increased the majority needed to pass bills in the General Assembly
1967-1968	<ul style="list-style-type: none"> • Benefited from excellent pre-convention work by the Preparatory Committee • Was promoted and supported by a large number of prominent Pennsylvanians • Prepared ballot questions for five constitutional changes that the legislature could not resolve on its own (each change was approved by the electorate)

Other Avenues for Constitutional Change

Often a constitutional convention is perceived as a component of a larger reform movement. Yet, there are several avenues for government reform outside calling a convention. In fact, there may be specific issues that are better addressed in the form of legislature-generated constitutional amendment or statute. But for umbrella issues—such as the overall structure of checks and balances, creating a unified judiciary, or defining relationships between local and state government—a convention may present the best option.

Perhaps the Pennsylvania constitution is silent on conventions because the founders envisioned a structure that would last for generations. Later generations, however, saw the need to add an amendment process to keep the constitution vital. Still, accounts of debates clearly show intent to establish an amendment process that would make it difficult for frequent or minor changes, or to use the amendment process as a substitute for the statutory law process.

Since the adoption of the 1968 Pennsylvania constitution there have been 37 constitutional amendments, or an average of about one per year. All but Articles III (Legislation), VI (Public Officers), IX (Local Government), X (Private Corporations), and XI (Amendments) have been amended. Despite public arguments to the contrary, Article I—the Declaration of Rights—has been amended more often than any other article (nine times since 1971). Article II—The Legislature—has been amended only twice, the fewest amendments to any amended Article.

Though not technically vehicles for constitutional change, courts in the Commonwealth have authority to rule that the General Assembly acted beyond the intent of the constitution. The Attorney General may also be asked to render opinions regarding the constitutionality of Pennsylvania statutes or bills.

Summary of lessons learned

Pennsylvania's five constitutional conventions collectively reveal the following safeguards for protecting the public interest and for supporting convention leadership:

- Ensuring a representative delegate selection;
- Encouraging openness of debate;
- Drawing upon experts without consideration of political position;
- Heeding ongoing public input;
- Accessing information held by government agencies and statewide organizations;
- Using the most effective technologies for fostering public interest and interaction;
- Making use of public officials at all levels to advise the convention, and to direct delegates and the public to sources of information;
- Maintaining media attention to ensure transparency, and to promote public awareness and participation;
- Sharing convention materials with the public, associations, and interest groups; and
- Following up to help the electorate prepare for their vote to adopt or reject the convention's proposals.

The enacting legislation that calls a constitutional convention should do each of the following:

- Determine the voter referendum (by type and date) that will call for a convention;
- Provide the manner for delegate selection;
- Set the date for the election of delegates (if an election process is preferred);
- Establish a Preparatory Committee with the authority to hire staff to plan, budget, facilitate, and manage a convention:
- Specify the opening and adjournment dates for the convention;
- Specify Articles and Sections of the Pennsylvania constitution open for debate and change, and those sections that are prohibited for deliberation by the delegates (if a "limited convention" is being proposed);
- Authorize the convention to elect officers and to devise rules
- Provide directions for placing convention proposals on the ballot for voter consideration, without interface by the General Assembly;
- Set an election date for the voters to approve or reject convention proposals; and
- Specify when approved proposals will take effect.

Past efforts in Pennsylvania show meaningful outcomes are directly related to pre-convention planning and ongoing facilitation, including:

- Establishing comprehensive pre-convention planning and preparation mechanisms;
- Keeping the convention attentive to stated legislative and public goals;
- Avoiding undue influence by partisan political forces and special interests;
- Informing the public, engaging their input, and holding their interest; and
- Presenting a unified front by a large group of stakeholders and prominent leaders.

Post convention activities are essential and have two primary audiences: the public and the General Assembly. Resolutions from the convention need to be organized, packaged, thoroughly explained, and made available for public scrutiny. Well-written and easily comprehensible information must be prepared so that voters can understand the

consequences of each potential change. The General Assembly also will have need for specific information and detailed analysis to direct its preparation of enabling legislation that would follow voters' approval of changes.

SUMMARY OF THE MOST PROMISING OPTIONS FOR PENNSYLVANIA

There are feasible options for a constitutional convention in Pennsylvania that go beyond the limited convention model provided in 1967-1968. For instance, a citizens' convention is possible per Commonwealth court rulings.

For the purpose of the immediate discussion, a "citizens' convention" is a constitutional convention where the delegates have been freely chosen by the electorate, convention delegates have complete control over the convention's agenda, and also have the authority to place their proposals directly onto the ballot for approval or rejection by Pennsylvania's voters within a reasonable period of time. The potential for a citizens' convention in Pennsylvania is still based upon a prior statutory call for a convention. One alternative would be to follow the lead of several other states that permit citizens themselves to call for a constitutional convention by approving a call for a convention that would automatically appear on the ballot periodically (normally every 10 or 20 years). A second alternative would be to authorize Pennsylvanians to call a convention via the petition process known as the "citizen initiative."

Currently, there is no obligation on the part of the General Assembly to consider citizens' convention proposals or to put those proposals to a vote in an election. But the following options may still be considered and pursued:

1. The General Assembly enacts a citizens' convention.
This is the most straightforward, but least likely. The General Assembly would detail the process for calling a citizens' convention as part of the enacting legislation to call for a vote for or against a constitutional convention.
 2. The General Assembly enacts a limited convention.
This option is the mostly likely route for securing the General Assembly's authorization because the legislature would maintain control over the issues to be considered and time to adjournment.
 3. The General Assembly enacts a call for a convention that restricts the conventions final proposals to constitutional amendments.
This may be one of the least efficient methods of constitutional change. Plus, the public might be ill-served by a continuation of single issue solutions. An example of this option is provided by former Constitutional *Commissions* in Pennsylvania.
 4. The General Assembly places a constitutional amendment on the ballot that proposes to implement an automatic periodic call for a convention on the Pennsylvania ballot.
This seems a promising solution to Pennsylvanian's current dilemma of not being able to control their own governance destiny, although the time and persistence to gain the approval of the General Assembly and approval by the voters could take decades.
 5. The General Assembly or the Governor establishes a citizens' commission instead of a convention.
Constitutional Commissions may be called by the General Assembly or by the Governor. Other states have used this as an alternative to a convention feared by the General Assembly.
 6. Devise special amendment procedures.
The General Assembly would call a citizens' assembly to deliberate and propose constitutional amendments for direct consideration by the General Assembly. Proposals can be in the form of statute or constitutional amendment.
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7. Hold a convention of coalitions, or a convention of organizations

It may not be the same as a true citizens' convention, and it obviously would have no official or legal standing in Pennsylvania, but a convention of coalitions can attract public attention and media coverage. At the very least it can be used to keep the topic of a constitutional convention in the public eye.

8. Hold an independent citizens' convention

For this option the General Assembly might provide an opportunity and resources for citizens to gather and deliberate reform or change. The convention is charged to hold public debate and deliberations, and sets its own rules and agenda. Proposals are submitted directly to the General Assembly for its consideration.

9. Provide for citizen initiative and referendum

The term "initiative" means different things in different states, but is broadly defined as a proposed statute or constitutional amendment placed directly upon the ballot by citizen petition for approval or rejection by the electorate. Its cousin, the Referendum, permits citizens to place recent legislative actions on the ballot for approval or disapproval by the electorate. There has never been a vote in Pennsylvania to approve an initiative process—either by constitutional convention or by the amendment process.

Again, this study does not include a recommendation for or against a constitutional convention. The body of the report includes the purpose, planning, and logistics for a meaningful convention in Pennsylvania if and when one is called.



INTRODUCTION



“Reform... is a matter of strengthening and balancing both participation and institutions over the long term... Reform must also mobilize the interests and energies of society itself... And reform is never finished... affluent market democracies need institutional renewal and infusions of participation and competition from time to time.”

MICHAEL JOHNSTON

PURPOSE OF THIS STUDY

The purpose of this study is to collect and summarize contemporary thought, practices, and logistics to guide the development of a constitutional convention *should one occur in Pennsylvania*. This review, conducted at the request of the Constitutional Convention Commission, provides analysis of a process that has not been used in Pennsylvania for almost a half century, and not fully used for over a century. The study does not include a recommendation for or against a constitutional convention. Its sole purpose is to determine how best to plan and implement a convention if and when one is called.

TIMELINESS AND CONTEMPORARY EVENTS THAT NOW BRING A CONVENTION TO THE FOREFRONT

Pennsylvania’s landmark 2006 and 2008 elections for the state House and Senate have produced an expanding dialogue for meaningful government reform. From quiet conversations among Capitol Hill insiders to public debates, editorial scoldings, and legislative hearings, the idea of a constitutional convention has injected itself solidly into these growing reform efforts. With so much at stake, and with the holding of a constitutional convention being extremely rare in Pennsylvania, the options for developing, preparing for, and managing a convention require serious and immediate attention.

In 2008 the Pennsylvania Legislature held public hearings on three separate bills to call a constitutional convention (more information regarding these bills is provided in Chapter 4). Hence, the introduction of this study is timely not only for its review and history of conventions in the Commonwealth, but also for its analysis of lessons learned and exploration of best options for an effective convention should one be called.

A CONVENTION AS A VEHICLE FOR REFORM

Often a constitutional convention is discussed as a component of a larger reform movement. Several conventions in Pennsylvania’s history, most notably the 1872-1873 convention, were called for exactly this reason. Debate regarding the need for constitutional reform is not unique to Pennsylvania. Other states, including California and New York, are seriously considering calling a convention, generally for the purpose of “reform,” and including the term “reform” in the name of enabling legislation calling for a convention.

There are, as is detailed later in this study, several avenues for government reform outside the constitutional convention (see Chapter 7 for a detailed analysis). In fact, there may be specific issues that are better addressed in the form of a legislature generated constitutional amendment or statute. But for umbrella issues (such as the structure of checks and balances, or relationships between local and state governments) a convention may be the best option.

THE “PROS” AND “CONS” OF A CONSTITUTIONAL CONVENTION

A constitutional convention is a controversial subject. On one side, a convention is seen as an unnecessary alternative to incremental amendments and focused statutes. Others see a convention's ability to comprehensively address the complexity of today's challenges, where the breadth and depth of issues simultaneously interrelate among the many workings of government, as the only satisfactory way of truly addressing a constitutional update or modernization. A convention, they contend, is an efficient way to create solutions and avoid problems often produced by the (often unintentional) ripple effects of single amendments. Further, a constitutional convention can address many issues, problems, and challenges during a single point in time—a process more difficult, and perhaps less effective, under the legislative amendment process.

For some, opposition to a convention follows apprehension that opening up the constitution is like opening Pandora's Box. Once it is open, anything can happen. This conflict has been captured by Stephen Holmes:

Some theorists worry that democracy will be paralyzed by constitutional straitjacketing. Others are apprehensive that the constitutional dyke will be breached by a democratic flood. Despite their differences, both sides agree that there exists a deep, almost irreconcilable tension between constitutionalism and democracy. Indeed, they come close to suggesting that “constitutional democracy” is a marriage of opposites...

These same thoughts were expressed by a League of Women Voters Study (*Illinois Ballot Issue: Should there be a Constitutional Convention?*) released in 2008. Their review further explained the potential threats of a convention:

In the question of whether to support [a constitutional convention], one must consider the extent of (1) the need to improve the Illinois Constitution, (2) the urgency to institute multiple reforms simultaneously, and (3) the potential to achieve piecemeal change through the current amendment process. Such a review must balance the anticipated benefits from rewriting specific articles by a convention against the potential risks involved in exposing the entire constitution to revision.

Pro or con, a convention can be high risk if not properly planned and managed, or when strong leadership is lacking. All who come to a constitutional convention will have an agenda, and each will bring fears of what could happen. But, as public initiatives and referendums in other states, and the amendment process in Pennsylvania show, similar apprehension can be applied to every method of changing a constitution when one's agenda is highly focused. During last year's debate preceding the ballot for a constitutional convention in Illinois one blogger put it succinctly: “Do you have faith in, or fear of, democracy?”

A summary of pros and cons of constitutional conventions, gathered from recent debates in Pennsylvania and in other states, is presented in the following table.

SUMMARY OF REASONS FOR OR AGAINST A CONSTITUTIONAL CONVENTION:

PRO STATEMENTS	RESPONDING CON STATEMENTS
<ul style="list-style-type: none"> • The constitution presents too broad a range of topics and complexities to be addressed one at a time; it is better to institute multiple reforms simultaneously 	<ul style="list-style-type: none"> • Similar results can be achieved through a less drastic or threatening way, such as multiple legislative amendments and incremental statutes
<ul style="list-style-type: none"> • The current Pennsylvania constitution of 1874 is a product of that time; 21st century realities (economic and social) mandate a new constitution 	<ul style="list-style-type: none"> • There is no guarantee (or little confidence) that a convention will provide a better or more modern constitution

PRO STATEMENTS	RESPONDING CON STATEMENTS
<ul style="list-style-type: none"> A convention can cohesively address the multiple challenges facing the Commonwealth, and the sooner the better 	<ul style="list-style-type: none"> History is not on the side of a potentially successful convention in Pennsylvania
<ul style="list-style-type: none"> The legislative amendment process is too focused on individual issues, providing often unintended and “ripple” effects that further challenge the Commonwealth 	<ul style="list-style-type: none"> A convention has no limits except as stipulated in the enacting legislation; at least the amendment process tightly focuses upon needed issues, one at a time, for easier debate and approval by the voters
<ul style="list-style-type: none"> The opportunity and public support for a convention is cyclical; not taking advantage of the current pro-reform environment might postpone an overdue comprehensive government “tune-up for decades or generations 	<ul style="list-style-type: none"> Timing in Pennsylvania for a convention is not good; faith in state government is at a particularly low ebb inviting increased voter emotion to the process
<ul style="list-style-type: none"> The scope and type of needed changes to be brought before a convention demands a change at the constitutional level 	<ul style="list-style-type: none"> Most problems (political and otherwise) present today in Pennsylvania are not a direct product of constitutional deficiencies
<ul style="list-style-type: none"> Using the legislative amendatory process or multi-amendment process can be equally difficult and “risky” as a convention in terms of potential outcomes 	<ul style="list-style-type: none"> Calling a convention should be the approach of last resort, not the first approach to reforming state government
<ul style="list-style-type: none"> A constitution was never conceived to be a static document; governance, social, technical, and economic changes over time will force necessary constitutional changes 	<ul style="list-style-type: none"> Many such changes bring emotional issues that will prevail over rational debate and over genuine issues of greatest importance to the electorate-at-large
<ul style="list-style-type: none"> A convention offers an exceptional opportunity for a public civics lesson in how government does or should operate 	<ul style="list-style-type: none"> Though the public may be dissatisfied with the current political climate or shortcomings in government operations, these are not always due to flaws in our existing constitution; they are a product of incapable or corrupt personnel, insufficient or misdirected funding, or the public’s general dissatisfaction with current social and economic conditions
<ul style="list-style-type: none"> There are specific, glaring holes in the existing constitution that need attention (such as how to call a convention or how to select the lieutenant governor) 	<ul style="list-style-type: none"> Then fix them outside of a convention where existing power groups, including elected officials, might “hijack” a convention and control its outcomes
<ul style="list-style-type: none"> A well presented constitution provides the broad principles and basic structure needed to ensure effective government 	<ul style="list-style-type: none"> Yes, but a convention offers the temptation and the opportunity for various interest groups to acquire special powers or to push their agenda on the public outside of the statutory law process
<ul style="list-style-type: none"> A convention will be under a very bright spotlight, with citizens paying more attention. This greater attention and tighter focus on a limited number of issues reduces the opportunity for special interests to control outcomes 	<ul style="list-style-type: none"> The legislative process, as the alternative to a convention, is not constrained by a short specific time frame, and therefore can consult with as many advisors as necessary, conduct extensive public hearings, and take its time to reach conclusions

PRO STATEMENTS	RESPONDING CON STATEMENTS
<ul style="list-style-type: none"> A convention is needed to address those sections of the constitution that are out-of-date with current economic, environmental, demographic, and political thought in Pennsylvania 	<ul style="list-style-type: none"> Perhaps, but that does not outweigh the fear that changes may eliminate hard-fought special interest gains over the years
<ul style="list-style-type: none"> A constitutional convention allows delegates to consider important issues that have failed to advance via the legislative process. 	<ul style="list-style-type: none"> This problem is not necessarily the fault of the constitution, but more likely caused by those in control of the legislature

Moving past the pros and cons, a constitutional convention should:

- Embrace constitutional structures that make state government “work”;
- Provide convention management capabilities for planning, logistics, and facilitation that enables the convention to effectively focus upon its primary charge; and
- Establish an environment, that as much as possible, safeguards the ability of the convention to focus upon the public interest.

The following chapters provide information and analysis on these three features of a constitutional convention in Pennsylvania. A brief introduction to each follows.

FINDING CONSTITUTIONAL STRUCTURES THAT MAKE GOVERNMENT “WORK”

A fundamental purpose of a constitutional convention is to enhance the structures and operations that make state government “work.” What will work moving forward may not be what historically has worked, or what is working now. Or, the purpose of a convention may be to correct structures that are clearly not working. Further, the constitution can hinder effective and efficient structures by clinging to methods that are decades (and perhaps in Pennsylvania more than a century) out of date in terms of contemporary economics, social mores, and political practice.

That said, there are constitutional provisions that provide permanent *policy and social* structure for government—many of them laid down in the 1770s. Among these are:

- Consent of the governed (also known as popular sovereignty);
- Limited powers and prohibitions against going outside the boundaries of given power;
- Civil rights;
- Separation of government branches and their balance of powers;
- Universal suffrage (restricting usually to age and residency); and
- An independent judiciary with the ability to perform objective judicial review.

Government structures need to be effective to keep the Commonwealth competitive economically and demographically. State government controls considerable resources in Pennsylvania. Individuals, local governments, organizations, and businesses are affected by government’s distribution or redistribution of resources.

Convention or no, future state government structures will be different, including e-government and its promise and challenges. For instance, the Organisation for Economic Co-Operation and Development (of which the United States is a member) sees these needs in government structure:

- Seamless service delivery;
 - Improved and expanded methods of communication;
 - Use of technology to improve the efficiency of back office operations;
-

- Better response to citizen expectations through improved citizen input;
- Major changes in operations based upon available and future technologies;
- Better understanding of specific policy rationale such as
 - Sharing of ideas and information
 - Direct communications among the levels of government
 - Shared services for local governments;
- Enhanced use of technology to ensure openness and transparency of operations; and
- Ability to better evaluate current policies and programs.

Hence, a relatively small change in constitutional language or intent may provide important solutions that bring considerable change in the future.

Constitutional convention delegates could consider new ways to identify policies and to produce a government structures that will remain dynamic and serve Pennsylvania well into the future. A Preparatory Committee and carefully chosen experts could strengthen study, debate, and deliberations. Delegates would be charged to identify and propose:

- Sustainable government structures and strategies;
- Policies that encourage local area agreements and local strategic partnerships; and
- Timetables where ongoing structures and agreements refresh.

There are new models for the Preparatory Commission to review before a convention. As one example, the Australian government uses a:

..‘hub and spokes’ coordination that works very well. This is essentially a lead agency structure, with one department coordinating the efforts of several departments. Sometimes there is a need for more than one set of ‘hub and spokes’—in the case of the Bali bombing, the Department of Foreign Affairs and Trade was the ‘hub’ for international efforts, and the Department of Family and Community Services was the ‘hub’ for the domestic response.

A convention, should center much more on possibilities and the future—using lessons learned from history. This history is presented in Chapter 1 and Chapter 2.

FACILITATION AND LOGISTICS THAT PROVIDE A HIGH PROBABILITY OF MEANINGFUL OUTCOMES

Despite six attempts at calling a convention since the 1874 constitution, there has been only one (limited) convention in 1967-1968. Therefore, there is virtually no public or official collective memory of conventions, making lessons learned from Pennsylvania history, and from conventions in other states, all more important. Past conventions show achieving goals is directly related to planning and facilitation that includes:

- Keeping the convention planning and the convention itself attentive to stated legislative and public goals, as presented in the specific charge to the delegates;
 - Avoiding undue influence by partisan political forces and special interests;
 - Informing the public and engaging their input and interest from the start;
 - Addressing fully all pre-convention preparations;
 - Helping to structure an effective convention in the least amount of time, thus taking full advantage of the current reform mood of the electorate; and
 - Presenting a unified front by a large group of stakeholders.
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Details of convention facilitation and preparation are provided in Chapter 3.

SAFEGUARDS NEEDED TO ENSURE A CONVENTION SERVES THE PUBLIC INTEREST

A review of state constitutional conventions over the past five decades reveals ten primary safeguards to assist convention leadership serve the public interest. Though the following chapters will analyze these issues in more detail, the public interest is best served by:

- Representative delegate selection;
- Openness of debate;
- Use of experts without consideration of political position;
- Ongoing public input;
- Access to information held by government agencies and statewide organizations;
- Using technology to foster public interest and interaction with the convention;
- Access to public officials at all levels to help and advise the public and delegates, and direct them to sources of additional information;
- Efforts to keep media attention high to ensure transparency and to promote public awareness and participation;
- Periodic sharing of convention materials with the public, associations, and interest groups along with feedback to the delegates; and
- Follow up to help the electorate prepare for their approval or rejection vote to the recommendations of the convention.

Safeguards can be ensured by:

- Including strategies for public participation and input in any act calling for a constitutional convention public referendum;
- Providing adequate funding for a proficient Preparatory Committee to prepare materials for delegates, plan the convention, gather public input, work with the media, and manage the day-to-day operations of the convention;
- Directing the Preparatory Committee or convention staff to directly involve student groups, the Commonwealth's colleges and universities, social and service organizations, and statewide commissions in the planning and reporting of the convention; and
- Planning for the technology, polling, focus groups, expert testimony, and public hearings to be summarized and analyzed for the convention delegates.

The chapters that follow provide sufficient detail to plan and manage a constitutional convention in Pennsylvania. Though all chapters are related, each also stands alone in analyzing a specific topic.

The analysis begins with a brief history of constitutional conventions in Pennsylvania and the lessons learned from each. These lessons are used to determine the planning, logistics, and management needs for a future convention. Going beyond basic logistics and facilitation needs, this study also explores ways to involve and serve the public during all aspects of the convention.



CHAPTER 1



A BRIEF HISTORY OF CONSTITUTIONAL CONVENTIONS IN PENNSYLVANIA

“Our new Constitution is now established, and has an appearance that promises permanency; but in this world nothing can be said to be certain, except death and taxes.”

BENJAMIN FRANKLIN

OVERVIEW

The Pennsylvania Constitution is the underpinning of the Commonwealth’s government. First adopted in 1776, it continues to provide a working structure for state leadership and helped frame the Federal Constitution later enacted in 1789.

Since the inception of “Penn’s Woods,” the Commonwealth of Pennsylvania has operated under five constitutions—though the initial four Frames of Government, three authored by William Penn himself, may also be referred to as “constitutions.” The first actual constitution, created by state convention in 1776, with Benjamin Franklin at its helm, was one of the first documents to lead a new nation from a confederation of colonies to a national democracy.

A second Pennsylvania constitution was enacted in 1790 to make improvements upon the original document. As will be detailed later in this chapter, the need for a new constitution after only 14 years can be attributed to (1) passage the year before of the Federal Constitution and the need to bring the Pennsylvania constitution into agreement and compliance, (2) a dissatisfaction within the Commonwealth regarding the physical structure of state government, and (3) growing criticism from both the citizens of Pennsylvania and from other states that found faults when using comparable language or thoughts in their subsequent constitutions. This second constitution would serve the Commonwealth as a basis of law for almost a century.

The third convention that authored the Constitution of 1838 made few changes, keeping the 1790 document virtually unchanged, partly in deference to the creators of the first constitution. However, the fourth convention, ultimately leading to the Constitution of 1874, was largely a result of public demand to address issues of government corruption (e.g., logrolling, and special purpose bills that funneled tax dollars directly into the pockets of lawmakers’ cronies who often channeled some of it back to the lawmakers) as the industrial revolution took root in Pennsylvania. It was drafted and adopted to meet new conditions and challenges resulting from rapid growth and economic development during and following the Civil War. It, too, served the Commonwealth for almost a century. A fifth (limited) convention was held in 1967-1968, drafting the current constitution.

TIMELINE OF CONSTITUTIONAL CONVENTIONS IN PENNSYLVANIA

Frame of Government	Charter of Privileges	Philadelphia Convention	Second Convention	Third Convention	Fourth Convention	Sproul Commission	Woodside Commission	Limited Convention
1699 to 1701	1701	1776	1789	1837	1872	1920	1957	1967

FRAME OF GOVERNMENT (1699 TO 1701)

It must be said from the start that the basic tenets of Pennsylvania's constitution are steeped in early English law, including the Magna Carta (1215), the Petition of Rights (1628) and the Bill of Rights (1689). It was the existence of these documents, and their popular acceptance in the 1600s, that provided direction to Pennsylvania as a colony, and later as a state. Chief among the provisions of the Magna Carta, for instance, was no taxation without representation—a concept that, as much as anything else, served as the catalyst for the American Revolution.

It was within this political thought that William Penn accepted in 1681 the charter to what is now Pennsylvania. In that same year he authored his *Concessions to the Province of Pennsylvania* to apply his own political philosophies to law. Penn took his political tenets beyond anything that preceded him when he drafted his *First Frame of Government*. It provided for free enterprise and religious freedom (Penn often referred to Pennsylvania as his “Holy Experiment”), a free and open press, and trial by jury of one's peers. This First Frame lasted only one year before the Assembly it established and the new settlers asked Penn for revisions.

As a result, Penn created his *Second Frame of Government* that established a unicameral legislature with powers beyond anything before seen in the colonies. The new Pennsylvania Assembly chose its own leaders, was free to draft legislation, and was given broad privileges. Penn kept the right to veto legislation, but the *Second Frame* eliminated the governor's power to dissolve the Assembly.

Nevertheless, Penn included his own changes in the Second Frame of Government, which were later approved by the colony's General Assembly in 1683. This document became the colony's *de facto* constitution.

In 1696, the colony received its third *Frame of Government*, written by William Markham, the deputy governor and Penn's cousin. This version, known as *Markham's Frame*, was regarded as the constitution until Penn came back to Pennsylvania in 1699 to write yet another version. Penn signed the fourth *Frame of Government* on October 1701 while in Pennsylvania. He then left for England, where he died in 1718. Because of Penn's presence in Pennsylvania, the fourth *Frame*, known as the *Charter of Privileges*, was drafted for the first time in conjunction with members of the Provincial Assembly.

Collectively, Penn's *Frame of Government* series became a major influence on later constitutions, both at the Federal level and for the first states. As Donald Lutz explains:

No one represented the disjunction between English and American rights better than William Penn, who, because of his Quaker beliefs, suffered through a trial in England that shocks us today. When he founded Pennsylvania, Penn granted religious freedom, which was lacking in England, as part of a bill of rights grounded in his religion and experiences... His *Frame of Government* contained 58 percent (fifteen out of twenty-six) of the U.S. Bill of Rights... The Bill of Rights has a long historical pedigree, but that pedigree lies substantially in documents written by people on American shores.

The many innovations of William Penn included the concept of amending a constitution. His provision (Section XXIII) to change the *Second Frame of Government* read:

No act ... to alter, change, or diminish the form, or effect, of the charter ... [is allowed] without the consent of the governor, his heirs, or assigns, and six parts of seven of the said freemen in provincial Council and General Assembly.

CHARTER OF PRIVILEGES

Penn's agreement with the colonists was expanded in 1701 under his *Charter of Privileges*, which kept most of the rights from the original *Concessions of 1682*, but went on to add civil protections. These additions included freedom of worship (however, the right to vote was limited to Protestants), provided counsel for those who had no legal counsel, defined due process of law, and imparted a foundation for civil rights that still exists today. The *Charter* was heavily copied by the other twelve original states in their subsequent constitutions.

Penn, in his first section of the *Charter*, writes:

I do hereby grant and declare, That no Person or Persons, inhabiting in this Province or Territories, who shall confess and acknowledge One almighty God, the Creator, Upholder and Ruler of the World; and profess him or themselves obliged to live quietly under the Civil Government, shall be in any Case molested or prejudiced, in his or their Person or Estate, because of his or their conscientious Persuasion or Practice, nor be compelled to frequent or maintain any religious Worship, Place or Ministry, contrary to his or their Mind, or to do or suffer any other Act or Thing, contrary to their religious Persuasion.

Hence, as early as 1701 this *Charter* allowed the citizens of Pennsylvania to select their Assembly representatives, while most other colonies appointed officials either by proprietary control or control by English law. The first sentence of the second Article in the *Charter* spelled out this electoral process:

FOR the well governing of this Province and Territories, there shall be an Assembly yearly chosen, by the Freemen thereof, to consist of *Four* Persons out of each County...

Writing the *Charter* meant that William Penn as governor of Pennsylvania, and more than any other colonial governor, would be directly pitted against his own citizen's Assembly. Despite early apprehension by Penn, the resulting structure worked well, and the *Charter* held up for almost 75 years.

In 1751, the Pennsylvania Assembly requisitioned a bell to celebrate the 50th anniversary of the *Charter of Privileges*. This bell was inscribed: "Proclaim liberty throughout the land unto all the inhabitants thereof." The bell cracked on its first ringing, and two subsequent repairs could not totally restore its integrity. Today it is still on display in Philadelphia and has become known as the Liberty Bell.

