ASSEMBLY DISTRICT
TWENTY • FOUR

DAN KNODL

STATE REPRESENTATIVE • 24TH ASSEMBLY DISTRICT

Assembly Joint Resolution 77

Public Testimony
Assembly Committee on Federalism and Interstate Relations
November 13, 2019

Thank you, Chairman Vorpagel and members of the committee for holding this hearing on Assembly Joint Resolution 77.

This proposal would add Wisconsin to the 15 other states that have already submitted an Article V application to Congress regarding the Convention of States Project.

There are three main points that would be addressed under this application and they are as follows.

1. Imposing fiscal restraints on the federal government
2. Limiting the power and jurisdiction of the federal government
3. Limiting the terms of office for federal officials and members of Congress

As you are likely aware, the Article V process requires 34 state applications in order to call a convention and the approval of 38 state legislatures to ratify any proposed amendments flowing from a convention.

It is common knowledge that the federal government has drastically grown in size and scope since our nation's founding. Unfortunately, there has been little to no willingness from members of Congress to address this growth especially the ballooning federal spending and the expanse of the administrative state.

While we have recently passed an Article V application relating to a balanced budget amendment, that language would come up short of fixing the various problems we face as a nation.

Over time we have experienced the federal government as well as the federal administrative state creep into every corner of our lives. It is time we reassert the rights we have as a state and reaffirm the age old tradition of federalism.

Thank you for your time and attention to this matter and I would be happy to take any questions at this time.

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TOM TIFFANY

STATE SENATOR • 12TH SENATE DISTRICT

Assembly Committee on Federalism and Interstate Relations

Public Hearing: Assembly Joint Resolution 77

November 13, 2019

Chairman Vorpagel and members, thank you for holding a public hearing on Assembly Joint Resolution 77. I'd like to thank my co-author, Representative Dan Knodl, for all his hard work on this. He will be delivering the testimony today.

Assembly Joint Resolution 77 is very simple. It allows the Legislature to apply to Congress, under the Article V provisions of the United States Constitution, to call a convention of states strictly limited to proposing amendments to the Constitution that:

- Impose fiscal restraints on the federal government;
- Limit the power and jurisdiction of the federal government; and
- Limit the terms of office for officials and members of Congress

This resolution does not call for a specific amendment to be proposed, and instead would allow the states to find solutions to the problems facing our nation.

There are a number of reasons why I'm supporting this Joint Resolution, and all are tied to my frustration with the federal government. For years, I've heard constituents ask me why Congress can't pass a balanced budget, why members of Congress stick around so long yet accomplish so little, and why the federal government continually sticks its nose in our daily lives.

Currently, the federal debt just passed $23 trillion for the first time ever, and the federal deficit is nearly $1 trillion. In Wisconsin, when we sit down to craft the state budget every two years, one of the requirements we have from the people of Wisconsin is that our budget must be balanced. Why? Because it's in our State Constitution. Forty-nine states have similar requirements either in their Constitution or in statute.

The founding fathers created a process for states to push back when the powers of the federal government have grown too invasive. Our ability to rein in the federal government is well within our state's rights and the time to act is now. The Convention of States resolution that is before you today would curb the federal government's ability to spend recklessly, impose term limits, and reassert our 10th Amendment states' rights.

It's time to return more decision-making power to the states and to the people. People across our state and across the country agree. Fifteen states have already passed a similar resolution and many others have proposed them in their statehouses. In my state senate district alone, there are over 1,000 people who have signed the petition asking us to pass this resolution.

It's time to send a clear message to Washington that their spending is out of control, and the encroachments on the liberty of the people is unacceptable. Assembly Joint Resolution 77 does just that. Thank you for your time and consideration. I am happy to respond to questions that you may have at any time.

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LAKESHIA MYERS
Wisconsin State Representative • 12th Assembly District
HERE TO SERVE YOU!

Testimony in Opposition of AJR 77: Convention of the States for one or more Constitutional amendments restraining abuses of power by the federal Government

Assembly Committee on Federalism and Interstate Relations

November 13, 2019

Chairman Vorpagel and esteemed colleagues of the Assembly Committee on Federalism and Interstate Relations, I appreciate the opportunity to provide testimony in opposition of AJR 77.

At the crux of my opposition to this joint resolution are two words, "state's rights". While some hear the term state's rights and think of autonomy, small government, and the ability of the state to govern themselves as they deem necessary, I do not. The term "state's rights" immediately strikes a chord of fear and concern. These concerns are legitimate ones considering I am both a woman and an African American.

At the last constitutional convention, held in 1787, pressing issues of suffrage and the institution of slavery were unaddressed and left to the states to decide. We all know how that turned out; slavery lasted another seventy-six years (abolished in 1863), suffrage was granted to black men eighty-two years later (1865), and women's suffrage one hundred thirty-two years later (1919). All of which were rectified by the federal government.

Historically, it has been state law that was used to oppress and control marginalized groups of people. State laws are responsible for:

- **The black codes**- Immediately after the Civil War ended, Southern states enacted "black codes" that allowed African Americans certain rights, such as legalized marriage, ownership of property, and limited access to the courts, but denied them the rights to testify against whites, to serve on juries or in state militias, vote, or start a job without the approval of the previous employer.
- **Anti-miscegenation laws**-meaning individuals of different races were banned from marrying.
- **Poll Taxes & Ballot Access Testing**-The notion that a fee be paid and/or a written test passed in order for African Americans to vote.

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- **Parental Rights of Rapists-**If a woman is a victim of rape and a child is conceived, her rapist has parental authority of the child. Seven states still have these laws on their books.
- **Child marriage-**Minors are able to be married prior to the age of eighteen. In some states, like Wisconsin, a child can be married as young as age sixteen.

Conversely, it was the federal government that stepped in to provide relief to those who were treated differently under the laws of states. Federal laws are responsible for:

- **Civil Rights Act of 1866-** Gave African American citizens the same right that a white citizen has to make and enforce contracts, sue and be sued, give evidence in court, and inherit, purchase, lease, sell, hold, and convey real and personal property.
- **Civil Rights Act of 1964-** Ended segregation in public places and banned employment discrimination on the basis of race, color, religion, sex or national origin
- **Voting Rights Act of 1965-** Outlawed the discriminatory voting practices adopted in many southern states after the Civil War, including literacy tests as a prerequisite to voting.
- **Loving v. Virginia 1967**-Outlawed anti-miscegenation laws in the United States and was the basis of Obergefell v. Hodges which guaranteed the right to marry for same sex couples.

Mr. Chairman and members, we have a solid government structure. It has served our democracy well for the last two hundred thirty-two years. While each era has brought its particular set of challenges, we have been able to conquer them with our unique system of checks and balances.

As our country has grown, so have our ideals and inclusivity. It would be a shame to push for a convention that could possibly move our country backward and thwart the progress we've made thus far. Thank you, and I urge all members to vote against this resolution.

CIVIL RIGHTS & LIBERTIES SECTION

To:	Members, Assembly Committee on Federalism and Interstate Relations
From:	Civil Rights & Liberties Section, State Bar of Wisconsin
Date:	November 13, 2019
Re:	SJR 57/AJR 77

The Civil Rights & Liberties Section opposes SJR 57/AJR 77, calling for a constitutional convention under Article V of the United States Constitution to address limiting the power of the federal government, imposing fiscal restraints, and placing term limits on federal officials, and calls upon members of the Wisconsin legislature to reject these resolutions. The Section's opposition focuses on the use of a constitutional convention rather than the substance of the issues the legislation is seeking to address. It is possible this resolution could lead to a rewrite of the purpose and scope of federal authority and rights, which is of concern to the Civil Rights & Liberties Section.

Once a constitutional convention is convened, there is no way to limit it to the scope of the concern or concerns stated in the applications. There is no way to predict or limit what changes it may make to our venerable 230-year-old governing document. History tells us that the framers struggled to ensure the document balanced the interests of states, minorities, and others in a way that would provide a government structure which would guide the new country through the future.

Recognizing there must be opportunity to perfect our constitution, the framers included, in Article V, a procedure for amending the Constitution without convening a convention. The Section believes that alternative procedure – the procedure that has resulted in twenty-seven amendments since the Constitution went into effect on March 4, 1789 – is a much safer, more targeted and certainly just as effective method for achieving a balanced-budget amendment. A constitutional convention throws open the doors for massive changes that could threaten our fundamental rights as guaranteed by the Bill of Rights and the application of those rights to the states by the Fourteenth Amendment. In addition, the federal court system, the scope of its jurisdiction and its power to invalidate the acts of the states and the federal government as unconstitutional would be in jeopardy. Lastly, the power of the federal government to police and regulate interstate commence under the Commerce Clause could be eliminated or severely curtailed, and, along with it, the power to enact and enforce our laws against discrimination in private employment, public accommodations and housing.

For these reasons, the Civil Rights & Liberties section opposes SJR 57/AJR 77.

For more information, please do not hesitate to contact our Government Relations Coordinator, Lynne Davis, ldavis@wisbar.org or 608.852.3603.

The State Bar of Wisconsin establishes and maintains sections for carrying on the work of the association, each within its proper field of study defined in its bylaws. Each section consists of members who voluntarily enroll in the section because of a special interest in the particular field of law to which the section is dedicated. Section positions are taken on behalf of the section only.

The views expressed on this issue have not been approved by the Board of Governors of the State Bar of Wisconsin and are not the views of the State Bar as a whole. These views are those of the Section alone.

STATE BAR OF WISCONSIN

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David Lewis
Appleton, Wisconsin

Testimony against AJR77 for a Convention of States

Assembly Committee on Federalism and Interstate Relations

November 13, 2019

The proponents of a Convention of States state that the Convention they are calling for is not a Constitutional Convention. It is rather a Convention for proposing Constitutional Amendments which will be sent to the states for ratification. This language has reduced the concerns of many about the inherent risks of a Constitutional Convention making unwanted changes to the Constitution.

Is this assertion from COS proponents true? A close examination of the American process for convening a Convention indicates that it is false.

The American system of government is a system of popular sovereignty. The Founders placed the sovereignty of the nation with the people. The calling of a convention, therefore, to discuss the supreme law of the land must originate with the people, via their elected voice, their legislators.

Two routes for convening a Constitutional Convention are well known, both involve popular sovereignty and both demonstrate the COS assertions of the Convention to be false.

First is Article V. It requires "The Congress…on the application of the legislatures of two thirds of the several states, shall call a Convention of proposing Amendments…" The delegates of the Convention shall possess the sovereign power of the people by virtue of this process in Article V. This sovereign power in a deliberative body has the authority to amend or alter the supreme law of the land however it sees fit. This includes rewriting the Constitution as in 1787.

The proponents of a Convention of States effectively deny that the delegates would have such power. However, the language of the Founders is clear. They deemed that when a critical mass of two thirds of the legislatures has called for a convention, Congress shall call the sovereign power of the people into a Convention to deliberate on the supreme law of the land.

Second is the Constitutional Convention of 1787. This too demonstrates the COS assertions of the Convention to be false. In that day the legislatures passed resolutions sending delegates to Philadelphia to deliberate in Convention on the supreme law. Those delegates demonstrated that their authority extended beyond creating and sending proposed changes to the states when they drafted a new Constitution and set new rules for its ratification. In Federalist 40 James Madison stated it was the delegates "transcendent and precious right" to draft a new Constitution.

In summary the delegates of a COS convention called by Congress would possess the sovereign power of the people enabling them to change and rewrite the Constitution. The Convention of States denies that power. And this body should deny them passage of AJR77.

Larry Greenley
Director of Missions, The John Birch Society, Appleton, WI

Testimony Against AJR 77
Relating to: convention of the States for one or more Constitutional amendments restraining abuses of power by the federal government.

Public Hearing of
the Assembly Committee on Federalism and Interstate Relations
Wednesday, November 13, 2019
10 AM
North Hearing Room (2nd Floor North)

My name is Larry Greenley and I am Director of Missions at The John Birch Society in Appleton.

I am testifying here in opposition to AJR 77 (SJR 57), which "applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the States limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress."

Now, here are the reasons given in AJR 77 for why such a convention is required accompanied by some commentary by me in italics:

"Whereas, the Founders of our Constitution empowered state legislators to be guardians of liberty against future abuses of power by the federal government; and

JBS commentary: We strongly agree with this statement. However, we advocate that state legislators use the constitutional tool of nullification to curb abuses of power by the federal government.

"Whereas, the federal government has created a crushing national debt through improper and imprudent spending; and

JBS commentary: We strongly agree with this statement. However, we would add that nearly all of the improper and imprudent spending is unconstitutional, and that the Constitution should be used as a guide to greatly reduce federal spending. We estimate that 80 percent of federal spending is for purposes not authorized in the Constitution.

"Whereas, the federal government has invaded the legitimate roles of the States through the manipulative process of federal mandates, most of which are unfunded to a great extent; and

JBS commentary: We agree with this statement also.

"Whereas, the federal government has ceased to live under a proper interpretation of the Constitution of the United States; and

JBS commentary: Again, we strongly agree with this statement. We would say that the federal government has usurped (that is, illegally seized) many powers that were never granted to it by the Constitution.

"Whereas, it is the solemn duty of the States to protect the liberty of our people — particularly for the generations to come — by proposing amendments to the Constitution of the United States through a Convention of the States under Article V for the purpose of restraining these and related abuses of power;"

JBS commentary: Here is where we part company with this convention of States application to Congress for a convention of States to be held under the provisions of Article V of the Constitution. We acknowledge that Article V provides for amendments to be proposed in two ways: the congressional method, which has been used for all 27 amendments so far; and the convention method, which has never been used yet.

However, the JBS position is that it would not be wise to convene an Article V convention during a time of such a lack of knowledge of the Constitution on the part of voters and such a widespread disobeying of the Constitution on the part of the federal government.

We have been actively opposing applications for an Article V convention since the 1980s. We have produced large numbers of articles and videos with a

whole variety of reasons why we oppose calling such a convention. However, our most enduring criticism is that Article V conventions would have the inherent power to be "runaway conventions" that could extensively or completely rewrite the Constitution.

We maintain that Article V conventions have the power to become "runaway conventions" for two main reasons:

(1) The precedent of the Constitutional Convention of 1787 where the founders met to revise the Articles of Confederation with the expectation that any revisions would have to be ratified by all 13 state legislatures, but went on to throw out the Articles and produce a completely new Constitution complete with a new ratification procedure requiring approval by special conventions of the people (not by state legislatures) in only 9 states instead of the original 13.

(2) The statement in the Declaration of Independence: "Whenever any Form of Government [fails to secure our rights], it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

In *Federalist No. 40* we learn that none other than James Madison, the father of the Constitution, pointed to this right to "alter or abolish" our form of government as stated in the Declaration to justify how the delegates to the Constitutional Convention exceeded their instructions.

Madison then concluded Federalist No. 40 with a vigorous justification for runaway constitutional conventions. He asserted that if the delegates to the 1787 Convention "had exceeded their powers, they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty which they assume; and that finally, if they had violated both their powers and their obligations, in proposing a Constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people of America."

