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## **Legislative History and Current Bills Related to the Constitutional Convention**

Michael Frieese

### **Abstract**

The purpose of this paper is to critically look at the legislative history of Article XIV, formerly Article VII. Specifically, I will discuss the events leading up to the 1894 Constitutional Convention (the convention were Article XIV and the “Forever Wild Provision” was adopted), the 1894 Constitutional Convention, the events and legislative acts in between the 1894 and 1915 constitutional conventions, the 1915 Constitutional Convention, the events and legislative acts occurring between 1915 and 1938, the 1938 Constitutional Convention, and finally I will address the delegate election process as well as the proposed reforms to the process. It is the intention of this paper to present the historical and present importance of the Forest Preserve, as well as the importance of the delegate electoral process to the outcome of the constitutional convention.

### **Introduction**

Article XIX, of the New York State Constitution, applies to how the Constitution is amended and how an official Constitutional Convention

is called.<sup>1</sup> Section 1 of Article XIX explains how the legislature can vote to send a possible constitutional amendment to the people.<sup>2</sup> Section 2 of Article XIX of New York State's Constitution addresses the calling of an official constitutional convention, the number of delegates to serve and the procedures to follow during said convention.<sup>3</sup> Section 3 of Article XIX contemplates what happens when an amendment is simultaneously brought before the people for a vote by both the legislature and the constitutional convention.<sup>4</sup>

Section 2 of Article XIX is particularly important, for the purposes of this paper, as it deals with the early legislative history of the current Article XIV section 7. Section 2 of Article XIX begins as follows: "At the general election, to be held in the year nineteen hundred fifty-seven, and every twentieth year thereafter, and also at such times as the legislature may by law provide, the question 'Shall there be a convention to revise the constitution and amend the same?' shall be submitted to and decided by the electors of the state."<sup>5</sup> This powerful provision allows for the people of New York to review and possibly amend their Constitution through the process of a Constitutional Convention every 20 years since 1957 or if they don't wish to wait the 20 years to urge the legislature to propose a Constitutional Convention to be held earlier than scheduled. 2017 is

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<sup>1</sup> N.Y. Const. art. XIX

<sup>2</sup> *Id.* at § 1.

<sup>3</sup> *Id.* at § 2.

<sup>4</sup> *Id.* at § 3.

<sup>5</sup> *Id.* at § 2.

the next time the question of whether a Constitutional Convention should be held and will come automatically. However, the people of New York have voted to convene a convention earlier than the 20 year cycle. It is in this context that this paper was written.

Warder H. Cadbury (an authority on Murray and a research associate at the Adirondack Museum) states, “How is the quality of wilderness to be reconciled with the quantity of use, particularly when by definition quality is contingent upon low density use? Put in another and more specific way, how can the wilderness of the Adirondacks [and Catskills] be preserved while at the same time making wilderness and its potential values accessible to a large public?”<sup>6</sup> The Forest Preserve entered into the New York State Constitution on January 1<sup>st</sup> 1895. It was historic in that it was the first time a state had ever taken such a measure. Another interesting point is that the Forest Preserve was created in the populous East (near one of the biggest cities in the world) as opposed to the West which was and is known for its wide open spaces. Counter-intuitively it was the closeness to New York City that was one of the sparks that fueled the creation of the Forest Preserve.

Regardless of the driving forces behind the creation of the Forest Preserve, it has become clear that the forever wild provision of the New York State Constitution and the Forest Preserve, which it

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<sup>6</sup> Frank Graham Jr., *The Adirondacks: A Political History* (1978).

protects, are a part of the fundamental character of the State of New York.

### The Beginning

The legal history of the Adirondacks began in 1779 with the passage of the Act of Attainder. The act stated “That the absolute property of all . . . lands . . . which next and immediately before the ninth day of July in the year of Our Lord one thousand seven hundred and seventy six, did vest in, or belong, or was, or were due to the crown of Great Britain be, and the same and each and every of them hereby are declared to be, and ever since the said ninth day of July, in the year of Our Lord one thousand seven hundred and seventy six, to have been, and forever shall be vested in the people of this State.”<sup>7</sup> The act also voided the land titles held by loyalists. The Act of Attainder gave the people of New York ownership of around seven million acres of lands and waters extending from Lake Champlain westerly to Lake Ontario, and from the Canadian border southerly to the Mohawk River.<sup>8</sup> With such a massive amount of land handed over to the State of New York, the Act laid the foundation for the Forest Preserve.

Even though the Act of Attainder originally handed over the acreage to the people of the State of New York, it was not long before it was divided up and sold to private owners. The early legislatures

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<sup>7</sup> 1779 N.Y. Laws 178.

<sup>8</sup> *Id.*

wanted to “dispose of the ‘waste’ lands of the Adirondacks.”<sup>9</sup> As for the Catskills, “the lands had been patented for years before (the Adirondack lands) and the patentees further portioned the land settlements, villages and farms dotted the landscape.”<sup>10</sup> It was still too early in the American experiment for the Forest Preserve to come into existence. Economic, not ecological interests were upmost on the mind of early legislatures. However, with the unchecked exploitation of the Adirondacks and the Catskills even the most economically minded person could not look away.

The hemlock stands in the Catskills were decimated by the tanning industry to the point where the industry could no longer function in the area because it had stripped the hemlocks of all their bark.<sup>11</sup> “The pulp and paper business seriously depleted the spruce, pine, basswood, aspen and white birch. The charcoal makers thrived by clear cutting the area of their operations.”<sup>12</sup> Fires also began to decimate the landscape due to the presence of the timber industry and the sparks created by the railroads.<sup>13</sup> The legally sanctioned lumbermen were not the only ones causing problems in the Adirondacks and the Catskills. Timber thieves added to the problem as did settlements and farms that spread like a plague into the

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<sup>9</sup>Graham, *supra* at 6.

<sup>10</sup>Norm Van Valkenburgh *The Forest Preserve of New York State in the Adirondack and Catskill Mountains: A short History*. 8 (1996).

<sup>11</sup>*Id.* at 9-10

<sup>12</sup>*Id.* at 10.

<sup>13</sup>*Id.*

Adirondack and Catskill forests in the early 1800s.<sup>14</sup> Plant life was not the only victim of the environmental rape occurring in both the Adirondacks and Catskills. The wildlife incurred a great deal of damage as well. By 1820, the last trout had been taken from Saratoga Lake; in 1822 the great wolf no longer roamed the forests of New York.<sup>15</sup> The moose and the panther disappeared from the eyes of New Yorkers as well.<sup>16</sup> What replaced the unutterable beauty of nature and its inhabitants were hotels, spas, lumbered wastelands, farms, mines and other forms of human habitation. (William H. Murray states “the curse and scourge of the wilderness . . . . A lumbered district is the most dreary and dismal region the eye has ever beheld.”<sup>17</sup>) Only the inaccessible peaks remained unspoiled by the hands of man.<sup>18</sup>

Around the middle of the nineteenth century, a foreign and seemingly impossible reality started to stir within the consciousness of the people in the United States. The idea, that the seemingly infinite wilderness of the new world was in actuality very finite, was starting to rise in the consciousness of many.<sup>19</sup> Writing in response to the wholesale destruction taking place in the Adirondacks, Samuel H. Hammond, in his 1857 book *Wild Northern Scenes* wrote, “Had I my way, I would mark out a circle a hundred miles in diameter and throw

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<sup>14</sup> *Id.*

<sup>15</sup> Norm Van Valkenburgh *The Forest Preserve of New York State in the Adirondack and Catskill Mountains: A short History*. 10- 11 (1996).

<sup>16</sup> *Id.*

<sup>17</sup> *Graham, supra* at 27.

<sup>18</sup> *Valkenburgh, supra* 11.

<sup>19</sup> *Graham, supra* at 53.

around it the protecting aegis of the Constitution. I would make it a forest forever. It should be a misdemeanor to chop down a tree, and a felony to cleat an acre within its boundaries. The old woods should stand here always as God made them, growing until the earthworm ate away their roots, and the strong winds hurled them to the ground, and new woods should be permitted to supply the place of the old so long as the earth remained. There is room enough for civilization in regions better fitted for it. . . . It will be stunted growth at best here.”<sup>20</sup>

Hammond’s statement was both profound (one of, if not the earliest mention, of the term “forever wild” as applied to the Adirondacks) but also prophetic (38 years later his vision came to light). Hammond was not alone in his sentiment. Editorials, in the Albany Evening Journal, echoed his feelings in the late 1850’s.<sup>21</sup> An 1864 editorial, in the New York Times, suggested that citizens should join together and “seizing upon the choicest of the Adirondack Mountains, before they are despoiled of their forests, make of them grand parks, owned in common.”<sup>22</sup> The people of New York State, in the middle of the nineteenth century were staring to realize the importance of wilderness preservation. Finally the time had come for the Legislature to begin to act upon the will of the people.

In 1872, the Legislature created a Commission of the State Parks. The Commission was charged to “inquire into the expediency of

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<sup>20</sup> *Id.* at 17.

<sup>21</sup> Valkenburgh, *supra* at 11.

<sup>22</sup> *Id.*

providing for vesting in the State the title of the timbered regions lying within the counties Lewis, Essex, Clinton, Franklin, St. Lawrence, Herkimer and Hamilton and converting the same into a public park.”<sup>23</sup> The Park Commission came back with a report in 1873 stating “we are of the opinion that the protection of a great portion of that forest from wanton destruction is absolutely and immediately required.”<sup>24</sup> The sitting Governor of the State of New York, John A. Dix, advised the Legislature that he agreed with the recommendation. Unfortunately, the Legislature was not progressive enough at the time to see the changing tides. The Legislature’s response to the Forest Commission was silence. The Commission’s report was lost in bureaucracy.<sup>25</sup>

The Legislature finally got around to dealing with the Adirondacks in 1883. It passed a law which prohibited the further sale of state land in ten of twelve Adirondack counties.<sup>26</sup> Unfortunately no mention of the Catskills was made. Then, in 1884, another commission was appointed to “investigate and report a system of forest preservation.”<sup>27</sup> The Forest Commission came back with a report that agreed with the preservation of the Adirondacks, but explicitly stated that the preservation of the Catskills was not as important. Of the Catskills, the Commission wrote, “The protection of these forests is, however, of less general importance than the preservation of the

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<sup>23</sup> 1872 N.Y. Laws 2006.

