

ATTACHMENT 2

The road to a constitutional convention: Things to figure out

BY BILL HAUCK AND JAMES P. MAYER

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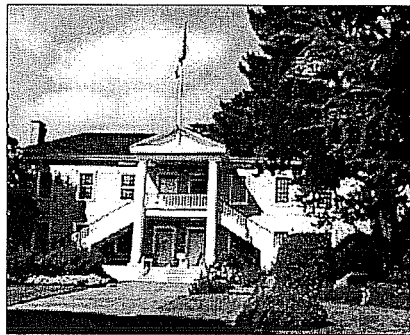
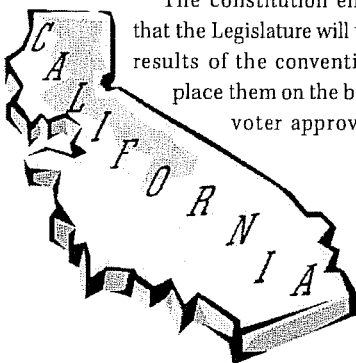
If Californians can agree on anything, it is a growing dissatisfaction with their government. From the public's perspective, the state is not just on the wrong track, but losing ground when it comes to solving problems and making the best use of public dollars to deliver high quality services. Partisan gridlock and budget stalemates have become the status quo, and it appears that nothing short of a political earthquake will knock things loose.

So what needs to change and how do we make it happen? Does fundamental change require constitutional change? And if we need constitutional change, is a convention the best way?

Calling a convention

Article 18 of the California Constitution provides for the creation of a convention for revising the constitution. The Legislature, with a two-thirds vote of each house, can put onto a general election ballot a proposal for a convention. If approved by voters, the constitution states that "the Legislature shall provide for the convention," and specifies that delegates must be voters elected from districts equal in population.

The constitution envisions that the Legislature will take the results of the convention and place them on the ballot for voter approval. The



In 1849, California's military governor called for a constitutional convention, to be held in Monterey's Colton Hall (pictured above). On September 1, delegates from 10 districts arrived to debate and write California's first constitution.

constitution does not authorize convention delegates to directly place a constitutional reform measure on the ballot.

The original constitution was drafted in convention in 1849. The second and last convention was held in 1879. By the 1960s, the Legislature looked for a way to change the constitution without calling a convention. So the Legislature asked voters to approve an amendment allowing the Legislature to appoint a revision commission; the voters obliged. The Legislature convened a constitution revision commission that drafted revisions to streamline and "clean up" the constitution, which had faced several hundred amendments since 1880. Generally, the work of the commission was noncontroversial and did not substantively reform governance in California.

In 1994, the Legislature established a constitution revision commission to tackle

governance issues. This commission made sweeping recommendations for changing the organization of state government, the role of some constitutional officers, the revenue and budget system and the fiscal relationship between the state and local governments. But alas, the Legislature did not place the commission's proposals on the ballot.

This year, two bills have been introduced — ACR 1 (Blakeslee) and SCR 3 (DeSaulnier) — which, if enacted by a two-thirds vote, would ask voters to call a convention.

Proponents of a convention have offered a second strategy: placing an initiative on the ballot to amend the constitution so that voters — not just the Legislature — could call a convention. A separate ballot measure — which could be voted on simultaneously — would ask voters to establish the convention.

Before pursuing either route, several issues need to be addressed, including the focus of reforms, the process for selecting delegates, how to move measures onto the ballot and how they would be implemented. These details will matter to voters, but perhaps more importantly they will matter to the interest groups who need to support — and could oppose — the convention proposal if it is placed on the ballot, perhaps as early as 2010.

What matters?

Setting the agenda. By its nature a constitutional convention has unfettered power to propose a new constitution for the state. But what should be on the table? What about social issues, including gay marriage or abortion? Should the convention be limited to fiscal issues — such as property, income

and sales taxes? Should the convention re-examine the budget rules in the constitution, such as the Proposition 98 school funding guarantee, or the Proposition 10 "First 5" programs? What about the initiative process? One important question is whether in calling a convention, voters can constrain the issues that the convention is empowered to consider.

