



The Term Limits Convention Handbook
For Lawmakers
Forward by Florida State Rep. Larry Metz

About U.S. Term Limits

The Term Limits Convention and its accompanying handbook for lawmakers are initiatives of U.S. Term Limits (USTL), a Washington, D.C. and Florida-based nonprofit specializing in term limits advocacy. Since its founding in 1992, USTL has helped facilitate over 500 successful term limits campaigns at all levels of government. After achieving state-imposed term limits on 23 congressional delegations – encompassing nearly half of Congress – the citizens saw these efforts undone in 1995 by the Supreme Court’s 5-4 decision in U.S. Term Limits vs. Thornton. But USTL never stopped fighting and has focused its resources on ensuring that term limit victories in the states weren’t overturned, building a formidable grassroots army and developing a new plan to impose term limits on Congress.

About the Author

Philip Blumel is one of America’s leading experts on term limits. After serving in different capacities with U.S. Term Limits for more than a decade, Blumel became President of the organization in 2009. Under his leadership, USTL has expanded its grassroots network to a record high and won campaigns at a 98 percent clip. His writing on term limits has been featured in the Wall Street Journal, New York Times, USA Today and other top publications. Blumel has also worked with Raymond James & Associates as a certified financial planner since 1999. He is a two-time graduate of the University of Florida with an undergraduate degree in journalism and a master's in economics. Blumel resides in West Palm Beach, FL with family.

Executive Summary

This Handbook is designed to provide both a historical primer on the term limits issue and practical guidance on how to apply successfully for an Article V Term Limits Convention.

The American people have lost faith in Congress and made up their minds on term limits. Recent polling by Gallup and Veraquest Research found that 75 percent of Americans would like to see term limits enacted on the U.S. House and Senate. That figure includes huge majorities of Democrats, Republicans and independents.

With the Supreme Court ruling that limits on Congress must come by constitutional amendment, there are only two options: waiting on Congress to propose the amendment or applying for an Article V convention so state-selected delegates can propose it.

History has shown the latter is our best option. Due to its conflict of interest, Congress has proven unreliable at best and disruptive at worst when asked to move on term limits.

For the 15 states with legislative term limits, applying for the Convention merely asks for the same or a similar standard to be set at the federal level. For lawmakers who are not term-limited themselves, this issue provides an opportunity to elucidate the difference between state government and the dismal state of representation in Washington. Of all our nation's elected bodies, Congress is furthest removed from the people it's elected to serve and thus most susceptible to abuse. For that reason, corrective reforms need to be bolder than anywhere else in America.

The Handbook proceeds from here by answering the **what**, **why** and **how** of both term limits and Article V convention. Relying on research from top constitutional scholars, it demonstrates not only that convention is a viable path but that it was designed for a purpose like ours.

Table of Contents

1. Introduction
2. Term Limits: A Brief Overview
 - History of the Movement
 - Why Term Limits
 - Where We Stand Today
3. The Design and Purpose of Article V
4. A Step-by-Step Guide to the Term Limits Convention
 - Legislative Guidance and Model State Application Bill
 - Getting Congress to “Call” the Convention
 - Selecting Convention Delegates
 - The Convention
 - Ratification
5. Dispelling “runaway convention” and other myths

Introduction

It would be very disappointing if, when three-quarters of Americans came to agree on a policy change, there existed no realistic way by which they could make it the law of the land. And yet, that was starting to look like the situation for supporters of congressional term limits.

The Supreme Court had invalidated term limits by ballot initiative in the 1995 case *U.S. Term Limits v. Thornton*, ruling that such a change would need to come as an amendment to the Constitution.

Amendment bills in Congress became a dead end, with leaders fine-tuning excuses for why they refused to act. Citizens needed a lifeline, and we found one hidden in plain sight – right in the Constitution:

“ARTICLE V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, **on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution**, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.”

Our founders knew this problem would arise, and had in fact left to the American people a solution – a convention that can bypass Congress to secure amendments the political class doesn’t like. If any idea is tailor-made for term limits, this is it.

