

RI Citizen Alert

A report on the state of Rhode Island government

Special
Election
Issue

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The People's Convention!

Vote "Yes" for Question 2

A Constitutional Convention

BY ROBERT ARRUDA

We are living through a dramatic time in Rhode Island history. Reformers are finding new strength in unity as old guard politicians fall. And after twenty years, your right to an informed vote for a Constitutional Convention is finally ready to happen. It's Question 2 on your ballot.



Governor Don Carcieri and retired Supreme Court Justice Robert Flanders are panelists at OCG's dinner/forum promoting Question 2, October 25. See page 2 for details

ate tried to push through to offset an adverse Supreme Court decision against their proposed ballot question for a Casino? Only after immense public pressure was this amendment withdrawn. Legislators will argue that amendments have come out of the General Assembly in recent years, but this has only been after public pressure and scandals in state government. Such amendments are a piecemeal fix. After twenty years, it is time for the people to examine all of the constitution.

Question 2 is also a good backup for Question 1, Separation of Powers (SOP). The House of Representatives has yet to pass laws to implement SOP. The latest prediction by Speaker Murphy is that this may be done by mid January. They had all of the 2004 legislative session to do this. The Senate held hearings and passed three comprehensive bills to address SOP. The House never considered these bills. A Convention could address problems that could arise in this process. Senator J. Michael Lenihan and Representative Nick Gorham, sponsors of the SOP legislation, strongly support this convention.

The question for a Constitutional Convention is mandated by the Constitution at least once every 10 years. Ten years ago, the legislature and Governor Sundlun both ignored the mandate, leaving citizens without a convention for 20 years.

As seen in recent election results, RI voters are more informed than ever and are looking for changes in the way their government operates. This is your chance to get involved. Express opinions on amendments that will be developed at the convention and on the ballot in November 2006. Better yet, run as a delegate. Vote "yes" on question 2, and take back your government.

The convention will be run by citizens (not legislators) who are elected in November 2005 as delegates from each of the 75 house districts. Operation Clean Government (OCG) plans to hold a 'Candidates School' to inform interested citizens on how to get elected to the 2006 Convention.

On pages 2 and 3 you will find comments as to why a Constitutional Convention is needed now by experts such as Governor Don Carcieri and former Supreme Court Justice Robert Flanders.

Legislative and union leaders, as well as special interest groups, fearing you might curtail their unreasonable power, are opposed to Question 2. They have raised the concern that a convention might produce bad constitutional amendments. Nonsense! There is an 11-month process that allows full public scrutiny of the proposals.

Convention delegates will meet and deliberate in the first six months of 2006 and hold public hearings around the state for additional citizen input. Their recommended amendments will then go before the voters for approval or disapproval in November 2006. The process is a careful and thoughtful one – unhampered by legislative leaders and the special interests they so often serve.

Legislators may try to persuade you that they are more qualified to deliberate and propose amendments to the Constitution. Remember the casino amendment the Sen-

I'm dead against this Constitutional Convention. What makes the public think they can just walk right in and help us make decisions? It's taken us years to learn the finer points of how to screw up things at the state house.



And as a couple of state representatives talk at the Capitol Grille...

Vote "Yes" for Question 1 Separation of Powers

BY WILL BARBEAU

Well, citizens, you are asked here to vote "Yes" for Question 1 – to establish Separation of Powers within the Rhode Island Constitution. Do you have any idea how much of a revolution this will invoke? It took 10 years of meetings and agitation to give you this choice! Approve this ballot question and legislators will no longer enforce and execute the laws they create. It will bring a new day to Rhode Island government!

The initial SOP Task Force started in 1994 and grew into a community-wide coalition of 38 organizations. Citizen activism convinced the 2003 Assembly to pass the Separation of Powers bills.

What is the SOP problem?

