



One Hundred and Six Ideas for Constitutional Change:

WHAT COMMENTATORS, SCHOLARS, POLITICIANS, THE MEDIA, AND PUNDITS
HAVE SUGGESTED MIGHT MERIT CONSIDERATION
IF NEW YORK STATE HOLDS A CONSTITUTIONAL CONVENTION

COMPILED BY SCOTT N. FEIN
EDITED BY ANDREW B. AYERS AND JIM MALATRAS

A PUBLICATION OF
THE GOVERNMENT LAW CENTER AT ALBANY LAW SCHOOL AND
THE ROCKEFELLER INSTITUTE OF GOVERNMENT



ALBANY LAW SCHOOL
GOVERNMENT LAW CENTER

Rockefeller
Institute of Government

One Hundred and Six Ideas for Constitutional Change

*What Commentators, Scholars, Politicians, the Media, and Pundits
Have Suggested Might Merit Consideration
If New York Holds a Constitutional Convention*

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September 2017

*Cover illustration: First New York State Constitution being read by Secretary to the
Legislature Robert Benson. (Image courtesy of the New York Public Library, Astor,
Lenox and Tilden Foundations.) Cover design by Rita Petithory.*

INTRODUCTION

The New York State Constitution requires that every twenty years, voters be presented with a question on the statewide ballot, “Shall there be a convention to revise the constitution and amend the same?” In contrast to the federal Constitution, the New York State Constitution expressly gives New York voters the opportunity to revisit and revise the relationship between the State government and its citizenry. A constitutional convention allows delegates elected by the people to gather and examine our State’s Constitution. The delegates can strike current text and propose changes and new provisions to the document. Changes to language can be made to enhance clarity and understanding, or to streamline what is already in place. New provisions may address issues that the current Constitution does not address. All convention proposals must be put before the voters who ultimately decide whether they will support or oppose the recommended changes.

Since 1777, New York State has held nine constitutional conventions, four of which resulted in the adoption of new constitutions. We are now governed by the 1894 Constitution, which has been amended over 225 times, many of which occurred in the absence of a convention, as a result of the approval by two successive legislatures and adoption of the proposed amendment at the polls.¹

Historically, New York has organized a constitutional commission before the vote on the ballot question. This process helps identify issues likely to be considered by the convention delegates if one is called by the voters. This year a constitutional commission has not been funded or appointed by the legislature or executive. In its absence, experts who have worked on prior constitutional commissions have coalesced to educate the public and others on the history of the State Constitution, the conduct of prior conventions, and key issues that may be addressed. This coalition

¹ See Peter J. Galie & Christopher Bopst, *Ordered Liberty: Highlights of the Constitutional Conventions Held in New York, 1777-1967* (2015), available at http://www.rockinst.org/NYS_ConCon2017/History.aspx.

was voluntary and operated without the imprimatur of any government entity. The Rockefeller Institute of Government and the Government Law Center at Albany Law School participated in the coalition.

In the run-up to the ballot referendum this November, we thought it would be worthwhile to identify, some of the issues that commentators, scholars, politicians, the media, or pundits have identified as potentially suitable for discussion at a constitutional convention.

We take no position on the merits of these proposals, or on how citizens should vote on whether to hold a Convention. But we hope to better inform voters' decision by exploring the range of proposals that might emerge from a Convention if one were convened.

Whatever the merits of the recommendations collected here, it is our good fortune in this State to have so many people willing to engage in civil discourse concerning measures to improve public governance and the welfare of the State's citizens.

