



Association of Legal Aid Attorneys UAW 2325 (AFL-CIO)



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Comments for Consideration by the Association of the Bar of the City of the New York: Yes or No in November? Discussing a Constitutional Convention for New York

March 22, 2017

Introduction

As the President of the Association of Legal Aid Attorneys/UAW Local 2325 I write on behalf of our over 1,000 indigent legal services attorneys working in New York City. Our members handle over a million cases every year, representing New York's indigent population in criminal, housing, juvenile, immigration, employment, homelessness, prisoners' rights, and other legal matters. As the nation's first union for attorneys and as part of the UAW our members are invested in the decision about whether to support a Constitutional Convention for many reasons.

Our current State Constitution is one of the strongest in the nation in terms of protecting New York's most vulnerable, the constituency which our members serve and defend each and every day. Especially given the current Federal assault on many of the values which our State Constitution enshrines: housing, social welfare, and labor rights among them, it is more important than ever that we ensure these protections remain for millions of New Yorkers.

While it may seem that a Constitutional Convention could be an opportunity to expand these rights, given the current balance of forces both in Albany and in Washington, we do not believe that a Constitutional Convention will result in any positive changes either for our members or for the millions of clients we serve. I urge the Task Force to reaffirm their 1997 decision to reject any endorsement of a Constitutional Convention at this time. In my testimony I will explain why we believe that this Constitutional Convention respectively poses a threat to New Yorkers in general, to our clients, and to the members of our union.

General Concerns

1. No Limits

A Constitutional Convention can propose the removal of any and all protections with no limit, provided compliance with the United States Constitution. The resulting amendments then can be packaged as per the will of the Convention delegates into a single ballot question, despite multiple changes. When the time comes for ratification, voters may be facing a tough decision to vote away protections in favor of amendments that they prioritize, hardly a choice which promotes the protection of the most vulnerable. The power to package amendments in turn favors single-issue constituencies with the resources to mobilize their base at the expense of the general welfare of the populace. This analysis is in line with the Task Force's own findings in its 1997 report which stated that "the current political climate, characterized by a proliferation of special interests, PAC money and lobbying, promotes 'single-issue' politics and could yield convention delegates elected only to pursue a narrow agenda without regard to the overall interests of the State."¹ It is our opinion that with the *Citizens United* ruling and the prevalence of political contribution irregularities in New York State, these concerns have only increased since 1997.

2. Resource Priority

Although estimates differ², Constitutional Convention could potentially cost to cost anywhere between \$47 and \$300 million dollars, with no guarantee that any amendments will be ratified. Given impending federal cuts to social services, health care, and other programs, this money could be better spent on direct services which could help New Yorkers, and especially communities in need, today. This money would be much better spent to expand and improve our public education system, indigent legal services, infrastructure, and health care, among other crucial programs in dire need of additional financial support from Albany. Even if we take the position that a Constitutional Convention could result in some positive amendments that would expand protections for working New Yorkers, we believe it would be wiser to use those resources to make definite investment in direct services, instead of spending this money on Constitutional Amendments which may be rejected at the ballot box.

3. Unnecessary

Although we share the Task Force's concern that there are important ethics and social reforms that should be made to the Constitution, criminal justice reform chief among them, we must note that there is already a process by which the Constitution can be amended if necessary without a Constitutional Convention. The Legislature can propose amendments for the consideration of the voters, a process which has been utilized more than 200 times in order to address legislative concerns and propose expanded protections to the Constitution. If there are particular amendments which the Legislature feels are necessary to be made, these should be

¹ "Report of the Task Force on the New York State Constitution," 23 The Record of the Association of the Bar of the City of New York at 534.

² <http://www.politico.com/states/new-york/albany/story/2017/02/how-an-implausible-cost-estimate-for-a-constitutional-convention-spread-109467>

addressed through this mechanism and voted on by the electorate separately, which we feel is the most transparent and democratic process. Although we understand that this process has also had its issues, our union stands ready and willing to help push any necessary reforms via this route, as we have many times in the past.

4. Delegate Concerns

We also note that the process by which delegates would be chosen is deeply flawed, including the issue of electing candidates slates rather than individual candidates. The Task Force's 1997 decision to oppose a Constitutional Convention came to a similar conclusion, listing five major concerns about the delegate selection process. In the intervening time since then, this process has not been altered in any way so as to address these concerns, nor do we have any indication that these reforms will be proposed in the near future.

Client Concerns

As the federal government makes plans to eliminate the Legal Services Corporation and other funding for indigent legal services, we are especially concerned about the potential impact that a Constitutional Convention could have on both Legal Services as well as our members' ability to advocate effectively for our clients. In this time of crisis our State should be doubling down to offer extended protections to our communities, not initiating a process which could end up in their removal. Articles XVII and XVIII of the Constitution have served as strong protections and powerful tools by which our attorneys and the legal services providers that employ them have been able to serve our clients. Our State Constitution goes well beyond the federal standard to offer protections to the most vulnerable in our society and we are deeply concerned about the possibility of these protections being removed, especially in this time when the issues that matter most to our clients have come under attack at the federal level.

Union Member Concerns

The New York State Constitution currently contains some of the strongest labor rights protections in the nation, as must be expected in the most union-dense state in the country. This includes the right to organize, collectively bargain, as well as an important prevailing wage clause. Our members are extremely concerned that a Constitutional Convention would be utilized by proponents of Right to Work legislation to either erase this critical protection or introduce a clause to limit the ability of workers to form a union. Potential amendments could also further restrict the permissible subjects of bargaining in State employee contracts among other regressive limitations. Thus far, Right To Work proponents have successfully altered State laws in 28 states to diminish the power of workers to leverage their voices and even the playing field with their employers. Several additional states have passed collective bargaining limitations similar to those described above, which have decimated the ability of public sector unions to effectively advocate for their members. In Iowa, for example, these changes have eliminated even the most basic subjects of bargaining including health care, allowing the State

to unilaterally impose any cut or modification to their employees' health care plans.³

Additionally, while our own union does not have a defined-benefit pension or any kind of joint pension plan nor are our members public employees, we must address the very real concern that a constitutional amendment. Changing Article V, Section 7 could threaten union pension plans, and lead to the erosion of the promises that have been made to our working men and women in this State. These kinds of amendments, some of many potential threats to working people in New York State, would be exactly the kind of single-issue reform that the Convention process would favor to the detriment of the populace as a whole.

Conclusion

We strongly urge the Taskforce to reaffirm its 1997 decision to oppose a Constitutional Convention. It is more than clear based on the Task Force's own standard of "a substantive assessment of the need for constitutional reform in current provisions of the State Constitution, the likelihood that a constitutional convention could accomplish needed reform and the risk of adverse change" that a Constitutional Convention must be rejected based on the clear analysis that a Convention, will most likely result in more damage to the very communities we represent. While many of our members would likely benefit from some protections that could be accomplished by a Constitutional Convention, the possibility of reform in some single issue areas cannot come at the expense or risk of losing the vast protections we currently have for our communities, our clients, and as union members.

³ <http://www.desmoinesregister.com/story/news/politics/2017/02/16/amid-marathon-debate-iowa-legislature-barrels-towards-passage-collective-bargaining-bill/97984338/>