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REPORT

Of the

BI-PARTISAN PREPARATORY
COMMISSION FOR A CONSTITUTIONAL CONVENTION

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WHY THIS REPORT IS BEING SENT TO RHODE ISLAND VOTERS

When you vote on November second you will be asked to decide whether there should be a convention to amend or revise the Rhode Island Constitution. This report has been completed to provide voters with information that may assist them in casting this important vote. The information below was assembled by the Bi-Partisan Preparatory Commission for a Constitutional Convention (the "Preparatory Commission"). However, the ultimate choice on whether to hold a Constitutional Convention lies with you, the Rhode Island voter.

THE COMMISSION AND ITS CHARGE

The Bi-Partisan Preparatory Commission For a Constitutional Convention was created pursuant to Article XIV, Section 2 of the Constitution of the State of Rhode Island, which provides, in pertinent part, that:

"The general assembly, by a vote of the majority of the members elected to each house, may at any general election submit the question, 'Shall there be a convention to amend or revise the Constitution?' to the qualified electors of the state. If the question not be submitted to the people at some time during any period of ten years, the secretary of state shall submit it at the next general election following said period. Prior to a vote by the qualified electors on the holding of a convention, the general assembly, or the governor if the general assembly fails to act, shall provide for a bi-partisan preparatory commission to assemble information on constitutional questions for the electors."

Pursuant to this provision, the General Assembly, during its 2004 session, passed a resolution providing for placement, on the November 2004 ballot, of the question regarding the calling of a convention, and for the creation of the mandated Preparatory Commission. The following individuals were subsequently appointed to said commission.

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| Representative Fausto C. Anguilla (D-Dist. 68) | Co-Chair |
| Senator Maryellen Goodwin (D-Dist. 4) | Co-Chair |

Representative Peter F. Kilmartin (D-Dist. 61)
Representative Anastasia P. Williams (D-Dist. 9)
Representative William J. McManus (R-Dist. 46)
Senator Marc A. Cote (D-Dist. 21)
Senator Daniel DaPonte (D-Dist. 14)
Senator Leo R. Blais (R-Dist. 24)
Barbara Hurst, Public member
Gary Sasse, Public member
Harry Staley, Public member

GATHERING INFORMATION ON CONSTITUTIONAL ISSUES

The Preparatory Commission is charged with gathering, and disseminating to the electors of the State, information on constitutional issues and questions to provide electors with an understanding of the role of a constitutional convention and inform electors about the type of constitutional reforms that might arise in the course of a convention. Such information is crucial to ensure that the voters are aware of what issues might comprise a convention agenda. This knowledge will assist voters in making an informed decision on the calling of a constitutional convention.

The Preparatory Commission first considered the process whereby it would gather information regarding aspects or provisions of the Constitution that might be considered by delegates to a convention. To this end, the Preparatory Commission held several open hearings around the state, to which interested parties were invited to attend and testify. One hearing was held in each of Newport, West Warwick, Woonsocket, Bristol, Westerly, and Providence. At each hearing, a stenographic record of the testimony was created and notes were made of the suggestions and concerns expressed by participants. Approximately 62 people testified at these hearings. The Preparatory Commission also received a number of letters regarding a Constitutional Convention.

METHODS OF CONSTITUTIONAL CHANGE

What is under discussion is the issue of whether and how changes to the Rhode Island Constitution should be made. The Rhode Island Constitution, adopted in 1842, is independent of the United States Constitution (which may only be changed at the national level), although it includes some similar provisions, particularly concerning individual rights. Primarily, the Rhode Island Constitution is the foundation document outlining the structure of state government, and the responsibilities and powers of government at the state and local level.

Only the people, by majority vote, may make changes to the Rhode Island Constitution. Constitutional changes may be *proposed*, however, in two different ways, both specified in the Rhode Island Constitution itself by Article XIV. One method allows the General Assembly, by a majority of the members elected to each house, to place proposed constitutional amendments on the ballot for the people to vote. The second method, which is the subject of this report, empowers a Constitutional Convention, meeting specifically for this purpose, to place proposed constitutional amendments on the ballot, also for a popular vote of the entire electorate. Delegates to the Constitutional Convention are elected by popular vote. Seventy-five delegates would be elected, one from each House district. The General Assembly would determine if delegates are selected on either a partisan or non-partisan basis.

