The Political Dynamics of Mandatory State Constitutional Convention Referendums: Lessons from the 2000s Regarding Obstacles and Pathways to their Passage

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THE POLITICAL DYNAMICS OF MANDATORY STATE CONSTITUTIONAL CONVENTION REFERENDUMS: LESSONS FROM THE 2000S REGARDING OBSTACLES AND PATHWAYS TO THEIR PASSAGE

John Dinan*

Among the numerous ways that state constitutions differ from the U.S. Constitution is in providing a broader array of constitutional amendment and revision mechanisms. Article V of the U.S. Constitution establishes only two means of changing the document. Amendments can be proposed by two-thirds of both houses of Congress and then ratified by three-fourths of the states, either in state legislatures or state conventions. Conventions can be called by Congress upon petition of two-thirds of the state legislatures. But when we examine state constitutions—and there is significant variation among the states—we find that in addition to permitting legislative-initiated amendments and conventions, as all 50 states do, one state establishes periodic revision commissions that can submit amendments directly to the people, and 18 states permit amendments to be initiated by the people, and 14 states provide for mandatory referendums that permit the people to vote at regular intervals on whether to call a convention.

I focus in this article on the mandatory convention referendum device, which is of interest because it currently offers perhaps the most viable avenue for undertaking a comprehensive reexamination of a state constitution rather than relying solely on piecemeal amendments that can have the cumulative effect of producing inconsistent and unworkable outcomes. Although some state constitutional changes are best pursued in piecemeal

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1. U.S. Const. art. V.
3. Tarr & Williams, supra n. 2, at 1092. Forty-one states make explicit provision in their constitutions for the calling of conventions; in the remaining states it has been understood that it is possible for conventions to be called. Id. at 1078–1079.
4. Id. at 1097–1098.
5. Id. at 1100.
6. Id. at 1079.
Fashion through legislatively initiated or popularly initiated amendments, the effect of proceeding entirely through piecemeal changes can over time be problematic. Proceeding solely in a piecemeal fashion does not permit a comprehensive review of the full range of existing constitutional provisions that a convention can provide. Such a comprehensive review can be particularly useful when existing provisions, often added at different periods, tend to work at cross purposes or unduly limit the discretion of state officials, as when amendments mandate regular increases in state spending on certain programs but limit legislators' ability to fund these increases.7

For many years, constitutional conventions were called regularly; however, in recent years they have become increasingly rare.8 In the 195-year period from 1776 to 1970, the 50 states held 220 conventions, and most were called by legislatures, which are generally, but not always, required to obtain approval from the people beforehand; but the 40-year period from 1971 to 2010 has produced only 13 conventions (and none after 1992).9 This drop-off is attributable to several factors but is due in no small part to legislators’ reluctance to submit convention questions to the public and thereby cede control over the revision process.10

Indeed, of the 13 conventions held since 1971, six were comprised of legislators sitting as delegates and/or were limited in the topics they could address (Tennessee in 1971 and 1977, Rhode Island in 1973, Louisiana in 1973–1974 and 1992, and Texas in 1974),11 leaving only three unlimited conventions that featured elected delegates and were called by legislatures (Montana in 1971–1972, North Dakota in 1971–1972, and Arkansas in 1978–1980),12 and another four called via mandatory convention referendums (New Hampshire in 1974 and 1984, Hawaii in 1978, and Rhode Island...
land in 1986),\(^\text{13}\) each of which enacted notable reforms.\(^\text{14}\) Mandatory convention referendums, which are available in just over one-quarter of the states, have therefore been responsible in the contemporary era for more unlimited conventions featuring elected delegates than have legislatively-initiated convention calls. Insofar, then, as conventions can be viewed as beneficial in providing a comprehensive examination of the cumulative effect of piecemeal amendments, the mandatory convention referendum is more likely than other mechanisms to allow a convention to be called, largely because it bypasses the legislature.

My purpose is to glean lessons from the mandatory convention referendums held in the first decade of the 21st century (from 2000 through 2008) about both the obstacles and pathways to their passage. In particular, I examine and draw lessons from referendums held in the following states and years: Iowa in 2000; Alaska, Missouri, and New Hampshire in 2002; Rhode Island in 2004; and Connecticut, Hawaii, and Illinois in 2008.

In one respect, the lessons that emerge from these referendum campaigns concern the obstacles to their passage, given that they all went down to defeat. In line with established patterns of behavior in mandatory convention referendums, the chief obstacles in the past decade have been, first, indifference on the part of the general public to state constitutional reform, and, second, resistance from the political party and allied groups that control the legislature, together with groups whose policy interests are constitutionally entrenched.

In another respect, even though these referendums all went down to defeat, in some states they came close to passing, and in others they received more support than prior convention referendums in the same state, thereby making it possible to identify certain pathways to success. First, referendum proponents will obtain greater support insofar as they are able in their campaign to increase public knowledge about the constitution in general and attract public attention to the referendum in particular. Additionally, referendum proponents can gain support by highlighting popular

\(^{13}\) These four post-1971 conventions called as a result of mandatory convention referendums are noted in Gerald Benjamin, *The Mandatory Constitutional Convention Question Referendum: The New York Experience in National Context*, 65 Alb. L. Rev. 1017, 1020 (2002) [hereinafter Benjamin, *Mandatory Referendum*].

institutions reforms and policies that are blocked in the ordinary amendment process.

Such an analysis might contribute to our understanding of the peculiar political dynamics of mandatory convention referendums, which differ in important respects from legislatively-initiated convention referendums. This knowledge might also guide and inform participants in the full set of mandatory convention referendums slated for the next few years: in Iowa, Maryland, Michigan, and Montana in 2010, and in Alaska, New Hampshire, and Ohio in 2012.

I. HISTORY AND DEVELOPMENT OF THE MANDATORY CONVENTION REFERENDUM

The mandatory convention referendum device originated in the Massachusetts Constitution of 1780, which was the first American constitution to be drafted by delegates elected for the specific purpose of drafting a constitution and then to be ratified by the people. Although several other state constitutions drafted in the late 1770s included provisions for legislatively-enacted amendments, the Massachusetts Constitution of 1780 was the first to provide a means of taking the sense of the people after a specific interval of time regarding whether to call a convention to consider revisions to the document. Although Thomas Jefferson is viewed as the first and most avid proponent of generational constitutional revision based on his advocacy of such a plan beginning in the late 1780s, the first adoption of such a device therefore dates to the Massachusetts Constitution of 1780 drafted in large part by John Adams.

According to the relevant provision in the Massachusetts Constitution of 1780, “In order the more effectually to adhere to the principles of the constitution, and to correct those violations which by any means may be made therein, as well as to form such alterations as from experience shall be found necessary,” the Legislature was directed in 1795 to call a vote of the

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17. Dinan, supra n. 9, at 45.


qualified voters in the various towns and plantations "for the purpose of collecting their sentiments on the necessity or expediency of revising the constitution." If two-thirds of voters gave their approval, then delegates would be chosen and a convention would assemble. Such a vote was held as scheduled, and although the referendum received the support of a majority of voters, it did not obtain the necessary two-thirds support, and so no convention was called. Because the Massachusetts Constitution did not provide for another convention referendum to be held after 1795, this was the final mandatory convention referendum held in the State.

The New Hampshire Constitution of 1784 and Kentucky Constitution of 1792 adopted variations on the Massachusetts procedure. In what is best described as a mandatory convention provision, rather than a mandatory convention referendum provision, New Hampshire's 1784 Constitution required that a convention be called seven years after its adoption, with no prior vote of the people required. Meanwhile, Kentucky's 1792 Constitution required that a convention referendum be submitted to the people in 1797 and, if approved by a majority of qualified voters, the question be resubmitted in 1798, at which time a second majority approval would result in the calling of a convention. Kentucky voters gave their assent in both years and a convention was held in 1799.

When the New Hampshire Constitution was amended in 1792, after the designated seven-year interval, New Hampshire became the first state to require mandatory convention referendums not just one time but on a recurring basis in perpetuity. This 1792 New Hampshire provision stipulated that a vote be held "after the expiration of seven years from the adoption of this constitution as amended," to "take the sense of the qualified voters on the subject of a revision of the constitution," and if a majority of the qualified voters approved, then the legislature was directed to call a convention. Moreover, and this represented New Hampshire's distinctive contribution to the development of the mandatory convention referendum, "the
same method of taking the sense of the people as to the revision of the constitution, and calling a convention for that purpose, shall be observed afterward, at the expiration of every seven years." When Indiana drafted its inaugural Constitution of 1816, it followed New Hampshire's model, albeit with a 12-year interval between submissions.

The New York Constitution of 1846 made two additional contributions to the development of the mandatory convention referendum device: by providing for a mandatory recurring convention referendum to supplement an existing legislative-initiated amendment procedure and settling on a 20-year interval between submissions. Prior to adoption of the New York Constitution of 1846, the states that had adopted the mandatory convention referendum device had provided that this was the only means by which the constitution could be changed. Each state that subsequently adopted this device followed New York's lead in viewing the mandatory convention referendum as an auxiliary device rather than as the sole means of undertaking constitutional change. Moreover, although subsequent states varied in the length of time provided between submissions, 20 years has been the most popular interval.

Counting Massachusetts and Kentucky, with their one-time mandatory convention referendums, 18 state constitutions have provided for mandatory convention referendums at some point in American history, and 14 continue to do so. The 18th century adopters were Massachusetts (1780), Kentucky (1792), and New Hampshire (1792–present). The 19th century adopters were Indiana (1816–1851), New York (1846–present), Michigan (1850–present), Maryland (1851–present), Ohio (1851–present), Iowa (1857–present), and Virginia (1870–1902). In the 20th century, the device was adopted by Oklahoma (1907–present), Missouri (1920–present), Hawaii (1959–present), Alaska (1959–present), Connecticut (1965–present), Illinois (1970–present), Montana (1972–present), and Rhode Island (1973–present).