As SOP Task Force Chairman Bob Kilmarx explained in 1994, kings, dictators and other tyrants can make and enforce laws. The breakthrough in government that created "democracy" was to separate the making of laws from the enforcing of laws. That separation produced the "legislative" branch and the "executive" branch of government. The next step was a "judicial" branch to settle disputes between the other two. And that's what democracies have to-

day, a three-branch government.

Except Rhode Island, of course.

Rhode Island legislators grabbed and expanded executive powers by creating boards and commissions, then placed themselves on those boards to make themselves more powerful.

Disasters reveal problems

When RI credit unions were closed in 1991, it became obvious that our powerful legislators were unable to provide adequate oversight for themselves. Governor Sundlun's attorney, Sheldon Whitehouse, said reformers "will not cut the deep root of RI's corruption" until they solve the Separation of Powers problem.

1999 - The 'quintessential' decision

In 1997 the Ethics Commission attempted to ban legislators from boards. The RI Supreme Court decided in a 4-1 decision against the Ethics Commission with a memorable ruling that called RI a "quintessential system of parliamentary supremacy." Justice Robert Flanders' dissenting opinion said it would plunge "the people of this state into a long, dark age of subjugation to unchecked, unbalanced and unlimited

see **Question 1, page 4**

Reform minded leaders urge a “Yes” vote

Featured on these pages are participants in Operation Clean Government's six regional forums and dinner/forum to promote passage of Question 2.

The Dinner/Forum will be held October 25 at the Crowne Plaza at 6:30.

Panelists include Governor Don Carcieri, Justice Robert Flanders, Professor Robert Williams, Senator Marc A. Cote, Rod Driver and Joe Larisa. Arlene Violet will moderate.

OCG's Golden Broom Award will be presented to former Supreme Court Justice Robert G. Flanders, Jr., for his independence and courage in defending Rhode Island's Constitution.

Call 861-3900 for more information or to make reservations.

Without a Constitutional Convention only the General Assembly can propose amendments to the Constitution

BY JOE LARISA

The trouble is that without a Constitutional Convention we are left to the General Assembly alone to propose amendments to the Constitution – not even the Governor has a role. As Governor Almond's point person on separation of powers, I can attest to the time and resources that even the most meritorious constitutional amendment requires. It took over ten years and two Supreme Court cases, two gubernatorial advisory questions to the public (both of which passed by huge margins) and tons of work by our office and good government groups to get even the most fundamental good government amendment (the law in 49 other states) on the Rhode Island ballot as an amendment.



We still don't even have even the most modest voter initiative amendment on the ballot. Other key changes, such as fixing the role of the Lieutenant Governor, increasing the percentage necessary for a veto override, line item budget veto power for the Governor and many more all deserve to be debated and possibly presented to the voters directly for their final say. None have come out of the General Assembly yet. Instead, what almost came out was a last minute proposed change to the Constitution without notice or debate to allow a private entity to operate a Rhode Island casino.

Joe Larisa, Esq., was Executive Counsel and Chief of Staff to former Governor Lincoln Almond

Constitutional Convention proposals have no effect unless they are approved by the voters

BY ROD DRIVER

Any concern about the “danger” of a constitutional convention is undoubtedly based on observations of the General Assembly. Legislators routinely vote for bills without reading them. And bad bills pass, such as the recent gambling-casino bill which violated both the R.I. and the U.S. constitutions. If the governor vetoes such a bill, the General Assembly overrides the veto.



By contrast, proposals from a constitutional convention have no effect unless they are approved by the voters. And when the voters say “no,” as they did to six proposals from the 1986 convention, there is no override of their decision. The General Assembly can be a threat to the citizens of Rhode Island. A constitutional convention actually provides an opportunity to rein in some of the abuses we have suffered from the legislature and from the executive and judicial branches of state government.

Rod Driver was a delegate to the 1986 Constitutional Convention and was a State Representative from 1987 - 1994.

Rhode Island must convene a Constitutional Convention in order to clarify and enhance our state's system of checks and balances

BY GOVERNOR DON CARCIERI

On November 2nd, the citizens of Rhode Island will be making a wide array of decisions. These choices are not just about elected officials. Voters will also be presented with fourteen referenda questions which, taken together, could significantly affect the future of our small state. One of these referenda, Question 2, asks voters to approve a new Constitutional Convention. I urge you to vote “yes” on Question 2.