HISTORY OF CONSTITUTIONAL REVISIONS SINCE LAST CONVENTION

The Commission's review of constitutional revisions over the past twenty years reveals an active period of constitutional reform. Delegates to the 1985 convention placed fourteen proposed amendments on the 1986 ballot, eight of which were approved by the voters. Proposed amendments by the 1985 convention that were rejected by voters included those regarding judicial selection, legislative pay, and four-year terms for Governor and other elected officials. Those approved included establishment of Ethics Commission, and an anti-abortion rider to the individual rights section.

Although no convention was called in 1994, a number of very important amendments were proposed by the Assembly and approved by the voters in the 1990's. These amendments were enacted pursuant to Article XIV, Section 1 of the Constitution, which provides an alternative to the constitutional convention as a means of revising the Constitution.

In 1992, a proposed amendment to extend the term of statewide elected officers, including the Governor, from two years to four years was placed on the ballot by the General Assembly. The amendment also provided for a recall process whereby the voters could remove from office any one of these officials, and further provided that no person can serve more than two consecutive terms.

In 1994, the General Assembly placed on the ballot a revised system for the selection of judges, including the creation of a commission to screen candidates and propose a list of candidates to the Governor. This amendment also won voter approval.

In the same year, the legislature proposed a series of major reforms relating to its own structure and operation. These proposed reforms included: (1) reduction in the size of the Senate from fifty to thirty-eight members and reduction in the size of the House from one hundred to seventy-five members; (2) resolution of the legislative pay issue, by replacing the \$5.00/day with \$10,000/year and disqualifying Assembly members from receiving state pensions; and (3) replacing the Lieutenant Governor as the presiding officer of the Senate with a Senate President elected by the Senate. All of these proposed reforms were placed on the ballot and approved by voters.

Most recently, the General Assembly voted to place a proposed separation of powers amendment on the November 2004 ballot. If approved by voters, this amendment to the State Constitution will effectuate major reform in State government, including vesting the Governor with appointment power over boards and commissions and prohibiting legislators from serving on said boards and commissions.

The General Assembly has been a dynamic instigator of constitutional change since the last convention and, indeed, a number of important constitutional amendments which failed to win approval through the Convention process were adopted once they were placed on the ballot by the General Assembly. It is important to keep in mind that *both* methods – a Convention and legislative proposal – ultimately require a vote of the majority of the electorate before the Constitution can be amended at all.

COMPARISON OF METHODS: CONVENTION V. LEGISLATIVE PROPOSAL

It is interesting to speculate why major reform in areas such as judicial selection, legislative pay, and terms of office were rejected when placed on the ballot by convention and approved when placed on the ballot as amendments proposed by the legislature. Voters may be better able to assess the merits of constitutional proposals after legislative debate has narrowed the issues.

In any event, the recent history of constitutional revision demonstrates that revision by assembly-proposed amendments is an effective method for amending the Constitution. In this vein, it should be noted that, based on testimony given at the hearings, major watchdog organizations in the state are split on whether a convention should be called, some advocating that because so much of their agenda has already been accomplished, a Constitutional Convention is not necessary. It was also suggested that a convention might change or undo some of the reforms already realized.

Some proponents of a Constitutional Convention testifying before the Preparatory Commission promoted specific changes to the Rhode Island Constitution. A number of examples are listed below. Others generally espoused the position that the Constitution is a “working document” that should be changed at popular will. Some of those testifying favored a Constitutional Convention to give the voters a chance to debate issues of the day, even if no specific proposed amendments were forthcoming. Proponents felt that a Convention would provide an opportunity to consider issues that the Assembly had not or would not consider on a timely basis.

Opponents of a Convention generally testified that a Constitution should be amended only to consider a pressing and grave matter of concern, and – because the major separation of powers amendment is already on the 2004 ballot – felt that this is not a time when other amendments should be considered. Specifically, some opined that it is important to see whether other issues develop from passage of the new separation of powers amendment, should it win majority vote. A strong note of caution was sounded by those who believe that a Convention, ruled by simple majority, could be a vehicle for limiting individual rights; they felt that the lack

of accountability of Convention delegates, contrary to members of the General Assembly, creates an environment in which minority rights are vulnerable. Legislators, unlike delegates, face re-election and, thus, must be able to justify to their constituents decisions they make in each session. Delegates are elected for a specific convention only and, once elected, do not have to account to any constituency. Concern was voiced over the likelihood that Convention delegates would be even less representative, particularly of the minority community, than the General Assembly. Some testified that they thought the process of study and deliberation that accompanies legislatively-initiated amendments, which can last for a much longer duration than a specially-convened Convention, was likely to lead to more sound decision-making.