The decades following the *Charter of Privileges* were marked by tensions with England, by rapid economic and wealth growth in the Commonwealth's cities, and by growing tensions between the eastern city interests and the colony's western frontier pioneers. Political tensions reached a boiling point as the Pennsylvania Assembly continually refused to establish new counties to the west, making sure that the western territories remained underrepresented. In addition, there were sharp disagreements about the colony's future with England, including debate over declaring outright American independence. These disagreements paralyzed the evolving state government. That changed quickly on May 15, 1776 when the Second Continental Congress resolved to end English rule and directed each colony to create a state constitution.

EVENTS LEADING TO THE 1776 PENNSYLVANIA CONSTITUTIONAL CONVENTION

It is impossible to understand what occurred at the Pennsylvania constitutional convention that began in Philadelphia on July 15, 1776 without knowing the history leading to that day. Recall that when Pennsylvania's delegation signed the Declaration of Independence they were the last to do so. Pennsylvania's delegates (George Clymer, Benjamin Franklin, Robert Morris, John Morton, George Ross, Benjamin Rush, James Smith, George Taylor, and James Wilson) were sent to the Continental Congress to vote against independence. To embrace independence was to overthrow not only the King of England, but the William Penn family. The Penn family had built a prosperous Commonwealth in a democratic spirit that invited immigrants of all faiths and beliefs. Plus, the Pennsylvania Assembly was controlled by the Quakers—a pacifist group not supportive of war. A large population of Pennsylvania Germans also held pacifist beliefs.

The idea of taking up arms in a revolution was all the more removed in Pennsylvania where British rule and presence were light. Few Pennsylvanians had contact with English officials, except through the Penn family. Both William Penn and his son, Thomas, were granted many privileges by the English court for the benefit of Pennsylvanians. In fact, it was possible that individual rights in Pennsylvania could be lost in a war for independence. The "taxation without representation" controversy that was inflaming other states was moot in Pennsylvania because while its own

constitution provided for taxation by the English Parliament, though Penn made sure taxes were kept relatively low.

Those in Pennsylvania who supported revolution decided early on that their only chance of winning statewide backing was to build a shadow government. This they did, eventually taking control of the Assembly. According to Richard Secor:

. . . It assumed the powers of government, then delegated them to a Council of Safety with full power to act in the name of Pennsylvania until a formal governmental structure should be devised and approved. This action occurred on September 28, 1776, when the Convention proclaimed a new constitution for Pennsylvania, without providing for popular ratification. After elections, this new government . . . assumed its duties on November 28. The old Assembly met in September, but, lacking a quorum, adjourned for the last time. These events consummated the revolution in Pennsylvania. A radical minority, by aggressive militance and superior organization and commitment, had succeeded in overthrowing the proprietary government and seizing power.

The ability to establish a shadow government was provided in no small part by the newly imposed Stamp Act, an English attempt at taxation that caused the first real crisis in Pennsylvania and a dispute with England. The Act was perceived as motion back to those conditions from which colonists fled to America. A contemporary article regarding the Stamp Act appeared in the *Pennsylvania Journal* (as quoted by Reid), capturing the public dissatisfaction:

Our dependence on Britain, instead of being lessened, will be vastly increased. We shall have indeed the shadow of liberty, but be destitute of the substance. Our influence in the British legislature will in reality be no more than it is now, but instead of being free from its jurisdiction, we shall be regularly and properly subject to it. They will have a right by the very constitution, to command our purses and persons at pleasure. Our liberties, our lives, and every thing that is dear, will be at their mercy.

Together, these events guided Pennsylvanians to their first constitutional convention.

PHILADELPHIA CONVENTION OF 1776

Less than two weeks after the Declaration of Independence was signed, a group of Philadelphia citizens took on the task of forming a constitutional convention. At the time there were three competing groups for power in Pennsylvania. The Tories supported the proprietary government established by the Penn family and opposed any attempt at independence. Mostly wealthy merchants from Philadelphia, Tories feared loss of power and possessions should America become independent of England. A second group was labeled the “Radicals,” who supported calls for independence. Many radical leaders, including Thomas Paine, lived in Philadelphia, but many were also from the western part of the Commonwealth and of Scots-Irish descent. Caught in the middle were the Moderates who controlled the Provincial Assembly. The Moderates were the best organized and had strong leadership, including John Dickinson and James Wilson.

The Radicals had two advantages. First, the Continental Congress, meeting in Philadelphia, called for colonies to establish a new government wherever an existing provincial government was not able to provide leadership and services. Convinced that Pennsylvania fell into this group, the Radicals asked the Provincial Assembly the very next day to establish a constitutional convention. Second, the Radicals were able to convince Benjamin Franklin to chair the convention. Few men in America at that time were held in as high esteem as the new convention leader for Pennsylvania.

Elections were held for convention delegates based upon rules established by the Radicals. By opening the election to a broad portion of the citizenry, and by mandating delegate oaths to limit opposition, the Radicals opened the constitutional convention on July 15 with Benjamin Franklin as its president—a mere eleven days after the signing of the Declaration of Independence. Their first order of business was creation of a Council of Censors to sit in judgment of the Assembly. Eventually the Pennsylvania Assembly discontinued meeting due to a persistent lack of quorum.

The workings of this convention were summarized best by Dr. Rosaline Branning, who explained the convention was held:

...by a provincial conference of the committees of correspondence of all the counties convoked by the committee of the City of Philadelphia. These were wholly extralegal bodies in which the persons disfranchised under the existing property qualification and rigid naturalization procedures could and did participate.

Despite the prominence of some convention members (Benjamin Franklin, John Morris and David Rittenhouse, for example), most delegates were farmers or business owners with no legal background or elected office experience. In addition to the Tories, most Quakers, Moderates, and German sects refused to participate in the convention altogether. However, Franklin was able to bring together those attending the convention for meaningful debate and action. Michael Fine later observed:

Pennsylvania is unique in the annals of American constitutions. At the very time that the National Congress was meeting in Philadelphia, Benjamin Franklin, a major architect of the American Revolution was crossing the halls of the Pennsylvania State House to chair the first Pennsylvania constitutional convention, being held in the same building as the Second Continental Congress.

There were aspects of the first Pennsylvania constitution that were unique among the colonies. It contained the only unicameral legislature—largely under the influence of Benjamin Franklin who believed a bicameral Assembly would only create friction and make it difficult to enact legislation. It also required an oath of office that required leaders to swear no harm to the people they served. There were term limits for legislators. Bills were printed and could not be enacted for at least a year from the first printing.

A major Article of this first official Pennsylvania constitution was the “Declaration of Rights”, inserted to establish and ensure civil liberties. This document was often replicated (as was equivalent language in Virginia) by conventions in other states. That said, this constitution was never submitted to the citizens of Pennsylvania for approval or adoption—there was no structure in place to do so. The adoption of Pennsylvania’s first constitution was the result of a direct vote of the convention members.

The new constitution was debated and revised for four months and was approved on September 28, 1776. Of the 96 members of this first convention, 94 attended the signing ceremony and 71 signed the constitution. The *Preamble to the Pennsylvania State Constitution of 1776* is presented in Appendix A.

CALL TO CONVENTION IN 1789 AND THE CONSTITUTION OF 1790

The second Pennsylvania constitutional convention followed the first (1776) by only thirteen years. In fact, Republicans in the General Assembly had fought hard for five years for a resolution to call a convention. This was a significant change in political strategy as the conservatives had chosen to boycott the former convention. What had changed in so little time?

Politically, there had been a gradual change in popular political thought to a much more conservative approach to government. With the revolution behind them, the urgent pleadings of the Radicals belonged to an earlier time. Now with the support of a large majority of Assemblymen, the second Pennsylvania constitutional convention began November 1789 in Philadelphia, with delegates under the leadership of conservatives and Moderates that included Thomas McKean, Thomas Mifflin, Timothy Pickering, and James Wilson.

As Paul Doutrich, historian with Pennsylvania’s Historical Museum Commission wrote:

With the [Federal] Constitution ratified and Federalists entrenched as Pennsylvania’s representatives on both the state and national levels, the victorious faction saw their opportunity to replace the Pennsylvania constitution of 1776. Radicals or

Antifederalists, recognizing the inevitability of change, could do little to stop the reform movement. In March 1789, as the new national government began to organize in New York, the Pennsylvania Assembly called for a state constitutional convention to be held the following November. Throughout the summer both parties campaigned vigorously; however, the election was generally free of the rancor and partisan attacks that had characterized state politics since 1776. As a result, an air of conciliation and cooperation dominated the convention.

The 1789 convention followed the adoption of the Federal Constitution. The existing Pennsylvania Constitution was reviewed for full compliance with its Federal counterpart, providing another immediate need for a convention.

A full year was needed to draft the new constitution, which was then shared with the citizens of Pennsylvania for debate. There was no vote by the electorate; instead, late in 1790 the convention reconvened and proclaimed the new document to be Pennsylvania's constitution.

The 1790 convention provided substantial changes to the previous constitution, often reflecting the structures of other state legislatures and following the new Federal Constitution. Major changes included:

- The change from a unicameral to a two chamber legislature;
- Senators to serve four year terms, with one fourth of the Senate being elected every year;
- Representatives would number between 60 and 100 and be elected annually;
- The former executive committee was replaced with a single governor (the governor could serve 9 years out of 12);
- The governor was given power to veto legislative actions and to call special sessions of the Assembly;
- Judges received life tenure (on good behavior) but were subject to impeachment; and
- Circuit courts (between the trial courts and the Supreme Court) were established.

There were no changes made to the Bill of Rights. Both conservatives and liberals agreed to preserve each existing Article.

The constitution of 1790 followed a process of adoption similar to 1776; adoption by the convention with no election by Pennsylvania voters. With 63 of the 69 delegates supporting the draft constitution, the convention recessed on February 6, 1790 to allow delegates to return home and present, discuss, and debate its provisions with the public. Delegates re-convened on September 2, 1790 to approve and sign the final document, and then adjourned.

CONVENTION OF 1837-1838 AND THE CONSTITUTION OF 1839

New calls for a constitutional convention began as soon as the 1790 convention concluded its work. Pressure for constitutional reform centered around five primary arguments: 1) the governor had been granted too much power by the last constitution (especially appointment powers of local officials); 2) the term of the governor should be lessened from 9 out of 12 years; 3) granting of corporate charters needed reforms; 4) judges should not be given life tenure; and 5) there was need for a process to amend the constitution.

Calls for a convention continued until 1835 when the legislature passed, by act, a vote "for or against" calling a constitutional convention. The convention was approved by a majority of Pennsylvania voters at the next general election.

Meeting in Harrisburg beginning May 1837, this third convention provided seven months of bitter debate among the delegates. Yet, several issues were resolved, including limitations upon the then broad appointment powers of the governor and allowing for changes to the constitution through an amendment process (up until 1838 the constitution could only be changed through a convention process). That amendment procedure—approval by two successive

legislatures followed by ratification by the voters of Pennsylvania—still stands. As a result, amendments to the 1839 constitution were passed four times (in 1850, 1857, 1864, and 1872).

The convention was not without controversy (and even violence) as the right to vote was again limited only to Caucasians, leaving free African Americans again disenfranchised. Protestors destroyed Pennsylvania Hall in Philadelphia by fire during the time of this debate, serving as a premonition of the abolition and racial equality issues looming on the horizon.

After almost a year of vigorous and biting debate, most convention issues were left untouched by the delegates. There was no change in the power of the governor over legislation, to the granting of corporate charters (though some changes were made to bank charters), to the structure of the General Assembly or the courts, or for qualifications to vote in Pennsylvania.

The 1838 revised constitution was the first to be submitted to the voters of Pennsylvania for their approval. Though changes recommended by this convention were relatively few in number, the new document was approved by Pennsylvania voters by a very thin margin of 113,971 votes for and 112,759 against adoption (or, a difference of about one-half percent of all who voted). In comparison, Pennsylvania's next (and the Commonwealth's current) constitution would be ratified by the voters on December 16, 1873, by a vote of 253,744 for and 108,594 against (more than two to one in favor).

CONVENTION OF 1872-1873 AND THE CONSTITUTION OF 1874

The Pennsylvania Constitution of 1874 is more detailed, and has served the Commonwealth longer, than any other. It is also the most amended. Perhaps it is testimony to the 1872-1873 convention that this constitution has lasted so long. Others contend that a constitution 135 years old alone provides ample confirmation that it cannot reflect the realities of the 21st century. This convention, upon which the Commonwealth government is still built, grappled with the issues of its day without knowledge of automobiles and a highway system, electric power, communication technologies, computers, mass media, and airports (let alone space travel), to name a few changes that would be seen during the tenure of its resulting constitution.

As stated in "A History of Pennsylvania Constitutions" prepared for the 1967-1968 convention, "Pennsylvania's present constitution is the product of the 1870s and bears indelibly the marks of that era." When the convention was called in 1872 the Commonwealth's economy was dominated by railroads, canals, mining, iron mills, oil fields, and manufacturing plants of all kinds. Communities appeared almost overnight on top of natural resources, beside industrial plants, or any place a railroad station materialized. Above all, there was a populist movement to better control business and industry (especially banks), and to avert monopolies and unregulated business consolidations that led to monopolies.

Most of this economic development and industrial excitement was limited to larger cities. Real differences between western and eastern counties in Pennsylvania led to steady tension throughout the convention. While most counties in Pennsylvania, especially the western counties, were very much in favor of a constitutional convention, opposition was centered in Berks, Lehigh, Northampton, and Montgomery Counties (then the state center of coal, railroads, iron mills, banking, and manufacturing). As the examples in the following table show, the votes for a constitutional convention in 1873 resulted in lopsided outcomes that seem inconceivable in this millennium.

**EXAMPLES OF VOTES IN 1871, BY COUNTY, FOR AND AGAINST CALLING A
PENNSYLVANIA CONSTITUTIONAL CONVENTION**

County	For Constitutional Convention	Against Constitutional Convention	County	For Constitutional Convention	Against Constitutional Convention
Allegheny	22,644	359	Huntingdon	5,879	5
Armstrong	6,033	39	Lancaster	16,862	116
Blair	6,214	16	Lycoming	8,211	9
Forest	269	1	Somerset	4,809	14
Huntingdon	5,879	5	Wayne	4,452	9

In fact, a majority of voters opposed the convention in only two of 67 counties: Berks (there was a bitter dispute between the legislature and the Reading Railroad regarding the railroad's intention to purchase coal mines and monopolize both businesses) and Greene.

Results of the vote for those few counties that opposed the referendum or voted more closely are presented in the following table. The total statewide vote for calling a convention was 316,097 for and 69,715 against.

**PENNSYLVANIA COUNTIES VOTING AGAINST CALLING A CONSTITUTIONAL
CONVENTION IN 1871, OR EXAMPLES WHERE VOTES WERE RELATIVELY CLOSE**

County	For Constitutional Convention	Against Constitutional Convention
Berks	5,269	10,905
Greene	1,433	2,725
Lehigh	5,836	4,020
Montgomery	5,836	6,827
Northampton	5,491	3,784

There is another lesson to be learned by studying the records of this convention. Despite the overwhelming public approval for a convention, the delegates, as a rule, voted by very narrow margins on most proposals *during* the convention. By far, most of the resolutions and motions put before the convention were not approved. Though the electorate chose by an overwhelming number to call a constitutional convention, popular support did not translate into overwhelming agreement among delegates during the actual convention.

Interestingly, a major legislative reform of this convention was increasing the number of Representatives and Senators in the General Assembly. The proposal to increase the House to 200 representatives (later 203) and to increase the number of Senators from 33 to 50 was seen as one way to lessen existing legislative abuses. It was argued that it would be more difficult to corrupt a larger number of elected officials. Examples of resolutions that were approved or disapproved during the convention are provided in Appendix B.

THE INTERIM PERIOD (1874 TO 1967)

Calls for constitutional change did not end with the 1874 constitution. Yet, the Pennsylvania electorate consistently defeated each proposed convention for the next 75 years, defeating six attempts between 1890 and 1963. The next (limited) convention would not take place until 1967.

During this interim the 1874 constitution became increasingly outdated and non-responsive to twentieth century realities. In response, the legislature repeatedly added single amendments, making the constitution, in the opinion of some, a patchwork of unworkable and conflicting approaches to state government.

Robert E. Woodside Commission (1957)

The Woodside Commission, so-called because it was chaired by Judge Robert E. Woodside, began its work during the administration of Governor George M. Leader. However, the Commission's final report, completed in 1959, would be submitted to Governor Lawrence. The Commission recommended changes to no less than 117 sections of the existing constitution and proposed adding six new sections.

The Woodside Commission was the first body to hold public hearings regarding constitutional issues. It was also the first to measure public opinion as part of its proceedings, and the first to employ a research staff. Unfortunately, it also produced a final report that many complained was too esoteric and too technical to help the public understand the issues. The resolution that established this Commission is included as Appendix C.

At the conclusion of its deliberations, the Woodside Commission did not recommend a constitutional convention. Instead, it forwarded to the Pennsylvania Assembly a set of amendments. To underscore its intent, proposed changes were listed by classes of amendments, such as "Class I Amendments." Their proposals were disregarded by the Assembly. A list of Class I and Class II amendments is found in Appendix D.

"Project Constitution" by the Pennsylvania Bar Association (1961)

Frustrated that the legislature largely ignored the Woodside Commission's report and its recommendations, the Pennsylvania Bar Association, by establishing "Project Convention," revisited the Woodside Commission Report and the 1874 constitution by establishing fourteen committees of law professors, lawyers, and judges. In all, over 300 committee members participated, and a final report was issued in January of 1963. This report included proposals from the Woodside Commission, new ideas from Project Constitution, and "borrowed" approaches enacted by other states. This was the first attempt in Pennsylvania's history to rewrite the entire existing constitution.

Also formed in 1961 was the Committee for State Constitution Revision led by Milton Shapp. Between this Committee and Project Constitution there was sufficient influence in the legislature to call a referendum on a constitutional convention for 1963, which the voters of Pennsylvania did not approve.

The Pennsylvania Bar Association decided to take direct responsibility for constitutional (and especially judicial) reform after defeat of the 1963 referendum. The Bar Association prepared a report that included twelve proposed amendments, developed by specific constitutional Article. This approach was partly in response to the Woodside Commission's failure to get legislative interest in an Article by Article (or even Section by Section) rewrite of the constitution. It was believed that specific amendments were easier to communicate, explain to the public, and gain acceptance in the legislature. Most of the Bar's recommended changes related to Article V, the Judiciary—not surprising given the source of the recommendations.

Governor Scranton put these twelve amendments before the legislature in 1966, one of which was a call for a constitutional convention. Voters approved all of the proposals and a constitutional convention was called in 1967 after a year of preparation.

THE 1967-1968 (LIMITED) CONVENTION AND THE 1968 CONSTITUTION

In 1967 the General Assembly passed, and the Governor approved, Act No. 2 calling for a limited constitutional convention. Governor Shafer signed the constitutional convention bill in Independence Hall on March 16, 1967.

This convention was limited both in the assignment of topics given the delegates and by its three month deadline to complete its work. The targeted topics were legislative apportionment; judicial administration, organization, and tenure; local government; and state finance (except for the uniformity clause in the existing Constitution's Article VIII—Taxation and Finance).

Act No. 2 called for the election of 150 delegates and designated 13 ex officio delegates, for a total of 163 delegates. In the November 1967 municipal election, voters elected three delegates from each of the state's 50 senatorial districts. The ex officio delegates included the Lieutenant Governor (who was later elected President of the Convention) and the Majority and Minority leadership of both the Senate and the House. As stated in Act No. 2, ex officio members "shall have the powers of elected delegates."

The limitations placed upon the convention by Act No. 2 included:

- Setting a three-month lifespan for the convention, from December 1, 1967, to February 29, 1968 (adjourning *sine die*);
- Banning any recommendation permitting or prohibiting the imposition of a graduated income tax;
- Prohibiting changes to that portion of the Constitution specifying that all taxes should be uniform for the same class of subjects within the territorial limits of the authority levying the tax; and
- Prohibiting any recommendation to use the Motor License Fund for any purpose other than public highways, bridges, and air travel facilities.

The convention of 1967-68 convened in the Hall of the House of Representatives in Harrisburg, and named the following officers: Lt. Gov. Raymond J. Broderick, President of the Convention; Robert P. Casey, First Vice President; Frank A. Orban, Jr., Second Vice President; and James A. Michener, Secretary.

The delegates began their assignments in December 1967 by submitting 209 proposals (a sample of these proposals is presented in Appendix E) which were referred to the appropriate committees and sub-committees. Here each proposal was studied, analyzed and debated. Public hearings were then scheduled to seek expert testimony and citizen input.

Eventually, seven proposals emerged from sub-committee debates and public hearings. In February of 1968 these proposals were given to the full convention for further debate and amendment. They were adopted by the convention and ratified by the voters on April 23, 1968. The proposals were:

- Setting the number of Representatives at 203 and number of Senators at 50 to be reapportioned after each decennial census;
- Limiting state borrowing based on tax revenues, budgeting, financial planning, and auditing;
- Permitting tax exemptions and providing for reimbursement of local taxing authorities "under certain conditions";
- Providing for home rule for all units of local government;
- Adopting uniform rules for mergers, consolidations and boundary changes of local governments; and
- Establishing a unified judicial system in Pennsylvania.

HOW HISTORY SHAPED THE CURRENT CONSTITUTION AND WILL SHAPE FUTURE CONSTITUTIONAL CHANGES IN PENNSYLVANIA

History is often a strong precursor of the future, and the 1968 Pennsylvania constitution has primary elements from each of the preceding four, dating back to 1776. Hence, the current constitution is based upon 233 collective years of sustained constitutional government, voter perceptions and priorities, successful and unsuccessful attempts at change, evolution through the industrial revolution into the virtual world of technology, and ever-increasing changes in Pennsylvania's demographics and social mores.

To effectively remind us about the changes in Pennsylvania between the 1873 and 1967 conventions, and because

the great majority of the Commonwealth's current constitution was written in 1873, the following table shows the differences in proposals made to each of Pennsylvania's last two conventions.

**A COMPARISON OF PROPOSALS OR PETITIONS SUBMITTED TO THE
1873 AND 1967 CONSTITUTIONAL CONVENTIONS IN PENNSYLVANIA**

1873 CONVENTION EXAMPLES			1968 CONVENTION EXAMPLES		
ISSUE	PETITIONED BY	OUTCOME	ISSUE	SUBMITTED BY	OUTCOME
Give Women the Right to Vote	Citizen petitions from Chester, York and other counties	Tabled	Legislative apportionment providing for 203 representatives and 50 senators	Constitutional Convention Committee	Approved
Prohibition of all Alcoholic Beverages	Citizen petitions from Wyoming, Lancaster and other counties	Defeated	State finance restrictions based upon tax revenues and related matters	Constitution convention delegates	Defeated
Allow corporations not incorporated in state to own property in state	Committee on Business and Industry	Approved	Provide a home rule option for all local governments	Constitution convention delegates	Approved
Prohibiting railroads from owning coal mines	Individuals and statewide organizations	Tabled	Adoption of a unified judicial system based upon Supreme Court rules	Pennsylvania Bar Association	Approved
Allow Conscientious Objection to not Bear Arms	Religious Society of Friends in Pennsylvania	Defeated	Add Commonwealth Universities to preferred budget status	Constitution convention delegates	Defeated
Requiring telegraph companies to have public offices and to conduct transfer of stock	Convention Delegates	Defeated	Levy taxes to directly support non-public schools	Single convention delegate	Ruled outside the limitations of the convention
Limit number of stock shares issued by railroads	Convention Delegates	Tabled	Filming of documentary about the convention or keeping a "film history"	Administration and Finance Committee	Defeated

THE PERCEIVED NEED FOR EACH VOTER-APPROVED CONVENTION

In Pennsylvania more proposals to call a constitutional convention were defeated than passed by the electorate. Why did only some achieve voter approval? To begin this analysis the following table lists the conventions, the primary catalysts for each, the perceived need for a convention, and the pressures/conditions of the time that led to approval of a convention.

AN ANALYSIS OF CONSTITUTIONAL CONVENTIONS IN PENNSYLVANIA

CONVENTION	CATALYST	NEED FOR CONVENTION	CONTEMPORARY PRESSURES THAT LED TO A CONVENTION
1776	<ul style="list-style-type: none"> Citizens of Philadelphia with support from eastern cities in Pennsylvania 	<ul style="list-style-type: none"> Following direction of Continental Congress New constitution written outside the influence of William Penn and the English 	<ul style="list-style-type: none"> Lack of leadership from the governor and Assembly Contagious enthusiasm following the recent signing of the Declaration of Independence in Philadelphia Political strategies of the Radicals
1789 Convention	<ul style="list-style-type: none"> Republicans in the General Assembly 	<ul style="list-style-type: none"> Requirement to accommodate and be in compliance with new Federal Constitution Call from the Second Continental Congress for all colonies to draft a constitution 	<ul style="list-style-type: none"> Period of near anarchy in Pennsylvania since the 1776 constitution In some cases, examples from other states provided better models for government structure Change in political thinking to include checks and balances, less government interference with personal rights Rise of conservative thinking in Pennsylvania Lessened influence of the "Radicals" and the perceived need for immediate actions by the public
1837 Convention	<ul style="list-style-type: none"> Democrats in the General Assembly (with a loose coalition of Antimasons and Whigs) 	<ul style="list-style-type: none"> Need to address emerging economic and industrial age developments 	<ul style="list-style-type: none"> Financial panic of 1837 "High" expenditures by the legislature for public works (canals in particular) Public call for better regulation of banks and financial institutions Dissatisfaction with the power of eminent domain given to private companies Rise of liberal views among the voters Returned attention to political affairs after the end of the War of 1812

1872-73 Convention	<ul style="list-style-type: none"> Public demand for reforms; repeated petitions to the General Assembly by organizations 	<ul style="list-style-type: none"> Need to address widespread corruption linked to rapid economic growth Counter the corruption of the legislature 	<ul style="list-style-type: none"> The beginning of the industrial revolution and the accompanying economic and social changes Pride in Pennsylvania as the national leader in transportation, mining, banking and trade Shift of wealth and power from the Commonwealth to the business sector Rapid growth of Pennsylvania cities Intrusion of the legislature into every aspect of local government Start of political machines and regimes in the largest cities Response to national issues of economic growth and inefficient government
1967-1968 Convention	<ul style="list-style-type: none"> Pennsylvania Bar Association “A Modern Constitution for Pennsylvania, Inc.” with a distinguished, statewide board Governor Shafer who in 1966 promised a convention if elected governor Significant attention and detail provided by the Preparatory Committee Governor Scranton’s Commission on Constitutional Revision 	<ul style="list-style-type: none"> Need to take difficult issues directly to the voters that could not be resolved in the legislature 	<ul style="list-style-type: none"> Public response to inaction by the legislature Perceived need to specifically update the constitution in the areas of legislative apportionment, taxation, relationship with local government, and the role/structure of the judiciary Inability to continue constitutional change via the single (or group of) legislative amendment process Legal profession’s push for changes to judicial organization and administration Inability for government at all levels to use prudent debt for government works because of constitutional restrictions

Since passage of the 1874 constitution there have been seven attempts to call a convention in Pennsylvania. Between 1873 and 1967 voters rejected a new convention six times. The seventh vote in the primary election of May 1967 resulted in passage; the vote was 1,140,931 in favor of a constitutional convention and 703,576 against. What were the contemporary conditions that led to the defeat of a convention? The following table summarizes the catalysts and contemporary reasons for defeat by the electorate for a called constitutional convention.