When I took office, I promised to shake up Rhode Island's political system. The State House is filled with special interest groups, lobbyists, and political operatives that care only about furthering their own agenda. Constitutional Conventions bring us one step closer to government by the people and for the people.

In short, Rhode Island must convene a Constitutional Convention in order to clarify and enhance our state's system of checks and balances. For too long, our state has been dominated by one branch of government. The time for change is now.

In conjunction with the “separation of powers” amendment (which will appear on the same ballot), a Constitutional Convention must consider measures critical to ensuring that Rhode Islanders – like most Americans – enjoy the benefits of three co-equal branches of government. A Convention must consider key issues, such as providing the Governor with a line item veto over the budget, increasing the percentage of the General Assembly necessary to override a Governor's veto, and restoring the Governor's traditional responsibility over state spending.

In conclusion, Rhode Island must convene a Constitutional Convention if we hope to provide the people of the Ocean State with the system of government they expect and deserve.

A convention would empower the people to take more control over their destiny

BY ROB SENVILLE

The pervasive scandals that have repeatedly infected all branches of our state and municipal government are ample proof that the structure of Rhode Island government is not sound. Separation of powers, Question 1, merely addresses an imbalance of power between the legislative and executive branches of government. In Rhode Island, the core imbalance of power lies not between the branches of government, but between the people and their government, with government officials having unchecked power and the people having few, tenuously retained rights.



To redress this imbalance we ought to convene a constitutional convention and revise the Constitution to dramatically decrease the power of our government officials, while simultaneously empowering the people to take more control over their own destiny.

Rob Senville, Esq., briefed the SOP issue for OCG in Supreme Court and litigated many other issues for OCG.

The framers of our constitution clearly recognized that the General Assembly can, on occasion, be unresponsive to the electorate

BY MARC A. COTE

The framers of our constitution recognized that it is a living, breathing document that should evolve according to society's changing needs. For this reason, the constitution requires that the voters be given the opportunity to decide every ten years at a minimum, whether amendments should be considered for voter approval through the citizen-driven convention process. Question 2 on this year's ballot fulfills this constitutional requirement.



Although the General Assembly has the ability to propose amendments to the constitution for approval or rejection by the voters, the framers of our constitution clearly recognized that the General Assembly can, on occasion, be unresponsive to the electorate. This is particularly common when the proposed amendments seek to adjust or shift the balance of power within the structure of our three branches of government, or when proposals are advanced that would give the voters more power to make the General Assembly more responsive and accountable to the will of the people.

Marc A. Cote is a State Senator representing North Smithfield and Woonsocket.

The need to approve Question 2 cannot be overstated

BY NICK GORHAM

There is no better example of the need for a Constitutional Convention than the most recent session of the General Assembly. Last spring, the General Assembly, in anticipation of the passage of Question 1, better known as the “separation of powers” constitutional amendment, passed legislation that can only be characterized as “rolling back the clock” on anticipated constitutional reform. It took back much of the appropriating authority it had delegated to the Board of Governors for Higher Education; it removed the governor from much of the budgetary process for the judicial branch; and it passed many measures under the aegis of “oversight” that might be more accurately described as “total control.” The unconstitutional “legislative grant” process continued, unabated and without any oversight at all. No hearings, no public comment, on much of this – par for the course.



Nicholas Gorham is a State Representative for Coventry, Foster, and Glocester.

We can govern better

BY LOU RAPTAKIS

A reform-minded, people driven, Constitutional Convention process will enact meaningful changes for our state without having to wait for more scandals and more crises to force legislators to do the right thing. It's going to take hard work to make that happen, but I believe that by working together, we can get it done.



Lou Raptakis is a state Senator representing Coventry, East Greenwich, Warwick, West Warwick.

