

# **Crucial Details of a California Constitutional Convention: Delegation Selection Methods, Scope of the Convention, Public Participation June 29, 2009**

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## **Executive Summary**

With California's fiscal woes mounting, and the government in Sacramento seemingly frozen in place, a constitutional convention has been proposed as a way to fix the Golden State's deeply entrenched structural problems. But as more people have begun considering this option, several important questions have arisen about some of the details of the Convention, specifically: 1) how would the delegates to the Convention be chosen; 2) how would a Convention of delegates chosen by random selection function, and how would the delegates be educated; 3) what would be the scope of the issues taken up by the Convention, and 4) how would the public monitor and even participate in providing input to the Convention. These sorts of details are extremely

important. If ever there was a case where “the devil is in the details,” this is certainly one of them.

There are three basic ways to select delegates to such a body: appoint them, elect them, or randomly select them. Each of these methods has their pros and cons, and the more one considers this question it becomes clear that there is no perfect method. But there is perhaps a ‘least worst’ method. That method may be the random selection method, which means that the details of this method become all the more important. In particular, an intensive education process for the delegates will be necessary, as well as proper design of that education period to ensure the education is thorough and unbiased.

The mandate and scope of the Convention also are crucial, with a consensus growing that the scope should be limited to issues related to governance, elections and budget reform.

This memo is designed to fill in important details to a constitutional convention on all these matters and more.

## **A) Delegate Selection Models**

### **1. What is the precedent/best practices in other states for delegate selection?**

Fourteen states allow for the automatic calling of a constitutional convention every 10, 15 or 20 years, depending on the state. These states are Alaska, Connecticut, Hawaii, Illinois, Iowa, Maryland, Michigan, Missouri, Montana, New Hampshire, New York, Ohio, Oklahoma and Rhode Island. These 14 states are unique in that they put constitutional conventions up for popular votes at regular intervals as required by the laws of their states.

All 14 of these states elect the delegates to their constitutional conventions, none of them appoint delegates (in some states, appointed delegates may be illegal or have been subjected to voting rights challenges). In holding elections to select delegates, there are variations within these states regarding the number of delegates per district (single-seat versus multi-seat), nonpartisan versus partisan elections, which districts to use (such as existing legislative districts or counties), and whether or not current office holders can be elected delegates.

There does not appear to be any “most popular” configuration of how delegates are elected: about half the states use single-seat districts, the other half use multi-seat; four states use nonpartisan delegate selection process and two use partisan, but three others use a combination of partisan and nonpartisan. None of the states include public financing of campaigns for candidates.

Some state delegate-election laws, like those in Michigan, were recently tossed out and have yet to be replaced. Others, like in New York, may be on the verge of undergoing significant changes, like allowing for public financing. Others, like in Connecticut and Montana, sitting legislatures are given broad authority to create the delegate election procedures only after a convention has been called. In Oklahoma, the legislature’s delegate election guidelines must be prepared before

the constitutional convention vote, so voters not only decide whether or not to have a constitutional convention, but they also endorse the delegate process by voting in favor.

Maryland had an interesting scenarios. Delegates are assigned by county, except for the city of Baltimore, which is assigned its own special district on account of the city's incongruous county lines. Each county is awarded a number of delegates equal to its representation in both houses. Specifics, such as partisanship, financing, runoffs, etc., are not stipulated in the constitution, other than that it falls to the General Assembly to provide for such specifics should the voters call for a convention.

## **2. What are the options for delegate selection?**

**a. Elected.** Delegates can be elected from single-seat districts or multi-seat districts; using existing state legislative districts, or by county; using a winner take all electoral system, or proportional representation.

**Pros:** Electing delegates would be familiar to voters and the media, especially if using existing legislative districts; elected delegates would have a certain degree of legitimacy, having been elected to serve by voters

**Cons:** If elected using the same method and the same districts used to elect the legislature, the process could be seen to mirror that which has led to a legislature widely viewed as being a failure.

State legislative districts are quite large in terms of population (state Assembly districts have over 450,000 people). Reaching that many voters would require significant financial resources, giving an advantage to candidates who have access to money or organized special interests and this again can be said to mirror negative aspects of the current system. One could easily envision a process replete with political party endorsements, slate cards, direct mail campaigns, 'special interest money' and independent expenditure campaigns. This could serve to undermine credibility of the constitutional convention.

If elected using county districts, counties are vastly different in terms of population, so there would need to be a process to ensure that every county has the same number of delegates per capita; and perhaps most importantly, electing the delegates, whether by county or existing legislative districts, would provide no guarantee that the overall body was representative of the diversity of California and this could undermine the public's acceptance of the entire effort. In addition, for any elected body there are legal considerations that could affect and complicate the elections, including the Voting Rights Act, campaign finance laws, ethics laws, independent expenditures and the like.

