

# INSIDE MICHIGAN POLITICS

Inside: Michigan's Bloated Constitution  
Votes on Michigan's Last Con-Con  
They Said It

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## DOES MICHIGAN NEED A NEW CONSTITUTION?

What happens if, later this year, the Capitol Gang in Lansing once again mangles the job of enacting a budget and restructuring government spending?

How about another state Constitutional Convention to put everything right?

It could happen — the instrument to accomplish the task is ready and waiting. It requires no action by the Legislature. Nobody will have to collect petition signatures. "Proposal 10-1" (that's what it will be called) is already on next year's general election ballot by decree of our present state Constitution, which mandates that the question of whether to call a new Con-Con must be put to the state's voters every 16 years.

If voters approve such a conclave, what would be the major issues? Almost certainly:

- *Education (Higher & K-12) Funding and Equity*
- *Changing the K-12 school foundation allowance floor from what it was in 1994 (because of voter approval of Proposal A) to a constantly rolling most recent "previous year"*
- *Reapportionment: How to Do It*
- *Direct gubernatorial appointment of all executive branch department directors (eliminating commission appointments of directors of Agriculture, DNR, Education, Civil Rights, and Civil Service)*
- *Whether the judiciary should be elected or appointed, and for terms of what length*
- *Changing the size and composition of the judiciary, from the Supreme Court on down*
- *Autonomy of higher education, perhaps under the jurisdiction of a single board, eliminating the elective and appointed status of current university panels*
- *Continued prohibition and/or limitations on public support of private education*
- *Abortion rights*
- *State Officers Compensation Commission: should it exist, and if not how to provide pay and benefits for public officials*
- *Term Limits/Unicameralism/Part-time Legislature*
- *Prohibition on Death Penalty*
- *Prohibition against Public Employee Strikes*
- *Graduated Income Tax/6% Cap on Sales Tax*
- *Headlee Tax Limit & prohibition on new state mandates without state funding*
- *Elimination of recall provisions for public officials for reasons other than criminal conduct*
- *Requiring simple majority voting, rather than 2/3 majorities, in the House and Senate on legislation*

*relating to appropriations for local or private purposes or to banking and trust companies.*

■ *Allowing the governor to fill a vacancy in the office of lieutenant governor (there's no way to fill such an opening now), perhaps with advice and consent from the Legislature*

■ *Eliminating restrictions on local taxation, particularly for local transportation purposes*

■ *Election reforms, possibly including a requirement that laws are in place mandating 'no reason' absentee voting and proscribing election petition fraud*

■ *Transforming the initiative petition from being indirect (going to the Legislature first before the voters) to direct (going straight to a statewide public vote)*

■ *Slashing the size of the state Senate and House of Representatives*

■ *Pondering the methodology of nominating candidates for Lt. Governor, Attorney General, and Secretary of State, perhaps in statewide primaries rather than at political party conventions*

The only times the question of calling a Con-Con has been on the ballot in recent history (in 1978 and 1994), it lost by margins of roughly 3-1. Voter approval next year probably depends on whether one or more powerful interest groups and/or politicians push the idea, preferably with a lot of cash and without organized opposition.

If voters ratify next year's Proposal 10-1, election of Con-Con delegates must be held on May 3, 2011 (preceded by a primary on Feb. 22). Both primary and general elections would be partisan (one delegate from each state House district, one delegate from each Senate district). Other things to think about:

● The delegates would convene in Lansing on Oct. 4, 2011 (unless the Legislature moves up the date), and would **1)** Choose their own officers; **2)** Adopt rules; and **3)** Judge qualifications and election of their members. Vacancies would be filled by the governor — any delegate s/he might choose must be of the same party as a delegate vacating office (but there's no stipulation as to ideology).

● The cost of holding a Constitutional Convention is estimated to be at least \$45 million — some \$20 million to hold special primary and general elections, as much as \$25 million for delegate compensation and convention expenses.

● If defeated in '10, a Con-Con question will automatically reappear on the statewide ballot in the year 2026. If nothing is approved then, 2042 is next up, followed by 2058 and so on.