Vote on Question 2 for a Citizens Convention

Why A Constitutional Convention?

BY JUSTICE ROBERT FLANDERS

In my opinion, the single greatest need for a constitutional convention is to propose an amendment that would provide that the state constitution is judicially enforceable by the courts through the award of traditional legal, equitable, and declaratory remedies for any proven violations of the constitution. The need for such an amendment may seem surprising. So many people assume, as a matter of course, that the courts may apply and enforce the various substantive rights, duties, and liberties set forth in our state constitution — even without an express clause in the constitution authorizing them to do so. But in a 1998 case, *Bandoni v. State*, the Rhode Island Supreme Court ruled otherwise. The court held that without legislation authorizing the courts to entertain any claim seeking relief under the so-called Victim Rights Amendment to our constitution, the provision in question was not self-executing. In other words, the courts could not enforce the particular constitutional right in question (namely, the right of a crime victim to address the court before the sentencing judge meted out the punishment to the criminal) unless and until the General Assembly first passed a law allowing the courts to do so.

As I argued in my dissent in that case, such a principle, if extended to other constitutional rights and provisions, would give the General Assembly a veto over the state constitution. No one could enforce the fundamental rights and liberties enshrined in that document if the General Assembly failed to pass legislation allowing the courts to hear claims alleging violations of constitutional rights.

Thus, absent a constitutional amendment authorizing the courts to enforce our state constitution by awarding traditional legal and equitable remedies for any violations thereof, the present status of the law in Rhode Island is that our state constitution is not self executing and cannot be enforced in a court of law without the General Assembly passing legislation authorizing the courts to entertain such claims. As a consequence, merely by doing nothing, the General Assembly can convert the constitution — the supreme law of our state — into a dead letter, thereby preventing the people from enforcing their constitutional rights in court.

For this reason alone, even if there were no other grounds to convene a constitutional convention, I would urge voters to approve the ballot question calling for a state constitutional convention. Moreover, the last convention

occurred almost twenty years ago and much has happened since then that cries out for the people to exercise their right of popular sovereignty by taking a close look at whether to change this and various other aspects of our state constitution.

Our state constitution provides in Article I, section I that the “basis of our political system is the right of the people to make and alter their constitution of government.” Thus, while the government officials who administer our government are public servants, the people are their masters.

In addition to adding an express provision authorizing the courts to remedy violations of the constitution, a convention should be convened to consider, among other issues, the following:

- (1) Should the ethics commission be allowed to enact regulations banning dual office holding by legislators and other public officials to prevent potential conflicts of interest?
- (2) Should the people’s constitutional right to bear arms include the right to carry a weapon for self-defense and other lawful purposes (subject to reasonable licensing requirements), or should it be limited to service in the military?
- (3) Should a person’s state constitutional right against being compelled to “give self incriminating evidence” apply to forced extractions of his or her DNA, blood, urine, and other body parts, fluids, and functions?
- (4) Should the ban on lotteries, except those run by the state, include casinos and the various types of gambling activities that occur in such establishments?
- (5) Should the method of proposing amendments to the state constitution be expanded to include methods that do not require legislative approval (e.g., initiative, or referendum)?
- (6) Should the constitutional language barring any member of the General Assembly from taking any fee or from being of counsel in any “case” pending before either house, under penalty of forfeiture of his or her seat, be amended to change the word “case” to “matter”?

The people and their elected delegates should address these and other important issues at a constitutional convention. At a minimum, certain wording in the state constitution should be clarified to eliminate or reduce the ambiguity that presently exists in the above-cited provisions.

Justice Robert G. Flanders, Jr., recently retired from the Rhode Island Supreme Court.

It’s a matter of fundamental citizenship

BY J. MICHAEL LENIHAN

Apart from the Separation of Powers Amendment to the Rhode Island Constitution which will appear on this November’s ballot, I don’t know if there is a need to further revise our constitution at this time, nor do I know what individual amendments need to be considered. What I do know, however, is that the people of Rhode Island have a right to make that decision. Moreover, if we decide to hold a convention to consider amendments, we deserve the right to select delegates to that body who will openly and fully consider the testimony provided to them. What is vital and essential here is the confidence we have in our plan of government. If we feel, as many of us do, that our right to participate in the formation of that plan has been abrogated, then our confidence in the validity of our state government is further shaken.