**b. Appointed.** Delegates could be appointed by some controlling authority or authorities.

**Pros:** By appointing delegates, the appointing authorities could ensure that the delegates are diverse and representative of California, as well as have sufficient expertise on the

range of issues to be taken up by the Convention. If current political leaders do the appointing, that might best ensure that the work of the Convention has the support of the political class.

**Cons:** Appointing the delegates would raise fundamental questions about the independence and legitimacy of the Constitutional Convention. The delegates could be seen as beholden to the same legislative/political leaders and special interests that are perceived as already controlling the political process. So appointed delegates raises fundamental questions about WHO would appoint the delegates? It seems instructive that our research has not uncovered a constitutional convention in any other state that had appointed delegates.

In addition, there is no guarantee that appointed delegates would result in a constitutional convention that was diverse and representative as the state itself. There also is no guarantee that the necessary expertise would be appointed. It could turn delegate selection into a partisan process that could end up undermining both of these worthy goals. Even without partisan interference, ensuring goals of diversity and competence would require significant coordination between the different appointing authorities which could also serve to undermine the appearance of independence of the Convention.

**c. Selection by caucus.** Delegates could be selected by county caucuses or by political party caucuses, or by caucuses of some other constituency.

**Pros:** Selection by caucus could have the credibility of being seen as selected at the grassroots level. Candidates could present themselves to their local constituencies and neighbors, giving a sense of legitimacy to the process.

**Cons:** Selection by caucuses would provide no guarantees that the delegates would be viewed as representative of the entire state. Political party caucus systems in most states have been replaced with primaries because caucuses were notorious for low turnout/participation, and therefore dominated by the most zealous activists.

Selection by caucus could raise fundamental questions about the legitimacy of the Constitutional Convention, if the delegates were seen as beholden to the same legislative/political leaders and special interests that are perceived as already controlling the political process.

Also, selection by caucus raises the question of what caucuses would do the selecting. Who would be the members of that caucus, who would do the electing? Most caucuses are for those of political parties. Would these caucuses be self-selecting, and open to anyone who shows up? Would that advantage certain classes of people over others?

**d. Selection by Citizen Assembly-like random selection.** Delegates could be selected by a random selection process that has been used for citizens assemblies in the United States, Canada and elsewhere.

**Pros:** Random selection would be the best method for ensuring a representative body; random selection of "average citizens" brings a sense of grassroots legitimacy to the process, which would give the proposals of the constitutional convention credibility with the voters; random selection might be the best process for shielding delegates against special interest influence; random selection has the gloss of being something new and different, never been tried, and therefore may have the greatest potential to capture the imagination of the public and the media.

**Cons:** Random selection of "average citizens" would not necessarily guarantee sufficient expertise on the part of the delegates. A thorough educational process would be necessary, and it would be important that the educational process for delegates was designed to prevent "capture" by any particular special interest or perspective. The selection process would also need to weed out any delegates who are not sufficiently committed to participate for many months.

### **3. Details of the Citizens Assembly-Random Selection Process:**

#### **a. What would be the exact process we would use to select the delegates?**

The aim of the delegate selection process would be to produce a body of delegates that is representative of the diversity of the state of California. A model that can achieve this has been used for citizens assemblies in British Columbia and Ontario, Canada. The way it would work for California is as follows:

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 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.

This is very similar to the process that has been followed by other similarly selected bodies in the United States and Canada, and it has led to a high rate of participation with few delegates withdrawing from participation.

**b. Who are the leaders of the Convention?**

A Constitutional Convention Commission (the Commission) composed of the chancellors of the ten campuses of the University of California, or their designees, and the President of the University of California, or his or her designee (who shall serve as the Commission's chair) will provide to the Constitutional Convention the names of three candidates, all of whom shall be respected educators, for the position of a compensated, nonvoting chair of the Constitutional Convention, who shall be selected as the first order of business by a majority vote of the membership of the Constitutional Convention.

The chair shall organize the logistics and affairs of the Convention and conduct its meetings, shall oversee the Learning Phase of the Convention, and has administrative responsibility which includes, within its budget and other resources provided for this purpose, ensuring that the members of the Constitutional Convention are provided with the resources required to carry out their duties. The chair may select up to four deputy chairs to assist the chair in carrying out his or her duties, a Research director to oversee the Learning Phase of the Convention, may employ staff and contract for consultants, including legal counsel, and may otherwise enter into contracts for the conduct of business of the Constitutional Convention. The chair also shall prepare rules of procedure for the conduct of the business and operation of the Convention and present these rules to the Convention for adoption at its first scheduled meeting.