The John Birch Society applauds what the Founders did in their creation of the Constitution. We accept Madison's use of the principle of the right of the

people to alter or abolish their form of government to justify creating the new Constitution with its new ratification procedure. However, we believe it would be unwise to convene an Article V convention in our era of such widespread lack of knowledge regarding the Constitution among voters and such widespread lack of adherence to the Constitution by the federal government. Such widespread disregard for the Constitution would enable powerful special interests to use an Article V convention to change the Constitution in their favor. This in turn would destroy the Constitution as a rallying point for Americans to work to restore their rights in the future.

Speaking of the federal government and special interests, let's consider the great odds against a convention of states actually taking power away from the federal government and the special interests. Let's say that eventually 34 states do apply to Congress for a convention of states to "limit the power and jurisdiction of the federal government, etc." What's the next step?

According to Article V, "Congress, ... on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments...." Proponents of a Convention of States-type of application to Congress for a convention claim that Congress will merely call a convention, then step back and leave everything else to the states.

But, let's get back to reality. Doesn't the fourth "whereas" of AJR 77 say: "Whereas, the federal government has ceased to live under a proper interpretation of the Constitution of the United States"? This is *the* Congress that has ceased to live under a proper interpretation of the Constitution. This is *the* Congress that "has invaded the legitimate roles of the States through the manipulative process of federal mandates, most of which are unfunded to a great extent."

Are we to believe that Congress will roll over and play dead during an Article V convention process?

We don't have to be in suspense over this question. Back in March 29, 2016, the Congressional Research Service published a report, "The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress." On page six of this report is a section entitled, "The Role of Congress in the Article V Convention." This section points out that between

1968 and 1992, 24 Article V "convention planning bills were introduced in the House of Representatives and 26 in the Senate."

These bills were concerned with how such a convention would be called and how delegates would be selected and apportioned among the states. "Most bills provided for popular election of delegates governed by existing state procedures."

While advocates for an Article V convention usually tell us that there will be one vote per state, most of the congressional bills "used the formula for apportionment of electoral votes for President and Vice President to determine the size of the convention and apportionment of delegates among the states." Using that formula would mean that Wyoming would have three delegates and three votes, Wisconsin would have 10 delegates and 10 votes, and California would have 55 delegates and 55 votes. That is to say Congress would likely empower the big population states to thoroughly dominate the convention.

I'm not saying that Congress would be acting constitutionally if it would get this involved in the nuts and bolts of holding an Article V convention; however, I am saying that self-interest would very likely lead Congress to forcibly take a very hands-on and extensive approach to calling a convention. After all, as the convention of states application says, "The federal government has ceased to live under a proper interpretation of the Constitution of the United States."

In light of the above, does it seem likely that an Article V convention would lead to limiting "the power and jurisdiction of the federal government"?

Now, let's add some more interested parties into the mix: the Executive Branch, the state and federal courts, the media, and the various and powerful special interest groups. We're talking about a real, three-ring circus event, and much more.

What would be the probable outcome of an Article V convention? A good guess would be that the most powerful of the establishment elites would end up having the biggest impact on a revised constitution, which would include influencing the crafting of a new ratification procedure to ensure the acceptance of the new constitution.

This gift to the powerful elites in government, media, and special interest groups would enshrine their preferred style of big government in a new constitution as legitimized by a convention of the people.

So, you might ask how can we rein in big government.

Here is The John Birch Society's solution as expressed by Thomas Jefferson in a letter in 1820:

> I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. *This is the true corrective of abuses of constitutional power.* [Emphasis added.]

Testimony Against a "Convention of States" (AJR77)
Wisconsin Assembly Committee on Federalism and Interstate Relations
by Ralph D. Skowron, M.D.

(Hearing on Nov. 13, 2019)

Representative Vorpagel, Chair, Representative Schraa, Vice-Chair, and Members of the Assembly Committee on Federalism and Interstate Relations:

Thank you for the opportunity for me to submit this testimony **against** the so-called "Convention of States" resolution, AJR77.

I am a retired physician, and reside in Hortonville, WI (in the 56th Assembly district). I also served in the Air Force and the Air National Guard, and retired with over 23 years service. In that capacity, I swore an oath *for an indeterminate period, with no duration specifically defined,* to "support and defend the Constitution of the United States against all enemies, foreign and domestic. . ." As legislators, all of you have also taken an oath to "support the constitution of the United States. . ."

Notwithstanding, many of you support AJR77, which applies to Congress to call a convention of states for the purpose of amending the Constitution. My opposition is not only to AJR77, but to any petition for an Article V convention of states.

The Congressional Research Service (CRS) works exclusively for the United States Congress, providing policy and legal analysis to committees and Members of both the House and Senate, regardless of party affiliation. As a legislative branch agency within the Library of Congress, CRS has been a valued and respected resource on Capitol Hill for more than a century. CRS is well-known for analysis that is authoritative, confidential, objective and nonpartisan. Its highest priority is to ensure that Congress has 24/7 access to the nation's best thinking.

I refer you to **Congressional Research Service Report R42589: The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress."** This report makes clear that a myriad of possibilities would exist once an Article V convention is called. Scholars disagree on every facet of the process. What follows are arguments from CRS R42589.

Supporters of a General Convention note that the language of Article V is broadly inclusive. "...on the Application of the Legislatures of two thirds of the several States, [Congress] shall call a Convention for proposing *Amendments* (emphasis added)..." This implies that Congress cannot be obligated, no matter how many States ask for it, to summon a convention for a limited purpose, and that such a limited convention would have no constitutional standing at all. By this reasoning, the many hundreds of state applications for a convention to consider amendments on a particular subject or subjects (*such as those proposed in AJR77*) are null and void.

However, while the concept of a General Convention enjoys considerable support, there are those who maintain opposing views.

The Limited Convention:

Some constitutional scholars hold that a convention *may*, in fact, be limited to a specific area contained in State applications, or indeed, that it *must* be so limited. Others scholars state that a convention limited by the subject area of state applications is constitutional, but *should that limited convention stray from its original purpose, the convention could not be limited by congress.*

Congress, however, has historically sought to provide for limited conventions when it has considered the question. It is at this step that Congress has asserted in the past, but not provided in legislation, its power to set limits as to the convention's agenda. This suggests a delicate balance of authority: Where the states are authorized to apply for a limited convention, but also where only Congress can guarantee, by law, that a convention so summoned will confine its recommendations to the issues within its mandate.

The Runaway Convention:

This is generally defined as a convention convened to consider a limited agenda, then moving beyond its original mandate to consider policy questions and amendments not contemplated in the original state applications or in the congressional summons. Though this possibility has been characterized as overstated and alarmist, one should not fail to recognize the likelihood of billions of lobbyist dollars aimed at influencing convention delegates.

Please note that AJR77 imposes no limits on how delegates to an Article V convention could be influenced. Even if there were, there exists no mechanism to enforce such limits. A Constitutional Convention would be a free-for all for special interest groups. The Constitution itself might not survive.

Summarizing my opposition to AJR77:

1. Congressional Research Service Report R42589 presents a plethora of questions regarding the Article V Convention process, all with several diametrically opposing answers, each supported by many legal and constitutional experts. With no expert consensus on what might unfold . . . .with even the *slightest* possibility that an Article V Convention NOT be Limited, how can those who have sworn to uphold the Constitution of the United States vote for AJR77, or indeed, for *any* Article V Convention application? The certain uncertainty of how such a convention would unfold is **the reason** an Article V Convention must never happen.

2. **In fact, after carefully considering the problems which would result from an Article V convention petition from "two-thirds of the several States", I am firmly convinced that, without *prior* constitutional amendments to address:**

   A. Proportional vs. equal representation of the States at such convention, and

   B. Limits on topics to be discussed and decided at such convention,

that any Article V convention would probably result in the destruction of the form of government we have come to know. And I believe that is the purpose of those non-governmental organizations who seek to convene an Article V convention under any pretense.

The greatest government document ever authored by humans deserves our support and defense. I support the Constitution of the United States, against all enemies, foreign and domestic. I ask that before you vote on AJR77, please study Congressional Research Service Report R42589. And after that, please honor your oath of office.

Addendum 104

CONVENTION of STATES ACTION

Five Reasons Progressives should support the COS Article V application

Keep more of Wisconsin's federal tax dollars in Wisconsin

Wisconsin is a donor state. For every $1 Wisconsin residents and businesses send to DC in the form of federal taxes, 85¢ comes back to Wisconsin.[1] Wisconsin ranks 38th in terms of the percentage of its budget that comes in the form of grants from DC.[2] Washington's one-size-fits-all programs can be much better administered by government closest to where those funds are to be spent for roads, schools and residents. States can use the COS application to limit Congress to spending money only in furtherance of its enumerated powers, thus providing a vehicle to keep more of Wisconsin's money in Wisconsin.

Require Congress to obey the laws they impose on the rest of us

Worker protection: Congress has exempted itself from the Fair Labor Standards Act, age discrimination statutes, OSHA regulations, family and medical leave provisions, and the Civil Rights Act of 1964. It took a very public sexual harassment scandal involving a US Senator before Congress mustered the political will to provide its own employees with just some of the protections required of non-government employers. Members of Congress are exempt from the Whistleblower Protection Act of 1989. They reaffirmed the exemption in 1995 when they passed the Congressional Accountability Act that continues to exempt them from whistleblower protections.[3] The COS application can empower the states to overturn Congressional abuse.

Insider trading: In 2012 Congress was shamed into passing the Stop Trading on Congressional Knowledge (STOCK) Act. This was done just before the November elections in response to voter outrage directed at incumbents up for reelection. Six months after the elections Congress moved quietly, forgoing debate, and gutted the reporting requirements necessary to enforce the statute.[4] Again, the COS application can empower the states to overturn such Congressional abuse.

Level the playing field for locally owned businesses competing against big corporations

Companies should succeed because they offer a superior product or service, not because someone is putting their thumb on the scale in DC. K Street and big corporations don't donate to political campaigns for ideological reasons, they expect something in return. One of the most common means politicians reward their supporters is through regulatory exemptions. Locally owned businesses find it ever more cumbersome to be in compliance with burdensome and complex federal regulations because they don't have an army of attorneys and lobbyists getting them exemptions. An amendment to eliminate these abuses will go a long way to eliminating cronyism and big money influence in DC.

1: https://files.taxfoundation.org/legacy/docs/ftsbs-timeseries-20071016-.pdf

2: https://taxfoundation.org/states-rely-most-federal-aid/

3: https://www.rollcall.com/news/whistleblower-day-but-not-for-hill-staff

4: https://www.npr.org/sections/itsallpolitics/2013/04/16/177496734/how-congress-quietly-overhauled-its-insider-trading-law

End the new "stop and frisk"

Civil Asset Forfeiture allows government to seize a person's property without a warrant or criminal charges. Studies have shown that this has a disproportionate impact on minority and low-income communities because they lack the financial resources to fight back. The loss of even a comparatively low-value asset can leave a struggling family financially devastated. Perhaps the most horrifying abuse of this practice is parents being threatened with having children seized by child protective services.[5] The COS application provides the states the opportunity to end unconstitutional federal programs like "equitable sharing" and "limited use resources" that are used to confiscate the belongings of innocent Americans.

Lower the black incarceration rate

African-Americans face disparities at every phase of the criminal justice system. They are more likely to be arrested, aggressively charged, incarcerated, and given longer sentences than non-blacks. A recent GAO study identified 641 collateral consequences faced by those convicted of non-violent drug offences. Many of them impact future employability, access to professional, business and motor vehicle licensing; and eligibility for government benefits, including grants, loans and contracts. These individuals face permanent disenfranchisement from civic and political participation.[6] Use the COS process to propose an amendment to end this abuse.

Ironically, racial disparity in our criminal justice system was exacerbated by the adoption of federal policies that were intended to make our justice system more race-neutral.[7] Congress has not been able to muster the political will to walk balk their error; but the states can do it for them by using the COS application to correct federal missteps.

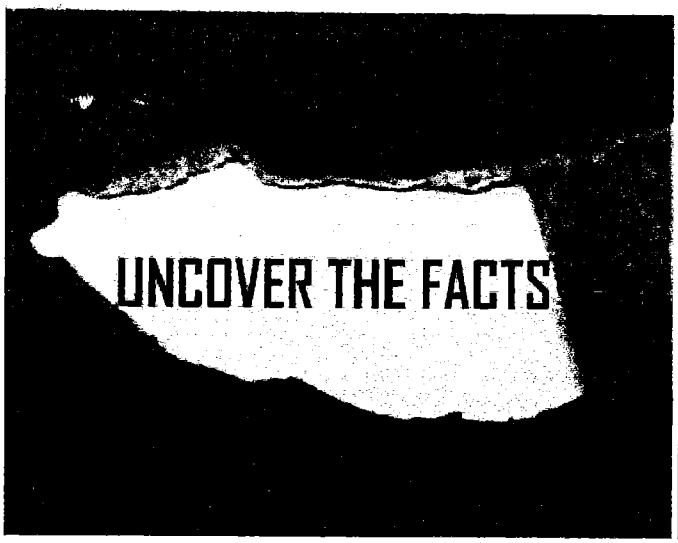
5: https://www.americanprogress.org/issues/criminal-justice/reports/2016/04/01/134495/forfeiting-the-american-dream/

6: http://www.naacp.org/criminal-justice-fact-sheet/

7: https://www.aclu.org/issues/criminal-law-reform/drug-law-reform/fair-sentencing-act

Thanks to Vickie Deppe from COS Illinois for contributions to this article

Brian Higgins, March 9, 2018



"This country consists of a union of sovereign States which hold the only power to ratify amendments... State legislatures hold concurrent power under the Constitution to initiate such amendments as they, the States and the people within them, require."

— Representative Larry McDonald, John Birch Society National Council & Chairman

Continued from front page

Welch, JBS members began supporting state legislatures in their efforts to pass resolutions for the Liberty Amendment.

As one newspaper reported, "Members of the four Birch societies in Bismarck, the state capital [of North Dakota], were pushing in the legislature a proposal for a constitutional convention to act on an amendment...[the Liberty Amendment]." [1]

In August of 1963, Welch sent an urgent request asking all JBS chapter leaders and members to send telegrams and letters urging the Alabama Senate to pass the resolution calling for the Liberty Amendment. [2]

Welch also produced a 15-minute radio program for JBS called "Are You Listening Uncle Sam," and, in 1967, he dedicated two programs to the Liberty Amendment. On the program Stone explained that his organization was using both methods (Congress and an Article V convention) to propose the Liberty Amendment.

In 1967 California State Senator John Schmitz, who was also a National Director for the John Birch Society, introduced the Liberty Amendment and called for a "national convention." [3]

In 1968 Welch joined Senator Schmitz as special guests at the National Convention of the Liberty Amendment Committee. [4]

Obviously, Welch supported Stone's efforts to have either Congress or the states propose the Liberty Amendment, and he used his time, resources, and relationships to make it happen.

On October 9, 1975, Representative Larry McDonald from Georgia, who served at the time on the John Birch Society's National Council, introduced the Liberty Amendment in Congress and gave extensive testimony — including advocating for the states to propose it in an Article V convention. [5]

In his book titled "*We Hold These Truths*," Representative Larry McDonald accurately explains that Congress and the states are authorized to propose amendments:

"Congress is authorized to propose constitutional amendments if it pleases. It is obligated to call a special convention to propose constitutional amendments if two-thirds of all state legislatures demand that it do so."

