

Shall There Be A Constitutional Convention?

Presentation to Retired Public Employees Association

October 11, 2022

The Proposition

Art. XIII, sec. 1 of the Alaska Constitution provides in part:

“If during any ten-year period a constitutional convention has not been held, the lieutenant governor shall place on the ballot for the next general election the question: “Shall there be a Constitutional Convention?” . . .’

- Alaska is one of fourteen states that provide for the automatic placement of the question of a constitutional convention on a statewide ballot, without referral by the legislature.
- The last two states to convene a convention through this means were Hawaii in 1978 and Rhode Island in 1986.

Voters have rejected the proposition every decade since 1972

1972:	29,192 Yes to 55,389 No
1982:	63,816 Yes to 108,319 No
1992:	84,929 Yes to 142,735 No
2002:	60,217 Yes to 152,120 No
2012:	90,079 Yes to 179,567 No

There is a high likelihood that the 2022 outcome could be different

There are three primary factors that are likely to drive an affirmative vote on the issue:

- A general disaffection with governmental institutions and a now-increasingly embedded sense that the country is headed in the wrong direction
- Populous—and popular--constitutional proposals from Governor Dunleavy that have not garnered sufficient legislative support
- An organized campaign in favor of a constitutional convention

The Governor's proposals that promote the case for a constitutional convention

Introduction and promotion of constitutional amendments that have little support in the legislature—its failure to act as proof of its dysfunction and the need to resort to the constitutional convention

- * HJR 6, SJR 5, constitutional spending limit
- * HJR 7, SJR 6, permanent fund, PFD, & PCE constitutional amendment
- * HJR 8 or SJR 7, constitutional requirement to have a statewide vote on new taxes before they can be imposed



WHY NOW?

A constitutional convention is our once-a-decade opportunity to stop the **corruption** and decay of our state from continuing unabated. Look around at the state of our state, from the **never ending theft of our permanent fund dividend** to **judicial overreach**. Our legislature has proven itself not up to the task, so we the people must step in as our constitution allows and make things right.

FOR THEIR FUTURE

For decades our state has grappled with increasing corruption, and an increasingly ineffective legislature. As our children look to us to steward this great land for their future, the time to step in and fix Alaska's increasing problems is now.

Dominant Themes by advocates for a Convention

- Guarantee the PFD
- Modify the constitution to prohibit abortion (limit court jurisdiction, define “life” as beginning at conception, rewrite Art.I, Sec, 22 right to privacy)
- Change the judiciary (gubernatorial appointments subject to legislative confirmation, alter the make-up of the judicial council)
- Impose a more rigorous spending limit
- Promote parental rights (school choice, vouchers, funding, control over curriculum)

Secondary Themes by advocates for a Convention

- Establish right to amend the constitution by initiative
- Establish Alaska as a “right to work” state
- Modify language authorizing the state retirement system
- Authorize legislative annulment of regulations
- Relocate the state capital
- Narrow protections for LGBTQ individuals

If the Measure passes, A Call must issue.

Alaska Constitution, Art. XIII, Sec. 3

- If a majority of the votes cast on the question are in the affirmative, delegates to the convention shall be chosen at the next regular statewide election, unless the legislature provides for the election of the delegates at a special election.
- The lieutenant governor shall issue the call for the convention.
- **Unless other provisions have been made by law, the call shall conform as nearly as possible to the act calling the Alaska Constitutional Convention of 1955, including, but not limited to, number of members, districts, election and certification of delegates, and submission and ratification of revisions and ordinances.**

Outcome of 1970 General Election on Constitutional Convention “As required by. . .”