The Convention shall adopt rules, and may subsequently amend those rules, by majority vote of the delegates. These rules shall be consistent with the duties of the chair and Robert's Rules of Order. In the absence of any rule to the contrary, Robert's Rules of Order shall govern the proceedings of the Constitutional Convention. Persons employed to work for the Constitutional Convention are exempt from civil service.

**c. What would be the educational process for the delegates?**

Before the Constitutional Convention is convened, the Chair shall select a Research Director who will be a noted educator responsible for assembling a learning team to assist the delegates. The Research Director will be assisted by two researchers and a Research Reference Group comprised of no more than 12 leading experts and scholars, both academic and nonacademic, on governance, electoral and budget issues. The Research Director will design and oversee the Learning Phase for the Constitutional Convention.

The educational program must be neutral and objective. Written materials and presentations from the Learning Phase will be posted on a website.

Also prior to the convening of the Convention the delegates will receive orientation material and a “reading list” to assist with their initial preparation. The delegates will begin their process by learning about, and studying, the governance, electoral and budget problems of California and their potential solutions. Guest experts from across California and the United States and elsewhere will be brought in to address the members. The delegates will also hear from former members of the state legislature and former elected officials, as well as from an expert who can describe California’s changing demographics.

This Learning Phase will last for six weeks, and at the conclusion of the Learning Phase the delegates will prepare a Preliminary Statement to the People of California, outlining the values, identified problems and potential solutions they believe have merit, and questions for further consideration. This report is intended to stimulate public discussion and kick-off the public hearing phase of the convention’s work.

**d. Are there any guidelines we can set to filter out unqualified delegates?**

The following persons are not eligible to be delegates of the constitutional convention:

- (1) A person who is not a registered voter in California.
- (2) An elected state executive officer or his or her appointee, except such statewide elected officials, or their designee, will be invited to participate as nonvoting ex officio members of the constitutional convention.
- (3) A Member or employee of the United States Congress.
- (4) A Member or employee of the California Legislature, except the majority and minority leaders of both houses of the legislature, or their designee, will be invited to participate as nonvoting ex officio members of the constitutional convention.
- (5) An elected official of a local governmental agency in this State, including, but not limited to, a city, county, city and county, board, commission, district, or special district.
- (6) A state or federal judge.
- (7) A current officer, elected member, or delegate, at the state or county level, of a registered political party.
- (8) Any person who, on or after January 1, 1987, has provided, for compensation, campaign-related advice or services to a candidate, ballot initiative committee, or independent expenditure committee.
- (9) A registered lobbyist.
- (10) An immediate family member of any person excluded under paragraphs (2) to (9), inclusive.

**e) Can we ensure there is a mechanism to get rid of disruptive delegates?**

The constitutional convention may expel any of its delegates, including the chair, for cause, by a two-thirds vote of the membership. "For cause" means dishonesty, neglect of duty, willful violation of convention rules, or conviction of an offense involving moral turpitude.

## **B. What will be the scope of the convention? What subjects will be taken up by the delegates?**

The mandate and scope of the convention will be limited. Delegates to the convention shall be authorized to consider and propose revisions to the Constitution only within the following four areas.

- a) **Governance**, including the structure of the legislative and executive branches of government, with the latter to include State agencies and commissions.
- b) **Elections and Electoral Systems**, including the initiative and referenda processes, campaign finance, top two primary, proportional representation, the number of residents per legislator, and term limits.
- c) **Budget**, including the budget process and related requirements, such as the 2/3ds legislative vote required to pass a budget, the term and balancing of a budget, and mandated spending.
- d) **Revenue distribution**, including the revenue relationship between local and state government

## **C. How will the Constitutional Convention include members of the public and solicit their input?**

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### **a) Modern Communications Technology**

With the use of modern communication technology, this constitutional convention will be unlike any other that has ever occurred. This convention has the potential to be the most inclusive ever in history. The convention will use the Internet, e-mail, live streaming of proceedings over the web, handheld polling devices and other techniques to regularly engage the public and seek public input.

### **b) Public Hearings**

In addition, following the Learning Phase the convention will hold approximately 30 public hearings all over the state for a two-month period. Delegates from different regions will be in attendance at each of these public hearings to listen first-hand to Californians views on reform (though not all delegates will attend all hearings, but those who do attend will report back to the other delegates). They will take testimony, and they will invite several leaders from each region to make presentations to the hearing. After the hearings are over, a committee of delegates will meet to review the presentations given at the hearings, and they will invite nine of those presenters who are deemed to have particular merit to present to the full Constitutional Convention.