

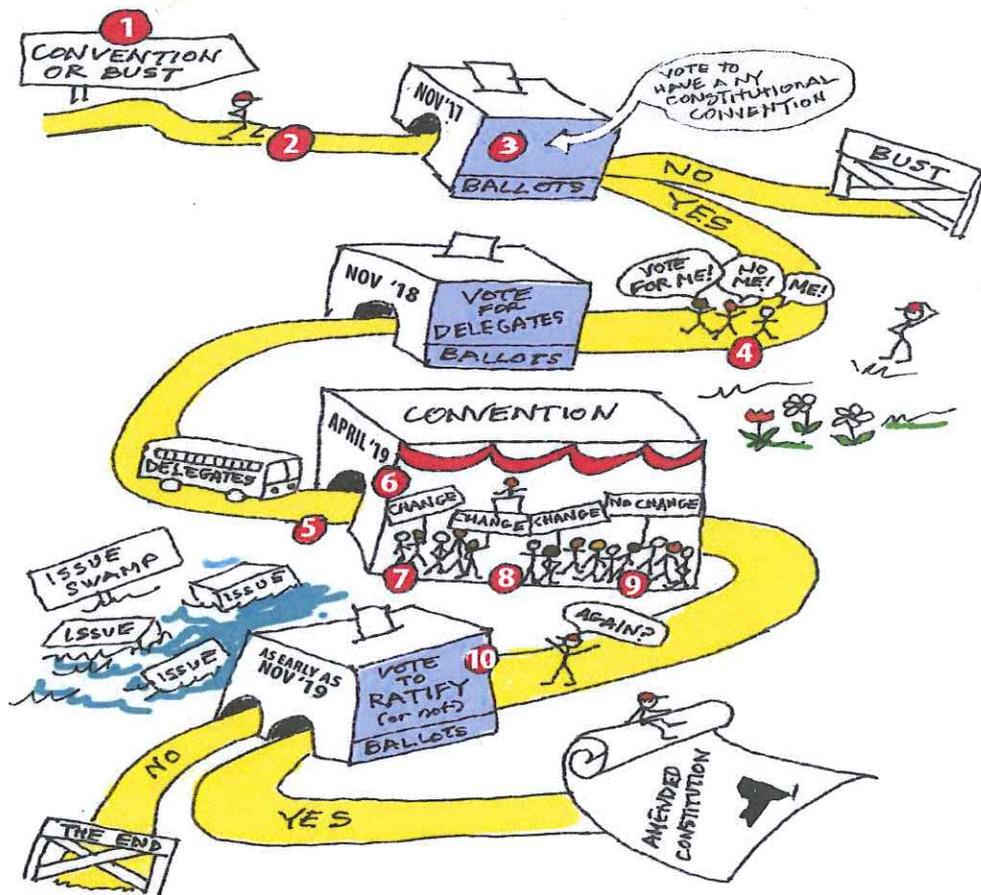
Convention-Land

New Yorkers' Road Map To The Constitutional Convention

October, 2017

New York State Constitutional **CONVENTIONLAND**

Click on the red numbers to learn more



New York Public Interest Research Group

For More Information

There has been a tremendous amount of information collected about the New York State Constitution and the debate over whether to hold a convention. Below are some of these additional resources:

To read the state Constitution, go to:

<https://www.dos.ny.gov/info/pdfs/Constitution%20January%202015%20amd.pdf>

For a full list of votes cast for and against constitutional conventions and amendments, go to:

https://www.nycourts.gov/history/legal-history-new-york/documents/Publications_Votes-Cast-Conventions-Amendments.pdf.

The Rockefeller Institute offers both sides of the debate, as well as useful background information, go to:

http://www.rockinst.org/nys_concon2017/

The Government Law Center at Albany Law School provides additional background information:

<https://www.albanylaw.edu/centers/government-law-center/publications/Documents/Protections-in-the-New%20-York-State-Constitution.pdf>

The League of Women Voters of New York State, while urging a “yes” vote in support of the convention, does offer useful background information, go to:

<http://www.lwvny.org/programs-studies/con-con-edu.html>

The New York State Constitutional Convention Clearinghouse also offers information:

<http://www.newyorkconcon.info/>

“Shall there be a convention to revise the constitution and amend the same?”¹

In November 2017, that seemingly simple question will be put to the voters of New York State. Under New York’s Constitution, every twenty years voters get an opportunity to decide if they wish to overhaul – or tinker with – their state Constitution. This guide is designed to offer a brief history of the state Constitution and a road map for that upcoming decision. This guide is not intended to offer a comprehensive look at either the history of past conventions or the mechanics of a convention. Instead, it offers an overview of the process so that New Yorkers can begin to contemplate this important decision.

