With state vote in sight, Bar aims to inform the public

House of Delegates says ‘yes’ to Constitutional Convention

By Christina Couto

After a 111–28 House of Delegates vote (with one abstention) June 17 in favor of supporting a Constitutional Convention, the State Bar plans to educate New York voters about the current Constitution and inform them of ways a potential convention could affect everything from the Adirondack and Catskill “forever-wild” provisions to the structure of the state’s judiciary.

A Constitutional Convention “is a once-in-a-generation opportunity—a rare chance for direct democracy—that our Constitution gives the voters to potentially re-invent their state government, if they so choose,” said Henry M. Greenberg of Albany (Greenberg Traurig LLP), who presented a report calling for support of a convention, prior to the House vote.

“We have had, in our history, four Constitutions over our 240 years [as a state],” said Greenberg, who is chair of the State Bar’s Committee on the New York State Constitution, which was established under Past President David P. Miranda of Albany (Heslin Rothenberg Farley & Mesiti P.C.) in 2015.

“And what is notable about the Constitution, among other things, and is baked into it, are some of the most cherished, sacred rights imaginable—rights you will not find in the federal Constitution, rights you will

Legal profession is obligated to cure injustices within its power, Gerstman says

By Christina Couto

Calling her the “best and the brightest among all of us in New York State and nationwide,” Associate Judge of the Court of Appeals Eugene M. Fahey ceremoniously swore in Sharon Stern Gerstman of Buffalo as the State Bar’s 120th president on June 17.

“To be a leader in the New York State Bar Association and become president is to be a leader of the national legal profession,” said Fahey, also of Buffalo, during the event, held during the House of Delegates meeting in Cooperstown.

Gerstman, speaking after being sworn in, said she believes that, “as bar leaders, lawyers and members of a civilized society, we have an obligation to cure whatever injustices are within our power to cure.”

She recalled “how lucky” she is to have been “born free, an American, to parents who value education and public service, and for a girl growing up in the ’50s and ’60s, to have been taught that it was good to be smart, even in math and science.”

She said she has had the good fortune of teachers who opened doors for her, deans who took a chance on her and law firms, judges and bar leaders who mentored and welcomed her.

“I look at the trajectory that brought me to this place as a wife, a mother, a mother-in-law and a grandmother—

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Play ball!
What happens when baseball and the law intersect?

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Advocacy and collaboration—Associate Judge of the Court of Appeals Eugene M. Fahey, left, swears in Sharon Stern Gerstman as the State Bar’s 120th president on June 17, while Gerstman’s husband Daniel and son Ari look on. [Photo by Marty Kerins, Jr.]
not find in any other state constitution.”

Yet, the document “is sometimes followed, it is sometimes ignored and I think, clearly in need of an overhaul,” Greenberg said.

Calling it a 52,500-word “behemoth,” he explained that the New York State Constitution was not designed to last through the ages. “Don’t confuse it with the federal Constitution—that svelte document you can put in your pocket.”

“The New York State Constitution was designed to be amended by every generation.”

Bar endorsement

As noted in the report, presented by Greenberg, the state Constitution mandates that every 20 years, New York voters be asked: “Shall there be a convention to revise the Constitution and amend the same?”

That question will be on the November 7 ballot.

The “Report and Recommendations Concerning Whether New Yorkers Should Approve the 2017 Ballot Question Calling for a Constitutional Convention” recommends New Yorkers vote “yes.”

The split House endorsement of the report followed a unanimous vote by the Association’s Executive Committee in favor of a Constitutional Convention a day earlier. Both groups met in at the Otesaga Hotel in Cooperstown for the Association’s quarterly meeting.

“As an association of attorneys, we are acutely aware of the shortcomings of the state Constitution, which touches on the lives of every New Yorker,” State Bar President Sharon Stern Gentman of Buffalo said of the vote to endorse a Constitutional Convention. “A convention would focus public attention on ways to modernize and improve the operations of state government, especially our court system.”

The report cites the opportunity to overhaul the “byzantine,” structure of the state courts and describes its composition of 11 trial-level courts—the most in the nation (California, a state with approximately double the population of New York, has one trial level court).

A convention could also provide opportunities to enhance voter participation and streamline and modernize the state Constitution, the report says.

How it works

By approving the report, the State Bar effectively puts its support behind the November 7 Constitutional Convention referendum and provides an opportunity to inform voters about it before they go to the polls this fall (see related article on page 3).

If approved by voters, New Yorkers would elect delegates in 2018 to the constitutional convention, which would occur in 2019. At the convention, delegates could propose amendments to the Constitution, which likely would be voted on by the electorate in November 2019.

In New York, there are only two ways to propose amendments to the state Constitution, either by the Legislature or by a Constitutional Convention. In either case, the voters get the last word, because all amendments must be approved by a statewide referendum.

“At the end of the day, all they [delegates] can do is propose. They can’t make changes to the Constitution themselves. Their work product goes before the voters for final approval,” Greenberg explained.

Historically, the primary mechanism for Constitutional amendment has been Constitutional Conventions (there have been nine), Greenberg said.

All four of New York’s Constitutions were written via Constitutional Convention, he said, explaining that “virtually every right that all of us hold dear was written into the Constitution.”

“The New York State Constitution was designed to be amended by every generation.”

— Henry M. Greenberg

Bernstein said that his section colleagues do see a need for overhaul of the state Constitution, but believe potential downsides outweigh potential benefits.

“Sometimes progress is less measured in what you gain than what it is in what you protect,” Bernstein said, quoting from the section’s online Communities discussion about the referendum.

The Committee on Legal Aid and the President’s Committee on Access to Justice joined forces to oppose a Constitutional Convention prior to the House meeting.

“Based on a number of premises that are so clearly incorrect that—even aside from other significant problems, we oppose the resolution,” the committees conveyed in a two-page memo to delegates, by Ronald Tabak of New York City (Skadden, Arps, Slate, Meagher & Flom LLP). Two committee members in favor of supporting a Constitutional Convention—Lillian Moy of Albany (Legal Aid Society of Northeastern New York) and Saima Akhtar of Albany (Empire Justice Center)—officially dissented from the committees’ opinion.

In addition, the Health Law and Commercial and Federation Litigation sections expressed their support, as did other groups, including the New York City Bar Association and the New York County Lawyers Association.

Yes or no?

What do you think? Email the State Bar News at sbn@nysba.org or ccouto@nysba.org and tell us if you support a Constitutional Convention and why, or why not. ♦

Couto is NYSBA’s State Bar News editor.