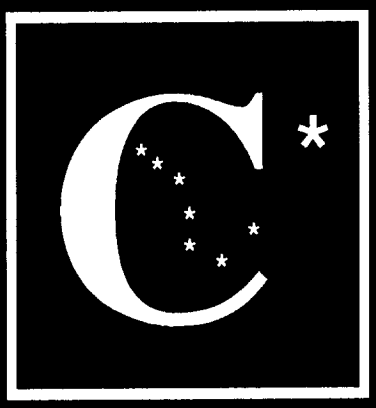
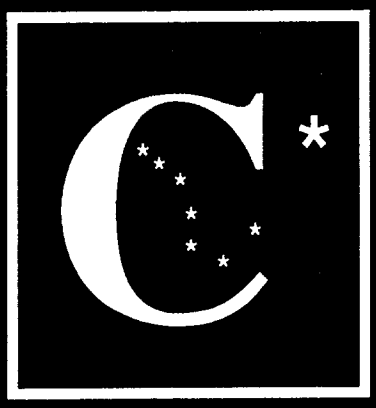
Shall there be a



ONSTITUTIONAL



ONVENTION?

ELECTION BALLOT

GENERAL ELECTION
NOVEMBER 3, 1992
STATE OF ALASKA

BALLOT PROPOSITION NO.___
Constitutional Convention Question

"Shall there be a Constitutional Convention?"

YES ☐
NO ☐

WHY is this question on the ballot November 3?

Alaska's Constitution requires that at least once every ten years the public will have the opportunity to decide whether or not a constitutional convention is necessary. Arcticle XIII, Section 3 provides:

If during any ten-year period, a constitutional convention has not been held, the Lieutenant Governor shall place on the ballot for the next general election the question: "Shall there be a constitutional convention?" If a majority of the votes cast on the question are in the negative, the question need not be placed on the ballot until the end of the next ten-year period...

A Commonwealth North Report

This report was originally prepared in 1982 by Commonwealth North to evaluate the pros and cons of holding a constitutional convention; to prepare recommendations as to the mechanics of a convention should one be held; and to identify alternative methods of amending Alaska's Constitution. In review, little need for change was noted. The report has stood the test of time and merits serious consideration and study as we approach the 1992 election. The intent is to educate ourselves and the public. No position is taken on the question of a constitutional convention.

August 20, 1992

Q What is the purpose of a constitution?

A It sets out the basic philosophy, policy, and framework of government; the mechanics of who does what; and the powers, restraints, relationships, and limits of government.

Q When was Alaska's Constitution drafted?

A Fifty-five delegates drafted our constitution two years before Statehood during the original 1955-56 convention. The National Municipal League termed it "one of the best, if not the best, state constitutions ever written." It was ratified by the voters April 24, 1956.

Q What can a constitutional convention do?

A Alaska's Constitution gives a convention plenary power, which means the power to propose amendments to the entire constitution. Proposed amendments must be submitted to the public for approval.

Q What if the voters decide against a convention?

A If no convention is called within the next ten years, the question will be placed on the ballot again in 2002. The legislature has the authority to call a convention at any time.

Q What if the voters decide to have a convention?

A Delegates will be elected at the next statewide election, unless the legislature calls a special election before then. The legislature will determine the details of the convention, such as the opening date, number of delegates, etc.

Q Are there other ways to amend our constitution?

A The legislature can propose amendments to the constitution by a two-thirds vote of each house. The proposed amendment then is placed on a ballot for a public vote. Thirty-one proposed Constitutional amendments have appeared on the ballot; twenty-two have been approved by the voters.

Q Have Alaskans voted on this question before?

A Yes. In 1970 the question was placed on the ballot as follows: "As required by the Constitution of the State of Alaska, Arcticle XIII, Section 3, shall there be a constitutional convention?" It narrowly passed (34,911 to 34,472). However, a suit was filed on the grounds that the wording implied that the constitution *required* a convention. The court threw out the election results and the question was placed on the ballot at the next general election in 1972. It was worded: "Shall there be a constitutional convention?" It was defeated (55,389 to 29,492).