Nowhere in the writings of Welch or McDonald do you find them concerned about a "runaway convention" or that the entire Constitution could be thrown out in an Article V convention. In fact, they were one hundred percent behind the states in their efforts to use Article V to propose amendments.

It is only under the current leadership of JBS that this organization has turned its back on the Constitution and the process the Framers gave us to defend our security and liberties. In so doing, The John Birch Society has denied its history and betrayed its mission.

In fact, in his article, "Falsehoods Mark the Campaign for a Constitutional Convention," McManus denies all of the evidence to the contrary. Though a "constitutional convention" is not the same thing as an Article V convention for proposing amendments, McManus and other current JBS leaders insist upon referring to an Article V convention of states as a "constitutional convention." If the President of JBS is this misleading about the history of his own organization, why would anyone in his right mind trust him in regards to the history of our Constitution?

The time has arrived for our state legislatures to stop falling victim to the fear-mongering tactics and conspiracy theories of extremist groups. As representatives of the people and guardians of the Republic, you are the last resort in defending us against this overreaching federal government by proposing amendments to restore the balance of power back to the states.

Time is running out. Will you be led by fear or will you be a fearless leader?

1. The Warren County Observer, March 27, 1961, page 5
2. The John Birch Society, August 30, 1963, Interim Bulletin
3. Daily Independent Journal February 24, 1967, page 2
4. Colorado Springs Gazette-Telegraph, June 13, 1968, page 36
5. Congressional Record – House, October 9, 1975, 32634-32641)

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Addendum 103

The time has arrived for our state legislatures to stop falling victim to the fear-mongering tactics and conspiracy theories of extremist groups.

The John Birch Society Denies Its History and Betrays Its Mission

Ken Quinn, Regional Director for Convention of States Project

For decades The John Birch Society (JBS) has been using fear tactics to manipulate state legislators into believing that an Article V convention for proposing amendments is a Constitutional Convention. To further their agenda they make the false claim that the 1787 Constitutional Convention was called by Congress to solely revise the Articles of Confederation and that the convention "ran away" because the delegates wrote an entirely new Constitution instead.

These claims are false and have been refuted by historical facts and even the writings of the Framers themselves (see "**Can We Trust The Constitution**," by Michael Farris, and **Federalist 40**, written by James Madison).

This marketing campaign of fear titled "Stop a Con-Con" has silenced the voice of the people and has paralyzed some state legislatures from fulfilling their duty as the barrier against encroachments by the national government (see **Federalist 85**).

USA PENNSYLVANIA NEBRASKA IDAHO OKLAHOMA MISSISSIPPI INDIANA FLORIDA NEW MEXICO DELAWARE WASHINGTON ILLINOIS WYOMING VIRGINIA NORTH DAKOTA KANSAS SOUTH CAROLINA OREGON TEXAS ARIZONA NEW JERSEY VERMONT CONNECTICUT ARKANSAS NEW HAMPSHIRE KENTUCKY NORTH CAROLINA NEVADA WEST VIRGINIA UTAH HAWAII MICHIGAN ALASKA MASSACHUSETTS CALIFORNIA IOWA LOUISIANA MONTANA RHODE ISLAND WISCONSIN MAINE MINNESOTA MARYLAND SOUTH DAKOTA GEORGIA OHIO MISSOURI TENNESSEE NEW YORK COLORADO ALABAMA

CONVENTION *of* STATES

Instead of supporting the states in their efforts to fight back against an overreaching federal government, JBS has actually helped the federal government to go unchecked by preventing the states from using the very tool the Framers provided to stop such usurpation of power.

The John Birch Society claims to be for "less government and more responsibility," yet when state legislatures try to pass resolutions to actually propose such amendments, JBS actively opposes them and even works to rescind resolutions that have passed!

According to JBS President John McManus, it does not matter what amendment is being advocated by the states; they will oppose it regardless of the topic. JBS works to rescind resolutions even for amendments that they claim they would like to see proposed by Congress, such as repeal of the Seventeenth Amendment (direct election of senators) and the Sixteenth Amendment (federal income tax).

McManus states that only Congress should be allowed to propose amendments to the Constitution. Stop and consider that for a minute. He is actually trying to convince his membership and you as state legislators that those who are daily usurping the Constitution are the only ones who can be trusted to propose amendments to it! Does anyone truly believe that Congress will propose amendments to limit their own power? Of course not!

You see, JBS does not trust you as a state legislator or the people to govern themselves. Does that sound like an organization that supports "less government and more responsibility" to you? JBS will give lip service to the Constitution, but when it comes to the states actually trying to use the Constitution to defend themselves as intended by the Framers, JBS is anti-Constitutional.

However, former JBS leaders were strong supporters of the states calling for an Article V convention for proposing amendments. As you are about to see, they not only understood Article V but they fully advocated for the states to hold a convention to propose an amendment that would fulfill their goal of "less government and more responsibility." That amendment was known as the Liberty Amendment.

In 1944, Willis E. Stone, a descendant of Thomas Stone, a signer of the Declaration of Independence, drafted the Liberty Amendment, which sought to vastly restrict federal authority, cut government cost, protect private enterprises, and repeal the Sixteenth Amendment. Stone ultimately organized the Liberty Amendment Committee in all 50 states and worked for decades to have his amendment proposed either by Congress or by the states in an Article V convention.

Shortly after JBS was founded in 1958 by Robert

Continued to back page

CONVENTION of STATES ACTION

How do we know that a Convention of the States will not "run-away."

Opponents of the states exercising their constitutional right to hold a meeting to propose amendments to the federal Constitution will often times say that such a meeting will "run-away" and result in unintended consequences. Their logic usually follows one of two lines of thinking.

- The 1787 Philadelphia convention deviated from its intended purpose, or
- Inability to limit a Convention will allow delegates to propose anything, even create a new Constitution.

The 1787 Philadelphia Convention

Some will point out that on February 21, 1787, the Confederation Congress approved a resolution stating that "Resolved that in the opinion of Congress it is expedient that on the second Monday in May next a convention of delegates who shall be appointed by the several states be held in Philadelphia for the sole and express purpose of revising the Articles of Confederation . . ."[1]

There are several problems with widely held belief that this resolution was what bound the delegates that attended the convention.

- Nowhere in the Articles of Confederation did Congress have the authority to call such an amending convention. The only way the Articles of Confederation could be amended was spelled out in Article XIII which stated that "[N]or shall any alteration at any time hereafter be made in any of them; unless such alteration be agreed to in a Congress of the United States, and be afterwards confirmed by the legislation of every State."[2] Congress simply did not have the authority to call a convention.
- The Articles of Confederation permitted the states to retain residual sovereignty which allowed Virginia to, on November 23, 1786, call for a Philadelphia convention to "render the Federal Constitution adequate to the exigencies of the Union."[3] By the time Congress passed their resolution on February 21, 1787, five other states (NJ, PA, NC, DE & GA) had accepted Virginia's call for a convention making six states already on board to meet to consider the path being proposed by Virginia.
- Eighteen of the 39 signers of the Constitution were also members of the Confederation Congress.[4] Those members of Congress actively supported the Philadelphia Convention both during the summer of 1787 as well as during the ratification process, which included debates at the Confederation Congress to adopt the new Constitution.[5]
- One of the most ardent Anti-Federalists was Andrew Yates, Jr. of New York. Yates was extremely critical of the part the States played in advancing the Philadelphia Convention, not the convention itself.[6] Yates and his fellow Anti-Federalists contended that no one was authorized at any point to adopt a government that was national rather than federal in character.[7] In other words, the Anti-Federalist's did not condemn the Convention for creating a whole new document, but for creating a government with a new nature.
- Fast forward to the 1960s when states began to turn towards Article V of the Constitution to offer amendments intended to put a check on the Federal government. In 1963 alone, 36 applications from various states were filed for a Convention of the States.[8] To counter this

renewed interest in Article V, liberal Yale law professor Charles Black wrote an article entitled *The Proposed Amendment of Article V: A Threatened Disaster.*[9] Among other things Black introduced the idea that the Philadelphia Convention was a runaway which began to be repeated by a number of other writers, despite the fact that even the Anti-Federalist didn't make this claim.

Inability to limit a Convention of the States

The inability to limit a Convention argument can be summarized using the words of Justice Warren Burger, who in 1988 wrote a letter in which he states "The convention could make its own rules and set its own agenda. Congress might try to limit the convention to one amendment or to one issue, but there is no way to assure that the convention would obey."[10]

This argument is faulty for several reasons.

- State assemblies, both before and after the Constitution's adoption, have adopted their own rules.[11] All of these rules have been remarkably similar. For example, the rules employed by the Washington Conference Convention of 1861 derived substantially from those governing the 1787 Constitutional Convention.[12]
- Simulated Article V conventions, such as one hosted by the Convention of States organization in 2015, began by adopting rules that borrowed heavily from rules governing state conventions in the 1700s.[13] In 2016 the Assembly of State Legislators similarly adopted rules for an Article V convention that also borrowed heavily from prior state conventions.[14]
- The Supreme Court has definitely interpreted the meaning of Article V. For example, in Hawke v. Smith the Supreme Court ruled that "[Article V] makes provision for the proposal of amendments either by two-thirds of both houses of Congress or on application of the legislatures of two-thirds of the states, thus securing deliberation and consideration before any change can be proposed. The proposed change can only become effective by the ratification of the legislatures of three-fourths of the states or by conventions in a like number of states. The method of ratification is left to the choice of Congress."[15]
- More recently, States have begun to pass "Faithful Delegate Acts" designed to limit the subject matter delegates may participate in at a convention. In 2015 alone, at least sixteen states introduced and, in some cases, passed bills that constrain delegate behavior.[16]
- In 1987, the US Department of Justice published a Report to the Attorney General on the limitability of a convention. The report included at least four methods of restraining the actions of delegates.

  > *"We also conclude that there are four possible methods of enforcing the subject matter limitation on the convention. First, and foremost, the states, who exercise ultimate control over the ratification of all constitutional amendments, may withhold ratification of a proposed amendment which is outside the scope of the subject matter limitation. Second, the Congress may enact legislation providing for such limitation as the states request and it may be that the Congress may decline to designate the mode of ratification for those proposed amendments that it determines are outside the scope of the subject matter limitation and therefore beyond the authority of the convention to propose. Third, the courts may review the validity of the constitutional amendment procedure, including whether a proposed amendment was within the subject matter limitation. Fourth, the delegates to a convention may be bound by oath to refrain from proposing amendments on topics other than those authorized under the charter of the convention."*[17]

These restraints, along with the limitations permitted by the applications and call from Congress, the US Department of Justice concluded that "we believe fears of a "run-away" convention are not well founded."[18]

1. Confederation Congress Calls the Constitutional Convention (Feb 21, 1787) reprinted in 1 DHRC (Documentary History of the Ratification of Constitution), *supra* note 4, at 185, 187
2. Articles of Confederation of 1781, art. XIII.
3. Virginia's Appointment of Delegates to the Connotational Convention (Nov 23, 1786), reprinted in 8 DHRC, *supra* note 4, at 540, 540.
4. Forrest McDonald, *E Pluribus Unum, The Formation of the American Republic 1776-1790* (Indianapolis: Liberty Fund, 2d ed., 1979), 334.
5. James Schouler, *History of the United States of America, Under the Constitution, 1783-1801, Vol. I, Rule of Federalism* (New York: Dodd, Mead & Co., 1880, 1908 ed.) 41
6. Sydney, N.Y.J., June 13-14, 1788, reprinted in 20 DHRC, supra note 4, at 1153, 1156.
7. 1 Farrand's Records, supra note 107, at 43, 42-43.
8. https://en.wikipedia.org/wiki/List_of_state_applications_for_an_Article_V_Convention
9. Charles L. Black, Jr., *The Proposed Amendment of Article V: A Threatened Disaster,* 72 Yale L.J. 957 (1963)
10. Letter of 22 June 1988 from U.S. Supreme Court Chief Justice Warren Burger to Phyllis Schlafy.
11. Paul Mason, Paul Mason's Manual of Legislative Procedure § 2-1, 10-4, 13-7 (National Conference of State Legislatures, 2010 ed.) [hereinafter MASON'S MANUAL] ("The best evidence of what are the established usages and customs is the rules as last in effect.").
12. A report of the debates and proceedings in the secret sessions in the conference convention for proposing amendments to the Constitution of the United States 19 (L.E. Chittenden ed., 1861).
13. https://s3.amazonaws.com/cosaction-prod/dkrwebapp/public/content/files/56/Convention_for_Proposing_Amendments_-_Proposed_Rules.pdf?1499339262
14. https://i2i.org/convention-rules-from-the-assembly-of-state-legislatures-two-cheers-only/
15. Hawke v. Smith, 253 U.S. 221 (1920)
16. AK, AL, AZ, KS, KY, MS, ND, NH, NV, NY, OK, SC, SD, TX, WV, WY
17. U.S. Department of Justice, Office of Legal Policy, *Report the Attorney General, Limited Constitutional Convention under Article V of the United States Constitution,* (10 Sep 1887): 1-2
18. Ibid., 3

Convention of States Simulation Presents Dishonest and Distorted Portrayal of an Actual Article V Convention

By Christian Gomez,
Research Project Manager
The John Birch Society

The Convention of States (COS) Project's "Simulation," held between September 21 and 23, 2017, in Williamsburg. Virginia, of how an actual Article V Convention would operate failed to refute objections that an actual Article V Convention could divulge into "runaway convention" and instead presented a dishonest and distorted portray of such a convention, should one ever be called by Congress.

Conservative-leaning proponents of an Article V Convention, such as Mark Meckler, the president of Convention of States Action/ Convention of States Project, have long contended that an actual convention would never become a "runaway convention" that could rewrite the Constitution, as The John Birch Society and many others believe could be the case. Instead, such advocates and proponents for a convention have maintained that an Article V convention would only consider a single or limited number of proposed amendments, the most well-known of which being the proposal for a Balanced Budget Amendment (BBA). However, the actions of certain pro-Article V convention advocacy group, such as the Convention of States Project/ Action or COS, have increasingly proven that those assurances are less than accurate.

As I mentioned earlier, on September 21 to 23, 2016, COS hosted their first ever "Article V Convention of States Simulation." By invitation only, current and former state legislators, as well as several state legislative candidates, from all 50 states attended that self-proclaimed historic event in Williamsburg, Virginia. The participating state legislators were referred to as commissioners and they deliberated, proposed, and quickly passed a litany of amendments that they would like to see added to the Constitution.

COS it is a project of Citizens for Self-Governance, which was founded by Mark Meckler, the former co-founder of Tea Party Patriots and the co-host of the 2011 bipartisan Harvard Conference on the Constitutional Convention (ConConCon). Interestingly enough, Meckler and COS today maintain that a "convention for proposing amendments," under Article V of the Constitution, or a "convention of states" is different and something entirely different from a "constitutional convention." Yet, his first major public endorsement for an Article V convention was at a conference that he co-hosted was in fact called the "Conference on the Constitutional Convention," having the name "Constitutional Convention." This was before he and his since-created COS group began their dishonest campaign to create a false distinction between an Article V convention and a "constitutional convention" perhaps to assuage legitimate fears or concerns that the convention he wants could also be used to draft an entirely new constitution, after all how would even go about, theoretically speaking, of drafting a new constitution without or outside of Article V?

