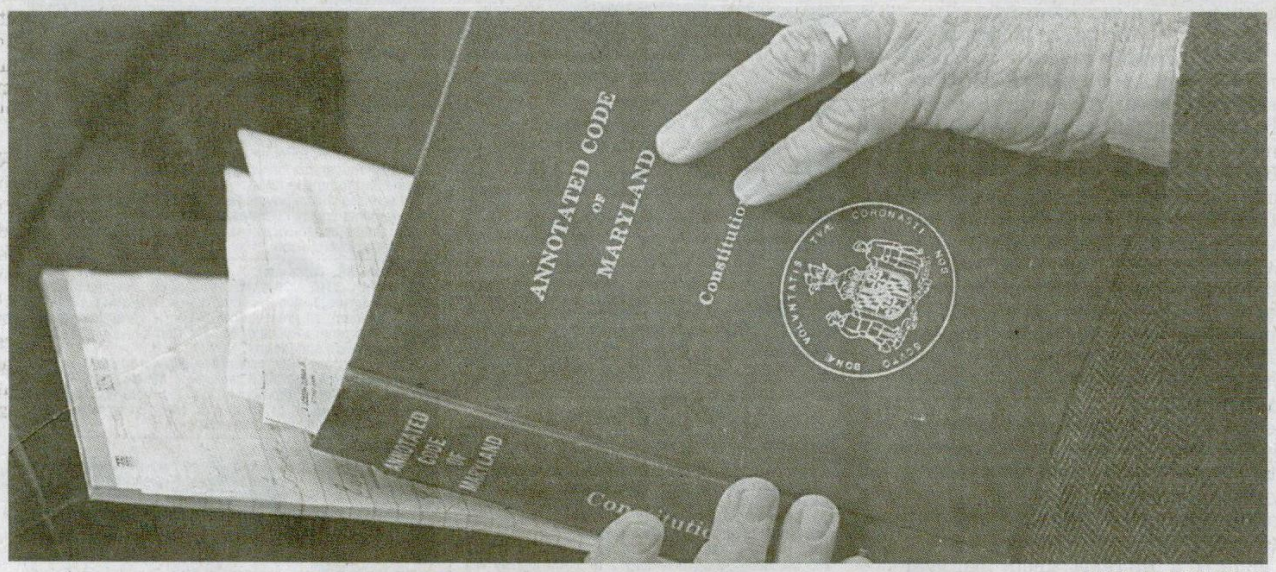
COMMENTARY



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Md.'s ballot surprise

Voters in November will have a rare opportunity to shape the state's constitution

By J.H. Snider

This November, Marylanders will have a once-in-a-generation chance to shake up the political process. Yet few know about it, and even fewer are talking about it.

Maryland's Constitution stipulates that, every 20 years, the General Assembly must place on the general election ballot a binding referendum asking voters whether they want to convene a constitutional convention. If it passes, it could be the most politically momentous event in Maryland during 2010.

Since the U.S. was founded, states have convened more than 230 constitutional conventions, five of them in Maryland. During the 20th century, Marylanders had six ballot opportunities to convene one. Three times supporters outnumbered opponents, but only once was a convention convened because Maryland's Constitution requires a majority, not a plurality, of voters. In 1950, for example, 200,439 voters supported a convention while only 56,998 opposed it, but the referendum failed to pass because 388,284 voters in the election left the ballot item blank.

The only convention referendum to win the necessary votes occurred in 1966. In 1964, the U.S. Supreme Court ruled that Maryland's legislative districting violated the U.S. Constitution's one-person, one-vote requirement. For example, many rural legislators had far fewer constituents than urban legislators. Maryland's governor, over the legislature's initial objections, strongly supported holding a convention. Convention delegates, elected in a special election, convened during 1967-68 and placed their proposal on the ballot for ratification in 1968. Opponents successfully focused public attention on the proposal's most controversial features, and it was defeated — although many of the proposed changes were subsequently adopted through constitutional amendments.

Constitutional conventions have been held for many reasons, including expanding white male suffrage (the early 19th century), expanding black suffrage (the late 19th century), expanding direct democracy (the early 20th century), and reapportioning legislative districts (the mid-20th century).

One common argument in their favor during the 20th century in Maryland was the current constitution's style, which is suitable for lawyers and lobbyists, not average citizens. Many Marylanders have read the U.S. Constitution, but few have read the Maryland Constitution, which at approximately 47,000 words is more than five times as long as the U.S. Constitution.

Another justification for a convention — one that I prefer — is that it is the preferred venue to propose democratic reforms where elected officials have a blatant conflict of interest with the public. Such issues include term limits, redistricting, campaign finance, ballot access and legislative transparency. When no conflict of interest exists, the constitutional amendment process, controlled by the legislature, is satisfactory.

The conflict-of-interest rationale for constitutional conventions goes back to the framers of the U.S. Constitution. As George Mason of Virginia explained the need, "It would be improper to require the consent of the National Legislature, because they may abuse their power and refuse their consent on that very account."

Another remedy for legislative conflicts of interest is the ballot initiative, by which citizens can put items on the ballot that incumbents oppose. But Maryland is not one of the 24 states that use ballot initiatives. In any case, a constitutional convention, if designed well, can be superior to a ballot initiative, partly because elected rather than self-appointed representatives craft the proposals and because the process is more transparent and deliberative.

In 2010, the best argument for a constitutional convention could be the redistricting triggered by the next decennial U.S. Census taken in April. Maryland's legislators will no doubt use redistricting to entrench themselves, creating partisan and pro-incumbent gerrymanders that disenfranchise moderates and suppress political competition. A convention could propose an independent body, such as a redistricting jury or bipartisan commission, to constrain gerrymanders.

Like any other democratic process, a constitutional convention is no panacea. Delegates would be elected in districts that mimic the size and district geography of Maryland's current General Assembly, and incumbents and special interests would be sure to influence the elections to favor their own interests. Nevertheless, no better vehicle is available for voters to break up Maryland's incumbent protection racket. And if voters don't like the convention's recommendations, they need not ratify them.

In 1967-8, the convention delegates were elected in a nonpartisan election, with candidates trying to distance themselves from the elected legislature's partisan, special interest and pro-incumbent politics. The nonpartisan election system should be retained, although enhanced with instant runoff voting.

Mobilizing the public on democratic reform issues is well known to be very difficult. Thus, compelling reasons, such as combating gerrymandering, must be found to capture the public's attention. Those who seek to create a more democratic political system in Maryland should now begin the process of educating the public about the issues at stake in this once-in-a-generation opportunity.

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