This Handbook explains for policymakers and observers alike how to get from Point A – having a concept for the Term Limits Convention to Point B – ratifying an amendment for congressional term limits.

Our U.S. Term Limits grassroots machinery is already in place. We’ve assembled staff and a network of supporters ready to provide support for legislative sponsors and overcome any obstacles that might arise. The progress we make next will depend on finding lawmakers who are willing to lead on this issue.

The following guidance is intended to simplify the Article V push to such a degree that it can be a central initiative for any legislator while not one that is particularly time-consuming or difficult to understand.

Term Limits: A Brief Overview

History of the Movement

The concept of term limits goes back all the way to ancient Greek and Roman democracy, when elected members were required to rotate out of office on a regular basis. In the United States, the tradition is even older than our current Constitution. The Articles of Confederation, our first constitution, mandated term limits on electees to the Continental Congress.

Thomas Jefferson, John Adams and Ben Franklin were proponents of the idea, believing a “rottenness begins” in the conduct of any man who longs to govern others for too long.

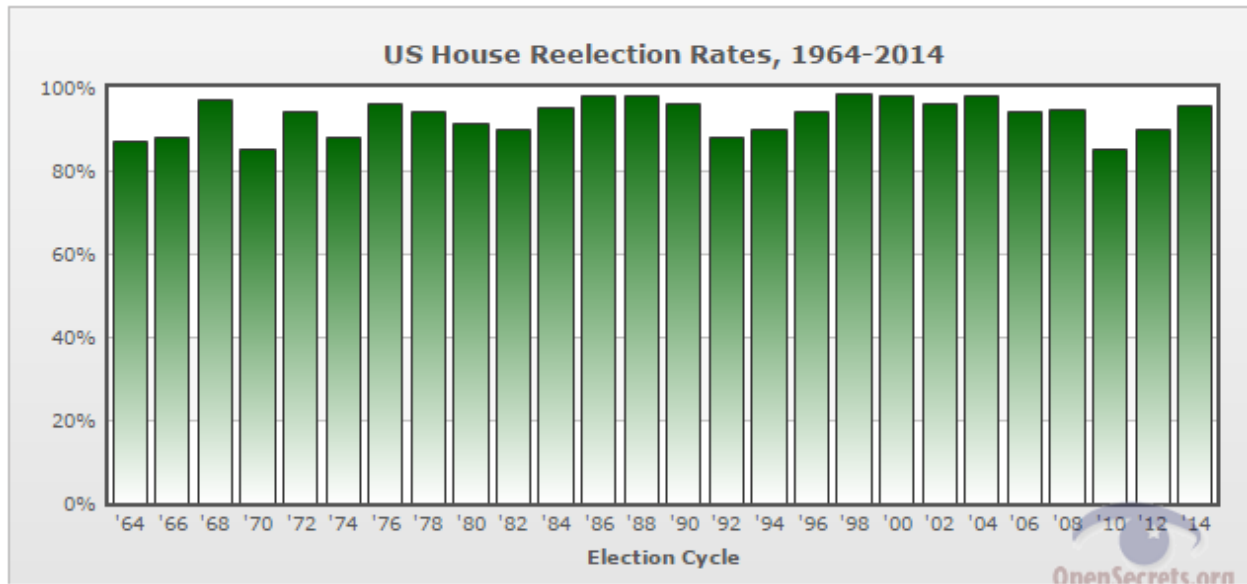
The presidency was held to an informal two-term limit for the first 150 years of our history, until President Franklin Roosevelt decided to seek a third term in the 1940 election. Roosevelt wound up taking that third term and a fourth one before dying in office, which prompted Congress to move swiftly on a constitutional amendment limiting the president to two four-year terms in office. It was ratified in 1951.

While many states term-limited their governors by this point, there had been no successful movement to revive legislative term limits. That all changed in the 1990s.

