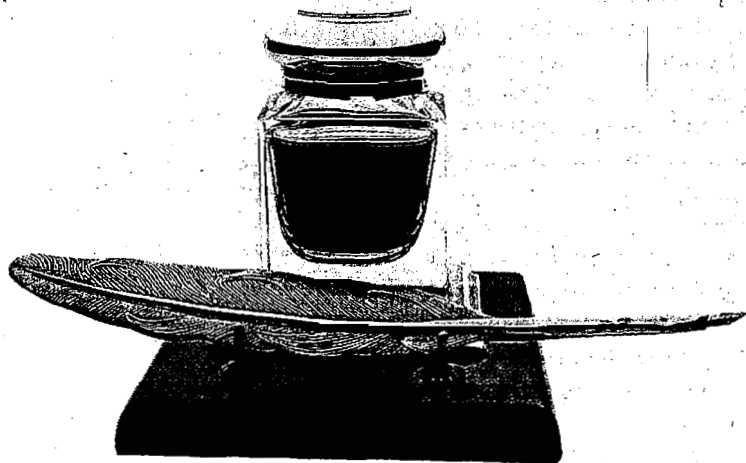


FORUM

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THE PLAIN DEALER

the
OHIO
constitution



Is it time for a rewrite?

Three proposed amendments to the Ohio Constitution were on the November ballot, concerning the minimum wage, gambling and smoking. They were only the most recent in a long parade of constitutional tweaks presented to the electorate. Has our constitution become cluttered? Are we diluting the intent of this contract with Ohio's citizens? Do we, in short, need to call a constitutional convention to address what is in the Ohio Constitution, and what should be? We presented this issue to Thomas Suddes, one of our weekly Forum columnists, and Steven H. Steinglass, professor of law and dean emeritus at Cleveland-Marshall College of Law, Cleveland State University.

THOMAS SUDDDES

PRO A creaky government designed by all-male (and, likely, all-white) conventions runs Ohio. And the Ohio Constitution's piecemeal updates — preferred option of Columbus insiders — don't give voters civic tools the times demand.

So it's rewrite time, and any new constitution must lead off (if voters agree) with a one-house Ohio legislature, like Nebraska's, and an Ohio Equal Rights Amendment. And — to reduce irrelevant hot air in the legislature — a convention should also ask voters to ratify plain-English rules on school taxes; capital punishment (yea or nay?); gun ownership; and abortion.

True, an all-male, all-white convention wrote the U.S. Constitution. But Ohio's is far more detailed and specific. It sets some procedural rules for the legislature. Absurdly, Ohio's even frets over marriage, a topic George Washington, Alexander Hamilton and James Madison somehow overlooked.

Ohio's 1912 convention did give voters the right to directly propose constitutional amendments and state laws when legislators won't. But lobbies still call the shots. Consider the Ohio House's rape last week of a voter-initiated minimum-wage initiative. In November, 56 percent of Ohio voters ratified the initiative. But House Republican elitists decided they're entitled to second-guess. Statehouse business is still conducted as it was in the Harding Gang's day, circa World War I. The only difference is that yesterday's "bribe" is today's "donation." So, Ohio needs a constitution with these features:

- A one-chamber legislature of 99 members elected every four years. All a two-house legislature in Columbus now offers is twice as many temptations to break the ethics law.

- End the election of the attorney general, secretary of state and treasurer. Ohioans should elect a governor (and running mate) and a state auditor. That's it. Otherwise, as the coin scandal showed, voters just hear a replay of Abbott and Costello's "Who's on First?" double-talk.

SEE SUDDDES | M3

STEVEN H. STEINGLASS

Making amendments

All amendments to the Ohio Constitution must be approved by the voters. There are three ways to propose amendments to the Constitution:

The General Assembly may propose amendments by a three-fifths vote of the members elected to each house.

A constitutional convention may propose amendments. A convention may be called by a two-thirds vote of the members elected to each house or by an affirmative vote of the people on the mandatory statewide referendum held every 20 years.

An initiative petition signed by 10 percent of the electors at the previous gubernatorial election may propose amendments.

— Steven J. Steinglass

CON Ohio does not need a constitutional convention, and here is why.

Constitutional conventions are only a means to an end. That end is significant constitutional reform. The real questions, then, are whether Ohio needs significant constitutional reform and, if so, whether a constitutional convention is the best way to achieve it.

Ohio faces myriad economic, social and other problems; but fundamental defects in the Ohio Constitution are hardly the cause of these problems.

That said, there is little question that the delegates to a constitutional convention could find work to do. Delegates surely would be asked to consider proposals on abortion, civil unions, eminent domain, gambling, gun control, home rule, judicial selection, reapportionment, school funding, tax reform, term limits and tort reform.

But there is hardly a consensus on any of these issues and, in a state as politically divided as ours, a convention focused on narrow special interests would not be a pretty thing. And if recent Ohio elections are any guide, a constitutional convention would be preceded by a deeply divisive and expensive election for delegates.