Nevertheless, the current stated objective of COS is to get at least 34 states (two-thirds of the states in accordance with Article V of the Constitution) to apply to Congress to call a convention that is quote "limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress." This in fact is also the same language found in Assembly Joint Resolution 77, which reads, in part:

> ***Resolved by the assembly, the senate concurring, That*** the legislature of the State of Wisconsin hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the States limited to proposing amendments to the Constitution of the United States that impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office for its officials and for members of Congress.

In COS's introductory video commentary to the live-stream of the Article V Convention of States Simulation, COS co-founder and now-president Mark Meckler said of the simulation, "*This is the real deal.* This is kind of like the precursor to the real Super Bowl. It's sort of a dress rehearsal." (Emphasis added.)

In other words, according to Meckler, that event constituted not just a mere gathering of state legislators, but rather the first concrete phase in amending the Constitution via an Article V convention. Meckler then later stated: "The actual convention doesn't take place without this convention first."

Throughout the course of the simulation, Meckler compared it to the Annapolis Convention of 1786, which preceded the Philadelphia Convention of 1787. Of course, it was during the Philadelphia Convention that the Articles of Confederation were replaced with our current Constitution. During the intermission hour on the last day of the three-day simulation, Meckler made his point with the following statement:

> History will record this event. Those of you who are watching, I mean this with all sincerity, you ought to write this down. You ought to put it in your diary or your journal. If you know American history you know that the Annapolis Convention is critical to the whole process of the drafting of the Constitution and passage ultimately. And when people study 1787, the convention, they have to look back to Annapolis. *This is the equivalent to Annapolis* in my opinion. [Emphasis added.]

So is Meckler right? Is the COS simulation the equivalent to the Annapolis Convention? Only time will tell whether or not COS is successful in having its model Article V application passed in 34 states in order for Congress to call a convention. However, one thing that is certain is that Meckler's convention simulation was just that — a simulation. So there was never any real threat that it could become a "runaway convention," because it had no real power, thus it can't be used as evidence or cited as proof that an actual Article V convention would not become a runaway convention.

It was a mock convention with no more real power on affecting the Constitution than a group of high-school and college students have on affecting actual global policies at a model UN conference.

Except rather than being high-school or college students, the invited delegates, or commissioners as they were called, for the most part were actual current and former state legislators, *none of whom* were officially authorized or sent by their respective state legislatures.

Instead, these delegates to the simulation were handpicked and personally invited by COS to attend. COS completely organized the entire three-day simulation and also paid for the travel, lodging, and lunch expenses for the delegates.

Most of the legislative delegates present were none other than the very sponsors and co-sponsors that have introduced the COS model applications in their respective state legislatures.

Despite wishful thinking and claims to the contrary by Meckler that the simulation is or was exactly how a real convention would operate, there is no actual guarantee, especially if one reads Article V of the Constitution, that the state legislators who sponsor the resolutions applying to Congress to call the convention would also be sent to the convention as the actual delegates representing their states.

And unlike the delegates to the Annapolis Convention of 1786, the well-meaning and good-intentioned delegates to the simulation had no official power or authorization from their states. Those who attended were there of their own free choice. And while the results of COS's efforts are yet to be determined, the simulation they organized will have no real bearing on an actual convention in the future.

Despite the fact that Article V of the Constitution does not provide for or require any preliminary convention, Meckler continued to exalt the grandeur of the simulation and boast about its future place in history, saying:

> And when historians study it, when our kids, and our grandkids, and our great-grand kids study it, yes they will study when we actually hold the convention but they will say, "how did this happen?" And they will look to history and they will look to this event. They'll want to know who was here. They'll want to know what was said. They'll want to know what amendments were debated and passed. *This is literally extraordinarily history in the making.* [Emphasis added.]

The biggest take away from Meckler was his insistence, both during and after the simulated convention, that the simulation is exactly how the real Article V convention would occur.

However, it's important to note that of the 137 delegates that were invited by COS to represent all 50 states, only four could be identified as Democrats (State Senator Joan Carter Conway of Maryland, State Representative Kris Roberts of New Hampshire, State Representative Bill Patmon of Ohio, and State Senator Elizabeth Crowley of Rhode Island). The remaining 133 delegates were Republicans, with the exception of

one from Nebraska, who had recently switched her party affiliation from Republican to Libertarian.

Thus, *the COS simulated convention had a 96-percent Republican representation.* There was not a single progressive delegate from the most progressive states in the Union, such as California, Illinois, Massachusetts, New York, Oregon, and Washington. Nevertheless, Meckler maintained that this is exactly how a real Article V convention would operate. For conservatives, this portrays a totally dishonest and distorted depiction that an actual Article V convention would be totally Republican or conservative controlled affair.

In reality, an actual Article V convention would also be host to large numbers of moderate and progressive delegates, and would probably have no actual grassroots (or very few) conservative delegates from even the most conservatives states, such as Montana and Wyoming, which despite having Republican majorities in their state legislatures are not conservative majorities, much less constitutionalist like say a Congressman Ron Paul or Thomas Massie. Instead, the Wyoming and Montana legislatures are composed predominantly of moderate establishment Republicans, much like the current Republican majority leadership of Senator Mitch McConnell in the U.S. Senate. So to think that all or the majority of delegates to an actual Article V convention would be Republicans, must less constitutionalist conservatives is far removed from reality and dishonest to suggest.

In all likelihood, assuming that the delegates to convention would even be state legislators, since Article V does not state one way or the other that will be, any legislators who are delegates to such a convention would likely be chosen by the leadership of their legislature or voted by the committee of the whole, and as a result would reflect the leadership or composition of the party majority in their respective legislature.

This means that the delegates from states like California, Illinois, Massachusetts, New York, Oregon, and Washington, would not be the same conservatives who attended the COS simulation.

And despite the overwhelming number of Republican delegates that attended the COS simulation, there was still much disagreement over the wording and language of the proposed amendments. Yet, in less than six hours the delegates quickly introduced, debated, and passed the following six amendment proposals:

1. Debt Limitation Amendment (DLA), requiring a two-thirds vote in both chambers of Congress to approve an increase of the public debt for a period lasting no longer than one year. This amendment would become effective three years from the date of its ratification.

2. Limiting Congress' power of regulating commerce to the "sale, shipment, transportation, or other movement of goods, articles or persons." It also prohibits Congress from regulating any activity solely on the basis that it affects commerce among the states. This amendment would become effective five years from the date of its ratification.

3. Congressional term limits of no more than six full two-year terms for members of the House of Representatives and no more than two full six-year terms for members of the Senate.

4. State abrogation amendment, requiring a minimum of three-fifths of the legislatures of the states in order to abrogate (i.e., nullify) any "federal law issued by the Congress, President, or Administrative Agencies of the United States, whether in the form of a statute, decree, order, regulation, rule, opinion, decision...."

5. Repeal the 16th Amendment, prohibit all federal taxes on gifts and estates, and prohibit any new taxes or tax increases unless approved by three-fifths of both houses of Congress.

6. Providing for an easy congressional override of "any proposed or existing federal administrative regulation, in whole or in part."

On the surface these proposed amendments may sound good. And, even I agree that repeal of the 16th Amendment and ending the death tax would be a good idea, but what's really isn't a flurry of new amendments. What we're lacking in our country, which The John Birch Society strives to achieve, is an informed electorate that knows and understands the Constitution that the Founding Fathers gave us and that will in turn demand enforcement of the Constitution by the elected local, state, and federal officials and lawmakers.

For example, various conservatives have estimated that only 20 percent of congressional spending is authorized by Article I, Section 8 (the section that grants enumerated powers to Congress) of the Constitution. Rather than adding "Band-Aid" amendments to the Constitution, what's needed is for voters to force Congress to begin cutting the 80 percent of unconstitutional programs they have been authorizing.

After the simulation, COS sent out an email describing it as a "Complete Success." But what if Meckler was wrong, what if the simulation is not how a real Article V convention would operate?

A real Article V convention would not be called by COS or Meckler; it would be called by Congress, which would likely determine the location, date, and parameters of the convention, such as the mode of selecting delegates and whether or not each state would have one vote or if it would be proportional by population.

And once the delegates arrive at an actual Article V convention, they would represent the sovereign will of the people to propose whatever amendments they deem fit and to set up their own rules, unbound by any previous rules or recommendations set by Congress, ASL, or COS.

In fact, COS would likely have little influence over the convention, because it would be just one of many outside lobbyists trying to influence the convention. COS had the unique situation of being the only lobbyist group at the simulated convention because it

was a COS event. Besides, since the simulation had no real power, there was no reason why any outside groups would attempt to interfere.

Meckler stated throughout the course of the simulation that their convention proved that a real Article V convention would not be a runaway convention. Of course the simulation was not a runaway convention, nor was there ever any likely possibility that it would become one because the delegates had no real power, thus there was no temptation to abuse or go beyond their power.

The vast majority of delegates were supporters of Article V conventions, so it was in their interest to help "prove" that such a convention would not become a runaway. However, a real Article V convention would have the inherent power to be a runaway convention because it would supersede the power of Congress and would possess the power of the sovereign people to alter or abolish the current Constitution as its delegates would see fit.

Furthermore, the simulation delegates only proposed COS-approved amendments. They did not introduce the much sought-after Balanced Budget Amendment, for which 28 states have already applied to Congress to call a convention, nor was there any mention of the proposed campaign finance reform amendment to overturn the Supreme Court decision in the *Citizens United v. FEC* case, as advocated by Professor Lawrence Lessig and left-wing Article V convention groups such as Move To Amend and Wolf-PAC.

At a real Article V convention, especially one not made up of 96 percent Republican delegates, the Wolf-PAC campaign finance reform amendment would likely be proposed and debated among the delegates, as would other liberal proposals such as a repeal or gutting of the Second Amendment.

As fun as the simulation may have been for Meckler and other COS enthusiasts to watch or be a part of, it was not an accurate depiction of what a real Article V convention would be. One thing we can be certain is that the COS simulated convention did not prove that an actual Article V convention would not become a runaway convention.

And with that being the case, I urge the distinguished members of this respective committee to table or vote nay on Assembly Join Resolution 77. Thank you

Ken Quinn with U.S. Term Limits Testimony in Support of AJR77

Dear Chairman Vorpagel, Vice-Chairman Schraa, and committee members,

My name is Ken Quinn and I am the Regional Director with US Term Limits. I am here today to testify in support of AJR77 because this resolution would allow the states to propose a Term Limits Amendment for Congress which has been the desire of the American people for decades and in a recent poll received **overwhelming support from 82% of the American voters** (See attached McLaughlin & Associates)

We all know Congress is broken. It has become dysfunctional and unresponsive to the American people. The members of Congress no longer listen to the voice of the voters, instead they only listen to their funders. Money is what gets the attention of Congress and unfortunately, self-interests and maintaining power is the name of the game. We currently have over **5,000 years** of combined federal and state level **"institutional knowledge"** sitting in Congress and what is that getting us? We have **$22 Trillion in debt, an immigration crisis, healthcare cost crisis, out of control spending, continuing resolutions** to keep the government open, etc. Enough is enough!

The **approval ratings** of Congress are consistently **below 20%,** yet the **re-election rates** for incumbents is over **95%!** The current system protects incumbents in office and makes it virtually impossible for the people to vote them out of office. Approximately **20% of congressional races** don't even have a challenger. Members of Congress spend between **30-70%** of their time in Washington dialing for dollars to raise money for their reelection and their party. Key committee chairmanships are not awarded to the most qualified members, but to the ones that have raised the most money for their party. (https://www.cbsnews.com/news/60-minutes-are-members-of-congress-becoming-telemarketers/)

We can only fix these problems with term limits. Term limits for Congress will **reduce corruption**, allow **new people** to introduce **fresh ideas**, allow people with **diverse backgrounds** to participate in our government, provide the **voters more choices**, and provide **fair and competitive elections**. People will go to Congress knowing they have a limited amount of time to do the work they were sent there to do instead of turning it into a lucrative lifetime career.

Robert Yates, a New York Delegate to the 1787 Federal Convention accurately described the need for term limits (rotation of office); "A rotation in the senate, would also in my opinion be of great use. It is now probable that senators once chosen for a state will, as the system now stands, **continue in office for life**. The office will be honorable **if not lucrative**. The persons who occupy it will probably wish to continue in it, and therefore use all their **influence** and that of their friends **to continue in office**. Their friends will be numerous and **powerful**, for they will have it in their power to confer great favors: … Everybody acquainted with public affairs knows how **difficult** it is to **remove from office** a person who is has **long been in it**. It is seldom done except in cases of **gross misconduct**."

I encourage you on behalf of your constituents and the American people to please vote to pass AJR77.

Sincerely,
Ken Quinn
Regional Director
U.S. Term Limits

THE ARTICLE V CONVENTION WAS DRAFTED BY THE FRAMERS TO ALLOW THE STATES TO ONLY PROPOSE AMENDMENT(S), NOT PROPOSE A NEW CONSTITUTION:

The attached documents will address the following items:

- **The Formulation of Article V during the 1787 Federal Convention.**
  In these panels every substantive discussion and vote on the amending provision during Philadelphia Convention which became Article V, proves that the Framers intended an Article V convention to be a limited convention for the amendment applied for by two-thirds of the state legislatures.
- **An Article V Convention is Not a Constitutional Convention (Con Con).**
  This research explains the differences between a Constitutional Convention called to draft a new Constitution and an Article V convention called to propose an amendment.
- **Madison refutes the charge that the delegates exceeded their authority (runaway convention).**
  In Federalist 40, James Madison refutes the charge that the delegates to the Philadelphia Convention exceeded their authority (runaway convention). This false narrative by the opponents today only fuels the "runaway" convention myth and is a campaign of fear to oppose the Constitution. Madison clearly explains that the delegates had full authority from their state legislatures to draft a new Constitution
- **Hamilton Explains that an Article V Convention Can Propose a Single Amendment (limited).**
  In Federalist 85, Alexander Hamilton explains that the Article V convention is limited to the amendment(s) the states were united in proposing. He opposed the effort to call for a second convention to revise the Constitution prior to ratification, and instead, favored an Article V convention.
- **Madison Opposed a 2nd Convention (new constitution) Not an Article V Convention (amendments).**
  In James Madison's letter to George Turberville, he explains that he opposed New York's desire for another convention because it would require unanimous consent and knowing how hard the ratification fight was and he did not want to go through that again. In this letter he also describes the two types of conventions; Constitutional Convention (first principles) and Article V convention (forms).
- **The Debate in Congress on the 1ST Article V Application Prove the Convention is Limited.**
  Over fifty of the members in the 1st Congress were either delegates to the 1787 Federal Convention or delegates to their state ratification conventions. They had firsthand knowledge of the intent of Article V and it is abundantly clear that they understood that two-thirds of the state legislatures needed to apply for the same amendment(s) in order for Congress to call a convention.
- **The U.S. Department of Justice Report Concludes an Article V Convention is Limited.**
  The report published by the U.S. Department of Justice on September 10, 1987 concludes that Article V of the U.S. Constitution permits to the states to apply for a limited convention to propose amendments.
- **Today the Uniform Law Commission Functions Exactly as an Article V Convention.**
  In this article (Runaway Convention? Meet the ULC: An Annual Conference of States Started in 1892 That Has Never Runaway) I demonstrate that the states currently participate in a Convention of States annually to propose uniform state laws. The National Conference of Commissioners on Uniform State Laws (ULC) is an official meeting of the states and functions virtually identically as an Article V convention. This proves that the states utilize convention rules today and that those rules work.
- **The John Birch Society Denies Its History and Betrays Its Mission.**
  The John Birch Society (JBS) is one of today's most vocal opponents to an Article V convention, however, back in the in the 1960s and 70s they pushed to call an Article V convention to propose the Liberty Amendment, making it one of their main goals. To learn more, I recommend watching this video youtube.com/watch?v=olDrFO9gENc

McLaughlin & Associates

To: All Interested Parties
From: John McLaughlin & Brittany Davin
Re: National Survey Executive Summary – Voters Overwhelmingly Support Term Limits for Congress
Date: January 15, 2018

Survey Summary:

The results of our recently completed national survey show that voters overwhelmingly believe in implementing term limits on members of Congress. Support for term limits is broad and strong across all political, geographic and demographic groups. An overwhelming 82% of voters approve of a Constitutional Amendment that will place term limits on members of Congress. Four-in-five voters believe that it is important for President Trump to keep his promise to support term limits for members of Congress by calling on Congress to vote for term limits, the majority of voters, 54%, believe it is very important for the President to keep his promise.