**PROPOSED CONSTITUTIONAL CONVENTIONS
NOT APPROVED BY THE PENNSYLVANIA ELECTORATE**

YEAR	CATALYST FOR CALLING THE CONVENTION	PURPOSE OF THE CONVENTION	CONTEMPORARY PRESSURES THAT LED TO DEFEAT OF A CONVENTION
1891	<ul style="list-style-type: none"> • Proposed by Governor Robert Pattison 	<ul style="list-style-type: none"> • Institute election reforms • Remove power from the political machines in the state's cities 	<ul style="list-style-type: none"> • Belief in the amendment process over the need for a convention (over the next six decades 86 amendments were put before the electorate (59 were adopted) • Lack of public support (voters defeated the convention proposal by a margin of 3 to 1)
1921	<ul style="list-style-type: none"> • Campaign promise to call a convention by William Sproul • Governor appointed a Commission on Constitutional Revision (Sproul Commission) 	<ul style="list-style-type: none"> • General reform that included an executive budget, a required General Appropriation bill, civil service, and increase in number of Supreme Court judges • Need to provide state and local government borrowing 	<ul style="list-style-type: none"> • Draft constitution had more than 130 changes; voters not interested in a complete rewrite of the constitution • Opposition by conservatives who saw the immediate post-World War I era as inappropriate for a convention • Opposition by liberals who did not approve of the governor's appointees for a Commission • Lack of attention to the convention by the general public (the convention was defeated by over 100,000 votes)
1935	<ul style="list-style-type: none"> • Call for convention by Governor Earle • Active campaign by the executive branch for a convention • Appointment of an Advisory Committee on Constitutional Revision • Support of the Democratic Party 	<ul style="list-style-type: none"> • Modifications to amounts state and local governments were allowed to borrow • Desire to broaden legislative authority to classify municipalities • Addition of an amendment process 	<ul style="list-style-type: none"> • Recent development of state and municipal authorities took some pressure off the need for fiscal reform (especially related to debt service) • Significant focus on the problems of the Great Depression distracted from the urgency of a convention • Voters disapproved the proposed convention by about 200,000 votes

1953	<ul style="list-style-type: none"> • Democrats in the Legislature • Local officials 	<ul style="list-style-type: none"> • Address the need for the Commonwealth and local governments to access prudent debt • To again approve the recommendations of the Earle Commission 	<ul style="list-style-type: none"> • Public campaign by the opposition to convince voters that the convention was intended to adopt a graduated income tax • Lack of explanation regarding how delegates would be selected • Defeated by about 160,000 votes
1963	<ul style="list-style-type: none"> • Pledge by Governor Scranton to call for a convention • Changing demographics that suggested Pennsylvania was losing population and working age citizens • Formation of the Citizens Committee—a loose confederacy of statewide organizations calling for a convention • Beginning of economic decline in major Pennsylvania industries • Project Constitution by the Bar Association • Woodside Commission report 	<ul style="list-style-type: none"> • Implement recommendations of the Woodside Commission • Realization that state demographics (especially population and economic activity) were on the decline 	<ul style="list-style-type: none"> • Tepid reception of the Woodside Report by the public • Passage of major reforms and structural changes through general elections • Public disinterest in constitutional issues that had languished for decades • The vote was close, with only 40,000 more votes to disapprove the convention out of about 2,250,000 votes cast • Competing ideologies were forced upon the voters: either vote for an open convention where results were unknown or vote for the concept of multiple amendments by the Woodside Commission

A thorough review of constitutional convention ballots in Pennsylvania fails to provide concrete reasons for their rejection. What is clear is that the electorate has shown repeatedly they have marginal interest in conventions. From adoption of the existing constitution in 1874 to the next convention in 1967-1968, the voters rejected calls for constitutional conventions no less than six times. The following table shows the extent of voter disapproval.

**VOTING RESULTS FOR CONSTITUTIONAL CONVENTION BALLOTS IN PENNSYLVANIA,
1891 TO 1963**

DATE	VOTES FOR APPROVAL	VOTES FOR DISAPPROVAL	VOTES FOR APPROVAL AS A PERCENT OF TOTAL VOTES
November 3, 1891	173,813	420,598	29.2
September 20, 1921	419,191	518,889	44.7
November 4, 1924	329,883	988,442	25.0
September 17, 1935	916,949	1,184,160	43.6
November 3, 1953	533,380	682,823	43.9
November 5, 1963	1,106,388	1,148,060	49.1

Though a trend seems to appear from 1924 to 1963, in reality these numbers are skewed by very low voter turnouts in some years. For instance, the relatively close election in 1963 was based upon a 40 percent voter turnout (the difference between disapproval and approval that year was less than 0.8 percent of all registered voters).

LESSONS LEARNED FROM HISTORY

What lessons are provided by this history of state conventions? The following circumstances appear crucial to the approval or defeat of the call for a constitution convention.

Timing

- Ironically, it appears that moments in time when a constitutional convention is most needed is when the electorate is least interested, or is distracted, from issues important to governance. For instance, the proposed conventions in 1918 and 1935 were deemed inappropriate as government, communities and families struggled in the aftermath of World War I and the Great Depression, respectively.
- A second irony is that public support for a convention is strongly correlated with *general* discontent among the electorate. Though most voter-perceived problems with government are not necessarily due to defects in the constitution, during times of discontent the public nevertheless “feels” the time is right to have a convention to “fix things.”
- Profound changes *outside of government* may also lead the electorate to see the need for constitutional change. This seems true for the 1872-1873 convention at the beginning of the industrial revolution, and for the 1967-1968 convention as voters realized economic development and population in Pennsylvania was beginning a downward spiral.
- Approving conventions in Pennsylvania has seldom been a one-time effort. Often years or decades of persistent pressure upon the legislature was needed to enact a bill for a constitutional convention.
- It seems to have helped, though not consistently, that candidates for governor promised to propose and support a constitutional convention. It was even more helpful when both (or all) gubernatorial candidates did so.

Primary catalysts

- Generally, the calling of a constitution convention was approved when publicly supported and endorsed by a *coalition* of groups. This was true in 1872-1873 when the push for a convention *began* with the electorate, and later was supported by statewide organizations and both the Democratic and Republican Parties.
 - Conversely, conventions supported or endorsed primarily by a narrow group (perhaps because they were seen as special interests) or political insiders fared badly.
-

Stated purpose of the convention

- Conventions called in the name of “reform” or “revision” seldom played well with the electorate; *specific* needs served as better catalysts. That said, as shown by the inability of the Woodside Commission to instruct the public, the electorate must fully understand those specific needs.
- Governor Pattison stated his purpose for a convention in 1891 was to take on the political machines in Pennsylvania’s largest cities; but voters did not accept this as a necessary condition for a convention (especially from a governor elected at the age of 31).
- The need to modernize or change precise Articles and Sections of the constitution attracted a more a positive response from voters, especially if the presentation was helpful to public understanding. This proved crucial in the approval of the 1967-1968 convention and fatal for the proposed 1935 and 1963 conventions.

Over the past century the Pennsylvania Assembly has used an increasing number of legislatively generated amendment proposals to change the constitution rather than resort to calls for a convention

- Since 1874 the need for constitutional conventions has been reduced by use of legislative predominance with amendments, and a lack of understanding by the electorate of issues that have become very complex and beyond the day-to-day understanding of many citizens (such as state borrowing limits, the structure of the judiciary, state and local finance, home rule, and alternate government structures, to name a few).
- Since the 1967-1968 convention there have been 37 successful attempts at constitutional revision outside of a convention.

Public understanding and support

- As noted immediately above, increasingly government (as is also true for a growing number of American institutions and businesses) is beyond the comprehension and understanding of the day-by-day experiences of voters. The Woodside Commission, for instance, had little effect on the electorate, and even the professionals who drafted the final report had difficulty summarizing it in any meaningful way.
- Public support may take time; but petitions for a constitutional convention that are visibly supported by the public are one of the most direct ways of influencing legislators.

There is a need for strong, prominent leadership combined with legislative and citizen support

- It appears that the absence of strong leadership during a convention leads to vague language and poorly designed compromises. There is a sense that emotions rather than debate shape its final product when direction is lacking.
- Three former governors presented the opening speeches for the 1967-1968 convention (Governors Leader, Fine, and Scranton). Governor Leader asked the convention to “not write a constitution of constraint but write one which releases our great and varied capacities to service the needs of our people.”
- All the conventions, when votes for specific resolutions are examined, show thin margins of yeas and nays; it appears that the difficulty or ease in calling a convention does not play a role in the ability of the delegates to agree or compromise on major issues. Strong and impartial leadership is needed to bring and keep delegates together.

The need for substantial preparatory work is essential

- The Preparatory Committee in 1967-1968 anticipated the needs of the delegates and welcomed them with a wide range of information, proposed convention structure, research, and organizational materials.
 - A total of 216 employees were hired as the administrative staff for the 1967-1968 constitutional convention; of these, 157 were legislative employees (all appointed positions lasted three months and were financed by a \$1.56 million budget, or about \$10 million in today’s dollars)
-

There is little history of the behind-the-scenes workings of the conventions; but they were not the politics-free or lobbying-free idealistic gatherings portrayed in most written accounts of past conventions

- For instance, a review of the contemporary newspaper accounts of the 1967-1968 convention suggests
 - The convention began on a high note of idealism, but the delegates were quickly attacked by interest groups and lobbyists (a future convention would be more prone to such pressures based upon the higher number of interest groups and lobbyists added over the past 40 years, plus the advent of ubiquitous communication technology); and
 - It is clear that certain delegates carried messages or entered resolutions for organizations with similar interests, or for of which they were members.
- The ex-officio members of the convention essentially did not participate in the convention or abide by the rules for being a delegate (with four exceptions: Lt. Gov. Raymond Broderick, Herbert Fineman, K. Leroy Irvis, and Robert Fleming)

Historic contributions of Pennsylvania constitutions

Any document as important and reflective of its people as a constitution will have roots in state history. For instance, Pennsylvania has served as an example for other states and the Federal Constitution; and the Pennsylvania constitution of 1776 will forever remain a major influence on the foundation of the federal government and constitution.

Much of the Federal Bill of Rights was based upon Pennsylvania's 1776 Constitution. Other states also borrowed heavily Pennsylvania's government structures (though a major difference was the unicameral Pennsylvania Assembly, attributed to Benjamin Franklin who insisted two houses would lead to constant friction and an inability to legislate). However, writing and implementing laws are two altogether different skills. While the writings of early conventions were revered and adapted by other states, Pennsylvania itself was in a state of anarchy for much of the latter part of the 1700s. Assemblymen refused to attend legislative sessions and no quorum could be raised for years. Only after the Continental Congress threatened to take over the state's government did the legislature begin to again meet. In addition, the Commonwealth had a rough start defining the structure of state government. First, there was a strong legislature without a governor. Eventually a governor did replace executive branch committees, but the judicial system remained weak, fragmented, and disorganized. Several constitutions were needed to create a process of checks and balances, and many still believe Pennsylvania has yet to find an optimum solution.

Other "first in the nation" gifts from Pennsylvania include: representation based upon proportion of total population in the state, no financial or property qualifications for those seeking office, and an independent judiciary system.

KEY FACTORS THAT CONTRIBUTED TO CONVENTION SUCCESS OR FAILURE

Collective lessons have been provided by each of Pennsylvania's five conventions and constitutions to guide the next convention. The following table summarizes such factors.

LESSONS LEARNED FROM PENNSYLVANIA CONSTITUTIONAL CONVENTIONS

ACTIVITY	STRENGTHS	WEAKNESSES
Convention Communications	<ul style="list-style-type: none"> • Maximize pre-convention publicity and ongoing media coverage • Screen and invite bold witnesses and interesting experts • Focus carefully on the issues of most need (or specified by a limited convention) • Balance testimony between the famous and not-so-famous • Issue reports to summarize issues and convention proceedings • Provide a single, official source of information and convention coverage 	<ul style="list-style-type: none"> • Letting media frenzy or personal drama among delegates distract from serious convention issues (though controlled razzle-dazzle can be helpful) • Not using all available media to reach the public (which would now include use of software and equipment compatible with typical home/office equipment) • No single person or convention support group in charge of media and communications
Preparatory Work	<ul style="list-style-type: none"> • Use committees to first address the most complex or sensitive issues • Establish a joint task force with state organizations for particularly complex issues • Have the preparatory committee do as much as possible ahead of time. • Provide proposed structure and rules for the delegates • Prepare the necessary research and background information for dissemination to delegates 	<ul style="list-style-type: none"> • Not determining before the convention the appropriateness of potential convention issues as statutory, amendment, or truly constitutional issues
Convention “tempo”	<ul style="list-style-type: none"> • Take full advantage of debate and careful deliberations (do not rush the convention) • Issues should be grouped to increase the importance of each task • Work patiently through the debates; there are countless interest groups that want to participate • Hold the necessary number of public hearings to avoid need for unproductive redundant debate during the convention • Invite participants from all sides of an issue 	<ul style="list-style-type: none"> • Not allowing the pace of the convention to vary; activity may occur in intense spurts • Failure to avoid details that slow down a convention • Too few public hearings to be inclusive of all those who wish to participate • Attempts to reach widely accepted resolutions through public hearings; wait for the convention • Failure to get opposing groups to work together as much as possible ahead of time
Convention Proceedings	<ul style="list-style-type: none"> • Create a step-by-step approach to debates and presentations • Use committees to first address the most complex or sensitive issues • Joint task forces with statewide organizations can resolve some issues before or during a convention 	<ul style="list-style-type: none"> • Failing to keep groups, panelists, and experts focused on long-term solutions (the new constitution may need to last decades or generations)

CONVENTION APPROACHES THAT PROVED SUCCESSFUL OR UNSUCCESSFUL

Each convention represents a different time period in the history of Pennsylvania, but what worked during each convention provides a common history lesson. A summary of convention approaches, and their effectiveness, is provided by the following table.

CONVENTION	WHAT WAS SUCCESSFUL	WHAT PROVED UNSUCCESSFUL
1776	<ul style="list-style-type: none"> • Political posturing by the Radicals • Finding strong leadership • Opening the delegate selection process to include citizens from all parts of the state and from untraditional backgrounds • Moving quickly to take advantage of the excitement over the Declaration of Independence • Holding the convention in Philadelphia (then the capitol) • Establishing apportionment of representation among counties and Philadelphia 	<ul style="list-style-type: none"> • Attempts to involve a broad, representative body of delegates (many groups refused to participate) • Deferring to prominent members of the convention on some issues (Franklin's call for a unicameral Assembly, for instance) • Creation of an Executive Council instead of a single Governor • Creation of a Council of Censors to sit in judgment of the General Assembly • Lack of structure for a unified judiciary
1789-1790	<ul style="list-style-type: none"> • Legislature was made bicameral • Single executive, the Governor, was established • Overhaul of the judiciary system • Agreement between liberals and conservatives to leave the Bill of Rights unchanged 	<ul style="list-style-type: none"> • Deference to the writers of the 1776 convention • Attempts to bring together the three political parties of the time: the Democrats, the Whigs, and the Antimasons (though the latter two groups often joined to fight the Democrats)
1837	<ul style="list-style-type: none"> • Strong convention leadership • Took advantage of the time's intense political excitement • Public interest in the convention following the economic panic of 1837 • Preparations for a public education system • Beginning of constitutional limitations on the substantive powers of the General Assembly • Adding a process to amend the constitution 	<ul style="list-style-type: none"> • Inability to re-structure and unify the judiciary branch • A continuing express exclusion of non-whites from voting in Pennsylvania • Inability to fully address issues of government corruption (later addressed by amendment)

1872-1873	<ul style="list-style-type: none"> • Enlistment of distinguished state leaders • High competence of the convention delegates • From the beginning the convention was interested in overall, general reform of government structures • No major changes to the Bill of Rights (the enacting legislation forbid the convention to address the Bill of Rights, which the delegates stated was invalid) 	<ul style="list-style-type: none"> • Difficulty addressing some issues due to bitter party divisions • Over-representation of railroad executives as delegates when addressing amendments restricting railroad monopolies • Progress was too slow to keep public interest
1967-1968	<ul style="list-style-type: none"> • The concept of limiting convention topics • Keeping the convention to three months • Putting recommendations into the form of amendments with adequate “plain English” descriptions • Statement by the delegates to the public at the conclusion of the convention • The excellent pre-convention work provided by the Preparatory Committee • Strong and distinguished leadership • A large number of prominent Pennsylvanians (including three governors) who supported a convention and took their messages to the public • Final proposals that were adopted by the voters 	<ul style="list-style-type: none"> • Refusal to allow filming and other media for historic preservation of convention activities • Including members of the General Assembly ex officio (except in rare cases) • Attempts to “correct” the fact that most of the constitution was off-limits to the convention (little effect because the voters had approved a limited convention)

Just as was done in the 1967-1968 convention, it will be useful to begin any future constitutional convention in Pennsylvania with a review and understanding of past conventions.



CHAPTER 2



FUNDAMENTAL PRINCIPLES THAT SHAPED THE PENNSYLVANIA CONSTITUTIONAL CONVENTION EXPERIENCE

“A people that values its privileges above its principles soon loses both.”

DWIGHT D. EISENHOWER

A BRIEF REVIEW OF POLITICAL SCIENCE AND CONSTITUTIONAL CONVENTIONS

Fundamental principles (or political philosophy as it is sometimes called) define government at all levels and determine the relationship between government and tenet (constitutions, politics, law, citizen rights, individual rights and freedoms, structures, authority, legitimacy, and social thought).

Political philosophies that contributed to the Federal and Pennsylvania Constitutions are summarized in this chapter. This is not a detailed history; a complete history is beyond the scope of this study and available elsewhere.

Much credit is given to the authors of our Federal Constitution for their boldness, original thought, and ability to produce a lasting document. Notwithstanding their bravery and practicality, they were also well read, and fully aware of the political ideas and debates taking place in every part of the world. Their deliberations were greatly influenced by the writings of others who preceded them or who were active at the time of this first national constitutional convention.

In terms of American history, the fundamental principles of government began with the Greeks (Plato and Aristotle), continued through the Roman Empire (with its introduction of checks and balances), the British Revolution (and the notion of a bill of rights), and the founding of American democracy.

Some of the earliest examples of modern western principles are Plato’s *Republic* and *Aristotle’s Politics*. Both offered detailed analyses of potential political institutions and set the foundation for political thought ever since. The Romans continued this tradition with the writings of Cicero and Polybius. Adding Christian thought to political theory began with Thomas Aquinas, leading to St. Augustine’s *City of God*. Political and institutional powers were explored by Niccolo Machiavelli, followed by Thomas Hobbes, whose publishing of *Leviathan* in 1651 played a crucial role in American debate. That same year the Leveller *Agreement of the People* became the earliest proposed constitution in English history. By the end of the century the writings of John Locke and Jean-Jacques Rousseau had become a dominant source of influence. Collectively, these philosophers provided direction to constitution authors facing a blank sheet of paper. It is reasonable they would first turn to those who had studied government over the centuries.

Political principles and the Federal Constitution

There is no question that primary influences upon the Federal convention delegates in 1787 included the unwritten “constitutions” of England, the existing state constitutions, and the Articles of Confederation. However, influential individuals also played key roles. For instance, Benjamin Franklin played a pivotal role in the drafting of the Federal and Pennsylvania Constitutions. When the Federal Convention convened in Philadelphia it was from the start

influenced by James Madison and his *Vices of the Political System of the United States* and also his *Of Ancient and Modern Confederacies*. During the convention John Adams published his *Defence of the Constitutions of Government of the United States of America*, which became a dominant source of debate.

Another growing source of influence during this time was the flurry of published pamphlets, which had become a popular tool for expressing political opinions. Some of the influential pamphlet writers who opposed the new constitution included George Mason (Virginia) in his *Objections to the Proposed Federal Constitution*, and Pelatiah Webster's (Pennsylvania) *The Weakness of Brutus Exposed*. Supporters were led by Richard Henry Lee's (Virginia) *Observations Leading to a Fair Examination of the System of Government proposed by the late convention*, and by Noah Webster (New Hampshire) in his *An Examination into the Leading principles of the Federal Constitution*.

Borrowing from the philosophers of the day, the Federalists developed four pillars for constitutionalism. They believed a constitution should:

- Protect its citizens from potential or actual foreign enemies;
- Maintain liberty by insuring individual rights and by placing restrictions upon what government can do to its citizens;
- Establish structures and a framework where people can work together for the good of the country (including economics, business development, free markets, open competition, and private ownership);
- Watch for the material security of its people (welfare, public health, and the bases for today's "safety net").

In addition, the Federalist drafted constitutional text borrowed heavily from religion and the Bible. There was belief on the part of the Federalists that the United States, through its constitution, might operate as a secular religion, going as far as referring to the Federal Constitution as the "Ark of the American covenant."

As a result of these ongoing political debates, the idea of "constitutionalism" became uniquely American, built in no small part upon the work of Thomas Paine who outlined its requisites. In his view, and in the view of many of his contemporaries who were drafting constitutions, constitutionalism required a document that:

- Is written and adopted before its framework or government becomes reality;
- Specifically defines the authority which the people commit to their government; and
- Holds all power beyond the limits of the document as illegitimate.

Despite ongoing policy and philosophical disagreements, the collective visions of those first drafters came together to forge an entirely new form of government. Adding their own thoughts, and committing to work in uncharted waters, the concept of constitutionalism became the glue that held America together. This was best expressed by Michael Foley:

The outstanding appeal of the Constitution to a society not noted for its respect for political institutions is derived from the document's close connection with the identity and development of the United States as a nation...As a result, the American nation is conceived in constitutional terms while American nationalism is seen as the derivative of American constitutionalism. National crises are therefore equated with constitutional crises; and American victories are identified as occasions when the Constitution has prevailed over adversity.

The Federalists and their supporters who created the first constitution have been labeled by history as triumphant and innovative. Often they are described in glowing terms, a view that stands the test of time in history books and civics lessons. John Fiske called the U.S. constitution "this Iliad, or Parthenon, or Fifth Symphony, of statesmanship." Richard Hofstadter quotes Thomas Paine's observation that the constitution was "to liberty, what grammar is to language."

However, their pragmatism was born to the chaos and uncertainty of the times, and the physical distance from their English counterparts was somewhat comforting. As pointed out by Harvard's J. A. Gunn, the Radicals, though credited for seeing government in new ways, were also acting in their own best interests:

The widespread tendency to conceive the public good as the preservation of private interests has been described without much recourse to the idea of 'interest.' The democratic radicals believed that men best knew their own interest and certainly they favoured their acting in terms of it.

The Antifederalists, who opposed the constitution, became unknown players, sometimes marginally described in terms such as "obstructionists." Though the Antifederalists embraced much of what was included in the new constitution they received no credit for their contributions.

In reality, despite political labels, the writers of the Federal Constitution and the state constitutions were mostly businessmen, merchants, farmers, and professionals. As described by Alan Grimes:

The framers of the Constitution were men of an economic class which was vitally interested in removing the deficiencies of the Articles of Confederation. The ratification of the Constitution in the conventions in the various states, however, should make clear that a majority of those voting in the conventions also believed that the national government should be clothed with greater powers in the economic field. And it is significant that the major proposals before the Philadelphia convention were all in agreement that the national government should possess greatly strengthened powers in trade and finance.

Some of the reverence offered to the writers of the constitution may be attributed to their use of religious text and Biblical references. As Lewis Lipsitz has observed, religious references should be seen in their context:

Written interpretations of it resemble analyses of the scriptures, it comes to prescribe civic virtue and to legitimize good behavior, and an elaborate code of laws and customs build up around it, presumably shaped by the need of the day. Often the fact that a constitution was originally a political document is all but forgotten.

Principles and state constitutions

In June of 1776 Richard Henry Lee moved that "these United Colonies are, and of right ought to be, free and independent States" and moved that "...a plan of confederation be prepared and transmitted to the respective Colonies for their consideration and approbation." In effect, this told the colonies to begin working on their constitutions, though the Declaration of Independence was not yet signed. Five states, including Pennsylvania, did just that.

By and large, the same writers and philosophers that most influenced the Federal Constitution convention influenced, directly or indirectly, the consequent state constitutional conventions. Since the 1600s a constitution was an accepted way to guarantee individual rights, to generally address public policy, and to structure government. Likewise, periodic state constitutional conventions have served as an acceptable way to review existing, established practices and structures. At certain moments in every state's history a convention has served the extraordinary purpose of codifying the unwritten, tackling the unknown to shape the future, or creating something revolutionary. As shown in the first chapter of this study, there are periodic occasions when the electorate determines its everyday experience and the existing state constitution to be incongruent, and a convention is approved and convened. This was certainly the case after the adoption of the Federal Constitution. Yet, the atmosphere of the first convention and its resulting constitution was unique, as acknowledged by Michael Lienesch:

What is most different, perhaps, from those first framers to later efforts is that the first were not looking back—they needed to move forward, to find a structure that would serve them going forward. It was unchartered waters. Later conventions had the luxury of looking back, to preserve, at least to include the present but necessarily the future.

The resulting state constitutions improved government structure and operations, and served as each state's foundation of civil behavior, government powers, and subsequent statutes. The notion of a Bill of Rights allowed the constitution to also address social issues and to protect individual sovereignty from government authority.

Because constitutions represent democratic thinking, there will always be friction between preserving the state constitution and avoiding a set of laws too rigid to be practical. Most states have deliberately sought ways to protect their constitutions by making it difficult to change or amend them. This is a balancing act. If the process for changing the constitution becomes too complex or difficult, it will also become too inflexible to stand the test of time. A working constitution allows government to continue functioning in a world of ever evolving social, legal, economic, and political forces. Further, there will always be friction between individuals or groups whose priority is to affirm and preserve the existing constitution and others that want to reform government, correct shortcomings, and watch for transgressors.

Contemporary principles of the Pennsylvania constitution

Post 1776 was a crucial time for the states, but critical times demand action. Though political ideologies and opinions varied (mostly seen as conflicts between the Federalists and the Antifederalists), all agreed that immediate response by state government was required. There was honest fear within every state's convention delegation—for good reason as they faced a completely unknown future with little history to guide them. Still, state by state, the Federalists moved quickly to write constitutions in the belief that speed and surprise would keep the Antifederalists at bay. This strategy was successful as the Antifederalists continued to ask for prudence and patience even as the conventions drafted their constitutions.

The Antifederalists could not seem to put their ideas into words, even though they had broad support in most states. They took positive stands on state sovereignty and the need for a bill of rights. But their arguments were negative (for instance, not arguing for strong state rights, but arguing under the fear of nationalism). In reality, the Federalists benefited from the chaos of the times and the lack of a national ideology.

The Antifederalists in Pennsylvania, who were rooted by their ideology, were much more aligned with William Penn's approach to leadership, which itself was rooted in the thinking of Montesquieu, Machiavelli, and especially Jean-Jacques Rousseau. In fact, much of Rousseau's success in France was due to the validation of his thoughts by earlier experiences in the United States. Their influence can be seen in the first Pennsylvania constitution, especially using terms and negative language by Machiavelli (who believed governments should be feared rather than embraced). The harshness of constitutional language was justified to both the Federalists and Antifederalists—often in response to actions or statements by the English. For instance, in response to the uprising against the Stamp Act in 1766, English Lord Chancellor Northington admonished the colonists:

Every government can arbitrarily impose laws on all its subjects; there must be a supreme dominion in every state; whether monarchical, aristocratical, democratical, or mixed. And all the subjects of each state are bound by the laws made by government.

Pennsylvania, along with most of the states that created constitutions during this time, adopted the tone, but not the intent, of the Antifederalists. That is why early state constitutions were written in a negative way as, for instance, Article I of the Pennsylvania constitution where sections begin: "The government shall not..."

CONSTITUTIONALISM AND THE INVOLVED CITIZEN

In addition to the United States, many other countries (including Canada, Germany, India, Japan and recently Iraq

and eastern European countries) have generated written constitutions to control their governance--as have many private and civic organizations. The public can encounter constitutionalism as part of many organizations—social, service, professional, and political.

Most discussions of the involved citizen begin with or equate to voting. However, citizen involvement goes far beyond exercising a right to vote. As Russell Dalton points out:

People tend to specialize in activities that match their motivations and goals. These cluster together and eventually form organizations and political parties... The new style of citizen politics thus seeks to place more control over political activity in the hands of the citizenry. These changes in the nature of participation make greater demands on the participants. At the same time, however, these activities can increase public pressure on political elites. Citizen participation is becoming more closely linked to citizen influence.

All fifty states (and territories) must have constitutions that conform to the United States Constitution. There may be no lessening of rights or standards by the states to those included in the Federal Constitution. On the other hand, states may define additional rights or set more detailed government structures, as long as the Federal Constitution is not violated. This must be carefully approached because statewide organizations, interest groups, and lobbyists try to utilize the amendment process to their advantage.

The need for civic virtue

In addition to political influence, the writers of our state constitutions were influenced by their religion, which played a significant role in the development of the ideas and philosophies of the day. Over 80 percent of the political pamphlets published during the first Pennsylvania constitutional convention were written by ministers. This is not surprising when remembering that a primary reason people left their homes to travel to America was to avoid religious persecution (including William Penn, the Quaker).

Despite repeated references to the Bible, the nation remained free of an official religion, or rules that prohibited voting, running for office, or owning property based upon religious belief. Constitutionalism, in no small part, embraced a “civil religion” that bound citizens in the pursuit of civic principles. Just as public education would later be deemed essential to *maintaining* a democracy, so did the founders believe civic virtue was essential to the *foundation* of democracy. James Madison (*The Federalist* No. 55) believed that this new republic with its new constitution could not succeed without civic virtue. Even though safeguards and protections were provided by the Federal Constitution, Madison believed only civic virtues could preserve liberty.

This thinking was reinforced by John Jay (*The Federalist* No. 64) who wrote that “every consideration that can influence the human mind, such as honor, oaths, reputations, conscience, the love of country, and family affections and attachments, afford security of their fidelity.” He went on to write:

Now the many, not just the few, were to play active public roles and thus must be informed in order to be able to fulfill their public responsibilities. Revolutionary leaders recognized this new reality even before independence was won, and in several states—Pennsylvanian, North Carolina, Georgia, and Massachusetts—constitutional provisions for the encouragement of education attested to this consciousness.

Civic virtue, especially in this millennium with its constant bombardment of information and opinions, will play a role in the next constitutional convention in Pennsylvania. Should a convention be called, the delegates and the general public might pay heed to Renee Hobbs, who offers the following advice for evaluating messages and for building citizenship skills. As proposed by Hobbs, all direct participants in and observers of a constitutional convention should consider proposals in terms of:

- Who is the author (or origin source) and what is the purpose of the message?
 - What values, lifestyles, or points of view are represented by this message?
 - What techniques are used to attract your attention?
 - What techniques are used to enhance the authority or authenticity of this message?
 - How might different people interpret this message differently?
 - What was omitted from this message?
 - Who makes money from this message?
-



CHAPTER 3



LOGISTICS, PLANNING, AND FACILITATION OF A CONSTITUTIONAL CONVENTION IN PENNSYLVANIA

“If you get the first move wrong, it will be completely wrong.”

