

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HCR 693 Congressional Term Limits

SPONSOR(S): Borrero, Gregory, and others

TIED BILLS: **IDEN./SIM. BILLS:** SCR 326

FINAL HOUSE FLOOR ACTION: 80 Y's 33 N's **GOVERNOR'S ACTION:** N/A

SUMMARY ANALYSIS

HCR 693 passed the House on January 9, 2024, and subsequently passed the Senate on February 1, 2024.

Currently, there is not a limit on the number of terms a member of Congress may serve. In the early 1990s, 23 states, including Florida, approved state constitutional amendments or passed laws imposing congressional term limits. However, in 1995, the United States Supreme Court ruled that congressional term limits may only be imposed by amending the U.S. Constitution.

Article V of the U.S. Constitution provides the specific process for amending the document. Congress may directly propose amendments to the Constitution, which is the method used for each amendment ratified since the Constitution went into effect. Alternatively, upon application by the legislatures of two-thirds of the states, Congress must call a convention for the purpose of proposing amendments. A proposed amendment goes into effect once ratified by the legislatures or state conventions of three-fourths of the states; the method of ratification being solely the choice of Congress.

The concurrent resolution constitutes the state's application to Congress under Article V of the U.S. Constitution to call a convention for the sole purpose of considering and proposing constitutional amendments limiting the number of terms a member of Congress may serve. The concurrent resolution does not specify the number of terms that members should be allowed to serve.

This concurrent resolution does not have a fiscal impact on the state or local governments.

The concurrent resolution is not subject to the Governor's veto powers.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Amending the United States Constitution

Article V of the U.S. Constitution¹ provides the exclusive process for amending the document.² Congress may directly propose amendments to the Constitution, the method used for each of the 27 amendments ratified since the Constitution went into effect. Alternatively, upon application by the legislatures of two-thirds of the states,³ Congress must call a convention for the purpose of proposing amendments. A proposed amendment goes into effect once ratified by the legislatures or state conventions of three-fourths of the states;⁴ the method of ratification being solely the choice of Congress.

State Applications for an Article V Constitutional Convention

Article V requires application to be made by a state's legislature, meaning the representative body authorized to make laws and not referring generally to a state's legislative process.⁵ The specific text does not refer to the authority of the President or a Governor to approve or veto legislation⁶ and the Governor's approval is not required.

Under Article V, Congress has the exclusive authority to review state applications and determine whether they count toward the two-thirds requirement. While Congress has not specified the form, structure, or content of a valid state application,⁷ the accumulation of pending applications from the various states shows Congress groups applications according to the issues expressly stated by the petitioning state rather than simply counting the total number of applications. For example, the current twenty-seven applications seeking a convention on a balanced federal budget amendment are not combined with the four applications requesting a convention for an amendment barring discrimination in public schools to satisfy the necessary two-thirds requirement and call a convention.⁸

Article V requires neither a state application nor the congressional call for a convention to include the specific text of a proposed amendment. Article V authorizes applications to Congress to call a convention "for proposing [a]mendments," apparently requiring the convention to study, debate, and compose the terms of a proposed amendment within the scope of issues authorized in the call.⁹ As

¹ "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; Provided that no Amendment which maybe made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, with out its Consent, shall be deprived of its equal Suffrage in the Senate." Art. V, U.S. CONST.

² "The language of the article is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed." *Hawke v. Smith*, 253 U.S. 221, 227 (1920). See Henry Paul Monaghan, *We the People[s]*, *Original Understanding, and Constitutional Amendment*, 96 Colum. L. Rev. 121, 127 (1996); Arthur Earl Bonfield, *Proposing Constitutional Amendments by Convention: Some Problems*, 39 Notre Dame L. Rev. 659 (1964).

³ Currently, 34 states.

⁴ Currently, 38 states.

⁵ *Hawke*, *supra* note 2 at 227.