Do you approve or disapprove of a Constitutional Amendment that will place term limits on members of Congress?

	Total	Rep.	Dem.	Ind.	Hispanic	A.A.*	White
Approve	**82%**	**89%**	**76%**	**83%**	**72%**	**70%**	**86%**
Strongly	56%	63%	45%	63%	45%	46%	61%
Somewhat	26%	26%	31%	20%	27%	24%	26%
Disapprove	**9%**	**6%**	**12%**	**8%**	**18%**	**15%**	**6%**
Somewhat	6%	3%	8%	6%	12%	8%	5%
Strongly	3%	2%	4%	2%	6%	6%	2%
Don't Know	**9%**	**6%**	**12%**	**9%**	**11%**	**16%**	**8%**

**A.A. represents African American voters surveyed*

During his campaign for President, Donald Trump promised that he would support term limits for members of Congress, how important is it for President Trump to keep his promise to support term limits for members of Congress by calling on Congress to vote for term limits.

	Total	Rep.	Dem.	Ind.	Hispanic	A.A.*	White
Important	**79%**	**91%**	**69%**	**79%**	**80%**	**60%**	**83%**
Very	54%	62%	45%	54%	51%	43%	57%
Somewhat	26%	29%	24%	25%	29%	17%	26%
Not Important At All	**12%**	**6%**	**19%**	**11%**	**13%**	**27%**	**9%**
Unsure	**9%**	**3%**	**12%**	**10%**	**7%**	**13%**	**8%**

If a bill were introduced in Congress to place term limits on members of Congress, would you want your senator and congressman to vote yes or no on this bill?

	Total	Rep.	Dem.	Ind.	Hispanic	A.A.*	White
Yes	**77%**	**82%**	**69%**	**80%**	**68%**	**64%**	**81%**
No	**6%**	**6%**	**7%**	**5%**	**10%**	**10%**	**5%**
Undecided	**17%**	**12%**	**24%**	**15%**	**21%**	**26%**	**14%**

Nearly three-in-four voters, 73%, are more likely to vote for a candidate for U.S. Congress who supports implementing term limits on Congress, 42%, are much more likely.

919 Prince Street * Alexandria, Virginia 22314 * Phone: 703-518-4445 * FAX: 703-518-4447
566 South Route 303 * Blauvelt, NY 10913 * Phone: 845-365-2000 * FAX: 845-365-2008
www.mclaughlinonline.com

Would you be more likely or less likely to vote for a candidate for U.S. Congress who <u>supports</u> implementing term limits for members of Congress?

	Total	Rep.	Dem.	Ind.	Hispanic	A.A.*	White
More Likely	**73%**	**80%**	**64%**	**77%**	**71%**	**58%**	**78%**
Much More	42%	45%	33%	49%	39%	27%	46%
Somewhat More	31%	35%	31%	27%	32%	31%	31%
Less Likely	**8%**	**5%**	**11%**	**8%**	**15%**	**16%**	**5%**
Somewhat Less	5%	3%	7%	4%	9%	7%	3%
Much Less	3%	2%	3%	4%	6%	9%	1%
No Difference	**11%**	**9%**	**16%**	**6%**	**6%**	**13%**	**11%**
Don't Know	**8%**	**6%**	**10%**	**9%**	**9%**	**14%**	**7%**

Conclusions:

American voters overwhelmingly support placing term limits on members of Congress. The support for term limits is strong, broad and intense, to vote for members of Congress who will vote "yes" on term limits, and against those who will vote "no" against term limits for members of Congress.

Methodology:

This survey of 1,000 likely general election voters nationwide was conducted on Jan. 5th to 11th, 2018. All interviews were conducted online; survey invitations were distributed randomly within predetermined geographic units. These units were structured to correlate with actual voter turnout in a nationwide general election. This poll of 1,000 likely general election voters has an accuracy of +/- 3.1% at a 95% confidence interval. The error margin increases for cross-tabulations.

Key Demographics:

Party:

	Total
Republican	33%
Democrat	36%
Independent/Other	31%

Gender:

	Total
Men	47%
Women	53%

Ideology:

	Total
Liberal	24%
Moderate	40%
Conservative	37%

Race:

	Total
White	71%
Asian/Asian American	4%
African American	12%
Hispanic	11%
Other	2%

Age:

	Total
18-29	15%
30-40	17%
41-55	25%
56-65	23%
Over 65	20%
Mean	49

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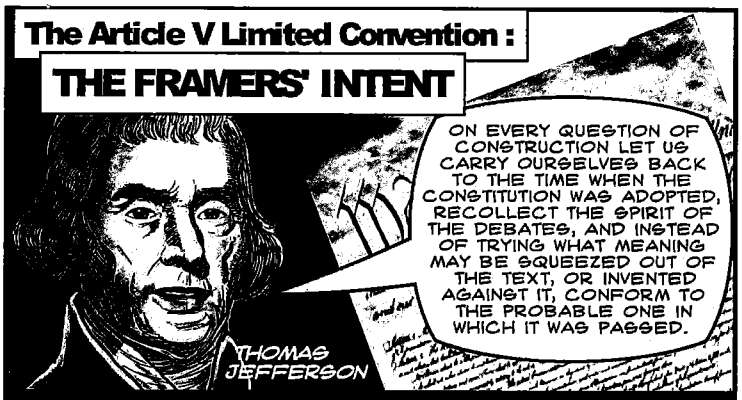
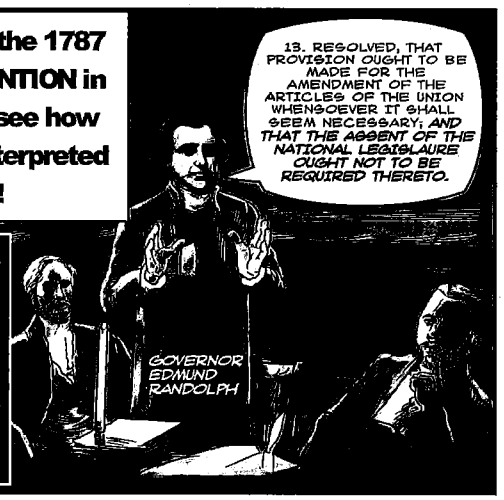
The Article V Limited Convention :
THE FRAMERS' INTENT



QUESTION: Did the Framers of the U.S. Constitution intend for an Article V convention to be limited to the subject agreed to by two-thirds of the states or an open convention?

Let's go back to the 1787 FEDERAL CONVENTION in Philadelphia to see how THE FRAMERS interpreted Article V!

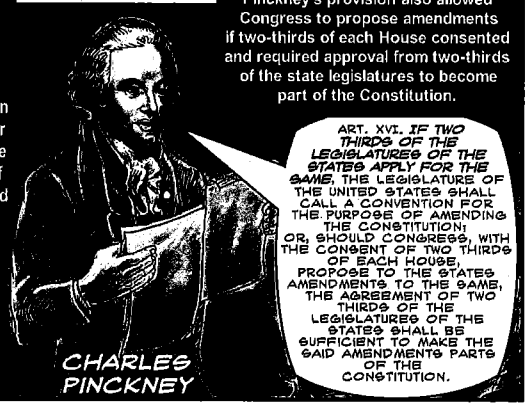
ON MAY 29, THE FIRST WORKING DAY OF THE 1787 FEDERAL CONVENTION, GOVERNOR EDMUND RANDOLPH INTRODUCED FIFTEEN RESOLUTIONS KNOWN AS THE VIRGINIA PLAN WHICH CONTAINED A PROVISION TO AMEND THE CONSTITUTION WITHOUT THE APPROVAL OF THE CONGRESS.



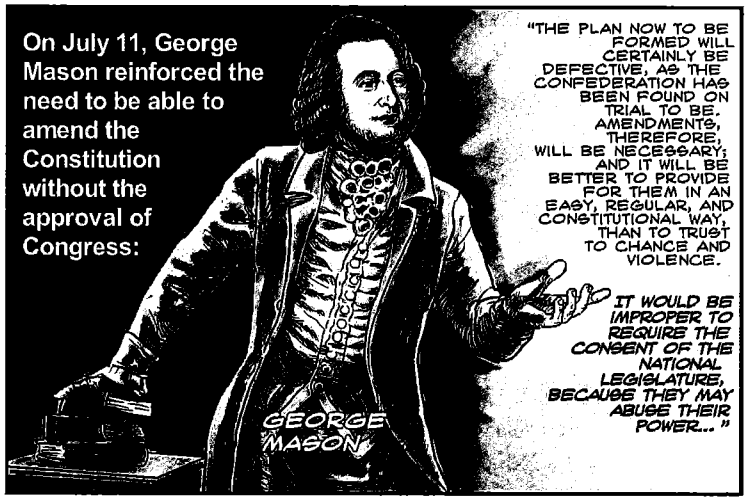
Immediately afterwards, Charles Pinckney of South Carolina laid before the House a draft of a federal government which he read. Pinckney's draft included a detailed provision which required a convention to be called by Congress for the purpose of amending the Constitution, if two thirds of the state legislatures applied for the same amendment(s).

This established the understanding from the very beginning that a convention for amending the Constitution was limited to the subject agreed to by two-thirds of the states.

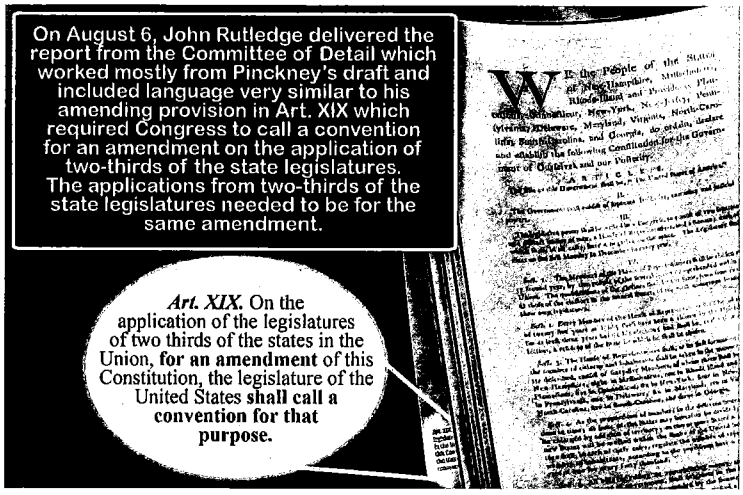
Pinckney's provision also allowed Congress to propose amendments if two-thirds of each House consented and required approval from two-thirds of the state legislatures to become part of the Constitution.



On July 11, George Mason reinforced the need to be able to amend the Constitution without the approval of Congress:

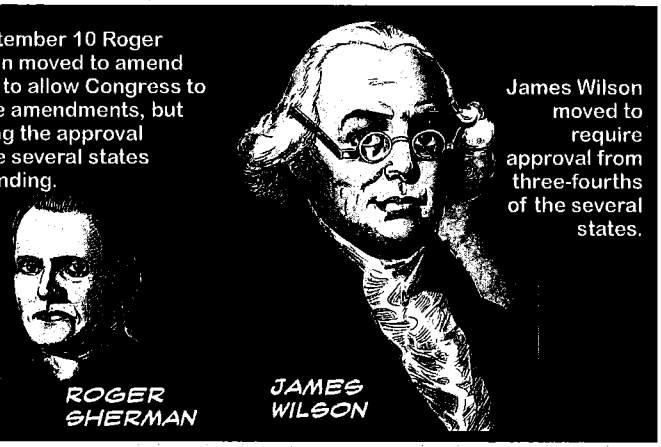


On August 6, John Rutledge delivered the report from the Committee of Detail which worked mostly from Pinckney's draft and included language very similar to his amending provision in Art. XIX which required Congress to call a convention for an amendment on the application of two-thirds of the state legislatures. The applications from two-thirds of the state legislatures needed to be for the same amendment.



On September 10 Roger Sherman moved to amend Art. XIX to allow Congress to propose amendments, but requiring the approval from the several states to be binding.

James Wilson moved to require approval from three-fourths of the several states.



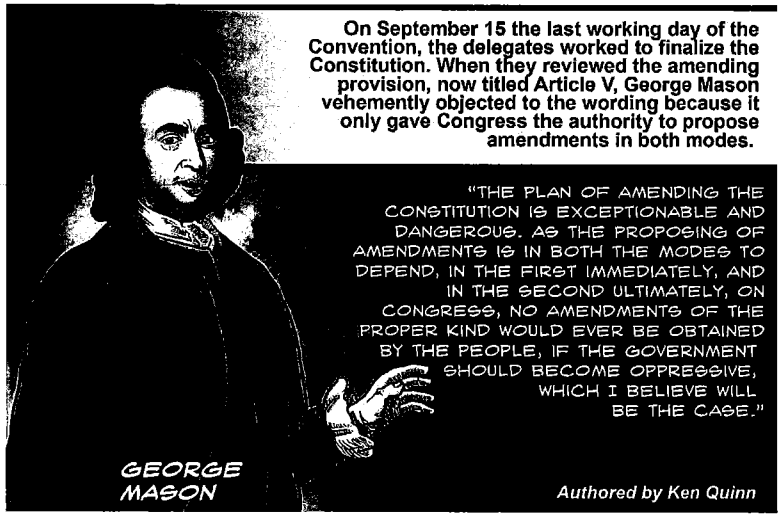
Note: Allowing Congress to propose amendments and requiring the approval from the states were originally in Pinckney's Article XVI amending provision.

