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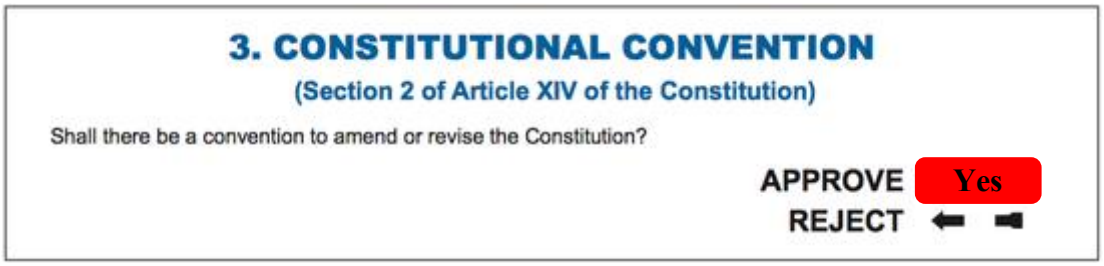
WORKING PAPER

What Comes Next?



A Plea to Improve the State Constitutional Convention Process

by

J.H. Snider

President, iSolon.org

Editor, The Constitutional Convention Clearinghouse & RhodeIslandConCon.info

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Preface

This working paper was originally written in the expectation that Rhode Island's November 4, 2014 referendum to convene a state constitutional convention would be approved by voters. That wasn't a wholly unreasonable expectation.

On October 23, 2014 Brown University's Taubman Center published a poll finding that 42.3% of voters were in favor of a state constitutional convention, 26.8% opposed, and 30.9% undecided. Knowing that there would be relatively little time after the election to educate and mobilize citizens on the enabling act to implement a constitutional convention before the legislature enacted one at its next session starting in January, I took that poll result as a mandate to draft this paper. Assuming that the referendum passed on November 4, this paper was to be delivered at a brown bag lunch in Providence, Rhode Island on November 5, 2014.

On November 4, 2014, the referendum was defeated 55.1% to 44.9%.

Despite the defeat, I believe that this paper contains public policy ideas that could be of interest to other democratic reformers seeking to solve seemingly intractable democratic reform problems, especially as they relate to the design of constitutional conventions and other democratic reforms where legislatures have an institutional conflict of interest with their constituents. Given the current realities of American politics, the most receptive audience for these ideas may be overseas in places where cynicism about the future of democratic institutions has not taken such deep root. Hopefully, when Americans next approve a periodic state constitutional convention, perhaps as early as New York in 2017, Hawaii in 2018, Iowa in 2020, Missouri, New Hampshire, or Alaska in 2022, or Rhode Island in 2024, it will also have some value. Between now and 2030, there are expected to be fourteen such referendums in the United States. At 44.9% of the vote, the 2014 referendum result in Rhode Island was the second highest of the eleven such state referendums held in the U.S. during the past decade.

Abstract

The contemporary democratic function of the periodic state constitutional convention referendum should be to provide a mechanism for the people to amend a state constitution about matters that are extremely difficult to address via a legislature due to a legislature's institutional conflict of interest with the people. Examples of such matters include redistricting, ethics, and term limits reform, as well as resetting the checks & balances between the legislative, executive, and judicial branches of government in a way that constrains the legislative branch.

Unfortunately, the state constitutional convention cannot fulfill this democratic function if the legislature has undue control over implementing it. This working paper proposes a solution to this problem: a new type of public body that consists of a series of constitutional convention "e-juries" (a variation on the "mini-public" idea) that would iteratively choose among plans submitted by contestants for creating a constitutional convention's enabling act. The proposal is applied in the context of Rhode Island's state constitutional convention convening process.

An alternative and less radical use of such an e-jury would be as a last resort remedy for the courts if a legislature failed to implement a constitutional convention as mandated by a state's constitution. Thus, even if a constitutional convention e-jury was never called in practice, it could have a salutary deterrence effect on a legislature. A multistage e-jury could also be used to deal with other democratic reform problems where the legislature has an institutional conflict of interest with the people.

The state constitutional convention is an institutional gem in the rough that merely needs some shining for its democratic value to shine through.

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Introduction

On November 4, 2014, Rhode Islanders are expected to approve a referendum to convene a state constitutional convention.[1] The next step in the convention process would be for the Rhode Island General Assembly to draft a bill (the "enabling act") implementing the constitutional convention. This includes specifying the terms by which delegates are elected and later convened in the convention. It is vital that this stage of the process be reformed so that the promise of the periodic state constitutional convention can be fulfilled.

Critics have a point that the constitutional convention process can too easily be corrupted via a weak enabling act process. In 1986, when the last state, Rhode Island, convened a state constitutional convention, the Rhode Island General Assembly's leadership was able to exert too much influence over who was elected as a delegate, who was elected president of the convention, who was hired as staff to the convention, and whether the convention would continue to receive funding if it acted against the wishes of the General Assembly's leadership.

Getting democratic reformers to concentrate on the enabling act stage of the constitutional convention process has been difficult, if not impossible. After securing a hard-fought win to convene a convention, they naturally tend to focus on what a convention should accomplish and electing delegates to implement that agenda. They may also feel that there is relatively little they can do if the legislature chooses to abuse its control of the enactment process.

This paper argues that these problems could be significantly mitigated and that the state constitutional convention process is an institutional gem in the rough. Part 1 of this paper discusses a legislature's conflict of interest when it has control over the enabling act. Part 2 discusses a solution to that problem. Part 3 discusses uses of that type of solution for other difficult democratic reform problems. Part 4 discusses some provisions that would be desirable for Rhode Island's upcoming enabling act, regardless of the process by which it was determined. Part 5 discusses some short-term implications of this proposal and the long-term problem of how to get from seemingly impractical idea to practical implementation.

[1] This paper was originally drafted for presentation at a brown bag lunch in downtown Providence, Rhode Island on November 5, 2014, one day after the constitutional convention referendum.

Readers who are primarily interested in what should be included in Rhode Island's enabling act rather than how the enabling act process should be reformed may want to skip to Part 4.

Part I: The Problem

After the people approve a referendum to convene a constitutional convention, state constitutions have granted legislatures the right to pass a bill (the "Enabling Act") governing many of the steps that must occur before a convention can convene and fulfill its tasks. This places the legislature in a conflict of interest situation because the primary modern function of a state constitutional convention is to serve as a check on the legislature; that is, to propose constitutional amendments when the legislature itself is the problem.

The Increasing Salience of the Legislature's Conflict of Interest

The constitutional convention originally had a much broader constitutional function than it does today. When the country was formed in 1776, it was the only efficient mechanism available in many states to both create and amend the state's constitution. When it had this larger function, the conflict of interest problem was obscured by the fact that it was also the only mechanism the legislature had available to propose amendments it wanted. However, as competing mechanisms for amending the constitution were gradually developed—notably the familiar modern process of the legislature directly proposing amendments and the people ratifying them without an intervening constitutional convention—the legislature's conflict of interest problem began to come to the fore.

An example is the state of Rhode Island, whose legislature convened four constitutional conventions as late as the middle 20th century (1944, 1951, 1955, and 1958). In Rhode Island at that time, passing constitutional amendments via a constitutional convention was perceived to be easier than passing them directly via the legislature. For the legislature to approve an amendment directly, it needed approval of the same amendment by two successive legislatures with an intervening popular election and by a supermajority as opposed to a simple majority vote by legislators. By creating "limited" constitutional conventions, the legislative majority could get its proposals passed more easily without losing control of the constitutional convention's agenda.

Even as the direct legislature-initiated constitutional amendment process developed as a competitor to the indirect constitutional convention process, the constitutional convention retained the function of providing a convenient mechanism for major rewrites of a constitution—if only to eliminate the archaic and often embarrassing language contained in many early state constitutions. For solving such problems, the legislature had no conflict of interest.

As in Rhode Island, legislatures could also eliminate the threat posed by a constitutional convention through a so-called "limited" constitutional convention, which allowed the legislature to control a convention's agenda via the act placing the convening referendum on the ballot. For example, such an act could make it permissible to convene a

constitutional convention to extend the term of a legislator from two to four years but not to implement legislative term limits. Rhode Island's limited constitutional convention of 1973 implicitly had such a provision.