Under the auspices of U.S. Term Limits, citizens in 24 states initiated ballot measures to term limit their congressional delegations. By 1995, nearly half of all congressional seats in America were term-limited. Feeling the heat, Congress moved to vote on an amendment for less strict term limits that would apply to the entire House and Senate, but fell a few dozen votes short. Their aim was to pre-empt and prevent the stricter limits from going into effect.

When the state-initiated term limits were challenged in court, the Supreme Court dealt a 5-4 defeat to term limits supporters, ruling in *U.S. Term Limits v. Thornton* that states have no rights under the Constitution as it stands to term limit their own representatives. That would be considered an additional “qualification for office,” they said, and would have to be enacted by constitutional amendment.

75 percent of Americans today desire a constitutional amendment to term limit Congress, and U.S. Term Limits chief aim is to fight for that amendment. We have recruited four dozen signers of our term limits pledge signers in Congress, and are determined to help state leaders achieve term limits on Congress by using the Article V Convention. The pledge will prove very valuable if Congress once again moves to pre-empt the Article V Convention.



Why Term Limits

America can ill-afford a Congress that is simultaneously distant from the people and protected by the advantages of incumbency. This has resulted in a ruling class that doesn't listen to the voters, asserts power where it rightfully belongs to the states and blocks new talent from entering the system.

The re-election rate in Congress is well over 90 percent, meaning incumbents are practically unbeatable. Unless a seat is open, conventional wisdom dictates that races will be uncompetitive and lacking serious challengers. Top candidates for Congress – even those who are well-financed – have largely given up on challenging sitting members, and tend to focus their energy on winning open seat races.

Unfortunately, with tenure reaching an all-time high, seats open up less frequently than ever before. A quarter of Congress has been in office for more than 16 years. Nearly half of Congress has been in office for more than eight. By 2016, nine members will have been in office for more than 40 years.

Term limits would reverse this trend by ensuring that open-seat races are held on a regular basis. The best and brightest minds in our states, who are currently blocked from serving in Congress by tenured politicians, would finally have the opportunity to move upward and make their case to the American people.

Term limits also address the top-down power structure in Washington, by allowing for less senior members to hold leadership roles. This means Congress won't only get an infusion of new talent, but that all of its members will be empowered to make a difference.

Studies have found that term limits laws have increased legislative diversity, and had a statistically significant, positive impact on increasing women's representation in legislatures.

The President has term limits. As do 36 governors and 15 state legislatures. When a foreign leader attempts to rescind his own limits, we are the first nation whose diplomats stand up and object. This idea, with roots as old as democracy itself, has become part of our national fabric. It is time to bring term limits to Congress.

Where We Stand Today

There hasn't been a better time to make congressional term limits into a reality. Public perception of Congress is dismal, with approval ratings hovering in the 10-15 percent range. At the same time, support for term limits has never been higher. What has eluded the term limits movement up to this point is a strategy to channel the frustration into a change of law.

With an Article V Convention, that weakness becomes our biggest strength. The American people have faith in state legislators, who have always shown more fidelity to them and their interests, to pursue the Term Limits Convention with great resolve.

The Design and Purpose of Article V

“If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment”

George Washington

In reading the words of America's founders, it's clear they believed a durable Constitution needed an accessible means of amendment.

They provided for two ways to propose constitutional amendments in Article V: amendments may be proposed by Congress upon a two-thirds vote in both chambers, or they may be proposed by an interstate convention made up of state-selected delegates. Congress itself is mandated to call the convention after receiving enough “applications” – that is, resolutions passed by two-thirds of state legislatures.

The two paths came about by way of a disagreement between constitutional convention delegates Alexander Hamilton and George Mason. Whereas Hamilton preferred giving Congress the sole authority to propose amendments, Mason saw a flaw in that thinking. He believed “no amendments of the proper kind would ever be obtained by the people” if Congress had all the power. The final version of Article V was then adopted with both approaches intact.