State Constitutions

A state constitution is the main governing document of the state, often compared to the United States Constitution. A constitution establishes the structure of the government, establishes key executive offices, the legislative and judicial branches and outlines their powers, and grants the basic rights of the citizens. Constitutions can be amended via legislative amendments approved by voters, citizen-initiated amendments (in some states, but not New York), commission referrals, judicial action, and constitutional conventions. Each state has different requirements for how constitutions can be amended. Fourteen states, including New York, put the question of whether to hold a constitutional convention before voters at specified intervals (*e.g.*, every 20 years in New York).

An Overview of New York’s Constitutional History

Since its first Constitution was written in 1777, New York has chosen to significantly rewrite its foundational document on eight occasions. The Constitution in effect today is largely based upon the document produced by the convention in 1894, with significant changes resulting from the 1938 convention. While there have been amendments to the Constitution since then, the basic structure of it has not undergone a comprehensive updating and there are provisions that are simply ignored as invalid under federal law.

Voters turned down opportunities to convene a convention in 1957, 1977, and again in 1997. In the last vote in 1997, 63% of voters said no. The next constitutionally mandated vote is this November’s general election, November 7th, 2017.

The possibility of additional changes occurred in 1967, when as a result of federal court decisions on voting rights and reapportionment that invalidated then-existing New York constitutional provisions, state lawmakers put a referendum on the 1965 ballot to call a convention. The referendum was approved by voters, but the product of that 1967 convention was voted down.

Amending New York State's Constitution

Amending New York's Constitution can be initiated only through a convention process or through action by the state legislature as set forth in Article XIX of the Constitution. **In both cases, ultimate approval lies in the hands of the voters.**

Legislative action to change the New York State Constitution:

1. Identical resolutions to amend the Constitution are introduced by members of the legislature in both the Senate and the Assembly.
2. The amendment is then presented to both chambers of the legislature for consideration and assigned to a committee.
3. That resolution is referred to the New York Attorney General for an opinion as to whether the resolution is drafted correctly. If it is not, the legislature considers changes.
4. The amendment must be approved by both chambers in two concurrent legislative sessions of separately elected legislatures.
5. If approved by both houses in two successive legislative sessions, the amendment is put before the voters for approval at a statewide election.
6. The state Board of Elections drafts the ballot language that summarizes the purpose of the proposal and places it on the ballot during a general election.
7. If the voters approve in a statewide vote, the amendment is passed and becomes part of the New York State Constitution effective January 1st of the following year.

Changing the New York State Constitution through the holding of a *convention*:

1. Every 20 years, New Yorkers are automatically asked if they would like a constitutional convention to be held. The convention cannot be limited in the scope of what it may consider. The legislature can also call for the same question to be put on the ballot at other times.
2. If voters approve the convening of a convention, delegates are elected at the next general election following the vote on whether to hold a convention.
3. The convention puts its recommended changes on the ballot during the next following general election.
4. If voters approve the amendments, the changes go into effect January 1st of the following year.

An Important Debate – Delegate Selection

If New Yorkers vote in agreement to call a convention, delegates would be elected the following year. An important argument in support of calling a convention is that Albany is broken and it is clear that the legislative process simply cannot respond with the needed solutions. Moreover, some provisions are out-of-date and the Constitution needs to be modernized. Thus, under this line of thinking, only a convention can advance important reforms.

However, a major debate about whether to support a convention is the question of who might be the convention delegates. Opponents argue that the delegates who would get elected are most likely individuals who are capable of circulating petitions to get on the ballot, raise the necessary campaign contributions to credibly run, and have the time and connections to get elected and serve. Why, opponents argue, would these individuals have any interest in advancing reforms? They argue that it is simply a waste of time and money.

Delegates At The Convention

- Get paid at a rate the same as a member of the state Assembly (\$79,500).
- Delegates are free to design whatever rules they want, choose their own leaders, and work on any issues.
- There can be *no* outside limitations on what the delegates consider.

The process of calling a convention follows.

Road Map to a Constitutional Convention

At the general election of 2017, New York voters will consider whether to convene a constitutional convention. If approved by a majority of voters casting a vote on the convention question, the steps to holding a convention and possibly rewriting the Constitution are as follows:

Step #1: Every 20 years, the New York State Constitution requires that the public decide if it wants to update its Constitution. The next vote is November 2017.