A strong popular consensus in favor of constitutional reform is a condition for a successful constitutional convention. For example, in 1912, at the height of the Progressive Movement, reform was in the air. There was political support for constitutional reform and for a convention from the two major political parties, as well as from an unusual coalition of Progressive reformers, city leaders, business interests, the liquor industry and labor unions. And major constitutional reform was needed.

The Progressives supported the initiative and referendum to provide the electorate with a direct role in initiating and approving legislative and constitutional provisions. Representatives of the cities, including Cleveland's legendary Mayor Tom L. Johnson, supported home rule to free cities from legislative control.

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SUDDER

FROM M1

Why Ohio needs a constitutional convention

"You cannot get good service from the public servant," Theodore Roosevelt told the 1912 convention, "if you cannot see him, and there is no more effective way of hiding him than by mixing him up with a multitude of [other officeholders]."

- Repair some of GOP Secretary of State J. Kenneth Blackwell's damage: Forbid the secretary to take part in other people's campaigns or run for another public office.

- Repeal term limits for state officials, with this catch: No General Assembly member could accept any paying job

from the governor until four years after leaving the legislature. And enforce the constitutional rule, violated for 155 years, that General Assembly members are entitled *only* to a salary — no taxpayer-financed health insurance, no Public Employees Retirement System pension eligibility. The PERS angle alone is the biggest reason General Assembly members want to stay on the state's payroll.

- The constitution should bind Ohio's presidential electors to vote for the candidate who gets the most popular votes in Ohio. Ohio needs no Florida-in-2000 circuses.

- Ironclad open-meetings and open-records guarantees: "The rule in Ohio," Supreme Court Judge Charles Zimmerman wrote in 1960, "is that public records are the people's records, and that the officials in whose custody they happen to be are merely trustees for the people." These days,

the people's trustees look out for everyone *but* the people.

The fearful will claim that an Ohio constitutional rewrite could be a kook magnet. Roosevelt, speaking to Ohio's 1912 convention, conceded that the voters aren't infallible. But, said T.R., "The American people are more often sound in their decisions than . . . any of the governmental bodies to whom, for their convenience, they have delegated portions of their power." Given the sordid antics in Columbus, who can argue?

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STEINGLASS

FROM M1

Why Ohio should stay the course

The liquor interests hoped to permit the licensing of saloons, the Ohio State Board of Commerce sought to overhaul the tax system and the labor movement sought to protect employee and other social welfare legislation (including the contemplated mandatory workers' compensation program) from a hostile judiciary.

Though not united in their goals, many of these groups shared a common distrust of the political system (including the courts), and a constitutional convention was seen as a way to bypass the General Assembly.

When the framework of government becomes an obstacle to addressing the problems facing a state, significant

constitutional reform may be needed. And the Ohio Constitution recognizes that the General Assembly may not support constitutional reform. Thus, every 20 years, the electorate is required to vote on whether to hold a constitutional convention. Voters will decide this question next in 2012.

To prepare for that vote, the governor and the General Assembly should support the creation of a broadly based, nonpartisan, blue-ribbon Constitutional Revision Commission. With the careful selection of members, good staffing and proper funding, such a commission could undertake a comprehensive review of the Ohio Constitution and make recommendations for reform.

The experience of Ohio and other states with constitutional revision suggests that the following questions should be asked by those interested in constitutional reform:

- Is there a need for a major revision of the basic rights of the people?

- Is there a need for a fundamental reform of the operation of state or local government?

- Is there a need for a fundamental restructuring of the relationship between state and local governments?

- Has the constitution become an obstacle to the ability of government to address the problems that confront the state?

- Has the constitution become cluttered with obsolete, redundant, verbose or otherwise inappropriate provisions?

Even if all of those questions are answered in the affirmative, it is still not clear that a convention is the best way to revise the Ohio Constitution. And if no consensus in favor of a convention emerged, the work of the commission would be invaluable in charting a more modest path for constitutional reform.

Steinglass is a professor of law and dean emeritus at Cleveland State University's Cleveland-Marshall College of Law.

Successful efforts

Ohio has had three successful constitutional conventions, each of which took place at pivotal times in the state's history, and each of which had broad popular support.

The Constitutional Convention of 1802 paved the way for Ohio's admission as the 17th state — the first carved out of the Northwest Territory — but did little else positive. Influenced by a romantic belief in the sovereignty of the people and by a political reaction to the autocratic rule of Arthur St. Clair, the Federalist governor of the Northwest Territory, the Constitution of 1802 (which was never presented to the voters) opted for a disastrous form of legislative supremacy that hobbled the state for almost five decades. It was almost impervious to amendment.

The Constitutional Convention of 1850-51 proposed an entirely new constitution that reduced the power of the General Assembly, made modest reforms in the operation of the judiciary and ended the legislative monopoly on constitutional revision by requiring that the electorate vote every 20 years on whether to hold a constitutional convention.

The Constitutional Convention of 1912, Ohio's most successful modern experience with constitutional reform, avoided the mistakes of a failed 1873-74 Convention that proposed a constitution the voters rejected. Rather than risk presenting a completely new constitution to the voters, the 1912 Convention proposed 42 constitutional proposals, 34 of which the voters approved.

— Steven H. Steinglass