30. Ind. Const. art. VIII (1816) (superseded 1851 by Ind. Const., which lacked any provision for calling a constitutional convention); Federal and State Constitutions, supra n. 24, at vol. 2, 1068.
31. Martineau, supra n. 15, at 425.
32. N.Y. Const. art. XIII, § 2 (1846) (superseded 1891 by N.Y. Const. art. XIV, § 2); Federal and State Constitutions, supra n. 24 at vol. 5, 2672–2673.
33. New Hampshire was for many years an outlier in this regard. It was not until 1964 that the New Hampshire Constitution was changed to permit the legislature to submit amendments for popular ratification. Until that point, the only means of changing the New Hampshire Constitution was through the mandatory convention referendum. Dinan, The American State Constitutional Tradition, supra n. 9, at 11–12.
34. May, supra n. 16, at 156 n. 15.
35. These dates of adoption are found in Martineau, supra n. 15, at 439–446; Benjamin, Mandatory Referendum, supra n. 13, at 1019.
In no instance were these devices enacted through legislative-initiated amendments. In all but one case, their adoption came through the work of constitutional conventions.36 Missouri alone adopted its mandatory convention referendum device through a constitutional initiative submitted and approved by voters in 1920.37 Elimination of these devices has occurred only two times, with the adoption of Indiana's 1851 Constitution and Virginia's 1902 Constitution, and through the work of revision conventions in both cases.38 Legislatures have on occasion sought to eliminate these de-


37. Martineau, supra n. 15, at 453–454 n. 54.

38. Dodd, supra n. 23, at 51. On the elimination of Indiana’s mandatory convention referendum device by the Indiana Convention of 1850–1851, see McLauchlan, supra n. 36, at 13–14. On the elimination of the Virginia mandatory convention referendum device by the Virginia Convention of 1901–1902, see John J. Dinan, The Development of the Virginia Constitution, in The Constitutionalism of American States 396 (George E. Connor & Christopher W. Hammons eds., U. of Mo. Press 2008) (noting that the device “was eliminated by a 1901–1902 convention that was so unwilling to permit popular participation in constitutional change that it did not even submit its own work to the people for ratification”). Goodrich Hatton, a delegate to the Virginia Convention of 1901–1902 provided the following explanation of the decision to eliminate the device: “The experience of every man in the Commonwealth is to the effect that whenever this question has been submitted by the General Assembly under this provision, no attention has been paid to it by the people. Only once since the adoption of the present Constitution has that question been submitted, and when submitted, the people of the Commonwealth were absolutely inattentive to it. They were not prepared for it, it was not discussed, and it went as a dead letter. When the people went to the polls and voted, a large majority of them did not know the question was before them or not. The committee very carefully considered that. They concluded that that provision was an excrescence upon the Constitution, and they determined to eliminate it as absolutely useless and ineffective.” Report of the Proceedings and Debates of the Constitutional Convention. State of Virginia, held in the City of Richmond, June 12, 1901, to June 26, 1902 vol. II, 2613 (The Hermitage Press Inc. 1906).
vices but have been unsuccessful, as in Oklahoma in 1994 when a legislative-initiated repeal amendment was rejected by voters.\(^39\) Thus, Oklahoma remains one of the current 14 mandatory convention referendum states, even if the state legislature has failed to comply with the referendum requirement in recent decades\(^40\) and has not submitted such a measure to the people since 1970.\(^41\)

As for the intervals between submissions, eight of the 14 current mandatory convention referendum states require that a vote be held every 20 years: New York, Maryland, Ohio, Oklahoma, Missouri, Connecticut, Illinois, and Montana. Another state, Michigan, provides for a 16-year interval. Four states provide for a 10-year interval: Iowa, Alaska, and Rhode Island, along with New Hampshire (which lengthened its previous seven-year interval in 1964). Hawaii currently requires that a convention referendum be placed on the ballot if a referendum has not been held in the last nine years.\(^42\)

All told, voters throughout U.S. history have given their approval to 30 mandatory convention referendums (the precise number is a matter of dispute, due to controversy over whether some of these met the requisite approval requirements) and these approvals have led to 25 conventions.\(^43\) New Hampshire, where this device was for many years the only route to constitutional change, produced fully half of these mandatory convention approvals and resulting conventions, with 15 approvals and 13 conventions: held in 1850, 1876, 1889, 1902, 1912, 1918, 1930, 1938, 1948, 1956, 1964, 1974, and 1984 (the legislature failed to call conventions after voter approvals in 1861 and 1864).\(^44\) New York has been responsible for three mandatory convention approvals and resulting conventions held in 1867, 1894, and 1938.\(^45\) Michigan voters have been responsible for two approv-

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40. For a report that this requirement has been "routinely ignored" see Adkinson & Palmer, supra n. 36, at 299.
41. Benjamin, Mandatory Referendum, supra n. 13, at 1020.
42. Tarr & Williams, supra n. 2, at 1079.
43. For the data prior to 1970, see Martineau, supra n. 15, at 424, n. 18, 439–446. For the data after 1970, see Benjamin, Mandatory Referendum, supra n. 13, at 1020.
45. An 1866 vote led to a 1867 convention, an 1886 vote led eventually to an 1894 convention, and a 1936 vote led to a 1938 convention. Martineau, supra n. 15, at 442–443. The 1938 convention is discussed in Galie, supra n. 25, at 24–27.
als that both led to conventions (in 1867 and 1961), as have Ohio voters (in 1873 and 1912) and Missouri voters (in 1922 and 1943). Hawaii voters approved two referendums that resulted in one convention that was held in 1978 (as for the other approval in 1996, convention opponents successfully challenged it in court on the ground that blank votes should have been counted as no votes, and voters went on to reject a 1998 convention referendum submitted by the legislature in the lawsuit's aftermath). Kentuckv voters gave the requisite approval in successive years to a referendum that led to a convention held in 1799. Rhode Island voters approved one referendum that led to a convention in 1986. Iowa voters approved a convention referendum in 1920 but the legislature failed to call a convention and none was held. Alaska voters approved a convention referendum in 1970, but no convention was called because opponents successfully challenged the vote on the ground that the ballot language was misleading, and voters went on to disapprove a 1972 convention referendum called in the aftermath of the litigation. A total of eight states have, therefore, held conventions as a result of mandatory convention referendums: New Hampshire, New York, Michigan, Ohio, Missouri, Hawaii, Kentucky, and Rhode Island.

II. USE OF THE MANDATORY CONVENTION REFERENDUM DEVICE IN THE 2000s

Mandatory convention referendums were submitted to the people on eight occasions in the first decade of the 21st century. In one sense, this period has been characterized by consistency, in that all of these referendums were defeated. But some came closer to passing than others. The mix of supporters, opponents, and key campaign issues also varied. Before turning to assess the general patterns and lessons that emerge from this

TABLE 1
CONVENTIONS CALLED AS A RESULT OF MANDATORY CONVENTION REFERENDUMS

<table>
<thead>
<tr>
<th>State</th>
<th>Year of Referendum</th>
<th>Year of Convention</th>
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<tbody>
<tr>
<td>Hawaii</td>
<td>1976</td>
<td>1978</td>
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<tr>
<td>Kentucky</td>
<td>1797, 1798</td>
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<td>Michigan</td>
<td>1866</td>
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<td>1961</td>
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<td>Missouri</td>
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<td>1942</td>
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<td>New Hampshire</td>
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<td>1910</td>
<td>1912</td>
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<tr>
<td>Rhode Island</td>
<td>1984</td>
<td>1986</td>
</tr>
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</table>

period, it is helpful to examine the distinctive nature of the campaigns and particular outcomes in each of these particular referendums.

A. Iowa (2000)

Since 1857, the Iowa Constitution has mandated that a convention referendum be placed on the ballot every ten years, and the most recent submission was in 2000. In a campaign marked by a lack of voter interest

58. Iowa Const. art. X, § 3.

59. Drake University professor Hugh Winebrinner commented: "I would guess the vast majority of voters were surprised to see it and didn't know what it was about." Kimberly Durnan, Voters Consider a Constitutional Convention, Associated Press (Nov. 8, 2000).
and an absence of organized support or opposition, voters defeated the referendum by a margin of 66.7% to 33.3%, with 598,318 voters opposing a convention and 299,972 voters in favor. This 33.3% level of support in 2000 exceeded the 27% of voters who supported the prior mandatory convention referendum in 1990 but was lower than the 39% who supported the 1980 referendum and the 49% who supported the 1970 referendum, which was the closest that a mandatory convention referendum has come to passing in Iowa since 1920. In that year, a majority of voters supported a referendum, but the state house and senate were unable to agree on a bill that would call a convention, and so no convention was held.

B. Alaska (2002)

The Alaska Constitution has since its inception mandated that a convention referendum be placed before voters at least once every ten years, and the most recent submission was in 2002. This measure attracted little interest and scant comment in the months preceding the vote. To the extent that the referendum attracted any attention, supporters emphasized the need to provide better representation for Native Alaskans and to safeguard subsistence hunting and fishing. Individuals who expressed their opposition to a convention stressed the danger of “opening up the entire state constitution to potential change,” among other concerns.