But a limited constitutional convention could backfire, however, if courts wouldn't accept limits on a constitutional convention once it had already assembled and voted to put certain proposals on the ballot. In 1975, this happened in Rhode Island. In *Malinou v. Powers*, 114 R.I. 399, 33 A.2d 420, the Rhode Island Supreme Court ruled that the General Assembly did not have the power to limit a constitutional convention's agenda, as it had attempted to do in 1973.

Limited or otherwise, if there was a conflict between a legislature and a constitutional convention, it tended to be a latent conflict when legislatures were filled with citizen legislators rather than career politicians. In an era when legislators were unpaid or poorly paid amateurs and rarely served more than a few terms, legislators were less wary of the types of checks on their power that a constitutional convention might create. As late as the mid-19th century, citizen legislators remained ubiquitous in America and later only gradually faded away. In some small states such as Vermont and New Hampshire, they are still common. They are also common in local politics throughout all fifty states.

The Birth of the Periodic Constitutional Convention

The paradigmatic type of modern constitutional convention is the periodic constitutional convention referendum, an early form of which was implemented in New Hampshire in the 1780s. This had some archaic features: the voting to convene the convention, elect delegates, and ratify convention proposals all took place in town meetings.

The modern form of the periodic constitutional convention took flight in the mid-19th century. A wave of states defaulting on their debts in the early 1840s helped trigger a series of constitutional conventions in the late 1840s and early 1850s. The defaults came in the aftermath of the mania for taxless finance, which was triggered by New York's highly successful Erie Canal project. Many states tried to copy New York's success by investing in canals and railroads. They did this by investing in the private companies building the canals and railroads. When those companies subsequently went bankrupt, taxpayers were asked to pick up the tab. Many of those companies had unduly influenced the legislature in ways that would never be tolerated today. This generated public fury against the incompetent or corrupt legislatures and calls for a new wave of state constitutional conventions. Many state provisions to issue bonds to finance capital improvements were added to state constitutions at this time.

Another development of more direct relevance was Rhode Island's Dorr Rebellion, which also occurred in the early 1840s and was well-publicized throughout the United States. In tiny Rhode Island, even a relatively small urban mob could have a huge impact on state government.

Until the mid-19th century in America, mob violence and political reform were intimately related. But the statewide impact and national publicity of the Door Rebellion made it

an especially influential case outside its state of origin. For example, Maryland's constitutional convention debates from 1851 refer to the Dorr Rebellion more than a dozen times. Instead of the Rhode Island method of constitutional change initiated by violence, the people of Maryland would be provided with the method of the periodic constitutional convention.

The Dorr Rebellion occurred because a recalcitrant legislature refused to pass popular democratic reforms expanding white, male suffrage and giving urban and other newly populated areas power in proportion to their population. If legislators had agreed to allocate legislative seats based on population, many would not only have lost their jobs but the regions from which they came would have lost significant power and the resources that came with that power.

When constitutional conventions in other states convened in the wake of the Dorr Rebellion, a consensus often developed that it was important to have a peaceful mechanism for amending constitutions in the face of a recalcitrant legislature. That peaceful mechanism was the periodic constitutional convention, which provided a mechanism to convene a constitutional convention when the legislature refused to do so.

In the wake of these developments, New York (1846), Michigan (1850), Maryland (1851), Ohio (1851), and Iowa (1857) created provisions in their constitutions for periodic constitutional conventions. Adding New Hampshire (1782), by the end of the 19th century six states had such provisions. By the end of the 20th century that number would increase to 14, with Rhode Island joining the group in 1973.

These periodic constitutional convention provisions essentially implemented the first section in many constitutions, such as Rhode Island's, granting the people an inalienable right to change their constitutions. Such a declaration of rights can be traced back to a similar statement in the 1776 U.S. Declaration of Independence. But the drafters of those clauses initially thought in terms of violent change, as was the case with America's struggle with Great Britain in the late 18th century. After the country was well established, that mode of change became less relevant, but it was surprisingly influential until the mid-19th century when cities developed professional police forces and the political power stemming from mob violence was greatly weakened.

A similar set of conflicts occurred in the middle 17th century when the English Parliament sought to convene periodically in the face of opposition from King Charles I, who didn't want to convene Parliament unless he was desperate for money (Charles I was later beheaded partly because of his hostility to convening Parliament periodically). Similarly, some colonial legislatures in the 18th century, especially in the years leading up to the Revolution, fought battles with colonial governors for the right to convene periodically.

Rushed, Poorly Drafted Constitutional Convention Provisions

The new periodic constitutional convention provisions were not without significant flaws, the chief one of which was the slapdash way they were created. The poster child of this tendency is the Article V constitutional convention provision in the U.S. Constitution.

The Federal Constitutional Convention of 1787 had far more important things to decide than how amendments to its proposed constitution might be passed decades into the future. These included disagreements about issues such as how to divide power among large and small states, the future of slavery, the relative powers of the legislative, executive, and judicial branches of government, and the division of power between the national and state governments. Disagreements about such issues were so substantial that until the final weeks of the convention there was serious doubt whether the convention could even come to an agreement to replace the confederation of 13 separate and sovereign states with a union under one central government. Debate on how to create an effective constitutional convention process was a luxury the convention acted as though it couldn't afford.

Even today, when high school and college students learn about the 1787 convention, they are rarely told about the debates over the constitutional convention provision of Article V, which were brief and came during the last week of the convention when many members thought it long past due for the convention to adjourn and couldn't be bothered with issues of such remote importance. The consequence was arguably the U.S. Constitution's worst drafted provision. Many articles have been written about its incredible vagueness and the constitutional crises it could create if it were ever implemented.

In drafting their constitutional convention provisions, states couldn't but improve on the hopelessly vague provision in the U.S. Constitution. But the same dynamics tended to apply.

People don't vote for constitutional conventions and elect delegates to them in order to plan for constitutional conventions that may not occur for decades into the future. They vote to convene conventions to address timely issues. The result is that again and again these provisions have been drafted at the end of conventions as an afterthought when the people and delegates were clamoring for the conventions to adjourn. Too often states have copied the provisions of other states merely to get the job over with. Some states don't even have provisions and assume that the legislature's inalienable right to convene a convention on behalf of the people is adequate.

In the early days of constitutional conventions, the sloppiness wasn't apparent and could often be excused as immaterial when the legislature had a minimal conflict of interest convening a constitutional convention. As we have seen, that's because legislatures were filled with citizen-legislators rather than career politicians, and the legislatures often needed a convention to pass the reforms it wanted. However, as constitutional conventions developed the relatively narrow institutional purpose of serving to overcome legislatures' veto power over constitutional reform, it has become increasingly important to draft periodic constitutional convention clauses with great care so as to prevent legislatures from creating do-nothing constitutional conventions or making them an arm of the legislature like an appointed legislative commission. This need is reflected in the

growing length of state constitutional convention provisions drafted during the 20th century.

Examples of the Legislators' Conflict of Interest Problem

The poster child of a dysfunctional periodic constitutional convention is Oklahoma. Under Oklahoma's 1907 constitution, the legislature is supposed to place a constitutional convention referendum on the ballot every twenty years. But the legislature has simply refused to do so since 1970. In the early 1990s, the legislature sought to assuage its violation of the Constitution by placing an amendment on the ballot abolishing the periodic constitutional convention provision. But when the people refused to abolish the provision, the legislature continued to ignore it.

Two other states have vague majority denominators that have allowed legislatures to provide a seemingly plausible excuse to convene a constitutional convention even when they have received an ordinary majority in a referendum. In 1950 in Maryland, for example, 79% of those voting on the question voted yes to convene a constitutional convention, but the legislature claimed that an adequate majority wasn't obtained to force it to convene a convention. (The legislature knew that a constitutional convention would lead to legislative reapportionment that would dramatically shift power from rural to urban areas of the state and from whites to blacks; the legislature's adamant opposition to convening a constitutional convention was further reflected in the fact that it could call a constitutional convention at any time, even without approval from a periodic constitutional convention approved by 79% of the voters voting on the question.)

In Iowa in 1922, there was no question that a majority approved a constitutional convention, but the legislature simply refused to convene one.

