

Commercial and Federal Litigation Section  
Comments on Report and Recommendations of  
NYSBA Committee on the New York State Constitution

Dated April 20, 2017

The NYSBA (“State Bar”) Committee on the New York State Constitution (“Committee”) has studied whether New Yorkers should approve the 2017 ballot question calling for a Constitutional Convention.

In its report dated April 20, 2017, the Committee recommends that the State Bar support a call for a Constitutional Convention on the November 2017 ballot. It did so based primarily on the belief that the state court system cannot be effectively reorganized and restructured without a convention. The Committee believes that the State Constitution needs to be streamlined, reorganized and modernized. The Committee made these recommendations notwithstanding concerns of the potential effects of special interest groups and the exposure to the possibility of adverse changes to protections already found in the State Constitution.

The Committee's Report is very thorough, based on research, study and interviews undertaken over a lengthy period of time. The Committee members consisted of well-respected lawyers and judges, including leaders of the State Bar. The Committee's work has been fulsome and expansive in its endeavor to analyze differing views.

The Committee notes that the Constitution, adopted in 1894, has been amended over two hundred times, but nonetheless contains antiquated and outdated provisions, including some that have been found unconstitutional by the United States Supreme Court.

In its focus on the Judiciary Article, the Report notes that the Constitution establishes an eleven level trial court system notwithstanding its goal of having a unified court system. The Committee's research shows that the current structure of the court system has been estimated to add approximately \$502 Million in unnecessary spending annually.

Noting that the Constitution also does not include certain rights that have been recognized by the

Supreme Court, the Committee observes that there are rights that New Yorkers may have interest in protecting through constitutional amendments, and, in addition, there is a need to modernize voting related procedures.

While the Constitution can be amended through the legislative process, the Committee concluded that there is no reasonable basis to believe that it would do so.

The committee noted some of the risks of a convention -

1. Existing rights may be put at risk and controversial provisions potentially may be sought to be added (although because proposed amendments must be approved by voters, the committee believes this risk to be small);
2. As delegates are elected, the campaign process introduces the influence of special interests and the selection process is structured to attempt to ensure that many delegates will be legislators, judges and other politically connected individuals;
3. As delegates are paid as legislators, those delegates with government jobs would receive double compensation, which may undermine the public confidence in the process;
4. The cost of the convention is expected to be significant - perhaps as much as \$100 Million - about one tenth of one percent of the State's budget.

The Section concludes that the Committee's work was based on a comprehensive and inclusive process and, as a result, is very thorough and deliberate, thus seeking to assure an appropriate review of the issues.

The Section supports the work of the Committee and believes that its analysis is well-balanced and provides a fair view of the potential benefits and detriments of a Constitutional Convention and, as such, the Section supports the Committee's recommendations.