That must not be allowed to happen. I urge my fellow Rhode Islanders to join me in voting “yes” on Question 2 on the November ballot and then to responsibly involve ourselves in the delegate selection and proceedings of the Constitutional Convention which will follow. It’s a matter of fundamental citizenship.

J. Michael Lenihan is a State Senator representing East Greenwich, North Kingstown and Warwick.



Here’s your chance to do something about the inadequacies in our government

BY SANDY MELLEN

Most Rhode Islanders listen to the news, hear another political scandal, shake their heads and feel helpless thinking there is nothing they can do about it. It is our state, our government and our responsibility to do something about it. The power given our three branches of government is assigned by us in our state constitution. Currently, a Constitutional Convention is the only tool the people have to correct inadequacies and this opportunity comes just once every ten years and only if we vote in favor of it.

According to our constitution, gambling requires voter approval. Yet there was no vote on the Lincoln Downs casino. In 1994, voters said they did not want a casino, yet we still have one.

In 1996, Rhode Islanders voted in favor of implementing Voter Initiative as a means of correcting an unresponsive General Assembly without having to wait ten years for a convention. The General Assembly voted against it.

A convention is required to address these and many other issues in our constitution. We must vote yes on question 2.

Sandy Mellen was a plaintiff with Senator Cote in a lawsuit brought by Rob Senville on the “Sham” Bi-Partisan Preparatory Commission in 1994.



In whom do we repose the greater trust, the Legislature or the people?

BY HARRY L. STALEY

One must begin by recognizing that the General Assembly is a one-party legislative body. The most recent session of the Legislature, particularly the last minute actions taken without adequate public input, makes the strongest and most convincing case for our position.

In a last minute effort to save a clearly unconstitutional law, the Senate proposed an amendment to the Constitution that would have bypassed an adverse Supreme Court decision and paved a way for a private corporation to build a casino in West Warwick.

In the wake of a public outcry at this tawdry episode, the amendment was withdrawn. So much for the careful “background study, interpretation and drafting” that opponents of the Constitutional Convention stated would insure a more orderly and secure amendment process.

Harry Staley, President, Rhode Island Shoreline Coalition and member of the 2004 Bi-Partisan Preparatory Commission for a Constitutional Convention.



The right of the people to convene a constitutional convention every decade is indeed one of liberty’s “surest guardians”

BY JAMES MARUSAK

Not surprisingly, a commission comprised largely of legislators has noted that we might defer this opportunity to the General Assembly which holds the *concurrent* power to submit amendments to the people... However, the people of this state have for too long ceded their constitutional power to the Honorable Legislature.

Despite the glaring need for critical reform, it took 150 years of constitutional struggle and a virtual landslide of public opinion to pressure the Assembly into presenting a true Separation of Powers amendment to the people.

If the 150 year struggle against legislative inertia and resistance regarding separation of powers in this state teaches us anything, it is that the people should never again allow “change by usurpation.” The right of the people to convene a constitutional convention every decade is indeed one of liberty’s “surest guardians.”

James Marusak, Esq., was Counsel to the 1986 Constitutional Convention Committee on Executive and Independent agencies

This is neither the time nor the place to sit back and let the political players make decisions for you

BY ROBERT J. HEALEY, JR.

With so many issues in need of public discussion and debate, why not have a convention? In reviewing the Constitution, I personally discovered at least sixty different areas that warrant review ranging from the elections process to education funding to government budgeting to civil rights.

Would it hurt to actually discuss these matters in a forum other than the Legislature with its tied and vested interests? One of the greatest criticisms of the people of Rhode Island is that they prefer to complain instead of act. Now is the time to act. Approve Question 2. Once approved, run for a seat. It is your government and your government is you.