Scott Fein
Chair, Board of Advisors
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BILL OF RIGHTS AND NEW POSITIVE RIGHTS

1. Codify or expand rights that have been recognized by the United States Supreme Court, including the right to marriage for same-sex couples and reproductive rights.
2. Strengthen anti-discrimination provisions:
 - Prohibit discrimination on the basis of sexual orientation and gender identity;
 - Protect noncitizens from discrimination;
 - Prohibit discrimination against people with disabilities;
 - Prohibit discrimination by private actors;
 - Replace category-by-category protections against discrimination with a comprehensive protection of equal rights for all persons.
3. Strengthen the current Article XVII, which guarantees “aid, care, and support to the needy,” and/or reconsider impact of the provision on mandated local expenditures.
4. Expand privacy rights.
5. Prohibit assisting federal authorities with immigration enforcement except to the extent required by federal law.
6. Create a right to healthcare.
7. Preserve the rights of private-sector employees to bargain collectively and add the rights of public sector employees to negotiate collectively.
8. Define “eminent domain” to provide that takings should be limited solely for public purposes and place reasonable conditions on takings solely for private sector development.
9. Create a right to government-provided counsel in civil cases affecting basic human interests (e.g., cases involving parental rights, foreclosure, access to education for students with disabilities, etc.).

10. Clarify which State constitutional rights are self-executing (i.e., enforceable through litigation regardless of whether the legislature has enacted a statute authorizing the litigation); which rights violations are compensable with money damages; and which rights violations can be enjoined by courts.

CRIMINAL JUSTICE

11. Codify the New York Court of Appeals ruling in *People v. LaValle*, which effectively prohibits capital punishment.
12. Clarify whether courts can direct local governments to increase the level of funding provided for criminal defense services.
13. Diminish reliance on money bail and create a presumption for release for nonviolent offenses.
14. Expand the authority of the New York State Commission of Correction over State and local correctional facilities.
15. Allow for the sale in regular commerce of selected items manufactured in correctional facilities.
16. Expand the role of the Attorney General in matters of alleged violation of the law by State and local officials.
 - Clarify the jurisdiction of the Attorney General to prosecute matters referred by the New York State Justice Center for the Protection of People with Special Needs.
 - Give the Office of the Attorney General authority to prosecute crimes committed in State correctional facilities.
17. Create a position for an independent statewide official who would investigate wrongful convictions and investigate and prosecute alleged civil-rights violations by law enforcement officers.

EDUCATION

18. Provide unqualified funding statewide for the cost of a sound basic public-school education through high school.
19. Alternatively, defer to the Legislature to determine the appropriate fiscal limitation if any on implementing a sound basic public-school education.
20. Establish the goal of “equality of educational opportunity” for all residents of New York State.
21. Expand the Court of Appeals standard of a “sound, basic education” to include preparation for higher education.
22. Eliminate the 19th-century reference to a system of “free common schools.”
23. Provide constitutional recognition to the State University of New York and the City University of New York.
24. Ensure that tuition for the State University of New York and the City University of New York is affordable for families in New York State.
25. Ensure that State aid to public schools is predicated on fiscal needs of the locality.
26. Reform the process by which the Board of Regents is selected.
27. Authorize the Board of Regents to distribute State funding to school districts based upon need, subject to legislative override.
28. Reconsider limitations on aid to religious schools (the Blaine Amendment).

ENVIRONMENT

29. Examine State and local governments’ power to address, or establish obligation to address, the causes and consequences of global warming.
30. Establish a constitutional right in either the Environmental Conservation Article or State Bill of Rights to clean air and clean water, enforceable against public officials and agencies.

31. Maintain “Forever Wild” protections for the State Forest Preserve in both the Adirondack and the Catskill parks.
32. Re-examine circumstances warranting, the state sale to private parties of public lands in the Adirondack and Catskill parks.

ELECTION LAW AND PROCESSES

Voter Registration

33. Allow registration to be more accessible to increase voter participation:
 - Lengthen the registration period;
 - Expand access to voters with limited proficiency in English;
 - Allow registration for those who are sixteen and seventeen years old, which becomes effective when they turn eighteen;
 - Provide for automatic voter registration with the assistance of State agencies;
 - Create a system of permanent registration;
 - Provide for same-day registration.

Impediments to Voting

34. Make it easier for residents to vote:
 - Require simplified ballots;
 - Adopt a system for early voting;
 - Hold federal, State, and local primaries on a single day;
 - Allow voting on weekends;
 - Enact a vote-by-mail system, and send mail-in ballots to all voters;
 - Require the New York State Department of Corrections and Community Supervision to inform

inmates about their legal capacity to vote, where applicable.