A brief constitutional history of Michigan:

## MICHIGAN'S BLOATED CONSTITUTION

● When it was first approved by Michigan voters back in 1963, the state's current Constitution contained 19,203 words. Since then, voters have added 31 amendments to the document, padding it out to its current total of 30,350 words — a growth of 58%.

● One word in nine, or about 11%, of the Michigan Constitution deals with trust funds even though they account for only .0005 of total state spending.

● The U.S. Constitution, nearly five times older than Michigan's, has been amended only 17 times other than the original 10 amendments (the Bill of Rights), supplementing the document's lineage by just a fraction of the Michigan Constitution's increase.

● In 1963, the U.S. Supreme Court had not yet ruled on such issues as 'one-man, one vote,' voting restrictions based on property ownership; the rights of a criminal defendant to receive publicly-funded defense counsel; or rights of minority students to be bused to schools based on racial composition. When these earth-shattering rulings came down, a number of sections in the brand-new Constitution immediately were null and void since they violated the newly-imposed federal constitutional standards.

● A "clean-up" resolution, aimed at purging Michigan's current charter of inoperative and/or unconstitutional provisions, cleared the state Senate last year but died in the House. If it had won 2/3 majorities in both chambers, it could have gone on the general election ballot last November for approval by the state's voters.

■ *The people of Michigan have adopted four constitutions — in 1835, 1850, 1908 and 1963. By contrast, there's been only one U.S. Constitution during the past 222 years.*

■ *Under pressure to show the feds they had their act together and really wanted to become a state, Michigan voters approved the 1835 Constitution, on Oct. 5-6 of that year, by a vote of 6,299 Yes, 1,359 No. Fifteen months later, on Jan. 26, 1837, Michigan was admitted into the Union as the 26th state after accepting the Upper Peninsula in return for the loss of the Toledo strip to Ohio.*

■ *On March 12, 1849, the state Legislature placed the issue of calling a second Con-Con on the statewide ballot. It passed. 100 delegates were elected to the conclave on May 6, 1850, which met in Lansing between June 3 and August 15. The resulting document was twice as long as the 1835 Constitution, and full of legislative detail. Supreme Court justices and five state administrative officers became elected positions, creating an infamous "long ballot" that lasted into the 20th century. The 1850 constitution was adopted by voters on Nov. 5 of that year by a vote of 36,169 Yes to 9,433 No.*

■ *In 1867 and again in 1873, voters twice rejected new constitutions (the latter drawn up by a governor-appointed commission and amended by the Legislature). There were five more questions on the*

*ballot on whether to call Con-Cons in 1882, 1890, 1892, 1898 and 1904. All but the first two received majorities of those voting on that particular question, yet none passed because none got a majority of those voting in the overall election.*

■ *In April 1906, a majority of those voting on the question (60.7%) and on that day overall approved calling still one more Con-Con. In 1907, 96 delegates were elected to convene — three from each Senate district. They met at the state Capitol in Lansing between Oct. 22, 1907, and March 3, 1908. On the agenda: the issues of municipal home rule, initiative and referendum, line item veto, and women and child labor restrictions. Still, the 1908 proposed Constitution retained most of the features of the 1850 document then in place. The new charter was adopted by the voters on Nov. 3, 1908, by a vote of 244,705 Yes and 130,783 No.*

What's happened since? Between 1908 and 1963, the 1908 Constitution was amended a whopping 69 times (57 proposed amendments were rejected). By contrast, between 1787 and this year, the U.S. Constitution has been amended only 27 times.

Four more questions on calling a Constitutional Convention appeared on statewide ballots between 1908 and 1960 — in 1926, 1942, 1948, and 1958. None got the needed majority of those voting in those elections, although the last two received a majority of those voting on the question.