One of the best attacks on a constitutional convention is that it will be exactly like the legislature that creates it. In Connecticut, for example, the legislature has the option to either appoint convention delegates or have them elected by the public. When the referendum last came up in 2008, opponents used the legislature's ability to appoint delegates to the convention as one of their most effective arguments against voting yes for a convention.

Rhode Island has a number of simple provisions to reduce the risk of such abuses. If the legislature refuses to place the referendum on the ballot, the secretary of state has the duty to do so. Whereas legislators have many ruses they can use to avoid accountability for failing to place a referendum on the ballot, a single elected executive does not.

Rhode Island's majority denominator requirement is modern and crystal clear (it requires "a majority of the electors voting at such election on said question"), so the games played in Maryland and Hawaii regarding ambiguous majority denominators cannot work here.

Delegates must be elected from pre-established districts (the same districts drawn for legislators), so legislators cannot directly appoint cronies as delegates and cannot gerrymander the districts to achieve the same effect. Another advantage of using

legislative districts is that legislatures cannot create giant electoral districts that give an advantage to established politicians or politicians who can raise large sums of money from special interests.

Rhode Island's Constitution has also been interpreted to mean that the general ban on plural office holding applies to delegates to a constitutional convention. A ban on plural office holding, whereby members of one branch of government cannot simultaneously serve in another branch, is widespread among American state constitutions because it is viewed as essential to preserving our system of checks & balances. However, it has not always been applied to delegates to state constitutional conventions, including legislators who seek to serve as delegates.

Despite these and other constitutional safeguards, Rhode Island's legislature, like other legislatures, retains too much latitude via the enabling act process to undermine the democratic function of the constitutional convention. That's why a new method for passing an enabling act is needed, one that will simultaneously minimize the legislature's role in the process while creating a process representative of the people.

What I recommend to solve the legislature's conflict of interest problem is a new institutional mechanism that I call a "constitutional convention enabling act jury." In a series of rounds administered by the judicial branch of government, the jury would choose among contestants' proposed enabling acts. The benchmark enabling act would be the previous constitutional convention enabling act.

Part 2: Policy Recommendations:
A Constitutional Convention Enabling Act e-Jury

This proposal aims to take responsibility for selecting an enabling act out of the hands of the legislature and place it in the hands of a new type of public body, a series of large scale, representative juries that would iteratively choose among plans submitted by contestants for implementing a constitutional convention. This body is labeled a "multi-stage constitutional convention enabling act jury," which can be shortened to "enabling act jury" and even further shortened to "e-Jury." The term e-jury also connotes "electronic jury." Since new communications and transportation technologies developed since the 18th century makes such a jury feasible, that's an appropriate connotation.

The e-jury is convened and moderated by the judicial branch of government, and the proposals for enabling acts among which it selects are submitted and presented by "contestants." The multiple stages of the e-jury are each composed of a different set of randomly selected individuals, and each stage selectively filters the contestants. The e-jury would not propose any terms of implementation itself, only choose among those presented to it by contestants in adversarial proceedings. The public deliberation over the enabling act is driven by the contestants, who are required to submit their comments and reply comments on a public website in a timely way. The e-juries largely exist to foster

this new type of public deliberation. The bulk of the work is arguably done by the contestants, not the e-juries.

Depending on the decision of the first round e-jury concerning the quality and number of the contestants, the e-jury may consist of two or three rounds. Although the description of the e-jury below may at first glance appear to be complex, it is actually very simple compared to the procedures of most public bodies. Well-designed democratic institutions must inherently include many checks & balances, which makes them inherently complex to describe in a more than superficial way.

Pre-Round #1

Prior to Round #1, the chair of Rhode Island's Supreme Court would select one or more moderators ("moderator") for the e-jury proceedings. Any secret correspondence from a legislator to a judge on this matter would be viewed as a criminal offense, just as would be any interference by an interested party in any other judicial proceeding.

Any individual or organization interested in presenting a proposal to the e-jury would submit a registration form online that would be publicly posted on a website. The registration form would include contact information for all contestant applicants including a brief statement of the contestant's credentials, as chosen by the contestant.

The moderator would determine whether the contestant's forms were complete. All rejections with explanations for the rejections would be submitted to the Round #1 e-jury members for review. If any were overturned, the affected contestant would jump to Round #2.

During each round, online comments and reply comments would be available to other contestants and the press in a timely way before the e-jury convened.

The moderator would establish a separate public website for legal counsel experienced in drafting legislation to advertise their services and fees. This would serve as a resource for contestants who survived to the last round. The moderator would determine whether such applicants were appropriate to be publicly listed. All rejections with explanations for the rejection would be submitted to the Round #1 e-jury members for review. If the e-jury overturned any, they would remain on the public website.

Round #1

A geographically stratified e-jury of 76 individuals (a male and female randomly selected from each of Rhode Island's 38 Senate districts) would make decisions about which contestants would be invited to present proposals for Round #2. This could be called the "Round #1 e-Jury."

All contestant applications would be posted online at least one week before Round #1 so that contestants could assess each other's credentials prior to making their own presentation.

The moderator would determine how many minutes each contestant or group of contestants would be granted to make its case for being granted the opportunity to present a proposal for Round #2. The order of the presentations would be chosen by lot. The Round #1 e-Jury would have the ability to waive any time limitations at the request of a contestant. The Round #1 e-Jury would convene for no more than one day unless an emergency required an extension.

Round #1 e-Jurors would decide whether there should be one or two more rounds of e-juries depending on the number and quality of contestants submitted in Round #1. The following description assumes a three round e-jury. A two round e-jury would only be slightly different. A primary difference is that in a three round e-jury the Round #2 contestants could be chosen merely on their ability to contribute to the public deliberation as opposed to their likelihood of submitting a winning proposal that could serve as the enabling act.

Pre-Round #2 (assuming a three round e-jury)

Prior to Round #2, the moderator would set up a website for all successful Round #1 contestants to submit their proposals publicly for anyone to see. The first round of proposals would be due three weeks before Round #2. Those who didn't submit proposals by the deadline would be automatically eliminated from the contest. One week before Round #2, contestants would submit reply comments regarding the proposals of other contestants. Those who didn't submit reply comments would be eliminated from the contest.

The moderator would determine whether a contestant had complied with these rules. All rejections would be submitted to the Round #2 jury members for review. If any were overturned, the contestants would jump to Round #3.

Round #2 (assuming a three round e-jury)

A geographically and gender stratified e-jury of 150 individuals (a male and female randomly selected from each of Rhode Island's 75 House districts) would make decisions about which contestants would be invited to present proposals for Round #3 (the "Round #3 e-Jury").

The moderator would determine how many minutes each contestant or group of contestants would be granted to make its case for being granted the opportunity to present a proposal for Round #2. The order of the presentations would be chosen by lot. The Round #2 e-Jury would have the ability to waive any time limitations at the request of a contestant. The Round #2 e-Jury would convene for no more than two days unless an emergency required an extension. By two-thirds majority vote, they could adjourn earlier.

The task for the Round #2 e-jurors would be to choose five contestants for Round #3. A sixth proposal with a contestant in absentia, the last enabling act for a constitutional convention (in Rhode Island's case, 1986), would automatically be entered as a contestant for Round #3. Contestants who had been inappropriately eliminated from

Round #2 during the Pre-Round #2 process would be added to the list of Round #3 contestants.

Day #1 one of the deliberations could include initial presentations by the contestants, with the morning of Day #2 devoted to rebuttals by the contestants and the afternoon devoted to juror deliberations.

Each winning contestant in Round #2 could receive a $10,000 grant, payable immediately, which could be used however it wanted, including to hire legal counsel for Round #3. Alternatively, the e-jurors could require contestants to explain why they should receive public funding to help prepare for the next round.

Pre-Round #3

Prior to Round #3, the moderator would set up a public website for all successful Round #2 contestants to submit their proposals. Immediately after Round #2, the moderator would provide written guidelines to the five winners for the desired legal format of the Enabling Act so the Round #3 proposals could be implemented as law. The first round of proposals would be due three weeks before Round #3. Those who didn't submit proposals would be automatically eliminated from the contest.