35. Expand the pool of voters:
 - Allow people on parole or other types of community supervision the right to vote.
 - Allow noncitizens to vote in certain elections (e.g, school-board elections when their children attend the school in question).

Reform Primaries, Campaign Finance, and Political-Party Involvement in Electoral Process

36. Change or limit the role of political parties:
 - Liberalize the process for gaining access to the ballot to run for elected office by reducing the influence of political parties;
 - Implement measures to reduce partisanship in State and county boards of elections, including measures to ensure independence of political parties and minimize voting stalemates;
 - Allow registered voters to change their party enrollment closer to primary day;
 - Consider opening primaries to independent voters or establishing nonpartisan primaries;
37. Reform election financing:
 - Adopt a structure for public campaign financing and a campaign-finance board to implement the initiative;
 - close the “LLC loophole” that permits disproportionate political donations by real-estate interests.
38. Institute “instant runoff voting,” allowing voters to rank candidates in order of preference, instead of holding runoff elections two weeks after primaries.
39. Reform redistricting:
 - Prohibit all forms of gerrymandering;

- Establish an independent redistricting commission.

ETHICS

40. Create an independent, transparent ethical-conduct commission.
41. Adopt a provision in the State Bill of Rights giving citizens the right—enforceable through a judicial cause of action—to a fair, ethical, and decent government, which would address the United States Supreme Court’s narrowing of the protections in the federal Honest Services statute.
42. Impose limitations on outside income for all State public officials, such as by following the Congressional model of a 15 percent cap on outside income.
43. Require disclosure of all sources of income by State and local officials.
44. Harmonize all ethical requirements for all branches of State and local government.
45. Authorize elimination of pensions for State and local public officials who have been convicted of public corruption or related offenses.
46. Establish conflict-of-interest rules for discretionary legislative or executive grants.
47. Provide that the Freedom of Information Law and Open Meetings Law apply to all State and local public officials, including the State legislature.

GOVERNMENTAL ORGANIZATION AND PROCESSES

Executive Branch

48. Currently, the Constitution limits the number of State departments and agencies to twenty. Since the ceiling was established, dozens of additional agencies have been established. Reconsider the organization of the Executive Branch including the cap on the number of departments and agencies.

49. Authorize the Governor to submit a plan of reorganization to the legislature every four years.
50. Allow for recall of state officials.
51. Re-examine the role of the Lieutenant Governor if the Governor is prevented from performing his or her duties. Re-evaluate the role of the Lieutenant Governor.
52. Provide for term limits on the Governor, Lieutenant Governor, Comptroller, and Attorney General.
53. Require a supermajority legislative vote for a “message of necessity.”

Legislative Branch

54. Provide for term limits for legislators and legislative leadership.
55. Establish a unicameral legislature by consolidating the Assembly and Senate into one legislative body.
56. Require that legislative districts be compact, contiguous, and coterminous, and drawn by an independent redistricting commission on an equal-population basis.
57. Reconsider the size of the State Senate or Assembly.
58. Provide for apportioning legislative districts in accordance with the current federal Voting Rights Act.
59. Provide that incarcerated people should be counted, for redistricting purposes, as residents of the district where they resided before conviction, not the district in which they are incarcerated.
60. Relax control over legislation by requiring upon request of the sponsor of a bill that the committee to which the bill is referred should be obliged to vote on the bill.
61. Require that the legislature use conference committees to assist in reaching decisions on legislation, including bills that pertain to the budget.
62. Require that bills passed by the legislature be sent to the Governor not more than sixty days after their adoption.

63. Eliminate or curtail member items and ensure that there is no conflict or appearance of a conflict arising from the sponsor's relationship to the recipient entity.
64. Consider adjusting per diem reimbursement to reflect time expended on legislative matters.
65. Adopt term limits and staggered terms for legislators.
66. Require that bills reported to the legislative floor must be accompanied by a detailed legislative committee report.
67. Evaluate whether the approval of the legislature should be required before a vacancy in the position of Lieutenant Governor can be filled.
68. Require that statutes be drafted in plain language.