The idea of convention was not foreign to the Framers. Borrowing from international and state precedent, they viewed conventions as ad hoc assemblies convened to solve a specific problem. The Meeting of Commissioners to Remedy Defects of the Federal Government, also known as the Annapolis Convention of 1786, not only led to the Philadelphia Convention of 1787 but also embodied convention as a purposeful body that could stand in for a legislature and get things done.

By the time Article V was finalized, there had already been 13 interstate conventions called during the founding-era on a variety of different subjects – some more narrow than others. Several state constitutions had amendment-by-convention laws that likely inspired the delegates, including a system in Georgia that allowed counties to circumvent the legislature.

One thing was clear: the founders believed that the scope of a convention was dependent on its prescribed task. Article V conventions for proposing amendments are not “plenipotentiary” – that is, they do not have full power and are limited only to consider amendments to “this Constitution.”

For this reason, it’s incorrect to call our effort a “constitutional conventions,” which implies a rewritten law code or basket of different ideas. Just as conventions have historically been held to a limited subject by the states, so too will the Term Limits Convention be closed off to other topics.

A Step-by-Step Guide to the Term Limits Convention

Legislative Guidance and Model State Application Bill

Step One: The Application

Section 1. The legislature of [INSERT STATE NAME] hereby makes an application to Congress, as provided by Article V of the Constitution of the United States of America

To get Congress to call a convention for the purpose of proposing amendments, two-thirds (34) of the state legislatures must pass “application” resolutions that specify the particular relief being sought. For our purposes, the application seeks only a convention “to set a limit on the number of terms that a person may be elected as a Member of the United States House of Representatives and to set a limit on the number of terms that a person may be elected as a Member of the United States Senate.” This convention is closed to subjects other than congressional term limits.

It is important that sponsors in each state do their best to emulate the language in the Term Limits Convention Model Application below. While liberties can be taken on style and drafting from state-to-state, significant differences between applications could result in Congress refusing to count states together. If that happens, we’ll fall short of the magic number of 34.

Per the Constitution, Article V applications are the exclusive province of *state legislatures*. Governors have no veto power and are not required to sign them, but if the Governor is supportive, his signature is welcomed to build additional support.

History and case law make clear that, while the application can dictate a certain subject to the convention, it cannot insist on a specific amendment. So, applications that include a defined term limit of 6, 8, 12 or more years are inadmissible. The determination of a specific term limits amendment will be done at the convention by the states’ chosen delegates.

As a task force set up to solve problems, a convention would be useless if its exact amendments had been preordained by Washington or the states. For this reason, it must have some freedom to deliberate on which term limits are the right ones.

Applications can have expiration or termination dates if the authors choose, but otherwise they are valid until rescinded. A termination clause can be contingent on another action, but not in such a way that coerces Congress or the convention. For example, it may not specify termination in the event that delegates propose an unwanted term limit (e.g. 16 years). We recommend not limiting the effective date in the resolution in order to keep it live for as long as it’s needed.

Once the application is passed by the legislature, a notarized copy should be sent to your Secretary of State and leadership in both Houses of Congress.

Sample Application Under Article V of the U.S. Constitution to Propose a Congressional Term Limits Amendment

Section 1. The legislature of [INSERT STATE NAME] hereby makes an application to Congress, as provided by Article V of the Constitution of the United States of America, to call a

convention limited to proposing an amendment to the Constitution of the United States of America to set a limit on the number of terms that a person may be elected as a Member of the United States House of Representatives and to set a limit on the number of terms that a person may be elected as a Member of the United States Senate.

Section 2. The secretary of state is hereby directed to transmit copies of this application to the President and Secretary of the Senate of the United States and to the Speaker and Clerk of the House of Representatives of the Congress of the United States, and copies to the members of the said Senate and House of Representatives from this State; also to transmit copies hereof to the presiding officers of each of the legislative houses in the several States, requesting their cooperation.

Section 3. This application shall be considered as covering the same subject matter as the applications from other States to Congress to call a convention to set a limit on the number of terms that a person may be elected to the House of Representatives of the Congress of the United States and the Senate of the United States; and this application shall be aggregated with same for the purpose of attaining the two-thirds of states necessary to require Congress to call a limited convention on this subject, but shall not be aggregated with any other applications on any other subject.