James Madison moved to postpone the consideration of the amended proposition to take up the following:

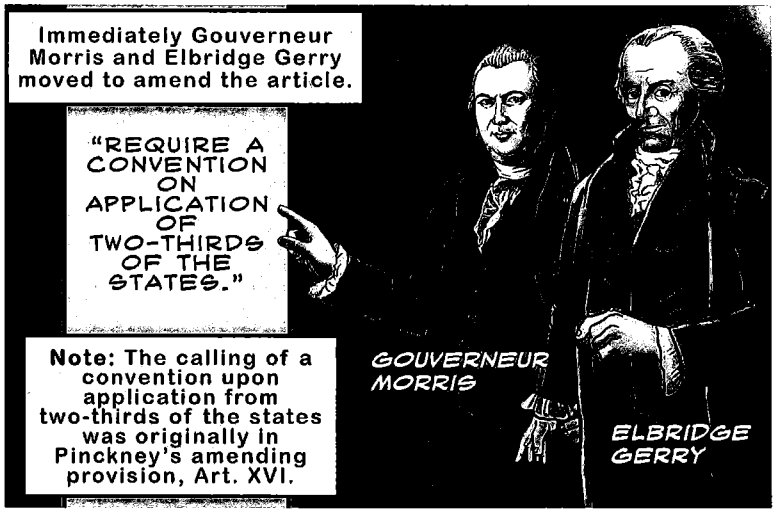
"THE LEGISLATURE OF THE UNITED STATES, WHENEVER TWO THIRDS OF BOTH HOUSES SHALL DEEM NECESSARY, OR ON THE APPLICATION OF TWO THIRDS OF THE LEGISLATURES OF THE SEVERAL STATES, SHALL PROPOSE AMENDMENTS TO THIS CONSTITUTION, WHICH SHALL BE VALID, TO ALL INTENTS AND PURPOSES, AS PART THEREOF, WHEN THE SAME SHALL HAVE BEEN RATIFIED BY THREE FOURTHS, AT LEAST, OF THE LEGISLATURES OF THE SEVERAL STATES, OR BY CONVENTIONS IN THREE FOURTHS THEREOF, AS ONE OR THE OTHER MODE OF RATIFICATION MAY BE PROPOSED BY THE LEGISLATURE OF THE UNITED STATES."

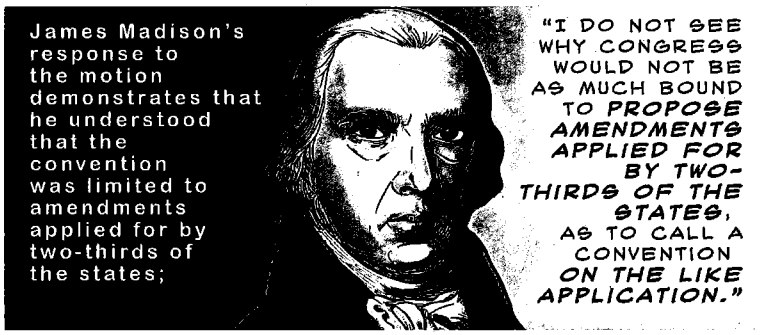
The proposition passed.

On September 15 the last working day of the Convention, the delegates worked to finalize the Constitution. When they reviewed the amending provision, now titled Article V, George Mason vehemently objected to the wording because it only gave Congress the authority to propose amendments in both modes.



Authored by Ken Quinn





Madison thought it would be redundant for Congress to call a convention because it was already bound to propose the amendments applied for by two-thirds of the states, otherwise Madison's response makes no sense. How could Congress propose amendments applied for by the states without specifying those amendments in their applications?

The motion for "a convention on application of two-thirds of the states" was agreed to unanimously.

ANSWER: The Framers of the Constitution intended that an Article V Convention was limited to the subject agreed to by two-thirds of the states in their applications

CONCLUSION:

Throughout the entire course of the debates, the delegates clearly understood that a convention called to amend or propose amendments would be limited to the amendment(s) applied for by two-thirds of the state legislatures. The vote to add "a convention on application of two-thirds of the states" only removed the dependence on Congress to propose those amendment(s) that were applied for and transferred that authority exclusively to the states. It did not change the requirement that applications from two-thirds of the states had to be for the same amendment(s), nor the purpose of the convention, to propose those specific amendments.

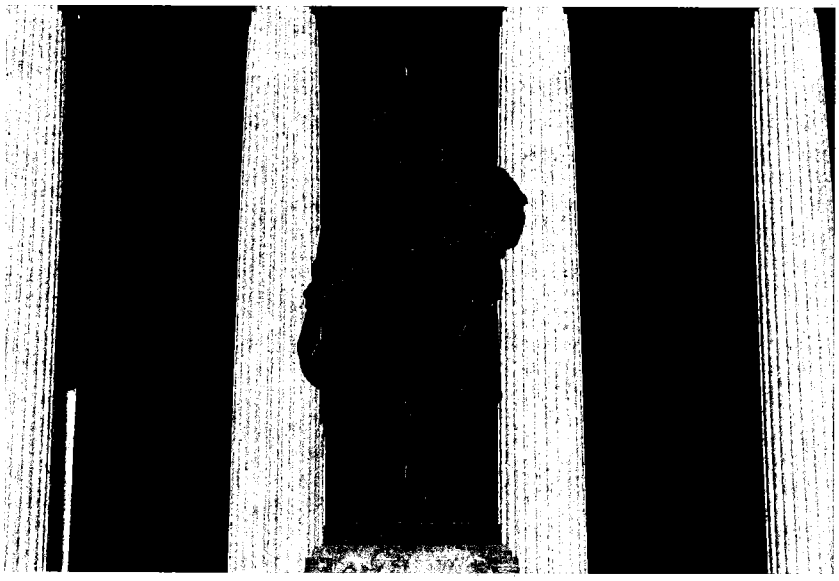
Not a single delegate during the debates claimed that the convention was an "open" convention, capable of proposing any amendment, they only understood it to be a limited convention that two-thirds of the state legislatures agreed to. This was the clear intention of the Framers as they formulated the text of the amending provision, which is now embodied in Article V.

Sources

1. From Thomas Jefferson to William Johnson, 12 June 1823," Founders Online, National Archives, version of January 18, 2019, https://founders.archives.gov/documents/Jefferson/98-01-02-3562.

2. The Debates on the Adoption of the Federal Constitution in the Convention held at Philadelphia in 1787, with a Diary of the Debates of the Congress of the Confederation as reported by James Madison, revised and newly arranged by Jonathan Elliot. Complete in One Volume. Vol. V. Supplement to Elliot's Debates (Philadelphia, 1836). https://oll.libertyfund.org/titles/1909#Elliot_1314-05_1595

*Authored by **Ken Quinn***



"There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution."

— Alexander Hamilton

An Article V Convention Is Not a Constitutional Convention

By Ken Quinn, Regional Director Convention of States Action

A common misconception about an Article V convention is that it is identical to a Constitutional Convention. Unfortunately, today some people believe this, due to false information propagated by groups opposed to the states exercising their constitutional authority. A cursory review of the writings of the Framers during the creation and ratification of the Constitution clearly demonstrates, however, that an Article V convention is *not* the same as a Constitutional Convention (or a "Con-Con," as opponents like to call it). Here is what history tells us.

The Framers Rejected a Proposal to Give Article V Conventions More Power

On September 15, 1787, the delegates at the Constitutional Convention unanimously approved adding the convention mode to Article V in order to give the states authority to propose constitutional amendments without the consent of Congress. Immediately after that vote, a motion was made by Roger Sherman to remove the three-fourths requirement for ratification of amendments. This would have given future conventions even more authority by allowing them to determine how many states would be required to ratify their proposals.

James Madison described the motion: *"Mr. Sherman moved to strike out of art. V. after "legislatures" the words "of three fourths" and so after the word "Conventions" leaving future Conventions to act in this matter, like the present Conventions according to circumstances."* This motion was rejected by the Framers, clearly indicating their intent to limit the power of future Article V conventions within carefully delineated constitutional boundaries.

James Madison himself makes it clear that a Constitutional Convention and an Article V convention are separate and distinct entities. According to Madison:

"A Convention cannot be called without the unanimous consent of the parties who are to be bound by it, if first principles are to be recurred to; or without the previous application of ⅔ of the State legislatures, if the forms of the Constitution are to be pursued."

Notice how he described that a Constitutional Convention (first principles) requires unanimous consent to be called by the parties that are to be bound to it, whereas an Article V convention (forms of the Constitution) only requires application by ⅔ of the states.

This high bar of unanimous consent "of the parties who are to be bound to it" is required for a convention to propose a new Constitution, but not for an amendment-proposing convention, which only requires ⅔ of the states to call. Also, a state is only bound by a new Constitution if it ratifies it; this is not the case for an individual amendment. Once three-fourths (38) of the states ratify an amendment, all 50 states are bound by it.

A New Constitution Must Be Ratified As a Whole Document, Whereas Amendments Are Ratified Individually

Another major difference between a Constitutional Convention and an Article V convention for proposing amendments is the passage and ratification process. A new Constitution must be passed and ratified as a complete document, whereas amendments are passed and ratified individually. Alexander Hamilton explains in Federalist 85:

"Every Constitution for the United States must

Continued to back page

USA PENNSYLVANIA NEBRASKA IDAHO OKLAHOMA MISSISSIPPI INDIANA FLORIDA NEW MEXICO DELAWARE WASHINGTON ILLINOIS WYOMING VIRGINIA NORTH DAKOTA KANSAS SOUTH CAROLINA OREGON TEXAS ARIZONA NEW JERSEY VERMONT CONNECTICUT ARKANSAS NEW HAMPSHIRE KENTUCKY NORTH CAROLINA NEVADA WEST VIRGINIA UTAH HAWAII MICHIGAN ALASKA MASSACHUSETTS CALIFORNIA IOWA LOUISIANA MONTANA RHODE ISLAND WISCONSIN MAINE MINNESOTA MARYLAND SOUTH DAKOTA GEORGIA OHIO MISSOURI TENNESSEE NEW YORK COLORADO ALABAMA

CONVENTION of STATES

DIFFERENCES BETWEEN A CONSTITUTIONAL CONVENTION AND AN ARTICLE V CONVENTION		
ACTION	CONSTITUTIONAL CONVENTION	ARTICLE V CONVENTION
Propose	Propose New Constitution	Propose Amendments to Current Constitution
Power	Full Powers, Unlimited	Limited to Subject of State Applications
Authority	Outside of the Constitution	Under Article V of the Constitution
Requirement to Call	Unanimous Consent of States to be Bound	Application by Two-thirds of the States
Called By	The States	Congress
Scope of Passage at Convention	Entire Constitution as a Whole Document	Individual Amendments, Singly
Votes for Passage at Convention	Unanimous Consent Required	Simple Majority
Scope of Ratification by the States	Entire Constitution as a Whole Document	Individual Amendments, Singly
Votes for Ratification by the States	Only Binds States That Ratify It	Ratified by Three-fourths and Binds All States

Continued from front page

inevitably consist of a great variety of particulars.... Hence the necessity of moulding and arranging all the particulars which are to compose the whole, in such a manner as to satisfy all the parties to the compact; and hence, also, an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act....

"But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly.... The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine (⅔), or rather ten States (¾), were united in the desire of a particular amendment, that amendment must infallibly prevail. There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution."

Text of Article V Unequivocally States "Convention for Proposing Amendments"

Article V could not be any clearer in regards to the powers a convention is given. Here is the relevant portion of text: *"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...."* It is absolutely disingenuous to claim that an Article V convention can propose an entirely new Constitution. The words *"for proposing amendments"* could not be any clearer. Article V gives a convention the exact same authority as Congress: the power to propose amendments — nothing more, nothing less.

JAMES MADISON.
Nat. Vol.-ob. 1836

"Should the provisions of the Constitution as here reviewed be found not to secure the Govt. & rights of the States agst. usurpations & abuses on the part of the U. S. the final resort within the purview of the Constn. lies in an amendment of the Constn. according to a process applicable by the States."

— James Madison,
Letter to Edward Everett, August 28, 1830

Text of Article V Does Not Allow For a New Constitution to Be Drafted

Last but not least is the fact that Article V does not allow for a new Constitution to be drafted, because the text states: *"Congress ... 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...."* When ratified, the amendments proposed by a convention become part of our current Constitution. A convention cannot, under the plain text of Article V, set up a new constitution.

CONVENTION *of* STATES

A PROJECT OF CITIZENS FOR SELF-GOVERNANCE

FEDERALIST No. 40

The Powers of the Convention to Form a Mixed Government Examined and Sustained
From the New York Packet.
Friday, January 18, 1788.
James Madison

To the People of the State of New York:

THE SECOND point to be examined is, whether the convention were authorized to frame and propose this mixed Constitution.

The powers of the convention ought, in strictness, to be determined by an inspection of the commissions given to the members by their respective constituents. As all of these, however, had reference, either to the recommendation from the meeting at Annapolis, in September, 1786, or to that from Congress, in February, 1787, it will be sufficient to recur to these particular acts.

The act from Annapolis recommends the "appointment of commissioners to take into consideration the situation of the United States; to devise SUCH FURTHER PROVISIONS as shall appear to them necessary to render the Constitution of the federal government ADEQUATE TO THE EXIGENCIES OF THE UNION; and to report such an act for that purpose, to the United States in Congress assembled, as when agreed to by them, and afterwards confirmed by the legislature of every State, will effectually provide for the same."

The recommendatory act of Congress is in the words following:"WHEREAS, There is provision in the articles of Confederation and perpetual Union, for making alterations therein, by the assent of a Congress of the United States, and of the legislatures of the several States; and whereas experience hath evinced, that there are defects in the present Confederation; as a mean to remedy which, several of the States, and PARTICULARLY THE STATE OF NEW YORK, by express instructions to their delegates in Congress, have suggested a convention for the purposes expressed in the following resolution; and such convention appearing to be the most probable mean of establishing in these States A FIRM NATIONAL GOVERNMENT:

"Resolved, That in the opinion of Congress it is expedient, that on the second Monday of May next a convention of delegates, who shall have been appointed by the several States, be held at Philadelphia, for the sole and express purpose OF REVISING THE ARTICLES OF CONFEDERATION, and reporting to Congress and the several legislatures such ALTERATIONS AND PROVISIONS THEREIN, as shall, when agreed to in Congress, and confirmed by the States, render the federal Constitution ADEQUATE TO THE EXIGENCIES OF GOVERNMENT AND THE PRESERVATION OF THE UNION. "

From these two acts, it appears, 1st, that the object of the convention was to establish, in these States, A FIRM NATIONAL GOVERNMENT; 2d, that this government was to be such as would be ADEQUATE TO THE EXIGENCIES OF GOVERNMENT and THE PRESERVATION OF THE UNION; 3d, that these purposes were to be effected by ALTERATIONS AND PROVISIONS IN THE ARTICLES OF CONFEDERATION, as it is expressed in the act of Congress, or by SUCH FURTHER PROVISIONS AS SHOULD APPEAR NECESSARY, as it stands in the recommendatory act from Annapolis; 4th, that the alterations and provisions were to be reported to Congress, and to the States, in order to be agreed to by the former and confirmed by the latter.

From a comparison and fair construction of these several modes of expression, is to be deduced the authority under which the convention acted. They were to frame a NATIONAL GOVERNMENT, adequate to the EXIGENCIES OF GOVERNMENT, and OF THE UNION; and to reduce the articles of Confederation into such form as to accomplish these purposes.