Shall there be a Constitutional Convention?

YES We need to review our constitution in light of the changes of the past 36 years.

Radical changes have occurred in Alaska since the constitution was drafted: vast wealth is at the disposal of the State government; the population has more than quadrupled; new economic and political interests have evolved. These basic changes generate issues scarcely envisioned in 1956: limitations on state spending; subsistence rights; the propriety of continued state borrowing, limitations on elected terms of office, etc. In a society that has changed this much, there should be a presumption in favor of reviewing the basic law.

NO Alaska's Constitution sets out a strong, vital framework for our state government.

Our constitution is one of the shortest and most flexible in the United States, designed to allow for great changes expected in a new state. It is free of the special "solutions" that tie the hands of future leaders. It allows the legislature its choice of legitimate means in the development of public policy; establishes a strong, unified executive, and an independent, unified judiciary. We don't need a convention when we already have one of the best constitutions in the country.

NO There is only one reason to call a constitutional convention -- the need for major revision.

A constitutional convention is held for the purpose of making substantial changes to a state's constitution. A convention only becomes necessary after it has been decided that large portions of a constitution are outdated or restrictive. There has been no hard evidence that Alaska's Constitution needs major revision. The call for a convention comes from individual groups advocating individual changes. Individual changes are made through the normal amendment process, not through a convention.

YES A convention would provide new leadership, foster greater understanding

A convention would be healthy for Alaska at this time, focusing attention on the basic legal structure and attracting community leaders who do not have time to consider legislative service. It could generate a new reservoir of leaders of great value to the state and provide a forum for broad discussion of those issues that now divide Alaska, leading to consensus, compromise, or at least a greater understanding for divergent positions.

YES Alaskans are entitled to evaluate the modifications made since Statehood.

In a real sense, the constitution of 1992 is not the constitution of 1956. Our constitution is constantly modified in its actual meaning by action of the judicial, legislative, and executive branches of government. The Alaska judiciary has the obligation to interpret the constitution. The legislature and executive also make decisions with constitutional implications that are not always challenged in the courts. Whether these modifications are "right" or "wrong" is certainly a matter which the people are entitled to evaluate.

NO A constitutional convention is not a remedy for weak leadership.

Many of the problems facing Alaskans today are not the result of an improperly drafted constitution, but simply the failure of the executive and legislative branches to function properly in some areas. Weak leadership is not something that can be amended in a constitutional convention. A constitutional convention is extremely expensive, time-consuming, and a potentially disruptive event. It is worthwhile only if the constitution needs major revision. When a convention is not necessary, it simply endangers the integrity of a constitution to no purpose.

What's being said in debate. . .

CON POSITION: Alaska doesn't need a convention, we already have a model constitution.

OBJECTION: Alaska's Constitution is indeed a model, but it does not follow that it cannot be improved. Any legal system, however admirably conceived, is subject to improvement based on experience with its actual operation. Our constitution was drafted before Statehood. Today we need to evaluate it, not as a matter of theory, but on the basis of performance.

RESPONSE: Alaska's Constitution was designed to take advantage of the experiences of the other states. It is used as a guide for states now modernizing their constitutions because it is a "model" in the sense of best-of-the-line, rather than in the sense of antique. It can be, and has been, improved through the amendment process, but it is not in need of the massive revisions that make it necessary to call a convention.

PRO POSITION: A convention does not necessarily mean massive revision of our constitution.

OBJECTION: The calling of a convention opens our entire constitution to revision. Under Alaska's Constitution, a convention has plenary power -- power to propose changes to the entire document. The public does have the final vote, but the lesson of the 17 constitutional conventions held in other states during the 1970's and 1980's is clear: conventions produce many amendments. It is almost impossible for anyone to make an informed vote when faced with ballots filled with amendments.