Section 4. This application constitutes a continuing application in accordance with Article V of the Constitution of the United States of America until the legislatures of at least two-thirds of the several states have made applications on the same subject.

Step Two: Getting Congress to “Call” the Convention

Term limits supporters are concerned that Congress, which opposes any limit on its own power, may not call the convention after 34 states have applied.

Thankfully, this view is not consistent with how Article V works. When two-thirds of legislatures apply for the convention, Congress is **constitutionally required** to make the call. Their role is to serve as the states’ functionary here rather as a discretionary body.

There are genuine reasons Congress could refuse to call the convention, but it is up to state legislators to deny them that chance. For example, Congress could decide that applications providing a specific term limit are different from those that leave it to the convention, and refuse to aggregate them. Or they can say applications dictating a specific amendment – rather than a subject – are completely illegitimate. The courts would likely rule in their favor there.

It is our responsibility to eliminate any loopholes Congress could use to sink our effort. We can accomplish that by sticking to the model application, which was drafted by Article V scholar Rob Natelson to protect the states in this process.

Step Three: Selecting Convention Delegates

Article V conventions respect federalism and allow for states to choose their own delegates in their own ways. Options for delegate selection include but are not limited to: legislative vote, vote by joint session, selection by the Governor, selection by a committee and popular vote.

The rules for choosing delegates do not go into the Term Limits Convention application but into separate legislation. Depending on state, there may already be good rules on the books that do not require amending or redoing.

Some states have begun passing “delegate limitation acts” (also known as faithless delegate acts) to impose criminal and civil penalties on any delegates who exceed the authority granted to them by the legislature. While they aren’t crucial, these laws are certainly recommended as a bulwark against anti-convention rhetoric. A sample law can be found in the Appendix.

Step Four: The Convention

Term Limits Convention delegates will be restricted to proposing amendments only within the subject of term limits for members of the U.S. House of Representatives and U.S. Senate. Each state will choose to send a group of delegates known as a “committee.”

Rules and procedures, apart from the subject matter, are determined by the delegates themselves at convention. These include rules on officer selection, how much debate time each person receives, how specific amendments are considered by the assembly and the rules of suffrage. Historically, interstate conventions have used “one state, one vote.” But since the delegates make the rules, they are free to replace that with a different system. There are no obligations for the convention to require a supermajority to report out an amendment – a simple majority will do unless attendees decide differently.

Though 34 states will have applied, all 50 states are entitled to send delegations to the convention and receive representation.

Step Five: Ratification

Amendments produced by the Term Limits Convention can be ratified by either state legislature or state convention. That choice, like few others in this process, belongs to Congress.

So far, all except one amendment to the Constitution have been ratified by legislature. The outlier was Amendment 21 which repealed prohibition. If state ratifying conventions are selected, once again state laws will decide what each one of those mini-conventions looks like. In Florida, for example, the convention delegates are chosen in a massive statewide election, with the top 67 vote-getters serving at-large. Other states operate differently. New Mexico, for instance, simply declares that every member of the legislature is a convention delegate.

It’s safe to plan for ratification by legislature, but if the other method is chosen, delegates will likely be appendages of the legislature or actual members of it.

Dispelling the “Runaway Convention” Myth

The biggest obstacle to a successful Term Limits Convention will be policymakers and concerned citizens who believe such a convention has the power to “run away” and open up the entire Constitution for revision. Under these wild scenarios, the Bills of Rights gets repealed and tyranny is foisted onto the American people. These fears have been seeded into many Americans’ minds by groups like the John Birch Society and Eagle Forum.

First, it’s important to note that those who subscribe to runaway convention thinking aren’t less patriotic or doing so with wicked aims. Most do support term limits, campaign finance reform and other ideas that have been floated inside the Article V sphere. Our disagreement is on how to get there.