Round #3 proposals would not in any way be restricted by the Round #2 proposals; learning from the previous round should be encouraged.

One week before Round #3, contestants would submit reply comments regarding the proposals of other contestants. Those who didn't submit reply comments would be automatically eliminated from the contest.

The moderator would determine whether a contestant had complied with these rules and submit a written statement to that effect to all Round #3 e-Jury members at the start of Round #3.

Round #3

A geographically and gender stratified e-jury of 150 individuals (a male and female randomly selected from each Rhode Island House district) would pick a winning enabling act from the approximately five remaining contestants. At the start of Round #3, the moderator would verbally explain his opinion concerning any Round #2 winners who did not comply with the Pre-Round #3 requirements. The Round #3 e-Jury with a simple majority vote would have the ability to let any rejected contestant participate in Round #3.

The moderator would determine how many minutes each contestant would be granted to make its case. The order of the presentations would be chosen by lot. The Round #3 e-Jury would have the ability to waive any time limitations at the request of a contestant. The Round #3 e-Jury would convene for no more than three days unless an emergency required an extension. The Round #3 e-Jury could also adjourn earlier by a two-thirds majority vote.

Day #1 one of the deliberations could start with initial presentations by the contestants in the morning followed by a first round of rebuttals in the afternoon. Day #2 could start with a second round of rebuttals in the morning followed by time for the e-jurors to read the written presentations and the rebuttals to those presentations early in the afternoon, with a vote on the contestants' plans later in the afternoon. e-Jurors would use ranked choice voting, also known as instant runoff voting, to select the winning contestant.

At his discretion, the moderator would have the option to extend the jury deliberations to a third day.

The e-jury could also vote to convene a Round #4 e-jury for up to a day with the moderator granted the option to extend the e-jury deliberations to a second day.

As an incentive for contributing to this important democratic process, the final winner of the enabling act contest could receive an additional $10,000 on top of whatever was received in an earlier round.

Schedule

- First Tuesday in November. The constitutional convention referendum.
- January 8. Contestant applications due.
- January 15. First round e-jury.
- February 21. Second round proposals due.
- March 8. Second round rebuttals due.
- March 15. Second round e-jury.
- April 21. Third round proposals due.
- May 8. Third round rebuttals due.
- May 15. Third round e-jury.

This would provide an enabling act approximately one month before the Rhode Island General Assembly would normally provide one. It would also provide a much more deliberative process, as the General Assembly tends to make decisions on potentially controversial decisions at the last minute with minimal public deliberation.

- Second Tuesday in November. Delegate election.

This would be the normally scheduled time for a delegate special election (general elections only occur once every two years, so the November after a general election is a special election). However, for reasons argued below, it would be better to schedule the delegate election in September, several months earlier.

e-Juror Waivers

e-Jury service could be waived for individuals as with other juries. There would be no voir dire, partly because voir dire is less needed to reduce bias when a randomly selected jury is large and thus likely to be more representative of the public than a conventional jury of twelve or fewer individuals. However, the moderator should retain the right to

propose removing an e-juror from the e-jury, which could be accomplished with a two-thirds vote of the e-jury.

A state prosecutor should be immediately informed of any effort to bribe an-juror, but the penalty for bribery, which should be a criminal offense, should only be applied to persons attempting to do the bribing unless the e-juror has engaged in a cover-up.

Whether alternates should be called to deal with no-show e-jurors could be left to the discretion of the moderator.

Cost of the e-Jury

e-jurors should be paid at least the Federal minimum wage for their time plus an IRS designated rate of mileage reimbursement for travel from their homes to their place of deliberation. Those whose wages are already paid for by their employer for e-jury service would not be eligible for this reimbursement. Legislators and legislative staff would not be eligible to serve on the e-jury because the purpose of the e-jury would be to solve the legislators' conflict of interest problem.

In large states, the e-jurors could convene at their nearest district court, thus reducing transportation costs, and communicate from there electronically with a central court.

By having the duration of the e-jury last no more than a few days, the burden on the e-jurors is significantly lessened, especially for the self-employed. Given that a trial can extend over many weeks, conventional jurors accept much greater potential economic losses when they serve on a jury.

Benefit of the e-Jury

It is much easier to estimate the cost than the benefit of a constitutional convention e-jury. It can be argued, however, that one gets what one pays for in democracy as with many other areas of life. Good democracy may be costly, but bad democracy is costlier.

When the public is too cheap to pay for needed democratic control mechanisms, abuses tend to flourish. A 2011 Gallup poll found that the American people believe that their state government wastes 42 cents of every dollar spent. That's up from 31 cents of every dollar spent when the poll was last taken in 1979. The comparable figures for local government are 38% in 2011 and 25% in 1979.

Applied in the context of Rhode Island state and local government, that comes to many billions of dollars per year of perceived waste and many tens of billions over the span of a decade or more (the period of a decade is especially appropriate to a Rhode Island constitutional convention because the people only have the right to convene one once every decade). If the people truly believe in such extensive waste and also believe that a well-run state constitutional convention could make even a small dent in it (e.g., less than 1% of 1%, which is .01%), then a well-funded state constitutional convention, including a well-designed enactment process, could be an excellent investment in Rhode Island's future.

Technological Foundations

This type of proposal is possible in part because of modern transportation and communications technology. Transporting jurors to a central location would have taken weeks, not hours, in the 18th and much of the 19th century, and would also have been far more costly.

Public websites to facilitate communication dramatically increase the speed and reduce the cost of contestant and public communication in comparison with using physical mail, which prevailed until the 1990s.

Even if it were affordable, the time required for a similar degree of public deliberation in the 18th and 19th centuries would have been at least several times longer, probably requiring more than a year as opposed to the half year proposed here for a three round e-jury and proportionately less for a two round e-jury.

However, such high quality public deliberation wasn't affordable. For example, local reporters and less well-off contestants could not have afforded to go to a central location in a timely way and then physically copy all the contestants' submissions (the photocopier was not invented until the mid-20th century). Printers would not have born this expense because the market to read contestants' submissions would have been too small and the cost to set manual type on short notice too high.

Part 3: Policy Recommendations: Other Uses for e-Juries in Democratic Reform

Constitutional conventions. By majority vote of the constitutional convention, the convention could convene a special, single-stage e-jury to request approval of proposed changes to its enabling act. If the jury refused to make the changes, the enabling act would remain the same.

Even if an e-jury was not mandated by law to create the enabling act, the threat of an e-jury could be a powerful deterrent to legislature shenanigans. For example, in the face of a legislature that refused to implement a constitutionally mandated constitutional convention via a conforming enabling act, a judge could use an e-jury as a type of remedy. A judge could mandate that a legislature revise a deficient enabling act and accompany that mandate with the warning that if it didn't fix it, an e-jury would be convened to do so.

Legislative redistricting. Legislatures have an incentive to create highly gerrymandered legislative districts, which, in turn, result in highly partisan legislators, decisive primary elections where turnout is low, uncontested general elections, difficulty achieving compromise between Democratic and Republican legislators, and reduced electoral competition more generally.

A multi-stage e-jury could be used to create an independent, decennial legislative redistricting system. Both constitutional convention referendums and legislative

redistricting are the only two constitutional provisions requiring decennial democratic reforms.

Existing mechanisms to create an independent redistricting process all suffer from significant flaws. Bi-partisan legislative redistricting solves the problem of partisan gerrymanders but results in aggravating the problem of pro-incumbent gerrymanders. Redistricting bodies made up of "experts" cannot solve the problem that legislators still appoint the experts. Principle-based redistricting, whereby legislatures are given constitutional instructions to design districts based on competing principle such as compactness and respect for community boundaries, haven't been able to effectively address the problem of what should be done when the legislature refuses to implement those principles and courts refuse to wade into an area full of so many ambiguities.

As with a multi-stage constitutional convention e-jury, a multi-stage legislative redistricting e-jury could be implemented directly or indirectly. Directly, the Constitution could mandate that such an e-jury be mandated after every decennial U.S. Census when the U.S. Constitution mandates that legislative redistricting occur. Alternatively, indirectly, a court could be given the right to convene a legislative redistricting e-jury as a threat to get the legislature to draft a fairer legislative redistricting plan than it has.

