

Democratic state legislators' constitutional moves

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The "Million Dollar staircase" in the state Capitol. | Shutterstock

A slate of proposed amendments aim to update the state's antiquated constitution.

One month into the 2019 legislative session, New York Democrats have done some victory laps. There was a [historic achievement](#) to recognize when state Sen. Andrea Stewart-Cousins officially became the first black woman to be majority leader in the chamber. Then Gov. Andrew Cuomo threw a party for lawmakers following passage of the long-stalled Reproductive Health Act. Every now and again, opportunities arise for individual Democrats to remind [Republicans](#) what one-party rule means for them. And [Democrats](#) say they are only getting started.

Case in point: Democratic lawmakers have begun the multi-year process of changing the state Constitution to add permanence to some of their biggest priorities. This includes ongoing efforts to address [voting access](#), [abortion](#), [civil rights](#), [a right to clean air and water](#), [government ethics](#) and the power of the [Legislature versus the governor](#). Two of these proposed amendments have already been passed by Democrats and dozens of other ideas introduced in the Senate and Assembly aim to change state government in other dramatic ways. If Democratic lawmakers succeed in those efforts, they will reverse decades of minimal activity in modifying an 125-year-old document that experts say is [so antiquated that it is "broken."](#)

Lawmakers propose dozens of amendments each session, but unified Democratic control of the Assembly, the Senate and the governor's mansion means that amendments may now pass much more easily than they could during the previous four decades of mostly-divided government. The speed with which they have passed high-profile bills in the last few weeks suggests that more amendments have a chance this year. "We've seen the track record already with the Senate working well with the Assembly and the governor," said state Sen. Joseph Addabbo Jr., who has proposed an amendment that could help expand [sports gambling](#) statewide. "Everything is on the table."

There may be a spike in amendments passing the Legislature this year, lawmakers say, but it is an open question how far they will go in remaking the Constitution in their legislative image. "With the new majority in the Senate, we have a historic opportunity to take major steps forward in improving governance and protecting the rights of all New Yorkers," state Sen. Liz Krueger said in a statement about three proposed amendments she has championed. "I have been pleased to see how many of my colleagues have signed on in support of these amendments and am optimistic that they will be considered in the months ahead."

To pass an amendment, a majority vote of two successive legislatures is needed before voters get to decide by an up-or-down vote in the next scheduled election. This means that an amendment passed in 2019 could go in effect as soon as 2021.

For much of [New York's history](#), amendments have also been passed by statewide conventions. Delegates would debate ideas that would then go before voters. Six amendments – which could include multiple changes to the Constitution – have been enacted this way over the years. But the state has not held a convention since voters resoundingly rejected the proposals that came out of a disastrous [1967 gathering](#). Since then, the legislative process has been the only way proposals have moved forward. Lawmakers have only passed two dozen amendments since 1991 – a stark contrast to the 175 amendments past lawmakers had added since the state Constitution was written in 1894, according to the [2016 book "Making the Constitution: The Prospects for Constitutional Reform in New York."](#)

Some state constitutions are made to be changed and New York is no exception, according to SUNY New Paltz Professor Gerard Benjamin. "(They) are functional and philosophically different than the U.S. Constitution," said Benjamin, a contributing author to "Making the Constitution." "There is a lot of stuff in them that sometimes requires amendments as a practical matter to make government work." That means that matters big and small have a place in a document that has ballooned over the years – and is in dire need of updates, whether it is removing antiquated financial rules or adding new civil rights protections. Among the recent amendments was one allowing full-fledged casinos, but others have largely addressed matters like land exchanges in the Adirondacks and municipal debt limits for sewage treatment facilities. But bigger changes appear to be in store for New York.

Proposed amendments to implement same-day voter registration and no-excuse absentee voting statewide – changes that could not be made through the normal law-making process – were among the first items taken up by the new Democratic majorities in the Assembly and Senate. Other ideas are in the works. Gov. Andrew Cuomo has floated the idea of enshrining [abortion rights](#) in the state Constitution and included [equal rights](#) for women along with his state budget package. Krueger is looking to extend civil rights protections to groups such as transgender people, and two other proposals from the Manhattan Democrat would establish a biennial budget process and replace the much-criticized [Joint Commission on Public Ethics](#) with a new body modeled on the State Commission on Judicial Conduct. "I think most New Yorkers would agree that it is time to update our 1930s-era equal rights language, and to create an independent and effective body to investigate corruption and uphold government integrity."

Getting a subsequent legislature and voters to approve an amendment is no easy task. "There is no

hard and fast rule,” said Bruce Gyory, an adjunct professor of political science at the University at Albany who was a contributing author to “[Making the Constitution](#).” “There is a high threshold, but every year both in terms of turnout and how people view the issue itself will weigh on the issue of passage or not.”

A failure to meet that standard doomed a [2005 effort](#) that would have limited the governor’s power over the budget. This would rectify an imbalance largely stemming from the landmark 2004 state Court of Appeals decision in *Silver v. Pataki*, which solidified the executive branch’s [dominance over the budget](#). While voters might have been open to considering more power for the Legislature, the proposal that went before voters was ultimately seen as a self-serving effort by lawmakers, according to Christopher Bopst, a constitutional expert who has written extensively on the issue. “It was one of the most panned amendments ever,” he said. “It was horrible.”

The governor cannot veto proposed constitutional amendments, but he has significant political leverage with the voters who ultimately decide issues like which branch has more power in the budget. “You have a governor that is still very popular in the state,” Bopst said. “Now you are going to take an amendment that is going to take power away from this governor that people like and shift it to a Legislature that for a long time has been seen as dysfunctional and in many cases corrupt ... that’s not an easy sell for voters either.” But unified government may present a fresh chance to escape this legacy without fostering divisions between the executive and legislative branches. Key to a renewed effort to empower lawmakers in the budget is making sure that the focus is less on who stands to lose in the short term rather than considering who might gain from inaction in the future, according to Assemblyman J. Gary Pretlow, who has sponsored an [amendment](#) similar to the 2005 proposal. “I’m not just thinking this governor,” he said. “There will be governors in the future. We could get a Donald Trump as governor.”

Like other proposals championed by New York Democrats this year, passing amendments the first time in the Legislature is the easy part. They still need to be passed again after the 2020 elections, and only then would voters get a chance to weigh in. To get to that point, Democrats are seeking to ensure that the accomplishments of their new legislative majorities will remain in force for years to come, according to state Sen. Brad Hoylman. “My colleagues are going to try to be creative about how we can enshrine basic rights in the constitution that may not be currently spelled out,” he said, “A clean environment, an equal rights amendment. Right to counsel or shelter. All of those I think are fundamental components of a functioning democracy. And to the extent that we can take that directly to voters, it really is New York’s, you know, opportunity to expand the constitution. And I think we’re going to take that opportunity to do so.”

With reporting by Rebecca Lewis.