<sup>24</sup> Valkenburgh, *supra* at 15.

<sup>25</sup> *Id.*

<sup>26</sup> 1883 N.Y. Laws 693.

<sup>27</sup> Valkenburgh, *supra* at 16.

Adirondack forests. The possibility of their yielding merchantable timber again in any considerable quantities is at best remote; and they guard no streams of more than local influence. Their real value consists in increasing the beauty of summer resorts, which are of great importance to the people of the State.”<sup>28</sup> It can be seen by the language the Commission used that conservation wasn’t the primary concern. Rather the Commission’s language suggests continued exploitation of the Adirondack Forest by the timber industry. Regardless of the Commission’s intentions behind the protection of the Adirondacks, they did “draft bills to create a forest preserve consisting of more than 681,000 acres of state land in eleven of the twelve Adirondack counties.”<sup>29</sup> The Catskills would still have to wait before they became protected.

In 1887, a law was enacted empowering the three member Forest Commission to sell “separate small parcels or tracts wholly detached from the main portion of the Forest Preserve,” or to sell the timber on these lands.<sup>30</sup> “Through default of the legislature, the commission itself defined the terms in the law” which allowed the Commission to eviscerate the meaning of “Forest Preserve” if they so wanted.<sup>31</sup> One tract of land, the Commission considered small,

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<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 18.

<sup>30</sup> 1887 N.Y. Laws 600.

<sup>31</sup> *Id.*

consisted of 3,673 acres of land!<sup>32</sup> If the Commission's intentions were suspect before, they were now wholly clear. The Forest Commission of the 1880's was out to exploit the Forest Preserve for all it was worth. The Commission's action rose more than a few eyebrows. In the 1890s, there was a renewed anger against the railroads, as destroyers of the forest, and attacks on lumbermen, and allegations that the Forest Commission was "captured" by industry.<sup>33</sup> In 1891 the State Assembly began to investigate the Forest Commission.<sup>34</sup> Upon investigation "the Assembly recommended the three member commission be replaced with a new five member commission and that more stringent and concise laws be enacted to protect the Preserve.<sup>35</sup> Then, in 1892, legislation was enacted to establish a 2.8 million-acre Adirondack Park, consisting of only the State owned lands within the park.<sup>36</sup> The bounds of the park were shown in the blue-line, and thus brought into being the phrases "inside the blue line" and "outside the blue line" to denote lands inside the park and outside the park.<sup>37</sup> However, the legislation was not wholly positive in regard to the conservation of the Adirondack forests. As is common in legislatures, the Assembly gave with one hand and took with the other. Imbedded in the legislation were provisions that permitted the Forest Commission "to sell state lands anywhere in

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<sup>32</sup> Valkenburgh, *supra* at 21.

<sup>33</sup> Graham, *supra* at 120.

<sup>34</sup> Valkenburgh, *supra* at 21.

<sup>35</sup> *Id.*

<sup>36</sup> 1892 N.Y. Laws 1459.

<sup>37</sup> Valkenburgh, *supra* at 22.

the Adirondacks and to lease State lands within the park to private individuals for camps and cottages.”<sup>38</sup> In 1893 a bill, proposed by the Governor Roswell P. Flower, was passed which created a five member forest commission. The Forest Commission was given authorization to sell timber from any part of the Forest Preserve including the Park.<sup>39</sup> The bill was known as the “cutting law.”<sup>40</sup> Opposition to the new law was almost immediate; the law drew criticism from unexpected places. Bernard Fernor, the government’s chief forester, an exponent of scientific forestry criticized the Forest Commission’s cutting practices.<sup>41</sup> Also during 1893 a severe drought hit the East which sparked forest fires. The fires were bad enough that business leaders in New York City became worried about the destruction of watersheds and the damage such destruction would cause the City.<sup>42</sup>

Given the early political history of the Forest Preserve, it is clear that the powers of the State favored managed forests instead of forest conservation.<sup>43</sup> The magazine *Garden and Forest* wrote, “It would seem that the time has already come when the Park ought to be preserved from its preservers.”<sup>44</sup> By 1894 preservationists, from

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<sup>38</sup> 1892 N.Y. Laws 1459.

<sup>39</sup> 1893 N.Y. Laws 634.

<sup>40</sup> Alfred S. Forsyth, Norman J. Van Valkenburgh, *The Forest and the Law* 2, 19 (1996).

<sup>41</sup> Graham *supra* at 126.

<sup>42</sup> *Id.* at 126.

<sup>43</sup> Valkenburgh *supra* at 23.

<sup>44</sup> Graham *supra* at 127.

around the state as well as the public at large, decided to take action.

The stage was set for the historic Constitutional Convention of 1894.<sup>45</sup>

#### The 1894 Constitutional Convention

In 1894, a constitutional convention was called to revise the state Constitution, particularly as it applied to the judiciary.<sup>46</sup> The convention began on May 5, 1894 and the Republican majority elected as president a liberal member of their party, Joseph H. Choate. As of yet, there were no plans to discuss the Forest Preserve.<sup>47</sup> However, the New York Board of Trade and Transportation, angry at the lack of preservation of the forests in the Adirondacks, saw in the convention a chance to take definitive action.<sup>48</sup> Historically, the Board of Trade and Transportation maintained an active Forest Committee and in anticipation of the convention also created a special committee on Constitutional Amendments.<sup>49</sup> The two committees worked together on a draft of an amendment that sought to protect the Forest Preserve.<sup>50</sup> The proposed amendment prohibited the sale of preserve lands, as well as the timber on them.<sup>51</sup> In seeking a sponsor for the amendment the committee approached David McClure, a Democratic delegate at the convention. McClure agreed to sponsor the amendment.<sup>52</sup> McClure

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<sup>45</sup>Valkenburgh *supra* at 23.

<sup>46</sup>Graham *supra* at 127.

<sup>47</sup>*Id.*

<sup>48</sup>*Id.*

<sup>49</sup>*Id.*

<sup>50</sup>*Id.*

<sup>51</sup>*Id.*

<sup>52</sup>*Id.*

introduced the amendment to the convention stating, “The special Committee on the State Forest Preservation, which was directed to consider and report what, if any amendments to the Constitution should be adopted for the preservation of the State forests, respectfully reports: That your Committee has had presented to it many valuable arguments and statements bearing upon the matter, and, after careful consideration has unanimously reached the conclusion that it is necessary for health, safety and general advantage of the people of the State that forest lands now owned by and hereafter acquired by the State, and the timber on such lands should be preserved intact as forest preserves. And not, under any circumstances be sold. Your Committee, is further of the opinion that, for the protection and preservation of State lands, other lands contiguous thereto should, as soon as possible, be purchased or otherwise acquired, but feel that any action to that end is more properly within the province of the Legislature than this convention. Your Committee recommends the adoption by this convention of the following, as an amendment to the Constitution – ‘The lands of the State now owned or hereafter acquired, constituting the Forest Preserves, shall be forever kept as wild forest land, They shall not be destroyed, nor shall the timber thereon, be sold.’”<sup>53</sup> In McClure’s presentation there are important ideas that should be highlighted. The first is that the recommendation of the

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<sup>53</sup> Revised Record of the Constitutional Convention of the State of New York, 1894 volume 2 at 1201.

amendment was unanimous. Another interesting aspect of McClure's speech is that he referenced the health, safety, and general advantage of the people rather than focusing solely on water preservation. It should be noted that McClure included the word intact in mentioning "intact as Forest Preserves." This seemingly trivial word has great meaning when put in context. The previous Forest Commissions had been fond of dividing up the preserves for camp sites; the word intact was likely intended to mean "in a natural state," or "untouched."<sup>54</sup> The words "not under any circumstances" referring to when timber could be sold show that the framers intended the amendment to afford "perfect" protection to the Forest Preserves.<sup>55</sup> It is also interesting to note that the committee wanted the Legislature to take action in regard to procuring more lands for the Forest Preserve. The committee did not just want to protect the lands that were already under state control, but rather wanted to protect the entire forest.<sup>56</sup>

On September 7, 1894 McClure offered (and the Committee later adopted) to add more words to the amendment. McClure added after the words "Forest Preserve" the words "as now fixed by law," (referencing the 1893 statute) and after the words "They shall not . . ."

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<sup>54</sup> Forsyth, Valkenburgh, *supra* at 22.

<sup>55</sup> *Id.* at 22.

<sup>56</sup> Revised Record of the Constitutional Convention of the State of New York, 1894, vol. 4 at 149.

the words 'be sold or exchanged or be taken by any corporation public or private . . .'"<sup>57</sup>

McClure had several reasons why he thought the protection of the Forest Preserve was a good idea. His reasons were: To protect the watershed for drinking, fire fighting and the rivers and canals; to provide a "Great resort for the people of this State"<sup>58</sup>; and to prevent the erosion of the land.<sup>59</sup> There were many reasons to protect the Forest Preserve, the conservation of timber, of fish and game, of an atmosphere notable for its "restorative" powers on the body and spirits, but those reasons were a secondary concern of New Yorkers. The main reason for the protection of the Forest Preserve was the protection of the vital watershed which it held.<sup>60</sup>

Public support for the proposed amendment was not unanimous. In the New York Tribune an editorial stated, "On the whole, we are inclined to think that there is less danger of irretrievable loss in the rigid prohibition of the proposed amendment than in leaving the forests entirely at the mercy of Legislatures and Commissions."<sup>61</sup>

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<sup>57</sup> Graham *supra* at 124.