- ASIAN PROVERB

THE CURRENT PROCESS

Pennsylvania’s constitution is silent on how to call a convention. This has been true since 1836. Though many options for a convention in Pennsylvania are available, three sources of options are traditionally referenced: notes and accounts of the 1967-1968 limited convention (especially the work of the Preparatory Commission), examples from recent conventions held by other states, and a case decided by the Pennsylvania Supreme Court in 1969 (*Stander v. Kelley*).

The process begins by legislative action (approved by a majority vote in both the House and Senate and signed by the governor) enacting a ballot question proposing a call for constitutional convention, followed by approval of a majority of Pennsylvania voters in the election where the ballot question is presented. Legislation may include the method of delegate selection, the length and place of the convention, the issues to be considered by the convention, or constitutional issues that shall be prohibited from convention action. For instance, the 1967-1968 convention was not to consider the uniformity tax clause of the existing constitution, effectively prohibiting a graduated state income tax or differential taxing of residential and commercial properties. As will be explained in detail later in this study, the court in *Stander v. Kelley* decreed that “[A] vote of the people cannot validate and Constitutionalize anything which violates a provision of the Constitution, and...this question or issue of Constitutionality is justiciable after the voters have adopted such a provision ...” Hence, the Pennsylvania Assembly is within the law if it calls a limited convention.

The following schematic outlines this process as it occurred in the 1967-1968 convention.

Schematic of the 1967-1968 Constitutional Convention Process in Pennsylvania

Legislature approves and governor signs authorization to convene a convention
(February 1967 – Act No. 2)

Voters of the Commonwealth approve calling a convention
(May 1967)

The Democratic and Republican Parties, following rules established separately by each party,
names two candidates from each senatorial district to serve as a convention delegate
(September 1967)

Delegates are elected by the voters, three from each senatorial district (this guaranteed
that both major parties would have representation from each district)
(November 1967)

The convention meets in Harrisburg with a legislated adjournment date of three months (December 1967-February 1968)

The convention produces recommended amendments to the existing constitution (1874 for the most recent convention) which are placed on the ballot for voter approval (April 1968)

ORGANIZATION AND SUPPORT

It is necessary to determine those tasks that must be accomplished before the convention formally convenes. These tasks include preparing background information and research for delegates, ensuring that needed resources will be available during the convention, support staff, management and group leadership, legal support, and logistical planning (venues, agendas, scheduling, etc., to name a few). No convention can be effective without a massive support system.

Convention Planning

The first decision is to determine who is responsible for planning the convention, and then supporting its delegates. The last convention employed, by statute, a Preparatory Committee. There are, however, other options as described in the following table.

OPTIONS FOR PLANNING A CONSTITUTIONAL CONVENTION IN PENNSYLVANIA

OPTIONS	BRIEF DESCRIPTION	PRECEDENT
Establish a Temporary State Agency	An agency of the Commonwealth (with a start date and termination date) will provide planning and logistics; takes advantage of seasoned researchers, lawyers, etc.; new agency can then hire staff or recruit from among state departments	Not tried in Pennsylvania, though Constitutional Commissions have been established as a temporary state agency
Preparatory Committee	Bill establishing the convention will include a list of services and a budget to prepare, facilitate, and follow up convention activities; a commission is appointed to plan and manage the convention	Was extremely instrumental in the successful management of the 1967-1968 convention in Pennsylvania
Temporary Staff	The elected convention officials (or its leadership) would independently budget, hire and manage convention staffing	Basically the Preparatory Commission model, but staff is recruited and hired after the election of delegates with authority to prepare for its convention
Professional Event Planners	A private business would be contracted for convention planning, support, arrangements, and possibly communications	This is a relatively new approach for government; the private sector is increasingly using this approach, but there has not been a recent constitutional convention to test this option

Temporary State Agency. Creating a temporary State Agency to plan and manage a constitutional convention has the advantage of drawing upon resources and references throughout state government. It could also identify, recruit and train needed staff. Those opposed to this approach will cite possible appointment of partisan staff. Indeed, there were charges that some of the 216 state employees hired by the 1967-1968 convention were “freeloaders” (a charge vehemently denied by the convention leaders).

Preparatory Committee. The Preparatory Committee approach worked very well for the 1967-1968 convention, because of its thoroughness, expertise, and appointments. The Committee was charged, and given the authority, by statute to:

- Initiate any studies, inquiries, or analyses of convention subject matter that they deemed relevant or necessary;
- Prepare detailed reference manuals for each of the subjects to be covered by the convention (these consisted of analyses prepared by “distinguished authorities” for each of the four subjects of the limited convention);
- Hold public hearings for each of the four topics included in the limited convention;
- Request and receive any assistance, data or information from any state agency or other government entity;
- Propose rules and procedures for delegate consideration; and
- Offer proposals to assist delegates set rules and elect officials.

An example of the studies provided by the Preparatory Committee may be found in Appendix F.

Professional Event Planners. For the first time, a convention might employ a private Event Planning contractor and related vendors. This contractor would:

- Identify and engage vendors in good standing that provide planning and support for major meetings and other types of conventions;
- Outline and present new opportunities and contemporary approaches to event planning that rely heavily on new communication technologies;
- Maximize virtual preparation for a convention and public access to all aspects of an ongoing convention;
- Handle the planning, logistics and management of the convention (unlike the Preparatory Committee its tenure and responsibilities would also include needed convention and post-convention activities).

It would still remain necessary to have convention administrators (or perhaps a state agency) to be active in the procurement and oversight of this contract.

Of course the most likely of outcomes would be the blending of several, and hopefully the best, elements of the above. The nature and needs of each convention are different, and thus may require a “hybrid” approach to organization, management, and logistical support.

LOGISTICS

The first order of convention business is determining the time, place, and duration of a convention, and to provide logistics as outlined by the Act authorizing a convention. At the very least, logistics will include speaker coordination, setting up public meetings, preparing and disseminating materials, managing facility needs, and handling post conference reports, archives and other follow up activities. Probably the first issues to address are place and time of the convention.

Convention Site and Facilities

Most proposals for constitutional conventions in Pennsylvania specify Harrisburg as the site and the House of

Representatives chamber as the venue. This tradition continues in the Senate Bills introduced in 2006 and 2008.

Reasons to site a convention in Harrisburg include facilities that were built for the type of activities the convention will require, which in many ways mirror a legislative session. The capitol provides large public space for hearings and convention deliberations, and also has a large number of smaller meeting rooms, offices, and work spaces that could be made available to the convention at minimal or no cost. There are existing accommodations for working with the media and for providing public access to convention activities, and most of the technology needed to keep the convention transparent and open to the public is in place. There is adequate air, train and highway access. Knowledge of state and local government structures, resident in state agencies and statewide organizations, is anchored in Harrisburg, thus offering a set of experts, staffers, organizations, and administrators probably unmatched elsewhere in Pennsylvania.

There are, however, arguments that the state capitol may not be the best place to house an independent convention. Any distance from the capital might incur less intrusion by the legislature and lobbyists, plus other potential sites in the Commonwealth have adequate venues and better transportation hubs. A convention outside the capital city might also reinforce public perception that the convention is not “business as usual in Harrisburg.” This would be especially true if the convention includes ex-officio officers of the legislature and executive branch. Commonwealth cities offer significant convention facilities, plus access to major universities for expert testimony and legal or research support. A convention outside Harrisburg or the capitol building may *need* to be considered if the legislature is in session and required meeting and office space for the convention are not available.

A geographically “neutral” site, such as State College, might be considered since it is centrally located and the required facilities for a statewide convention are available. In addition, this distance from the capital city may provide some insulation from special interest influences.

Length of convention

Limited conventions not only place specific sections of the constitution on or off the table for convention consideration, they generally limit the length of a convention (three months for Pennsylvania in 1967-1968) with a statutory date for adjournment *sine die*.

Many would find a convention with no preset date for adjournment to be threatening -- not only interest groups and government agencies, but also voters. Further, it is customary for states to set a time for adjournment for constitutional conventions and other types of citizen assemblies. Setting a deadline serves four primary purposes:

- Containing the cost of the convention within its established budget;
- Requiring completion of the work on a date certain spurs action by the delegates;
- Timing the proposals resulting from a convention in order to match the Pennsylvania election cycle, thus giving the public time to consider proposals; and
- Assisting with scheduling convention activities in a manner that enhances media coverage and public interest.

PREPARATORY AND ONGOING CONVENTION SUPPORT

A Preparatory Committee was in place before the 1967-68 convention. In fact, it took the better part of a year to prepare for the upcoming convention. Its basic charges included:

- Providing the four basic services for a convention: research, legal staffing, communications, and administrative support;
-

- Designing and implementing a public information program with a two-way communication system;
- Making actual arrangements for the convention including venue and lodging preparations, reproduction of documents, staff support, etc.; and
- Preparing the training process and materials for the elected delegates.

Preparation Committee staffing was minimal, using additional resources from most of the state agencies, universities, and other resources. The staff consisted of the following:

• Executive Director	• General Counsel
• Assistant Executive Director	• Director of Convention Services
• Parliamentarian	• Director of Convention Operations
• Solicitor and Assistant Parliamentarian	• Two Co-Directors of Research
• Information Officer	• Historian
• Administrative Consultant	• Director Convention Drafting Bureau

Staffing requirements for future constitutional conventions may be quite different, especially if virtual technologies are introduced. The possibility of a virtual convention is discussed later in this chapter.

CONVENTION GOVERNANCE

Rules and procedures

Any deliberative body, including a constitutional convention, needs a governance structure to promote the orderly and methodical work of the convention. This is even more important when its business must be conducted in a limited amount of time. Establishing the governance structure before the convention saves time for the participants and promotes understanding of the convention rules from day one. When the delegates arrive for the convention they have in hand a proposed *Manual of Rules and Procedures* for their approval that outlines convention procedures. The following table summarizes rules and procedures for delegate consideration:

PROPOSALS BY THE PREPARATORY COMMITTEE OF THE 1967-1968 PENNSYLVANIA CONSTITUTIONAL CONVENTION

<ul style="list-style-type: none"> • Electing officers • Meeting times and daily agendas • The role of the president and other convention officers (powers and duties) • Rights and duties of delegates • Motions and rules of order • Designing notifications to appear, invitations to address the convention, and rules for debate or presentations • Committee procedures • Establishing committees 	<ul style="list-style-type: none"> • Establishing a Committee on Rules and Organization • Adoption of standing rules, with the ability to suspend or amend such rules • Official reporters for convention activities and electronic storage of convention notes, debates, meeting minutes and testimony • Taking of the roll and voting procedures • Method of submitting proposals, recommendations, or petitions
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The next convention will need an expanded manual to include use of communications, interaction with the media, and access to extensive references/resources/archives with instructions or training on *how* to access them. Unlike past

conventions, recent advancements in technology and communication services offer new opportunities for planning, supporting, and implementing convention activities. These services are also necessary for directly supporting convention delegates, and providing communications among delegates, committees, and convention leadership. Examples of needed services follow:

**TECHNICAL SERVICES AND EXPERTISE NEEDED FOR A FUTURE
CONSTITUTIONAL CONVENTION IN PENNSYLVANIA**

<ul style="list-style-type: none"> • Audio Visual Equipment • Catering and Food Services • Computer Assisted Instruction • Computer Support and Equipment • Concept and Graphic Design • Conference Accommodations • Conference Facilities • Convention Services • Data Projection • Electronic Access to Expert Witnesses • Event Planning • Event Staffing • Hearings and Presentations 	<ul style="list-style-type: none"> • Multimedia Services • Photographers and videographers • Printing and Graphics • Simultaneous Interpretation Services and specific signing services • Sound Reinforcement • Expert Speakers/Instructors • Special Events Management • Teleconferencing • Video Projection • Videoconferencing • Webinar Services • Website Management Services
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Election of officers

One of the first tasks of the convention will be determining how to, then selecting, its officers. Again, the Preparatory Committee can help to accomplish much of this before the opening of a convention by:

- Recommending needed officers and describing the role of each officer;
- Preparing specific materials to support convention officers;
- Proposing a method to elect or otherwise select officers; and
- Outlining the potential need for committee and sub-committee chairs.

The 1967-1968 convention had four elected officials (President, First Vice-President, Second Vice-President, and Secretary), 16 committee co-chairs for the eight convention committees, and 32 co-subcommittee chairs for its 16 subcommittees.

Establishing committee leadership

The committee structure from the 1967-1968 convention serves as a first example. There were four major committees (each with two to six sub-committees) that mirrored the four constitution articles assigned (and limited by) Act No. 2. A convention with no limitations upon articles or sections for review would probably have many more sub-committees.

Every delegate to the convention served on a committee, some on more than one. Each committee and each sub-committee had two co-chairman. A summary of committees is provided by the following table.

**COMMITTEES AND SUB-COMMITTEES OF THE
PENNSYLVANIA CONSTITUTIONAL CONVENTION OF 1967-68**

COMMITTEE	SUB-COMMITTEE	NUMBER OF MEMBERS ON SUB COMMITTEE
Judiciary	Selection of Judges	8
	Tenure of Judges	8
	Incompatible Activities of Judges, their Suspension, Removal, Discipline and Compulsory Retirement	8
	Retirement and Post-Retirement Service of Judges	8
	Judicial Administration and Organization	8
Local Government	Structure and Organization	8
	Annexation and Boundary Changes	8
	Local Finance	8
	Home Rule	8
	County Government	8
	Apportionment	8
Taxation and State Finance	Taxation	12
	State Debt	12
	Sinking Fund	12
Legislative Apportionment	Method of Apportionment	14
	Composition of the Legislature	14
Style and Drafting	[None]	18
Arrangement, Submission and Address to the People	[None]	18
Rules	[None]	18
Administration and Finance	[None]	18

Given there are eleven Articles in the Pennsylvania constitution, each with one to 32 sections, the amount of committee work to be assigned can be overwhelming for a full convention. In fact, a convention of 150 delegates would provide about 13 delegates per Article or less than one delegate to cover each of the 200 sections of the existing constitution.

Preparatory Committees usually propose convention rules and organization, site, facilities, and staff needs. A resolution by the Pennsylvania Assembly could provide, for example, “that the Convention and the (Committee) may use any of the facilities, furniture, fixtures, supplies and other property of the Pennsylvania Assembly” as did language authorizing previous conventions.

Committee staff would plan the logistics of assembling the constitutional convention well in advance of its convening date. The activities listed below require advance planning and coordination with state government departments and arrangements with private business (hotels, transportation, catering, across the Commonwealth):

- Arranging, furnish and prepare convention facilities;
- Coordinating use of legislative venues and meeting space, including assigning and furnishing rooms for committees, staff, clerical work, delegates, press, etc.;
- Ordering supplies for convention;
- Arranging for convention equipment and communication systems, including computer support and telephones;
- Arranging for reviewing, editing, storage and duplication of convention documents;
- Analyzing and recommending resources for convention staff needs; and
- Recommending a proposed staff organization, developing job descriptions, and proposing salary scales or rates of reimbursement to state agencies.

PLANNING A VIRTUAL CONVENTION

Any discussion of a future constitutional convention in Pennsylvania will include a debate of the advantages and disadvantages of a face-to-face versus a virtual convention. Significant advances in technology and successful use of virtual conventions in private business validate this new approach.

Few activities spark debate or fuel passions like politics. It may be expected that a virtual convention will be favored by those who support a more open convention—the additional access and transparency of a virtual convention encourages democratic input and allows ongoing observation of convention activities for all Pennsylvanians (and the world). Those who favor more traditional approaches to governing may see a virtual convention as a threat to usual hierarchies, political control, or existing authority.

What is a virtual convention?

For the purpose of this study, a virtual constitutional convention is a real-time meeting of convention delegates set over a specified period of time with its own online location. Not only the actual convention, but also events leading up to the convention, such as public hearings, could be held in this same virtual location. This would allow delegates (and simultaneously the public and media) to gather electronically without the need for travel across the Commonwealth.

In addition to the convenience of virtual events, a virtual convention could attract public attention and encourage citizen input. As stated by David Perlmutter:

When future historians chronicle the interactive, instant, always-on, open-source, globally accessible communications era, they will note that the initial years of the twenty-first century heralded many markers of radical change. *Time* magazine pictured a mirrored computer screen on its 2006 Person of the Year issue and thus affirmed the power of the self-expressive i-generation... Ordinary people with cell phone cameras loaded up the first verbal and pictorial news from “ground zero” and scenes of sensational news like the South Asia tsunami, the London 7/7 bombings, and the Virginia Tech massacre. One U.S. television station fired its staff and opened up all on-air content to such “citizen journalists” while many others explored variations of the “I-reporter” or “you-report” format.

The virtual convention is becoming a mainstay in the corporate world, but is still “out of the box” for the public sector—due in no small part to the infrequency of state constitutional conventions, including in Pennsylvania. However, a virtual convention could attract a limitless audience that transcends age, culture, political affiliation, geography, and points of view. It is fair to expect that even after its conclusion groups that formed before or during the convention would continue to exist.

Also, the recent proliferation of applications on the Internet have produced an electorate that is accustomed to easy access to great speakers and writers, instant news and information, political pundits, blogs on every conceivable subject, Twitter, Facebook, and unlimited networking at the office and in the home. In other words, a constitutional

convention that follows the 1967-68 format may not seem important or interesting to a majority of Pennsylvanians who have direct access to many competing choices for their time and involvement.

Advantages of disadvantages of a virtual convention

Calling a virtual convention would be controversial. Not only is it untried and unproven in Pennsylvania, there are no clear examples from other states. Pennsylvania might be the first. Perhaps the more appropriate concern is: What technologies do we bring to a constitutional convention and when? The use of online services will be a given; and it will be advantageous to pair convention activities with the most appropriate technology.

High on the list of the advantages of a virtual convention is maintaining delegate and public interest. This advantage was summarized by Michael Cornfield in his analysis of national political conventions:

If there's one thing we can count on during the conventions, it's that the decision makers and opinion leaders who flood into the host cities will experience periods of boredom as they travel from one venue to another and wait out the less-than-compelling speeches and presentations they attend. At times like those, they will check their Blackberries, iPhones, and other net-enabled devices. That's a chance to grab their attention and connect them with your activists, whom you can have ready to communicate your message. Activists will leap at the chance to link to conventioners, especially those unable to be there in person.

The advantages and disadvantages of a virtual convention are summarized in the following table.

THE ADVANTAGES AND DISADVANTAGES OF A VIRTUAL CONSTITUTIONAL CONVENTION

ISSUE	ADVANTAGES	DISADVANTAGES
Planning and holding a completely virtual convention	<ul style="list-style-type: none"> • Can be profoundly interactive for delegates, interest groups, and voters • Can save money, especially for preparatory work, regional meetings, delegate support • Could keep convention from being "scripted" or obviously hijacked by any group or political ideology because of its visibility • Greatly organizes the entire event and stores everything for future access and use 	<ul style="list-style-type: none"> • Introduces need for a basic level of technological skills in addition to skills and information needed to be a contributing delegate • This is new; there will be glitches in terms of equipment and in terms of user ability, perhaps leading to delegate or viewer frustration • Will require a formidable group of technicians and support staff (perhaps even a help desk) available to the delegates throughout the convention • Setup and design can be complex and expensive • Delegates may need to attend training sessions • Testing of equipment requires a "dry run" • Needs some means of giving help and assistance at the event itself • Users would need minimum computer specs including headphone and microphone (or headset)

Preparatory work for delegates (with access for voters and interested individuals)	<ul style="list-style-type: none"> • Can be an effective way to archive and access needed information, listen to speakers and experts, ask questions in real time, and share questions or suggestions • Travel has become more difficult, expensive, and time consuming; avoiding travel can be a positive; reducing travel permits “attendance” at more functions • Establishes networks and communications among delegates before meeting face-to-face as a group • Can feature experts, national speakers, academics; if missed, can be accessed and replayed from the archives • Can set up electronic addresses that serve as booths at a floor convention; click and watch or follow scheduled presentations 	<ul style="list-style-type: none"> • Not all delegates may be computer literate or have the necessary equipment to take advantage of the technology; therefore, paper copy may still be necessary
Public Interactions	<ul style="list-style-type: none"> • Can set up message boards, webinars, interfaces with statewide groups, • Effective way to share graphics, images and explanations of complex materials (in addition to text can use streaming audio, video presentation, or animation • Every event and all information submitted as part of the convention can be reviewed again later • Accessing electronically makes following the convention affordable—no travel or registration 	<ul style="list-style-type: none"> • May leave out members of the public with no access to the hardware or software to participate • May need to have public libraries, schools and colleges set up public spaces to access the convention
Costs Related to a Virtual Convention	<ul style="list-style-type: none"> • Reduced transportation, lodging, and per diem costs for delegates, support staff, and those who address the convention • Fewer days for delegates and viewers away from home or business 	<ul style="list-style-type: none"> • Cost of hardware, software, communications, links, and technical and support staff • Need for technical support for training and for trouble shooting during the convention

Whether or not a constitutional convention (or part of the convention) is held virtually, there is no question that online applications can save money, time, and study effort for delegates in the *preparatory stage* of the convention. Offering preparatory activities online may also reduce start-up costs for the convention and lower overhead costs as less space, travel, and facilities will be needed.

While there is time and cost involved in providing technology to support convention activities, delegates (and anyone else) can access materials and archived content (such as expert presentations and public hearings) at any time from any place. Thus, preparation for a convention can be completed according to each delegate’s personal schedule. There may also be less absenteeism than when everyone must convene at a central site. Since delegates would spend less time away from home and business, it would free more time to devote to preparation. It may be easier for the Preparatory Committee to document, appropriately cite, and archive convention materials in a virtual environment.

Targeted use of virtual technology

Various activities of a constitutional convention can employ technology of different types for different goals. The following table presents options for the use of technology.

**OPTIONS FOR TECHNOLOGY SUPPORT FOR A CONSTITUTIONAL
CONVENTION IN PENNSYLVANIA**

OPTION	EVENT COVERAGE	RELATED USE OF TECHNOLOGY
Public Participation in the Preparatory Process	Convention previews and explanation of how state constitutional conventions are structured	Prepared video/audio programs; interviews with convention officers; live broadcasts of preparatory and training sessions for delegates; interactive seminars open to the public provided by the Preparatory Committee, universities, and statewide organizations; special materials for use in the classroom
Public Input Before the Convention	Recording of statewide hearings , the providing of expert testimony for the delegates, and input from organizations and groups	Permits off-site speakers and witnesses to “join” hearings; Statewide broadcast of hearings and public meetings to gather information and hear from experts
Continuous Coverage of the Actual Convention	Live video and audio coverage of sessions	Cable TV (PCN); radio (PBS); live web casts; cell phone streaming; use of convention media “hosts” to explain the workings and ongoing agenda of the convention; simultaneous presence at multiple concurrent sessions
Focus Upon Specific Issue Discussions and Debates	Public hearings and convention debates; possibly responses from statewide organizations and others	Use of “fact checker” produced and disseminated by convention staff and independent entities; electronic archive that can be accessed by the public at any time
Provide Public Feedback	Ongoing communication and information gathering from the convention audience, organizations, individuals	E-mail alerts with opportunity for public response; convention blog sites; web discussion groups; public polling (scientific and online)
Manage Media Relations	Provision of schedules, agendas and events to the media services to schedule coverage	E-mail newsletter; press releases, press conferences

It is important to remember that those Pennsylvanians most experienced and comfortable with the technology (most likely our younger citizens) will not be well represented at a constitutional convention no matter how delegates are selected. On the other hand, the use of these technologies may attract newcomers to the political process, especially

younger voters, and can provide the basis for classroom instruction and student activities.

Others may find the technology frustrating and become distrustful of its contributions. Delegates may find themselves working with a new group of individuals that include cybrarians, user assistance technicians, or avatars (on screen representations of the delegates). During a virtual convention delegate support will be ongoing and intense.

Yet, seeing a speaker live or hearing a concert live is still a very different experience than an Internet connection. Face-to-face conventions also provide social opportunities and direct interaction among delegates not available in the virtual world. Not everything that occurs at a convention can be replicated online. It is unlikely that a completely virtual convention would be acceptable or effective. However, as the previous table shows, there are significant options for planning the integration of technology into a constitutional convention.

Technical Aspects of a virtual convention

When properly run, a virtual convention can be a profoundly interactive event for delegates and for the public. The key to success is meeting the expectations of a face-to-face activity on the web. Delegates can dialog with speakers and experts as well as among themselves. They can store notes and record debates online and access them at will from wherever they are.

The tools of technology include video, graphics, streaming audio and video, accessing archives, as well as text and much more. When a convention session concludes, its content could remain accessible for the duration of the convention and possibly much longer. A summary of advantages and disadvantages is presented in the following table.

PROS AND CONS OF A VIRTUAL CONVENTION

PROS	CONS
<ul style="list-style-type: none"> • Delegates have better attendance • Delegates or the public can attend only those sessions of interest • Conventions can be split by topic (mini-conventions) • Can take the place of public hearings • Saves travel time and expenses • Public and media can attend without traveling • Can archive convention activities and debates for future review at any time from any place • A high-tech convention would be good publicity for Pennsylvania • The technology increases the interest of younger Pennsylvania voters and school students • The convention with controlled web addresses can keep control of materials and serve as the official source of information • Can save on printing costs and material distribution costs • Additional information can be available instantly during debates and discussion (including video, graphics and animation) • The public will learn to readily access convention activities 	<ul style="list-style-type: none"> • Design and setup can be costly • Delegates and the public need personal access to technology equipment and software at home or the office to participate • Must have software or know how to download • Following the virtual convention might require training (could be provided on line by the convention) • Delegates will need fulltime assistance and a help desk to avoid frustration • Convention delegates might require equipment beyond a basic home computer (headsets, mikes, cameras, etc.) • There will be glitches from time to time • Delegates may miss opportunities to socialize and meet “off-line” with other delegates • Interest groups and lobbyists will use the same technology to reach delegates (not necessarily a con, but could get out of control) • This approach may not be the best for debates • Not every part of the convention is well suited for virtual adoption

Examples of virtual convention providers

The following table presents examples of commercial providers or providers that can support a virtual convention. Inclusion of providers in this table does not represent an endorsement; its only purpose is to show that the technology exists and that multiple options are available.

**EXAMPLES OF COMPANIES THAT PROVIDE
VIRTUAL CONVENTION SERVICES OR SUPPORT**

NAME OF COMPANY AND PRODUCT	SERVICES AND FEATURES (AS PRESENTED BY THE COMPANY)
Cisco TelePresence	<ul style="list-style-type: none"> • Scheduling is easy-no IT support required • Launching a meeting is as simple as making a phone call. • People appear lifelike and life-size • In-room controls are intuitive • Collaboration applications are plug and play • Participants can meet in many rooms at once-up to 48 locations in one meeting • Users can meet, record high-quality video, or participate in online special events • Users can easily bring in collaboration applications like WebEx • Existing SD or HD videoconferencing systems can be easily integrated.
Computer Generated Solutions, Virtual Events 365	<ul style="list-style-type: none"> • Communicate virtually with other peers • Ask questions to the experts in the field • Request immediate support from the VirtualEvents365 help desk • Respond to surveys and answer assessments • Adapt new applications across the convention • Provide communications with media • Partner and committee meetings • Internal training • Recruiting and training.
Digitell's Virtual Convention Center	<ul style="list-style-type: none"> • Features for meeting notices • Online registration for convention events • Avatar creation • A virtual calendar to post events • e-commerce solutions for selling products online. • Statistics on who visits, how often [users] visit, and what they visit are also tracked. • Invited groups, experts or organizations can recreate an "exhibit hall" through the Virtual Convention Center. Delegates will be able to watch videos, download brochures, send e-mails, or visit an organization's web site from the convention's address
V-Rooms™ Virtual Data Rooms	<ul style="list-style-type: none"> • Data rooms reduce the cycle time for creating documents and minimize administrative staff document handling and travel time • Data rooms are specifically focused on reducing a client's technology, administrative and expense burdens allowing critical resources to be directed at convention initiatives • Provides instant access on a 24X7 basis to the most accurate and timely information, which decreases review and negotiation cycles.

Virtual Conventions by DSCI/Facebook	<ul style="list-style-type: none"> • The MIRAGE Suite of Simulation software, including the DSCI Virtual Convention application, provides 3D interactive, web-based virtual events for conventions • The Virtual Convention software creates realistic 3D version of convention halls • DSCI has products and support in the following technology areas: training systems, visualization/ virtualization, interactive entertainment, free-space optics, information exploitation, biometrics, and comprehensive [Network] edge device solutions.
Virtualis Convention and Learning Center	<ul style="list-style-type: none"> • Provides a virtual event platform for corporate meetings and business users hosted on Second Life • Was developed by Corporate Planners Unlimited, Inc., a ‘real world’ events management company • Offers a wide array of customization and support for staff and conference attendees • Provides online meetings design and management.