The popular and legislative initiative. A multi-state e-jury could also be used to transform both the popular initiative and the legislative initiative. Here is one way it could work for the popular initiative. Voters would sign a petition to put a referendum on the ballot at the next general election. But instead of putting a referendum on the ballot to directly vote on a particular proposal, it would put a referendum on the ballot to convene an e-Jury to address a particular issue such as campaign finance, government transparency, or redistricting reform. If voters approved the referendum, a multi-stage e-jury would convene to select from contestants a proposal to place on the ballot a popular referendum at the next general election. This e-jury-based design for the popular initiative would dramatically reduce the influence of special interests in popular initiative politics.

For the legislative initiative, it would work much the same way, except that the legislature rather than the voters would take the initial step of placing the proposal on the ballot to convene an e-jury. Legislatures already have the right to place many types of referendum on the ballot, including for bonds, gambling modifications, and constitutional conventions. Legislatures also regularly create independent commissions and other bodies to address issues that are too politically hot for them to handle, such as legislative salaries, unfunded pension liabilities, and tax increases. The e-jury could be an additional mechanism to address such politically sensitive but vitally important issues.

Part 4: Policy Recommendations: A Sample Contestant Proposal

I would suggest that the most important design feature of an enabling act is to balance two competing principles: 1) prevent the legislature from having undue control of both who gets elected to a constitutional convention and the constitutional convention's agenda, while 2) providing reasonable accountability for a constitutional convention, the most important element of which is a requirement for popular ratification of its recommendations.

I start with an outline of procedures that have been used to realize these principles in Rhode Island in 1986 and Iceland in 2011. Next, I suggest some enhancements to them. The features listed below only include what I consider to be the good features; bad features are either completely ignored or phrased in a way that their good part is highlighted.

Rhode Island's 1986 Enabling Act

Rhode Island's enabling act for its last constitutional convention in 1986 (see Appendix A) was arguably one of the best enabling acts for a state constitutional convention in both Rhode Island and U.S. history. It should thus serve as the starting point for a discussion of an enabling act for any future constitutional convention in Rhode Island (note: some of its features may not be appropriate for a larger state). Its strengths include the following:

1) Compliance with the constitutional requirement for a popular election to select delegates (as opposed to, say, legislature appointment of delegates).
2) Compliance with the constitutional requirement for delegate election by House legislative districts (as opposed to, say, a gerrymander specifically designed for the constitutional convention delegate election).
3) Compliance with the constitutional requirement that convention proposals be submitted to the people for ratification (as opposed to, say, having proposals passed by the convention automatically become law).
4) Compliance with the constitutional requirement (based on a Rhode Island Supreme Court ruling) that delegates to a convention may consider any question dealing with constitutional amendment.
5) Ratification at a general election (as opposed to, say, a primary or special election where turnout tends to be lower).
6) Non-partisan election of delegates.
7) Specified time and place for the election of delegates.
8) No more than fifty signatures required to get on the ballot.
9) Names on the ballot listed in random order.
10) Convention candidates subject to the same campaign finance requirements as General Assembly candidates.
11) The convention appropriation can be spent as the convention sees fit; the convention may appoint and pay staff as it deems necessary.

12) A non-legislative official (in this case, the governor) calls the convention to order and serves as president pro tempore until the convention elects its own leadership.*
13) The convention is a public body subject to Rhode Island's right-to-know laws.*
14) Publicly recorded roll call votes when the convention as a whole votes on an issue.*
15) The convention may request advisory opinions from Rhode Island's Supreme Court.*

Iceland's 2011 Enabling Act

Perhaps more than any other Western country, Iceland was harmed by the economic downturn in the recession that began worldwide in 2008. For example, its currency lost half its value in relation to major Western currencies. Unemployment skyrocketed and government services had to be drastically cut. This led to what has been called the "kitchenware revolution," Iceland's version of Rhode Island's mid-19th century Dorr Rebellion, except involving the banging of pots and pans and the throwing of eggs at the government rather than the use of firearms. As a consequence of that revolution, the sitting government resigned and a new one promised to convene a constitutional convention.

Iceland's Constitution was widely recognized to be deficient. It had been rapidly adopted from Denmark's constitution in the 1940s after the Nazi's occupied Denmark in World War II and Iceland declared independence. Among its notable deficiencies, it failed to incorporate the democratic principle of one person, one vote, so some rural legislative districts had disproportionate control over the legislature. There was also no provision for constitutional change outside the control of the legislature, so the legislature retained a final veto power over anything the constitutional convention proposed, even if a large majority of Icelanders approved its proposals at a popular referendum.

Iceland's constitutional convention enabling act is notable for its use of modern information technologies. It's also notable for its use of ranked choice voting in its election of delegates, although its method of using ranked choice voting was strikingly unusual and awkward because Iceland (population 320,000) was treated as a single large district rather than many separate districts, which is the way all U.S. state legislative districts are organized. This use of a single large district may have been necessary because it overcame the problem of individual districts that had unequal numbers of citizens.

To Rhode Island's enabling act provisions, I would add the following from Iceland.

1) Senior elected and appointed members of the executive branch as well as members of the legislature are not eligible to stand for election to the convention.

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* The parliamentarian at the 1986 convention ruled that the convention was a sovereign body not subject to restrictions from the General Assembly. See State of Rhode Island, *Constitutional Convention*, Vol. 1, Jan. 4, 1986, pp. 16-22.

2) Candidates provide a concise summary of themselves for use in an online and mailed voter handbook distributed to all households in the state.
3) The administrator of elections is required to give candidates a specified period of time to correct any deficiencies found in their application to be placed on the ballot.
4) Ranked choice voting (also known as instant runoff voting and the single transferable vote) is used for choosing candidates.
5) A detailed description is provided of the precise method of calculating a winner using ranked choice voting.
6) The voting handbook includes a sample ballot and explains the voting procedure.
7) No excuse absentee ballots are allowed, with voting beginning at least two weeks before the election date.
8) Delegates at the convention are bound solely by their conviction and not by any instructions from their voters or other parties
9) Delegates at the convention are paid a salary.
10) The convention creates a public website to publish its work, broadcast its sessions, and solicit public feedback, including recommendations for constitutional provisions.

To these features, I would add the following:

Links to candidate websites in the voter information handbook and all forms of ballot, both sample and real. There is probably no more inexpensive and effective type of public campaign finance of elections than providing such links. But incumbents hate providing links to candidate websites on government media such as ballots because the less citizens know about their challengers the better off they are. Incumbents almost always have better name recognition than challengers, and incumbents know voters are more likely to vote for incumbents the less they know about challengers. This is the same principle that leads U.S. companies to spend hundreds of billions of dollars every year on marketing that does little more than enhance the name recognition of their brands. Asking incumbents to add links to challenger websites on government supplied online voter information handbooks and ballots would be like asking American business to provide links to competitors on every ad they pay for.

Expand the ban on plural office holding. U.S. state constitutions universally ban office holders from one branch of government from simultaneously serving in another branch of government. The Framers of the U.S. Constitution believed that this ban was an absolutely essential feature of a system of government based on checks & balances. For example, they had witnessed firsthand the corruption that stemmed from the King's power to grant public offices to members of Parliament, and they wanted to ban such plural office holding. Framers of state constitutions have agreed, although the details vary.

One of the variations concerns whether the ban should be extended to serving as a delegate to a constitutional convention. Usually constitutions are ambiguous about this

question, as the ban on plural office holding doesn't explicitly cover constitutional convention delegates. I would suggest that allowing legislators, their aides, and immediate family members to serve in a state constitutional convention is inconsistent with its checks & balances democratic function, which is to provide a mechanism for constitutional change when the legislature itself is the problem.

However, that is too narrow a conceptual framework to analyze the ban on plural office holding. Another framing is ethics. Many states ban plural public office holding as a general matter because of the conflict of interest generated when serving two masters at once.

Another less common ban is on lobbyists and party operatives serving on democratic reform commissions, such as California's legislative redistricting commission. This type of ban is as much about perception as reality. When such bans are not in place, opponents of a particular so-called independent body, such as a proposed constitutional convention, can argue that it will be corrupted and thus undermine the democratic purpose and thus legitimacy of the institution. For example, this type of argument was widely used in 2014 as an attack on convening a constitutional convention in Rhode Island.