<sup>58</sup> McClure went on, poetically stating, "When tired of the trials, tribulations and annoyances of business and every-day life in the man-made town, they (forests) offer to man a place of retirement. There, if he is possessed of great veneration, he may find some consolation in communing with that great Father of all, whose 'hand hath reared those columns and who filleth their solitude.' For man and for woman thoroughly tired out, desiring peace and quiet, these woods are inestimable in value." *Id.* at 131.

<sup>59</sup> Revised Record of the Constitutional Convention of the State of New York, 1894 vol. 4 at 127-140.

<sup>60</sup> Graham *supra* at 132 – 137.

<sup>61</sup> Graham *supra* at 128.

There also existed debate on how long the Forest Preserve should remain off limits. A few preservationists who were also foresters wanted the ban to last for 20 years. They hoped that after 20 years science would have advanced far enough to allow for forestry activities to take place on the Forest Preserve without damaging the preserve itself.<sup>62</sup>

During the convention there were many questions given to McClure by the other delegates who flushed out the true intent and purpose of the amendment. The questions and answers were as follows: “Did the amendment prevent the Legislature from authorizing a railroad or a highway through the Preserve; even in the case of demonstrated public need? ‘I think so; the scope of the matter is to prevent its being taken by any corporation, public or private.’ Was a further amendment necessary to define the limits of area to which the amendment referred? ‘But this constitutional amendment refers to the Forest Preserve as now fixed by law. The law is contained in the Statute of 1893.’ Did the drafters of the amendment believe its language would effectively prevent any Legislature in the future from reducing the Preserve’s extent? ‘We do, sir. We carefully considered that.’”<sup>63</sup> The framers of the “forever wild” amendment clearly meant for the Forest Preserve to be a pristine wilderness area with only the lightest touch of humanity allowed. The ban on human activity was

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<sup>62</sup> *Id.* at 128.

<sup>63</sup> Revised Record of the Constitutional Convention of the State of New York 1894 vol. 4 at 140-141.

meant to hold even in times of seemingly great need. The framers realized that leaving any crack in the protection of the Forest Preserve would lead to eventual destruction. As the saying goes . . . if you give a mouse a cookie . . . he will ask for a glass of milk.

McClure explained of the amendment, “I hope the members of the Convention understand the force and effect of the proposed amendment. If I may be allowed to say preliminarily, by way of explanation, it is intended by the amendment to at first define what is meant by the words “Forest Preserves.” The Legislature, by the Act of 1893, constituted what was called in the act “The Forest Preserves.” That Act provided that State lands in certain counties should be and thereafter remain the Forest Preserve, together with lands thereafter acquired in those counties. McClure states that, “The object of inserting in here the first amendment as now fixed by law is to prevent the Legislature from at any time limiting the extent of the Forest Preserves by providing that in a certain county which by the laws of the State is now a part of the Forest Preserve there should not be included within it, or in any way excepting, any part of the lands within the county.”<sup>64</sup>

McClure also preempted arguments regarding the need for forest management and improvement, saying, “First of all we should not permit the sale of one acre of land. We should keep all we have, we should not exchange our lands- in an exchange the State is in danger of

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<sup>64</sup> Graham, *supra* at 125-127. (emphasis added)

attaining the worst of the taxing- and there is no necessity why we should part without lands. We should not sell one tree or branch. Some people may think in the wisdom of their scientific investigations that you can make the forests better by thinning out and selling to lumbermen some of the trees regardless of the devastation, the burnings and stealing that follow in the lumberman's track. But I say to you, gentlemen, no man has yet found it possible to improve on the ways of nature. In the primeval forest when the tree falls it is practically dead and where it falls it is protection to the other trees; it takes the moisture through its bark and the rottenness and diffuses it down into the soil. . . . If our action here is practically unanimous, as I believe it will be, it will probably be followed by action on the part of the Legislature looking to the purchase of more forest lands. We can buy those lands for a trifle . . . . Finally, the Legislature should purchase all of the forest lands, both in the Adirondacks and Catskills, not now owned by the State, and should preserve them, even though it costs millions of dollars to do it. The millions so invested will be spent.”<sup>65</sup>

After listening to the questions and answers of the other delegates, Judge William P. Goodelle, a delegate-at-large from Syracuse, suggested a change in the wording of the amendment. He stated, “I refer to that system which has been for some years carried on by our State in destroying our forests, in piling up great burdens upon

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<sup>65</sup> *Id.* at 140.

the State for that purpose, by reason of building dams and reservoirs which they have constructed in certain regions of the Adirondacks.”<sup>66</sup> Frank Graham Jr. speaking about Goodelle goes on saying, “Goodelle, speaking from personal knowledge, told how dams were often built, at state expense, on the region’s beautiful rivers to raise the water level and float logs to the sawmills. As a consequence, water backed up into the forest, flooding thousands of acres, so that dead trees stood in a ‘vast sea.’ He recommended that the concluding phrase of the clause, ‘nor shall the timber thereon be sold or removed,’ be amended to read: ‘Nor shall the timber thereon be sold, removed or destroyed.’”<sup>67</sup>

Goodelle proposed a further amendment to the proposed constitutional provision, to prevent leasing of lands as wells as sale or exchange, which was approved.<sup>68</sup> The final text of Article VII read as follows: “The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed, or destroyed.”<sup>69</sup> The amendment was presented to the full Convention on September 13, where it was adopted by a unanimous vote of 120-0. At the general election on

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<sup>66</sup> Revised Record of the Constitutional Convention of the State of New York, 1894, vol. 4 at 142.

<sup>67</sup> Graham, *supra* at 130.

<sup>68</sup> Forsyth, Valkenburgh, *supra* at 25.

<sup>69</sup> Revised Record of the Constitutional Convention of the State of New York 1894 vol. 4, at 144.

November 6 the amendment was presented as part of an entire new Constitution that was approved by a vote of 410,697 to 324,402. The new Constitution and the “Forever Wild” provision became effective January 1, 1895.<sup>70</sup>

#### 1895-1915

Alfred Donaldson in his book *A History of the Adirondacks* states this about the years between the 1894 convention and the 1915 convention: “These were lean years for the forests. They were years of almost unceasing, though unsuccessful, attacks upon the new amendment. They were years of much lax administration, resulting in enormous lumber thefts and much questionable surrendering of the State’s title to its lands; they were, worst of all, years of the most extensive and destructive forest fires. The lesson of all these losses was driven home, however, and the dawn of a new era began.”<sup>71</sup>

A few months after the effective date of the new Constitution the Legislature adopted Chapter 395 of the Laws of 1895. The 1895 law created a “board of fisheries, game and forest” to “maintain and protect the forests in the forest preserve, and promote as far as practicable the further growth of the forests therein.”<sup>72</sup> This was the beginning of the Legislature’s attack on the Forest Preserve and its

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<sup>70</sup> Forsyth, Valkenburgh *supra* at 25.

<sup>71</sup> Alfred J. Donaldson, *A History of the Adirondacks*, vol. 2, 168 (1921).

<sup>72</sup> 1895 N.Y. Laws 241.

protective barrier (Article VII). At first glance the Board of Fisheries, Game and Forest does not seem to be a likely avenue of attack. However the words “as far as practicable” in the mission statement are a signpost of deregulation. These words lend themselves to findings that the protection of the Forest Preserve is no longer practicable and therefore industry should be let in. The law authorized the board to “prescribe rules and regulations affecting the whole or any part of the Forest Preserve and for its care and administration . . .,” but within the limitation that the Board should not, by any rule, “prevent the free use of any road, stream or water as the same may have been heretofore used, or as may be reasonably required in the prosecution of any lawful business.”<sup>73</sup> Interestingly enough Article VII was adopted for the very purpose of limiting what types of use could be made of the Forest Preserve. McClure even stated that the Article VII was crafted to shut off certain activities (regardless of whether they were lawful or not) even if there was a demonstrated public need for these activities.<sup>74</sup> The 1895 law went on to redefine the Adirondack Park and directed that it be “forever reserved, maintained and cared for as ground open for the free use of all people for their health and pleasure and as forest lands, necessary to the preservation of the headwaters of the chief rivers of the State and a future timber supply; and shall remain a part of the

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<sup>73</sup>1895 N.Y. Laws 244-245.

<sup>74</sup> Graham *supra* at 129.

Forest Preserve.”<sup>75</sup> Within a few months of the establishment of Article VII the Legislature already began undermining the amendment by establishing “uses and concepts of forest and game management and recreational development contrary to the basic concept of forest preservation in a natural state.”<sup>76</sup> The only part of the 1895 law that was consistent with article VII was the reference to protecting the headwaters. The rest represents a slow chipping away of Article VII.

Again in 1895 the Legislature proposed another Constitutional amendment to allow the leasing of five acre tracts of land to be used for campsites on lands of the Forest Preserve, the exchange of state-owned land outside the Adirondack Park for private lands inside the Park, and sale of such land to provide money with which to purchase land inside the Park. The resolution was passed in 1896 but defeated by the people of the State of New York by a 2 to 1 margin.<sup>77</sup> In 1897 the Legislature created a Forest Preserve Board and authorized it “to acquire for the State, by purchase or otherwise, land, structures or waters or such portions thereof in the territory embraced in the Adirondack Park, as defined and limited by the Fisheries, Game and Forest Law, as it may deem advisable for the interests of the State.”<sup>78</sup> This action was as prophesized by David McClure in 1894.<sup>79</sup>

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<sup>75</sup>1895 N.Y. Laws 253.

