

EVAN A. DAVIS

SUITE 4300

ONE LIBERTY PLAZA

NEW YORK, N.Y. 10006

(212) 225-2850

FACSIMILE
(212) 225-3999

May 10, 2017

BY MAIL & FACSIMILE

Douglas A. Kellner, Co-Chair
New York State Board of Elections
40 No. Pearl Street
Albany, NY 12207

Peter S. Kosinski, Co-Chair
New York State Board of Elections
40 No. Pearl Street
Albany, NY 12207

**Re: New York State Constitutional Convention –
Abstract of Ballot Question**

Dear Commissioners:

This letter is respectfully submitted on behalf of the Committee for a Constitutional Convention, a pro-convention group of New York citizens that includes former judges of the New York State Court of Appeals, former high-ranking State officials (both elected and appointed), and representatives of labor, business and academia throughout New York State. It is joined by Citizens Union, Effective NY, the League of Women Voters and the Long Island Association, four other groups supporting a constitutional convention.

We write to express our concern about a matter of profound importance regarding the upcoming constitutionally mandated vote to be held at this November's statewide election on the question of whether there should be a Constitutional Convention. We understand that this will be Question One on the ballot. More specifically, we are concerned about 1) not having Question One appear on the back of the ballot in what we believe would be a violation of the Election Law and 2) the wording of the abstract, statement of subject matter and form of submission that under the Election Law must be prepared by the State Board of Elections with the advice of the Attorney General.

As you are aware, Article XIX, Section 2 of the New York State Constitution specifies the text of the question that must appear on this year's ballot:

Shall there be a convention to revise the Constitution and amend the same?

It is our view that Question One and any accompanying explanatory text must appear on the face and not on the back of the ballots used at the November 7, 2017 election. The Election Law makes specific mention of what may appear on the back of a ballot. The only authority to place a ballot proposal on the back of a ballot is expressly limited to absentee ballots. See § 7-122(2)(b). The distinction between absentee ballots and ballots distributed at the polling place is sensible because of mailing costs and because an absentee voter is far less likely to fail to turn over the ballot than a polling place voter who may feel more time pressed so as not to delay others.

We respectfully ask that you let us know as soon as you can whether you agree with our position concerning the ballot placement of Question One and if not, why you disagree.

With regard to an explanatory text to accompany Question One on the ballot, New York Election Law § 4-108 requires the State Board to certify at least three months prior to the election, that is by no later than August 7, 2017 for this year's general election, an abstract of Question One and its form of submission. The abstract must describe the "propose and effect" of Question One and the form of submission must include a brief description of its subject matter. Subdivision (3) of § 4-108 provides, as well, that "the Attorney General shall advise in the preparation of such abstract and such form of submission."

The last time the constitutional convention question appeared on the ballot in 1997, we understand that the form of submission did not include any statement of subject matter and that the abstract, consisting of a lengthy and dense statement tracking all of the terms of Article XIX, Section 2, which was posted in every polling place.¹

¹ The abstract posted at polling places in 1997 read as follows:

"Article 19 section 2 of the State Constitution provides that every twentieth year after 1957 the following question shall be submitted to and decided by the voters of the State. "Shall there be a convention to revise the constitution and amend the same?" If a majority of those voting on the question decide in favor of a convention, then at the next general election the voters of every Senate District shall elect three delegates to the convention and the voters of the State shall elect 15 delegates-at-large. The delegates shall meet at the Capital on the first Tuesday of April next following their election, and shall continue their session until the business of the convention is completed. The delegates are to receive for their services the same pay as the Members of the Assembly, as well as reimbursement for actual traveling expenses, while the convention is in session. A majority of the convention is required to conduct any business and no amendment to the Constitution may be submitted to the voters unless approved by a majority of the delegates. A record of all the votes are to be kept in a journal. The convention shall have the power to appoint officers, employees and assistants and to fix their pay and provide for the expenses of the convention, including the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers and be the judge of the election, returns and qualifications of its members. In case of a vacancy of any district delegate to the convention, the vacancy shall be filled by a vote of the remaining delegates representing the district in which the vacancy occurs. If the vacancy occurs in the office of a delegate-at-large, the vacancy shall be filled by a vote of the remaining delegate-at-large. Any proposed Constitution or constitutional amendment adopted

While the possibility of a Constitutional Convention has generated considerable interest among various groups, we are concerned that the general public may be less well-informed as to what a convention to revise the Constitution to and amend the same is actually is. Indeed they may never have heard of a constitutional convention and therefore decline to answer Question One for lack of information. For this reason we do not believe that the subject matter of Question One is apparent from the face of the Question and that some explanatory text must be included in the form of submission to comply with the election Law and fairly to carry out the purpose of Article XIX, Section 2 of the Constitution..

We submit, therefore, that it is crucial that the subject matter of Question One be briefly described on the ballot and that the description be succinct and worded in a manner that will (a) educate the electorate about the proposition, and (b) be neutral so as not to induce a “pro” or “con” vote. As you may recall, in 2013 there was considerable controversy surrounding the wording of the ballot subject matter text prepared by the State Board of Elections in conjunction with the proposed constitutional amendment to allow casinos as an exception to the prohibition against gambling in Article I, Section 9 of the Constitution. Many felt that that abstract was worded in such a manner as to promote a vote in favor of the question.

We respectfully suggest, therefore, that the wording of both the abstract and the subject matter description be something like the following or its equivalent:

The New York State Constitution requires that every 20 years the People decide if a Constitutional Convention should be held to consider amendments to the State Constitution. The purpose of this provision is to provide an alternate to the adoption of constitutional amendments by the State Legislature, which are then submitted for voter approval.

If a majority voting on this Question One votes YES, three delegates from each state senatorial district will be elected in November 2018, along with 15 at large delegates elected statewide. The delegates so elected will convene at the capitol in April, 2019. Amendments adopted by a majority of the delegates will be submitted to the electorate for approval or rejection in a statewide referendum.

If a majority votes NO there will be no Constitutional Convention.

Whatever the State Board of Elections, acting upon the advice of the Attorney General, decides with respect to the wording of the abstract, and form of submission, that information must, as already noted, be transmitted to all County Boards of Election at

by the convention shall be submitted to the voters of the State at time and in a manner provided by the convention, at an election which shall be held not less than six weeks after the adjournment of the convention. If approved, the Constitution or constitutional amendment shall go into effect on the first day of January next following its approval.”

least three (3) months prior to Election Day. *See* Election Law § 4-108(1). Within fourteen (14) days thereafter, any voter has standing to challenge the wording of the abstract. Election Law § 16-104. That is a very short window within which to initiate a challenge

We respectfully request, therefore, that once the Board certifies the abstract and transmits same to the County Board of Elections, that it also provide us forthwith by email with a copy of such abstract and form of submission. That email should be sent to edavis@cgsh.com; ddaddy@citizensunion.org; al@Yes4NY.org; laura@lwvny.org; morgan.pehme@effectiveNY.org; mcohen@longislandassociation.org.

Thank you for your consideration and attention and please do not hesitate to contact the undersigned should you have any questions.

Respectfully submitted,

Committee for a Constitutional Convention



By:

Evan A. Davis, Committee Manager

cc: Andrew J. Spano, Commissioner
New York State Board of Elections

Robert A. Brehm, Commissioner
New York State Board of Elections

Todd D. Valentine, Co-Executive Director
New York State Board of Elections

Gregory P. Peterson, Co-Executive Director
New York State Board of Elections

Hon. Eric Schneiderman
Attorney General of the State of New York

Hon. Barbara Underwood
Solicitor General of the State of New York