There are two rules of construction, dictated by plain reason, as well as founded on legal axioms. The one is, that every part of the expression ought, if possible, to be allowed some meaning, and be made to conspire to some common end. The other is, that where the several parts cannot be made to coincide, the less important should give way to the more important part; the means should be sacrificed to the end, rather than the end to the means.

Suppose, then, that the expressions defining the authority of the convention were irreconcilably at variance with each other; that a NATIONAL and ADEQUATE GOVERNMENT could not possibly, in the judgment of the convention, be affected by ALTERATIONS and PROVISIONS in the ARTICLES OF CONFEDERATION; which part of the definition ought to have been embraced, and which rejected? Which was the more important, which the less important part? Which the end; which the means? Let the most scrupulous expositors of delegated powers; let the most inveterate objectors against those exercised by the convention, answer these questions. Let them declare, whether it was of most importance to the happiness of the people of America, that the articles of Confederation should be disregarded, and an adequate government be provided, and the Union preserved; or that an adequate government should be omitted, and the articles of Confederation preserved. Let them declare, whether the preservation of these articles was the end, for securing which a reform of the government was to be introduced as the means; or whether the establishment of a government, adequate to the national happiness, was the end at which these articles themselves originally aimed, and to which they ought, as insufficient means, to have been sacrificed.

But is it necessary to suppose that these expressions are absolutely irreconcilable to each other; that no ALTERATIONS or PROVISIONS in THE ARTICLES OF THE CONFEDERATION could possibly mould them into a national and adequate government; into such a government as has been proposed by the convention?

No stress, it is presumed, will, in this case, be laid on the TITLE; a change of that could never be deemed an exercise of ungranted power. ALTERATIONS in the body of the instrument are expressly authorized. NEW PROVISIONS therein are also expressly authorized. Here then is a power to change the title; to insert new articles; to alter old ones. Must it of necessity be admitted that this power is infringed, so long as a part of the old articles remain? Those who maintain the affirmative ought at least to mark the boundary between authorized and usurped innovations; between that degree of change which lies within the compass of ALTERATIONS AND FURTHER PROVISIONS, and that which amounts to a TRANSMUTATION of the government. Will it be said that the alterations ought not to have touched the substance of the Confederation? The States would never have appointed a convention with so much solemnity, nor described its objects with so much latitude, if some SUBSTANTIAL reform had not been in contemplation. Will it be said that the FUNDAMENTAL PRINCIPLES of the Confederation were not within the purview of the convention, and ought not to have been varied? I ask, What are these principles? Do they require that, in the establishment of the Constitution, the States should be regarded as distinct and independent sovereigns? They are so regarded by the Constitution proposed. Do they require that the members of the government should derive their appointment from the legislatures, not from the people of the States? One branch of the new government is to be appointed by these legislatures; and under the Confederation, the delegates to Congress MAY ALL be appointed immediately by the people, and in two States1 are actually so appointed. Do they require that the powers of the government should act on the States, and not immediately on individuals? In some instances, as has been shown, the powers of the new government will act on the States in their collective characters. In some instances, also, those of the existing government act immediately on individuals. In cases of capture; of piracy; of the post office; of coins, weights, and measures; of trade with the Indians; of claims under grants of land by different States; and, above all, in the case of trials by courts-marshal in the army and navy, by which death may be inflicted without the intervention of a jury, or even of a civil magistrate; in all these cases the powers of the Confederation operate immediately on the persons and interests of individual citizens. Do these fundamental principles require, particularly, that no tax should be levied without the intermediate agency of the States? The Confederation itself authorizes a direct tax, to a certain extent, on the post office. The power of coinage has been so construed by Congress as to levy a tribute immediately from that source also. But pretermitting these instances, was it not an acknowledged object of the convention and the universal expectation of the people, that the regulation of trade should be submitted to the general government in such a form as would render it an immediate source of general revenue? Had not Congress repeatedly recommended this measure as not inconsistent with the fundamental principles of the Confederation? Had not every State but one; had not New York herself, so far complied with the plan of Congress as to recognize the PRINCIPLE of the innovation? Do these principles, in fine, require that the powers of the general government should be limited, and that, beyond this limit, the States should be left in possession of their sovereignty and independence? We have seen that in the new government, as in the old, the general powers are limited; and that the States, in all unenumerated cases, are left in the enjoyment of their sovereign and independent jurisdiction.

The truth is, that the great principles of the Constitution proposed by the convention may be considered less as absolutely new, than as the expansion of principles which are found in the articles of Confederation. The misfortune under the latter system has been, that these principles are so feeble and confined as to justify all the charges of inefficiency which have been urged against it, and to require a degree of enlargement which gives to the new system the aspect of an entire transformation of the old.

In one particular it is admitted that the convention have departed from the tenor of their commission. Instead of reporting a plan requiring the confirmation OF THE LEGISLATURES OF ALL THE STATES, they have reported a plan which is to be confirmed by the PEOPLE, and may be carried into effect by NINE STATES ONLY. It is worthy of remark that this objection, though the most plausible, has been the least urged in the publications which have swarmed against the convention. The forbearance can only have proceeded from an irresistible conviction of the absurdity of subjecting the fate of twelve States to the perverseness or corruption of a thirteenth; from the example of inflexible opposition given by a MAJORITY of one sixtieth of the people of America to a measure approved and called for by the voice of twelve States, comprising fifty-nine sixtieths of the people an example still fresh in the memory and indignation of every citizen who has felt for the wounded honor and prosperity of his country. As this objection, therefore, has been in a manner waived by those who have criticised the powers of the convention, I dismiss it without further observation.

The THIRD point to be inquired into is, how far considerations of duty arising out of the case itself could have supplied any defect of regular authority.

In the preceding inquiries the powers of the convention have been analyzed and tried with the same rigor, and by the same rules, as if they had been real and final powers for the establishment of a Constitution for the United States. We have seen in what manner they have borne the trial even on that supposition. It is time now to recollect that the powers were merely advisory and recommendatory; that they were so meant by the States, and so understood by the convention; and that the latter have accordingly planned and proposed a Constitution which is to be of no more consequence than the paper on which it is written, unless it be stamped with the approbation of those to whom it is addressed. This reflection places the subject in a point of view altogether different, and will enable us to judge with propriety of the course taken by the convention.

Let us view the ground on which the convention stood. It may be collected from their proceedings, that they were deeply and unanimously impressed with the crisis, which had led their country almost with one voice to make so singular and solemn an experiment for correcting the errors of a system by which this crisis had been produced; that they were no less deeply and unanimously convinced that such a reform as they have proposed was absolutely necessary to effect the purposes of their appointment. It could not be unknown to them that the hopes and expectations of the great body of citizens, throughout this great empire, were turned with the keenest anxiety to the event of their deliberations. They had every reason to believe that the contrary sentiments agitated the minds and bosoms of every external and internal foe to the liberty and prosperity of the United States. They had seen in the origin and progress of the experiment, the alacrity with which the PROPOSITION, made by a single State (Virginia), towards a partial amendment of the Confederation, had been attended to and promoted. They had seen the LIBERTY ASSUMED by a VERY FEW deputies from a VERY FEW States, convened at Annapolis, of recommending a great and critical object, wholly foreign to their commission, not only justified by the public opinion, but actually carried into effect by twelve out of the thirteen States. They had seen, in a variety of instances, assumptions by Congress, not only of recommendatory, but of operative, powers, warranted, in the public estimation, by occasions and objects infinitely less urgent than those by which their conduct was to be governed. They must have reflected, that in all great changes of established governments, forms ought to give way to substance; that a rigid adherence in such cases to the former, would render nominal and nugatory the transcendent and precious right of the people to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness,"2 since it is impossible for the people spontaneously and universally to move in concert towards their object; and it is therefore essential that such changes be instituted by some INFORMAL AND UNAUTHORIZED PROPOSITIONS, made by some patriotic and respectable citizen or number of citizens. They must have recollected that it was by this irregular and assumed privilege of proposing to the people plans for their safety and happiness, that the States were first united against the danger with which they were threatened by their ancient government; that committees and congresses were formed for concentrating their efforts and defending their rights; and that CONVENTIONS were ELECTED in THE SEVERAL STATES for establishing the

constitutions under which they are now governed; nor could it have been forgotten that no little ill-timed scruples, no zeal for adhering to ordinary forms, were anywhere seen, except in those who wished to indulge, under these masks, their secret enmity to the substance contended for. They must have borne in mind, that as the plan to be framed and proposed was to be submitted TO THE PEOPLE THEMSELVES, the disapprobation of this supreme authority would destroy it forever; its approbation blot out antecedent errors and irregularities. It might even have occurred to them, that where a disposition to cavil prevailed, their neglect to execute the degree of power vested in them, and still more their recommendation of any measure whatever, not warranted by their commission, would not less excite animadversion, than a recommendation at once of a measure fully commensurate to the national exigencies.

Had the convention, under all these impressions, and in the midst of all these considerations, instead of exercising a manly confidence in their country, by whose confidence they had been so peculiarly distinguished, and of pointing out a system capable, in their judgment, of securing its happiness, taken the cold and sullen resolution of disappointing its ardent hopes, of sacrificing substance to forms, of committing the dearest interests of their country to the uncertainties of delay and the hazard of events, let me ask the man who can raise his mind to one elevated conception, who can awaken in his bosom one patriotic emotion, what judgment ought to have been pronounced by the impartial world, by the friends of mankind, by every virtuous citizen, on the conduct and character of this assembly? Or if there be a man whose propensity to condemn is susceptible of no control, let me then ask what sentence he has in reserve for the twelve States who USURPED THE POWER of sending deputies to the convention, a body utterly unknown to their constitutions; for Congress, who recommended the appointment of this body, equally unknown to the Confederation; and for the State of New York, in particular, which first urged and then complied with this unauthorized interposition?

But that the objectors may be disarmed of every pretext, it shall be granted for a moment that the convention were neither authorized by their commission, nor justified by circumstances in proposing a Constitution for their country: does it follow that the Constitution ought, for that reason alone, to be rejected? If, according to the noble precept, it be lawful to accept good advice even from an enemy, shall we set the ignoble example of refusing such advice even when it is offered by our friends? The prudent inquiry, in all cases, ought surely to be, not so much FROM WHOM the advice comes, as whether the advice be GOOD.

The sum of what has been here advanced and proved is, that the charge against the convention of exceeding their powers, except in one instance little urged by the objectors, has no foundation to support it; that if they had exceeded their powers, they were not only warranted, but required, as the confidential servants of their country, by the circumstances in which they were placed, to exercise the liberty which they assume; and that finally, if they had violated both their powers and their obligations, in proposing a Constitution, this ought nevertheless to be embraced, if it be calculated to accomplish the views and happiness of the people of America. How far this character is due to the Constitution, is the subject under investigation.

PUBLIUS.

Connecticut and Rhode Island. Declaration of Independence.

FEDERALIST No. 85

Concluding Remarks
From MCLEAN's Edition, New York.
Alexander Hamilton

To the People of the State of New York:

ACCORDING to the formal division of the subject of these papers, announced in my first number, there would appear still to remain for discussion two points: "the analogy of the proposed government to your own State

constitution," and "the additional security which its adoption will afford to republican government, to liberty, and to property." But these heads have been so fully anticipated and exhausted in the progress of the work, that it would now scarcely be possible to do any thing more than repeat, in a more dilated form, what has been heretofore said, which the advanced stage of the question, and the time already spent upon it, conspire to forbid.

It is remarkable, that the resemblance of the plan of the convention to the act which organizes the government of this State holds, not less with regard to many of the supposed defects, than to the real excellences of the former. Among the pretended defects are the re-eligibility of the Executive, the want of a council, the omission of a formal bill of rights, the omission of a provision respecting the liberty of the press. These and several others which have been noted in the course of our inquiries are as much chargeable on the existing constitution of this State, as on the one proposed for the Union; and a man must have slender pretensions to consistency, who can rail at the latter for imperfections which he finds no difficulty in excusing in the former. Nor indeed can there be a better proof of the insincerity and affectation of some of the zealous adversaries of the plan of the convention among us, who profess to be the devoted admirers of the government under which they live, than the fury with which they have attacked that plan, for matters in regard to which our own constitution is equally or perhaps more vulnerable.

The additional securities to republican government, to liberty and to property, to be derived from the adoption of the plan under consideration, consist chiefly in the restraints which the preservation of the Union will impose on local factions and insurrections, and on the ambition of powerful individuals in single States, who may acquire credit and influence enough, from leaders and favorites, to become the despots of the people; in the diminution of the opportunities to foreign intrigue, which the dissolution of the Confederacy would invite and facilitate; in the prevention of extensive military establishments, which could not fail to grow out of wars between the States in a disunited situation; in the express guaranty of a republican form of government to each; in the absolute and universal exclusion of titles of nobility; and in the precautions against the repetition of those practices on the part of the State governments which have undermined the foundations of property and credit, have planted mutual distrust in the breasts of all classes of citizens, and have occasioned an almost universal prostration of morals.

Thus have I, fellow-citizens, executed the task I had assigned to myself; with what success, your conduct must determine. I trust at least you will admit that I have not failed in the assurance I gave you respecting the spirit with which my endeavors should be conducted. I have addressed myself purely to your judgments, and have studiously avoided those asperities which are too apt to disgrace political disputants of all parties, and which have been not a little provoked by the language and conduct of the opponents of the Constitution. The charge of a conspiracy against the liberties of the people, which has been indiscriminately brought against the advocates of the plan, has something in it too wanton and too malignant, not to excite the indignation of every man who feels in his own bosom a refutation of the calumny. The perpetual changes which have been rung upon the wealthy, the well-born, and the great, have been such as to inspire the disgust of all sensible men. And the unwarrantable concealments and misrepresentations which have been in various ways practiced to keep the truth from the public eye, have been of a nature to demand the reprobation of all honest men. It is not impossible that these circumstances may have occasionally betrayed me into intemperances of expression which I did not intend; it is certain that I have frequently felt a struggle between sensibility and moderation; and if the former has in some instances prevailed, it must be my excuse that it has been neither often nor much.

Let us now pause and ask ourselves whether, in the course of these papers, the proposed Constitution has not been satisfactorily vindicated from the aspersions thrown upon it; and whether it has not been shown to be worthy of the public approbation, and necessary to the public safety and prosperity. Every man is bound to answer these questions to himself, according to the best of his conscience and understanding, and to act agreeably to the genuine and sober dictates of his judgment. This is a duty from which nothing can give him a dispensation. 'T is one that he is called upon, nay, constrained by all the obligations that form the bands of society, to discharge sincerely and honestly. No partial motive, no particular interest, no pride of opinion, no temporary passion or prejudice, will justify to himself, to his country, or to his posterity, an improper election of the part he is to act. Let him beware of an obstinate adherence to party; let him reflect that the object upon which he is to decide is not a particular interest of the community, but the very existence of the nation; and let him remember that a majority of America has already given its sanction to the plan which he is to approve or reject.