It is Machiavellian to both lament insider control of a state constitutional convention and then oppose measures to limit such insider influence. I believe opponents of state constitutional conventions have widely engaged in such strategies, perhaps not recognizing the inconsistency of opposing laws that would deter the evils they claim to lament.

Compensation for low-income delegates. Rhode Island has tended not to pay its constitutional convention delegates. But the alternative is not necessarily to pay all the convention delegates at the same rate (e.g., as legislators), as is often done with U.S. state constitutional conventions and was done in Iceland. Another alternative is to pay only the low-income delegates. The Framers of the U.S. Constitution debated whether or not to pay the offices of U.S. president and member of Congress and decided that electing officials without pay is undemocratic because only the wealthy could then afford to serve, which for them mostly implied aristocrats and monarchs. Contrary to popular wisdom, the absence of adequate pay can be a significant source of corruption in U.S. legislatures. It not only skews legislative bodies to elites; it invites legislators to seek inappropriate sources of outside funding and to shirk their public service so as to be able to have enough time to earn a living.

Delegates should be able to alter the enabling act with the approval of a single-stage constitutional convention e-jury. This single-stage constitutional convention e-jury would be much simpler than the multi-stage e-jury proposed above because it would face a question with only two choices: keep the current enabling act or approve the revised enabling act proposed by the constitutional convention. Any delegate to the convention

would have the right to testify before the e-jury, as would the author(s) of the original enabling act.

The Convention should be divided into two phases, a preparatory/learning/slow-paced phase and a traditional/law-proposing/fast-paced phase. A fast starting pace for a convention gives existing elites and leaders of the legislature great control over the convention because they will tend to have de facto control over the convention's leadership and staff. Under a fast-paced regime, fewer delegates have the time necessary to either earn trust from among their peers or vet staff. If a convention is truly supposed to represent the people rather than existing elites, time must be provided to not only educate convention members but allow members of the public to submit proposals for constitutional reform on the convention's public website.

During a convention's early months of operation, I suggest having its delegates meet for only one day a week at most, presumably a weekend day, and to be paid only for that one day of service. Meanwhile, delegates would elect a small committee of, say, five members to set up and maintain the public website, invite expert speakers to talk to the delegates about relevant matters, conduct public hearings more generally, moderate the public website, and hire a small cadre of staff. At some point, the convention would transition to a traditional law-proposing convention with a new set of leaders. By then, the delegates to the convention would be able to make a much more informed choice.

An advantage of a two-phased constitutional convention is that it would reinforce the idea that the ideal candidate for convention delegate would be a good listener and a thoughtful person rather than a know-it-all who can tell everyone what he wants to do from day #1. It should be remembered that James Madison, widely credited as the "father of America's Constitution," came to the 1787 U.S. constitutional convention with many specific proposals for the Constitution, which he was then forced to revise as a result of deliberation and compromise with other delegates. The result, overall, was a much better final constitution than what he initially proposed—and most convention delegates aren't likely to be as well-prepared as James Madison.

This doesn't mean that candidates for delegate shouldn't clearly state the problems they think important to solve and suggest some ideas for solving them. That type of reasoning should give the public important clues as to how the delegate would contribute to the final set of proposals. The point is that those specifics should be a secondary concern and that the structure of the convention should reinforce the idea that delegates should have a capacity for learning as well as contributing.

The convention should not be solely reliant on the legislature for funds. One of the most subtle ways a legislature can exert control over a constitutional convention is over the use of funds. For example, in 1986, the Rhode Island General Assembly's enabling act only provided $50,000 in funds for the convention. To get more funds, the convention leadership had to beg the General Assembly leadership and avoid hiring staff and pursuing issues that would offend the leadership. Thus, the fact that appropriations

were flexible once provided was irrelevant if the convention leaders had to repeatedly ask for more funds. Eventually, total funding reached $891,000 but not without sacrificing the convention's independence.

This is a difficult problem to solve. What I suggest is that the convention leadership draft a budget and post it publicly. It should first ask the General Assembly if it would be willing to fund it without engaging in any type of negotiation or contact with General Assembly leaders. If the General Assembly does not provide the funds on those terms, the convention should be able to accept money from non-profit foundations, providing that the money is granted with no strings attached and solely based on the proposed budget publicly posted.

If a constitutional convention enabling act e-jury includes a funding formula in the enabling act it selects, then a lot of these funding problems should go away. Greater reliance on expert information from "crowdsourcing" via the public website, as opposed to paid staff, could help reduce costs and thus fundraising pressure.

Ranked choice voting should only apply to candidates within single districts. Ranked choice voting has tremendous advantages over the conventional first-past-the-post (also known as plurality) voting system widely used in American elections and elsewhere.

- It guarantees that the winner of an election has a majority rather than a mere plurality of the vote. With more than five candidate running for each constitutional convention delegate position in 1986 and no runoff election, that's a serious problem that should be addressed using ranked choice voting.

- It reduces strategic/insincere voting. Voters can vote for the candidates they truly prefer and in the order they truly prefer because there are no wasted votes.

- It weakens the influence of political parties by overriding Duverger's Law. Duverger's Law is one of the most important "laws" in the study of American political parties. It asserts that because voters won't waste their votes in a first-past-the-post/plurality election system, the outcome will be that voters will only vote for one of the two major party candidates. This then becomes a self-fulfilling prophecy because if voters know that others voters act according to Durverger's Law, they would be foolish not to act on it themselves. Consequently, non-partisan elections without ranked choice voting tend to be relatively ineffective in reducing the power of the incumbent political parties.

- It makes negative campaigning more risky because a candidate who attacks another candidate would likely receive a lower preference ranking among that candidate's supporters, which could be important if the candidate doesn't have a majority of first choice votes in the first round of vote counting.

- It forces candidates to appeal to a broad base of support. With five or more candidates competing for one spot, a smart candidate will appeal to a narrow base because he doesn't have to win a majority of votes, only more than the second place finisher. With ranked choice voting, he must also compete for second, third, or other high preference rankings, so he must appeal to a broader audience.

But ranked choice voting also has disadvantages. Even with the simplest of voting systems, democracies have tended to have great trouble accurately counting votes. A famous case is the difficulty counting votes in the 2000 presidential election between Al Gore and George Bush. This difficulty would be compounded with the additional complexity of ranked choice voting. But with modern information technology, that calculating problem is greatly mitigated and has already been effectively solved in many elections.

Of greater present concern is the additional information burden ranked choice voting imposes on voters. Voters not only have to pick one candidate but are expected to rank as many candidates as they reasonably can. With multimember districts—not something the Rhode Island Constitution would allow—this burden on voters is multiplied by every additional member in the district. The innovation of linking candidate websites to the candidate's name on the ballot can greatly alleviate the remaining information problems. So too can the media by providing interactive online guides to the candidates that could help the public rank its preferences.

The public website should have flexible "liking" options. Delegates to the convention should be given a special status when they "like" a submission. Members of its preparatory commission should take these and other likes into consideration when they plan educational events. The members of the preparatory committee should themselves have a special "liking" option if they think a submission should be brought to the attention of other delegates. The press should consider such liking ratings when it chooses what issues to cover.

Lobbyist disclosure should be strengthened. All lobbyists should be encouraged to submit their recommendations via the public website and to testify at public hearings. On the other hand, lobbyists' contacts with individual delegates to the constitutional convention should be strongly discouraged. Secret contacts between legislators or their staffs with delegates should be strictly prohibited, but legislators' feedback on the public website and in public hearings should be encouraged.

Proposed Schedule After the Convening Referendum Passes

June 2015. Enabling Act passed into law.

September 2015. Election of delegates. (In order to add time for a preparatory phase to the constitutional convention, this election is moved up from general to primary election season.)

October 2015. Convention convenes and enters its preparatory phase.

February 2016. Convention enters its law-proposing phase and should finish its proposed constitution at least three months prior to the ratification election at the general election in November. This is to leave adequate time for the press/public to deliberate between when the convention adjourns and the public votes.

November 2016. Ratification election for convention proposals.