<sup>76</sup> Forsyth, Valkenburgh *supra* at 28.

<sup>77</sup> *Id.* at 28.

<sup>78</sup>1897 N.Y. Laws 94.

<sup>79</sup> Forsyth, Valkenburgh *supra* at 23-24.

In the year 1900 the Legislature showed blatant disregard for Article VII and proved it was willing to “amend” the Constitution through the use of pure legislation.<sup>80</sup> The law passed by the Legislature in 1900 authorized and provided funds for the purchase of those lands that “include the place where the battle of Lake George was fought in Warren County.”<sup>81</sup> This land the law provided funds for was within the Forest Preserve so it should have automatically become a part of the Forest Preserve.<sup>82</sup> However, Section 2 of the law stated that the State should “take measures to lay out, improve, and care for the same as a public park” and provided funds to do so and to “appoint a custodian to take charge of such property.”<sup>83</sup> A public park is not the same as a Forest Preserve and nowhere in Article VII or any of the previous legislative history does it suggest that a public park is compatible with “Forever Wild.” Unfortunately this was not the last (or gravest) assault on the Forest Preserve during the turn of the century. Chapter 607 of the Laws goes even further in ignoring the mandates of the Constitution. That law provided funds to “appoint expert foresters . . . who shall . . . be employed to the work of reforesting the burned, barren or denuded lands in the forest preserve, and in such other works as may tend to the improvement . . . of the State Forest.”<sup>84</sup> Letting

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<sup>80</sup> Obviously this kind of action is against the very purpose of having a Constitution.

<sup>81</sup> 1900 N.Y. Laws 924.

<sup>82</sup> So the Constitution of the State Of New York would have one believe.

<sup>83</sup> 1900 N.Y. Laws 925.

<sup>84</sup> 1900 N.Y. Laws 1337.

foresters into a Forest Preserve is like letting a child into a candy store. The Legislature through clever use of positive language was seeking to castrate Article VII and destroy the little that was left of the Great American Wilderness.

Despite questionable (at best) legislative action the Forest Preserve did continue to grow through various land acquisitions.<sup>85</sup> Chapter 189 of the Laws of 1902 authorized the purchase of lands “for purpose of preserving the scenery of the Ausable Chasm, and making it a public resort.”<sup>86</sup> The Legislature once again mixed preservation with public use and is confused by the terms Forest Preserve and Adirondack Park. The law provided that the lands acquired were to “become a part of such Adirondack Park,” but fails to mention that the lands are also within the Forest Preserve and are therefore governed under Article VII.<sup>87</sup>

Twelve years after the creation of the Adirondack Park, the Catskill Park was established. Chapter 233 of the Laws of 1904 defined the outbounds of the new park by metes and bounds description that followed tract and great lot lines, streams and railroads.<sup>88</sup> In response the legislature redefined the boundaries of the Adirondack Park to match the way the Catskill Park was defined.<sup>89</sup>

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<sup>85</sup>Forsyth, Valkenburgh, *supra* at 29.

<sup>86</sup>1902 N.Y. Laws 482.

<sup>87</sup> *Id.*

<sup>88</sup>1904 N.Y. Laws 427-428.

<sup>89</sup>Forsyth, Valkenburgh, *supra* at 29-30.

In 1910 the Legislature decided to ignore the Constitution again. Chapter 72 authorized the Forest, Fish and Game Commission “to reforest lands in the Forest Preserve.”<sup>90</sup> Chapter 521 provided funds “to erect a suitable iron fence around the monument erected . . . on the lake George battle ground park . . . , and to clean up the paths and roads around the said park, and to erect boundary fences wherever necessary. . . .”<sup>91</sup>

In the years before the laws became consolidated and remained the same for years on end, it was standard to enact the same law yearly, or periodically over a few years. The wording and content of the laws generally remained the same or had only minor insignificant changes. However, sometimes a minor change or deletion would have large and long lasting effects (similarly to Lorenz’s Butterfly Effect). This happened with Chapter 444 of the Laws of 1912, which was a restatement of the laws governing the Conservation Department and Conservation Commission. In the definitions of the parks a seemingly insignificant change took place that would have far reaching effects. The previous definitions of the parks had said they would consist of “all lands now owned or hereafter acquired by the State within” described boundaries. The 1912 law states “all lands within those described boundaries.” With those words, for the first time, private lands inside

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<sup>90</sup> 1910 N.Y. Laws 115-116.

<sup>91</sup> 1910 N.Y. Laws 1203.

the boundaries became a part of the parks.<sup>92</sup> This is significant because private land owners were no longer allowed to do whatever they wanted with their land, rather they were constrained by the rules of the parks. In 1913 the Constitution was amended. The amendment provided that up to 3 percent of the total acreage of the Forest Preserve could be used “for the construction and maintenance of reservoirs for municipal water supply, for canals of the State and to regulate the flow of streams.”<sup>93</sup> The years between 1895 and 1915 saw many legislative attempts to undercut Article VII. Fortunately the Forest Preserve still stood. The Constitutional Convention of 1915 resulted in lively debates between preservationists, management enthusiasts and industry.

#### 1915 Constitutional Convention

The Constitutional Convention of 1915 did not produce a new constitution. However, it did serve as a further vetting process for Article VII. The 1915 constitutional convention was important because it produced significant debate on both sides of the issue. Industry and forest managers (who were relatively quiet during the 1894 convention) vocally tried to open up the forest preserve.<sup>94</sup> For all the debate, however, the 1915 convention served as the strongest indication on the record since 1872 that “wild forest lands were intended to be touched by man as little as possible and that the preservation concept was given

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<sup>92</sup>1912 N.Y. Laws 890.

<sup>93</sup>Forsyth, Valkenburgh, *supra* at 30.

<sup>94</sup>*Id* at 31.

place above either ‘management’ or ‘recreational development’.”<sup>95</sup> The important players in the convention were: Charles M. Dow (Chairman of the Conservation committee of the convention and a proponent of management); Mr. O’Brian (management); James S. Whipple (former Fish and Game commissioner and proponent of management); Mr. Angell (management); Charles S. Mereness (who had been a delegate to the 1894 Constitutional Convention and preservationist); Mr. Beach (preservationist); Mr. Cobb (preservationist); Mr. Austin (preservationist); Mr. Parsons (preservationist); Mr. Clinton (preservationist); Louis Marshall (a New York City attorney, who had been delegate and a staunch ally of David McClure at the 1894 Constitutional Convention and a preservationist); Mr. Tierney (lumber supporter) and Mr. Dunlop (lumber supporter).<sup>96</sup>

Dow, the chairman of the conservation committee, was in favor of creating a nine-member commission which would have “exclusive care, maintenance and administration of the Forest Preserve.”<sup>97</sup> Mr. Dow proposed to give the commission the power to cut fire trails, to remove, but not to sell dead timber in order to reduce fire hazards and to allow the practice of scientific forestry.<sup>98</sup> If one were to ignore Mr. Dow’s proposal about allowing scientific forestry and focus on the other powers the committee was to be granted one could easily agree. Who

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<sup>95</sup> *Id* at 31.

<sup>96</sup> *Id.* at 31.

<sup>97</sup> Journal of the Constitutional Convention of the State of New York, 1915 at 375.

<sup>98</sup> *Id.* at 374.

doesn't want to prevent fires? However, a close reading of the legislative history of the 1894 convention (especially McClure's explanation of Article VII) shows that even the removal of dead timber goes against the original intent. In wild forests, since time immemorial, trees have fallen, and in their death serve an important function to the forest ecosystem as a whole. Even the cutting of fire trails is an affront to Article VII. Did ancient forests have man-made fire trails? Furthermore, as was remarked in the past, who can stop a lumberman's axe once its appetite is whetted. Mr. Dow's reasons for giving so much power to the forest commission was that legislatures (in passing constitutional amendments) do not fully look over the merits of proposals and just pass them to be voted on by an uninformed public or not voted on at all except by those directly interested. He argues that this method of protection is too insecure and that a commission of professionals whose sole occupation is the management of the Forest Preserve would offer the Preserve better (or at least more consistent) protection.<sup>99</sup> In defense of his argument Mr. Dow cited the 1913 and 1915 concurrent resolutions to amend Article VII of the 1894 Constitution to provide that the "... prohibition of section 7 shall not prevent the cutting or removal of mature, dead or fallen trees detrimental to the forest growth, on lands constituting the Forest Preserve, not the leasing of camp sites and the construction of roads and trails necessary for protection against fire, and for ingress

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<sup>99</sup> *Id.* at 361.

and egress. The Legislature may authorize the sale of lands outside the limits of the Adirondack Park and the Catskill Park as such parks are now constituted by law. The proceeds of such sales of lands shall be set apart in a separate fund and issued only for purchase of lands or for reforestation in such parks.”<sup>100</sup> The amendment did not go to referendum because it was ruled out of order because of a procedural problem.<sup>101</sup> Mr. Dow argued that but for the procedural mixup the amendment would have been adopted. The adoption of the amendment would have effectively ended the constitutional protection of the Forest Preserve.<sup>102</sup> While Mr. Dow clothed his language in the cloak of protection, the end result of adopting his viewpoint would be “opening up” the Forest Preserve. An entire legislature and the population of New York are less likely to be influenced by lobbyists for industry than is a nine man commission. The threat of the commission’s capture would be so grave that it would no longer be a matter of if the Forest Preserve would be “opened up,” but when.

Delegate O’Brian was the next person to speak. In opposing Mr. Dow’s proposal for commission management he stated, “But I suggest to you, gentlemen, that every time a proposition was made there, it involved the question of putting the axe to these forests. It meant going back to the old policy. . . . You cannot open the door to a new policy without imperiling all that has been done in the last twenty

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<sup>100</sup> *Id.* at 367.

<sup>101</sup> Forsyth, Valkenburgh *supra* at 32.