Post-evaluation of a virtual convention

Should a constitutional convention employ some technical aspects of a virtual convention, it is important to conduct a post-evaluation of its success and of delegate satisfaction or dissatisfaction. This assessment documents a new and historic contribution to the convention, and it provides guidance for future convention planning. As put by John Carey:

Technological innovation is always social innovation, if the application will be used by people. Yet, many technologies have been introduced with little concern for the social side of the innovation. Virtual worlds are intended to be immersive social experiences that can offer an alternative to face-to-face interactions, as well as provide new forms of human experience. People living in virtual worlds will need a rich array of communication tools if they are to get the kinds of emotional satisfaction that are possible in everyday social exchanges. ...Are people communicating effectively and do they feel comfortable in virtual worlds? Have communities emerged and, if so, what is the shape of those communities?

As seen in the previous discussion of a virtual constitutional convention, a wide range of options now exist that heretofore were not available to the planner and manager of conventions. Technological advancements permit anything from dramatically enhanced communication and information gathering for a traditional convention where delegates come to a central site, to a virtual citizens’ convention where interested participants observe proceedings via television or online. Interactive participation and debate with fellow “delegates” and speakers could be available via Skype, with subsequent voting by cell phone or email. These and an innumerable range of options permit modern constitutional conventions to be more effective, more interactive, and more citizen-friendly than ever before. Each option has its benefits and drawbacks, requiring convention planners to carefully design the right mix of technology to address the challenges presented to them. Along the way, and after a convention, an objective evaluation will add much to the future planning of infrequent constitutional conventions.

CONVENTION FUNDING AND BUDGETS

Act No. 2 of 1967 provided a limited budget for the 1967-68 constitutional convention in Pennsylvania. A sum of \$100,000 was appropriated for the Preparatory Committee, whose work ceased on December 1, 1967 when the convention began. The only other appropriation was \$2,500 for each delegate to cover their expenses. In addition, delegates received \$0.10 per mile for travel. Delegates from the legislature, executive branch, or who were state employees did not receive the \$2,500. However, the Preparatory Committee was charged to budget for facilities,

printing, consultants, studies, equipment, office supplies, etc., and to submit this budget to the Legislature for appropriation.

In 2009 dollars the 1967 appropriation would total \$645,000 for the Preparatory Committee and \$16,120 for each delegate (or a total of \$2,418,000 for a convention with 150 delegates). Expected travel reimbursement rates for a convention would be near the current amount of \$0.555 per mile. At the very least, based only upon these three costs, a convention would cost more than \$3.5 million. Add the costs of facilities, equipment, paid experts and consultants, etc., and the minimum cost approaches \$10 million.

Other states that have recently proposed constitutional conventions have estimated their costs. The state of Hawaii in 2008 envisioned a constitution convention costing "less than \$10 million." However, the proposed Illinois convention that was defeated by the voters in 2008 would have cost taxpayers about \$78 million based upon a replication of its 1970 constitutional convention with its 116 delegates.

The Association of the Bar of the City of New York completed a comprehensive study (during the previous decade) of a proposed state constitution and, in June 1997, issued the *Report of the Task Force on the New York State Constitutional Convention*. The Bar Association projected a total cost between \$35 million and \$65 million to the New York taxpayers to hold "an election for convention delegates, compensating the delegates, compensating support staff, paying for facilities, and presenting its proposals to the voters for ratification."

It is impossible to estimate the cost of a constitutional convention in Pennsylvania without the details found only in the Act to call a convention. It is likely that the task of costing out a convention will be assigned to the Legislative Budget and Finance Committee before legislative consideration of a constitutional convention.

FUNDING FOR A STATE ENDORSED CONVENTIONS VS. A CITIZENS' CONVENTION WITHOUT STATE SUPPORT

Funding a convention with legislative support

The Act that establishes a constitutional convention in Pennsylvania will include funding for the required activities (though it may be underfunded if the General Assembly is less than enthusiastic about a convention). Precedents from previous conventions in the Commonwealth would have this enabling legislation fund the following:

- Public financing of the delegate selection process, including the costs of reviewing signatures and certifying elections (though not the costs of individual delegate campaigns);
- Remuneration for delegates, providing citizens the resources to participate;
- A Preparatory Committee;
- Direct convention costs, including venues, printing, communications, etc.;
- Staffing during the convention; and
- Post-convention activities including readying materials for the ballot to accept or reject convention proposals.

The advantages of legislative funding include:

- Use of taxpayer money to support the convention (no bias of donors);
 - Availability of funds before the convention to support preparatory activities;
 - Adequate funding of all activities provided in one piece of legislation (or two if the Preparatory Committee is first established, then required to submit a convention budget to the General Assembly);
 - One less distraction to the convention's planners and its delegates if funding is secure.
-

Funding a convention without legislative support

A citizens' convention in Pennsylvania without legislative support will need to self-finance its operations. After developing its budget, the convention will seek donors from four basic sources of funds: individuals who support the convention, corporate sponsors (who may or may not support the convention but make use of its marketing opportunities), statewide organizations, and charitable foundations. The term "organization" is used here very loosely and might include local governments, interest groups, unions, social services, or professional associations, to name a few. However, those organizations that oppose a convention are equally likely to help finance the campaign to defeat a vote for a convention (and some corporations are likely to contribute to both campaigns).

For instance, in California the Bay Area Council (a group pressing for a constitutional convention that has expanded into "Repair California") is recruiting corporate members—with success. Early partners include Google, Yahoo!, Hewlett Packard, and Wells Fargo. Says spokesman John Grubb: "We're going after wealthy, civic-minded individuals." The Council began with a fundraising goal of \$7 million to wage a campaign to persuade voters to approve a convention. But expect that eventually there will be groups with similar campaigns seeking to convince voters to *disapprove* a convention.

In Pennsylvania, where most questions regarding citizens' conventions are unanswered due to the silence of the state constitution, the attempt to call and finance an independent convention will raise new issues, including:

- What type of organization needs to be formed to manage the convention? (LLC, corporation, 403(c), etc.)
- Would the convention be required to report all contributions to the Commonwealth?
- Do existing disclosure laws relate to a citizens' convention?
- Will the public see donors as buying undue influence?

An independent convention is void of any previous legislative action. Therefore, those issues regarding a convention for which the constitution is silent will need resolution by the convention. How will the delegates be selected? How will an election process, if any, be placed on a ballot in Pennsylvania without legislation? Each question might involve additional funding to implement the final answer.

On the other hand, an independent convention may seek funds from local government agencies and municipal corporations as an alternate way to obtain public funding. Private businesses, such as hotels and restaurants, can offer complimentary or discounted services for delegates and for services related to the convention. Specific cities could offer financial support in return for holding the convention in their city (municipal corporations are not required to file reports with the Federal Election Commission).

The decision to hold (or how soon to hold) a citizens' convention may depend upon raising needed funds. Hence, the first requirement is establishing the organization to plan a convention, then to seek funding.

DOES THE SOURCE OF FUNDING DRIVE THE DISCOURSE AND ISSUES?

It is important to answer this question in two ways: Does the funding of the convention influence its discourse, or does the funding of *delegate selection* drive later discourse?

The latter question has no clear response at this point in time; the method of delegate selection for a convention will not be known until there is enabling legislation. If convention delegates are prohibited from taking contributions, or limited in contributions totals, then candidates who have the personal resources to wage a campaign clearly have an advantage (and might tilt the delegation in favor of individuals with significant wealth). Further, it is not clear, at least in Pennsylvania, which current election laws might apply to a candidate running for a constitutional convention. Depending upon the state's final determination, candidates might fall under the minimum reporting laws. This would be unfortunate, as the transparency of the delegate election is lost if not all contributions need to be reported. Also,

existing rules might affect a delegate's ability to accept contributions from Political Action Committees (PACs) or other groups

Funding the *convention* also involves unknowns, not the least of which is public perception of appropriate donations from individuals and corporations who clearly have a stake in the outcomes of the convention. National political conventions routinely offer opportunities to "connect with influential people" in return for large donations.

Funding efforts might be enhanced by registering the convention as an organization that makes private donations tax deductible. Convention staff could also hire an independent vendor to raise funds, concentrating on convention planning and management.

CONSTITUTIONAL CONVENTIONS BY CITIZEN REFERENDUM IN PENNSYLVANIA

The important question is: Can *only* the legislature call a constitutional convention or can the citizens of the Commonwealth directly call for a convention?

The one *official* approach to creating a citizens' convention involves placing before the voters a proposal that allows the people of Pennsylvania to directly call a constitutional convention. This proposal would include the process and components for a citizens' convention.

An organized coalition and public campaign would be needed to pursue enactment of the needed legislation to place this ballot question before the voters of Pennsylvania. Similar attempts in other states have required at least 18 months of preparation and public outreach, often at costs between \$10 million and \$20 million, depending on the size of the state. Those states that have citizen initiatives and referendum have an established process to call a constitutional convention without the approval of the legislature. The following section will describe that process.

A review of citizen initiatives and referendum in other states

The logistics of constitutional citizen initiative and referendum campaigns vary across states. For instance:

- Arizona requires signatures equal to 15 percent of the votes cast in the most recent gubernatorial election; Mississippi requires 12 percent; Michigan, Montana, and South Dakota require 10 percent; and California, Oregon, and Illinois require signatures of 8 percent;
- Florida requires signatures of 8 percent of the votes cast in the most recent presidential election;
- North Dakota requires signatures equal to 4 percent of the resident population; and
- Mississippi prohibits citizen initiatives from amending its Bill of Rights, state retirement systems and right to work provisions, or the initiative process itself.

In California, where a citizens' convention is allowed, the Attorney General's office has publicly released a citizen referendum filed with the office (The Secretary of State's tracking number for this measure is 1373 and the Attorney General's tracking number is 09-0019). The lead proponent for the convention, Paul Currier, now must collect signatures of 694,354 registered voters (the number equal to eight percent of the total votes cast for governor in the 2006 election). He has 150 days to circulate petitions, meaning the signatures must be collected by January 11, 2010.

A detailed analysis for a citizen's convention in Pennsylvania and the process to bring citizen initiatives and referendum to the Commonwealth is provided in Chapter 7.

THE ROLE OF PUBLIC OFFICIALS

The governor

Officially, the only role of the governor in calling a constitutional convention in Pennsylvania is to sign legislation that provides for a convention. However, history makes it clear that in Pennsylvania the governor also acts as marketing commander-in-chief, head cheerleader, coalition builder, and political facilitator for a convention. Also, it is often the governor that initially supports an effort to call a constitutional convention. For example, the *Sacramento Bee* recently quoted Governor Schwarzenegger: “I think that eventually the state of California has to look at a constitutional convention, to really look at the whole thing...because there are many aspects of government in California that are dysfunctional.” The governor’s support goes beyond talk. He has founded the Proposition 1A campaign committee—a coalition of convention proponents that Schwarzenegger has funded with \$80,000 out of his political war chest.

Former governors also play a role, as was true in the 1967-1968 limited constitutional convention in Pennsylvania, where the current and two former governors formed a commission to support the call for a convention (Governors Leader, Scranton, and Shafer). More recently, in neighboring New York State, former governor Mario M. Cuomo wrote in the *New York Times* (July 2009): “A constitutional convention is a peoples’ meeting to design or redesign the peoples’ government. The legislature has traditionally not favored calling such a body to life. It feared that a convention might take steps to diminish the legislature’s institutional power or incumbents’ chances of re-election.”

At a recent press conference in Connecticut, Governor M. Jodi Rell called for a constitutional convention. She supports an open convention with a primary goal of adding the right of citizen initiative and referendum to Connecticut’s existing constitution, adding: “I believe that people should have the right to petition their government.” Similarly, New York Governor Paterson has publicly announced the backing of constitutional convention legislation, perhaps as soon as late 2009.

On the other hand, history also makes clear that support by the governor is not the solitary prerequisite to a convention. In Pennsylvania, past calls for a convention by Governors Pattison (1891), Sproul (1918), Pinchot (1931), and Earle (1935) went to defeat at the polls. This is no different from other states where, for instance, Governor Linda Lingle of Hawaii backed a state convention in 2008 that was defeated by the voters (65 percent against and 35 percent in favor).

It is also the governor who is most at risk when something goes wrong. For instance, the constitutional convention delegation in the U.S. Virgin Islands has filed suit against Governor John deJongh in response to the governor’s decision not to forward the draft constitution to the Obama administration for its consideration. According to Governor deJongh: “not only did the drafters of the proposed Constitution fail to expressly recognize the supremacy of the U.S. Constitution, but [the delegation] stated that the Virgin Islands Constitution shall be the supreme law of the Virgin Islands.” The governor has recessed the convention with no date given to recall delegates.

The legislature

In Pennsylvania the legislature plays a major role in proposing, specifying the content, establishing the timing, and providing funding for a constitutional convention. Under current legal rulings by the Pennsylvania Supreme Court, there can be no official convention without the consent of the legislature.

If the General Assembly will not establish a constitutional convention, it may be petitioned to provide an alternate, less threatening, process to review the state’s constitution (though this may also be functionally moot as the General Assembly in the past ignored constitutional convention and commission proposals). One example is provided by the state of Alabama where a Constitutional *Commission* was proposed earlier in this decade:

An Alabama Constitutional Commission would be established during the 2003 regular session of the Alabama State Legislature. The Commission would meet and organize much like a legislative body. Article Committees would be

established and charged with the responsibility to reform or rewrite each article and would be required to hold public hearings. At the conclusion of the public hearing process, the Committees would go into session to prepare the revised or rewritten articles for debate among the full Commission.

The Commission would then send its recommendations to the Alabama State Legislature for approval or rejection. The State Legislature would not be able to amend or substitute the articles, they could only approve or reject. Rejected articles would be sent back to the Commission with recommended changes.

Clearly, the role of the General Assembly is key to any review of the current constitution.

The judiciary

For all states but Pennsylvania the constitutional convention is a body chosen by the people to revise the law of that state, free of oversight by the legislative, executive, and judicial branches. The legislature does not have the right to interfere with the convention which, while in session has higher standing. *Only* in Pennsylvania is the constitutional convention not considered a fourth branch of government while it is convened. This precedent was set by the Supreme Court of Pennsylvania which ruled in *Wells v. Bain*:

The convention is not a co-ordinate branch of the government. It exercises no governmental power, but is a body raised by law in aid of the popular desire to discuss and propose amendments.

In all other states the constitutional convention has the weight (at least) of the legislature. An example from the state of Wisconsin defines its independence:

Thus the weight of authority is to the effect that the convention, when in session, is a fourth branch of the government, with the same immunity from interference as that possessed by the other three. The executive and judiciary have no more right to interfere with the fourth branch than they do with the other legislative branch, namely, the legislature. The legislature has no right to interfere with a legislative body of higher standing.

CHAPTER 4

CITIZEN PARTICIPATION

“This representative assembly should be in miniature an exact portrait of the people at large. It should think, feel, reason, and act like them.”

JOHN ADAMS

IMPLEMENTING SYSTEMS TO INFORM THE PUBLIC AND TO SOLICIT THEIR INPUT

The most cited section of the Pennsylvania constitution when addressing citizen rights is Article I, Section 2 (political powers). It provides the basis for ongoing public participation in all aspects of state government, and has been included in every one of Pennsylvania’s five constitutions from 1776 to 1968:

All power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety and happiness. For the advancement of these ends they have at all times an inalienable and indefeasible right to alter, reform or abolish their government in such manner as they may think proper.

Citizen participation is, in one sense, built into the constitutional convention process. For instance, there were four opportunities for public input during the 1967-1968 Pennsylvania convention, *three by way of vote*. First, there was a decision to hold a convention, approved by the electorate in the 1967 primary election. Next, election of delegates took place during the general election of November 1967. The convention that followed held public hearings, accepted proposals or resolutions from the public, and reported publicly the debates, notes, and decisions of the convention. Finally, approval of a series of constitutional amendments was placed before the public for a final vote in the 1968 primary election.

However, the opportunity for citizen participation in any future convention will go far beyond previous models and be important on two levels. First, there is need for educational programs to help the public understand, evaluate, and judge the issues to be placed before a constitutional convention. Public information is essential to attracting the public’s attention, helping them assess issues as they are being considered by the delegates. Some issues will be complex, and many will be outside the citizen’s everyday experience (consider unification of the judicial system, for instance).

Second, without an organized participation process voters will eventually be asked to vote on issues they may not fully understand. As shown by previous conventions in Pennsylvania, and by experiences of other states, the process of informing the public begins prior to the calling of a constitutional convention. Especially for those voters who distrust the existing political system, accurate and impartial information is the foundation for bringing about change. Considerations for public involvement might include:

- Using all possible forms of communication (brochures, earned media articles, internet sites, and speaker kits, to name a few) to teach about the existing constitution and the purposes of a constitutional convention;
- Exploiting new and evolving technologies to communicate, especially wireless and computer applications;
- Providing a statewide speakers bureau;
- Establishing an official constitutional convention website that would permit interested organizations, bloggers, and others to link with, and to present views on issues;
- Holding regional conferences and town hall meetings;
- Arranging interviews and packaged programs specifically for television and radio;
- Creating public service announcements for all media;

- Preparing public information to address specific convention issues, such as business; agriculture; the professions; and the interests of civic, religious and governmental groups;
- Distributing information prepared and presented by Pennsylvania's universities (including extension programs), colleges and law schools that include information packets, web sites, or multimedia programs;
- Organizing and publicizing state organization endorsements of a convention and of the scope of a convention, coupled with direct outreach to the members of those organizations;
- Polling;
- Convening focus groups; and
- Preparing and disseminating study guides for students and the general public.

The complexity of issues in the 21st century makes more difficult the task of presenting factual, yet relevant and understandable, information to Pennsylvanians, even with the advent of new ways to easily disseminate information. Yet, as the amount and sources of information are increased, information will be, at times, disparate or conflicting. It is essential that public information programs be provided directly by, and officially attributed to, the convention.

Public Hearings

For most states, including the last constitutional convention in Pennsylvania, official activities have begun with public hearings. It is not unusual for conventions to hold up to 30 public hearings in all parts of the state during the two months before the convention is called to order. Convention delegates (however chosen) will attend nearby hearings to listen, to take testimony, to hear experts, and to witness representatives from organizations debate important issues. Leaders and authorities from each region will be invited to locally participate, with the best invited later to address the convention itself.

DELEGATE SELECTION MODELS

For many, the decision to support or not support a constitutional convention is directly linked to the citizen's perception that an open and fair process of delegate selection will first take place. That said, the current Pennsylvania constitution is silent on the matter of constitutional conventions, including how delegates are to be selected.

That means defining a delegate selection process will be an integral part of proposing a constitutional convention in Pennsylvania. The following article from the *New York Times* underscores this need, but also reminds Pennsylvanians that its next convention, and its delegates, will be open to national and international scrutiny.

"A Convention is now in session in Harrisburg for the purpose of revising the Constitution of Pennsylvania. The present document is, in many respects, far from being perfect, and there is a very fair probability of the Convention making it better. But we are more than doubtful whether that assemblage will effect all it is expected to accomplish. Were the selection of members not only a good one but the very best that can possibly be imagined—were every particle of undue personal interest or ambition, every shadow of political partisanship, and every trace of prejudice or passion entirely absent from the deliberations—and were the results of the revision such as should meet with the unqualified approval of all patriotic citizens, and the amended instrument be a model to all times, both for the wisdom of its provisions and the clearness with which they were expressed, the principal evils which the public have hoped to remedy by the calling of the Convention would still remain, in a very great measure, if not entirely, unalleviated."

©The New York Times, November 18, 1872

A review of the 50 states and of democratic governments around the world identifies four practiced methods of delegate selection: elections, appointments, random selection, and citizen assembly. Based upon current thinking and recent experience in other states, the following table summarizes the opportunities and challenges of each method.

METHOD	OPPORTUNITIES	CHALLENGES
Election (states with elections include New York, Hawaii, Utah, Massachusetts and most others)	<ul style="list-style-type: none"> • Free and open to all that wish to participate (if the registration process is reasonable) • Could reflect the current political boundaries (districts) of the state • Opens doors to all interested citizens 	<ul style="list-style-type: none"> • May be subject to current campaign laws • Could be hijacked by interests able to make massive campaign contributions to elect their favored delegates • Conventioneers might simply mirror the legislature • May require establishment of qualifications for candidacy that could be challenged
Appointment (example is Louisiana)	<ul style="list-style-type: none"> • Potential to identify and recruit conventioneers for needed abilities, experience, and leadership 	<ul style="list-style-type: none"> • Not acceptable to most pro-convention groups; possibly not acceptable to most voters • Inherent public distrust of the appointment process (depends on who does the appointing) • Possible charges of cronyism or patronage that undermine the convention • Can be used to bias or hijack the convention
Random Selection (Under discussion in California)	<ul style="list-style-type: none"> • Some pro convention groups/ individuals see this as the least flawed option • Provides best way to assure a delegation that fairly represents the entire Commonwealth and all voter demographics • Might bring back credibility through a “grassroots” approach to government • “Novel” and new approach might help get the attention and keep the interest of citizens and the press • Prevents political party manipulation and undue influence of special interests prior to delegate selection 	<ul style="list-style-type: none"> • Not all selected will be able to participate (threat of job loss, inability to be away from family, etc.) • Not all will be qualified or sufficiently interested • Length and scope of commitment might be undesirable to some • Complex issues will demand significant homework and preparation
Citizen Assembly (used by Ontario, England, Scotland, and British Columbia)	<ul style="list-style-type: none"> • Convention participants are usually chosen by random selection as specified by the enabling legislation (usually mirrors procedures for jury selection) 	<ul style="list-style-type: none"> • Same as for random selection above

Elected convention delegates

State constitutions generally provide a method for electing delegates to constitutional conventions (Pennsylvania is an exception). For instance, fourteen states have enacted an automatic calling of a constitutional convention every 10 to 20 years. "Automatic" means that these states place on the ballot a call for a convention at regular intervals as required by statute or their constitution. These states are Alaska, Connecticut, Hawaii, Illinois, Iowa, Maryland, Michigan, Missouri, Montana, New Hampshire, New York, Ohio, Oklahoma and Rhode Island (see Appendix G for more detail). All fourteen of these states *elect* delegates to their constitutional conventions. A review of these fourteen states did not yield a most popular or most used selection process. For instance, seven states elect delegates from single-seat districts and seven from multi-seat districts.

There are, however, differing *methods* for electing delegates, though each begins with determining the number of delegates per "district," then determining what constitutes a district (examples include existing legislative districts, counties, or areas proportional to population). Further clarifications determine who may or may not be elected delegates. Bills recently introduced into the Senate of Pennsylvania closely follow the procedure for electing delegates to the 1967-68 convention (3 delegates from each of the Commonwealth's 50 Senatorial districts).

Recall that the 1967-1968 convention was composed of 150 *elected* delegates and 13 voting ex officio delegates. Of the total 150 elected delegates 139 were men and eleven were women. Of these 11 women (seven percent of total delegates), two reported occupations and 9 identified themselves as a housewife or homemaker (it should be noted that homemakers included a state representative, a former court steno, two Republican Committeewomen, a former professor, a Democratic Committeewoman, and two former teachers). The occupations of all delegates are presented in the following table.

**OCCUPATIONS OF DELEGATES
1967-1968 PENNSYLVANIA CONSTITUTIONAL CONVENTION**

OCCUPATION	NUMBER OF DELEGATES	PERCENT OF TOTAL DELEGATES
Lawyer/Attorney	60	40.0 Percent
Finance/Insurance/Real Estate, Accounting	17	11.3 Percent
Business Executive	14	9.3 Percent
Business Owner	9	6.0 Percent
Housewife/Homemaker	9	6.0 percent
Schools/Colleges	8	5.3 Percent
Business Management	5	3.3 Percent
Union Rep/Official	5	3.3 Percent
Municipal Officer	4	2.7 Percent
Retired	4	2.7 Percent
Clergy	2	1.3 Percent
Researcher/Technician	2	1.3 Percent
Judge	2	1.3 Percent
All Others	9	6.0 Percent
Totals	150	100.0 Percent

Source: The Pennsylvania Constitution Convention, *Directory of Delegates*, 1967.

The previous table shows a set of occupations significantly different from *statewide* demographics. However, it must be remembered that elections seek the best qualified or most popular candidates. And, if the purpose of an election is to seat the most distinguished candidates, there may be little correlation with statewide demographics. Partial proof of this hypothesis is shown by the future state leadership among the 1967-1968 convention delegates, including long-time convention scholar and judge, Robert Woodside; future Lt. Governor, Ernest Kline; future Speaker of the Pennsylvania House of Representatives K. Leroy Irvis; future Pennsylvania Supreme Court Justice Bruce Kauffman; former Governor William Scranton; future Governors, Richard Thornburgh and Robert Casey; and internationally renown historical novelist James Michener.

Elections can be designed to improve public representation. There are methods to vote for distinguished delegates and simultaneously to preserve demographic characteristics (at least a few, such as gender, age, and region). For instance, a voter, when choosing two candidates from a list, may be required to vote for one woman and one man. This process is common to many organizations/clubs, volunteer agencies, religious groups, nonprofit boards, and even political parties.

Recent interest in a constitutional convention for the state of New York has generated several bills that outline or propose a specific delegate selection process. These bills, as a rule:

- Create a public finance system for delegate elections;
- Change the existing delegate selection process by adopting a system whereby each voter votes for one candidate instead of three; and
- Make it easier for citizens to gain access to the delegate election ballot.

New York has also established the State Commission on Government Integrity and a Temporary Commission on Constitution Revision. The Temporary Commission stated that if a convention is held "...its membership should represent the great diversity of New York... This includes not only our racial and ethnic diversity, also the broad spectrum of education and experience and the vocational backgrounds present in New York." A growing interest for a constitutional convention in New York is yielding legislative bills (such as Bill No. A04146 sponsored by Brodsky) that address delegate selection:

[The former process], although one that had admirable results in 1967, seems ill-suited for today's legal and political climate. The selection of candidates by a narrow group of party leaders seems unlikely to meet with public approval, while the guaranteed minority representation could be subject to challenge on one person-one vote grounds.

Instead, it might be preferable for three delegates to be chosen on a non-partisan ballot at the same time that the initial call to a convention is submitted to the voters for approval. Additionally, it is probably desirable for a host of reasons to prohibit any serving member of the General Assembly from seeking election as a delegate.

Random selection of convention delegates

When a truly representative slate of delegates is desired, only random selection of delegates avoid the influence of bias. Statistically, a randomly selected group of 150 brings a very high probability of statewide representation. Random selection has the advantage of avoiding any bias in selection, of being certified for correct procedures, and avoiding the cost of elections. Further, selection of delegates does not need to wait for the next general or primary election.

To date, random selection has been used infrequently in the United States for anything except calling jurors. That is not the case in many other countries where random selection is routinely used to call Citizen Assemblies. California is most likely to use a random selection process to select delegates for its next constitutional convention (though this is by no means certain). A proposal submitted by the Bay Area Council, a pro-convention organization of citizens, proposes the following method to randomly select delegates:

“The names of approximately 32,000 Californians would be randomly selected from the statewide voters database, 400 from each state Assembly district, 200 men and 200 women from each district. Those names would be mailed a letter of invitation with a fact sheet explaining the role and responsibility of delegates to the Constitutional Convention (including that they would be paid for their participation), and offering them a once in a lifetime opportunity to participate in something unique.

Those invited Californians would be asked to respond by mail, e-mail or telephone to indicate their interest. The names of those who expressed interest would be placed into a pool for their Assembly district, and for each of those districts up to 20 people (of those who responded positively), 10 men and 10 women, would be selected by random draw to receive a second invitation to attend a regional selection meeting. At the meeting, the potential members would sit through a presentation on the work of the constitutional convention, the expectations for members, their workload, their compensation, and the details of schedules and deadlines.

After the presentation, each potential member would be asked to indicate if they are still interested in joining the convention, and to confirm publicly that they are eligible. The names of those who responded affirmatively then would be sealed into envelopes, and put into a hat. Then five people from each Assembly district pool would be selected by random draw for membership on the constitutional convention, with no more than three of any gender selected for each Assembly district. Two substitutes per district, one man and one woman, also would be randomly drawn at this time.

In addition to the 400 delegates selected in this way, up to an additional 20 randomly selected delegates may be added by the Constitutional Convention Commission (see below for description of this body) as may be needed to cause the membership of the convention to approximate a representative sample of California's adult population with respect to age, gender, socioeconomic status, and geographical distribution based on voter registration.”

Appointed convention delegates

Delegates to a constitutional convention in Pennsylvania can be appointed—most likely as part of the legislation enacted to place a convention on the ballot. In Pennsylvania, Senate Bill 291, introduced by Senator Ferlo, proposed the following two types of appointments: ex-officio delegates from the House and Senate with the same powers as elected delegates and a (modified) appointment process where:

“Two delegates will be nominated by the county committee of each political party in each senatorial district in accordance with party rules.”

However, nominees appointed by political parties must then compete with other nominees placed upon the ballot by petition (500 names required). Each voter then selects two delegates from among all the nominees, regardless of how they were nominated.

Delegates chosen for a Citizens Assembly

The Citizen Assembly is more common in countries other than the United States. Assemblies have been called for many reasons, including for constitutional conventions (and would work equally well for preparing constitutional amendments). The Assembly would consider potential amendments, with the final proposals placed before the electorate at a general election.

Many countries use this process with a random selection of participants. For instance, in 2003 the provincial government of British Columbia established a Citizens Assembly to review electoral reform. The 160 members were chosen by a random selection process that began by drawing the names of 100 women and 100 men across the 79 provincial electoral districts. Two additional names were added to correct the representation of native Canadians.