RESPONSE: The calling of a constitutional convention would not represent "an attack" on the present constitution. Since the public has to ratify all proposed amendments, a convention would only result in changes deemed beneficial by the majority. Features of the constitution which have demonstrated their viability should remain untouched. The purpose of a convention is simply to review and make recommendations as to whether specific changes could be made to improve the operation of state government.

CON POSITION: We already have an amendment process for the changes needed.

OBJECTION: The constitution requires approval of two-thirds of the legislature before a proposal is submitted to the people. This requirement may pose an inordinate barrier to implementation of needed measures. More than 500 resolutions to amend the constitution have been introduced since Statehood. Only 31 have passed both houses of the legislature and appeared on the ballot.

RESPONSE: The amendment process has worked very well to change those provisions which the majority of the people want changed. In 33 years of Statehood, 22 amendments -- dealing with such basic issues as establishment of the Alaska Permanent Fund, the right of privacy, limited entry in fisheries -- have been ratified by the voters. This process is designed to pass needed amendments, not adopt every resolution ever made.

PRO POSITION: The legislature will not reform itself. Reform amendments will only come out of a constitutional convention.

OBJECTION: Legislators are elected by the people. To say that the legislature will not reform itself, is to admit that the people cannot elect legislators to do what the majority want. It is true that some proposed amendments have failed repeatedly. It is not necessarily true to conclude unreasoned blocking. It is possible that some ideas simply don't hold up under analysis. Many of these repeat proposals were also debated and voted down by the 1956 convention.

RESPONSE: The legislature consistently blocks proposed amendments that restrict its powers or affect its structure. Amendments to limit the length of the legislative session have been introduced 24 times since Statehood. Such an amendment finally passed in 1983 and was ratified by voters in 1984. The concept of a unicameral legislature has been introduced 14 times. The legislature has continued to prevent a public vote on these issues even after both were approved by voters in statewide advisory referendums.

Alternative approaches to amending Alaska's Constitution

There are two questions which must be considered apart from the issue of whether or not a constitutional convention is necessary at this time: first, whether the amendment process Alaska has now can be improved; and second, whether there are other methods of amendment which might merit study.

In pursuing these questions, three concepts were explored: use of the initiative for constitutional amendment; use of a Constitutional Revision Commission; and use of a legislative standing committee.

It is concluded that, regardless of the outcome of the election, all three concepts merit further consideration.

The two-level review process in constitutional amendment

Alaska's Constitution can be amended through a convention or through the legislature. Both methods require approval of proposed amendments by a majority of the voters.

This two-level review process was designed to meet concerns of the 1956 convention delegates that there be adequate methods of updating the constitution and adequate safeguards so amendments would not be haphazard.

Alaska has not had a convention since Statehood, but there has been substantial use of the legislative amendment process.

Two criticisms of this process are: first, time constraints -- on both citizens' groups and legislators -- hamper adequate analysis of proposed amendment issues; and second, it is difficult for citizens to bring their concerns to the attention of legislators.

Any alternative approaches to constitutional amendment should meet the concern of safeguarding the constitution, while alleviating the criticisms of citizens' groups today.

Use of the initiative in constitutional amendment

The initiative is the power granted to the people to propose laws and to enact them at the polls independent of a legislative body. While Alaska's Constitution grants the power to enact certain types of law by initiative, it does not extend the process to constitutional amendment. To do so would require a constitutional amendment.

The principal argument in favor of extending the initiative is that the process provides a means for voters to modify a constitution when their legislature has not responded to public requests.

The principal argument against is that the initiative process eliminates the check and balance of a two-level review. Initiatives are both proposed, and directly voted on, by the voters.

It is concluded that the initiative process, as it is presently set out to enact Alaska statutes, should not be extended to the constitution. However, further study might show that the concept of constitutional initiative could provide an acceptable alternative if sufficient restrictions are placed on the process to ensure adequate review.

Use of a Constitutional Revision Commission

A Constitutional Revision Commission is a state agency charged with the responsibility of researching and preparing constitutional amendments. These agencies are being used, in one form or another, in many states.