REGIONAL TOTALS

Southeastern	15,951	85	9,559	6,020	7,429	8,137	8,697	6,848	5,169	8,632
Southcentral	44,246	682	20,438	22,519	15,528	27,842	21,438	21,753	19,238	17,526
Central	17,962	381	9,419	7,664	7,448	9,988	10,848	6,515	7,792	7,471
Northwestern	<u>4,246</u>	<u>58</u>	<u>2,893</u>	<u>1,061</u>	<u>2,051</u>	<u>1,941</u>	<u>3,154</u>	<u>831</u>	<u>2,712</u>	<u>843</u>
GRAND TOTALS	<u>82,405</u>	<u>1,206</u>	<u>42,309</u>	<u>37,264</u>	<u>32,456</u>	<u>47,908</u>	<u>44,137</u>	<u>35,947</u>	<u>35,911</u>	<u>34,472</u>

Year 1971	Designation: HB 117
Delegate Selection	<ul style="list-style-type: none"> • Special election for election of delegates to be held on September 14, 1971. 65 delegates shall be elected. Sixty delegates shall be apportioned among the election districts of both houses of the legislature. There will be 5 at-large delegates • Delegates shall be nominated by petition. 50 legally qualified voters for house district; 100 legally qualified voters for senate district; 1,000 for statewide delegate (including at least 25 from each senate district)
Timing	Convene October 15, 1971, adjourn no later than January 7, 1972
Length	No more than 75 days
Location	College, Alaska [later modified to Anchorage]
Other	Creation of Alaska Constitutional Convention Commission—president of senate, speaker, three members appointed by governor. Compile information, undertake studies and research, background materials

Boucher v. Bomhoff, 495
P.2d 77 (Alaska 1972)

- **On the basis of our study of the record, we believe that a reading of the questioned ballot leads inescapably to the conclusion that the prefatory language was inherently misleading.** The prefatory language suggests that the constitution requires that a constitutional convention be held, when in fact it requires only that a referendum be held on the question of whether there shall be a constitutional convention. **The implication of the prefatory language is that a constitutional convention will be held as required by the Alaska Constitution unless the voters reject the holding of a convention.** On the basis of the foregoing analysis of the prefatory language and the opinion evidence previously alluded to which was produced by appellees, we affirm the trial court's findings of fact and conclusions of law.

Year 1980	Designation
Delegate Selection	<ul style="list-style-type: none"> 65 delegates shall be elected. Sixty delegates shall be apportioned among the election districts of both houses of the legislature. There will be 5 at-large delegates. Election to take place third Tuesday in May
Timing	Second Monday in September
Length	Convention shall last no more than 90 days
Location	College, Alaska
Other	<p>Creation of Alaska Constitutional Convention Commission—three members appointed by president of senate, three members appointed by speaker, two members appointed by governor and one member appointed by the chief justice. Compile information, undertake studies and research, background materials</p> <p>Applicability of APOC disclosure and reporting requirements</p>

If the voters vote affirmatively, the legislature has the power to shape the contours of the convention

Legislature will initially decide whether election of delegates will occur at the next “regular statewide election” (August 2024 primary) or in a special election.

The Legislature can determine:

- The location of the convention
- The timing and duration of the convention
- The manner of selection of delegates (election districts)
- The funding for the convention

Location of the Call

The location of the convention is likely to be contentious. The major contenders are in this order of probability:

- Anchorage
- Mat-Su Valley
- Fairbanks/College
- Juneau

Timing of the Convention

- Politics likely dictates that a convention be held in the second half of an odd year:
 - 1. Legislators will likely wish to be candidates/delegates
 - 2. Hence can't hold the convention at the same time as legislative sessions. Given the conflict of statewide primaries and general elections held in even-numbered years, convention can effectively be held only during the second half of odd numbered years.
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The Campaign for Delegates

The 1955 Legislature called for election of non-partisan delegates for September 19, 1955 (Convention convened on November 8, 1955).

- Any election of delegates now is likely to be contentious, as candidates spar over changes.
- There is a high degree of likelihood that Outside money will flow freely for election of delegates.