Other Statewide Elected Officials

69. Re-examine the roles of the State Comptroller and Attorney General.

Judiciary

70. Simplify New York's complex court structure, including consolidation of State trial courts.
71. Provide that justices on town and village courts need be attorneys in good standing in New York State.
72. Address unbalanced caseloads among the existing, constitutionally limited four Departments of the Appellate Division of Supreme Court by expanding the number of Departments or reconfiguring them.
73. Require all Departments of the Appellate Division to adopt the same procedural rules.
74. Provide for merit selection of judges statewide, as opposed to by election.
75. Abolish judicial selection by party nominating conventions.
76. Expand the pool of candidates eligible for appointment to intermediate appellate courts.

77. Expand the right to appointed counsel to certain civil cases that involve the potential for physical or emotional harm in matrimonial, child-custody, and eviction matters.
78. Increase the retirement age for judges or expand the periodic certification process for judges over a certain age to include all courts.
79. Require all State courts to make their dockets electronically available to the public at no charge.
80. Require all State courts to provide translators to anyone participating in their proceedings whose primary language is not English.

LOCAL GOVERNMENT ISSUES

81. Evaluate the use of local property taxes to fund State mandates.
82. Examine the extent of real-property tax exemptions for large not-for-profit entities.
83. Revise tax and debt limits on local governments.
84. Limit the use of Industrial Development Agencies and Local Benefit Corporations.
85. Clarify the distinction between matters of local concern and State concern, such as when State interest allows dispensing with a home rule message, permitting the legislature to enact special legislation affecting specific municipalities without local government consent.
86. Increase the protection for municipalities from unfunded mandates; e.g., require a two-thirds vote in the legislature to enact future unfunded mandates.
87. Discourage courts from finding that a local law should be preempted by a State law, such as by establishing a constitutional presumption against State preemption unless explicitly expressed by a legislative enactment.
88. Require State assumption of specified entitlement programs, including Medicaid and the Safety Net Assistance Program.

89. Facilitate procedures for local government consolidation and sharing of services.

PENSIONS

90. Evaluate whether a State pension should be extinguished if a public official is found guilty of conduct relating to public corruption.
91. Evaluate constitutional protection for public-employee pensions.
92. Examine whether pensions for State and local personnel should be capped based upon the base salary.

STATE BUDGETING, FUNDING, AND THE ISSUANCE OF DEBT

93. Limit spending public funds without the express approval of the electorate.
94. Limit any increase in state spending to the rate of inflation.
95. Eliminate governmental financing of public projects using moral-obligation debt (i.e., debt that is not secured by the full faith and credit of the issuer).
96. Eliminate existing statutory limits on State-supported debt.
97. Consider issues pertaining to lease-backed and contractual obligation-backed financing.
98. Limit the legislature's ability to create new public authorities that are authorized to issue debt.
99. Require the State to develop a ten-year business plan reflecting projected infrastructure needs and schedule, including as may pertain to bridges and roads, mass transportation, treatment of wastewater, and the provision of pure water.
100. Allow the legislature to revise gubernatorial language in the proposed State budget, subject to subsequent gubernatorial veto and legislative override (i.e., re-evaluate the Court of Appeals decision in *Silver v. Pataki*).

101. Require that the annual budget proposed by the Governor and adopted by the legislature be in fiscal balance when enacted, including commitments of all contractual obligations assumed by State public authorities.

GENERAL REVISIONS

102. Edit the Constitution's text to increase coherence and eliminate obsolete, superseded, and transitional provisions.

PROCEDURAL REVISIONS

103. Provide for new methods of constitutional revision, including limited conventions, direct or indirect initiatives, or a permanent constitutional commission with power to submit proposals directly to the voters.
104. Revise the processes for the selection of delegates to a constitutional convention to comply with the federal voting rights laws and court decisions, such as the Voting Rights Act.
105. Limit or prohibit participation by sitting legislators and judges in a constitutional convention.
106. Prohibit dual compensation and pension credits for convention delegates who also serve in other public offices, such as sitting legislators and judges, who may otherwise be entitled to receive both their existing salary and a convention delegate salary and pension credits.

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