

Constitutional Convention may get a push later in the year

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It surprised attorney Sean Costello that a vote set for later this year on whether to call a New York State Constitutional Convention seems to be receiving little attention in Western New York.

After all, the ability to amend the state Constitution is a big deal, according to Costello, an associate at **Rupp Baase Pfalzgraf Cunningham** who focuses on municipal law. And there actually may be a push for the convention to happen, given that many people are politically engaged in the wake of the presidential election, he said.

The New York State Constitution is complex, he said, even more so than the federal Constitution, so there has been talk of simplifying it. Doing that through a convention is intended to be independent of the Legislature's control.

"The convention is nice theoretically because it gives citizens the ability to make reforms that the Legislature is not willing to do," he said.

However, the Constitution covers so many areas, from ethics reform for public officials to the rights of municipalities and state governments, there is a sense that special-interest groups could feel threatened by a convention. Costello said some may be worried that a convention would result in changes to what they hold dear.

The referendum to decide whether a Constitutional Convention will be held is slated for the Nov. 7 ballot. It is held every 20 years pursuant to the state Constitution. The referendum was voted down in 1977 and '97. The last convention was held 50 years ago.

"There are tons of special interests that like the status quo," Costello said. "It's a universal rule that nobody gives up power. So, for example, the Legislature doesn't like the potential for term limits or other things that can change their power and public-sector unions don't like threats to their pension rights."

Since the convention is such an important issue from a state and local government perspective, Phillips Lytle attorney Craig Bucki said people will be hearing more about it, particularly in September and October. The state Bar Association, meanwhile, is taking an active role in forming a committee to prepare for the referendum.

Bucki said groups for and against the convention probably will run TV ads on the issue closer to the referendum vote.



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Attorney Sean Costello says a convention will give New Yorkers a chance to make reforms.

“The only way you’re going to get long-term structural change in government is by having a Constitutional Convention,” he said, “because that would be the one opportunity for delegates to come together from throughout the state to meet and go through the entire Constitution and come up with a proposal for different amendments.”

Bucki practices in litigation focused on municipal and state government.

If the referendum is approved in November, delegates for the convention will be up for election on the ballot a year later. The number of delegates selected is based on the size of a Senate district. At-large members are chosen, as well.

The delegates campaign for paid positions. Their work would start in April 2019 in Albany and last several months. Any amendments would go to state voters on the November 2019 ballot.

In 1967, an entirely new Constitution was proposed, with some controversial items included, but voters rejected it. The last major replacement of the state Constitution occurred in 1894, Costello said, though it was amended in 1938, too.

Since then, there have been more than 200 amendments, many of which were not done through a convention. Amendments can be made by the Legislature if it adopts a change in two consecutive sessions and then that change is passed by voters in a November referendum.

One of the most recent changes to the Constitution was permitting the expansion of casino gambling in New York.

There are very different views on the issue of a convention, according to Bucki. Those in favor look forward to tackling issues such as civil rights, budgeting, municipal government and the construction of the judiciary, he said. Those against it say the time and expense of a process that could conclude without amendments made is not worth it. Indeed, a convention can be expensive because the delegates have to be paid at the same rate of an Assembly member — approximately \$80,000, plus expenses.

“It’s purposefully a procedure that is hard to achieve,” Bucki said. “Therefore, the view of the other side is going to be not to mess with the system we have.”

Groups such as teacher’s unions have a lot to lose because there’s the risk of collective bargaining being overturned, Costello said. Other opponents of the convention say that what ends up happening is that the political class is represented too much in the delegates because, like most public officials, they must be elected.

What makes a convention appealing to some, however, is that many of the ethics reforms for public officials that stalled in Albany could be proposed as amendments to the Constitution, he said. There probably would be a focus on public campaign finance reform, prohibiting cross-endorsement by political parties, changing voting rules to allow for early voting and online balloting, term limits for legislators and stripping pensions from public officials convicted of a felony.

Said Costello: “A lot of the ethics reform proposals could go into constitutional amendments, and I think a lot of them, if put up for separate referendums, would pass.”

According to Bucki, an entire article in the state Constitution deals with the rights of local governments and their ability to enact their own legislation to apply within their respective municipalities. He could see a push to create an alternative form of government through a streamlined procedure for municipalities, which would allow them to band together to form combined city and county governments.

“Most everything you can possibly find concerning governance is in the state Constitution, and who is to say that new things couldn’t be added?” Bucki said. “So really anything could happen with respect to local government, even implicating their future existence and right to exist.”

The Constitution covers so much ground that there is even an article in it about the Erie Canal and how it should be operated, he said, as well as what land in the state should be considered and treated as forever wild.

“If you have a Constitutional Convention, everything would be on the table, from local government to state finances, the judiciary, civil rights, how the Legislature operates, how education is funded and pensions for public employees,” he said.

Costello said the Constitution could be amended to expand or reduce the number of areas where municipalities could pass laws without worrying about approval from Albany. Also, a change could be made so that the state would be obligated to pay for mandates it puts on municipalities, he said. Right now, unfunded mandates — where the state passes laws and the municipalities end up paying for it — are prevalent, he added.

In the justice and courts realm, he said there could be a push for the right to representation in civil matters for low-income people, which would expand the legal aid system.

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