Part 5: Implementation Issues

If state constitutional convention opponents really believe their arguments that a state constitutional convention could be a good vehicle for good government reform if only it were truly a people's convention rather than a duplicate of the legislature, then they should embrace the effort to not only solve the legislature's conflict of interest problem but also, more immediately, devise an enabling act that would help fulfill the promise of the constitutional convention.

Short-Term Enabling Act Issues

This proposal highlights the dangers of deferring to a legislature, such as the Rhode Island General Assembly, in setting the agenda for the act enabling a constitutional convention. With normal legislation, the press tends to cover the scope of disagreement within the legislature. With a constitutional convention enabling act, it is vital that the press bend over backwards to cover the views of those outside the legislature.

The press should take as a given that Machiavellian politics are likely to pervade the General Assembly's enabling act process. Legislative leaders will be in the awkward position of seeking to subvert the democratic purpose of the constitutional convention process while seeking to publicly profess the opposite. Special attention should be given to arcane but key procedural details whose implications the public will have difficulty understanding. Legislative leaders should be pressed to defend their procedural decisions in public on TV newsmaker shows and in other public forums.

Legislative public hearings can be helpful but are insufficient. There should be extensive public debate about the desirable terms of the enabling act that both takes place outside the legislature and are taken seriously by the press.

The dismal experience with the General Assembly's Bi-partisan Preparatory Commission is a telling recent example of the limits of relying on the General Assembly to facilitate a thoughtful debate on constitutional convention related issues. For example, during its public hearings, there was minimal debate about the cost of a convention, and the cost issue was not formally discussed by the Commission until after the public hearings were complete. The Commission then proposed a cost based on no public notice and comment. The resulting cost estimate included notable mathematical errors that were not subject to public correction before being included in its report and in the *2014 Voter Information Handbook*.

Although the Bi-partisan Preparatory Commission dealt with the desirability rather than the means of implementing a constitutional convention, the political logic of the two types of public hearings are similar. In both cases, the General Assembly has a conflict of interest in facilitating a thorough debate of the options, so a healthy external debate is vital. This eventually did happen with the debate prior to the November 4, 2014 referendum over whether to convene a constitutional convention, and it should happen again now with the transition to a debate over the terms of implementing a constitutional convention.

Short-Term e-Jury Scenario

It is unrealistic to expect the General Assembly to implement the e-jury proposal contained here, so this is a proposal primarily for Rhode Island's constitutional convention to consider as part of its much larger agenda. However, there may be one highly improbable scenario where it could have a more immediate effect and be used to encourage the General Assembly to be on good behavior when drafting the enabling act.

Here is the scenario: Assume the General Assembly failed to pass an enabling act by the end of its session. Rhode Island's government agents, who are subservient to its Constitution, could then be sued for violating the Constitution. Just as it could if the General Assembly failed to implement a legislative redistricting plan in its session following the decennial U.S. Census, Rhode Island's Supreme Court could then take on the case. As one type of remedy, the Court could threaten to convene a variation of the constitutional convention e-jury proposed here.

During the last national decennial redistricting cycle in 2010, I proposed a similar e-jury approach to deal with the problem of legislative redistricting. I was told by a prominent election law lawyer that a Maryland judge could create at his discretion a redistricting jury to choose among contestant redistricting plans. No statutory or constitutional changes would be required for the judge to do this. But he could do this only if the districts were grossly gerrymandered and the legislature refused to fix them in a reasonable way.

Long-Term e-Jury Implementation

Now is the time to start brainstorming about the types of reforms needed to bring Rhode Island's constitutional democracy into the 21st century. Planning for the long-term future is not currently a strength of American democracy. It seems that people always have immediate government priorities that trump long-term considerations. Most sober analysts would agree that taking government action in preparation for an event that will likely only happen many decades into the future is as probable as hell freezing over. But if there ever was an issue where that vice should be overcome for the sake of our democracy's long-term vitality, fixing the constitutional convention process via the constitutional convention process is it.

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About the Author

J.H. Snider is the president of iSolon.org and editor of The State Constitutional Convention Clearinghouse and RhodeIslandConCon.info. His op-eds on Rhode Island's constitutional convention history and process have appeared widely in Rhode Island media including the *Providence Journal*, *GoLocalProv*, and the *Valley Breeze*. He has been a fellow at the Edmond J. Safra Center for Ethics at the Harvard Law School, the Shorenstein Center on Media, Politics and Public Policy at the Harvard Kennedy School of Government, the New America Foundation, the American Political Science Association, and Northwestern University. He holds a Ph.D. in American Government from Northwestern University, an MBA from the Harvard Business School, and an AB from Harvard College.

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PUBLIC LAWS

OF THE

STATE OF RHODE ISLAND

AND

PROVIDENCE PLANTATIONS

PASSED AT THE

GENERAL ASSEMBLY

AT THE

JANUARY SESSION, A.D., 1985

VOLUME II

CHAPTERS 246 THROUGH 534

AND AT THE

JANUARY SESSION, A.D., 1984

CHAPTERS 270 AND 442

JOINT COMMITTEE ON LEGISLATIVE AFFAIRS
SPEAKER MATTHEW J. SMITH, CHAIRMAN

LAW REVISION

1985

20-2-25. Scallop license. — Commercial: ~~twenty-five dollars ($25).~~ one hundred ($100.00) dollars. Such license shall only be issued to a resident of this state and shall be valid only for the reason for which issued.

SECTION 2. This act shall take effect upon passage.

CHAPTER 326

85-H 6125 am
Effective Without the Governor's Signature
Jun. 27, 1985.

AN ACT CALLING FOR A CONSTITUTIONAL CONVENTION OF THE PEOPLE OF THE STATE OF RHODE ISLAND FOR THE PURPOSE OF AMENDING OR REVISING THE CONSTITUTION AND MAKING AN APPROPRIATION THEREFOR

It is enacted by the General Assembly as follows:

SECTION 1. Special election of delegates. — A special election shall be held on November 5, 1985, for the purpose of electing delegates to a constitutional convention in accordance with the provisions of this act.

SECTION 2. Time and place of convening — Selection of permanent meeting place. — The convention shall convene at state expense in the city of Providence at 7:00 p.m. eastern standard time on January 6, 1986, in the house of representatives' chambers in the state capitol, for the purpose of organizing and choosing a permanent meeting place thereafter to adjourn to the permanent meeting place selected by them, to consider whether the constitution of the state should be revised or amended in accordance with the approval of the voters in the November, 1984, general election of the question "Shall There be a Convention to Amend or Revise the Constitution?"

SECTION 3. Number and apportionment of nonpartisan delegates. — The number of delegates to be elected to the convention shall be one hundred (100). The qualified electors of each of the then existing one hundred (100) representative districts shall elect one delegate on a nonpartisan basis from each such district. No person shall be a candidate for delegate from a representative district unless that person is a qualified elector of said district.

SECTION 4. Applicability of election laws — Nonpolitical affiliation — Nomination papers. — The provisions of the general laws of Rhode Island relating to elections and any and all other provisions of the laws of the state of Rhode Island relating to the qualifications of electors, registration, the manner of voting, the duties of election officials and to the preparation for, conducting and management of elections, shall govern insofar as they may be applicable, excepting those provisions which are inconsistent with this special act, and in such case the provisions of this special act shall control.

The election of delegates to the convention shall be on a nonpartisan basis and there shall be no party mark or designation upon any ballot nor upon any declaration of candidacy, nomination petition or list of candidates.

The nomination papers of each candidate for nomination as a delegate from a representative district shall be signed by at least fifty (50) qualified electors of such representative district. There shall be no primary election preceding the special election.

During the first ten (10) days of September, 1985 each voter desiring to be a candidate for election as delegate at the constitutional convention to be held in January, 1986 shall on such form as shall be provided by the secretary of state, sign his name as the name appears on the voting list and file not later than four P.M. (4:00 P.M.) of the last day of filing with the local board of the place of his voting residence a declaration of his candidacy which shall include the following information:

1. His name and address as the same appears on the voting list, place and date of birth, and length of residence in the state and in the town or city where he resides.

2. A certification that he has not served a prison sentence on final conviction of a felony in Rhode Island or in any other state unless his right to vote has been restored by an act of the general assembly.

