

Preparatory Commission on the Call of a Constitutional Convention
Pursuant to Article XIV, Section 2 of the Rhode Island Constitution

I am speaking as a private citizen and my comments do not reflect views of my associates nor of my clients or any organization with which I may be affiliated.

I would like to begin my presentation with some thoughts with regard to Article XIV, Section 2, relating to the call of Constitutional Conventions and my experience as a delegate to the 1973 Convention which proposed the Article. As a delegate to that Convention, I can assure the panel that adoption of Section 2 by the Convention was a hard-nosed fight. Many delegates who opposed the amendment were openly aligned with the General Assembly or old politics in one way or the other and if you look at the roll call, you will see those connections. It was the last major consideration of the Convention and went right down to the wire. Very hotly contested and a very close vote.

The real reason why the General Assembly proposed the Constitutional Convention in 1973 was that it wanted to remove the constitutional ban on lotteries. Which, by the way, it did. The General Assembly wanted a limited convention. However, the Attorney General notified the presiding officers of the Convention that, in his opinion, a Constitutional Convention once established could not be limited as to the subject matter in its call. Whether that was a correct reading of the law or not remains an open question; however, the leadership of the Convention was convinced that it would have to consider questions other than those originally presented. Of interest was that the newsroom of *The Providence Journal* was on strike so very little information was publicly available as to the Convention's sessions and the internal struggles between reform-minded delegates and those who preferred the status quo; for all practical purposes, there was an absence of news or publicity on the Convention proceedings. Many delegates, some of whom would now be likely self-identified as "progressives," were very

much concerned about the ethical situation of the time and as a result joined together in obtaining Convention approval, over determined opposition, of both the question of a convention choice being presented to the voters every ten years and, very importantly, mandating disclosure of campaign contributions.

With regard to Article XIV, Section 2 and the Preparatory Commission, what did many delegates to the 1973 Convention expect would occur? First, we expected that the General Assembly would establish the Preparatory Commission well in advance of the vote on whether there should be a convention, the common thought at that time was a year in advance. Secondly, it was thought that it would be comprised, primarily, of non-members of the General Assembly. I can absolutely assure you that it was not expected there would be General Assembly members in a majority on the Preparatory Commission because many constitutional issues directly affect the General Assembly, creating possible conflicts. Thirdly, there would be a written report given to the voters well in advance of the question being on the ballot. And lastly, it was thought the Preparatory Commission would not take positions with respect to individual issues. The Preparatory Commission would, instead, determine the principal issues that might be considered, suggest pros and cons on those issues so that the issues could be robustly debated. In that regard, it is important that we look at the constitutional language with regard to the Preparatory Commission. Its role was “to assemble information on Constitutional questions for the electors;” not to take positions thereon. I note that many delegates, myself included, did not feel at the time we had the votes for more specificity on some of these points.

So, with that background, my first issue relating to why I support a Constitutional Convention is to amend Article XIV, Section 2 to make it clear that the membership of the Preparatory Commission would not be dominated by General Assembly members, that the

Preparatory Commission would be established a year in advance of the vote on the issue by the electors, clarify the preparatory role of the Preparatory Commission, and, lastly, that it be made clear that the Commission would have a budget in order to inform the electors of the result of its assemblage of information.

My next issue is with regard to the election of the general offices, particularly Governor, Lieutenant Governor, and Attorney General. I do not believe that these officers should be elected by less than forty percent (40%) of the electors. Should the election winner receive less than forty percent (40%), there should be a run-off for those positions. I believe it is worth the cost, for many, many reasons, not the least of which is to insure that our majority rule, democratic philosophy is not damaged by multiple candidates and parties resulting in the election of a candidate with the support of a distinct minority of voters. Given the possible number of candidates under our present laws, a five or ten person ballot could permit someone with twenty percent (20%) or less to be declared elected to one of these important offices. Such an elected official would be unlikely to receive support for many of that individual's policies and such an occurrence would disenfranchise a substantial number of voters who do not believe that someone who is elected with such a plurality reflects the will of the people; that it amounts to nothing more than a determined minority, a segment of the community, creating divisions when we should be creating unity after an election. I would also take the same position with regard to mayors of Rhode Island cities, particularly Providence.