Step #2: Should the process for selecting delegates stay the same? Reformers had wanted there to be a legislative debate over the rules for electing delegates and the openness requirements for the convention's proceedings in advance of the public vote. Knowing the ground rules for delegate selection will be a factor for many New Yorkers in how they decide to cast their votes on the convention question. Unfortunately, no such reforms were approved.

Step #3: The public votes on whether to hold a convention. If the majority of votes cast on the convention question are "yes," then the process continues. If the majority votes down a convention, no convention happens and the "road" to a convention ends. The next required vote would be in 2037.

Step #4: Voters choose who they want to serve as delegates at the convention. At the next general election following the voters' approval to convene a convention (November 2018), voters choose three (3) delegates from each State Senate District (there are 63 Senate districts), and fifteen (15) are elected statewide. Thus, the convention would consist of a total of 204 delegates. Anyone who is eligible to vote can run for delegate. The processes for getting on the ballot and running a campaign are the same as those running for any other state office.

Step #5: According to the state Constitution, the convention, consisting of its 204 delegates, begins its deliberations the first Tuesday of April 2019 and continues until work is completed. There is *no* deadline for the convention to finish its work.

Step #6: As the convention begins, the delegates will likely organize themselves to consider changes to the Constitution, such as creating committees to examine specific areas of the Constitution (*e.g.*, environmental policies).

Step #7: The convention begins to discuss changes. Anything can be on the agenda since it is not possible to limit the scope of issues considered at a convention.

Step #8: The delegates decide on which changes they agree should be part of a new Constitution. A key decision will be whether the proposed changes are voted on as one package or as separate individual amendments.

Step #9: Whatever changes emerge from the convention are then sent to the voters for final approval. New Yorkers go to the polls the following November (2019 at the earliest) to approve or reject the changes.

Step #10: Any changes that are approved in a statewide referendum go into effect January 1st in the year after the vote is held. If rejected, the Constitution does not change.

Significant Proposals That Resulted From Previous New York's Constitutional Conventions

New York has had nine conventions during its history. Below are some of the significant proposals that emerged from those conventions. Not all received final approval by voters.

- **1777**; Creation of state government, religious freedom, trial by jury.
- **1801**; Increase in size of legislature, 32 senate seats, 150 assembly.
- **1821**; Established procedures for amending the constitution without a convention.
- **1846**; Expanded the types of offices that would be elected by the people, convention question to appear on ballot every 20 years.
- **1867**; Voters approved: Extension of judges' terms in office. Voters *rejected*: Increased term limits for senators.
- **1894**; Creation of the State University of New York (SUNY), Adirondack and Catskill Parks designated as "Forever Wild," merit-based civil service.
- **1915**; Proposed Equal Protection Clause, women's right to vote, and others. All *rejected* by voters.
- **1938**; A number of proposals were advanced, some *rejected*. Those *approved* included: safety net for the needy, access to housing, debt limit for NYC rapid transit, and an equal protection clause prohibiting discrimination. In total, 57 amendments were proposed in the form of nine ballot questions; six of those questions were approved.
- **1967**; United States Supreme Court case invalidated New York's system of legislative apportionment. The Legislature called for Convention to address this issue. Convention approved a number of plans that would have allowed public funding of private schools, created an independent redistricting system, streamlined the court system and lowered the voting age to 18. Submitted to voters as single "batch." All were *rejected* by the voters.

Examples of Popular Provisions Currently Found In New York’s Constitution

New York State’s Constitution offers provisions that are not found in the U.S. Constitution. Below are some examples of those provisions:

- The state Constitution deals with the conservation of New York’s forest preserves. The Adirondack and Catskill Parks are protected as “forever wild” and can only be developed in certain restricted areas.
- The New York Constitution recognizes certain rights of workers, such as the right to organize and collectively bargain that are not found in the U.S. Constitution. New York State’s pension system for public employees is protected by the state Constitution.
- The New York Court of Appeals has interpreted the Education Article of the state Constitution to require the state to provide students with the opportunity for a “sound basic education.”
- The state Constitution requires the state to provide for the care of the needy and encourages the state legislature and local governments to offer low-rent housing and nursing-home accommodations to low-income citizens. Unlike the mandate in Article XVII to provide aid, care, and support for the needy, the housing article creates no entitlement to assistance.