Alaska voters rejected the 2002 referendum by a margin of 71.6% to 28.4%, with 152,120 voters opposing a convention and 60,217 voters expressing their support. This was the lowest level of voter support for a convention referendum in the brief history of such referendums in Alaska. The initial referendum in 1970 was narrowly approved with 50.3% sup-

60. Deputy Secretary of State for Elections and Voter Registration Bob Galbraith reported that he was “not aware of any campaign for or against it.” Every 10 years, Iowans Asked Whether Convention Should Be Held, Associated Press St. and Loc. Wire (Des Moines, Iowa) (Oct. 27, 2000).
61. Benjamin, Mandatory Referendum, supra n. 15, at 1044.
62. Id.
63. Shambaugh, supra n. 54, at 281–282.
64. Alaska Const. art. VIII, § 3.
65. For a comment to the effect that the referendum “has been largely ignored to date,” see Duane Heyman, Alaska Constitution Faces Rewrite, Alaska J. of Com. (Sept. 23, 2002) (available at www.alaskajournal.com/stories/092302/sea_constitution.shtml).
However, opponents filed suit in state court, claiming that the ballot language was misleading when it asked, "As required by the Constitution of the State of Alaska, Article XIII, Section 3, shall there be a constitutional convention?" The court sided with the convention opponents, who contended that this ballot language suggested that the constitution required that a convention be called rather than merely a referendum on calling a convention. Accordingly, the referendum was resubmitted to voters in the next statewide general election, in 1972, with the revised wording, "Shall there be a constitutional convention?" It received only 34.5% of the vote.

The 1982 and 1992 referendums were also submitted using this revised language, and both were also defeated, with supporters obtaining only 40 and 37.3% of the vote, respectively.

C. Missouri (2002)

By an amendment added to the Missouri Constitution via the constitutional initiative process in 1920, a convention referendum is required to be held in Missouri every 20 years, and the most recent submission was in 2002. In a campaign that attracted little attention from public officials or the citizenry, the 2002 referendum was defeated by a margin of 65.5% to 34.5%, with 1,079,085 voters disapproving of a convention and 569,598 voters expressing their approval. This level of support is comparable to the results of the 1962 and 1982 referendums, where 36.3% and 30.5% of voters supported a convention, respectively. It stands in contrast, however, with the results of the two previous referendums in 1921 and 1942, both of which were approved by voters and led to conventions.

69. Id.
71. The vote totals in 1972 were 29,192 in favor and 55,389 opposed. State of Alaska, supra n. 68.
73. The vote totals in 1982 were 63,816 in favor of a convention and 108,319 opposed. The vote totals in 1992 were 84,929 in favor and 142,735 opposed. State of Alaska, supra n. 68.
74. Mo. Const. art. XII, § 3(a).
75. For a comment to the effect that "until recently, many state officials were unaware that the measure was even on the ballot," see Paul Sloca, Missouri Endures Unusual Political Season, Associated Press St. and Loc. Wire (Jefferson City, Mo.) (Nov. 3, 2002).
77. The vote totals in 1962 were 295,972 in favor and 519,499 opposed. Martineau, supra n. 15, at 446. The vote totals in 1982 were 406,446 in favor and 927,056 opposed. Benjamin, Mandatory Referendum, supra n. 13, at 1044.
78. The vote totals in 1921 were 175,355 in favor and 127,130 opposed. The vote totals in 1942 were 366,018 in favor and 265,294 opposed. Martineau, supra n. 15, at 446.

New Hampshire was the first state to adopt a recurring mandatory convention referendum device (in 1792) and it has made use of this device more frequently and with more success than any other state (15 approvals and 13 conventions).\(^7\)\(^9\) Originally, the New Hampshire Constitution required that a convention referendum be placed on the ballot every seven years, in what served for many years as the only method of changing the State Constitution. However, in 1964, the Constitution was amended to permit legislative-initiated amendments and also lengthen the interval between mandatory convention referendum submissions to the current ten years.\(^8\)\(^0\)

The most recent mandatory convention referendum in New Hampshire took place in 2002 and attracted a fair amount of attention from the media and public officials. The State's leading newspaper, the Union Leader, ran a number of articles on the referendum in the lead-up to the vote and then issued an election-day endorsement.\(^8\)\(^1\) The referendum was also endorsed by the Democratic and Republican gubernatorial candidates, albeit for very different reasons.\(^8\)\(^2\) Democratic candidate Mark Fernald supported a convention in the hope that delegates would increase the gubernatorial term from two to four years and respond to a string of state Supreme Court decisions regarding the State's obligation to increase the State's role in school funding by authorizing an individual income tax.\(^8\)\(^3\) Meanwhile, the ultimately-victorious Republican candidate Craig Benson also viewed a convention as a vehicle for responding to the State court's school-finance decisions,\(^8\)\(^4\) the most recent of which had been issued in April 2002.\(^8\)\(^5\) However, Benson's preferred constitutional response was quite different; he sought to limit the State's role in education spending and thereby counteract the court's rulings, which had resulted in the State requiring a number of wealthier "donor" towns to send local tax revenue to the State for redistri-

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79. Regarding the 11 referendum approvals that led to conventions being called and the two referendums that were approved but did not lead to conventions prior to 1970, see Martineau, supra n. 15, at 424 n. 14–15. Regarding the two referendum approvals that led to conventions being called in New Hampshire after 1970, see Benjamin, Mandatory Referendum, supra n. 13, at 1020.


83. Id.

84. Pat Hammond, Power from the Bottom up: N.H. Voters Have Chance to Call for Real Change on Nov. 5, New Hampshire Sunday News Al (Oct. 13, 2002).

The 2002 New Hampshire convention referendum came close to passing—closer than any other convention referendum in the 2000s—but was defeated by a margin of 50.9% to 49.1%, with 184,042 voters opposing a convention and 177,721 favoring it.90 This outcome paralleled closely the previous convention referendum in New Hampshire in 1992, which was defeated by a margin of 50.8% to 49.2%.91 These outcomes stand in contrast, however, with the 1972 and 1982 New Hampshire referendums, both of which were approved and led to conventions.92


Rhode Island is the most recent state to adopt the mandatory convention referendum device (through the work of a 1973 constitutional convention), and Rhode Island voters were the last to approve a referendum leading to a convention (through a 1984 referendum that produced a 1986 convention).93 The relevant state constitutional provision requires that a convention question be placed on the ballot if the question has not been

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86. Fernald, Benson Support Constitutional Convention, supra n. 82.
87. Id.
88. According to one newspaper account: “Even the top partisan officials in the state acknowledge that they’ve been more concerned about getting their candidates elected than educating voters about a constitutional convention’s ramifications.” Id.
91. The vote totals in 1992 were 210,342 in favor and 217,575 opposed. Benjamin, Mandatory Referendum, supra n. 13, at 1044.
92. The vote totals in 1972 were 96,764 in favor and 73,365 opposed. The vote totals in 1982 were 115,351 in favor and 105,207 opposed. Id. at 1044.
93. Rhode Island’s most recent adoption of the mandatory convention referendum is noted in id. at 1019. On Rhode Island being the last state to approve a referendum that led to a convention, see id. at 1020 n. 24.
submitted in the preceding ten year period.\footnote{94} Additionally, and this is unique to Rhode Island, prior to the holding of such a referendum, “the general assembly, or the governor if the general assembly fails to act, shall provide for a bi-partisan preparatory commission to assemble information on constitutional questions for the electors.”\footnote{95}

The most recent mandatory convention referendum was held in 2004 and generated significant attention from the media, public officials, and a wide array of interest groups that were quite active in campaigning for and against the measure.\footnote{96} The state’s leading newspaper, the Providence Journal, endorsed a convention,\footnote{97} as did Republican Governor Don Carcieri\footnote{98} and the public-interest group Operation Clean Government.\footnote{99} In expressing its support for a convention, the Providence Journal identified several worthy constitutional reforms that were unlikely to emerge from the legislature but stood a chance of being passed in a convention, including adoption of the gubernatorial line-item veto, creation of an inspector general to watch over state spending, reform of the judicial selection process, and imposition of term limits on the speaker of the house.\footnote{100} Governor Carcieri, meanwhile, emphasized the ways that a convention could increase the power of the governor relative to the legislature, such as by adopting the line-item veto, increasing the percentage of legislators required to override a veto, and strengthening the governor’s hand in the budget process.\footnote{101} Other officials and groups touted the opportunities that a convention would afford to adopt direct democratic institutions such as the statutory initiative process that would otherwise be blocked in the legislature.\footnote{102}

Opponents, meanwhile, pooled their financial resources to campaign against the convention referendum under the banner, Citizens for Representative Government. Among the biggest financial contributors to the opposition campaign were the Rhode Island Federation of Teachers and Health Professionals, the National Education Association of Rhode Island, the

\footnotesize{94. R.I. Const. art. XIV, § 2.  
95. Id.  
98. Zuckerman, supra n. 96.  
99. Id.  
100. Editorial—Vote Yes on Question 2, supra n. 97.  
101. Zuckerman, supra n. 96.  
Rhode Island AFL-CIO, and the Rhode Island chapter of the ACLU.\textsuperscript{103} Common Cause of Rhode Island was also active in opposing the referendum, and its executive director co-authored an influential op-ed in the \textit{Providence Journal} the week before the election urging a vote against a convention.\textsuperscript{104} Among other things, critics emphasized the financial costs (estimated by the preparatory commission to be over $2,000,000)\textsuperscript{105} and the possibility that convention-approved measures could threaten civil liberties\textsuperscript{106} and the rights of immigrants and minority groups.\textsuperscript{107}

Opponents prevailed in the 2004 referendum, but by the narrow margin of 52% to 48%, with 175,601 voters opposed and 162,296 voters in favor.\textsuperscript{108} This referendum obtained much more support than the most recent Rhode Island convention referendum in 1994, which attracted the support of only 40.6% of voters and marked the only other time, aside from the initial successful referendum in 1984, that Rhode Island voters have considered a mandatory convention referendum.\textsuperscript{109}

F. Connecticut (2008)

Since 1965, the Connecticut Constitution has required that a convention referendum be submitted to voters every 20 years,\textsuperscript{110} and the most recent submission was in 2008, in a year that also featured submission of such referendums in Illinois and Hawaii.\textsuperscript{111} As was also the case with these other two referendums that year, the Connecticut referendum attracted significant attention in the media and from public officials and a wide range of

\begin{flushright}
\textsuperscript{103} The amount of money contributed by each of these groups to the opposition campaign is reported in Edward Achorn, \textit{Commentary—Citizens for Special-Interest Government}, Providence J. B5 (Dec. 14, 2004) (available at Lexis, News Library, RINWS).