<sup>102</sup> *Id.* at 32.

years.” However, he said: “It is suggested that the people should have it for park and recreation grounds; that it should be for the use of the people; but that is not the real purpose and the underlying thought of the preservation of these forests.”<sup>103</sup> Mr. O’Brian then quoted Henry D. Graves, then head of the U.S. Department of Forestry: “The third great service which forests render to the state or country is to the recreation and health of the people and their esthetic environment. The greater the urban population in any section, the more vital does this service become. Who can calculate what the forests of the United States have meant to the virility and health of her people, and to the preservation, in the midst of complex social conditions, of some of the pristine vigor and simplicity of pioneer conditions? Wholly aside from the question of moral and esthetic environment, as a means of national health and greater national efficiency, this service has an economic value beyond calculation.”<sup>104</sup> These words were of great weight in 1915; however, how much greater has their weight become in the modern age? The human population has exploded to unimaginable numbers, urban sprawl has spread concrete over vast tracts of land, wilderness the world over has exponentially shrunk; the Forest Preserve’s value has at least grown proportionately with the previously mentioned factors.

At this point in the convention the topic of most concern was what the commission in charge of managing the Forest Preserve should

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<sup>103</sup> *Id.* at 33.

<sup>104</sup> *Id.*

consist of. There were three different points of view being discussed. One side wanted a board of nine commissioners, another side wanted one commissioner from each state district, and another (including former commissioner Whipple) wanted a single paid professional to be responsible for the Forest Preserve's management.<sup>105</sup> The Committee of the Whole adopted the proposal for a commission of nine as Section 1 of a new article, and the old form of Section 7 of Article VII was proposed as Section 2, with the following addition: "The commission is, however, empowered to reforest lands in the Forest Preserve, to construct fire trails thereon, and to remove dead trees and dead timber there from for the purposes of reforestation and fire protection solely, but shall not sell the same."<sup>106</sup>

The next proposed amendment was brought forth by delegate Angell, who wanted the Conservation Department to be able to classify the Forest Preserve into classes. Class one would consist of mountain tops, lake, and stream sides, whereas remaining lands would be classified as class two land. Angell proposed that the Conservation Department would have the power to practice scientific forestry, to use the land for highways and for the construction of campsites on class two land. He also proposed to give the Conservation Department the power to sell Forest Preserve lands which lay outside the "blue line" or

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<sup>105</sup> *Id.*

<sup>106</sup> Journal of the Constitutional Convention of New York, 1915 at 361

boundaries of the parks.<sup>107</sup> In support of his amendment Delegate Angell cited that the above method was endorsed by Henry D. Graves who was the chief forester of the national preserve. In a letter to the chairmen of the conservation commission sent July 18, 1915 Mr. Graves wrote, “Undoubtedly considerable parts of the Adirondack Preserve should be retained as pristine forests for the recreation and esthetic enjoyment of the people. I believe, however, that it would be equally unfortunate for the Constitution to prevent the people of the State from carrying out, after expert advice and public consideration, a policy of practical forest management on certain parts of the Adirondack lands or any other lands owned by the State where it is determined to be the highest use which can be made of that particular portion of the public holdings.”<sup>108</sup> Mr. Graves job title (Chief Forester) calls into question his objectivity and supports an argument that he is biased. It is clear that delegate Angell wanted to “open up” the Forest Preserve and all but destroy any protection offered to the wild forest lands.

The Association for the Protection of the Adirondacks (an ironic name considering their objective was to open up the Forest Preserve to lumbermen and their sharp axes) was also involved in the debate and their organization was described as “an association which has always taken a particular pride in its stand against liberal interference with or

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<sup>107</sup> *Id.* at 369.

<sup>108</sup> *Id.* at 367-368.

use of the forest.”<sup>109</sup> In other words it was an organization dedicated to the exploitation of the Forest Preserve for profit by discouraging government protection and encouraging forestry.

The 1915 convention also differed from the 1894 convention in that party platforms were formulated in regard to the Forest Preserve. The Democratic platform recommended the following amendment to Article VII: “The Constitution, in relation to the preservation of forests, should be so amended as to permit a profit to the State; to be derives from scientific preservation and cultivation of out forest lands, at the same time protecting them against exploitation by private interest.”<sup>110</sup> The Democratic platform failed to explain how the Forests can be used for profit and not exploited by private interests. They also forgo mentioning how the Forest Preserve will be protected from public exploitation.

The Republican Party’s platform at the time of the nominations for the Republican delegates-at-large was as follows: “We favor conservation and utilization of the State’s forests and waters under conditions which will safeguard the rights and interests of the State. The holdings by the State of forest lands should be enlarges and adequately protected against fire and waste.”<sup>111</sup> The Republican party choose to word their platform as vaguely as possible, saying that they support both conservation and utilization, and that they are against

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<sup>109</sup> Forsyth, Valkenburgh *supra* at 34.

<sup>110</sup> Journal of the Constitutional Convention of New York, 1915 at 368.

<sup>111</sup> *Id.* at 368.

waste and fire. What constitutes waste in a wild forest? As was noted in the 1894 Constitutional Convention even dead, fallen, rotting trees serve a purpose to the forests ecosystem. Furthermore, is it possible to both utilize and conserve a wild, pristine forest?

Delegate Mereness was the next to speak about Article VII. Mr. Mereness wanted to permit the sale of parcels that were not contiguous to the parks and were outside the blue lines in the Forest Preserve counties.<sup>112</sup> Mereness defended the wisdom of the 1894 convention in economic terms. Mereness claimed that the State owned lands had appreciated 5 times in value over the past 20 years and that trend would continue in the future. Furthermore, he stated that the land he would sell were mostly without trees and were not valuable as preservation lands.<sup>113</sup>

In speaking against Mr. Agnell, the next speaker, delegate Beach, was skeptical about the science of “scientific” forestry. When Mr. Beach was asked whether he disagreed to the practice of scientific forestry in the Preserve he answered: “I don’t believe it is a possible thing to control a lumberman if he once takes his axe into the forest. I don’t think rules can be devised which would protect the forest if you once allow an axe in there.”<sup>114</sup>

The next Delegate was Mr. Tierney, who was in favor of scientific forestry (this fact is of little wonder considering that Mr. Tierney was

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<sup>112</sup> Forsyth, Valkenburgh *supra* at 34.

<sup>113</sup> Record of the Constitutional Convention of New York, 1915 at 1438.

<sup>114</sup> *Id.* at 1444.

an attorney for a lumber company owning 100,000 acres of land in the Adirondacks).<sup>115</sup> Mr. Tierney spoke out for the specific purpose of rebutting delegate Beach's above statement.<sup>116</sup> Mr. Tierney asserted that "the methods employed by lumbermen today and the care which they take of the forest put to shame the policy of the State of New York in caring for its forests."<sup>117</sup> Mr. Tierney described Article VII as follows: "In a fit of rage, 20 years ago, the Constitutional Convention stopped the progress of this State with regard to the care of its forest lands. You need not worry, gentlemen, about the lumbering interests wanting to break into the into the Adirondack forests. They take better care of them than does the Conservation Commission. They spend more to fight fires and build fire trails."<sup>118</sup>

The next speaker was former commissioner Whipple. Mr. Whipple spoke against any lumbering in the forest, asserting that any removal of trees would have a negative effect on the water retention ability of the land as well as its climate control effects.<sup>119</sup> Speaking about population growth Mr. Whipple stated: "What is the situation of our population in America? At our rate of increase in fifty years we will have two hundred million people. New York State grows faster than any other portion of the Country. In that time then we will have at least twenty million people in the state of New York. The park lands in

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<sup>115</sup> Forsyth, Valkenburgh *supra* at 34.

<sup>116</sup> Record of the Constitutional Convention of New York, 1915 at 1444.

<sup>117</sup> *Id.* at 1444.

<sup>118</sup> *Id.* at 1445.

<sup>119</sup> Record of the Constitutional Convention of New York, 1915 at 1450.

that time will be to those people what Central Park is to the people of the city of New York. Can you afford to put an axe to it? The crime of the centuries has been the destruction of many portions of that Adirondack country.”<sup>120</sup> The need for water and climate control is greater now than ever before. Mr. Whipple wanted the State to fund further land acquisition projects and was in favor of letting the Conservation Commission remove and sell dead timber for domestic firewood use.<sup>121</sup> Mr. Whipple also stated that “scientific forestry” is not possible.<sup>122</sup>

The next speaker, Delegate Dunlap, spoke in favor of selective cutting. To back up his proposal he cited the good condition of the Adirondack League Club lands, especially their lack of fires.<sup>123</sup> Delegate Dunlap also supported the building of campsites and construction of roads.<sup>124</sup>

The next speaker spoke in rebuttal of Mr. Tierney. Mr. Cobb, a conservationist, asserted that the good forestry practices espoused by Mr. Tierney was a utopian view and that in reality less than 10 percent of the lumber industry actually practiced the so called “good” practices. The vast majority of the lumbering industry still wrought destruction on forested lands through the practice of clear cutting.<sup>125</sup>

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<sup>120</sup> *Id.* at 1450.

<sup>121</sup> Forsyth, Valkenburgh *supra* at 35

<sup>122</sup> Record of the Constitutional Convention of New York, 1915 at 1452.

<sup>123</sup> *Id.* at 1462.

<sup>124</sup> *Id.* at 1465.

<sup>125</sup> *Id.* at 1468.