The year 1960 was a watershed — and not just because that was when **JFK** beat **Richard Nixon** for the presidency. Even then, roughly half of Michigan's population resided in Southeast Michigan, as is still the case today. Hard to believe, but Michigan was the fourth-fastest-growing state in the nation. Sadly, however, the relationship between the executive (**Soapy Williams**) and state lawmakers was so gelid it made the 2007 session look like hot grease on a Hibachi. The Legislature was plainly malapportioned — Senate districts had remained unchanged since 1925. The largest district was in Detroit (528,334 people), the smallest was four counties in the western U.P. with 72,350. Payless paydays for state employees in 1959 due to governmental gridlock drew national headlines. There was no individual or corporate income tax. The state Constitution remained essentially an 1850 document.

In 1960, an initiative petition drive led by **George Romney's** Citizens for Michigan, Jaycees, and the League of Women Voters led to a so-called "gateway amendment" on the statewide ballot, requiring only a majority voting on the question itself for approval. Adopted by a vote of nearly 3-2, it proposed holding an election on April 3, 1961, on whether to call a new convention. The subsequent vote was a cliffhanger — 596,433 Yes to 573,012 No. Indeed, the 1961 question passed in only four counties — Wayne, Washtenaw, Oakland and Macomb, while losing in the other 79 counties.

Delegate selection in the '61 primary and general elections yielded a partisan make-up of 99 Republicans and 45 Democrats. By way of comparison, partisan balance in the 1961-62 state Legislature, meeting concomitantly, was 56-54 R/D in the House, 22-12 R/D in the Senate (78-66 R/D overall). Reflecting the hostility toward Con-

Con by Capitol politicians, the conclave's preparatory commission, appointed by then-Gov. **John Swainson**, had to be funded by a Kellogg Foundation grant after the Legislature refused to appropriate any money for it.

Clearly, though, the 1961-62 ConCon produced a new generation of leadership: Romney, who became governor; Secretary of State **Richard Austin**; three Congressmen; five state senators; 14 state representatives; and two appellate judges.

Key issues at the 1961-62 Con-Con were resolved in these ways:

- Guarantee of equal protection under the law in the Declaration of Rights, and a prohibition against discrimination on the basis of religion, race, color and national origin.

- Constitutional authority for the Civil Rights Commission to investigate alleged discrimination.

- Continued prohibition of the death penalty.

- A unified court of justice, including a new Court of Appeals.

- A requirement that the number of administrative departments, bureaus, commissions, etc., be incorporated into no more than 20 principal departments.

- Prohibition of a graduated income tax (the 1908 Constitution did not mention an income tax at all). Inclusion of language prohibiting a graduated tax had the implied effect of making a flat rate income tax legal if the Legislature chose to enact one.

- Requirement of an annual executive budget.

- State responsibility for public community and junior colleges.

- Permission for juries of 12 in civil cases to return a verdict when 10 out of a dozen jurors agree

- Creation of a partisan apportionment commission to decide legislative district boundaries (declared unconstitutional by the state Supreme Court in 1982).

- Joint election of Governor and Lieutenant Governor for four-year terms, and conversion of a number of other state administrative officers that had been elected to appointed status.

- Grant of power to the Lt. Gov. to cast the deciding vote in the Senate in the case of a tie (later used by Republicans to organize the state Senate in 1971-74).

- Authority for local civil service systems and greater flexibility for local units of government.

- Long-term borrowing by the state for specific purposes, subject to a 2/3 vote in each house of the Legislature and vote of the people (1968 water pollution bond proposal a good example).

- Requirement that property be assessed at no more than 50% of true cash value, equalized.

Despite all the changes, it was basically a Republican document. The vast majority of Democrats, whether delegates or affiliated with key interest groups, fought the proposed new charter on the grounds that they **1)** Didn't like its redistricting provisions (the Dem critics proved to be right); **2)** Didn't like the elimination of elections to choose state officers like the Treasurer, Supt. of Public Instruction, and Highway Commissioner (they were probably wrong, but you couldn't fault their opposition since all these officials at that time were Democrats); and/or **3)** Were distrustful of Republican Romney's gubernatorial ambitions (they had reason to be).