CONSTITUTIONAL REFORM ISSUES OFTEN CITED

It is important for voters to realize that once a Convention is called, the delegates determine their own agenda. Even if a particular issue or set of issues has prompted the people to convene a Convention, the delegates may choose to take up any matter they like. It is also important for voters to know that any amendment to the Rhode Island Constitution is, by definition, "constitutional" under that document; while it is possible that a state constitutional provision is unconstitutional under the *federal* constitution, instances of a state constitutional provision being overturned by federal court decision are very rare.

The following list of suggestions for constitutional change, which were all subjects of testimony at the public hearings, illustrates the wide range of complex issues that might be presented to delegates to a constitutional convention:

- *Judiciary* – require magistrates to be selected in same manner as judges, conduct periodic review of judicial performance, restore to the Executive control of the judicial budget, make constitutional provisions executable by judiciary without legislative implementation;
- *Elections* – enable voter initiative or referenda petitions to propose or nullify legislation, abolish term limits for general officers and or consider term limits for legislators, bracket election of Governor and Lt. Governor, empower appointment by Governor of certain state officials who are now elected; provide

for a constitutional reapportionment commission and/or establish a non-partisan redistricting process; amend voter registration qualifications, including liberalizing voting rights of felons;

- *Executive* - enable a line-item veto by the Governor of the budget, strengthen the Governor's control of the executive branch;
- *Legislative* – establish a full-time Assembly, mandate term limits, subject the Assembly to the open meetings law, require a two-thirds vote by both houses to propose constitutional amendments, require that a proposed constitutional amendment be approved by the General Assembly twice with an intervening General Election to become effective;
- *Miscellaneous* – address gaming, define marriage, require a larger vote than simple majority of the electorate to ratify constitutional amendments, create a Constitutional-level Inspector/ Auditor General, review Boards and Commissions, clarify certain provisions such as the right to bear arms and the right against self-incrimination, address whether a non-resident property tax payer may vote at financial town meetings, address whether reparations should be paid to descendants of slaves.

CONVENTION EXPENSE

The consideration of whether to call a Constitutional Convention cannot properly be undertaken without a complete understanding of the substantial cost of such action. Even if delegates are uncompensated, delegate expenses must be paid. Other necessary expenses include staff salaries, printing costs and operational expenditures. The foregoing examples suggest the careful study and evaluation required to effectuate major constitutional reform. The General Assembly has resources budgeted for the kind of research and data gathering necessary when it proposes amendments, but a Convention would require a substantial staff to work with delegates and with the Convention committees to which proposals are referred. A convention in 2006 would unquestionably require the use of experts, consultants, and researchers. Particularly since Convention delegates themselves are volunteers, they must be provided with the information and resources needed for study, deliberation and decision-making. Consequently, the expense of a convention in 2006 will far surpass the cost of the 1985 convention. The cost of the 1985

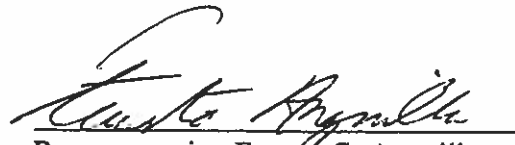
constitutional convention was \$891,000; the projected cost of a similarly-conducted convention in 2006 would be at approximately Two Million Dollars, after adjusting 1985 costs for inflation. Because many of the parameters of a Constitutional Convention would be decided by the General Assembly and the elected delegates to the Convention, the cost could be considerably higher.

CONCLUSION

The members of the Preparatory Commission hope that the information provided in this report proves educational and helpful as Rhode Islanders weigh the issues involved and the timing of a convention at this point in history. The Commission reminds voters that, if a convention is not called in 2005, the General Assembly may, by a majority vote, place the Constitutional Convention question on the ballot at the next general election. The General Assembly may, by a majority vote, also propose amendments at any time it deems appropriate. Thus, a vote in November 2004 against calling a convention does not mean that constitutional change cannot occur for another decade. Rather, Rhode Island's Constitution sets forth an amendment and revision process that is flexible and provides for more than one method of securing constitutional reform.

ACKNOWLEDGMENT

The Commission expresses its appreciation to the staff for their assistance with coordinating commission meetings and particularly throughout the Commission's deliberations in preparation for this report.


Representative Fausto C. Anguilla
Co-Chair


Senator Maryellen Goodwin
Co-Chair