



EXPANDING THE RIGHTS OF IMMIGRANTS BY VOTING 'YES' FOR A NEW YORK CONSTITUTIONAL CONVENTION

Posted on November 5, 2017 by Cyrus Mehta

By [Cyrus D. Mehta](#) and [Sophia Genovese-Halvorson](#)

On November 7, 2017, voters in New York will get an opportunity to decide whether to hold a Constitutional Convention in order to improve New York's Constitution. The next opportunity to engage in this unique democratic experiment will arise in 2037.

The latest polls have shown that large numbers of voters want changes in New York's Constitution that the legislature has failed to enact – e.g. an entitlement to healthy air and clean water, strict limits on the outside employment of legislators, independent ethics enforcement, [an end to gerrymandering](#), [making it easier to register and vote](#), [closing campaign finance loopholes](#), [term limits](#), and the expansion of immigrants' rights and protections. At the same time, a [poll is showing that New Yorkers oppose calling for the Convention](#). Many reasonable people oppose voting for a New York Constitutional Convention in the age of Trump, dark money and Brexit. But when we run away from democracy itself out of fear, we will never be able to improve the rights of New Yorkers even beyond the US Constitution, including immigrants. We have this opportunity only once every 20 years.

Some say the path forward is to replace New York's elected representatives with others who will make the needed reforms. However, as the late Governor Mario Cuomo observed, our elected representatives live in a cocoon of unaccountability and incumbent protection. The system is designed to secure their reelection. That system needs to be changed, and it will take an outside force to do it. Short of calling a Constitutional Convention, the only way to

amend the Constitution, or to pass any law, is with the approval of the legislature. But as just explained, [elected officials are in favor of maintaining the status quo](#).

There is also an [understandable, but misguided, fear](#) that certain protections, such as the labor bill of rights, the duty of the legislature to care for the needy, the right to a free public education, and the preservation of the Adirondack Park will be at stake. However, these are indeed rights and protections that were created through the Constitutional Convention process. *The New York Times*, [while unfortunately coming out against the Convention](#), has called these concerns “overwrought.” The history of the Convention has not been one of stripping rights; rather, it has a rich history of creating [radical advancements](#) in human rights for all New Yorkers. The 1938 Constitutional Convention affirmed the duty of the state to aid the needy, promote public health, educate its children, and care for the physically and mentally handicapped. It is not as if a vote in favor of a Constitutional Convention would give a carte blanche to delegates to adopt any reforms of their choosing. The last state Constitutional Convention was in 1967, where voters ultimately rejected the proposed changes created by the Convention Committee. Then there is the claim that reform minded delegates won't get elected and that the Convention will be “hack filled.” This strikes us as having too little trust in voters who having called for a Convention to effect reform would supposedly turn around and elect people opposed to reform. Voters in a progressive state like New York are much smarter than how they are perceived by opponents to the Convention.

The 2017 Convention Vote will again provide New Yorkers with the opportunity to continue the tradition of expanding rights in the New York Constitution, including the expansion of rights and protections afforded to immigrants. Albany had not been able to bring about any meaningful reforms for immigrants. Our “gerrymandered” elected representatives are so entrenched that only a [criminal conviction, rather than votes](#), can dislodge them. If we can broaden equal rights for all New York residents, including immigrants regardless of status, we will not need to rely on Albany that is in a perpetual logjam and stalemate. For example, New York's Department of Motor Vehicles will be compelled to issue drivers licenses to all New York residents, regardless of immigration status, based on the broader equal protection clause in the New York Constitution that can be developed through a Constitution Convention.

Cyrus Mehta's Op-Ed in [The New York Daily News](#) forcefully and eloquently

advocates for expanded equal rights for all New York residents, including immigrants. It is reproduced below:

“The N.Y. constitutional convention immigrants need”

As the federal government threatens undocumented immigrants, New Yorkers have an opportunity to provide vital protections to those immigrants living in the state. On Election Day, voters can choose to convene a constitutional convention where the rights of those immigrants could be strengthened in ways that the federal government cannot erase.

It's an opportunity we must not miss.

New York has always been a magnet for immigrants. The Statue of Liberty is here — not in Washington, D.C. — for a reason. Yet the state Constitution has never addressed the discrimination immigrants face.

It addresses only discrimination based on race and religion, not on country of origin or immigration status. Notably, it does not even prevent discrimination based on gender.

That's a misfit for the character of our state. In 2015, more than 4.5 million foreign-born individuals constituted 22.9% of New York's population. Only California has a higher count.

More than 3 million foreign-born immigrants live in New York City, more than in any other city in the world. They represent over 37% of the city's residents.

Among these immigrants are an estimated 817,000 in New York State, including 575,000 in New York City, without valid federal authorization. These undocumented immigrants — who pay taxes, otherwise observe our laws, and enrich our communities — contributed \$40 billion to New York's economy and \$1.1 billion to state and local taxes in 2015.

While the equal protection clause of the U.S. Constitution covers all persons within the jurisdiction of any state, the U.S. Supreme Court has applied a relaxed standard of review to discrimination against undocumented immigrants. As a result, laws depriving those immigrants of basic civil rights have been upheld.

An amendment to the state Constitution could prohibit such discrimination — and finally reflect the values of New York, where over the decades governors and mayors, Republican and Democratic alike, have consistently defended the

rights of undocumented residents.

While it's federal laws that mandate that undocumented immigrants be removed — subject to the executive branch's priorities, which are at least in theory supposed to be focused on threats to public safety — the likelihood is uncertain. Even if the federal government initiates removal, proceedings can take years.

More importantly, immigration status is often uncertain. Immigrants can gain authorization to remain by falling in love with and marrying an American. More than 800,000 young undocumented people who came into the United States before the age of 16 received authorization to remain under Deferred Action for Childhood Arrivals — an Obama-era program.

President Trump has canceled DACA, but suggested in a tweet that "Congress can legalize DACA," and added that, if not, he "will revisit the issue."

Basic rights should not hinge on such vagaries.

People are undocumented because the federal immigration system, desperately in need of sensible reform, has not provided meaningful pathways to legal status for many who have family or jobs in the United States. As New York will continue to be home to undocumented immigrants, it is only fair that the state Constitution provide equal civil rights to all, regardless of immigration status.

Once such equal rights are established, they will preclude discrimination against New York residents based on their immigration status.

For example, New York would have to grant driver's licenses to undocumented immigrants. That would help ensure that our roads are safe and provide a boon to those who need to drive in order to work or take their children to school.

Such an expanded protection against discrimination in our state Constitution could not be erased by the federal government.

In specific areas, federal law may preempt the states — but, under our federal system, state law governs most civil rights, such as the right to contract, to an education, to buy a home, to drive and more.

At a time when the federal government seeks to force state and local law enforcement to punish undocumented immigrants in ways that go beyond valid federal preemption and financial incentives, asserting New York's sovereign lawmaking and enforcement rights is vital.

The first step in getting from here to there is voting yes on a constitutional convention.

(This blog represents the personal views of the authors and not necessarily those of any organizations that they may be a part of)