⁶ Sen. Sam J. Ervin, Jr., *Proposed Legislation to Implement the Convention Method of Amending the Constitution*, 66 Mich. L. Rev. 875, 888-889 (1968); see also art. I, s. 7, cl. 2, U.S. CONST.; art. III, s. 8(a), FLA. CONST.

⁷ Legislation previously was proposed but never enacted. See Kenneth F. Ripple, *Article V and the Proposed Federal Constitutional Convention Procedures Bills*, 3 Cardozo L. Rev. 529, 530-533 (1981-1982); Ervin, *supra* note 6 at 885. See also Mary M. Penrose, *Conventional Wisdom: Acknowledging Uncertainty in the Unknown*, 78 Tenn. L. Rev. 789, 796 (2011), citing separate prior legislation filed by Senator Sam Ervin and Senator Jesse Helms.

⁸ See Selected Memorials, Office of the Clerk of the United States House of Representatives, *available at* <https://clerk.house.gov/SelectedMemorial> (last visited Dec. 4, 2023)

⁹ Michael A. Almond, *Amendment by Convention: Our Next Constitutional Crisis*, 53 N.C. L. Rev. 491, 513 (1975); Robert M. Rhodes, *A Limited Federal Constitutional Convention*, 26 Fla. L. Rev. 1 (1973).

Article V does not restrict the scope of a state's application, states may request a general convention for any purpose or a convention limited only to certain issues.¹⁰

There is no court decision on whether a time limit applies to state applications. However, the U.S. Supreme Court determined Congress has sole authority to set a time limit for states to ratify proposed amendments.¹¹ Federalist Papers 43 and 85¹² imply that applications for a convention should be reasonably contemporaneous, addressing a particular problem or issue recognized by at least two-thirds of the states as requiring consideration of constitutional amendment.

Calling an Article V Convention on Application by the States

Article V states that "Congress...on the Application of the Legislatures of two thirds of the several states, shall call a Convention..." (emphasis supplied). As the U.S. Supreme Court has interpreted the text as "plain" and its interpretation "admits of no doubt,"¹³ the general consensus appears to be that once two-thirds of the states apply for a convention on a common topic, Congress has no discretion and must call for the requested convention.¹⁴

Article V is silent on such matters as the selection of delegates by the states, voting requirements at the convention, and the procedural rules of the convention. Under the Supremacy Clause,¹⁵ because Congress would be exercising its national power provided in Article V, congressional action on these issues would be controlling, particularly on national matters such as the date, time, place, and financing of the convention. Congress also could determine the number of votes allocated to each state and establish uniform requirements for the selection, guidance, removal, and replacement of state delegates. Absent congressional action, each state may be able to decide such matters for itself.

Florida Control of Delegates to an Article V Constitutional Convention

The Article V Constitutional Convention Act¹⁶ provides guidelines for Florida to qualify, appoint, remove, and recall delegates to an Article V constitutional convention. These statutes would control absent express directions by Congress on the same issues, whether in the convention call itself or established in separate federal legislation.¹⁷

Congressional Term Limits

The U.S. Constitution governs the election and terms of members of Congress: Members of the U.S. House of Representatives serve two-year terms and members of the U.S. Senate serve six-year terms.¹⁸ The U.S. Constitution establishes the qualifications for members of each chamber but does not limit the number of terms or years a member of Congress may serve.¹⁹

Prior to 1995, 23 states, including Florida,²⁰ approved constitutional amendments or passed laws imposing congressional term limits.²¹ The U.S. Supreme Court found such efforts violated the

¹⁰ William W. Van Alstyne, *A Response to Justice Thomas Brennan's Remarks at the Thomas M. Cooley Law School Article V Symposium*, 28:1 *Thomas M. Cooley L. Rev.* 51, 54 (2011); Ripple, *supra* note 7 at 548; William W. Van Alstyne, *The Limited Constitutional Convention – The Recurring Answer*, 1979 *Duke Law Journal* 985; Rhodes, *supra* note 9 at 18.