## VOTES LEADING UP TO ADOPTION OF MICHIGAN'S CURRENT CONSTITUTION

	Yes	No
<b>1958*</b>	821,282 (57.5%)	608,365 (42.5%)
<b>1960**</b>	1,312,215 (57.8%)	959,527 (42.2%)
<b>1961***</b>	596,433 (51.0%)	573,012 (49.0%)
<b>1963****</b>	810,860 (50.2%)	803,436 (49.8%)
<b>1978*****</b>	640,286 (23.3%)	2,112,549 (76.7%)
<b>1994*****</b>	777,779 (27.9%)	2,008,070 (72.1%)

\* General Election tally on whether to hold a Con-Con to revise 1908 Constitution. While "Yes" votes got a plurality, they didn't constitute a majority of the votes cast in that election (2,341,829 total), which the '08 constitution required for a new Con-Con to be held.

\*\* General election vote on whether to amend the 1908 constitution to allow a simple majority of those voting on the specific question of whether to call a Con-Con; if "Yes," another election would have to be held to call one.

\*\*\* Spring Election (4/3/61) vote on whether to call a Con-Con. Later that same year (7/25/61), delegates were elected from state legislative districts throughout the state.

\*\*\*\* New Constitution wins razor-thin victory in Spring Election. George Romney, who had been a vice president of Con-Con, had taken office as Governor just three months earlier. Both chambers of the Legislature were controlled by Republicans.

\*\*\*\*\* Automatic vote in the General Election which must be held every 16 years to determine whether citizenry wants to convene another Con-Con. This time, they didn't.

\*\*\*\*\* They didn't this time, either. Will they in 2010?

The delegate vote on final passage of the present Constitution was 98 Yes (93-5 R/D) to 43 No (3-40 R/D). In the spring of 1963, voters narrowly approved the new document, 810,860 Yes, 803,436 No — in fact, it had to withstand a statewide recount. Since its adoption, the charter has been amended 31 times; 39 proposed amendments have been rejected.

Michigan Con-Cons are unlimited in scope — they can propose a completely new Constitution or offer specific amendments to the present charter. Any proposed Constitution or amendment approved by a majority of the delegates (elected and serving) must be submitted to the voters not less than 90 days following adjournment of the convention at a time set by the conclave. Most of Michigan's Con-Cons have lasted about three months, although the 1961-62 session stretched out more than half a year.

In late 2006, a new, reconstituted "Citizens for Michigan" panel recommended that our current Constitution needed a drastic overhaul, and that voters should vote "Yes" in 2010 to hold a new Con-Con.

This newest CfM was an *ad hoc* non-profit, bi-partisan honor roll of big names in state government over the past four decades, including former Attorney General **Frank Kelley**; Oakland Co. Executive **L. Brooks Patterson**; ex-state House Speaker **Paul Hillegonds**; **John J.H. (Joe) Schwarz** (R-Battle Creek), a former Congressman and state senator; ex-Congressman **Paul**

**Todd** (D-Kalamazoo); attorney **Patricia Boyle**, a former judge at the local, state and federal levels; a couple of legal advisers to former governors of both parties; **Robert H. Naftaly**, a former director of the state Dept. of Management & Budget, chief financial officer for Blue Cross/Blue Shield of Michigan, and chairman of the state Tax Commission; the late **John Woodford**, a longtime director of the Michigan Dept. of Transportation; and many others with similar credentials and reputations.

The CfM called for a new Con-Con to tackle many of the issues listed above but in particular cited concern over the growing phenomenon of amending the state Constitution by "ballot initiative." Three such initiatives (Proposals 1,2 and 4 in 2006 as well as Proposal 2 in 2008) have been approved by the state's voters in just the past two elections. CfM argued that language in the current Constitution "create(s) an opportunity for special interest groups to slip in complicated and not well-understood changes which may be quite radical in nature. Often these have led to lawsuits by those whose interests are challenged."

Moreover, said CfM, the increased ease with which well-financed groups from outside the state have hired circulators to place such propositions on the ballot creates a real danger that Michigan's voters will soon face a "California-style ballot with multiple Constitutional proposals."

Because Michigan is one of only 14 states which permit this type of broad constitutional amendment, and because we have the second-lowest threshold for signatures in the entire country, we're a target for those who wish to push "narrow, self-serving experiments," said CfM.