After consulting with the top experts, we’ve concluded that the arguments for runaway convention are without merit and not supported by the evidence.

Exhibit A in this discussion is America’s very long and documented history of conventions. In the hundreds of state and interstate conventions that have taken place here in the founding era and beyond, none have ever run away. On rare occasions a delegate would suggest departing from the agenda, but that person would get nowhere because checks and balances were built-in, as they are here.

A common internet meme calling the Philadelphia Convention of 1787 a runaway is based on poor scholarship. The false narrative goes like this: Convention delegates only had the authority to amend the Articles of Confederation (America’s first Constitution), but ignored that and threw the Articles on the scrap heap. Hence, it’s said they jumped over their boundaries and ran outside the law.

In reality, 10 of the 12 state delegations at that convention had broad authority which included the ability to adopt a new Constitution. This was made explicit by the instructions their states gave them. Congress did *recommend* the Convention stay limited, but it was merely advice that bound no one legally.

Far from a runaway, the 1787 Convention was yet another example of an American convention doing exactly what it was told to do, whether broad or narrow.

Another defect in the runaway reasoning is identifying the stage at which unlawfully expanding the agenda is possible. If the state applications specify radical amendments, then that’s not running away – it’s attempting to create an entire convention based on bad ideas.

Once the Term Limits Convention applications get to Congress, there is no wiggle room for legislators to insert agenda items. Their role of convention caller is ministerial, and they are only allowed to choose between two options for ratification.

Delegates to the convention – who can be recalled by their states -- have some discretion, but it’s limited to amendments within the subject area chosen by 34 states. The topic of term limits is so clear and unequivocal that it cannot be construed to include amendments on other subjects.

Any departure then, by either the delegates or Congress, would be subject to judicial review. If groups come forward with lawsuits challenging an amendment to come out of Article V, the courts can mediate that dispute.

The ultimate safeguard in Article V, however, is its very high bar for ratification. Before any amendment becomes law, three-quarters of states (38) must ratify it. Even groups with popular – though not universal – ideas avoid using the Article V approach for this reason. Their issues don't have the backing term limits does and so they've concluded it would be a waste of time.

If popular groups on the left and the right don't think their amendments could be ratified, how then could anyone ratify a radical amendment that everybody hates?

It just couldn't happen. Notwithstanding the career-destroying scrutiny of hijacking a convention, there are just too many safeguards in place to allow fanaticism.

Conclusion

Throughout history, Congress has repeatedly proposed amendments to curb abuses coming from the states. They sought redress with the 14th amendment to protect Americans' civil rights, the 24th amendment to guard voting rights and many more. Our founders knew, however, that the states wouldn't be the only ones whose behaviors warranted corrective action.

Congress itself, they said, would need to be reined in from time to time. James Madison wrote:

“The several departments being perfectly co-ordinate by the terms of their common commission, none of them...can pretend to an exclusive or superior right of settling the boundaries between their respective powers; and how are the encroachments of the stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people themselves, who...can alone declare its true meaning, and enforce its observance?” (Federalist 49)

He was referring to the convention remedy. The level of authority Congress has, while not a problem itself, has created a situation where fixed incumbents encroach on the people's right to representation. The chief aim of the Term Limits Convention is to fix the imbalance by bringing new leaders to Washington on a regular basis.

Every state lawmaker understands that cooperation with the federal government cannot work if congressional leaders feel no need to be responsive. But that's now the status quo. The voting public, state and local leaders feel left behind by people who go to D.C. with great promise but end up focusing only on their own perpetuation.

It can be corrected swiftly by promoting and passing resolutions for the Term Limits Convention. The Convention is a safe way to reform our government without needing approval from those who stand in the way of reform.

This Handbook hopefully answers most questions you have about Article V, but if it you're still eager to learn more, do not hesitate to reach out to U.S. Term Limits any time. We are the grassroots army and your top ally to pass the Convention applications in 34 states and get a term limits amendment ratified.

Thank you,

USTL