



# California Constitutional Convention Q&A

(Updated 12-17-08, based on Bay Area Council research and consultation)

## »What is a Constitutional Convention?

A Constitutional Convention is a gathering of delegates for the purpose of revising an existing constitution or writing a new constitution.

## »Why should a Constitutional Convention be convened?

We think it is undeniable that California's government suffers from drastic dysfunction – our financing system is bankrupt, our prisons overflow, our water system teeters on collapse, our once proud schools are criminally poor, our democracy produces ideologically-extreme legislators that can pass neither budget nor reforms, and we have no recourse in the system to right these wrongs.

Most of these problems are a byproduct of the outdated system and rules of governance enshrined in our current constitution. California's constitution was always meant to be a living document that could adjust to the times, but it hasn't been systematically reformed since 1879. Our constitution needs serious structural reforms, chosen and authorized by the people, and a Constitutional Convention is the only politically viable means to achieve those reforms.

## »What is the current process to call a California Constitutional Convention?

There is only one route stipulated in the current constitution and that route is controlled by the legislature. By a 2/3rds vote, the legislature places the question to call for a Convention on the next general election ballot (November 2010). If passed by a majority of the voters, the legislature must "provide" for the Convention within 6 months. After the Convention, the new constitution or the packaged revision is placed on the ballot as one single measure for a majority vote. *(While achieving a 2/3rds vote in the legislature is very difficult, it is worse if the legislature does not "provide" for the Convention after the people vote for one, as happened in 1933.)*

## »Is there another process to call a California Constitutional Convention?

Our legal research indicates that by ballot initiative, a majority of the voters can approve an amendment to the current Constitution that would allow the voters to bypass the legislature and directly call a Constitutional Convention. This voter-driven Convention would have the same powers as one created by the legislature, and the product of the Convention would still be subject to majority approval by the voters to take effect. It is worth noting that one of the fundamental statements of the California Constitution is:

All political power is inherent in the people. Government is instituted for their protection, security, and benefit, and they have the right to alter or reform it when the public good may require.

A third potential route is for a group of citizens to form a "Citizen's Convention," decide on the revisions, and then package the changes as a series of amendments to pass through the initiative process (16 such amendments were on the 1970 ballot). This process could be prohibitively expensive, as each separate measure would require signatures to qualify for the ballot, and a separate campaign to secure passage.

## »Could the amendment allowing voters to call a California Constitutional Convention and the actual call be on the same ballot?

Yes. According to our legal counsel, the amendment to allow the voters to directly call a Constitutional Convention and an immediate call for a constitutional convention can be on the same ballot. For example, "Proposition 1" would amend the Constitution to *allow* voters to call a Convention and "Proposition 2" would ask voters if the Convention should be called now. Article 2, section 10 (A) of the Constitution states "An initiative statute or referendum approved by a majority of votes thereon takes effect the day after the election, *unless the measure provides otherwise.*"

## »What is the history of Constitutional Conventions in California?

California has had two previous Constitutional Conventions: in 1849 and the 1878 Convention that produced our current system. In 1962, the constitution had grown to 75,000 words, which at that time was longer than any other state constitution but Louisiana. That year, the electorate approved the creation of a “California Constitution Revision Commission,” which worked on the constitution from 1964 to 1976. The legislature placed revisions emanating from the Commission on the ballot. The electorate ratified the Commission's revisions in 1966, 1970, 1972, and 1974. In the end, the Commission managed to remove about 40,000 words from the constitution, but otherwise made only minor changes.

### »What happens in other states?

Constitutional Conventions are fairly common in the United States. Indeed, in 14 other states, voters are *automatically* asked every 10-20 years whether to authorize a Constitutional Convention and 25 percent of the time the voters have said “yes” to a Convention. In seven other states a Constitutional Convention may be called by a simple majority of the legislature.

### »Who are the delegates in a Constitutional Convention?

The makeup of the Convention in California is not stipulated, except that delegates geographically represent proportionate amounts of population. Delegates would likely come from either Senate, Assembly, Board of Equalization or Congressional districts, or a combination of these districts, to meet “one-person, one-vote” standards and requirements under the Voting Rights Act. (It also avoids the expense and political contentiousness of redrawing districts lines.) In other states the general practice is to have the Convention size be roughly comparable to the legislature, in California’s case, 120 delegates. In the 1878 Convention, there were 152 delegates: 3 from each Senate district and 32 at-large delegates.

Following the practice of other states, delegates would have to meet the same qualifications of voters generally, or be voters. Many states also bar current elected officials from serving in Constitutional Conventions.

Delegates can be selected by an election, by an application process, or through a random “jury pool” process. Courts across the U.S. have ruled that delegates do not necessarily need to be elected to Constitutional Conventions since a Convention is not a “governing body” but simply a “recommending body” whose only authority is to propose amendments to be submitted to a vote of the people.

The product of a Constitutional Convention and its electoral success will be directly linked to the openness and fairness of the delegate selection process. Some have argued that an election would favor statewide special interests that could run slates of “endorsed” candidates to ensure their interests are protected in the Convention. The Convention would then look much like the current legislature, the argument continues, unable to agree on any reforms.

Some have argued for an application process, similar to Proposition 11 (Redistricting Reform, 2008), to ensure qualified delegates apply to serve, with a filtering process to weed out obvious interest group biases. The downside of a “Prop. 11 process” is that it is difficult to explain to voters (who may reject it due to the complexity), and some feel it unduly favors certain political parties.