Delegate Landreth advocated for the Angell amendment for roads and campsites. Mr. Landreth made particular note of skepticism about government. Landreth argued: “The policy of locking up our forests against access and proper use by its rightful owners, the people, is based on an unwarranted and demoralizing assumption that the public officials cannot be trusted.”<sup>126</sup> While facially his argument sounds good, in reality “locking” the forest up is not a denunciation of the integrity of public officials, but rather a pronouncement of the importance of the Forest Preserve. As in all Constitutions some ideas or actions are considered to be of such great importance that any decisions involving them need to go through a process to ensure the right decision is made. Likewise, preserving the Forest Preserve is not a form of elitism. The benefits of preservation go beyond the rich and reach all people. Furthermore, the ones who receive the benefit from opening up the Forest Preserve would not be the people within the Forest Preserve but instead large industries.

The argument for more roads was interesting in that in the year 1915 cars were beginning to become more commonplace (though far less than they would be in the coming years) and people were arguing that the less mobile members of society (elderly, disabled) should be able to experience wilderness through the use of cars.<sup>127</sup>

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<sup>126</sup> *Id.* at 1474-1476.

<sup>127</sup> Forsyth, Valkenburgh *supra* at 35-36.

Delegate Meigs, in support of Angell's proposed amendment (An amendment that would divide the Preserve into 2 separate classes), stated: "A part shall always remain wild forest land, shall not be sold, and the timber shall not be cut, removed or destroyed; the balance shall be used not for commercial purposes but for utilization forests, in which trees may be cut for the purpose of benefiting the forests- for increasing the yield per acre of forest products. Does this not meet the demands of the rule, 'The greatest good to the greatest number?'"<sup>128</sup> Mr. Meigs backed up his views by relying on the familiar and time tested argument (an argument that has been used and will be used whenever foresters want to take an axe to forests) that forestry has reached a point of enlightenment not yet seen in all its history.<sup>129</sup> He further argued that Mr. Angell's proposed amendment would allow cutting in the second class designation, but that the cutting would not be commercial and only be for the benefit of the forest.<sup>130</sup> Mr. Meigs asserts, "I do not believe in opening the door to the lumbermen; to letting down the bars to any interest which would injure our forests; but I do believe that we should give discretionary power to this Department of Conservation, which we have created to trim and prune for the benefit of the forests."<sup>131</sup> Unfortunately for Mr. Meigs, if you are

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<sup>128</sup> Record of the Constitutional Convention of the State of New York, 1915 at 1479.

<sup>129</sup> Forsyth, Valkenburgh *supra* at 36.

<sup>130</sup> Record of the Constitutional Convention of the State of New York, 1915 at 1479.

<sup>131</sup> *Id.* at 1478.

to allow the Department of Conservation discretionary power to “trim and prune,” the whole forest preserve may end up looking like a well looked after English Garden (at best) rather than a pristine, wild forest as the framers of Article VII intended.

The preservationists responded with successive statements by delegates Austin, Parsons, Clinton and Marshall. Austin stated that far from being a danger, dead wood is beneficial in that it contributes to water retention, increase in humus, and the building of soil.<sup>132</sup>

Mr. Marshall called to attention the bias of some of the other delegates. Mr. Marshall exposed the fact that Mr. Angell was legal counsel to a syndicate that owned extensive timber properties and that Mr. Meigs was the president of the Santa Clara Lumber Company. Delegate Marshall stated: “Conservation, preservation, scientific forestry is what they say when they talk. Yet their contract called for cutting of soft wood timber eight inches in diameter.”<sup>133</sup>

After the preservationists finished speaking the various proposed amendments were voted on. The only new amendment approved was the Blauvelt amendment, which provided for a highway from Long Lake to Old Forge, via Blue Mountain Lake and Raquette Lake.<sup>134</sup> Section 2, which was the same as the former “forever wild” provision of

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<sup>132</sup> Forsyth, Valkenburgh *supra* at 36.

<sup>133</sup> Record of the Constitutional Convention of the State of New York, 1915 at 1499.

<sup>134</sup> Forsyth, Valkenburgh *supra* at 36.

Article VII, was approved.<sup>135</sup> The “Burd” amendment was also retained (the “Burd” amendment was adopted in the general elections of the year 1913 and allowed for 3 percent of the total acreage of the Forest Preserve for reservoirs and other water related purposes.<sup>136</sup> The proposed new Constitution was brought before the people in the General Election and defeated by a vote of over 2 to 1.<sup>137</sup> Article VII of the Constitution remained unchanged.

#### 1915 – 1938

The 1915 convention will be remembered for the attempt to exchange preservation for management. It will also be remembered as a reaffirmation of the collective view that the Forest Preserve was to be left pristine and as untouched by man as humanly possible. However, the Legislature wasted no time in ignoring the clear mandates of the people of New York.

In 1916 the Legislature revised the Conservation Laws. The revised laws gave powers to the Forest Commission that were cloaked in the language of preservation, but in practice were made in order to use and exempt forest lands from the Forest Preserve, not to protect such lands. Chapter 451 of the Laws of 1916 gives the Commission the

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<sup>135</sup> *Id.* at 37.

<sup>136</sup> *Id.* at 37.

<sup>137</sup> *Id.* at 37.

following powers (among others): “. . . reforesting public lands under such terms as may be deemed to be for the public benefit<sup>138</sup>. . . receive by gift or devise the fee or other estate of lands or timber or both, for forestry purposes.<sup>139</sup> To condemn lands, “. . . within the Adirondack or Catskill parks or adjacent thereto, the appropriation of which, in the judgment of said Commission, shall be necessary for park purposes, or for the protection and conservation of the lands, forests and waters within the State.<sup>140</sup> Structures. No building shall be erected, used or maintained upon the Forest Preserve except under permit from the commission.”(Emphasis added).<sup>141</sup>

In the 1920’s the Legislature continued to pass laws that were not in accord with Article VII. Chapter 401 of the Laws of 1921 authorized “the state commission of highways to use stone, gravel and sand and to occupy a right of way on certain lands in the Forest Preserve in order to construct the state and county highway designated” in the law.<sup>142</sup> This law became the law on April 30, 1921, with the approval of the Governor and was passed by three-fifths present.<sup>143</sup> In 1924 the Legislature expanded the 1921 law by allowing for the maintenance and reconstruction of state and county highways that “have been

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<sup>138</sup> 1916 N.Y. Laws 1200.

<sup>139</sup> *Id.* at 1209.

<sup>140</sup> *Id.* at 1203.

<sup>141</sup> *Id.* at 1210.

<sup>142</sup> 1921 N.Y. Laws 1243.

<sup>143</sup> *Id.* at 1243.

heretofore improved, or which may hereafter be designated by law.”<sup>144</sup>

In 1924 the Legislature also authorized the town superintendent of Harrietstown in Franklin County to build a highway through the Preserve.<sup>145</sup>

Highways were not the only use of Forest Preserve land that the Legislature deemed important enough to allow them to ignore Article VII. In 1922, Chapter 99 of the Laws allowed for the creation of game refuges, to be fenced and patrolled.<sup>146</sup>

Continuing the trend of disrespect of the Forest Preserve, the legislature in 1925, dropped all pretenses of following the Constitution (during the 1894 Constitutional Convention David McClure stated, “as now fixed by law’ is to prevent the Legislature from at any time limiting the extent of the Forest Preserve by providing that in a certain county which by the laws of the State is now part of the forest preserve there should not be included within it, or in any way excepting, any parts of the lands within the county.”).<sup>147</sup> Chapter 357 of the Laws of 1925 authorized the Conservation Commission “. . . to accept, for the state, grants or deeds of gift of any lands located in any county named

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<sup>144</sup> Forsyth, Valkenburgh *supra* at 41.

<sup>145</sup> 1924 N.Y. Laws 531.

<sup>146</sup> 1922 N.Y. Laws 275. One refuge is still in operation today as a Wildlife Management area. Forsyth, Valkenburgh, *supra* at 41-42.

<sup>147</sup> During the 1894 Constitutional Convention David McClure stated, “as now fixed by law’ is to prevent the Legislature from at any time limiting the extent of the Forest Preserve by providing that in a certain county which by the laws of the State is now part of the forest preserve there should not be included within it, or in any way excepting, any parts of the lands within the county.” Forsyth, Valkenburgh *supra* at 42.

in section sixty-two of this chapter [the “Forest Preserve” counties], which the commission may deem suitable for park or reservation purposes. . . . The grant or deed must recite that it is given for acceptance under the provisions of this section. Property so accepted shall forever be under the jurisdiction of the Conservation Commission and its successors in office and, by virtue of the acceptance thereof, shall be irrevocably dedicated to be used for purposes of a public park or reservation under the care, custody control and management of the Conservation Commission and shall not become part of the forest preserve. Such property shall not be subject to the limitations of section seven of article seven of the constitution of the state, but shall forever remain open to the public for the enjoyment of the scenic and natural beauties of the premises, and receive such improvement or development, by the erection of buildings, roads, highways, railroads and other structures, including the improvement, alteration and maintenance of the structures now on such promises as the legislature may from time to time determine. The Conservation Commission may, in its discretion, lease a part or all of such premises upon such conditions as it may determine not inconsistent with the reasonable use of said premises by the public, provided that any such lease shall first have been approved by the attorney-general as to form.”<sup>148</sup> Obviously this law passed by the Legislature is unconstitutional. The Legislature has no power to exempt State land that is within the Forest Preserve

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<sup>148</sup>1925 N.Y. Laws 659.

from Article VII. The whole point of Article VII was that lands within the Forest Preserve be under the protections of Article VII. The Legislature clearly forgot the difference between a constitutional provision and an ordinary law. Unfortunately 1925 was not the last time the Legislature of New York forgot the difference between a constitutional provision and a law. Chapter 332 of the Laws of 1935 is similar to the 1925 law and provides in part: "Acceptance by the department of gifts of property and money. The conservation department, for the purpose of carrying out the provisions of Article four of the Conservation Law, shall have power to receive and accept in the name of the people of the State, by gift or devise, the fee or other estate therein of land or water, or of rights therein in the State of New York, including moneys, fish, birds, quadrupeds and other real and personal property, which it may deem desirable or suitable for the purpose of fish and game management. Such land or water, or land and water, or right therein, money, fish, birds, quadrupeds and other real and personal property may be accepted from any person, including the United States government. Land or water accepted under the provisions of this section shall not become part of the Forest Preserve or be subject to the limitations of Section 7 of Article VII of the constitution of the State but shall be held for use of the division of fish and game of the Conservation Department, and receive such

improvement or development as in the opinion of the department is calculated best to carry out the purposes of this Section.”<sup>149</sup>

