



Constitutional Convention



The Legislature

The Legislature has three alternatives for proposing changes to the Constitution:

1. It can propose amendments.
2. It can propose a constitutional convention to revise the Constitution.
3. It can propose revisions to the Constitution.



The Voters

- The voters have the power, by collecting signatures equal to 8% of the votes cast for Governor in the last gubernatorial election, to propose amendments to the Constitution.
- The voters do not have the power to propose a revision or to call a constitutional convention.



The Voters (cont'd)

- Could the voters amend the Constitution to permit the voters to call a convention?
- What's the difference between an amendment and a revision?



Revisions

- Revisions “refer to a substantial alteration of the entire Constitution,” and may be either quantitative or qualitative. (*Amador Valley Joint Union High Sch. Dist. v. State Bd. of Equalization* (1978) 22 Cal.3d 208, 222.)



Quantitative Revisions

- Quantitative revisions substantively change the Constitution by deleting or altering numerous existing provisions. (*McFadden v. Jordan* (1948) 32 Cal.2d 330.)
- A qualitative revision, by contrast, may affect only a single article, but if it “accomplish[es] . . . far reaching changes in the nature of our basic governmental plan,” it is nonetheless considered to be a revision. (*Amador Valley, supra*, 22 Cal.3d at 223.)



California Supreme Court

The California Supreme Court has only struck down two measures on this ground:

1. In *McFadden v. Jordan*, the Court struck down an initiative that would have amended 15 of 25 articles and added 21,000 words, affecting everything from oleomargarine to the bill of rights.



California Supreme Court (cont'd)

2. In *Raven v. Deukmejian*, the California Supreme Court invalidated a measure that would have required state courts to construe certain criminal law rights consistently with the federal Constitution. (*Raven v. Deukmejian* (1990) 52 Cal.3d 336, 350.)



A Proposal

Would a proposal to give the voters the power to bypass the Legislature and call a convention themselves be considered a revision?

1. The power to revise the Constitution has always been the exclusive domain of the Legislature. The power of the voters to propose statutory and constitutional amendment initiatives did not change this scheme.



A Proposal (cont'd)

2. Although the California Supreme Court upheld Prop. 140, it reasoned that Prop. 140 was not a revision because it did not “diminish or delegate” legislative power to anyone else.
3. While amending the Constitution is relatively simple, the Constitution has always imposed constraints on the ability to revise the Constitution. The Constitution “provided the formidable bulwark of a constitutional convention as a protection against improvident or hasty (or any other) revision.”



Arguments

On the other hand, there are significant arguments against such a conclusion:

1. All political power is inherent in the people.
2. The People already play an integral role in the convention process, including approving the Legislature's proposal to call a convention, electing delegates, and approving the revisions proposed by the convention.



Arguments (cont'd)

3. The courts have upheld other more far-reaching changes that affected the Legislature's power – e.g., Prop. 140, Prop. 13.
4. If giving the power to the people to call a convention is a revision, how could the power of the initiative and the Legislature's power to place a revision on the ballot survive a similar challenge?
5. If Legislature refuses to place question before the voters, voters would have no means by which to propose revisions to the Constitution.



Convention

If the voters could call a convention, how would it work? Under the Constitution, mechanics are as follows:

1. The Legislature adopts a resolution placing the question of whether to call a convention before the voters.
2. The voters vote on the question of whether to call a convention.



Convention (cont'd)

3. Within six months, the Legislature provides for the convention, including the election of delegates.
4. Votes elect delegates from districts that are as nearly equal in population as may be practicable.
5. The delegates meet, debate, and draft a revised constitution.
6. A proposed revision is submitted to electors and if approved by a majority, it takes effect.