Accordingly, CfM recommended either a constitutional ban on changes proposed by petition or, if they are permitted, that no such proposal be placed on the ballot unless a substantially larger number of signatures be required. Even then, the panel recommended that the proposal not be allowed to be added to the Constitution unless it is ratified by the voters in *two* successive elections. CfM contended that such a crackdown on these ballot initiatives would be best handled in a Con-Con "rather than in a piecemeal or in a bedsheet ballot proposal."

Last year, Michigan Democratic Party Chairman **Mark Brewer** and organized labor mounted a petition drive to place a single question on the 11/4 general election ballot that, if approved by the state's voters, would have effected some three dozen changes — many of them major — to the Constitution. In effect, the "Reform Michigan Government Now" (RMGN) proposal concocted by Brewer & Co. was a 'dagwood sandwich on a toothpick' that voters would be asked to swallow whole.

But voters never got a chance to vote on it — the courts denied RMGN ballot access on the grounds that so many sweeping, multi-section changes to the state's basic document should not be accomplished via approval of a single question. A Con-Con, the jurists implied, was the only proper way to address such an overhaul.

Here are some key questions that need to be answered about the election and composition of any new Con-Con:

- Should delegates continue to be chosen in partisan elections?

- Should delegates still be chosen from both House and Senate districts?

- If elections are to be non-partisan, or the mode of apportionment changed, voter approval of a separate ballot question would be required next year, preferably before the 11/2/10 general election but, if not, on that date.

- To place such a question on the ballot would require 380,126 initiative signatures, or a resolution passing both chambers of the Legislature by a 2/3 majority.

## THEY SAID IT

■ "Huck is going to be the lightning rod that will stop the smoking ban." — **Ed Wendover**, chief of staff for freshman state Rep. **Mike Huckleberry** (D-Greenville), a 59-year-old restaurateur who says he doesn't support a government-imposed workplace smoking ban (Greenville Daily News, 1/15/09). Health care organizations pushed hard to get the 94th Michigan Legislature to prohibit smoking in bars and restaurants, but the effort foundered when the Senate and House passed different versions and couldn't agree on a compromise by year's end. Democrats in both chambers overwhelmingly approved a ban, with Republicans by and large opposed. Huckleberry, who allows smoking in part of his restaurant, was elected last Nov. 4 in the heretofore strongly Republican 70th House district, covering Montcalm Co. and part of neighboring Ionia.

■ "I don't know what a good Democrat is." — **Andy Dillon** (D-Redford), Speaker of the House of Representatives, in response to a question from moderator **Tim Skubick** ("As a good Democrat, shouldn't you be supporting a graduated income tax?") The exchange took place at an afternoon panel discussion staged by the Michigan Society of Association Executives at its annual Legislative Conference in the Lansing Center Jan. 27.

■ "If we keep going the way we've been going, I'd be willing to go to a part-time Legislature because it would be less disturbing to the people." — *Dillon again, responding to another Skubick query.*

■ "What we get from Washington (D.C.) now might help us in the next two years, but in the third year we'd fall off the cliff. The tough decisions have to be made this year, and (we should) not just depend on a (federal) stimulus package." — *Dillon again. It's doubtful, however, that, based on what we've seen in her first six years as governor, Jennifer Granholm shares the Speaker's sentiments — despite what we heard from her in last week's State of the State address.*

■ "Since you hung me out to dry on the graduated income tax, I don't think I should answer any more of your questions." — *Senate Minority Leader Mike Prusi (D-Ishpeming), in response to another Skubick inter-rogative, same date, same place. Like his three caucus leader counterparts (Dillon, Senate Majority leader Mike Bishop, and House Minority leader Kevin Elsenheimer), Prusi wouldn't commit to holding a vote to put a question on amending the state constitution to allow a graduated income tax on next year's statewide ballot. Such a question was overwhelmingly rejected by Michigan voters in 1968, '72 and '76. A two-thirds majority in each chamber would be necessary to put it on the ballot a fourth time.*