During the period between 1915 and 1938 the people of the State of New York amended Article VII a few times. In the years 1918, 1927 and 1933 highways were authorized through the Forest Preserve to grant better access. The biggest change to Article VII occurred in a 1931 amendment. The amendment is known as the ‘Reforestation Amendment.’<sup>150</sup> The amendment allowed the State, “to acquire lands for the establishment of forest tree nurseries and reforestation areas all across the State, significantly including those parts of the Forest Preserve Counties outside the Adirondack and Catskill Parks.”<sup>151</sup> In order to gain the support of organizations dedicated to protecting the Forest Preserve the Park was enlarged for 4,054,000 acre to 5.6 million acres.<sup>152</sup>

The people of New York also voted down several proposed amendments to Article VII in the intervening years between the 1915 and 1938 constitutional conventions. In 1923 a proposal that would have allowed Forest Preserve lands to be used for hydroelectric power purposes was voted down.<sup>153</sup> Delegate Goodelle (of the original 1894 constitutional convention) would have been proud of the people of New

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<sup>149</sup> Forsyth, Valkenburgh *supra* at 42-43. (Emphasis added)

<sup>150</sup> *Id.* at 43.

<sup>151</sup> Revised Record of the Constitutional Convention of New York, 1938 vol. 2 at 1291.

<sup>152</sup> Forsyth, Valkenburgh *supra* at 44.

<sup>153</sup> *Id.* at 44.

York.<sup>154</sup> In 1932 an amendment known as the “Recreation Amendment” was defeated.<sup>155</sup> This amendment would have allowed the State to “construct paths, trails, campsites, and camping cities in the Forest Preserve.”<sup>156</sup>

#### 1938 Constitutional Convention

The main issue in the 1938 constitutional convention (as far as the forest preserve was concerned) was the Hewitt amendment (reforestation amendment of 1931).<sup>157</sup> Conservation Commissioner Lithgow Osborne and delegate Brewster wanted to amend the Constitution so that lands acquired under the Hewitt amendment since its enactment, as well as future lands acquired under the Hewitt amendment, should be exempt from Article VII.<sup>158</sup> Delegate Brewster introduced the proposal which reads as follows: “Wild life conservation and reforestation are hereby declared to be policies of the State. The legislature may appropriate moneys for the acquisition by the State of land, outside of the Adirondack and Catskill parks now fixed by law for the practice of forestry or wild life management and the prohibitions of Section 1, of this article, shall not apply to any lands heretofore or

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<sup>154</sup> Delegate William Goodelle was the person who proposed the addition of the words “or destroyed” to Article VII. His reasoning was to prevent dams from being built that would flood parts of the Forest Preserve thereby destroying it. At the time dams were used to raise water levels to allow logs to float down them, however (as is now apparent) dams used for hydroelectric power cause just as much damage.

<sup>155</sup> *Id.* at 44.

<sup>156</sup> *Id.*

<sup>157</sup> *Id.* at 32.

<sup>158</sup> Revised Record of the Constitutional Convention of New York, 1938 vol. 2 at 1291.

hereafter acquired for such purposes within the forest preserve counties outside of the Adirondack and Catskill parks as now fixed by law.”<sup>159</sup>

The Conservation Commission’s reasons for supporting the amendment were that at this time the commission was a fervent supporter of forest management. The commission was active in attempting to garner support for scientific forestry, which it aptly called “tree farming.”<sup>160</sup>

Delegate Osborne supported delegate Brewster’s proposed amendment stated “Twenty – three years ago, and still more 44 years ago, questions relating to conservation of our natural resources demanded, or at least seemed to demand<sup>161</sup>, constitutional treatment which they do not need today. . . . Today we find a forest conservation policy established and recognized, not only by the Constitution and by statute law, but also by precedent and by the practice of a succession of devoted civil servants in the Conservation Department until there is little that such a body as this can do to promote it.”<sup>162</sup> Delegate Osborne’s statements echo words uttered every generation, that is, that this generation knows better than every generation before and generations of the future will see no fault in their wisdom. Governor Al Smith also spoke in support of delegates Osborne and Brewster arguing that the sole purpose of protecting the forest preserve through the Constitution was to “put a

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<sup>159</sup> *Id.* at 1291 – 1292.

<sup>160</sup> *Id.* at 32.

<sup>161</sup> Delegate Osborne’s words seem to imply that the Forest Preserve never needed to be protected by the Constitution.

<sup>162</sup> *Revised Record of the New York State Constitutional Convention of 1938*, Vol. 2 at 1292.

halter on the lumber thieves that we had. We did not have the facilities for catching them that we have today with our State Police and good roads and automobiles.<sup>163</sup> If delegate Smith would have read the legislative history of Article VII he would have realized that there were many other reasons for placing the forest preserve under the protection of the Constitution such as protecting the watershed, curbing erosion, and aesthetics (among other reasons).

Delegates Gott and Kuczwalski spoke out in favor of preservation and against the Hewitt amendment; unfortunately it was to no avail.<sup>164</sup> The convention readopted Article VII section 7 as Article XIV section 1. The 1913 amendment which called for a 3% impoundment of water was kept as subsection 2 and subsection 3 ( the Hewitt amendment) that permitted special-purpose purchase of lands in Forest Preserve counties but outside the parks.<sup>165</sup>

While the 1938 convention did loosen certain restrictions, the convention did maintain the same tight requirements for lands acquired that are within the “blue line” of the Forest Preserve.<sup>166</sup> The laws adopted in 1925 and 1935 that allowed for lands acquired by gift or devise to be used for forestry and game propagation, thereby exempting them from Article XIV, were not mentioned in the 1938 convention, nor did the convention try and add to those laws by

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<sup>163</sup> *Revised Record of the New York State Consitutional Convention of 1938*, Vol. 2 at 1310 – 1311.

<sup>164</sup> *Id.* at 1302 – 1308.

<sup>165</sup> *Id.* vol. 3 at 2703 – 2104.

<sup>166</sup> *Id.* at 33.

allowing land purchased by the State to be treated the same as land gifted or devised.<sup>167</sup>

### Delegate Elections

A constitutional convention is only as good (or bad) as the delegates that are elected to serve. Article XIX section 2 of the current New York State Constitution states, “in case a majority of the electors voting thereon shall decide in favor of a convention for such purpose, the electors of every senate district of the state, as then organized, shall elect three delegates at the next ensuing general election, and the electors of the state voting at the same election shall elect fifteen delegates-at-large.”<sup>168</sup> The specific process including requirements, procedure and restrictions are located in the New York Election Law’s article 6.<sup>169</sup>

As can be seen by the 1894 constitutional convention the delegate’s can be the major force behind constitutional change. The Forest Preserve was not even on the agenda heading into the 1894 constitutional convention, yet 1894 was the beginning of New York State’s constitutional protection of the wilderness. The delegate’s themselves were responsible for creating the Forest Preserve. Where would we be today if not for Delegates Choate, McClure and Goodelle? If different delegates had been selected for the conventions of 1894, 1915 and 1938 would there even be a Forest Preserve to protect? That

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<sup>167</sup> Id. at 33.

<sup>168</sup> N.Y. Const. art. XIX § 2.

<sup>169</sup> N.Y. Elec. Law § 6-1000.

being said, electing delegates to the convention is possibly the most crucial part of the whole constitutional process.

In order to make a convention truly be of the people it is important to have certain guidelines as to who is eligible to run for and subsequently serve as a delegate in a constitutional convention. With no rules as to is eligible to run or serve the convention could easily be high-jacked by those with deep pockets or those in the government who want to stifle public participation. The current New York Legislature understands the above facts and consequently has introduced no fewer than 10 different bills, related to delegate selection, for vote in the 2009-2010 regular sessions. On January 7, 2009 Assemblyman Thiele proposed Bill Number: A1237. This bill seeks to “decrease the number of signatures needed for designating and nominating petitions for office of delegate to the constitutional convention.”<sup>170</sup> The purpose of this Bill is to “ensure the Delegate selection process for the Constitutional Convention is easily accessible to anyone who wishes to run as a Delegate.”<sup>171</sup> The specific provisions are to lower the “signatures on party petitions needed to designate a candidate for office of Delegate-at-large to a Constitutional Convention by half to 7,500 signatures, and to reduce the number of signatures needed to designate a District Delegate by half to 500 signatures.”<sup>172</sup> The Bill also proposes to lower the requirements for independent nominating petitions for a candidate

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<sup>170</sup> Summary of Bill A1237.

<sup>171</sup> Memo of Bill A1237.

<sup>172</sup> *Id.*

for the office of Delegate-at-large to a constitutional convention by half to 7,500 signatures and for District Delegate reduce the required signatures by half to 1,500.<sup>173</sup> In Justification for his proposed bill Assemblyman Thiele states, “Historically, the election of Delegates to New York State Constitutional Convention has largely been governed by the generally applicable Election Law. This is still the case today. The provision of this law, and their strict interpretation by the courts, has been criticized repeatedly as raising substantial barriers to ballot access. So that a Constitutional Convention is more of a ‘people’s convention’ than a political insiders’, as recommended by the Temporary State Commission on Constitutional Revision, reducing the required number of signatures for a valid petition would provide easier access to the ballot and significantly open the process to less politically experienced candidates in an effort to level the playing field.”<sup>174</sup> The heart of the Bill is in the right place, however will it really be effective in opening up the Convention to politically less experienced candidates? The number of signatures required remains a significant number. It is likely that the reduction of required signatures will not serve to open up the electoral process but rather make it easier for those who were already planning on running.