Selecting delegates by jury pool may be the best means to ensure that interest groups do not “game the system.” If the delegates selected must broadly represent California’s diverse population, some argue, their work is likely to be accepted by the voters. The potential problem with a jury pool selection process is that the delegates will not be experts, and require considerable education to make informed decisions. Yet, proponents argue, defendants routinely place their entire fate in the hands of such juries in courts and Canada has significant success with reforms generated by jury-pool selected delegates. Like with Jury Duty, these delegates would likely need to be protected from employment discharge during the term of their service.

### »Would the delegates be paid to serve in the Convention?

In some states, delegates do not receive a salary but are merely reimbursed for their expenses. Yet, a refusal to pay delegates for their work may mean that only wealthy citizens will be able to afford to serve as delegates, especially if the delegates are to meet full-time. The longer the Convention meets, the more difficult it will be for ordinary citizens to

forego pay to serve. The New York Constitution mandates that delegates receive the same salaries and be reimbursed for expenses at the same rate as state legislators. California Assembly and Senate Members are currently paid \$116,208 a year. Proposition 11, recently passed by California voters authorized \$300 per day for work on redistricting, or the equivalent of \$78,000 per year.

**»What if there were a vacancy?**

When vacancies in delegate positions occur, it is common for governors to fill vacancies, although they may be obliged to appoint to any vacancy a person of the same party, from the same district as the person vacating the post.

**»Where and when will the Constitutional Convention meet?**

To ensure that a Convention is held in a timely fashion once it is authorized, the Convention call should specify a date on which and a place at which the Convention must first meet. The Convention of 1849 met in Colton Hall in Monterey, and the Convention of 1878 met in the Assembly Chambers in Sacramento. Some have proposed holding the Convention in the Assembly Chambers again, but that might interfere with the regular operation of the Assembly. Most likely a neutral location in Sacramento would be most appropriate, but other locations could be considered, or the Convention could move around the state.

**»How long would the Constitutional Convention meet?**

Other states typically specify an ending date as well as a beginning date in their enabling legislation. The deadline for conclusion of the Convention's work serves as a spur to action, reduces the cost of holding a Convention, and ensures sufficient time for public consideration of proposals before the ratification vote. One study of Conventions from 1938-1968 found that their average duration was 2.6 months. The 1878-1879 Convention, which rewrote the entire California Constitution met for five months and four days. The duration of a California Constitutional Convention would likely be determined by the time period between the authorization vote and enough time to place the revision on the next convenient statewide election ballot.

**»What are the approximate costs of a Constitutional Convention?**

This question would be best answered by the California Legislative Analyst. Illinois's Legislative Analyst estimated costs up to \$23 million for a Convention in Illinois in 2008.

**»Can the topics of a Constitutional Convention be limited?**

Other states have ruled convincingly that, yes, Conventions may be limited *to consider only* certain subjects; and second, the Convention may be limited *from considering* certain subjects. According to state Constitutional Convention experts at Rutgers University:

Questions always arise about whether state Constitutional Conventions can actually be limited, or whether there is a possibility of a "runaway" state Constitutional Convention. These are, of course, legitimate questions but the law in the United States seems to be clear that if the proper procedures are followed to impose limitations on a state Constitutional Convention those limits will be legally enforceable.

This precedent applies both to Conventions emanating from the legislature or directly from the people by initiative. The limitations would need to be placed in the enabling legislation that the people vote on. Sometimes delegates are obliged to take an oath that they will confine themselves to the issues committed to them by the Convention call.

**»How would the delegates learn about the issues they would revise?**

If Convention delegates are to make informed decisions, they will need access to research on current conditions and likely future developments within the state. They will also need materials documenting the practices and experiences in other states. Most states therefore formally designate official bodies to prepare useful materials. In some states the nonpartisan legislative analyst offices provide the information, in others ad hoc groups have without official sanction also prepared relevant materials. Should California form such a commission, it should complete its work at least a month prior to the beginning of the Convention, so that its research can be disseminated to delegates and

interested members of the public. This commission could remain on call for the delegates during the duration of the Convention.

**»What rules would govern a Constitutional Convention?**

State Constitutional Conventions are usually charged with selecting their own leadership, adopting their own rules, hiring and compensating staff, keeping a record of their proceedings, and being judge of the qualifications of their own members. However, the initiative or the Legislature could specify a decision-rule—e.g., proposals would only go to the people if they obtained a 3/5 majority of all delegates to the Convention.

**»What revisions could be made during the Constitutional Convention?**

We do not presume to have the answers at this point, but through our consultations consensus seems to be emerging on the need to address the following issues:

- Adopt a two-year budget cycle
- Implement an open primary system and/or make state offices nonpartisan
- Extend term limits
- Increase the number of members of the legislature to ensure better representation of the population
- Create a Sunset Commission, similar to Texas, where every state agency is up for review and automatically abolished unless legislation is enacted to continue, merge or transfer their responsibilities.
- Reform California's system of taxation and spending, and ties to local government spending
- Address the initiative process, raise the minimum number of signatures required
- Remove 2/3<sup>rd</sup>s requirement on passing a budget (either if the increase is below 5%, or altogether)
- Guarantee steady funding for infrastructure
- Enable greater funding for education in exchange for important reforms