The Citizen Assembly followed this agenda:

- From January to March 2004 the delegates met with a series of experts on all aspects of electoral law, reform, and representing multiple points of view;
- In May and June the Assembly held over 50 public hearings;
- September to November was spent in discussion and debate; and
- A final report was submitted in December 2004.

The Assembly met on weekends, had access to all experts and information it requested, with delegates being paid a monthly stipend and travel expenses. The Assembly voted 146-7 to discontinue its winner-take-all, single seat district electoral system and replace it with a proportional representation system. Their recommendation was accepted by the voters.

**DELEGATE SELECTION PROVIDED BY RECENT CONSTITUTIONAL CONVENTION BILLS
INTRODUCED IN THE PENNSYLVANIA LEGISLATURE**

Three bills to call a constitutional convention have been introduced in the Pennsylvania Senate since 2006. Though each bill was voted out of committee, none made it to the floor for consideration by the full Senate. For the most part, delegate selection followed previous convention procedures, relying especially on the 1967-1968 limited convention model. As the following table shows, two bills proposed a straightforward election of delegates, and a third (Senate Bill 291) proposed a modified appointment process.

SPECIFIC DELEGATE SELECTION PROPOSALS	SENATE BILL 1236 (PICCOLA)	SENATE BILL 1290 (FOLMER)	SENATE BILL 291 (FERLO)
Method of Selection	Elected—three delegates from each senatorial district	Elected—three delegates from each senatorial district	Elected—three delegates from each senatorial district
Qualifications	18 years of age, state resident for 4 years with one year in senatorial district represented	18 years of age, state resident for 4 years with one year in senatorial district represented; not be a public official or registered lobbyist; delegates may not serve in public office for two years following convention	18 years of age, state resident for 4 years with one year in senatorial district represented
Nomination Process	Candidates are nominated by petition (500 signatures required); signatures certified by the Secretary of State	Delegates nominated by petition (100 signatures required); certified by Secretary of State; must file copies of statement of financial interests	Two delegates nominated by the county committee of each political party in each senatorial district following party rules; candidates may also be nominated by petition (500 signatures required); nominees certified by Secretary of State; ex-officio delegates include the Lt. Governor, President pro tempore, Speaker, majority and minority leaderships and caucus chair

Election Details	Each elector votes for two candidates from the senatorial district during the general election; three candidates receiving the highest number of votes are the elected delegates	Ballot shall not include party affiliation; elections held at time of general election at same time as vote for a constitutional convention; each voter selects two candidates; three candidates with highest number of votes are elected as delegates; alternate delegates determined 4 th and 5 th highest number of votes	Delegates selected during municipal election; each voter can choose two candidates; three candidates with the highest number of votes are elected to the convention
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ELIGIBILITY OF DELEGATES

Eligibility decisions are of two types: (1) universal requirements for delegates and (2) conditions or characteristics that prevent an individual from serving as a delegate. The most common definition of delegate eligibility among the states is taken from the eligibility requirements for members of that state's General Assembly.

Based upon Pennsylvania history and the recent introduction of bills in the Senate, the general requirements for convention delegate eligibility would most likely be:

- Must be a registered voter in Pennsylvania;
- Must have resided in their senatorial district (or other area used for delegate elections) for a full year (perhaps two years or more); and
- Prohibition from moving outside the delegate's election district during the convention.

Additional restrictions and prohibitions for convention delegates are possible since the Pennsylvania constitution is silent on a convention, and therefore would not be prohibited. Restrictions placed upon delegate selection in other states include:

- Elected officials currently holding a national office, state office or local office;
- Certain appointed officials at the state level or local level (might include judges, county row officers, etc.);
- Members of the state legislature and its employees;
- Congressional Representatives or Senators;
- Certain local government officials that serve in elected positions, board positions, authorities, or similar positions;
- Federal or state judges and justices; and
- Employees and leadership of political parties.

Restrictions upon delegate eligibility vary across states, but major challenges to such restrictions are rare. State courts have held that restrictions on public officials serving as delegates to be legitimate based on the "incompatible offices" standards in their constitutions. This includes Article VI, Section 2 of the Pennsylvania constitution which states:

No member of Congress from this state, nor any person holding or exercising any office or appointment of trust or profit under the United States, shall at the same time hold or exercise any office in this State to which a salary, fees or perquisites shall be attached. The General Assembly may by law declare what offices are incompatible.

The above language appears to provide authority for the legitimacy of limiting certain public officials from serving as convention delegates.

More restrictive rules for convention delegate eligibility in other states have included bans on:

- All registered lobbyists;
- Family members of any unqualified delegate; and
- Persons who served as compensated employees for election campaigns.

If convention delegate selection in Pennsylvania follows precedent, delegates to the next constitutional convention will be:

- Elected from the state's 50 senatorial districts (though other options are possible such as one delegate from each state Senate and from each state House district);
- A citizen of the United States and a registered voter in the district where the delegate resides;
- Nominated through petition or election filings similar to those for state officials;
- Prohibited from running as a write-in candidate;
- Required to pass an eligibility test from the Secretary of State; and
- Subject to campaign finance and ethics statutes for elected officials.

Furthermore, anyone being compensated for attempting to influence delegates, or the officials or employees of the convention, would likely be required to register as a lobbyist (this has not been legally addressed to date but seems probable under recent law in Pennsylvania).

Summary of options for delegate selection in Pennsylvania

Using past conventions in Pennsylvania and recent convention experiences in other states as a guide, the following options for delegate selection might be considered for the next constitutional convention in Pennsylvania:

- Implement a random selection of delegates to assure statewide representation of voters and to avoid any built-in bias of other selection methods;
- Include the delegate selection process as part of the authorizing referendum statute on a constitutional convention; voters then decide not only to call or not call a convention, but also approve how the delegates are selected;
- Elect delegates by county instead of legislative districts (as in Maryland) with each county having the same number of delegates as its number of representatives in both houses. However, it should be noted that Maryland's use of county-based delegations is based upon state precedent, and has been challenged in court several times under the rulings of *Baker v. Carr*. Still, the process prevails, though some adjustment to population disparities by county have been addressed by adding representatives in the most urban areas; and
- Specific issues that may be difficult to resolve before or during a convention can also be placed on the ballot that includes the vote for or against a convention. These issues might include convention financing, election runoffs, allowing or not allowing elected officials to be convention delegates, and other processes to avoid selection of partisan delegates.

HOW TO MODERATE THE INFLUENCE OF THOSE CURRENTLY IN POWER

Citizen selection of convention delegates

The most effective way to moderate the influences that will pursue a constitutional convention is for Pennsylvania voters to know and elect those delegates who will reject expected outside influences. The corollary is nominating delegates who will put constitutionalism and the needs of the Commonwealth before their own interests. Beyond

that, the public is dependent upon open media coverage; independent, objective expert testimony; polling results; and public hearings.

Due to their apparent indifference, legislators seemed to have little impact upon the 1967-1968 convention. Most ignored the convention during and after its meeting. This indifference included most of the ex-officio delegates from the legislature. There was limited influence from the executive branch, and most of its apparent influence came in the form of consulting with the convention at its invitation (or as paid experts). There was considerably more influence from the judicial branch as most of that convention addressed judicial issues.

Influence can originate from many sources. In fact, statewide organizations likely will immediately identify those delegates who are sympathetic to their cause or have an existing affiliation—however indirect. For instance, universities will seek out delegates who are graduates of their universities, just as certain groups will seek to find environmentalists, political fundamentalists, supporters of public transit, etc., among the delegates.

It is certain that the public, either directly or through their organizations, will carefully watch convention proceedings, looking for any hint of misconduct or lack of transparency. Certain groups will take the role of watchdog, perhaps without specific self-interest in the convention. Others will watch presentations and debates being vigilant to identify allies, opportunities, and threats. Much of the public will follow the convention through established media.

Deliberative democracy

Vigilant selection of delegates offers a direct means of moderating convention influences, but the convention, by adopting forms of deliberative democracy, could employ direct citizen participation as another method of avoiding undue influence. The goal is to involve many citizens (and a representative sample, if possible) in deliberations that lead up to a convention and that form the debates during a convention. A basic definition of deliberative democracy is provided by Sirianni and Friedland:

Deliberative democracy rests on the core notion of citizens and their representatives deliberating about public problems and solutions under conditions that are conducive to reasoned reflection and refined public judgment; a mutual willingness to understand the values, perspectives, and interests of others; and the possibility of reframing their interests and perspectives in light of a joint search for common interests and mutually acceptable solutions.

At its finest, a constitutional convention directly involves citizens in policy research, open debate, and recommended actions. Using deliberative democracy to take participation one step further, citizens identify problems, grasp challenges, seek options or solutions, and strive for consensus. In the end, by going beyond traditional representative government, this process provides a *working relationship* among citizens, representatives, communities, and the media. This process, in place throughout the constitutional convention, is described by Luskin and Fishkin:

By “deliberation” we mean a process of learning, thinking, and talking about policy and electoral choices. Deliberating citizens seek relevant information, reflect on the issues, and exchange views with others. The most valuable kind of deliberation is balanced, taking account of information both convenient and inconvenient to given arguments and alternatives, although much naturally occurring deliberation is of course highly imbalanced. People tend to acquire information disproportionately consistent with what they already have, think mainly along customary lines, and talk mostly with others who think as they do. We do not wish to bar such imbalanced deliberation by definition, but the kind of deliberation from which we expect improving effects is balanced. The root of “deliberation,” recall, is “to weigh.” The deliberation that does the most good involves weighing the merits of competing arguments.

The question then arises: How is deliberative democracy implemented as part of a constitutional convention? The following activities have been successfully used in conventions in other states and appear useful and feasible in Pennsylvania as well:

- Use technology to make public deliberations efficient and cost effective;
- When possible, base deliberations and resulting citizen input upon random sampling for unbiased representation (polling is often used for this activity);
- Form small group sessions for deliberation; then aggregate outcomes across groups;
- Record and analyze group debates (not unlike a focus group); and
- Provide sufficient information to support serious and meaningful deliberations.

However, the primary challenge of introducing deliberative democracy to a constitutional convention is supporting the scope (in terms of issues, geography, population, and characteristics) of citizen participation. Accepting the premise that most Pennsylvania citizens are capable of meaningful deliberation, the number of issues and complexity of policies exceed the time and effort most citizens can offer.

It is also unlikely that the planners and facilitators of a constitutional convention can provide and manage deliberative activities for the public. This will take added support, most likely from foundations and other philanthropic groups, statewide organizations, universities, local government and schools, and strong leadership for each deliberative pursuit. Since none of these support groups has the capacity to engage very large numbers of citizens, a coordinated effort will be necessary.

The historical reviews presented in the first two chapters of this study underscore that an informed, active citizen is essential to democracy. Yet, our history is based upon the belief that citizens are not deliberators; they elect representatives to engage in robust and intellectually honest deliberations on their behalf. The challenge is attracting a diversity of views that are representative of the state, rather than only the loudest or most extroverted citizens. Teamed with new technology opportunities, deliberative democracy principles could prove rewarding in efforts to address the scope of issues, the diversity of the citizenry, and citizen participation in a constitutional convention.



CHAPTER 5



THE BASIS FOR A LIMITED CONSTITUTIONAL CONVENTION IN PENNSYLVANIA

“Every man takes the limits of his own field of vision for the limits of the world.”

ARTHUR SCHOPENHAUER

PLACING RESTRICTIONS ON CONVENTION ISSUES

A limited constitutional convention sends one clear signal to the delegates: *There are specific issues you are to address, but you are not authorized to write a new constitution.*

Is it constitutional in Pennsylvania to limit the issues of a convention? Can enacted restrictions be enforced if convention delegates do not pay attention? As detailed earlier in this report, the 1967-1968 convention was limited by topic, by time, and by issues prohibited for delegate consideration. Each bill recently introduced in the Pennsylvania Senate (one in 2006 and two in 2008) calling for a constitutional convention outlined a limited convention. It is likely, based upon recent experience in Pennsylvania, that a convention designed and enacted by the Legislature will be limited.

Several states, including Pennsylvania, have successfully called limited constitutional conventions. In each case, the argument for limiting a convention includes the possibility of a “Pandora’s Box” or avoiding a “runaway convention.” More specifically, organized groups of all types and motivations try to limit conventions to preserve hard fought prior changes to the constitution, most achieved through the legislative amendment process. An open Pennsylvania convention, with its risk of change to *any* Article or Section, puts at risk past political victories. The *level* of risk seems inconsequential; the very chance of change, no matter how remote, is sufficient to cause some to support a limited convention.

Setting exact boundaries for the scope of a constitutional convention can be crucial. Most voters think of a convention as a review of the structure and the framework of government, focused upon those issues dealing with the executive, judicial, and executive branches of state government. However, a convention can expand into policy issues as well, including as examples, education funding, healthcare programs, and infrastructure needs.

For most, it seems clear that meaningful, sustained reform requires a *comprehensive* review of state government structure and operations that must include the three branches. To date in Pennsylvania, most debates have been focused upon reforms branch-by-branch, such as establishing a unified judicial system or to address the size of the legislature. However, state government is an increasingly complex, interrelated system; and any restructuring would be strengthened by collectively reviewing all parts of that system and making adjustments in a synchronized manner.

COURSE OF ACTIONS FOR LIMITING A CONSTITUTION CONVENTION IN PENNSYLVANIA

Because the Pennsylvania constitution is silent regarding a convention, there are two consequent interpretations that allow the legislature to limit a convention. The first viewpoint is that *nothing* is disallowed because the constitution itself does not prohibit any specific legislative action. The second interpretation is that a limited convention is legal under Article I, Section 2 if the legislature appropriately includes such limitations when it enacts the Act to call a limited convention.

Limiting a constitutional convention in Pennsylvania requires the terms of such limitations be included in the initial ballot for or against calling a convention. In other words, the enacting legislation requires voters to disapprove a convention or to approve a convention *with its limitations* as part of the same ballot question. This approach has been held constitutional by the Pennsylvania Supreme Court and in other state courts. For instance, the Virginia Supreme Court in 1945 noted:

Where the legislature, in the performance of its representative function, asks the electors if they desire a convention to amend or revise a certain part of the Constitution but not the whole Constitution, an affirmative vote of the people on such a question would have the binding effect of the people themselves limiting the scope of the convention to the very portion of the Constitution suggested to them by the legislature. The wishes of the people are supreme.

This is not an issue for those 14 states that have automatic convention ballots. In those states only the need for a convention is put before the voters, not its agenda.

Limitations by issue or area

The limited convention of 1967-1968 charged the delegates to consider four major issues that, up to that time, could not be agreed upon by the Pennsylvania General Assembly. These issues were:

- Legislative apportionment;
- Taxation and state finance;
- Local government; and
- Judicial administration, organization, selection, and tenure.

As outlined in the “Address to the People of Pennsylvania” by the 1967-1968 convention:

Act No. 2 not only limited the subject areas the convention could consider, but also laid down other restrictions. First, it set a three-month life for the Convention, beginning December 1, 1967, and adjourning sine die February 29, 1968. Second, it specifically prohibited the Convention from making any recommendation that clearly permits or prohibits the imposition of a graduated income tax. Third, it prohibits the Convention from changing in any manner that portion of the Constitution which specifies that all taxes shall be uniform, upon the same class of subject, within the territorial limits of the authority levying the tax. Fourth, it prohibited the Convention from altering the restriction that the Motor License Fund should be used solely for public highways, bridges and air navigation facilities. The Convention faithfully observed the limitations thus placed upon it.

Limitations by time

As discussed in detail in Chapter 3, constitutional conventions generally have a start and ending date. This allows for effective planning, budgeting, and management of the convention. Knowing that the convention will adjourn sine die on a date certain provides incentive for the delegates to complete assigned activities. It also allows the recommendations or proposals of a convention to be in sync with election cycles—pre-convention for the election of delegates, and post-convention for voter approval of its resolutions.

The most common length for a convention is about three months. The state of New Jersey, preparing for its most recent convention, studied the length of state constitutional conventions and found that the average duration was 2.6 months (for conventions held between 1938 and 1968). But that represents only the time the convention is in session. Time also is needed to prepare for the convention and to elect delegates.

As was the case with limiting convention issues, legal precedent in Pennsylvania allows the enacting legislation to place a time restriction on a constitutional convention.

A LEGAL REVIEW OF LIMITED CONSTITUTIONAL CONVENTIONS IN PENNSYLVANIA

Unlike the United States Constitution, the current Constitution of the Commonwealth of Pennsylvania does not specifically provide a mechanism for the calling of constitutional conventions. Such provisions were last included in Pennsylvania's Constitution of 1776, which granted the Council of Censors the:

...power to call a convention, to meet within two years after their sitting, if there appear to them an absolute necessity of amending any article of the constitution which may be defective, explaining such as may be thought not clearly expressed, and of adding such as are necessary for the preservation of the rights and happiness of the people.

Despite this, a constitutional convention has been recognized as one of the three legal methods for changing the Pennsylvania Constitution—the other two being legislative amendment as provided in Article XI and by a ruling by the Supreme Court of the United States that provisions of the Pennsylvania Constitution violate the Federal Constitution. Each of the five state constitutions in Pennsylvania was written by a convention.

The Supreme Court of Pennsylvania has addressed the issue of a limited convention through a decree from *Stander v. Kelley*:

Nevertheless, this Court has several times previously held that amendments to our prior and existing Constitution may be initiated by the calling of a Convention, provided a majority of the electors vote in favor of such a call. Unmindful of the fact that the Constitution of 1874, which has been the framework of our State Government for over 90 years, was adopted by the convention method at a time when the amendatory provisions of the then existing Constitution did not prescribe a convention as a method for Constitutional change... The Court also noted that the adoption of the United States Constitution “directly contravened Article XIII of the Articles of Confederation which were drawn up and submitted to the people through a Constitutional Convention.”

Further clarification is provided by legislative statute, upheld by the courts. A review of this ruling may be found in 16 A. Jur. 2d *Constitutional Law* § 25 in Pennsylvania, which states:

Conventions may either be limited or unlimited; a limited convention may only consider a specified part or parts of the constitution, while an unlimited convention may consider the entire constitution, and may alter, reform, or abolish any part or all of it. The courts seem to agree that the powers of a constitutional convention may be effectively limited by the terms of a statute calling the convention into existence, where the statute has been approved by the people at an election held for that purpose.

There is precedent for a limited Constitutional Convention in Pennsylvania. *An Act to provide for calling a Convention with limited powers* (1835 Pa. Laws.270) specifically provided “the expediency of calling a convention of delegates, to be elected by the people, with authority to submit amendments of the State Constitution to a vote of the people, for their ratification or rejection, *and with no other or greater powers whatsoever.*” [Emphases added]

In authorizing the convention that produced the Constitution of 1874, the Pennsylvania General Assembly limited the powers of the Convention by stating:

That nothing herein contained shall authorize the said convention to change the language, or to alter in any manner the several provisions of the ninth article of the present constitution, commonly known as the declaration of rights, but the same shall be excepted from the powers given to said convention, and shall be and remain inviolate forever: *And provided further*, That the said convention shall not create, establish or submit any proposition for the establishment of a court or courts with exclusive equity jurisdiction. (1872 Pa. Laws 55).

However, as Judge Woodside later noted in his study of the 1872-1873 convention “[t]he convention did not adhere strictly to this limitation on its power and proposed several minor alterations to the Bill of Rights.”

An Act providing for a constitutional convention with limited powers was signed into law by Governor Raymond P. Shafer on March 15, 1967 (1967 Pa. Laws 9). The Act limited the convention to four subjects: Legislative Apportionment; Judicial Administration, Organization, Selection and Tenure; Local Government; and the Judiciary. The Act also provided that “[t]he convention shall not consider or include in its recommendations any proposal which clearly permits or prohibits the imposition of a graduated income tax by the Commonwealth or any of its political subdivisions...”

Hence, in Pennsylvania, there exists legal precedent and judicial decree allowing a limited constitutional convention. The concern remains, therefore, of the legislature setting up a “Hobson’s Choice” for the electorate. The General Assembly could respond to citizens’ demands for reform by offering the voters a ballot question calling for a constitutional convention, but limit the range of convention issues in such a manner as to prohibit the voters from dealing with their real concerns. Such a Machiavellian maneuver would, strategically, nearly guarantee a “no” vote by the citizens based on the call’s limitations. It would permit lawmakers to say that the citizens had rejected the convention option, even though voters had not been presented with a valid range of options.

CAN A LIMITED CONVENTION IN PENNSYLVANIA BE ENFORCED?

History and legal precedent have shown that in Pennsylvania, and in some other states, limitations can be enforced when the state legislature follows the correct procedures to call a limited convention. In fact, this legal consensus in Pennsylvania has existed for almost one hundred years.

A limited convention can also be (indirectly) enforced by the voters. For instance, automatic referendums in New York State (1997) and Rhode Island (2004) for an unlimited convention were defeated by the electorate.

An additional method has been introduced by a recent Senate Bill in Pennsylvania. This approach requires a delegate to take an oath to keep within the limitations set for the convention as part of the process of certifying delegate elections. For instance, SB1367 states in Section 5(c):

Candidate’s affidavit.—A candidate must file with the secretary an affidavit stating all of the following:

- The candidate’s residence with street and number and post office address.
- That the candidate is eligible for the office of elected delegate to the constitutional convention.
- That, if elected, *the candidate will faithfully observe the limitations and requirements imposed upon the convention by this act.* [Emphasis added].

During a convention the leadership and Parliamentarian can rule on the appropriateness of convention proposals under legislated limitations. Public viewing of convention procedures can also identify activities outside the boundaries of a limited convention.

Notwithstanding the above, enforcement can go only so far and can only be applied to the convention proceedings. While it is unlikely supplemental recommendations would be included in the convention report, a responsible delegation might address supplemental issues or direct the public’s attention to potential concerns or solutions that go beyond the convention’s charge.



CHAPTER 6



WHAT NEEDS TO HAPPEN AFTER A CONSTITUTIONAL CONVENTION?

“The Constitution only gives people the right to pursue happiness. You have to catch it yourself.”

BENJAMIN FRANKLIN

THE TWO POST-CONVENTION AUDIENCES

Post convention activities have two primary audiences: the public and the General Assembly. Resolutions from the convention need to be organized, packaged, thoroughly explained, and made available for public scrutiny. This activity helps prepare voters for the election where they will have the opportunity to approve or disapprove each recommendation. It will also be prudent to provide information that explains the consequences of each potential change. To the extent possible, the convention should leave behind a non-partisan, united viewpoint to avoid confusing or conflicting interpretations after-the-fact.

Addressing the long-term applications of convention recommendations to the General Assembly exponentially increases the need for specific information and detailed analysis. Fairly detailed explanations of the convention’s intent will be needed for informed debate for Representatives and Senators, especially if there is need to draft legislation to enable the provisions of the newly approved amendment.

COMMUNICATIONS AND CITIZEN FOLLOW UP

The delegation to the 1967-1968 constitutional convention prepared a booklet to assist the public understand the results of the convention and to help them prepare for their vote in the next general election. In its “Address to the People of Pennsylvania” the delegation wrote:

Our present Constitution was drafted in 1872 and 1873 against a background of corruption and special-interest legislation. Before the turn of the century, a number of its provisions were outmoded and it was beginning to hamper the government’s ability to meet the needs of the people under changing social and economic conditions. Since 1890, the demand for revision steadily increased but six times over this same period the voters rejected calls for open Constitutional Conventions...

The adopted proposals now to be offered to the voters of Pennsylvania are the end product of thousands of hours of research, study, and debate by 163 delegates who came to the Convention from every part of the state, with broad diversity of backgrounds and possessing personal or regional viewpoints, but with the over-riding determination to write provisions that would be in the best interest of the Commonwealth and its people.

The decision is now in the hands of the people... Shall modernization of our Constitution be completed or left only partially completed? This is the basic question the people will be called upon to answer in voting on these proposals April 23 [1968].

TIME FOR CITIZEN RESPONSE TO A CONSTITUTIONAL CONVENTION

The existing Pennsylvania constitution is clear on the process for the legislative generated amendments. Article XI § 1 (Proposal of amendments by the General Assembly and their adoption) provides that:

Amendments to this Constitution may be proposed in the Senate or House of Representatives; and if the same shall be agreed to by a majority of the members elected to each House, such proposed amendment or amendments shall be entered on their journals with the yeas and nays taken thereon, and the Secretary of the Commonwealth shall cause the same to be published three months before the next general election, in at least two newspapers in every county in which such newspapers shall be published; and if, in the General Assembly next afterwards chosen, such proposed amendment or amendments shall be agreed to by a majority of the members elected to each House, the Secretary of the Commonwealth shall cause the same again to be published in the manner aforesaid; and such proposed amendment or amendments shall be submitted to the qualified electors of the State in such manner, and at such time at least three months after being so agreed to by the two Houses...

However, since the constitution is silent on constitutional conventions, there is no clear mandate for informing the public about convention proposals to be placed before the voters. Specifying a public review period between the time the convention issues its proposals and the election in which the voters determine whether to approve them needs to be part of the original call for the convention.

POST CONVENTION ROLE AND DUTIES OF THE LEGISLATURE

The post convention role of the legislature is virtually self-determined through the initial Act to call a convention. Act No. 2 (establishing the 1967-1968 convention) required the convention to prepare its proposals in ballot form for later consideration by Pennsylvania voters. There was no direct attempt by the legislature to change these ballot questions prior to the April 1968 Primary Election where the convention proposals were put to a vote. Any role played by the General Assembly was behind the scenes. However, all five ballot questions were approved by the voters, suggesting the General Assembly did not have the authority, political will, or power to influence the voters.

Questions of post convention involvement by the General Assembly become crucial if a future constitutional convention is required to submit proposals directly to the General Assembly rather than directly to the voters. Crucial issues under this scenario might include:

1. Does the legislature have the authority to amend or clarify proposals forwarded by the convention?
2. Should all proposals be legislated through the existing amendment process?
3. Will votes in the General Assembly to accept convention proposals be taken at one time, or in sequence—perhaps over several years or legislative sessions?
4. Does the public have the right to approve or reject convention proposals in either their original or legislatively altered forms?
5. If the General Assembly does amend the proposals of the constitutional convention, does the public have an opportunity to vote on both the convention version and the legislative version of the proposal?
6. Can proposals forwarded by the convention be selectively addressed or ignored?

Based upon legal precedent in Pennsylvania, the answer to questions 1 and 6 is “Yes.” Previous conventions have submitted proposals to the General Assembly and many proposals were ignored. Mandating that convention proposals be submitted to the electorate in the form of ballot questions, and setting the date the ballot will be placed before the electorate, negated all the above questions in 1968.

Most post convention activities emerged from the Executive Branch. After the 1967-1968 convention Governor Shafer announced that William Scranton and George Leader (both previous governors) would lead a bipartisan Constitutional Campaign Committee to promote voter approval of the convention’s work. Convention President Broderick, as he adjourned the convention, reminded the delegates that there was still much to do: “We must still persuade the voters that our recommendations are the best for Pennsylvania. I trust that you will join me in this effort over the next two months.”

ADDRESSING UNRESOLVED CONSTITUTIONAL CONVENTION ISSUES IN PENNSYLVANIA

Newspaper articles after the adjournment of the 1967-1968 constitutional convention bemoaned the fact it generated little public interest and, as stated in some editorials, begged the question: "Why do we need a constitution at all? "The sum of the whole, unfortunately, does not equal the sum of the parts that went into it," said an observer identified only as an academic scholar. Most post convention assessments pointed to the rewriting of the constitution's local government sections as its best work. Many editorials spoke to the few results (five ballot questions) produced by such a resource intensive activity.

The process for the 1967-1968 constitutional convention is the only model available for Pennsylvania because of legal decrees since that convention. A review of this process (see the following table) provides examples of avoiding unresolved issues after a constitutional convention.

**PROVISIONS OF ACT NO. 2 AND THE 1967-1968
PENNSYLVANIA CONSTITUTIONAL CONVENTION**

SECTION	WHAT IT DID
§ 1, Referendum	Provided text for the Referendum calling for a constitutional convention; referendum to be voted by the electorate at the May 1967 primary; also included the limitations of the convention (hence, if approved by the electorate, only a limited convention could be called)
§2, Convention Membership	Provided 163 delegates with three delegates from each senatorial district and 13 ex officio members with the powers of a delegate
§2(a) Eligibility of Delegates	Specified minimum age, citizenship and residence in district
§3, Nomination of Delegates	County committees of each political party nominate delegates
§4, Election of Delegates	Set the date of delegate elections at the municipal election in the year 1967; three candidates with most votes are selected
§5, Preparatory Committee	The Committee was composed of the Lt. Governor and legislative chairs and caucus chairs
§6, Organization of the Convention	Sets the start and end dates for the convention, provides for the election of officers, the setting of rules, and the limitation of issues to be addressed
§7, Limitations	Limits the convention to four parts of the constitution: legislative apportionment, judicial organization, local government, and taxation and state finance
§8, Manner of Submitting Proposals to the Electorate	Replacement text may be in any number of sections, and the convention shall frame the questions for the electorate
§9, Submission of Proposals to the Electorate	Recommendations to be submitted to the electors for approval or rejection on a separate ballot at the primary held in April 1968
§10, Expenses of Delegates	Each delegate received \$2,500 flat stipend plus travel expenses
§11, Registration of Lobbyists	All lobbyists must take an oath to present credentials, including disclosure of the organization whose interests he or she represents
§12, Conventions Open to the Public	All sessions of the convention were open to the public

As seen in the previous table, Act No. 2 provided the structure of the convention, beginning with the initial Referendum.