\textsuperscript{105} Anderson, \textit{supra} n. 102.

\textsuperscript{106} Sasse & West, \textit{supra} n. 104.


\textsuperscript{110} Conn. Const. art XIII, \S 2.

\end{flushright}
interest groups. Moreover, some of these groups, particularly convention opponents, spent heavily to influence the outcome of the referendum.

Prominent convention supporters included Republican Governor M. Jodi Rell and many Republican legislators, as well as taxpayers and property rights groups, and, particularly after the Connecticut Supreme Court issued an October 10, 2008, ruling legalizing same-sex marriage, social conservative groups. For Governor Rell and many Republican lawmakers, along with a number of groups that made up an umbrella organization, the Connecticut Constitution Convention Campaign, the principal attraction of a convention was that delegates might establish direct democratic institutions such as the initiative and referendum. Taxpayer and property-rights groups viewed a convention as the most viable route to enacting tax-limitation amendments and securing greater restrictions on the eminent domain power, especially in the aftermath of the U.S. Supreme Court’s 2005 *Kelo v. City of New London* ruling that sustained a Connecticut city’s use of eminent domain for economic development purposes. Meanwhile, the Family Institute of Connecticut was supportive of the referendum throughout the campaign, but a convention took on renewed importance for this and other social conservative groups and received the strong endorsement of the Catholic Conference of Connecticut, after the state Supreme Court issued its same-sex marriage legalization ruling less than a month before the election. In the view of these groups, a convention represented the last possible means of changing the Constitution to prevent the Court’s ruling from taking effect or to overturn the decision, in much the way that California voters relied on the constitutional initiative process.
in November 2008 to overturn the California Supreme Court’s same-sex marriage legalization ruling in May 2008.\textsuperscript{118}

Opposition groups, many of which joined forces under the banner “Connecticut Vote No: Protect Our Constitution,” were more numerous and far better funded than the supporters.\textsuperscript{119} Democratic office-holders and party officials were strongly opposed to the convention referendum, as typified by Attorney General Richard Blumenthal’s influential op-ed that appeared in the \textit{Connecticut Post} on the Sunday prior to the referendum and charged, among other things, that “a constitutional convention opens a Pandora’s box of unknowns and uncertainties.”\textsuperscript{120} Other prominent groups in the opposition coalition included the state chapters of the AFL-CIO and UAW, the Connecticut Education Association, the state chapters of the National Organization for Women and Planned Parenthood, the ACLU, and gay and lesbian groups.\textsuperscript{121} According to published reports late in the campaign, the opposition Connecticut Vote No coalition raised $866,000, in comparison with $15,000 for the supportive Connecticut Constitutional Convention Campaign.\textsuperscript{122}

Although a University of Connecticut/\textit{Hartford Courant} poll released a week prior to the election indicated that 50\% of respondents favored a convention, compared with 39\% who were opposed,\textsuperscript{123} the referendum was rejected at the polls by a margin of 59.4\% to 40.6 \%, with 847,518 voters opposing a convention and 579,904 voters in favor.\textsuperscript{124} This level of support, although clearly a large drop-off from polls taken a week out from the vote, was slightly higher than the 34.5\% of voters who supported the only other mandatory convention referendum held in Connecticut in 1986.\textsuperscript{125}

\begin{thebibliography}{99}
\bibitem{119} Hladky, supra n. 112, at B1.
\bibitem{120} Richard Blumenthal, \textit{Vote No on the Constitutional Convention}, Conn. Post Online (Bridgeport, Conn.) (Nov. 2, 2008).
\bibitem{122} Hladky, supra n. 112, at B1.
\bibitem{123} Id.
\bibitem{125} The vote totals in 1986 were 207,704 in favor and 379,812 opposed. Benjamin, \textit{Mandatory Referendum}, supra n. 13, at 1044.
\end{thebibliography}
G. Hawaii (2008)

Drafters of the initial Hawaii Constitution of 1950, drawing on the recommendation and language of the National Municipal League’s Model Constitution, provided that if a ten-year period elapsed without submission of a convention referendum, the lieutenant governor should place the question on the ballot at the next general election. This interval was then changed slightly after a legal dispute in November 1976 over whether the lieutenant governor should place a convention referendum on the ballot, because election day technically fell several days shy of ten years after the last legislative-initiated referendum in November 1966. The Lieutenant Governor was initially hesitant to submit the referendum in light of this technicality, but the League of Women Voters sued to force a referendum submission, and at that point the Legislature agreed to place the referendum before voters. This 1976 referendum was approved by voters, and at the resulting 1978 Convention, delegates addressed this technical issue by modifying the relevant constitutional language to require a referendum submission at the next general election after nine years had elapsed from the last convention referendum. Hence Hawaii currently has a nine year submission requirement, which is the shortest interval between submissions of any of the mandatory convention referendum states.

Hawaii is the last state where more voters approved than opposed a mandatory convention referendum: in 1996. However, this did not lead to a convention. Although yes-votes exceeded no-votes, a good number of voters left the convention question on their ballot blank. The attorney general interpreted the constitutional provision as not requiring her to count these blank ballots. But the state AFL-CIO, a leading convention opponent, filed suit against this decision, arguing for a contrary interpretation of the relevant constitutional provision that would have resulted in the defeat of the referendum. The state Supreme Court, in a 1997 decision, sided with convention opponents. At that point, convention supporters filed suit in federal court and secured a U.S. District Court ruling ordering that a

126. On the influence of the Model State Constitution in leading states in the second half of the twentieth century to adopt the mandatory convention referendum, see id. at 1019.
127. Trask, supra n. 36, at 302–303.
128. Id. at 308.
129. Id.
130. Id. at 311.
132. Trask, supra n. 36, at 316.
133. Id.
134. Haw. St. AFL-CIO v. Yoshina, 935 P.2d 89 (Haw. 1997); see also Trask, supra n. 36, at 316.
new election be held.\textsuperscript{135} Although this ruling was eventually reversed by the 9th Circuit Court of Appeals,\textsuperscript{136} the Legislature nevertheless decided to submit a convention referendum at the 1998 general election, where it was soundly defeated.\textsuperscript{137} Thirty-four percent of voters supported the measure; fifty-nine percent opposed it; and seven percent left that question blank.\textsuperscript{138}

The most recent mandatory referendum submission in 2008 did not generate any legal challenges of the sort seen in 1976 and 1996, but it did attract significant attention from public officials and an array of well-organized and well-funded groups. Chief supporters included Republican Governor Linda Lingle and Lieutenant Governor James “Duke” Aiona and the state Republican Party.\textsuperscript{139} Although convention supporters lacked a major galvanizing issue of the sort found in other mandatory convention referendums, various groups and individuals, some allied under the banner “It’s Time Hawaii,”\textsuperscript{140} viewed a convention as a useful vehicle for enacting particular constitutional reforms, such as adopting legislative term limits and dividing the State’s unique statewide school system into districts governed by local school boards.\textsuperscript{141}

Opponents were well organized and well funded. The state Democratic Party and most Democratic officials opposed a convention, as did an umbrella group, the Hawaii Alliance, comprised primarily of public and private employee unions and Native Hawaiian groups.\textsuperscript{142} The Hawaii Alliance raised over $832,000 to oppose the convention,\textsuperscript{143} with the National Education Association Ballot Measure Fund alone contributing $350,000, and the Hawaii Government Employees Association, the Hawaii State Teachers Association, and the University of Hawaii Professional Assembly contributing $10,000 each.\textsuperscript{144} These individuals and groups were motivated by a wide range of concerns about a convention. Democrats argued that a convention might enable members of the minority Republican Party to gain

\begin{footnotes}
\item[135] Trask, supra n. 36, at 317.
\item[136] Bennett v. Yoshina, 140 F.3d 1218 (9th Cir. 1998).
\item[137] Trask, supra n. 36, at 317–318.
\item[139] Derrick DePledge, Call for Constitutional Convention, Honolulu Advertiser (Oct. 12, 2008) (available at Lexis, News Library, HONADV).
\item[141] DePledge, supra n. 139.
\item[142] Trask, supra n. 36, at 319.
\item[143] Id.
\item[144] Mark Niesse, Hawaii Has Battle over Constitutional Redo, Associated Press St. & Loc. Wire (Oct. 25, 2008) [hereinafter Niesse, Constitutional Redo].
\end{footnotes}
more power for their policy goals than was otherwise possible in the Democrat dominated legislature.\textsuperscript{145} Public employee unions were concerned that a convention might eliminate the existing constitutional guarantee of collective bargaining rights.\textsuperscript{146} Teachers unions were also concerned about the possibility that a convention would divide the single statewide school system into local districts with opportunities for variation in decision-making about K-12 schools.\textsuperscript{147} Finally, some Native Hawaiian groups feared that a convention might eliminate some of the existing constitutional protections for Native Hawaiians.\textsuperscript{148}

The 2008 referendum was defeated handily. Only 33.5\% of voters (152,596) in the election voted for it, whereas 61.9\% of voters (281,668) in the election voted against it, and another 4.6\% of voters (20,796) who participated in some aspect of the election (which included the presidential contest between John McCain and Barack Obama) left the convention referendum portion of their ballot blank.\textsuperscript{149} Because of the state Supreme Court ruling arising from the previous disputed referendum, blank ballots are counted as negative votes, meaning that the 2008 referendum failed by a 66.5\% to 33.5\% margin, an outcome that was virtually unchanged from the prior 1998 referendum results.\textsuperscript{150}