Another Bill proposed by assemblyman Thiele is Bill Number A1959 which “provides that delegates to a constitutional convention

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<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

shall not be state or local elected officials, legislators or political party chairs; prohibits contributions to candidates for delegate positions in excess of one hundred dollars.<sup>175</sup> The stated purpose of the bill is to ensure that a constitutional convention reflects the views of the people not just politicians and special interest groups.<sup>176</sup> In essence the bill wants to ensure that a constitutional convention would provide citizens from all walks of life to have the ability to meaningfully participate in the possible re-structuring of the New York State Constitutional Convention.

The idea of excluding those who are already serving in an official state capacity is a double edged sword. On the one hand they would have an unfair advantage in becoming delegates in that they have greater resources and name recognition than the average citizen. Also, people serving in an official capacity are likely to want to maintain the status quo and not give serious consideration to re-framing the constitution which is likely what the people wanted in calling for a constitutional convention in the first place. However, there are also draw backs in not allowing people with legislative/political experience to be considered in the process of selecting delegates to a Constitutional Convention. One argument is that they are also citizens of the State of New York and have as much a right and interest in the well being of the State as any other citizen. Furthermore, people with political

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<sup>175</sup> Summary of Bill number A1959.

<sup>176</sup> Memo of Bill number A1959.

experience are more likely to understand the complex issues and subtleties of reframing a Constitution than the average person on the street. These aren't easy issues as popular culture would have you believe. Bill number A1959 is not the only bill that exclusively deals with prohibiting current office holders from running to become delegates to the constitutional convention. Bills numbered A9496, A10827, A6094 (same bill as A9496), A8292, and A5277 all seek to exclude people currently serving in public office from becoming delegates to a constitutional convention.<sup>177</sup>

Another section of the bill states that the limit a candidate for delegate can receive from an individual donor is 100 dollars. This provision also has positive and negatives. On the positive side it limits the ability of major industries or rich individuals from cherry picking the delegates so that they can shape the Constitution as they see fit. On the negative side the limit on donations may inhibit some qualified yet no wealthy individuals from being able to compete in the election, whereas a wealthy individual may be able to buy his way into office. As easy way to eliminate the problems with this provision of the bill would be to enact a cap on how much an individual can spend on a campaign as well as keeping the 100 dollar limit on individual donations.

Another bill regarding the election of delegates is bill number A4146 sponsored by Assemblyman Brodsky. The purpose of the bill is

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<sup>177</sup> Summary of Bill numbered A9496, A10827, A6094 (same bill as A9496), A8292, and A5277.

to reform the constitutional convention's delegate selection process. In order to do this the bill proposes to: "Create a public finance system for delegate elections, Reform the delegate election process by substitution a system whereby each voter votes for one candidate instead of three, and make it easier for citizens to gain access to the delegate election ballot."<sup>178</sup> In justification for the bill assemblyman Brodsky claims that the current process dilutes minority voting, making it a likely violation of the Voting Rights Act.<sup>179</sup> Brodsky claims that the way the current system is set up wherefore voters can vote for multiple candidates and that historically this method has been used by racial majorities to dominate the electoral process.<sup>180</sup> The remedy Brodsky's bill suggests is to create a system of limited voting (a person can only vote for one delegate).<sup>181</sup> Besides creating more fairness for minorities limited voting is also easier to understand and execute.<sup>182</sup>

The second issue the proposed bill deals with ballot access laws. In particular it seeks to reform the number of signatures needed for delegates to have before they can get onto the ballot. The second problem with the current law that the bill seeks to reform is the fact that even minor mistakes can lead to a void petition.<sup>183</sup> In 1994 the Temporary Commission on Constitutional Convention voiced similar

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<sup>178</sup> Memo of Bill A4146.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

concerns. The Commission stated: “There can be little dispute that the complex and sometimes technical construction and application of the election law favors those most familiar with it . . . Some have expressed concern that it would be relatively more difficult for those who are not a part of an existing political party organization to become candidates for convention delegates. This is not only a criticism of the election law but also as expression of the view that, regardless of the rules applicable to everyday political elections, there should be afforded to persons not normally involved in partisan politics a greater and more open opportunity to become involved in the special process of constitutional revision.”<sup>184</sup> The current bill remedies the above cited problems by providing a grace period, reducing the number of signatures, and changing the legal standard from strict compliance to substantial compliance.<sup>185</sup>

The next issue the bill seeks to reform is campaign financing. The memo for the bill explains, “Public financing of the delegate selection process is absolutely critical. Since greater access must be afforded to those that do not normally participate in politics, public financing is critical to provide average citizens the resources to participate.”<sup>186</sup> This bill seeks to level the political playing field and avoid “government

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<sup>184</sup> *Temporary State Commission on Constitutional Revision, The New York State Constitution: A Briefing Book*. Rockefeller Institute of Government, 49 (1994) .

<sup>185</sup> Memo of bill A4146.

<sup>186</sup> *Id.*

industry” dominance at the convention.<sup>187</sup> Unlike other bills seeking to reform the delegate election process, this bill does not ban legislatures from serving as delegates. Instead it tries to frame the delegate election process in such a way as to allow less politically experienced individuals to compete successfully in the process.<sup>188</sup> The strength of this bill is that it is more comprehensive than most of the others that deal with delegate election reform. The bill does not focus on one issue but takes all the issues combines them into one bill making it easier to effect change as one bill takes less time to vote on then do several. The one issue with this bill is that it claims to be able to allow less politically savvy people to compete with legislatures for delegate appointments. If current politicians are allowed to run they will always have the advantage over non politicians, not just through access to money and campaign strategy but more importantly through name recognition.

Bill number S8342 proposes to convene a constitutional convention and provides for qualifications for delegates to a constitutional convention.<sup>189</sup> This bill seeks to call a constitutional convention for limited purposes it states the question to be submitted to the people of the State of New York will be, “Shall there be a convention to revise the constitution and amend the same for the sole and limited purposes of providing for reform of the state budget process, creating a real

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<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> Summary of Bill number S8342.

property tax cap, providing state mandate and regulatory relief, limiting state debt and expenditures, authorizing statewide initiative and referendum, and establishing term limits, recall, and rules of succession for all state elected officers?”<sup>190</sup>

The bill also seeks to amend the public officer’s law by adding a new section, 73-c, which reads as follows: “Delegates to State Constitutional Convention. All persons seeking election as a delegate to a State Constitutional Convention, pursuant to section town of Article Nineteen of the New York State Constitution shall, upon the filing of their petitions seeking such office, file the same financial disclosure form as required by a member of the legislature. Any person seeking election as a delegate to a State Constitutional Convention shall have been a resident of the State for no less than five consecutive years, and a resident of the Senate District for not less than one year. All persons elected . . . shall, within thirty days of their election, file with the Secretary of State, an oath of office, in a form prescribed by the Secretary of State which swears that such delegate will impartially serve the People of the State of New York, in the discharge of the duties of their office, without conflict or undue influence. No person shall be eligible to file such oath of office as a delegate to a state constitutional convention, who, within five years of the time of their service as a delegate, has held any elected public office, or has been employed as a lobbyist, as defined by section one-c of the Legislative Law, or has been

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<sup>190</sup> Bill number S8342.

employed as an officer or executive director of a labor union, employee association, or not-for-profit corporation.”<sup>191</sup>

The first provision of this bill is interesting in that it seeks to hold a constitutional convention only on a limited issue.<sup>192</sup> Basically, if passed, this bill would take the forest preserve off of the table. Preservationists will not have to worry about the forest preserve losing protection. However, another result is that Article seven will not be strengthened. With the impending climate change crisis, hydro-fracking, invasive species, and population growth Article seven needs to be strengthened therefore the first provision of the bill is not acceptable.

The second provision of the bill wants to limit who can become a delegate (as other bills have similarly proposed<sup>193</sup>) as well as put the delegates through a similar process through which all elected officials in the State of New York must go through, as well as meeting certain residency requirements. As mentioned earlier, not allowing people in public office be elected as delegates is a double edged sword<sup>194</sup>, however requiring the delegates to meet the same requirements other elected officials must meet is necessary given the importance of the position and the possibility of undue influence.

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<sup>191</sup> *Id.*

<sup>192</sup> As do Bills numbered A9497, A11654, S6088, and S6093. None of the previous bills support a review of Article Seven.

<sup>193</sup> *Supra* 43.

<sup>194</sup> *Supra* 43.

## Conclusion

Article Seven of the New York State Constitution has a long and storied history. Ever since the land was taken from the crown and given to the people of the State of New York in 1779 the land that would become the forest preserve has been of immense value. It was its value that initially threatened to destroy it, however in the end it has served to preserve it. What price can we put on wild forest lands?<sup>195</sup> What values does humanity hold most dear? These are the questions that have been asked numerous times in various conventions and are still asked today. In 1894 the delegates decided that the wild forest lands were priceless and that to allow them to be exploited would not only harm the forest and its natural inhabitants but all the people of New York. Though weakened over the years the heart of the “Forever Wild” provision has remained intact. In order to keep it that way it is important to elect delegates that share similar views with past delegations. To ensure that this is achieved it is important to look at the delegate election process as well as the requirements and restrictions as to who can serve, then to enact the law that best ensures fairness to the People of New York. Regardless of the outcome it must always be remembered that the “price of preservation is eternal vigilance.”<sup>196</sup>

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<sup>195</sup> Especially considering the fact that they are few and far between.

<sup>196</sup> Forsyth, Valkenburgh, *supra* 65.