At the primary election in May, 1967 the following question shall be submitted to the electorate of the Commonwealth to determine its will regarding a constitutional convention (note that the constitution of 1874 had eighteen Articles compared to the eleven Articles of the current constitution):

Shall a constitutional convention be called in accordance with, and subject to, the limitations and requirements contained in Act Number 2 of the 1967 Session of the General Assembly, to prepare for submission to the electorate proposals for the revision of the subject matter of any amendment proposed, but not approved, at the May 1967 Primary and for the revision of Sections 16, 17 and 18 of Article II and of Articles V, XIII, XIV, XV and IX (excluding Section 18 and the Uniformity Clause of Section 1 of Article IX as provided in Section 7 (b) of this Act)?

It comes down to this: As a practical matter the General Assembly must provide legislation to place a referendum before the voters of Pennsylvania asking for approval or disapproval to call a constitutional convention. This is driven largely by the needs for adequate funding, and the apparent need for access to the state's election machinery at three points in time – first, to legitimize the call for convention via ballot; second, to elect convention delegates (if an elective delegate selection process is employed); and third, the post-convention submission of the convention proposals to voters for approval or rejection. This requires completion of the following post convention tasks as previously determined by the call for convention:

- Direct how convention proposals will be placed on the ballot for voter consideration;
- Set the date for an election where the voters to approval/disapproval convention proposals: and
- Specify when approved proposals will take effect.

Making the case

The official work of the convention concludes with its adjournment, leaving only the formal referendum process in which the voters will either accept or reject the convention's proposals. But as happened at the conclusion of the 1967-1968 convention, delegates will be strongly encouraged to get out and convince the public to approve the convention's proposals. This begins the final phase of the amendatory process – the statewide campaign to convince the voters.

It is highly probable that the campaigns to convince the voters, either for or against the proposals, will be run much like a campaign for the governorship, and neither funded or officially sanctioned by the state. However, the campaign in support of the proposals likely will involve most of the convention's delegates and many prominent state officials, as well as Pennsylvania celebrities. Tasks that must be undertaken to make these campaigns a success will include:

- Build a strong leadership victory team;
 - Design and implement a victory campaign strategy;
 - Build a strong fundraising team to raise the funds necessary for the referendum campaign;
 - Build an aggressive marketing and public relations team;
 - Recruit a legal team;
 - Develop a qualified financial/accounting team;
 - Identify likely allies and adversaries;
 - Organize and meet regularly with allies – email, conference call, internet, in person;
 - Cultivate state associated celebrities to campaign;
 - Line up high credibility spokespeople;
 - Conduct polling and focus groups to understand public sentiments, identify any public misunderstandings of your positions (and reconfigure campaign accordingly – including training),and identify your demographic weak areas;
 - Develop training materials, for speeches, debates, Op-Eds, model letters to the editor to keep people on message, and as reference materials;
-

- Execute an aggressive op-ed effort to activate opinion leaders;
- Hold leadership training seminars to get everyone “on-message” and up to speed quickly;
- Recruit community opinion leaders quickly and get commitments of support (local clergy, business leaders, politicians, community activists, etc.), and involve them as often as possible and at as many levels as possible;
- Develop truth squads to discredit adversaries;
- Develop an aggressive web strategy, should be interactive;
- Utilize the web’s ability to virally circulate information to kindred organizations, their members and citizens within their virtual footprint
- Meet with newspapers editorial boards;
- Get on TV and radio talk shows;
- Conduct community education sessions – and rebroadcast on cable and web.
- Develop a strong presence on the blogosphere;
- Build a strong college-based support effort;
- Hold rallies;
- Develop traditional campaign activities, like yard signs, bumper stickers, bill boards, t-shirts, arm bands, door hangers, etc.; and
- Build a strong get out the vote campaigns with allies;



CHAPTER 7



OTHER AVENUES FOR CONSTITUTIONAL CHANGE

“Patience and Diligence, like faith, remove mountains.”

WILLIAM PENN

It is frequently argued, especially by those who oppose a constitutional convention, that other avenues for change or reform should be tried before calling a convention. In Pennsylvania this other avenue is the legislative amendatory process. For many states, though not for Pennsylvania, another avenue is public initiative and referendum. While it can be argued that, when read together, Article I, §2, §20, and §25 seem to provide Pennsylvanians the rights of initiative and referendum, the legislature never has established the mechanisms to make those rights operational. Thus, the initiative and referendum approach to change is not available in Pennsylvania, leaving the legislative amendment process as the only alternative to a constitutional convention.

As will be shown in this chapter, the Pennsylvania constitution has frequently been changed through the legislative amendment process (and, in a much more limited role, by judicial interpretation). But constitutional *change* is not the same as constitutional *reform*. Writings by Alan Tarr explain this distinction:

Of course, it is possible to introduce significant constitutional reform without calling a convention or adopting a new constitution—amendments proposed by constitutional commissions, by initiative, or by state legislatures may also produce constitutional reform. But in thinking about constitutional reform, it is important to distinguish it from the ordinary constitutional change that is so prevalent in the states. Any alteration of a state constitution, no matter how technical or minor, qualifies as constitutional change. In contrast, constitutional reform involves a more fundamental reconsideration of constitutional foundations. It introduces changes of considerable breadth and impact, changes that substantially affect the operation of state government or the public policy of the state. The replacement of one constitution by another obviously qualifies as constitutional reform. So too may major constitutional amendments or interconnected sets of amendments. However, most constitutional change in the states does not qualify [as reform or true change].

DIFFERENCE BETWEEN A CONVENTION AND THE LEGISLATIVE AMENDMENT PROCESS

The legislative amendatory process (located in Article XI §1 in the Pennsylvania Constitution) is relatively straightforward:

An amendment to the Pennsylvania constitution may be proposed in the Senate or the House of Representatives, and must pass both houses by a majority vote. The proposed amendment is then published in at least two newspapers in every Pennsylvania county three months before the next general election. After the general election the legislature must again approve the amendment by a majority vote in each house. The amendment is then published again and the entire electorate in Pennsylvania votes on the proposed amendment. If a majority of voters approves, the amendment is passed and the constitution is amended. If a proposed amendment does not receive a majority of vote it must wait at least five years before it can be put on the ballot again. If more than one amendment is placed on the ballot each must be voted separately.

There is one exception to this procedure. In case of an emergency, an amendment can be proposed in the Senate or House of Representatives and must be passed by at least a two-thirds majority of both houses. The proposed amendment is published in two newspapers in each county. A vote by the electorate must wait at least one month after passage in the General Assembly. If more than one amendment is proposed, each must be voted separately.

Emergency amendments have occurred three times in Pennsylvania, the first in 1972 following Hurricane Agnes. This

first “emergency” amendment allowed additional legislative leniency in providing aid, tax rebates, and state grants to help affected regions recover from flood damage. This was voted and approved in special session.

Emergency amendments were again passed during the regular legislative sessions in 1975 and 1977 following more floods and related storm damage in the Commonwealth. In each case the electorate approved the emergency amendments.

Despite the inclusion of a provision for amending the constitution, it was the goal of its authors to provide a structure that would last for generations. It was also their intent to make the amendatory process sufficiently difficult to be used often, to build minor changes, or to replace statutory law. As Stephen Griffin concluded:

It is reasonable to attribute two goals to the founding generation: they wanted the government to be based on and guided by written law, and they wanted to maintain the framework character of the Constitution so it would last through the centuries. The problem is that these two goals are inconsistent when one takes account of the need to adapt the Constitution to changing circumstances. The experience of American constitutionalism shows that you can maintain the written quality of the constitution only at the expense of abandoning the framework character of the document and you can maintain the framework character of the constitution only by abandoning the idea that all important constitutional change must occur through formal amendment...You can use the formal amendment method of adapting the constitution to historical change only at the price of abandoning the commitment to have a constitution that serves as a framework for government.

Still, with its requirement of passage by the General Assembly in two consecutive legislative sessions before the proposed amendment is placed before the electorate, Pennsylvania has one of the most restrictive amendment processes.

RECENT USE OF THE LEGISLATIVE AMENDMENT PROCESS IN PENNSYLVANIA

Since the adoption of the 1968 constitution there have been 37 amendments—on average, about one each year. All but Articles III, VI, IX, X, and XI have been amended. Specific Articles and Sections, and the date of amendment, follow.

AMENDMENTS TO THE PENNSYLVANIA CONSTITUTION 1968 TO PRESENT

ARTICLE	SECTION	DATE OF AMENDMENT	CHANGE ADOPTED BY AMENDMENT
I	§6	May 18, 1971	Authorizes the General Assembly to provide, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case
	§6	November 3, 1998	In criminal cases the Commonwealth shall have the same right to trial by jury as does the accused
	§9	November 6, 1984	Permits the use of suppressed voluntary admissions or confessions to impeach a defendant's credibility
	§9	November 7, 1995	Further provides for rights of accused in criminal prosecutions
	§9	November 4, 2003	Further provides for rights of accused in criminal prosecutions and for judicial administration
	§10	November 6, 1973	Authorizes courts of common pleas to provide for the initiation of criminal charges by information
	§14	November 3, 1998	Further providing for bailable conditions
	§27	May 18, 1971	Provides for the preservation and restoration of the state's natural resources
	§28	May 18, 1971	Prohibits the denial or abridgment of rights because of gender

II	§17	November 3, 1981	Creates the Legislative Reapportionment Commission
	§17	May 15, 2001	Provides appeal process to the Supreme Court for reapportion plans
IV	§4.1	May 16, 1978	Provides for the election of the Attorney General and provides term eligibility
	§5	May 16, 1978	Provides eligibility of office and qualifications for the Attorney General
	§6	May 16, 1978	Provides further qualifications for Attorney General
	§8	May 20, 1975	Further provides for the appointing power of the Governor relating to certain appointive and elective offices.
	§8	May 16, 1978	Provides for filling the vacancy of the Attorney General
	§9	May 20, 1975	Provides for record keeping of recommendations for pardons
	§9	November 4, 1997	Further provides for the composition and powers of the Board of Pardons.
	§17	May 16, 1978	Provides succession of the Attorney General
	V	§3	November 6, 1979
§13(b)		May 20, 1975	Further providing for the appointing power of the Governor relating to justices, judges, and justices of the peace
§13(b)		May 16, 1978	Providing for filling vacancies in the office of justice, judge or justice of the peace
§13(b)		November 6, 1979	Provides for additional judges for the Superior Court, changing certain provisions relating to initial terms, and further providing for the president judge of the Superior Court
§16		May 15, 2001	Changes provisions relating to judicial discipline
§18		May 18, 1993	Changes provisions relating to judicial discipline
Schedule§11		November 6, 1979	Provides for the president judge of the Superior Court
Schedule§24		May 18, 1993	Includes provisions relating to judicial discipline
VII	§14	November 5, 1985	Further provides for absentee ballots
	§14	November 4, 1997	Further provides for absentee voting

VIII	§2(b)(i)	May 15, 1973	Further providing for the establishment of standards and qualifications for land used for forest and agricultural purposes
	§2(b)(v)	November 6, 1984	Authorizes special tax provisions for taxpayers in certain areas
	§2(b)(vi)	November 4, 1997	Authorizes an exclusion from taxation of a portion of the assessed value of homestead property
	§2(c)	November 8, 1977	Exempting totally and permanently disabled veterans from payment of real property taxes in certain cases
	§2(c)	November 5, 1985	Exempting totally and permanently disabled veterans from payment of real property taxes in certain cases.
	§11	November 3, 1981	Restricts gasoline and motor license fees to construction and reconstruction of highways and bridges
	§17	November 4, 1975	Grants the General Assembly the power to enact special laws to aid certain individuals, corporations, associations, institutions or nonpublic schools adversely affected by conditions caused by certain storms or floods
	§17	November 8, 1977	Provides that special emergency legislation may be enacted when Federal emergency or disaster assistance is also made available

An overview of the preceding list of amendments shows that:

- Public arguments to the contrary for doing so, Article I, the Declaration of Rights, has been amended nine times since 1971, and at least once during each decade since the last convention—more often than any other Article.
- Articles II and VII, The Legislature and Elections sections, respectively, have been amended only twice—the fewest amendments to any of the amended Articles.
- The powers and structure of the Executive Branch (Article IV) have been amended eight times, mostly to establish the election of the Attorney General and to define in more detail the governor's options for appointments.
- As the amendments (eight) to Article V show, the role, and especially the breadth and number, of the judiciary continues to evolve—this despite the significant attention paid to this Article by the 1967-1968 constitutional convention.
- There have been no recent amendments to Article VIII—Taxation and Finance. The amendments in the 1970s and 1980s added exemptions to existing tax laws.

JUDICIAL INTERVENTION

Though not *technically* an option for constitutional change, courts in the Commonwealth of Pennsylvania have the authority to rule that the General Assembly acted beyond the intent of the constitution (see §2.21 of the *Standard Pennsylvania Practice 2d*). Pennsylvania courts can hear cases where it is alleged that the legislature violated the constitution or acted beyond the boundaries of constitutional law. However, as determined by legal precedent, Pennsylvania courts must presume for all legal challenges that the legislature did not intentionally violate the constitution. The court must be presented with proof that an *intentional* attempt was made to pass unconstitutional language or legislation.

A succinct statement by Betty Kane in the Minnesota Secretary of State Office summarizes how the judiciary plays a role in state constitutions:

An essential part of any constitution is the arrangement it makes for its own improvement...Even a document like our federal constitution, which is so basic and flexible as to be “self-revising” by statutory change and legal interpretation, must make provision for meeting extraordinary and unforeseen needs...Constitution-makers are faced with a paradox when they determine the process for change. The provisions must be flexible enough to adapt to changing conditions, but a constitution that is too easily changed invites manipulation by pressure groups, thus becoming unrepresentative.

EXECUTIVE INTERVENTION

The Pennsylvania Election Code requires the Attorney General to prepare a statement in “plain English” to accompany the publishing of a proposed constitutional amendment. This statement must include the purpose, limitations, and effects of the ballot question on the people of the Commonwealth.

The Attorney General may also be asked to render opinions regarding the constitutionality of Pennsylvania statutes. Such requests have significantly decreased in number over the past decade. Its use appears to cycle; there were four to five Attorney General reviews each year during the 1950s and 1970s, but only one or two per year in the 1960s and 1980s. The 1990s saw one review per year, and there has been only one review (in 2006) since 1999.

A CITIZENS’ CONVENTION

There are two options in Pennsylvania for a citizens’ convention. The first requires the General Assembly to enact legislation providing and supporting a citizens’ convention. The second option is a convention called by the citizens of Pennsylvania without the approval or support of the General Assembly. Both are equally implausible; the first appears not politically feasible in Pennsylvania (at least at this time) and the second produces proposals with no authority or process to put them before the electorate. A campaign to enact legislation to establish a process for the calling of a citizens’ constitutional convention could take generations. Rulings by the Pennsylvania Supreme Court also make the option of a citizens’ convention remote. As summarized in *Pennsylvania Constitutional Law*:

The function of the constitutional convention is to propose and recommend to the electorate changes and alterations in the existing Constitution. A constitutional convention has no powers, except those that are delegated to it by the act authorizing its meeting, and the constitutional convention has no law-making powers of any kind. Speeches of the members of a constitutional convention, although they may throw light on resulting ambiguity, cannot be used to distort the obvious meaning of the language adopted.

A convention cannot take from the people their sovereign right to ratify or reject the constitution formed by it. Since the electorate may employ the convention process for amending the Constitution, it follows that the people have the right to determine, initially or by ratification, the manner and matter of notices and times of publication which they desire or are willing to sanction...Furthermore, where the Constitution was amended by constitutional convention, an amendment was not void because it did not comply with the provision of the Constitution that no amendment should be submitted more often than once in five years.

It has been argued, and upheld by the Pennsylvania Supreme Court, that despite the language of Article XI, there is, for all practical purposes, no other way by which a constitutional convention can be called in Pennsylvania except by Act of the General Assembly. A legal examination of this point by the *Dickinson Law Review* concluded:

For the advancement of their peace, safety and happiness the people “have at all times an unalienable and indefeasible right to alter reform or abolish their government, in such manner as they may think proper.” The reader of these imposing words would hardly suspect that the constitution to which they are prefixed, does not allow a change of government, except with the consent of the existing government.

What is the possibility, then, for a direct call by citizens for amendments or a convention for changing the Pennsylvania constitution? According to Pennsylvania Chief Justice Daniel Agnew (1873 to 1878 on the bench) it is the following:

If the legislature possessing these powers of government, be unwilling to pass a law to take the sense of the people, or to delegate to a convention all the powers the people desire to confer upon their delegates, the remedy is still in their own hands; they can elect new representatives that will. ...If their representatives are still unfaithful, or the government becomes tyrannical the right of revolution yet remains.

As pointed out in the *Dickinson Law Review*, if your revolution fails, you will be charged with treason by the very government that was the focus of your revolt. In fact, the *Review* declares that: "The declaration in Section 2 of Article I of the [Pennsylvania] constitution is untrue, and should have been eliminated as soon as the anarchic doctrines which attended the Revolution, had ceased to be current." Many citizens, of course, consider the possibility of an armed revolt to be unreasonable, especially since the armaments of revolution are largely under the control of the government. Constitutions and the rule of law are, ultimately, provided to ensure a peaceable change in government.

There are other legal challenges to the concept of a citizens' convention in Pennsylvania. For instance, according to the *Pennsylvania Law Encyclopedia* (Second Edition), based upon precedent in Pennsylvania courts:

Under the Pennsylvania Constitution, all power is inherent in the people, and no person nor branch of government has any more power than is provided by that absolute framework of government. Thus, no matter how desirable an act may appear or how worthy the objective, it cannot be sustained if it is interdicted by the Pennsylvania Constitution. Furthermore, a principle of questionable constitutionality should not be extended beyond its present application or limitation, especially if such extension would violate either the letter of the spirit of the Constitution. Moreover, a vote of the people cannot validate and constitutionalize anything that violates a provision of the Constitution, and this question or issue of constitutionality is justiciable after the voters have adopted such a provision.

Two additional court cases provide the essential decrees regarding a citizens' constitutional convention in Pennsylvania. The first, *Stander v. Kelley* (1969), decreed that "in matters related to the alteration or amendment or change or abolition of the Constitution, all the clear and mandated provisions of the Constitution must be strictly followed and obeyed, and no departures from, or circumventions or violations of, existing mandatory amendment requirements will be permitted." Recall that this decree was issued after the most recent constitutional convention in Pennsylvania; and there has not been a legal challenge to this ruling to date.

The second case, *Pennsylvania Prison Society v. Commonwealth* (2000), decreed that voters must be able to "express their will as to each substantive constitutional change separately, especially if those changes are not so interrelated that they must be made together. If multiple changes are so interrelated that they must be made together, as a unit, they should be made by constitutional convention where they can be more adequately debated and understood." Hence, again, only by decree, is the use of a constitutional convention an acceptable method for changing the Pennsylvania constitution.

WHAT ARE THE REASONABLE POSSIBILITIES FOR A CITIZENS' CONVENTION?

There has long been discussion and debate in Harrisburg over the possibility of a "citizens' convention." What is not clear in these discussions is how a "citizens' convention" differs from a constitutional convention. After all, if elected delegates to a convention are a cross-section of Pennsylvania citizens, is that not a citizens' convention?

Again, because the Pennsylvania constitution is silent on conventions, direction has come from State Supreme Court decrees and legislative Acts establishing the restrictions of a convention. A constitutional convention in Pennsylvania cannot occur without the express approval of the General Assembly—it cannot originate and proceed by public initiative. Hence, a citizens' convention differs from a constitutional convention in that it is independent of the General Assembly.

Such a convention would place the leadership, agenda, and resulting resolutions directly into the hands of the citizen delegates. Delegates would define the issues and outcomes of a convention, and directly manage the convention, setting their own rules, committees, and issues for debate. Their final proposals would be submitted directly to the public by ballot or forwarded to the General Assembly.

The possibility for a citizens' convention, be it established and supported by the General Assembly or independently of the General Assembly, is slim to none without prior statutory changes. There are a variety of options that could be explored for establishing a process for calling a constitutional convention in Pennsylvania – including a genuine citizens' convention. Most remain improbable at this point in time unless a well-organized, well-funded, strong and sustained popular movement with talented and determined leadership emerges. A summary of possibilities follows:

1. *The General Assembly enacts a process to permit (and possibly financially support) a citizens' convention*

This is the most straightforward approach, but least likely politically. In this scenario the General Assembly would introduce and enact legislation to enable citizens to directly call a constitutional convention. There might be no obligation on the part of the General Assembly to consider convention proposals or to put those proposals to a vote in a general election. It is possible the General Assembly would require the citizens' convention to raise and spend its own funds.

2. *The General Assembly enacts a process to permit and support a limited constitutional convention*

This is similar to the first option, but the General Assembly might be more inclined to enact legislation to allow a convention if that convention's authorized range of issues would be limited. Again, there would be no obligation on the part of the General Assembly to fund such a convention, or consider proposals from the convention.

3. *The General Assembly enacts a process that limits a convention to proposing constitutional amendments on a single subject*

This may represent the least effective method of constitutional change. Little is gained by the convention in accepting this restriction, and the public might be ill-served by a continuation of single issue solutions. At the very least, any possibility for reform in the sense of constitutionalism is removed.

The cost and effort of such a convention might not be acceptable, even to would-be delegates. There is a real risk this process could make the constitution too rigid. In any case, it is unlikely this approach would be supported by interest groups or approved by the voters.

That said, the value of this approach may be to focus upon a single or pressing issue before the General Assembly. A citizens' convention could be called to specifically address property tax reform, or to propose changes to a single section of the constitution.

4. *The current constitution is amended to provide Pennsylvania's citizens the right to directly call a constitutional convention via a ballot question that would appear automatically on the ballot at regular intervals (either every 10 or 20 years).*

This seems the most promising solution, though the time and persistence to gain the approval of the General Assembly would be significant. Several states already employ this method; although it rarely leads to the convening of a convention. However, the effort could achieve greater political favor by restricting those issues a citizens' convention could address, by allowing the convention to propose amendments and statutes, and require all proposals to be approved by the voters. Constitutionalizing a citizens' convention would take years, as does any proposed amendment to the constitution.

5. *Call a citizens' state commission instead of a convention*

State constitutional commissions can be called by either the General Assembly or by the Governor, and can receive funding from either source. Generally, a state commission is limited by its mandate, but that limitation can be quite wide if essential support for the commission is available.

State legislatures or Governors have authorized state *constitutional commissions* as a substitute for a constitutional convention that is more feared by the legislature. Setting the precedent for a state constitutional commission also can serve as a catalyst for a full constitutional convention in the future. However, if the commission performs much the same research and debate of a constitutional convention, its proposals also could be presented directly to the General Assembly for its consideration as amendments. The legislative amendment process would then be used to approve the proposals of the commission.

Examples of commissions and committees include the Sproul Commission (1920), the Advisory Committee on Constitutional Revision (1935), the Woodside Commission (1957), and "Project Constitution" of the Pennsylvania Bar Association and the Committee for State Constitution Revision (both of 1961).

6. *Devising special amendment procedures*

As first proposed by G. Alan Tarr at the Center for State Constitutional Studies at Rutgers, the Pennsylvania General Assembly would convene and receive proposals from a citizen-type convention. The purpose is to establish a less onerous procedure (than the current system) for adopting some constitutional amendments. This is done by allowing the convention to propose the amendment *and* the legislative process to approve that amendment. The rationale is that not all parts of the constitution should require the same level of difficulty to change. The difficulty of passing the amendment may be directly correlated with the importance of the proposal, at least in theory, as described in the next paragraph by Tarr:

Under the alternative proposed here, however, the convention could specify that some or all of its proposed amendments, if adopted, would be subject to amendment by a less onerous process. Thus the convention might propose a particular amendment but, as part of the amendment itself, specify that after adoption it would be subject to amendment by a special procedure. The convention itself would devise that procedure. It might be amendment by a simple majority vote in the Legislature, by a simple majority vote in the Legislature and ratification by the people, or by some other option.

The citizen-type conventions might be limited to specific amendments and could be called periodically or whenever needed. In addition, the General Assembly could identify some parts of the constitution as "unamendable." To adopt this system requires change to the current constitution.

7. *Hold a convention of coalitions, or a convention of organizations*

It may not be the same as a citizens' convention, and it obviously has no official or legal standing, but a convention of coalitions can attract public attention and media coverage. At the very least it can be used to keep the topic of a constitutional convention in the public eye. This approach is underway in Alabama where coalitions are joining with other organizations into one network for education, advocacy, and action. Their goals are:

- Educating constituents on the need for constitutional reform;
 - Encouraging Alabamans to sign-up with Alabama Citizens for Constitutional Reform;
 - Contacting legislators to urge them to allow state voters to approve a constitution convention; and
 - Asking the boards of state organizations to approve a resolution endorsing the call for a citizens' convention.
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8. *Hold an independent citizens' convention*

For the purpose of the immediate discussion, a “citizens’ convention” is a constitutional convention where the delegates have been freely chosen by the electorate, convention delegates have complete control over the convention’s agenda, and also have the authority to place their proposals directly onto the ballot for approval or rejection by Pennsylvania’s voters within a reasonable period of time. A convention independent of the existing state government may have limited access to information and experts. There will also be no funding from the General Assembly. Convention proposals would be adopted by putting pressure upon the legislature to amend the constitution or to provide statutory relief.

A gathering akin to an independent citizens’ convention is currently under consideration in England where the necessary bills have been introduced in Parliament. Basically, this process provides the support and facilities for citizens to gather and deliberate reform or change. Their recommendations are then forwarded to (if done in Pennsylvania) the General Assembly. An advantage of this approach is that a call for a constitutional convention is not needed. In England the convention is proposed by The Public Accountability and Political Ethics Bill—meaning the authority to call the convention is a product of statute. The convention would establish a citizens’ convention composed of one hundred registered voters selected by lot.

The convention will be charged to review and propose reforms to the existing political system. Provisions are made for debate and deliberations. According to the bill, the convention will submit their recommendations in a report “to be enacted swiftly by Parliament unless, the Prime Minister, or Parliament, disagrees with them, in which case either of them, or 5% of citizens, could call a referendum on the issue.”

9. *Provide for citizen initiative and referendum*

The term “initiative” means different things in different states, but is broadly defined as a proposed statute or constitutional amendment placed upon the ballot directly by citizen petition. Its cousin is the referendum whereby recent legislative enactments are petitioned onto the ballot by citizens for rejection or confirmation. From the very first state constitutions the referendum was used to ask voters to ratify their constitutions, though not in Pennsylvania.

The initiative is mostly a product of the populist reform movement in the late 1800s when western U.S. territories adopted this process that was always popular in New England. The use of initiatives and referendums seemed well suited to the populists and the free spirits that colonized the western part of the nation. Often, as was the first case in Oklahoma, these states included citizen initiative and referendum in their original constitutions. It was also advocated by President Theodore Roosevelt during that time.

There has never been a popular vote in Pennsylvania to approve an initiative process—either by convention or by the amendment process. It is a new concept for most voters in the Commonwealth. Although (with a few exceptions such as California) it has not been used often in other states where it is available, polls indicate citizens still believe the Initiative and Referendum tools are important safety valves in the governing process that they want available.

ISSUES THAT REQUIRE CHANGE TO THE PENNSYLVANIA CONSTITUTION

“Change is the only constant.”
HERACLITUS

This report, keeping solely to the “how to” concerns of constitutional conventions, includes no analysis of potential issues that may come before the next convention. An analysis of likely issues is expected in a later study by the Constitutional Convention Commission.

As shown by history, Pennsylvanians do not approve many (and certainly not automatically) efforts at reform or change. Most understand and appreciate the risks of an open convention, and many will fear that debate regarding true structural reform will be distracted by divisive social issues. But this has always been part of the democratic process, and today’s issues such as same sex marriage or abortion mirror past issues of suffrage or slavery. It is very likely that a convention, or attempts at a multi-amendment process, will touch upon subjects sensitive to specific voters and their organized groups.

Without comment, it is useful to provide a list of examples which require constitutional change—meaning no other means for such change is currently possible in Pennsylvania. Many statewide groups, as shown by the following list of “long standing positions” posted by the League of Women Voters-Pennsylvania, have clear goals for constitutional reform. For the League, these include:

- Reforming the legislative and congressional redistricting process;
- Replacing elections with an appointment system for appellate court judges and justices;
- Establishing statewide initiative and referendum procedures;
- Differentiating tax rates for residential and commercial properties;
- Instituting a progressive income tax;
- Using a portion of the liquid fuels tax to fund mass transit; and
- Instituting no excuse absentee voting.

The following table lists, by Article and in no particular order, potential convention issues should a constitutional convention be called. Though certainly not a complete list, the only purpose of the table is to demonstrate the breadth and depth of potential issues that *might* come before a convention. There are numerous additional issues that can be addressed either as statutory changes or constitutional changes under the current language of the constitution.