**H. Illinois (2008)**

The Illinois Constitution has since 1970 required that a convention referendum be submitted every 20 years,\textsuperscript{151} and the second and most recent submission in 2008 generated significant attention from public officials and groups that organized for and against a convention. Lieutenant Governor Pat Quinn was the most high profile supporter of a convention; in fact, he was the only statewide official to back a convention,\textsuperscript{152} viewing it as the only means of adopting direct democratic reforms such as the statutory initiative, referendum, and recall, as well as ethics reforms.\textsuperscript{153} Members of a

\footnotesize{\begin{itemize}
  \item 146. Niesse, Constitutional Redo, supra n. 144.
  \item 150. Trask, supra n. 36, at 319.
  \item 151. Ill. Const. art. XIV, § 1(b).
  \item 153. Mark Brown, Here's a Real Chance to Fix Springfield; Many Oppose Rewriting State Constitution—But Why?, Chi. Sun Times A6 (Oct. 12, 2008) (available at Lexis, News Library, ILNWS); Rupa}
new organization founded by Bruno Behrend and John Bambanek, the Illinois Citizens’ Coalition, also campaigned for a convention on the grounds that it would adopt direct democratic reforms that would increase citizen influence in state government.154 Other supporters touted a convention as a way to provide a more equitable school finance system that relied less heavily on property taxes.155 Meanwhile, the Chicago Tribune was the most high profile media outlet to endorse a convention call.156

Convention opponents were well organized and funded and brought together a number of diverse groups that did not often find themselves on the same side of political battles. The Alliance to Protect the Illinois Constitution included not only union groups (the Illinois AFL-CIO and Illinois Federation of Teachers), and other traditional allies such as the Illinois Trial Lawyers Association, but also included business groups (the state chapters of the Business Roundtable, Chamber of Commerce, and Retail Merchants Association) and the Illinois Farm Bureau, along with the state chapter of the League of Women Voters.157 As James Mays, President of the Illinois Business Roundtable, noted, “It’s no secret that the people in this alliance rarely agree on much. But we all agree on this.”158 The Alliance spent over $600,000 in opposing the convention.159 Meanwhile, the Chicago Sun Times editorialized against a convention, in part on the ground that it “easily might be dominated by single-issue crusaders” and, moreover, “[o]nce the Constitution is thrown open, anything goes.”160

One aspect of the Illinois convention referendum campaign that attracted further attention to the referendum and drew the ire of convention backers was a decision by the State Board of Elections to include ballot language and instructions that Cook County Circuit Judge Nathaniel Howse Jr. deemed misleading and false in a ruling issued a month prior to the election. The instructions stated that the failure to vote on this measure would be equivalent to a negative vote, which was not technically correct because the convention referendum can pass either by securing three-fifths...
of those voting on the question or a majority voting in the entire election, as argued in a lawsuit filed by Lieutenant Governor Quinn and the Chicago Bar Association. Additionally, the official explanation of the ballot measure noted (unnecessarily in the view of the complainants) that a prior convention referendum had been submitted in 1988 and had been defeated by a margin of 75% to 25%. In a ruling issued in October 2008, prior to the election but after many ballots had already been printed, Judge Howse found that this ballot language did not comport with the constitutional requirement but that it was too late to order the ballots to be reprinted. Instead, he directed elections officials to distribute a handout at the polls containing corrected language.

The 2008 Illinois referendum was defeated by a margin of 67.3% to 32.7%, with 3,044,406 voters supporting a convention, 1,480,441 voters opposing a convention, and 1,003,871 voters leaving that question blank. The level of popular support in 2008 exceeded the 25% who supported the 1988 referendum but fell far short of the 60% needed to call a convention.

III. OBSTACLES TO SECURING PASSAGE OF MANDATORY CONVENTION REFERENDUMS

A review of these eight defeated referendums from 2000–2008 is useful in part in illustrating the significant obstacles to passage of mandatory convention referendums. Scholars have taken due note of the low approval rate of mandatory convention referendums in comparison with the high approval rate of legislative-initiated convention calls, as typified by Janice May’s observation two decades ago that “[o]verall, most convention calls are approved, but the automatic calls are frequently rejected.” These cases from 2000–2008 provide no warrant for revising this longstanding view of the difficulty in securing approval of mandatory convention referendums. These recent cases are of interest, however, in helping to explain this low approval rate, by illustrating the principal obstacles that stand in the way of their passage and would need to be confronted by individuals seeking to build support for such referendums in future years.

162. Id.
163. Id.
164. See id.
166. The vote totals in 1988 were 900,109 in favor and 2,727,144 opposed. Benjamin, Mandatory Referendum, supra n. 13, at 1044.
167. May, supra n. 16, at 156.
Table 2

RESULTS OF MANDATORY CONVENTION REFERENDUMS FROM 2000-2008

<table>
<thead>
<tr>
<th>Year</th>
<th>State</th>
<th>Percent of Voters Supporting a Convention</th>
<th>Result</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>Iowa</td>
<td>33.3%</td>
<td>Failed</td>
</tr>
<tr>
<td>2002</td>
<td>Alaska</td>
<td>28.4%</td>
<td>Failed</td>
</tr>
<tr>
<td></td>
<td>Missouri</td>
<td>34.5%</td>
<td>Failed</td>
</tr>
<tr>
<td></td>
<td>New Hampshire</td>
<td>49.1%</td>
<td>Failed</td>
</tr>
<tr>
<td>2004</td>
<td>Rhode Island</td>
<td>48.0%</td>
<td>Failed</td>
</tr>
<tr>
<td>2008</td>
<td>Connecticut</td>
<td>40.6%</td>
<td>Failed</td>
</tr>
<tr>
<td></td>
<td>Hawaii</td>
<td>33.5%</td>
<td>Failed</td>
</tr>
<tr>
<td></td>
<td>Illinois</td>
<td>32.7%</td>
<td>Failed</td>
</tr>
</tbody>
</table>

A. Citizen Indifference

One obstacle to passage of mandatory convention referendums is the marked indifference of the public to state constitutional reform. Citizen indifference to state constitutional reform is a longstanding phenomenon that is a product in part of the low level of citizen knowledge about state constitutions. Indeed, “[M]ost citizens, including many who vote regularly in representative elections and are otherwise quite knowledgeable about politics, know very little about their state constitution.”168 Moreover, because of “the essentially abstract (and even abstruse) issues reform efforts involve,”169 it can be difficult for citizens to inform themselves about proposed state constitutional reforms and to make connections between these reforms and the way that the state is governed, much less their own lives. After all, “It is extraordinarily difficult to excite most citizens about and give them a stake in the composition of the State Board of Apportionment or the constitutional status of legislative interim committees,” among the various topics covered in state constitutions.170

Citizen indifference to state constitutional reform makes it difficult to secure passage of mandatory convention referendums because voters who are not knowledgeable or not confident in their knowledge about ballot

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measures are apt to vote against them.\footnote{For an argument that low visibility for a convention referendum tends "to make calling it seem more risky" and thus reduces its chances of passage, see Benjamin, \textit{Mandatory Referendum, supra} n. 13, at 1017.} Scholars who have studied voter behavior on ballot measures in general have consistently found that individuals who lack knowledge about a ballot measure are more likely to vote against such a measure, if they decide to vote at all on the question.\footnote{Shaun Bowler \& Todd Donovan, \textit{Demanding Choices: Opinion, Voting, \& Direct Democracy} 33–35 (U. of Mich. Press 1998).} In much the same way that research has consistently shown that voters with relatively low information in representative elections tend to vote for the incumbent, voters with low information in referendum campaigns will default to a no vote on these measures.\footnote{\textit{Id.}}

Moreover, research on state constitutional amendment ballot measures indicates that citizens are more likely to oppose such amendments when they are generated through initiative petitions rather than referred by the legislature.\footnote{Dinan, \textit{State Constitutional Developments, supra} n. 111, at 3.} Recent evidence demonstrates that fewer than half of constitutional amendments generated by initiative petition are approved, whereas over two-thirds of constitutional amendments referred by legislatures are approved.\footnote{\textit{Id.} at 5. In 2004–2005, voters approved only 43.6\% of constitutional amendments generated by initiative petition, but they approved 74.8\% of constitutional amendments referred by the legislature. In 2006–2007, voters approved only 33.3\% of amendments generated by initiative petition, but they approved 86.8\% of amendments referred by the legislature. In 2008, voters approved 41.4\% of amendments generated by initiative petition, but they approved 66.7\% of amendments referred by the legislature. \textit{Id.}}

Citizen indifference to state constitutional reforms poses a particular problem when it comes to securing passage of mandatory convention referendums as opposed to legislative-initiated convention referendums. When a legislature approves a convention call and submits it to the people, there is a much greater likelihood that the referendum vote will have been preceded by substantial discussion among public officials and in the media. Such discussion tends to increase citizen knowledge about state constitutions and build confidence in their capacity to pass judgment on the wisdom of constitutional reform. There is no guarantee that such discussion and coverage will take place when the convention question is placed on the ballot automatically, without any necessary participation of legislators in the process.

Citizen indifference contributed to the defeat of several of the mandatory convention referendums held from 2000–2008. In some instances, most notably in Iowa in 2000 and Alaska and Missouri in 2002, there was virtually no discussion about the pending referendum among public officials or in the media. This absence of attention increased the likeli-
hood that citizens would vote against unfamiliar measures. These particular referendums did not generate substantial opposition; so their failure cannot be attributed to the work of opposition groups. Rather, they met with decided indifference, which contributed to their defeat.

In other instances, particularly in Rhode Island in 2004 and Hawaii, Illinois, and Connecticut in 2008, citizen indifference had the effect of enabling critics—and each of these referendums generated substantial criticism—to sow doubts in the minds of voters by stressing the unpredictable nature of a convention. As Alan Tarr has noted, "Because voters typically do not have deep-seated convictions about whether or not a convention shall be called," they are more receptive to arguments that a convention would unnecessarily and unwisely open a Pandora's Box of issues in an unpredictable fashion. Arguments of this sort were advanced in each of these referendum campaigns.