Such a commission has one purpose -- to improve the processes used to amend a state constitution. It studies both the need for, and effect of, amendments.

Its charge would be to hold public hearings; review areas of public interest, contract research; draft and present proposed amendments to the legislature.

It could, for example, be directed to research the effect of various ways amendment by initiative might work, and if the concept is approved, have a role in researching initiative proposals from the public.

A Constitutional Revision Commission can be created by executive or legislative act without a constitutional amendment.

Such a commission should be free of control of any government branch. One recommendation would be a bi-partisian body with an appointee from each government branch and four elected public members. The present Alaska Code Revision Commission, which updates and revises existing statutes, could serve as a guide.

Use of a legislative standing committee

A third option would be to request the Alaska Legislature to establish its own standing committee to implement the amendment process. An Alaska Constitutional Amendment Hearing and Action Committee would:

- receive requests from both the public sector and the legislature for amendments to the Constitution;
- hold public hearings on such requests; and
- introduce proposals to the legislature for action.

It is not expected that every proposal would be submitted to the legislature, rather the objective would be to allow the public and the legislators the opportunity to consider and publicly review and debate the merits of major proposals.

The mechanics of planning a constitutional convention

If a convention is called, when will it start...how many delegates...how long will it last? These questions are of interest regardless of whether a voter is in favor of, or opposed to, a convention.

The mechanics of planning a convention, should one be called, are the responsibility of the legislature. Convention legislation has been considered in the past, particularly in 1970 when Governor William Egan introduced House Bill 117 in response to a constitutional vote. The legislation was never enacted because the convention was ultimately rejected, but the key considerations of that bill have served as a guide for all subsequent proposed enabling acts.

The provisions summarized and commented on here include the areas of consideration in HB 117. They are intended as discussion points if the voters approve a convention in November.

Setting the stage: the key provisions

PROVISION: That the legislature establish a Constitutional Convention Commission to prepare the groundwork for an effective convention.

COMMENT: If the voters approve a convention on the November ballot, it is expected that the next legislature would pass the enabling statute and the convention would be convened in 1993. This leaves only a short preparation time. Alaska's 1956 constitutional convention was successful, in part, because of thorough preparation. Other states having successful conventions stress the importance of this first step. The primary duties of the commission would be to compile materials useful to the delegates; undertake research; organize appropriate background material; and provide information on request.

PROVISION: That the election of delegates take place at a special election and that such election be nonpartisan in every aspect.

COMMENT: Due to the singular importance of the constitution as the basic law of the state, it is concluded that the enabling provisions should, insofar as possible, focus attention on the convention by separating it from on-going political concerns.

PROVISION: That 65 delegates be elected: 60 from existing House and Senate districts, plus five at-large.

COMMENT: The election of delegates should meet the U.S. Supreme Court's one-man, one-vote criteria to avoid challenge. It is unnecessary to have a special apportionment for a convention if the existing election districts meet that criteria.

PROVISION: That the delegates be paid the same travel and per diem as members of the legislature, but that they not be paid a salary.

COMMENT: The goal of the enabling legislation should be to seek delegates who are more attracted by the desire for public service than by the desire for a winter job.

PROVISION: That the convention be limited to 60 days, with the option to recess for 15 days of public hearings.

COMMENT: It is considered imperative that any convention be given a time frame within which its work must be completed. The 1955 convention was given 60 days, including weekends and holidays, to draft the constitution, plus a 15-day break to hold public hearings. If the original constitution could be drafted within that time frame, the review should take no longer. It would also be expected that a firm 75 day limit would attract community leaders who could not participate in drawn-out conventions.

PROVISION: That the convention be convened during the legislative session.

COMMENT: The constitution provides the framework of government: the legislature implements government. It is concluded that the separate function of both the legislature and the convention will be served by a separate membership. While nothing in the constitution prohibits legislators from serving as delegates, if the convention is scheduled to run concurrently with a portion of the legislative session the matter is effectively settled.

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935 West 3rd Avenue
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