



## Can a Constitutional Convention Truly be Limited?

by Russ Diamond | January 27, 2010

A poll just released by Franklin & Marshall College indicates that 72 percent of Pennsylvanians support a constitutional convention as a method of reforming state government. In addition, since just November 2009, 25 state newspapers, five leading columnists, the leaders of four major good-government groups, and the Commonwealth's two most popular political analysts have publicly endorsed a call for a convention.

This public sentiment serves as a clarion call for action on the matter. But some Pennsylvanians are leery of the notion, due to fear of an attack on individual rights. This fear is not unwarranted, and we need to examine whether such an attack can be prevented.

A critical point for Pennsylvanians to consider is the difference between a general (or unlimited) constitutional convention and a limited constitutional convention. At a general convention, all portions of our constitution would be up for debate and change, while at a limited convention only certain portions would be open for discussion.

This begs the question: Can a convention truly and legally be limited?

The answer in Pennsylvania is **YES**.

Because our state constitution is completely silent on the topic of a convention, the General Assembly has the authority to regulate all aspects of a convention - **including which portions of the constitution are subject to debate** - with an appropriately crafted statute that enables a convention. Legal precedent and judicial decree in Pennsylvania hold that such a statutory limitation is proper, constitutional, and enforceable.

Legal precedent also maintains that if a statutory topical limitation is specifically referenced in a referendum put before the people to approve or reject a convention call, the ability to enforce that limitation is further cemented.

Senate Bill 340 and House Bill 1929 provide both these protections against a "runaway" convention that could attack individual liberties by taking Article I of the Pennsylvania Constitution – our state's Declaration of Rights - off the table completely:

### **Section 9. Function.**

- (a) Scope. -- The convention has the power, by a vote of two-thirds majority of its elected delegates on final passage, to make recommendations to the electorate on all subjects contained within the Constitution of Pennsylvania **except for those contained within Article I, pertaining to the Declaration of Rights.**

**Section 3. Referendum.**

- (a) Question. -- At the municipal election on May 18, 2010, the following question shall be submitted to the electorate of this Commonwealth to determine its will regarding a constitutional convention:

Shall a constitutional convention be called **in accordance with and subject to the limitations and requirements contained in the Citizens' Constitutional Convention Act of 2010**, to prepare for submission to the electorate proposals for the revision of all Articles of the Constitution of Pennsylvania **except Article I**?

Additionally, SB340 and HB1929 also take an additional step by including a reference to the limitation in the delegate oath of office:

**Section 8. Organization of convention and sessions.**

- (a) Convening. -- The following shall apply:  
(4) The Chief Justice of the Supreme Court shall then administer the oath of office in the following form:

I do solemnly swear (or affirm) that I will support, obey and defend the Constitution of the United States and the Constitution of Pennsylvania, **that I will abide by the limitations and requirements of the Citizens' Constitutional Convention Act of 2010**, and that I will discharge my duties with fidelity.

Section 9, which prohibits the convention from tampering with Article I, also includes a provision that requires any proposed changes to the constitution be approved by a **supermajority** (two-thirds) of the convention's delegates. This further ensures that divisive issues do not become the focus of the convention.

It should be noted that the convention **does not have any authority to rewrite the constitution**. Rather, it is only empowered to make recommendations for change. The recommendations must then be submitted to the electorate for final approval or rejection.

Finally, modern technology will most assuredly provide concerned citizens of the Commonwealth with opportunities for close and careful scrutiny of any modern convention's activities.

The Courts will be available to challenge violations of the limitation, and will be bound by legal precedent. As the original author of SB340 and HB1929, I would be first in line to seek an injunction to halt a convention that exceeds its limitation.

**One point must be made crystal clear:** Our individual liberties are *not* the cause of Pennsylvania's current crisis in confidence and therefore, should *not* be subject to review at a convention. Rather, there are distinct problems within the structures of our government that have caused our state to become so dysfunctional.

A limited constitutional convention, which allows citizens to reform the structures of government (Articles II-XI) while absolutely protecting our individual rights (Article I), is the proper way to address this dysfunction. SB340 and HB1929, if approved by the General Assembly, would provide just such an opportunity.

**Read the Bills:**

SB340: <http://tinyurl.com/SB340> *Sen. Mike Folmer, prime sponsor*  
HB1929: <http://tinyurl.com/HB1929> *Rep. Curt Schroder, prime sponsor*  
Proposed amendments: <http://www.russdiamond.org/convention.html>  
Convention endorsements: <http://www.russdiamond.org/answer.html>