B. Opposition from In-Power Officials and In-Power and Constitutionally Favored Groups

A second obstacle to passage of mandatory convention referendums is opposition from the dominant legislative party and groups allied with that party as well as groups whose interests are currently protected by constitutional provisions. Each of these groups runs the risk of losing power, albeit for different reasons, in the event a mandatory convention referendum is approved and a convention held. Moreover, a convention called pursuant to

176. On the lack of attention to the referendum in Iowa in 2000, see Durnan, supra n. 59. On the lack of attention to the referendum in Alaska in 2002, see Heyman, supra n. 65. On the lack of attention to the referendum in Missouri in 2002 and the way this posed an obstacle to its passage, see Paul Sloca, Voters Could Call for Constitutional Convention, Associated Press St. & Loc. Wire (Jefferson City, Mo.) (Oct. 19, 2002) ("David Webber, a political scientist at the University of Missouri-Columbia and a close observer of state government said the lack of public interest in the measure makes it an unlikely candidate for voter approval.").

177. For examples of critics' deployment of this type of argument, see the comments in Rhode Island in 2004 of H. Philip West Jr., as reported in Anderson, Panel Reports Pros and Cons of Convention, supra n. 102; the comments in Illinois in 2008 of Laurie Berger, as reported in M.K. Guetersloh, Groups Spell Out Opposition to Constitutional Convention, The Pentagraph (Bloomington, IL) A4 (Oct. 29, 2008); the comments in Hawaii in 2008 of Roger Takabayashi, as reported in Niesz, Constitutional Redo, supra n. 144; and the comments in Connecticut in 2008 of Richard Blumenthal, as reported in Pat Eaton-Robb, Conn. Voters Decide Not to Change Constitution, Associated Press St. & Loc. Wire (Hartford, CT) (Nov. 5, 2008).


179. This argument is ubiquitous in convention referendum debates. See Tarr & Williams, supra n. 2 at 1085. For examples of critics' deployment of this argument, see No Need for Convention; Iowa Referendum: State Constitution Does Not Need an Overhaul, Telegraph Herald (Dubuque, Iowa) A4 (Nov. 3, 2000) (available at Lexis, News Library, TELHLD); Issue Paper, supra n. 67, at 9; Sasse & West, supra n. 104.
a mandatory referendum is particularly dangerous to these groups’ interests, and certainly more so than a convention called at the initiative of the legislature. When the legislature drafts a convention call, in-power groups can often explicitly limit the agenda of a convention, as was done on numerous occasions in the late 20th century. They can also control who participates in a convention (as was done most notably when the legislatures of Texas in 1974 and Louisiana in 1992 called conventions comprised solely of legislators themselves). In-power groups, however, have much less ability to limit and control conventions held pursuant to mandatory convention referendums. And, therefore, they have a much greater incentive and work more diligently to secure the defeat of mandatory convention referendums than legislative-initiated convention calls, which of course they play a major role in crafting.

Officials, and particularly legislators, of the dominant political party were some of the chief opponents of mandatory convention referendums in several states from 2000–2008. Legislatures have long been considered “natural enemies of unlimited constitutional conventions.” In part, this is because constitutional reforms adopted by state conventions have tended, over time, to reduce the power of the legislature relative to other institutions. Moreover, legislators are reluctant to cede control over the political agenda to convention delegates, especially given that conventions have often provided valuable training and opportunities for the emergence of politically talented individuals who might be seen as rivals to legislative leaders. Dominant-party legislators are particularly wary of allowing members of the out-of-power party to place their preferred policy issues on the political agenda and possibly secure their passage, as is possible in an unlimited convention.

Opposition from dominant-party legislators was particularly evident in Connecticut, Hawaii, and Illinois in 2008, where Democrats controlled both legislative chambers and worked hard to defeat referendums seen as providing potential openings for Republicans in each of these states. In Hawaii, although a few Democratic legislators expressed support for a convention, the Associated Press reported that a number of Democratic Party members were opposed because they “said it would be used by Republicans to gain power outside of the state Legislature, which Democrats control with more
than an 80% majority in both houses."\textsuperscript{187} In Connecticut, Democrats were among the chief opponents, on the ground, as University of Connecticut Law Professor Richard Kay noted in the lead-up to the referendum, that "[t]he ‘ins’ don’t want a constitutional convention because they’re in."\textsuperscript{188} In Illinois, Democratic officials were also invariably opposed to a referendum, although in this case, they were joined in opposition by a number of Republicans.\textsuperscript{189}

Dominant-party legislators are not the only individuals who stand to lose in the event a convention is called and the minority party is given a chance to gain access to the political agenda and re-open heretofore settled issues. Interest groups allied with the dominant party have a similar incentive to prevent such conventions,\textsuperscript{190} and they contributed to the defeat of several convention referendums from 2000–2008. Private and public-employee unions are among the chief allies of the Democratic Party, and it is no surprise that unions played a major role in campaigning against convention referendums wherever Democrats controlled the state legislature.\textsuperscript{191} Union opposition was especially evident in Rhode Island in 2004\textsuperscript{192} and in Connecticut,\textsuperscript{193} Hawaii,\textsuperscript{194} and Illinois\textsuperscript{195} in 2008. Teachers unions spent particularly heavily to defeat some of these referendums, especially in Hawaii, where the National Education Association Ballot Measure Fund alone contributed $350,000 to the opposition campaign in that state.\textsuperscript{196} Trial lawyers are also closely allied with the Democratic Party in most states and

\begin{itemize}
\item \textsuperscript{187} Hawaii Democrats May Boost Obama, supra n. 145. For the official stance of the Democratic Party in Hawaii, see DePledge, supra n. 139.
\item \textsuperscript{188} Dixon, supra n. 121.
\item \textsuperscript{189} Brown, supra n. 153 (noting that “Not only do the state’s leading Democratic officials say you should vote ‘no,’ but so do the state’s leading Republicans”). Brown argued: “Simply put, these are the powers that be. They’re comfortable with the way things are. They’ve got their share of the power and the ability to exert their will on the process. Everything doesn’t always go their way, but they have a seat at the table, and with that comes a certain level of predictability about what influence they can have on public policy.” \textit{Id.}
\item \textsuperscript{190} On the general expectation of opposition from “[p]articular interests with established legislative relationships,” see Benjamin, \textit{Mandatory Referendum}, supra n. 13, at 1050.
\item \textsuperscript{191} For the critical role played by unions in opposing a prior convention referendum in New York in 1997, see \textit{id.} at 1040.
\item \textsuperscript{192} In the aftermath of the referendum vote, Edward Achorn, the deputy editorial-pages editor of the state’s leading newspaper, \textit{The Providence Journal}, took note of the significant financial contributions from unions to the opposition campaign and argued, “They already control the General Assembly, and thus hold a near monopoly on political power at the state level. Controlling a majority of 75 newly elected convention delegates would have been expensive or impossible. And those citizens might have stirred up trouble for the public-employee unions . . . .” Achorn, supra n. 103.
\item \textsuperscript{193} See Dixon, supra n. 121.
\item \textsuperscript{194} See Trask, supra n. 36, at 319.
\item \textsuperscript{195} For an argument that in Illinois, unions, among other groups, were worried that “people from outside the normal channels” would be “allowed an opportunity to tinker with the state Constitution” and “it might upset that balance of power and put them at a disadvantage,” see Brown, supra n. 153.
\item \textsuperscript{196} Niesse, \textit{Constitutional Redo}, supra n. 144.
\end{itemize}
were active in opposing some of these referendums out of a concern that a
convention could provide an opening for Republicans and their allied
groups to engage with tort reform or other issues that had been settled or
submerged by the dominant party.197

Opposition also stemmed from a different quarter: from groups whose
policy interests were protected not so much by the dominant party through
the legislative process but rather by entrenched constitutional provisions
that worked in their favor. These latter groups—and there is some overlap
in that several groups are advantaged both by their alliance with the domi-
nant legislative party and by favorable constitutional provisions—work to
defeat referendums out of a fear that a convention will eliminate or other-
wise alter these existing constitutional protections.198

Public-employee unions are the leading example of a group that occa-
sionally opposed referendums because the resulting conventions might
threaten Democratic and allied-group control of the political agenda and
might also erode existing constitutional protections for collective bargain-
ning rights and pensions. It was in part a concern with protecting the collec-
tive-bargaining rights provision in the Hawaii Constitution that led public-
employee unions to campaign heavily against a convention referendum in
Hawaii in 2008.199 A concern with preserving an existing pension and re-
tirement rights provision in the Illinois Constitution played a role in driving
public-employee union opposition in Illinois in 2008.200

Various other groups also opposed convention referendums out of a
concern with preserving existing constitutional provisions. In Hawaii in
2008, Native Hawaiian groups sought to prevent any erosion in a constitu-
tional provision that establishes the Office of Hawaiian Affairs and contains
important guarantees of their interests.201 In Rhode Island in 2004 and
Connecticut in 2008, state chapters of the ACLU opposed convention refer-
endums out of a concern that existing bills-of-rights provisions, whether
regarding free speech or search and seizure or various other civil liberties,
might be altered in a resulting convention.202 And in Illinois in 2008, the
state chapter of the NRA joined the opposition campaign, presumably out

197. On the opposition of trial lawyers in Illinois, see Colindres, supra n. 157.
198. This logic is detailed and examples from the New York referendum in 1997 are supplied in
Benjamin, Mandatory Referendum, supra n. 13, at 1039. See also Benjamin & Gais, supra n. 10, at 70;
Sturm, supra n. 80, at 64.
199. Niesse, Constitutional Redo, supra n. 144.
200. This opposition argument was noted in Behrend, supra n. 154.
201. See the comments of Office of Hawaiian Affairs Chairwoman Haunani Apoliona, as reported in
Niesse, Hawaii Considers Constitutional Change, supra n. 148.
202. ACLU opposition and financial contributions to the opposition campaign in Rhode Island are
reported in Anderson, supra n. 102. ACLU opposition in Connecticut is reported in Dixon, supra n.
121.
of a desire to preserve a right-to-bear-arms guarantee that had been added to the Illinois Constitution in 1970 and could have been put at risk in a resulting convention.203

IV. PATHWAYS TO APPROVAL

Although in one respect the defeat of all eight mandatory convention referendums from 2000–2008 illustrates the continuing obstacles to their passage, it is noteworthy that several came very close to passage or led in the polls until late in the day. The New Hampshire referendum in 2002 came closest to passing, losing by a narrow margin of 50.9% to 49.1%.204 The Rhode Island referendum in 2004 was also quite close, failing by a margin of 52% to 48%.205 Meanwhile, the Connecticut referendum in 2008 was passing by an 11-point margin in an independent poll taken a week before the election,206 before it was defeated by a wide margin of 59.4% to 40.6%.207 In each of these instances, the mandatory convention referendums stood some chance of passing.