¹¹ *Coleman v. Miller*, 307 U.S. 433, 454 (1939); *Dillon v. Gloss*, 256 U.S. 368, 375-376 (1921).

¹² See James Madison, *The Federalist No. 43* (January 23, 1788); Alexander Hamilton, *The Federalist No. 85* (May 28, 1788).

¹³ *Hawke*, *supra* note 2 at 227.

¹⁴ Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis*, 81 *Constitutional Commentary* 53, 80 (2012); Gerald Gunther, *Constitutional Brinkmanship: Stumbling toward a Convention*, 65 *A.B.A. J.* 1046, 1048 (1979); Almond, *supra* at 498; Ervin, *supra* note 6 at 885; Bonfield, *supra* note 2 at 675. See also Alexander Hamilton, *The Federalist No. 85* (May 28, 1788).

¹⁵ Art. VI, cl. 2, U.S. CONST.

¹⁶ Ss. 11.93-11.9352, F.S.

¹⁷ See art. VI, cl. 2, U.S. CONST., the "Supremacy Clause."

¹⁸ Art. I, U.S. CONST.

¹⁹ Art. I, s. 2 (as affected by the 14th and 16th Amendments) and art. I, s. 3 (as affected by the 17th Amendment), U.S. CONST.

²⁰ See Florida Amendment 9 (1992), amending art. VI, s. 4 of the Florida Constitution to limit the terms of the Governor, Florida Cabinet, members of the Florida Legislature, and U.S. Senators and Representatives elected from Florida, *available at* [https://ballotpedia.org/Florida_Term_Limits,_Amendment_9_\(1992\)](https://ballotpedia.org/Florida_Term_Limits,_Amendment_9_(1992)) (last visited Dec. 1, 2023).

²¹ Sula P. Richardson, U.S. Congressional Research Service, *Term Limits for Members of Congress: State Activity* (June 4, 1998), *available at* <https://www.everycrsreport.com/reports/96-152.html> (last visited Dec. 4, 2023), finding the states that passed some form of

qualifications for membership in either chamber established by the U.S. Constitution and that congressional term limits could only be imposed by amending the Constitution.²²

In 2016, the Florida Legislature passed HM 417, applying to Congress to call a convention under Article V solely to consider and propose amendments to the U.S. Constitution to limit the number of terms to which a person could be elected to the U.S. Senate or the U.S. House of Representatives.²³ If passed, this concurrent resolution would update Florida's application for an Article V convention on congressional term limits but would not increase the total number of states applying for such a convention.

Applications limited solely to seeking a convention to limit the number of terms to which a person could be elected to Congress were submitted by the State of Alabama in 2018, by the states of Missouri and Wisconsin in 2022, and by the State of Oklahoma in 2023.²⁴

Effect of the Concurrent Resolution

The concurrent resolution is the state's application to Congress under Article V of the U.S. Constitution to call a convention for the sole purpose of considering and proposing constitutional amendments to limit the number of terms to which a person may be elected to the U.S. Senate or to the U.S. House of Representatives. The concurrent resolution states it covers the same subject matter as similar applications from states that are presently outstanding, is to be aggregated with such other applications to achieve the two-thirds number of states necessary to call for a convention on this specific issue, and is a continuing application until the necessary two-thirds of the states is achieved. The concurrent resolution also provides that the application is revoked and withdrawn, nullified, and superseded as if never passed, retroactive to the date of passage, if the application is used to support calling a convention on any other subject.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

congressional term limits included AK, AR, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NH, NV, ND, OH, OK, OR, SD, UT, WA, WY.

²² *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 836 (1995).

²³ HM 83 (2012) applied for a convention to limit the number of consecutive terms one could serve in either chamber of Congress. SM 476 (2014) applied for a convention imposing fiscal restraints on the federal government, limiting federal power and jurisdiction, and limiting terms of federal officials and members of Congress.

²⁴ *Supra* note 8.

D. FISCAL COMMENTS:

None.