My next issue is the line item veto. This is an issue that should be discussed in a convention because it will never be discussed in the General Assembly. It will never be presented to the voters in any way, shape, or form unless it is through a Constitutional Convention. There are arguments for it and there are arguments against it and certainly

arguments for limits on a line item veto scope. But that discussion will never be had in the General Assembly, so it must be left to the people assembled in a convention.

The next issue that should be discussed in the Constitutional Convention is Article XII which relates to education. The Rhode Island Supreme Court has said that in Rhode Island there “is no fundamental constitutional right to an education” nor does the Constitution guarantee “equal, adequate, or meaningful education.” Based on Rhode Island legislative history and the literal reading of the existing Constitution, I think the Court made the right decision at the time because there is simply no provision in the Constitution that provides for equal, adequate, and meaningful education for our children. A robust debate is called for to determine the appropriate role of the General Assembly under our Constitution as to education. This should be discussed in a Constitutional Convention where those issues can best be fleshed out and argued. This would also engage everyone interested in education, particularly parents, teachers, and taxpayers.

My next issue is the selection of judges in Article XIX, Section 4. I have been involved in that process when it was a political process and I have been involved in the context of the Judicial Nominating Commission. The problem is that we have had Governors who ignore the time lines in statutes and appointments, we have commissions that have not been effective, and recently we have the rise of the magistrate class. A rather simple amendment could avoid gubernatorial inaction, clarify the nature and duties of the Commission, and finally, include magistrates thereunder.

The next issue is the Ethics Commission established pursuant to Article III, Section 8. I lost my arguments at the time of its proposal as too legalistic and limiting but I believe in my concept. The literal wording of Section 8 has caused the Rhode Island Supreme Court to say that the present Article III, Section 8 gives the Commission the powers to “enact”

substantial ethics “laws,” I repeat “laws.” The Court did not find that this violated the constitutional rule of separation of powers. Personally, I believe most of the work of the Ethics Commission is administrative which is staff driven. I would rather see the administrative functions in the Secretary of State’s office and use the Commission as an advisory panel who turns over prosecution of violations of law and the code of ethics to the Attorney General’s Office. I find it difficult to accept that unelected individuals can, as the Court says, have the power to enact substantial ethics “laws.” That power belongs to the General Assembly under the rule of separation of powers; the executive officers and the judicial officers should have their appropriate role. I note also that the Supreme Court has said that the Ethics Commission may not forbid members of the General Assembly from serving on public boards, commissions, and agencies. One wonders if this should not be the case. I also note that the “free debate” clause and conflicts of interest policy can be reconciled and can be best debated by those in a Convention rather than within the affected legislative body. It is precisely the kind of issue that should be debated in a Convention.

I am very troubled and disappointed that some members of our community, self-identified “progressives,” fail to trust the people of Rhode Island with respect to a Constitutional Convention and have raised substantial cash to defeat a proposed Convention. Unheard of! Roger Williams, the Founding Fathers, and a revolutionary like Thomas Dorr must be turning in their graves. To be afraid to ask voters for their will on Constitutional issues is anti-democratic. This is really a case where special interests, admittedly not all “progressives,” are working together against the call of a Convention because they feel it threatens relationships in the General Assembly and their own sacred cows and causes. Quite frankly, I think they should be abashed if not ashamed. If they have an issue, they should run as delegates to the Convention

and use it as an opportunity to increase public awareness of their concerns and protect their goals.

Lastly, let me reiterate, some issues are best debated on a constitutional basis in a Convention forum rather than in the General Assembly simply because the General Assembly has the most to give up or is mostly affected thereby.

I appreciate the work of the Preparatory Commission; my comments as to Article XIV, Section 2 in particular should not be taken as personal criticisms.

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