In another three instances—in Iowa in 2000, Missouri in 2002, and Illinois in 2008—convention referendums failed by wide margins but secured more public support than the last time a referendum was submitted in each of those states. (The referendum had 33.3% support in Iowa as compared with 27% support for the prior referendum in that state, 34.5% support in Missouri as compared with 30.5% support for the prior referendum, and 32.7% support in Illinois as compared with 25% support in the previous referendum208). Only in Alaska in 2000 and Hawaii in 2008 were support levels either virtually unchanged or lower than the last time the measure was put to a vote in each state.209

206. Hladky, supra n. 112.
208. On Iowa, see the data for 1990 and 2000 in Benjamin, Mandatory Referendum, supra n. 13, at 1044. On Missouri, see the data for 2002, as reported in Missouri Secretary of State, Official Election Results, State of Missouri General Election—11/5/2002, supra n. 76, and the data for 1982, as reported in Benjamin, Mandatory Referendum, supra n. 13, at 1044. On Illinois, see the data for 2008, as reported in Illinois County Vote Totals on Con-Con Referendum (2008), supra n. 165, and the data for 1988, as reported in Benjamin, Mandatory Referendum, supra n. 13, at 1044.
209. In Alaska, the 2002 support level of 28.4% was much lower than the 1992 support level of 37.3%. See data reported in State of Alaska, Division of Elections, Advisory Votes, Propositions and Other Questions on Alaska’s Ballots, supra n. 68. In Hawaii, the 2008 support level of 33.5% was virtually unchanged from the 34% support level in 1998. The 2008 data is reported in State of Hawaii, Office of Elections, General Election—State of Hawaii—Statewide, November 4, 2008, Summary Report, supra n. 149, at 3. The 1998 data is reported in State of Hawaii, Office of Elections, General Election—State of Hawaii—Statewide, November 3, 1998, Summary Report, supra n. 138, at 5.
The solid showing of several 2000–2008 referendums—most notably in New Hampshire and Rhode Island and to some extent Connecticut—makes it possible to advance several general conclusions about the conditions and strategies associated with overcoming the obstacles to their passage. The first challenge facing convention supporters, as we have seen, is confronting citizen indifference to state constitutional reform, and several lessons emerge about ways that this has been done and might be done in future campaigns. The second challenge, as we have also seen, is overcoming the strenuous opposition of in-power parties and groups as well as constitutionally favored groups. Here, as well, several lessons about how this might be achieved emerge from the recent referendum campaigns.

A. Overcoming Citizen Indifference

If a chief obstacle to passage of mandatory convention referendums is citizen indifference that is grounded in a lack of knowledge about state constitutional issues and an inability to make a connection between constitutional reform and issues of governance, then a principal challenge for referendum supporters is to boost citizen knowledge about, and connection with, state constitutional issues. This challenge can be met, and was met to some extent in several 2000–2008 referendums, primarily by ensuring that the convention referendum has high visibility well before election day.210

A preparatory commission can go a long way toward increasing the visibility of a convention referendum,211 as in Rhode Island in 2004. Rhode Island is the only mandatory convention referendum state whose constitution requires the legislature to appoint a non-partisan preparatory commission prior to the referendum.212 The history of voter behavior in Rhode Island reveals a close correlation between the work of preparatory commissions and the success rate of ensuing convention referendums. In 1984, the preparatory commission recommended approval of the referendum, and voters gave their approval and a convention was called.213 In 1994, the Legislature was so late in appointing the preparatory commission that it never even met; that year’s referendum obtained the support of only 40.6% of voters.214 In 2004, the Legislature appointed a commission in a timely fashion and commission members released a comprehensive report; however, the commission report made no recommendation on whether voters

210. Infra nn. 211–228.
211. On the importance of a preparatory commission and its influence in New York in 1997, see Benjamin, Mandatory Referendum, supra n. 13, at 1027–1029.
212. Benjamin, The Agenda of State Constitutional Reform, supra n. 2 at 193.
213. Anderson, supra n. 102.
214. Id.
should or should not approve a convention call. Despite the lack of a
recommendation, the commission report received ample news coverage and
had the effect of boosting citizen knowledge about the issues that might be
considered at a convention. It is noteworthy that the Rhode Island con-
vention referendum came within several percentage points of passing in
2004, securing 48% of the vote. In short, creation of an official prepara-
tory commission—and even in the absence of a constitutional requirement,
state officials are fully capable of establishing them and have done so in
anticipation of prior referendums—can play a key role in drawing citizen
attention and increasing support for such referendums.

Governors and gubernatorial candidates can also play an important
role in boosting the visibility of and dispelling citizen uncertainty about
mandatory convention referendums. Governors have long been understood
to play a critical role in building support for constitutional reforms, whether
such reforms take place through the amendment process or in revision con-
ventions, in part because they “are uniquely situated to mobilize people
and resources for state-wide, good government reform efforts.” On con-
stitutional issues in particular, “[g]ubernatorial support is critical . . . be-
because the governor is the statewide official who is most capable of com-
manding public attention on constitutional issues and persuading an other-
wise indifferent electorate to support reform.” This has the effect of not
only giving voters more familiarity with the convention referendum but also
removing some of their uncertainty about approving what can otherwise
seem—and is often portrayed by critics as—a radical measure.

Endorsements from and active involvement of governors or gubernato-
rial candidates in referendum campaigns contributed to the strong showings
of referendums in New Hampshire in 2002 and Rhode Island in 2004 and
played some role in boosting the 2008 Connecticut referendum to a late
lead in the polls. It is significant that the referendum that came closest to
passing was in New Hampshire in 2002, where both gubernatorial candi-
dates in an open-seat race (Republican Craig Benson and Democrat Mark
Fernald) supported a convention call, albeit for different reasons. In
Rhode Island in 2004, Republican Governor Carcieri lobbied heavily for the

215. Id.
216. Id.
218. Benjamin, Mandatory Referendum, supra n. 13, at 1025.
220. Benjamin, Mandatory Referendum, supra n. 13, at 1050.
221. Dinan, supra n. 168, at 519.
222. Fernald, Benson Support Constitutional Convention, supra n. 83.
referendum, and it came close to passing.\textsuperscript{223} And in Connecticut in 2008, Republican Governor Rell expressed her support for a referendum when responding to a question at a September press conference.\textsuperscript{224} Admittedly, gubernatorial support is not a sufficient condition for a strong referendum showing, given that Hawaii’s Republican Governor Lingle endorsed a 2008 referendum that barely secured one-third of voter support.\textsuperscript{225} But such support played a key role in several states.

There are other ways of overcoming citizen indifference besides establishing an official preparatory commission and securing the active participation of the governor or gubernatorial candidates, and some of these were evident in 2000–2008 even if they were not determinative in these particular instances. A well-organized and well-funded campaign by referendum supporters can generate voter interest, especially when supporters take the opportunity to prepare for the referendum vote well in advance of the election.\textsuperscript{226} However, none of the supportive campaigns during this period was able to secure much in the way of financial backing, and some were not even able to organize a campaign at all.\textsuperscript{227} Short of a well-organized and well-funded campaign, there is also the possibility of relying on public forums sponsored by the League of Women Voters or similar groups. Such forums were arranged in Illinois in 2008 and generated some media coverage, but forums of this sort generally do not attract the interest of citizens who are not already politically attuned.\textsuperscript{228} Finally, controversy can occasionally generate media coverage and voter interest, as occurred in the later stages of the Illinois referendum when a lawsuit and series of state court decisions regarding misleading referendum ballot language attracted some

\textsuperscript{223}. Anderson, supra n. 102.
\textsuperscript{224}. Dixon, supra n. 121.
\textsuperscript{225}. DePledge, supra n. 139.
\textsuperscript{226}. As Gerald Benjamin has noted, “[T]he predictability of the time of the question’s appearance on the ballot does offer an opportunity to commission studies and hold conferences and take other steps that can attract voter interest in the years and months leading up to the referendum.” Benjamin, \textit{Mandatory Referendum}, supra n. 13, at 1024.
\textsuperscript{227}. Organized supportive campaigns were present in Connecticut in 2008 in the form of the Connecticut Constitution Convention Campaign that raised $15,000. Hladky, supra n. 112. Campaigns were present in Hawaii, in 2008, in the form of It’s Time Hawaii. Niesse, \textit{Constitutional Redo}, supra n. 144. They were present in Illinois, in 2008, in the form of the Illinois Citizens’ Coalition. Behrend, supra n. 154. Meanwhile, although Rhode Island did not feature a single coordinated campaign as was found in these other states, several groups did spend minor amounts of money in support of the referendum. See Liz Anderson, \textit{Election Spending Reports Probed}, The Providence J. (R.I.) B1 (Nov. 18, 2004) (available at Lexis, News Library, PRVJNL).
coverage. However, there is no indication that this increased media coverage had any effect on mitigating what turned out to be a sizeable defeat.