3. A certification that he has not been lawfully adjudicated to be non compos mentis, of unsound mind.

The local board shall retain each declaration of candidacy and after three (3) days of the final day for filing declarations of candidacy, shall deliver nomination papers to the proper candidate or to such persons as he in writing designates to receive them.

At the head of the space on the nomination papers where voters are to endorse their approval of the candidates shall be printed the following:

Each of the signers of this paper by so signing severally certifies that he is a voter in the area from and for which the candidate seeks to be elected.

Each such nomination paper shall be submitted before four (4) o'clock on the seventh (7th) day following the delivery of nomination papers to the candidate or to such persons as he in writing has designated to receive them to the local board of the city or town where the signers appear to be voters. Each local board shall proceed forthwith to check signatures, on each nomination paper filed with it, against the voting list as last canvassed or published according to law. Within three (3) days after the submission of said nomination paper the local boards shall certify a sufficient number of names appearing thereon that are in conformity with the requirements of section 17-14-8 to qualify such candidate for a position on the ballot and after considering any challenge under this section and, if necessary, certifying any additional valid names, shall file such nomination papers. If any candidate questions the validity or authenticity of any signature on such nomination paper, the local board shall forthwith and summarily decide the question, and for this purpose, shall have the same powers as are conferred upon the board by the provisions of section 17-14-14, if any challenged signature is

found to be invalid, for any reason in law, or forged, then such signature shall not be counted.

All such nomination papers shall be filed in the office of the secretary of state, not later than two (2) days after the certification of said nomination papers.

When nomination papers have been duly filed, they shall be conclusively presumed to be valid, unless written objections thereto are made as to the eligibility of the candidate or the sufficiency of the nomination papers or the signatures thereon. All such objections shall be filed in the office of the local board by four (4) o'clock on the next business day after the last day fixed for filing such nomination papers.

A person nominated as a candidate may withdraw his name from such nomination prior to the election for constitutional delegates by a request signed and duly acknowledged by him setting forth the reason for the withdrawal, that the same is the candidate's own free act and deed, and that the same is not executed as the result of any threat or promise made to the said candidate. Such certificate of withdrawal shall be filed in the local board not later than five (5) weeks before the date said election for convention delegates is to be held.

The provisions of chapter 17-20 of the general laws, "Mail ballots," shall be given application to the election of delegates to the constitutional convention provided for herein.

The combination of voting districts as provided for in section 17-11-1.1 is prohibited for the election of delegates to the constitutional convention.

Names shall be arranged on the ballot for election as delegate to the constitutional convention by lot to be drawn by the secretary of state. The name first drawn by lot shall be placed first upon the ballot for the district from which said candidate is a voter, the name drawn second for said district shall appear second and so on until all the names of all the candidates have been drawn and placed in order by lot upon the ballot for the district from which said candidate is a voter.

Names shall be placed upon the ballot in horizontal order.

In those cities and towns having regularly scheduled elections on the same day as the election for constitutional delegates the names of candidates for the constitutional convention shall appear on the top of the ballot and above those matters for which the local election is being held.

If a delegate shall die or become otherwise incapacitated and unable to serve as a delegate to the convention, then the candidate for delegate to the convention from the same district receiving the next greatest number of votes shall serve in his stead.

In the event a delegate has been elected unopposed and shall die or otherwise become incapacitated and unable to serve as a delegate, then the members of the convention shall elect a delegate from his district to serve in his stead.

SECTION 5. Conduct of the convention. — The delegates of the convention shall be called to order by the governor who shall act as chairman pro tempore until the convention shall have elected a permanent presiding officer. The secretary of state shall serve as secretary pro tempore until the convention shall have

elected a permanent secretary. Upon the call of the roll and the determination of a quorum, the convention shall proceed to organize by choosing a presiding officer, secretary and such other officers and committees as they shall see fit, and by establishing rules of procedure. A majority of the elected qualified delegates shall constitute a quorum for the transaction of business and may adjourn the convention from time to time. The delegates may consider any question dealing with revision or amendment of the constitution. They may appoint and engage such aides, consultants, secretaries and other assistants as they shall determine necessary. The convention shall be a "public body" as that term is used in chapter 38-2 of the general laws, as amended (Access to Public Records) and shall be subject to all of the provisions of said chapter. The convention shall also be a "public body" as that term is defined in chapter 42-46 of the general laws (Open Meetings) and shall be subject to all of the provisions of said chapter.

All candidates seeking office as a delegate to the convention, and all persons, groups or organizations promoting or opposing candidates, issues and the ultimate questions submitted to the voters for ratification, shall be subject to the provisions of chapter 17-25 of the general laws as amended. (Rhode Island Campaign Contributions and Expenditures)

The vote of each delegate on issues before the convention shall be recorded and entered into its journals. The actions of the convention shall be certified by the presiding officer and the secretary; and the journals and papers of the convention shall be deposited in the office of the secretary of state who shall cause to be advertised copies of the proposed amendment or amendments in all daily newspapers published in Rhode Island having general circulation in a specific county or in the state of Rhode Island, at least once prior to the special election described in section 7 of this act. Delegates shall receive no compensation for attendance upon said convention.

SECTION 6. Request of the supreme court — Advisory opinions. — The convention by a majority vote of the delegates may request advisory opinions from the supreme court of the state of Rhode Island.

SECTION 7. Subpoena power. — Any twenty-five (25) delegates of the convention shall have full power and authority to compel the attendance of absent members and to call upon any sheriffs or deputy sheriffs to execute the orders thereof. For these purposes the authority of such sheriffs or deputy sheriffs shall extend throughout the state.

SECTION 8. Adoption of amendments by the people of the state. — Any amendment or amendments to the constitution proposed and approved by the convention in accordance with this act shall be submitted to the people for their ratification and adoption at the general election to be held in November, 1986.

The proposition or propositions of amendment submitted to the electors at such election shall be submitted in conformity with chapter 17-5, entitled "Statewide Referenda Elections," as amended.

Such election shall present to the people the amendment or amendments approved by said convention as one (1) single proposition or as separate propositions, the single proposition or each of the separate propositions shall be preceded by the words "Shall the action of the constitutional convention in amending the

constitution in the following manner be ratified and approved?" If a majority of the electors voting thereon shall approve the single proposition, or in each case in which a majority of the electors voting thereon approve one of the separate propositions, all such propositions so approved shall be and become a part of the constitution of the state of Rhode Island and shall go into effect at such time and in such manner as the constitution has determined.

SECTION 9. Appropriations. — For the purpose of this act, the sum of fifty thousand dollars ($50,000) shall be and the same is hereby appropriated out of any money in the treasury not otherwise appropriated, and the state controller is hereby authorized and director to draw his orders upon the general treasurer for the payment of said sum, or so much thereof, as may be required from time to time upon receipt by him of properly authenticated vouchers.

SECTION 10. Severability. — If the provisions of this act, or any subdivision thereof, or the application therefor to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 11. This act shall take effect upon passage.

CHAPTER 327

85-H 6499 am
Effective Without the Governor's Signature
Jun. 27, 1985.

AN ACT PROVIDING FOR MAJOR CAPITAL IMPROVEMENTS TO THE PAWTUCKET WATER SYSTEM AND AUTHORIZING THE FINANCING THEREOF, INCLUDING THE ISSUE OF NOT MORE THAN $250,000 BONDS THEREFOR

It is enacted by the General Assembly as follows:

SECTION 1. The city of Pawtucket is hereby authorized, in addition to authority previously granted, to issue bonds to an amount not exceeding $250,000 from time to time under its corporate name and seal or a facsimile of such seal. The first installment of principal shall be paid not later than one year and the last installment to be paid not later than twenty years after the date of the bonds.

SECTION 2. The bonds shall be signed by the city treasurer and by the manual or facsimile signature of the mayor and shall be issued and sold at not less than par and accrued interest in such amounts as the city council may determine. The manner of sale, denominations, maturities, interest rates and other terms, conditions, and details of any bonds or notes issued under this act may be fixed by the proceedings of the city council authorizing the issue or by separate resolution of the city council, or to the extent provisions for these matters are not so made, they may be fixed by the officers authorized to sign the bonds or notes. Interest