Robert Healey, Esq., founder of the Cool Moose Party, is a former candidate for Governor.



Question 1, from page 1

governmental powers exercised by controlling members and subparts of the Legislature.”

In the meantime, Edward Achorn joined the *Providence Journal* Editorial staff in 1999. His editorials raised the bar of discussion on the issue to a lucid, fever pitch. Citizens began to understand “separation of powers.”

2000 - “Yes” vote for SOP idea

As part of a long-range educational plan, nonbinding referenda explaining SOP were placed on both the 2000 and 2002 ballots. Citizens rallied in support.

As the pace quickened, Representative Nicholas Gorham and Senator J. Michael Lenihan submitted SOP bills to the House and Senate. These were killed in committee – causing public outrage.

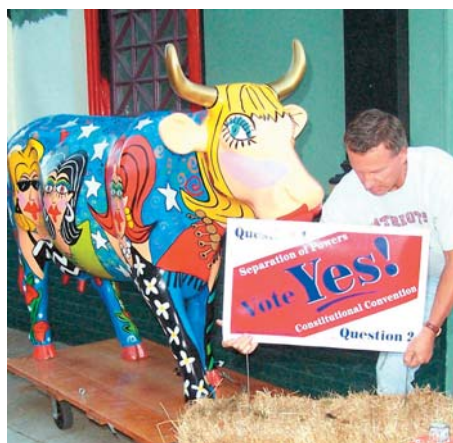
2003 - Unanimous Assembly Vote

Finally, in a blur of publicity, TV hearings, OCG public forums, strong editorials, and contending bills, the truth emerged: the voting public understood what Separation of Powers meant and wanted it now.

The General Assembly finally got the message and placed the issue on your 2004 ballot!

Now, it's your turn.

Vote “Yes” for questions 1 and 2



The Blue Cow says vote “Yes” for Questions 1 and 2. Signs can be picked up at the “Imagine” gift shop at 5 Miller St., Warren.

*Due to years of citizen activism
Separation of Powers is ready for your vote*



Left: Phil West and Sheldon Whitehouse discuss how SOP will stop RI corruption.

Middle: Representative Nick Gorham receives OCG's Golden Broom award from Chairman Bob Arruda at SOP dinner/forum in January 2003.

Right: Smiles of victory show a unanimous Assembly vote in 2003. l to r: Common Cause Executive Director Phil West, bill sponsor Senator J. Michael Lenihan, Operation Clean Government Chairman Bob Arruda and OCG and RISOP founder Bruce Lang hold a *Providence Journal* announcing the victory.



Governor Don Carcieri addresses over one hundred supporters who rallied at the State House on September 13 for passage of Question 1 on the November ballot. The Separation of Powers referendum is supported by the Right Now Coalition of which Operation Clean Government is a member.

PHOTOS BY WILL BARBEAU

Join the OCG Team

For as little as \$1 a month, you can help fight corruption and unethical behavior in RI state government.

OCG's goal is to promote Honest, Responsible and Responsive state government. OCG has no political affiliation. We have no paid staff. WE ARE ALL VOLUNTEERS. Funds raised are used to file court suits and ethics complaints and to print and distribute newsletters. Other expenses include mailings, office supplies and public forums. Take pride in your state by being a member of this great team. JOIN NOW!

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YES, I want to join other Rhode Island citizens and help to promote Honest, Responsible and Responsive State Government.

New member Renewal

My membership contribution to OPERATION CLEAN GOVERNMENT is enclosed:

\$12 Individual \$15 Family (list all names to be included) \$25 \$50 \$100 \$ ___ Other

Name(s) _____ Home Phone _____

Business Phone _____

Street _____ Email Address _____

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OCG is a non-profit organization, however contributions are not tax deductible because our activities include lobbying.

Yes, I would like to volunteer some time or participate on one or more of the OCG committees. Please call me.

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I heard about OCG from _____

Oct/Nov 2004