B. Overcoming Opposition Groups

Referendum supporters have employed various strategies for overcoming opposition from particular interest groups. It is, of course, important to have organization, money, favorable media coverage, and high-profile endorsements, among other standard elements in any successful political campaign. However, the lesson to emerge from 2000–2008 is that mandatory convention referendums have a particular dynamic. The key is to identify institutional reforms or issues that command popular support but are blocked in the political process or do not stand a chance of emerging from the constitutional amendment process. Given that in-power political parties and their allied groups, as well as constitutionally favored groups, have the incentive and means to mount substantial opposition to convention referendums, the challenge for supporters is to highlight salient issues that attract such broad-based public support that it becomes possible to overcome the opposition of particular interests. Additionally, supporters must be able to demonstrate that these issues are not only deserving of constitutional resolution but can only be realistically achieved through a convention rather than the ordinary amendment process. This can involve highlighting various ways that existing constitutional provisions limit the ability to govern the state effectively; it can also involve showing that new provisions would lead to more effective or responsive governance.

One type of issue that mandatory convention referendum supporters seized on to some effect in 2000–2008 concerns direct democratic reforms such as the initiative, referendum, and recall, and occasionally the related issue of legislative term limits. Direct democracy and term limits have polled well in previous mandatory referendum convention campaigns. And these issues featured particularly prominently in several of the recent campaigns in support of convention referendums. Such was the case in Rhode Island in 2004, where supporters touted the opportunity to enact the statutory initiative and referendum as well as term limits for the speaker of the state house. Connecticut Governor Rell made the initiative and referendum the centerpiece of her support for a 2008 convention referendum that

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230. On polling results in the mandatory convention referendum campaign in New York in 1997 see Benjamin, Mandatory Referendum, supra n. 13, at 1036.

231. On the initiative and referendum, see the comments of Marc Cote, as reported in Anderson, supra n. 102. On term limits for the house speaker, see Editorial—Vote Yes on Question 2, supra n. 97.
led in late polling.232 In fact, 65% of respondents to this poll supported adopting the initiative procedure.233 Meanwhile, in campaigning on behalf of an unsuccessful Hawaii referendum in 2008, state Attorney General Max Bennett touted the benefits of direct democracy and term limits and argued that these reforms could best be enacted through a constitutional convention.234 Similarly, in Illinois in 2008, in supporting a referendum that also went down to defeat by a large margin, Lieutenant Governor Quinn argued that a convention was the only viable route to adopting the popular recall, along with the statutory initiative and referendum (Illinois already has a constitutional initiative process, but it can only be employed for limited purposes).235

The attractiveness of direct democracy and term limits as galvanizing issues for mandatory convention referendum campaigns stems in part from their general popularity and in part also from the difficulty of securing their enactment through the regular constitutional amendment process. A potent argument deployed by opponents of mandatory convention referendums has been that there is no need to call a constitutional convention when necessary changes can simply be enacted through the ordinary amendment process.236 In this context, the benefit of invoking direct democracy and legislative term limits is that convention supporters can plausibly argue that legislators are unlikely to approve amendments enacting these reforms, save for highly unusual circumstances, given that these reforms are intended to limit legislators' powers or electoral prospects. To be sure, mandatory convention referendum states that have a constitutional initiative procedure—Michigan, Missouri, Montana, Ohio, Oklahoma and Illinois (whose constitutional initiative is limited in scope)—have another route for adopting legislature-constraining reforms, short of the mandatory convention referendum.237 However, in the remaining states—Alaska, Connecticut, Hawaii, Iowa, Maryland, New Hampshire, New York, and Rhode Island—the mandatory convention referendum is the only viable path to securing these sorts of institutional reforms.238

A second issue that mandatory convention referendum supporters relied on to occasional effect in 2000–2008 concerns recent state supreme court rulings that removed certain policy issues from the political process. State supreme courts have taken an increasingly active role in recent de-

232. Dixon, supra n. 121.
233. Hladky, supra n. 112.
234. DePledge, supra n. 139.
236. See e.g. the argument advanced in Blumenthal, supra n. 120.
237. For a discussion of this point, see Benjamin, The Mandatory Constitutional Convention Question Referendum, supra n. 13, at 1021.
238. Id.
cades in issuing controversial decisions abolishing the death penalty, pro-
viding expansive protection for search-and-seizure rights among other civil
liberties, requiring more school funding and a more equitable distribution of
funds, and legalizing same-sex marriage and civil unions.239 On two occa-
supporters seized on recent state supreme court rulings on one of these mat-
ters as a warrant for calling a convention for the purpose of overturning the
ruling and returning the issue to the political process.

In New Hampshire in 2002, convention supporters objected to a string
of state Supreme Court decisions, including one issued earlier that year,
requiring the state to make significant changes in funding K-12 schools.240
Convention supporters, including the ultimately victorious Republican gu-
bernatorial candidate, Craig Benson, argued that these rulings improperly
limited legislative discretion on an issue that properly belonged in the legis-
lative domain. These critics of the Court’s school funding decisions argued
that a convention would provide a vehicle for counteracting the Court’s
decisions and restoring legislative authority over school funding.241 To be
sure, in this case, such a constitutional change could proceed through the
legislature; there was no institutional or interest-based reason why legisla-
tors would be opposed to recommending such an amendment. However,
convention supporters/court critics argued that the legislature had, for
whatever reason, not yet taken action and that convention delegates would
be able to respond to the Court’s decisions more effectively.242 A sign of
the importance of this particular issue to the debate about, and the strong
showing of, the 2002 New Hampshire convention referendum, was the
Union Leader’s election-day editorial, which focused entirely on the state
Supreme Court’s school-funding decisions as the basis for its endorsement
of the referendum.243

In Connecticut in 2008, convention supporters focused heavily on and
received a boost from the issuance of a state Supreme Court decision on
October 10, 2008 that legalized same-sex marriage.244 Prior to this deci-
sion245— which marked the third time that a state supreme court decision
legalized same-sex marriage, after Massachusetts in 2003 and California in

239. These decisions are discussed in Williams, supra n. 219, at 113–134.
240. The initial decision was Claremont Sch. Dist. v. Gov., 635 A.2d 1375 (N.H. 1993). The 2002
decision was Claremont Sch. Dist. v. Gov., 794 A.2d 744 (N.H. 2002).
241. See Fernald, Benson Support Constitutional Convention, supra n. 83; Van Loan, supra n. 89.
242. Van Loan, supra n. 89.
243. Editorial: Yes on Ballot Questions; Rein in Court, Fix Constitution, supra n. 81.
244. Hladky, supra n. 112.
May 2008—supporters of the Connecticut convention referendum primarily touted the opportunity to adopt direct democracy. However, in the immediate aftermath of the decision, some convention supporters turned in the final weeks of the campaign to emphasize the possibility that a convention could overturn the decision by amending the state constitution to prohibit same-sex marriage. Convention supporters argued that the legislature was not inclined to approve a court-constraining constitutional amendment, leaving the mandatory convention referendum the only possible avenue toward achieving this goal. As has been noted, several weeks after the ruling was handed down, an independent poll showed the referendum with an 11-point lead, although poll respondents were more supportive of a convention than a constitutional ban on same-sex marriage. The referendum went down to defeat the next week by nearly a 20-point margin.

V. Conclusion

My concern in this article has been to draw attention to the importance of the mandatory convention referendum. This device is almost unique to the American state constitutional tradition and is currently a feature of 14 state constitutions. It is of particular interest in the contemporary era because it currently offers the most viable mechanism for undertaking a comprehensive review of the cumulative effect of piecemeal amendments that may have, over time, produced some inconsistent and unworkable outcomes.

It is important to be clear about the limits and possibilities of state constitutional reform that might be achieved through constitutional conventions. It should be emphasized that constitutional conventions, whether they result from legislative-initiated convention calls or mandatory referen-
dums, are incapable of resolving many of the problems that are currently seen as plaguing state governance, and it is important to be clear about this limited capacity. To the extent that current concerns stem from a mismatch between federal mandates and state fiscal capacity to carry out these mandates, for instance, or the inability of the two major parties to agree on spending levels and priorities or taxation levels and distribution, state constitutional reform is unlikely to generate solutions. However, insofar as current concerns about state governance stem from constitutional provisions that unduly limit state legislative discretion or require certain types and levels of spending, but then limit the ability to raise revenue to carry out these requirements, then it is possible that state constitutional reform can address these problems.\footnote{See Peter Galie, Presentation, Recent Experiences in Other States and Nations (Oct. 14, 2009) (available at http://igs.berkeley.edu/events/reform2010_files/galie.pdf). This presentation, which was part of a panel on “Recent Experiences in Other States and Nations,” was part of an overall conference entitled “Getting to Reform: Avenues to Constitutional Change in California.” See http://igs.berkeley.edu/events/reform2010.html (accessed May 9, 2010).}

To the extent that the cumulative effect of piecemeal amendments creates problems of the latter type, whether regarding fiscal policy or other issues, then conventions can offer a beneficial way of addressing them, and it becomes important to analyze the political dynamics of the mandatory convention referendum device that offers the most viable way of calling such conventions. The referendums held between 2000 and 2008 offer lessons about the continuing obstacles to their passage but also point the way to strategies that might lead to their approval. The chief obstacles are citizen indifference to state constitutional reform and strenuous opposition to conventions on the part of in-power parties and in-power and constitutionally favored groups. Although convention supporters were unable in any of these instances to surmount these obstacles, several came close to doing so, primarily by boosting the referendums’ visibility as a result of preparatory commissions or gubernatorial endorsements and by highlighting salient issues that enjoyed broad popular backing but had little chance of emerging through the ordinary amendment process. Such an analysis might not only contribute to our knowledge of the distinctive patterns that characterize mandatory convention referendum campaigns but might also be of use to individuals seeking to secure approval of such referendums in upcoming years, including in the four states where they will be considered in 2010 and another three states in 2012.