Costs of a Convention

Art.XIII, Sec. 3: “The appropriation provisions of the call shall be self-executing and shall constitute a first claim on the state treasury.” The following summary is from an undated internal legislative memo released on September 10, 2021.

Creating a budget for a convention will likely be difficult. However, to briefly illustrate convention budgeting issues that might arise, consider the following hypothetical. If the Constitutional Convention lasted for 75 days, there were 60 delegates (for ease of estimating expenses based existing legislative sessions and special sessions), with 60 days of support prior to commencement of the convention (legal, administrative, etc.), and a 30-day wind-down period, the convention begins to look much like a legislative session lasting approximately 165 days in length. Based on the current costs in the legislature’s budget for legislative operations, selecting the components that a convention may require, a budget for a Constitutional Convention could be as follows:

	Annual Cost per Leg Council FY22 Enacted Budget	Daily Cost	Fixed Costs	75 days	60 days	30 days	Total (165 Days)
Attorney Staff	\$ 4,547,400	\$ 12,459	\$ -	\$ 934,397	\$ 747,518	\$ 373,759	\$ 2,055,674
Security Staff	\$ 805,414	\$ 2,207	\$ -	\$ 165,496	\$ 132,397	\$ 66,198	\$ 364,091
Service Agency	\$ 12,877,800	\$ 35,282	\$ -	\$ 2,646,123	\$ 2,116,899	\$ 1,058,449	\$ 5,821,471
Space Rental		\$ 4,000	\$ -	\$ 300,000	\$ 240,000	\$ 120,000	\$ 660,000
Session Operations	\$ 8,585,500	\$ 23,522	\$ -	\$ 1,764,144	\$ 1,411,315	\$ 705,658	\$ 3,881,116
Salaries & Per Diem	\$ 8,680,100	\$ 23,781	\$ -	\$ 1,783,582	\$ 1,426,866	\$ 713,433	\$ 3,923,881
		\$ 101,250	\$ -	\$ 7,593,743	\$ 6,074,994	\$ 3,037,497	\$ 16,706,234

§ 15. No Exclusive Right of Fishery

No exclusive right or special privilege of fishery shall be created or authorized in the natural waters of the State. This section does not restrict the power of the State to limit entry into any fishery for purposes of resource conservation, to prevent economic distress among fishermen and those dependent upon them for a livelihood and to promote the efficient development of aquaculture in the State. [Amended 1972]

Kenai Peninsula Fisherman's Coop. Ass'n. v. State, 628 P.2d 897 (Alaska 1981)

State v. Ostrosky, 667 P.2d 1184 (Alaska 1983)

Alaska Fish Spotters Ass'n. v. State, Dep't. of Fish & Game, 838 P.2d 798 (Alaska 1992)

Vanek v. State, 193 P.3rd 283 (Alaska 2008)

Reasons to Oppose the Constitutional Convention

- Outcomes are unpredictable, a Pandora's box, and long-standing institutions that have worked well are at risk.
- The likely issues to be presented to a convention will further polarize the Alaskan electorate.
- To the extent that there are proposed changes to the constitution, there is an alternative amendment process that incorporates rigorous review.

Art. XIII, Sec. 1 Alaska Constitution

Amendments to this constitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

Legislative Proposals for Constitutional Amendments 25th through 32nd State Legislatures 2007-2022

Subject	25th	26th	27th	28th	29th	30th	31st	32nd
Attorney General	x	x	x	x	x	x	x	
Judicial Council or Courts				x	x		x	x
Redistricting Board			x	x		x		
Marriage	x			x	x	x		
Abortion	x					x	x	x
Public Finance								
Dividends		x		x	x	x	x	x
Gas Endowment	x	x	x	x				
Transportation Fund		x	x	x				
Education Fund			x	x				
POMV					x	x	x	x
Other PF	x		x					
Voter Approval before Taxes							x	x
Total Number of Amendments	9	20	18	14	9	20	26	21

Bruce Botelho September 8, 2022