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Delegate selection. The constitution states that delegates are to be elected based on districts. This process has not been tried in California in modern times, and given the concerns expressed about the role of special interest groups and campaign financing in legislative races, it will be challenging to craft an elections process that generates smart and publicly minded delegates.

Alternatively, proponents have suggested that this provision of the constitution also be changed. Four proposals are under consideration: (1) a statewide election, (2) a jury-like selection process, (3) a process similar to the process in Proposition 11 for creating a citizens' redistricting commission and (4) a modified jury selection. Still, the central challenge remains to find delegates who presumably can do a better job figuring out the answers than legislators themselves, yet who are independent enough to be guided by the public interest, rather than narrow interest groups.

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governance.


Decision process. Will the convention meet in public? Can it deliberate in confidential sessions? Is a simple majority vote adequate for proposing constitutional changes, or is a higher threshold — say two-thirds — required to demonstrate consensus and to protect minority rights? The constitution is silent on the mechanics of the convention, but the result and the public's confidence in the process will rest in part on these factors.

Consultative process. While a convention relies on delegates to make recommendations, interest groups and the general public will need to be able to influence those recommendations. In addition, both the interest groups and the public will need to support the recommendations on the ballot. Will lobbying be allowed, regulated, reported? How will the delegates receive that input and make sure that their recommendations are not only technically sound but politically viable?

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SEE "CONVENTION" - PAGE 29

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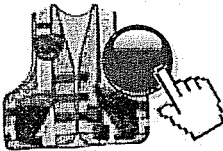

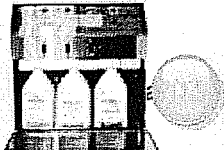
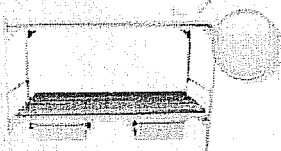
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hearing concerns and suggestions, as well as building the confidence of voters who will have to endorse the results. At the same time, how will the public's influence be balanced with those of interest groups, which are better equipped to participate and whose financial support will be needed when the reforms are ultimately before voters?

Implementing the convention's proposal

The constitution appears to view conventions as a tool for the Legislature, rather than the body politic. If the convention is first to be transformed into a tool of direct democracy or to circumvent the Legislature, a couple of other issues need to be considered:

• **Authorizing proposals to move to the ballot.** The constitution does not grant delegates the authority to put reform proposals directly on the ballot. If proponents do not want to rely on the Legislature to place the recommendations before voters, that authority will need to be given to the convention by the voters when they establish the convention.

• **Leadership to initiate, guide and sustain the effort.** A constitutional convention will take several years to initiate and pursue its work. The momentum for reform will need to be sustained through the campaign and into implementation, assuming voters adopt the changes. Thus, a reform effort must be built around solid and committed leadership that can be sustained over time and adapt to changing social, economic and political conditions. Will that leadership come from the delegates or from outside groups or from the governor and legislative leaders?

• **Statutory, regulatory and organizational reforms.** A constitutional convention as a vehicle for reform places the focus solely on the constitution. If the goals of the effort are to improve the quality, efficiency and transparency of public institutions and programs, implementing the newly constituted government will require numerous changes in statutes and regulations, as well as dedicated and competent elected and appointed leaders. The ultimate success of this effort will only begin if the convention manages to develop substantive reforms that can be politically supported.

Surely, many more issues will surface if the idea of a voter-called convention makes its way onto the ballot. But one other issue should be given serious consideration: Are there any unintended consequences of a

voter-called convention?

The reforms of the Progressive Era thought direct democracy was such an important check on special interests that they gave voters tremendous authority when it comes to the initiative process. Yet, now the hue and cry is over special interest abuse of the initiative process. What are the potential unintended consequences of voter-led constitutional conventions? Or for that matter, even one?

Let's create a roadmap that will give Californians an idea of what they are buying

when they vote to call for a constitutional convention. We should begin by not offering them a vague notion of a convention that will solve the state's dysfunction. That will simply reinforce their cynicism. ❖

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