PENNSYLVANIA CONSTITUTION ARTICLE	POTENTIAL ISSUES FOR DEBATE AT A CONSTITUTIONAL CONVENTION
Article I – Declaration of Rights	<ul style="list-style-type: none"> • Use of eminent domain by state and local governments) • The right to bear arms • Freedom of association

Article II –The Legislature	<ul style="list-style-type: none"> • Recall of elected officials • Size and composition of the General Assembly • Compensation of the General Assembly • Term limits of legislators • Composition of the Legislative Reapportionment Commission
Article III-Legislation	<ul style="list-style-type: none"> • Popular initiatives and referenda • Use of the National Guard • Additional classifications for municipalities
Article IV-The Executive	<ul style="list-style-type: none"> • Administration of pardons • Choice of Lieutenant Governor and procedures to replace the Governor and Lieutenant Governor outside of normal elections • Powers to convene or adjourn the General Assembly • Use and scope of veto powers
Article V – The Judiciary	<ul style="list-style-type: none"> • Replacement of judicial elections with a “merit appointment” system • Recall of sitting judges • Election of judges vs. retention elections • Qualifications for judicial office and ethics • Scope of disciplinary actions
Article VI- Public Officers	<ul style="list-style-type: none"> • Powers of impeachment
Article VII-Elections	<ul style="list-style-type: none"> • Primary Elections • Absentee voting
Article VIII-Taxation and Finance	<ul style="list-style-type: none"> • Uniformity clause
Article IX-Local Government	<ul style="list-style-type: none"> • Home rule powers and authority • Physical consolidation, mergers and border changes of local governments • Local redistricting
Article X-Private Corporations	<ul style="list-style-type: none"> • “Personhood” of corporations
Article XI	<ul style="list-style-type: none"> • Providing a process for amending the constitution, including through a constitutional convention, citizens’ initiative petitioning, or periodic automatic ballot question

There appear to be, at this time, no provisions of the current Pennsylvania Constitution that are in conflict with the Federal Constitution—hence, a convention would not need to be called for that reason. Such conflicts would probably be rendered null and void by the courts before a convention could deal with such conflicts; but the underlying issue that led to the conflict may well remain, and could become the seed of a convention call. Additional convention topics might stem from legislative or popular debates. For instance, debates regarding personal property taxes could morph into a constitutionally prescribed formula the distribution of state funds for PreK to grade 12 educational services. Or, early discussion to structure a new state budget process might morph into constitutionally limiting annual increases in general fund spending (in fact, twenty-three states now limit annual increases in budgetary spending, often tied to increases in personal income).

Local Government

The relationship between state and local governments in the Commonwealth requires special attention, especially because it is frequently mentioned as a primary reason to call a state constitutional convention. Not all issues can be resolved by statute, especially those that deal with the taxing authority of local governments. During a convention

very broad questions would be posed including:

- How much authority over municipalities should the state have?
- Is the current system in Pennsylvania too structured?
- Do municipalities require additional autonomy? For what purpose?

There remain additional topics that address the fiscal responsibilities between state and local government in accordance with the “sorting out process” recommended by the National Conference of State Legislatures. These include:

- What services should be provided by government?
- Which level of government should finance each of those services?
- Which level of government should deliver those services?

Local government was a major component of the 1967-1968 Pennsylvania constitutional convention and will surely be so during the next convention whenever it is called.

The Judiciary

The Judiciary would be an expected topic because not all the dissatisfaction with the existing structure was addressed by past conventions. Second, a large number of individuals interested in a convention tend to be most interested in the Judiciary Article because of their legal profession or background. A third reason is the increasing complexities involved with administering a judicial system.

Other Issues

It is difficult to predict what other issues will top the list of constitutional reforms whenever the next Pennsylvania convention is called. The topics will surely reflect the political, economic, and social atmosphere of the times. As shown earlier in this report, timing is important. It will, however, be valuable to anticipate issues and prepare a background analysis for each. Such analyses were provided by the Preparatory Committee for the 1967-1968 convention.

On this 222nd anniversary of the Federal Constitution, the Civic Research Alliance presents this study to the Pennsylvania Constitutional Convention Commission and ends with a portion of the speech prepared by Benjamin Franklin, read just before the Federal Constitution was signed Monday, September 17, 1787:

For when you assemble a number of men to have the advantage of their joint wisdom, you inevitably assemble with those men, all their prejudices, their passions, their errors of opinion, their local interests, and their selfish views. From such an assembly can a perfect production be expected? It therefore astonishes me, Sir, to find this system approaching so near to perfection as it does... Thus I consent, Sir, to this Constitution because I expect no better, and because I am not sure, that it is not the best. The opinions I have had of its errors, I sacrifice to the public good.



CHAPTER 9



OBSERVATIONS OF THE CONSTITUTIONAL CONVENTION COMMISSION

The following observations by the Constitutional Convention Commission are based on the research embodied in *A Citizens' Guide to a Modern Constitutional Convention*. Individual Commission members and others can decide whether to make recommendations based on these observations.

1. Pennsylvania has the most restrictive constitutional amendment process of any state in the United States. In addition to having less onerous amendment processes, many other states have built-in “safety valves” that, though rarely employed, provide citizens with valuable opportunities to amend their state constitutions. A goal of Article 1, Section 2, of the Pennsylvania Constitution is to preserve the authority of the citizens to determine the kind of government they want and believe they need. At present, only the Pennsylvania General Assembly can initiate a referendum calling for a state constitutional convention. Furthermore, the General Assembly can decide whether and in what form to place convention proposals on the ballot. Giving Pennsylvania citizens’ the explicit right to call for a constitutional convention and accept or reject its recommendations can be achieved as follows:
 - First, Pennsylvania citizens could be given the right to initiate a constitutional convention referendum either through a citizens’ initiative or other petition process.
 - Second, the Pennsylvania Constitution could be amended to require that, in a gubernatorial election year, at intervals of no less than every 20 years, a question be placed on the ballot asking the citizens of Pennsylvania if they want to convene a constitutional convention.
 - Third, all proposals to call a constitutional convention could be required to provide that amendments recommended by the convention go directly to the voters without alteration by the General Assembly or any other authority. This should be done in a timely manner that provides sufficient opportunity for the voters to become educated about the proposals being presented to them.
2. The Pennsylvania Supreme Court has ruled that Pennsylvania constitutional conventions can be restricted as to subject matter if those restrictions are part of the question put to the voters. Pennsylvania is the only state that prohibits a convention from over-riding such restrictions. Enabling Pennsylvania voters to choose to call for a constitutional convention without also being required to accept legislatively pre-established restrictions on the subject matter of the convention can be achieved by presenting the ballot question to the voters in two parts:
 - First, ask the voters whether they want to call a constitutional convention.
 - Second, ask the voters what provisions of the constitution should, or should not be within the purview of the convention.
3. Convention preparatory research task forces have played a valuable role in promoting and developing successful conventions. The Commonwealth faces broad, complex, and inter-related governance problems at all levels of government. A constitutional convention preparatory task force could examine these problems using the

opinions and expectations of citizens and issue experts to make recommendations on which would be best addressed by statute as opposed to amending the constitution.

4. Citizens' confidence in the convention, and therefore its success, is best achieved if the delegate selection process results in the creation of a body of delegates that, in the aggregate to the greatest extent possible, accurately reflects the geographic, economic, cultural and demographic reality of Pennsylvania's citizenry.
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This web site contains most of the primary source materials listed below dealing with the Pennsylvania constitutions including the texts of all constitutions, constitutional convention debates, case law, legislative histories of the post-1968 Constitution, treatises, digests and citators, periodicals, and attorneys-general opinions.
 - The Pennsylvania Legislative Webpage has multiple sources of information and a comprehensive history of the 1776, 1790, 1838 and 1873 conventions. Link to http://www.legis.state.pa.us/WU01/VC/visitor_info/creating/constitution.htm
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 - More information on the judicial system in Pennsylvania can be found at www.courts.state.pa.us/OpPosting/Supreme/out/J-187-98-do.pdf
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APPENDIX A

PREAMBLE TO THE PENNSYLVANIA CONSTITUTION OF 1776

WHEREAS all government ought to be instituted and supported for the security and protection of the community as such, and to enable the individuals who compose it to enjoy their natural rights, and the other blessings which the Author of existence has bestowed upon man; and whenever these great ends of government are not obtained, the people have a right, by common consent to change it, and take such measures as to them may appear necessary to promote their safety and happiness. AND WHEREAS the inhabitants of this commonwealth have in consideration of protection only, heretofore acknowledged allegiance to the king of Great Britain; and the said king has not only withdrawn that protection, but commenced, and still continues to carry on, with unabated vengeance, a most cruel and unjust war against them, employing therein, not only the troops of Great Britain, but foreign mercenaries, savages and slaves, for the avowed purpose of reducing them to a total and abject submission to the despotic domination of the British parliament, with many other acts of tyranny, (more fully set forth in the declaration of Congress) whereby all allegiance and fealty to the said king and his successors, are dissolved and at an end, and all power and authority derived from him ceased in these colonies. AND WHEREAS it is absolutely necessary for the welfare and safety of the inhabitants of said colonies, that they be henceforth free and independent States, and that just, permanent, and proper forms of government exist in every part of them, derived from and founded on the authority of the people only, agreeable to the directions of the honourable American Congress. We, the representatives of the freemen of Pennsylvania, in general convention met, for the express purpose of framing such a government, confessing the goodness of the great Governor of the universe (who alone knows to what degree of earthly happiness mankind may attain, by perfecting the arts of government) in permitting the people of this State, by common consent, and without violence, deliberately to form for themselves such just rules as they shall think best, for governing their future society, and being fully convinced, that it is our indispensable duty to establish such original principles of government, as will best promote the general happiness of the people of this State, and their posterity, and provide for future improvements, without partiality for, or prejudice against any particular class, sect, or denomination of men whatever, do, by virtue of the authority vested in use by our constituents, ordain, declare, and establish, the following Declaration of Rights and Frame of Government, to be the CONSTITUTION of this commonwealth, and to remain in force therein for ever, unaltered, except in such articles as shall hereafter on experience be found to require improvement, and which shall by the same authority of the people, fairly delegated as this frame of government directs, be amended or improved for the more effectual obtaining and securing the great end and design of all government, herein beforementioned.

APPENDIX B

EXAMPLES OF RESOLUTIONS INTRODUCED DURING THE PENNSYLVANIA CONSTITUTION CONVENTION OF 1872-1873

EXAMPLES OF RESOLUTIONS NOT ADOPTED	EXAMPLES OF RESOLUTIONS ADOPTED
Resolved, That the Committee on Railroads and Canals be directed to inquire into the expediency of so amending the Constitution, that the original allowance of six per cent. to the patentees of land, under the proprietary grant, shall not be deemed or taken as a payment of the damages of any landholders for land appropriated for public use.	Resolved, That the Committee on Offices be requested to inquire into the expediency of incorporating into the Constitution the following provision : That no person shall be eligible to hold more than one lucrative office at the same time, nor to hold any lucrative Office in this State while holding a lucrative office under the United States.
Resolved, That the Committee on Railroads and Canals be requested to inquire into the expediency of so amending the Constitution that the same shall provide, in substance, as follows: "That the Legislature shall pass no set limiting the owner of land, appropriated by a corporation under a legislative grant, by the right of eminent domain, to the direct damages accruing from such appropriation, but all the damage, whether direct or consequential, shall be assessed against and paid by the appropriating corporation.	Any two or more persons, citizens of this Commonwealth, associated for the prosecution of any lawful business, may, by subscribing to articles of association and complying with all the requirements of the law, form themselves into an incorporated company with or without limited liability as may be expressed in the articles of association, and such publicity shall be provided for as shall enable all who trade with such corporations as adopt the limited liability to know that no liability exists beyond that of the joint capital which may have been invested or subscribed.
WHEREAS, There seems to be some doubt with regard to set final decision of the judiciary of Pennsylvania with reference to the power of the Legislature to pass a law affecting the sale of liquor, we submit the same for approval to the vote of the people affected by it; therefore, Resolved, That the Constitutional Convention of Pennsylvania, which is about assembling, be and the same is hereby petitioned by the East Pennsylvania Eldership, representing the members of the Church of God, in Eastern Pennsylvania, to insert an article in the new Constitution giving this right, in all its fullness, to the Legislature.	That no incorporated company organized for mining purposes or possessed of mining privileges shall own, hold or possess the soil or surface right of more than one thousand acres at any one time, exclusive of lands held for the right, of way for railroad purposes, by due appropriation of law.

<p>Mr. Darlington (delegate) presented a petition, signed by one hundred and ninety citizens of Chester county, praying for an amendment to the Constitution granting to women the right of suffrage, which was read and referred to the Committee upon Election, Suffrage and Representation.</p>	<p>The Legislature shall make a sufficient appropriation each year to be annually distributed among the several school districts according to law and applied to public school purposes only.</p>
<p>Resolved, That the Constitution be so amended that any county having a population of not less than one hundred thousand, and a territory of not less than six hundred square miles, may be divided into two judicial districts, each containing not less than forty thousand population, and having a territory of not less than two hundred square miles. The Legislature may, by commissioners or otherwise, establish the location of the court house and other offices required by such division, and provide for the election of register of wills and recorder of deeds and mortgages for each additional district, which offices shall be located where the courts are held.</p>	
<p>No banking or other corporation shall receive or pay directly or indirectly a greater rate of interest than be allowed by law to individuals.</p>	
<p>The Legislature shall establish industrial schools, and require the attendance therein of vagrant, neglected and abandoned children.</p>	

APPENDIX C

No. 400 AN ACT

Creating a temporary State commission to study the Constitution of the Commonwealth to recommend possible amendment or revision; prescribing the powers and duties of the Commission; and making an appropriation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. A temporary State commission, to be known as the "Commission on Constitutional Revision," is hereby created. The commission shall consist of fifteen citizens of this Commonwealth, of whom five shall be appointed by the Governor, five shall be appointed by the Speaker of the House of Representatives, and five shall be appointed by the President pro tempore of the Senate.

Section 2. The members of the commission shall elect from its membership a chairman and a vice-chairman. Vacancies in the membership of the commission shall be filled in the manner provided for original appointments.

Section 3. The commission shall study the Constitution of the Commonwealth, as amended, in the light of contemporary conditions and the anticipated problems and needs of the people of the Commonwealth. If the commission finds change in the constitution advisable, it shall consider the best means of effecting such change.

If the commission determines that the best means is by amendment, it shall so recommend and its report shall contain drafts of the proposed amendment or amendments. If the commission determines that the best means is by general revision, it shall collect, compile and analyze such information as it may deem useful to the delegates at a constitutional convention, and shall make any recommendations relating to the substance of revision as it may consider appropriate.

Section 4. The commission shall submit its final report to the Governor and the General Assembly not later than one week after the convening of the General Assembly in regular session in 1959. Section 5. The commission is authorized to make any powers, studies or analyses it may deem relevant through its own personnel or in cooperation with any public or private agency including universities, colleges, foundations and research organizations.

Section 6. The members of the commission shall receive no compensation, but shall be reimbursed for all expenses necessarily incurred in the performance of their duties.

Section 7. The commission may employ, and at its pleasure remove, such personnel as it may deem necessary for the performance of its functions, and fix their compensation within the amounts made available by appropriation.

Section 8. The commission is authorized to make and sign any agreements for research or otherwise, and to do and perform any acts that may be necessary, desirable or proper to carry out the purposes of this act.

Section 9. The commission may meet within and without the State, and may hold public or private hearings.

Section 10. The heads of the several departments, agencies, boards, commissions, authorities and instrumentalities of the Commonwealth and of the governmental subdivisions of the Commonwealth, are directed to cooperate with the commission with such facilities, assistance and data as may be necessary or desirable for the commission properly to carry out its functions under this act, and which will not interfere with the proper conduct of the respective departments, agencies, boards, commissions, authorities, instrumentalities and governmental subdivisions.

Section 11. The sum of fifty thousand dollars (\$50,000), or so much thereof as may be necessary, is appropriated for the expenses of the commission in carrying into effect the provisions of this act. Payment from the appropriation shall be made on requisition of the chairman of the commission in the manner provided by law.

Section 12. This act shall take effect immediately.

APPROVED--The 15th day of July, A. D. 1957.
GEORGE M. LEADER

APPENDIX D

CHANGES TO THE PENNSYLVANIA CONSTITUTION PROPOSED BY THE WOODSIDE COMMISSION

CLASS 1 CHANGES

Class 1 changes are those recommendations for amendment which the Commission deems to be of first importance, critically needed for the efficient conduct of the state government, and which the Commission strongly urges the General Assembly to approve.

CONSTITUTION ARTICLE	SECTION	TOPIC(S)
I – Declaration of Rights	§ 6	Trial by Jury
II – The Legislature	§ 4	General Assembly, continuing body, annual sessions, special sessions
	§ 16	Senatorial Districts, Ratio
	§ 18	Legislative apportionment, enforcement
III- Legislation	§ 25	Legislation at special sessions, repeal
IV- The Executive	§ 3	Succession by the Governor
	§ 9	Pardoning Power, Board of Pardons
V – The Judiciary	§ 6	Philadelphia Courts, consolidation
	§ 7	Prothonotary of Philadelphia, repeal
	§ 8	Philadelphia Courts, consolidation
	§ 11	Justices of the Peace and Aldermen
	§ 12	Magistrates Courts in Philadelphia
	§ 13	Fees, Fines and Penalties, repeal
	§ 16	Voting for Judges, repeal
	§ 25	Selection of Judges
	§ 27	Dispensing with Trial by Jury
VIII – Elections	§ 1	Qualifications of Electors
IX- Taxation and Finance	§ 4	State Debt
	§ 8	Municipal Debt
	§ 11	State Sinking Fund
	§ 15	Municipal Indebtedness
XIV- County Government	§ 1	Qualifications of Electors

IX – Taxation and Finance	§ 4	State Debt
	§ 8	Municipal Debt
	§ 11	State Sinking Fund
	§ 15	Municipal Indebtedness
XIV – County Government	§ 1	Optional Plans of Government
	§ 2	County Officers
	§ 3	Residence, repeal
	§ 4	Location of Offices, repeal
	§ 5	Compensation, repeal
	§ 6	Accountability, repeal
	§ 7	Election of Commissioners, repeal
XV- Cities and Boroughs	§ 1	Incorporation
	§ 2	Optional Plans of Government
	§ 3	Home Rule Charter Making
	§ 4	Consolidation of Allegheny County, repeal
	§ 5	Land for Highway Construction
XVIII-Amendment of Constitution	§ 1	Future Amendments

CLASS 2 CHANGES

Class 2 Changes are those recommendations for amendment which the Commission deems to be very desirable, but which are not vital for the efficient conduct of the state government.

CONSTITUTION ARTICLE	SECTION	TOPIC(S)
I – Declaration of Rights	§ 10	Twice in Jeopardy
II – The Legislature	§ 6	Disqualifications
III- Legislation	§ 3	Bills to Codify Existing Law
	§ 12	Purchasing
	§ 16	Cash Refunds on Taxes
	§ 17	Appropriations to Charitable and Educational Institutions, repeal
	§ 20	Delegation of Municipal Powers, repeal
IV- The Executive	§ 1	Constitutional Officers
	§ 8	Appointing Power
	§ 18	Duties of the Secretary of the Commonwealth, repeal
	§ 19	Duties of the Secretary of Internal Affairs, repeal
	§ 20	Duties of the Superintendent of Public Instruction, repeal
	§ 21	Succession by Auditor General and State Treasurer
VI- Public Officers	§ 4	Removal of Public Officers
IX – Taxation and Finance	§ 13	Reserve Funds
XIV – County Government	§ 8	Philadelphia Consolidation
XVI- Private Corporations	§ 10	Corporate Charters, Amendment of
XVII- Railroads and Canals	§ 11	Duties of the Secretary of Internal Affairs
XVIII-Amendment of Constitution	§ 2	Amendment by Initiative
	§ 3	Periodic Review

APPENDIX E

EXAMPLES OF PROPOSALS BY DELEGATES TO THE 1967-1968 PENNSYLVANIA CONSTITUTIONAL CONVENTION

PROPOSAL NUMBER	SUBJECT	COMMITTEE REFERRAL
1000	Proposal to repeal and replace Article V (Judiciary)	Referred to Judiciary
1001	Proposal to provide advisory referenda in local government units	Referred to Local Government
1002	Proposal providing for the incorporation of cities, boroughs, towns, and townships with plans for home rule	Annexation and Boundary Changes, later to Home Rule
1003	Proposal to change the process of legislative apportionment	Legislative Apportionment, later Composition of Legislature
1007	Proposal to consolidation and amend Articles XIII, XIV and XV into a single Article	Local Government
1008	Proposal for providing the composition of the Judicial Nominating Commission for Supreme and Superior Courts	Judiciary
1009	Proposal to add a new section to Article V to provide for a Commonwealth court	Selection of Judges, then Tenure of Judges, then Judicial Administration and Organization
1010	Proposal of new article providing for apportionment of political subdivisions and the time and method thereof	Local Government, then Apportionment
1011	Proposal to repeal Article V, replace with new Article V	Judiciary, then Selection of Judges
1012	Proposal adding new article relating to local government	Structure and Organization, then County Government
1013	Proposal to add new section to Article V providing for the retirement of judges	Judiciary, then Retirement and Post-Retirement Service of Judges
1014	Proposal to amend Article XIV, sections one and four, eliminating surveyors as county officers	Local Government, then County Government
1015	Proposal to add new article enabling contiguous political subdivisions to form commissions for joint furnishing of services	Local Government, then Structure and Organization
1016	Proposal to amend Article VIII relating to taxation and state finance	State Debt, then Sinking Fund

1017	Proposal to add new article for the creation, division or dissolution of local governmental units	Local Government, ending in Apportionment
1023	Proposal to amend Article XIV, section 1 to eliminate coroners as county officers	Local Government, then Committee on County Government
1027	Proposal to repeal current provisions relating to consolidation in Allegheny County	Local Government, then Committee on County Government
1032	Proposal for abolition of bodies corporate and politic, commonly known as "authorities" for municipalities, counties, school districts, and townships	Taxation, then State Debt, then Sinking Fund
1038	Proposal adding a new article to grant local governments exclusive power to regulate wages, hours and working conditions of local government employees	Local Finance, then Home Rule, then County Government
1050	Proposal amending section 1, Article VIII to exempt from local real estate taxes certain persons 65 years of age and over	Taxation
1069	Proposal to authorize county treasurers to succeed themselves	County Government
1096	Proposal requiring all assessment of property for tax purposes to be at the full value of such property	State Finance, then Taxation
1105	Proposal providing that authority bonds must be sold at public sale	State Debt
1118	Proposal providing for tax exemption of corporate capital stock	Taxation and State Finance, then Taxation
1156	Proposal to provide a panel of associate judges for the hearing of real estate and condemnation appeals	Judiciary, then Judicial Administration and Organization
1169	Proposal to provide training courses for the minor judiciary	Selection of Judges
1183	Proposal to require the distribution of proceeds from the gross receipts tax on certain corporations to local taxing districts	Taxation and State Finance, then Taxation
1187	Proposal prohibiting the exemption from taxation of public utilities and their property	Taxation and State Finance, then Taxation

1188	Proposal providing for consolidation and boundary changes of certain local governmental units	Local Government, then Annexation and Boundary Changes
1205	Proposal to provide for the adoption of a system for selecting judges of certain courts by referendum	Judiciary, then Selection of Judges, then Tenure of Judges, the Incompatible Activities of Judges, then Judicial Administration and Organization

APPENDIX F

AN EXAMPLE FROM THE PREPARATORY COMMITTEE FOR THE 1967-1968 CONVENTION

The 1967-68 convention had 209 proposals for its consideration. The Preparatory Committee provided a detailed analysis for each proposal. Following is an example for one proposal, but every proposal was analyzed in the same manner, in the exact same format.

LOCAL GOVERNMENT EXAMPLE NEW COUNTIES

SUBJECT	DESCRIPTION	SOURCE
Present Provision	No new county shall be established which shall reduce any county to less than four hundred square miles, or to less than twenty thousand inhabitants; nor shall any county be formed of less area, or containing a less population, nor shall any line thereof pass within ten miles of the county seat of any county proposed to be divided.	Article XIII, Section 1 of the 1776 constitution
Pennsylvania Proposals	<ul style="list-style-type: none"> • A new county shall not be established if it would have less than three hundred square miles and fifty thousand inhabitants or if a line thereof would pass within ten miles of the boundary of the county seat of a county proposed to be divided or if its establishment would reduce another county below such area or population. A new county shall not be established without the consent of a majority of the electors resident within the proposed boundaries thereof voting on the question. • Counties shall be created by the Legislature and may be divided by it from time to time with the approval of the residents affected except that no county shall be created which shall contain at the time of its creation fewer than 50,000 residents. 	<ul style="list-style-type: none"> • Sproul Commission (1920) • Southeastern Pennsylvania (Chapter 5) Americans for Democratic Action

Historical Notes	<ul style="list-style-type: none"> • The 1776 constitution provided that the General Assembly “constitute towns, boroughs, cities, and counties” • This section was eliminated by the constitution of 1790 and was silent in the 1838 constitution • An amendment was added in 1857 that specified the exact conditions where the General Assembly could create or change counties • The amendment of 1857 was retained in the constitution of 1874 	Page 68 of Manual No. 4; prepared by the Preparatory Committee
Interpretation of Provision	Discussion of the effectiveness of the current language and describing how these rules could no longer be practically applied without moving county seats; this provision effectively stops the creation of new counties in Pennsylvania	Page 69 of Manual No. 4; prepared by the Preparatory Committee
Comments	<ul style="list-style-type: none"> • Three substantial changes were recommended in 1930 (no action) • Earle Committee had no comment • Woodside Commission had no comment • Scranton Commission suggested no changes 	<ul style="list-style-type: none"> • The Sproul Commission
Other States	<ul style="list-style-type: none"> • Most states are silent on this matter • Ohio is more restrictive than Pennsylvania • Numerous states have the authority to merge counties subject to referendum 	Page 70 of Manual No. 4; prepared by the Preparatory Committee
Preparatory Committee Hearings and Other	<ul style="list-style-type: none"> • Opposition to any change • Suggestion of no change • Supported increased power of the Legislature to create and divide counties 	<ul style="list-style-type: none"> • Several Pennsylvania associations of county officials • Pennsylvania Bar Association • Southeastern Pennsylvania Chapter of the Americans for Democratic Action
Alternatives and Proposals	<ul style="list-style-type: none"> • Establishing new counties • Legislature to provide for local government units • Establishing multi-county governmental units • Merger of counties • Dissolution and annexation of counties 	<ul style="list-style-type: none"> • State of Ohio • State of Minnesota • State of Maryland • State of Michigan • State of Missouri
National Authorities and Organizations	<ul style="list-style-type: none"> • Nationally organizing 2,700 counties into 500 “strong and effective units” 	<ul style="list-style-type: none"> • Committee for Economic Development

For additional information see page 67 (Chapter 4), *Alternatives for the Revision of Existing Local Government Provisions of the Constitution*, of the Reference Manual No. 4, *Local Government*, printed by the Pennsylvania Constitutional Convention, 1967-1968.

APPENDIX G

CONSTITUTIONAL CONVENTION PROCESS BY STATE

STATES THAT REQUIRE A PERIODIC REFERENDUM	YEARS BETWEEN A REQUIRED REFERENDUM	STATES WHERE A CONSTITUTIONAL CONVENTION CAN BE CALLED BY THE LEGISLATURE	STATE CONSTITUTIONAL CITATION
		Alabama	Article 18, §286
Alaska	10	Alaska	Article 13, §2
		Arizona	Article 21, §2
		California	Article 18, §2
		Colorado	Article 19, §1
Connecticut	20	Connecticut	Article 13, §1
		Delaware	Article 16, §1
		Georgia	Article 10, §1
Hawaii	10	Hawaii	Article 17, §2
		Idaho	Article 20, §3
Illinois	20	Illinois	Article 14, §1
Iowa	10	Iowa	Article 10, §3
		Kansas	Article 14, §2
		Kentucky	§258
		Louisiana	Article 13, §2
		Maine	Article 10, §4
Maryland	20	Maryland	Article 14, §2
		Massachusetts	Chapter 6, §1
Michigan	16	Michigan	Article 12, §3
		Minnesota	Article 9, §2
Missouri	20	Missouri	Article 12, §3
Montana	20	Montana	Article 14, §1
		Nebraska	Article 16, §2
		Nevada	Article 16 , §2
New Hampshire	10	New Hampshire	Part 2, Article 100
		New Mexico	Article 19, §2
New York	20	New York	Article 19, §2
		North Carolina	Article 13, §1

Ohio	20	Ohio	Article 16, §2
Oklahoma	20	Oklahoma	Article 24, §2
		Oregon	Article 17, §1
Rhode Island	10	Rhode Island	Article 14, §2
		South Carolina	Article 16, §3
		Tennessee	Article 11, §3
States that Require a Periodic Referendum	Years Between a Required Referendum	States Where a Constitutional Convention Can be Called by the Legislature	State Constitutional Citation
		Utah	Article 23, §2
		Virginia	Article 12, §2
		Washington	Article 23, §2
		West Virginia	Article 14, §1
		Wisconsin	Article 12, §2
		Wyoming	Article 20, §3

Along with Pennsylvania, the following states are not included on the above table, signifying a lack of specific state constitution language regarding calling a convention:

- Arkansas
 - Florida
 - Indiana
 - Mississippi
 - New Jersey
 - North Dakota
 - Texas
 - Vermont
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