



# NYCLU

NEW YORK CIVIL LIBERTIES UNION

## An Overview of the New York State Constitutional Convention Process

*A reading of the present New York State Constitution, together with a reading of the state's political history, reveal that a major share of the constitutional provisions are outgrowths of historic political struggles. Victories in political battles translate themselves into dignified constitutional language. In the political arena, victories may be wiped out subsequently by the shifting majorities, and hard-won political settlements may again become unsettled. Therefore, there is a universal urge to rivet into the state's constitution the details of a hard-won political compromise or victory so that the battles will not be re-fought anew with each temporary shift in the legislative majority.*

Richard I. Nunez

[New York State Constitutional Reform - Past Political Battles in Constitutional Language](#)

### **I. The basic mechanics**

- Every 20 years, New Yorkers are *automatically* asked during the general election if they would like a constitutional convention to be held.
  - “*Shall there be a convention to revise the constitution and amend the same?*”
  - The legislature can also call for the same question to be put on the ballot at other times.
- If voters approve the convention, delegates are elected at the *next* general election.
- The convention will be held the following year, and its scope cannot be limited.
- The convention recommends changes to appear on the ballot during the next general election.
- Changes approved by the voters will take effect January 1 of the following year.

### **II. Expected timing for this cycle**

- **November 7, 2017 general election:** the question of whether to convene a constitutional convention is *automatically* presented to New York voters.
  - Approval is by a *majority of voters casting a vote on the convention question itself*.
- **November 6, 2018 general election:** *if* voters approve in 2017, delegate selection will take place via the general election ballot.
- **April 2, 2019: Constitutional Convention begins deliberations;** until work is completed.
- **November 5, 2019 general election:** any amendments proposed by the convention are presented to the voters for approval or rejection; those approved take effect Jan 1, 2020.

### **III. Delegate selection: Will the process for selecting delegates stay the same? Should it?**

- Under the current model, voters in each of the 63 State Senate districts choose 3 delegates for the district, and voters statewide choose 15 at-large statewide delegates (204 total).
- Anyone who is eligible to vote can run for delegate; processes for getting on the ballot and running a campaign are the same as those for state senators.
- “Split-ticket” voting for statewide delegates has historically been difficult due to ballot design.

Some have called for debate and reform of the scheme for electing delegates (as well as rules that govern transparency of Convention proceedings). However, changes to the delegate selection process may not be taken up in time for this cycle. Some voters will take into account the ground rules for delegate selection when approving or rejecting the up-or-down convention question; arguably, they should be encouraged to do so, as delegate composition naturally shapes content.

#### **IV. What takes place at the convention?**

- After the convention opens, delegates organize themselves into committees or working groups to consider specific areas of potential constitutional change.
- These groups offer proposals for amendments, and the convention may debate these proposals.
- The delegates decide which proposals should advance to the ballot; a key decision is whether to bundle proposed changes into a “new Constitution” for an up-down vote on all amendments, or to put forward individual amendments.

#### **V. Brief history**

1997 – Voters declined; more citizens casting ballots *disregarded* the question than answered it.

1977 – Voters declined.

1967 – Voters approved a convention, at the call of the Legislature, *not* as a result of the automatic 20-year question; bundled ballot proposal\* for “new Constitution” overwhelmingly rejected.

1957 – Voters declined.

1938 – Most recent Convention from which any amendments were approved; quite an overhaul.

#### **VI. What’s at stake: Matters that could come up for debate at a 2019 Constitutional Convention**

As an illustration, the 1967 convention put forward a single bundled proposal for a yes-or-no statewide vote. That proposal covered an extremely broad range of constitutional matters, many still ripe for debate today:

- Civil rights, suffrage expansion, and measures restraining government surveillance.
- Repeal of the Blaine Amendment, a provision limiting state subsidy of religious education.
- Mandating state takeover of court system costs, and costs and administration of welfare programs.
- Allowing the legislature to incur debt without referendum.
- Legislative redistricting by an independent commission.
- Structural change to a “statute of restrictions” or “two-part constitution”: enacting a short Constitution and placing other provisions in a separate document that takes two years to amend.

Even as broad as that list may be, ***the scope of a convention’s consideration is unlimited, so literally everything is potentially on the table.*** Additional topics floated for potential debate this cycle include:

- Election reforms that expand access; or, conversely, voter ID requirements and other voting restraints.
- Various structural political changes, such as: dissolving the legislature and forming a unicameral legislature; limitations on gubernatorial power, budgeting authority, judicial selection, appointment powers, and other adjustments to the existing dynamic of checks and balances; term limits and/or changes to electoral terms of office; and myriad ethics reform measures.
- Constitutional caps on state spending and property tax increases, and other fiscal restraint measures.
- “Direct democracy” measures such as initiative, recall, and legislative referendum.
- Repeal or limitation of the state’s obligations to provide aid to the needy and access to health care.
- Changes in areas of law where a court decision on constitutional grounds has been controversial, or where subject to a game of political football that has not yielded legislative change.

- Changes to workers' compensation, civil service, public pensions, or collective bargaining rights.
- Adjustments to home rule by local governments, either broadening or limiting state control.
- Provisions affirming environmental rights, or easing existing protected wilderness boundaries.
- Expansion or narrowing of the rights of criminal defendants, the incarcerated, or former offenders.
- Other civil and individual rights measures, such as a NY "Equal Rights Amendment," reproductive freedom provisions, expansion of immigrants' rights, marijuana legalization, or constitutional enshrinement of an individual right to bear arms.