I shall not dissemble that I feel an entire confidence in the arguments which recommend the proposed system to your adoption, and that I am unable to discern any real force in those by which it has been opposed. I am persuaded that it is the best which our political situation, habits, and opinions will admit, and superior to any the revolution has produced.

Concessions on the part of the friends of the plan, that it has not a claim to absolute perfection, have afforded matter of no small triumph to its enemies. "Why," say they, "should we adopt an imperfect thing? Why not amend it and make it perfect before it is irrevocably established?" This may be plausible enough, but it is only plausible. In the first place I remark, that the extent of these concessions has been greatly exaggerated. They have been stated as amounting to an admission that the plan is radically defective, and that without material alterations the rights and the interests of the community cannot be safely confided to it. This, as far as I have understood the meaning of those who make the concessions, is an entire perversion of their sense. No advocate of the measure can be found, who will not declare as his sentiment, that the system, though it may not be perfect in every part, is, upon the whole, a good one; is the best that the present views and circumstances of the country will permit; and is such an one as promises every species of security which a reasonable people can desire.

I answer in the next place, that I should esteem it the extreme of imprudence to prolong the precarious state of our national affairs, and to expose the Union to the jeopardy of successive experiments, in the chimerical pursuit of a perfect plan. I never expect to see a perfect work from imperfect man. The result of the deliberations of all collective bodies must necessarily be a compound, as well of the errors and prejudices, as of the good sense and wisdom, of the individuals of whom they are composed. The compacts which are to embrace thirteen distinct States in a common bond of amity and union, must as necessarily be a compromise of as many dissimilar interests and inclinations. How can perfection spring from such materials?

The reasons assigned in an excellent little pamphlet lately published in this city,[1] are unanswerable to show the utter improbability of assembling a new convention, under circumstances in any degree so favorable to a happy issue, as those in which the late convention met, deliberated, and concluded. I will not repeat the arguments there used, as I presume the production itself has had an extensive circulation. It is certainly well worthy the perusal of every friend to his country. There is, however, one point of light in which the subject of amendments still remains to be considered, and in which it has not yet been exhibited to public view. I cannot resolve to conclude without first taking a survey of it in this aspect.

It appears to me susceptible of absolute demonstration, that it will be far more easy to obtain subsequent than previous amendments to the Constitution. The moment an alteration is made in the present plan, it becomes, to the purpose of adoption, a new one, and must undergo a new decision of each State. To its complete establishment throughout the Union, it will therefore require the concurrence of thirteen States. If, on the contrary, the Constitution proposed should once be ratified by all the States as it stands, alterations in it may at any time be effected by nine States. Here, then, the chances are as thirteen to nine[2] in favor of subsequent amendment, rather than of the original adoption of an entire system.

This is not all. Every Constitution for the United States must inevitably consist of a great variety of particulars, in which thirteen independent States are to be accommodated in their interests or opinions of interest. We may of course expect to see, in any body of men charged with its original formation, very different combinations of the parts upon different points. Many of those who form a majority on one question, may become the minority on a second, and an association dissimilar to either may constitute the majority on a third. Hence the necessity of moulding and arranging all the particulars which are to compose the whole, in such a manner as to satisfy all the parties to the compact; and hence, also, an immense multiplication of difficulties and casualties in obtaining the collective assent to a final act. The degree of that multiplication must evidently be in a ratio to the number of particulars and the number of parties.

But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. There would then be no necessity for management or compromise, in relation to any other point no giving nor taking. The will of the requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that

amendment must infallibly take place. There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution.

In opposition to the probability of subsequent amendments, it has been urged that the persons delegated to the administration of the national government will always be disinclined to yield up any portion of the authority of which they were once possessed. For my own part I acknowledge a thorough conviction that any amendments which may, upon mature consideration, be thought useful, will be applicable to the organization of the government, not to the mass of its powers; and on this account alone, I think there is no weight in the observation just stated. I also think there is little weight in it on another account. The intrinsic difficulty of governing thirteen States at any rate, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion constantly impose on the national rulers the necessity of a spirit of accommodation to the reasonable expectations of their constituents. But there is yet a further consideration, which proves beyond the possibility of a doubt, that the observation is futile. It is this that the national rulers, whenever nine States concur, will have no option upon the subject. By the fifth article of the plan, the Congres will be obliged "on the application of the legislatures of two thirds of the States Uwhich at present amount to ninee, to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof." The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of that body. And of consequence, all the declamation about the disinclination to a change vanishes in air. Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority. If the foregoing argument is a fallacy, certain it is that I am myself deceived by it, for it is, in my conception, one of those rare instances in which a political truth can be brought to the test of a mathematical demonstration. Those who see the matter in the same light with me, however zealous they may be for amendments, must agree in the propriety of a previous adoption, as the most direct road to their own object.

The zeal for attempts to amend, prior to the establishment of the Constitution, must abate in every man who is ready to accede to the truth of the following observations of a writer equally solid and ingenious: "To balance a large state or society Usays hee, whether monarchical or republican, on general laws, is a work of so great difficulty, that no human genius, however comprehensive, is able, by the mere dint of reason and reflection, to effect it. The judgments of many must unite in the work; experience must guide their labor; time must bring it to perfection, and the feeling of inconveniences must correct the mistakes which they INEVITABLY fall into in their first trials and experiments."[3] These judicious reflections contain a lesson of moderation to all the sincere lovers of the Union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the States from each other, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain, but from time and experience. It may be in me a defect of political fortitude, but I acknowledge that I cannot entertain an equal tranquillity with those who affect to treat the dangers of a longer continuance in our present situation as imaginary. A nation, without a national government, is, in my view, an awful spectacle. The establishment of a Constitution, in time of profound peace, by the voluntary ocnsent of a whole people, is a prodigy, to the completion of which I look forward with trembling anxiety. I can reconcile it to no rules of prudence to let go the hold we now have, in so arduous an enterprise, upon seven out of the thirteen States, and after having passed over so considerable a part of the ground, to recommence the course. I dread the more the consequences of new attempts, because I know that powerful individuals, in this and in other States, are enemies to a general national government in every possible shape.

PUBLIUS.

1. Entitled "An Address to the People of the State of New York."
2. It may rather be said TEN, for though two thirds may set on foot the measure, three fourths must ratify.
3. Hume's "Essays," vol. i., page 128: "The Rise of Arts and Sciences."

Founders Online

From James Madison to George Lee Turberville, 2 November 1788

To George Lee Turberville

Dear Sir N. York Novr. 2. 1788.

Your favor of the 20th. Ult: not having got into my hands in time to be acknowledged by the last mail, I have now the additional pleasure of acknowledging along with it your favor of the 24. which I recd. yesterday.

You wish to know my sentiments on the project of another general Convention as suggested by New York.[1] I shall give them to you with great frankness, though I am aware they may not coincide with those in fashion at Richmond or even with your own. I am not of the number if there be any such, who think the Constitution, lately adopted, a faultless work. On the Contrary there are amendments wch. I wished it to have received before it issued from the place in which it was formed. These amendments I still think ought to be made according to the apparent sense of America and some of them at least I presume will be made. There are others, concerning which doubts are entertained by many, and which have both advocates and opponents on each side of the main question. These I think ought to receive the light of actual experiment, before it would be prudent to admit them into the Constitution. With respect to the first class, the only question is which of the two modes provided be most eligible for the discussion and adoption of them. The objections agst. a Convention which give a preference to the other mode in my judgment are the following. 1. It will add to the difference among the States on the merits, another and an unnecessary difference concerning the mode. There are amendments which in themselves will probably be agreed to by all the States, and pretty certainly by the requisite proportion of them. If they be contended for in the mode of a Convention, there are unquestionably a number of States who will be so averse and apprehensive as to the mode, that they will reject the merits rather than agree to the mode. A convention therefore does not appear to be the most convenient or probable channel for getting to the object. 2. A convention cannot be called without the unanimous consent of the parties who are to be bound by it, if first principles are to be recurred to; or without the previous application of ⅔ of the State legislatures, if the forms of the Constitution are to be pursued. The difficulties in either of these cases must evidently be much greater than will attend the origination of amendments in Congress, which may be done at the instance of a single State Legislature, or even without a single instruction on the subject. 3. If a General Convention were to take place for the avowed and sole purpose of revising the Constitution, it would naturally consider itself as having a greater latitude than the Congress appointed to administer and support as well as to amend the system; it would consequently give greater agitation to the public mind; an election into it would be courted by the most violent partizans on both sides; it wd. probably consist of the most heterogeneous characters; would be the very focus of that flame which has already too much heated men of all parties; would no doubt contain individuals of insidious views, who under the mask of seeking alterations popular in some parts but inadmissible in other parts of the Union might have a dangerous opportunity of sapping the very foundations of the fabric. Under all these circumstances it seems scarcely to be presumeable that the deliberations of the body could be conducted in harmony, or terminate in the general good. Having witnessed the difficulties and dangers experienced by the first Convention which assembled under every propitious circumstance, I should tremble for the result of a Second, meeting in the present temper of America and under all the disadvantages I have mentioned. 4. It is not unworthy of consideration that the prospect of a second Convention would be viewed by all Europe as a dark and threatening Cloud hanging over the Constitution just established, and perhaps over the Union itself; and wd. therefore suspend at least the advantages this great event has promised us on that side. It is a well known fact that this event has filled that quarter of the Globe with equal wonder and veneration, that its influence is already secretly but powerfully working in favor of liberty in France, and it is fairly to be inferred that the final event there may be materially affected by the prospect of things here. We are not sufficiently sensible of the importance of the example which this Country may give to the world; nor sufficiently attentive to the advantages we may reap from the late reform, if we avoid bringg. it into danger. The last loan in Holland and that alone, saved the U. S. from Bankruptcy in Europe; and that loan was obtained from a belief that the Constitution then depending wd. be certainly speedily, quietly, and finally established, & by that means put America into a permanent capacity to discharge with honor & punctuality all her engagements. I am Dr. Sir, Yours

Js. Madison Jr

FC (DLC). Headed by JM: "Copy in substance of a letter to G. L. Turberville Eqr."

1. JM's political allies in Richmond hoped to publish this letter, or part of it, but decided not to when JM demurred (Carrington to JM, 14 Nov. 1788; Tuberville to JM, 16 Nov. and 14 Dec. 1788; R. B. Lee to JM, 17 and 25 Nov. and 12 Dec. 1788).

States and other Powers who are not in treaty with her, and therefore did not call upon us for retaliation; if we are treated in the same manner as those nations we have no right to complain. He was not opposed to particular regulations to obtain the object which the friends of the measure had in view; but he did not like this mode of doing it, because he feared it would injure the interest of the United States.

Before the House adjourned, Mr. MADISON gave notice, that he intended to bring on the subject of amendments to the constitution, on the 4th Monday of this month.

TUESDAY, May 5.

Mr. BENSON, from the committee appointed to consider of, and report what style or titles it will be proper to annex to the office of President and Vice President of the United States, if any other than those given in the Constitution, and to confer with a committee of the Senate appointed for the same purpose, reported as followeth:

"That it is not proper to annex any style or title to the respective styles or titles of office expressed in the Constitution."

And the said report being twice read at the Clerk's table, was, on the question put thereupon, agreed to by the House.

Ordered, That the Clerk of this House do acquaint the Senate therewith.

Mr. MADISON, from the committee appointed to prepare an address on the part of this House to the President of the United States, in answer to his speech to both Houses of Congress, reported as followeth:

The Address of the House of Representatives to George Washington, President of the United States.

SIR: The Representatives of the People of the United States present their congratulations on the event by which your fellow-citizens have attested the pre-eminence of your merit. You have long held the first place in their esteem. You have often received tokens of their affection. You now possess the only proof that remained of their gratitude for your services, of their reverence for your wisdom, and of their confidence in your virtues. You enjoy the highest, because the truest honor, of being the First Magistrate, by the unanimous choice of the freest people on the face of the earth.

We well know the anxieties with which you must have obeyed a summons from the repose reserved for your declining years, into public scenes, of which you had taken your leave for ever. But the obedience was due to the occasion. It is already applauded by the universal joy which welcomes you to your station. And we cannot doubt that it will be rewarded with all the satisfaction with which an ardent love for your fellow citizens must review successful efforts to promote their happiness.

This anticipation is not justified merely by the past experience of your signal services. It is particularly suggested by the pious impressions under which you mean to commence your administration, and the enlightened maxims by which you mean to conduct it. We feel with you the strongest obligations to adore the invisible hand which has led the American people through so many difficulties, to cherish a conscious responsibility for the destiny of republican liberty; and to seek the only sure means of preserving and recommending the precious deposite in a system of legislation founded on the principles of an honest policy, and directed by the spirit of a diffusive patriotism.

The question arising out of the fifth article of the Constitution will receive all the attention demanded by its importance; and will, we trust, be decided, under the influence of all the considerations to which you allude.

In forming the pecuniary provisions for the Executive Department, we shall not lose sight of a wish resulting from motives which give it a peculiar claim to our regard. Your resolution, in a moment critical to the liberties of your country, to renounce all personal emolument, was among the many presages of your patriotic services, which have been amply fulfilled; and your scrupulous adherence now to the law then imposed on yourself, cannot fail to demonstrate the purity, whilst it increases the lustre of a character which has so many titles to admiration.

Such are the sentiments which we have thought fit to address to you. They flow from our own hearts, and we verily believe that, among the millions we represent, there is not a virtuous citizen whose heart will disown them.

All that remains is, that we join in your fervent supplications for the blessings of heaven on our country; and that we add our own for the choicest of these blessings on the most beloved of our citizens.

Said address was committed to a Committee of the whole; and the House immediately resolved itself into a committee, Mr. PAGE in the chair. The committee proposing no amendment thereto, rose and reported the address, and the House agreed to it, and resolved that the Speaker, attended by the members of this House, do present the said address to the President.

Ordered, That Messrs. SINNICKSON, COLES, and SMITH, (of South Carolina,) be a committee to wait on the President, to know when it will be convenient for him to receive the same.

Mr. CLYMER, from the committee appointed for the purpose, reported a bill for laying a duty on goods, wares, and merchandise, imported into the United States, which passed its first reading.

Mr. BLAND presented to the House the following application from the Legislature of Virginia, to wit:

VIRGINIA, *to wit:*

IN GENERAL ASSEMBLY, Nov. 14, 1788.

Resolved, That an application be made in the name and on behalf of the Legislature of this Commonwealth to the Congress of the United States, in the words following, to wit:

"The good People of this Commonwealth, in Convention assembled, having ratified the Constitution submitted to their consideration, this Legislature has, in conformity to that act, and the resolutions of the United States in Congress assembled, to them transmitted, thought proper to make the arrangements that were necessary for carrying it into effect. Having thus shown themselves obedient to the voice of their constituents, all America will find that, so far as

it depended on them, that plan of Government will be carried into immediate operation.

"But the sense of the People of Virginia would be but in part complied with, and but little regarded, if we went no farther. In the very moment of adoption, and coeval with the ratification of the new plan of Government, the general voice of the Convention of this State pointed to objects no less interesting to the People we represent, and equally entitled to our attention. At the same time that, from motives of affection to our sister States, the Convention yielded their assent to the ratification, they gave the most unequivocal proofs that they dreaded its operation under the present form.

"In acceding to the Government under this impression, painful must have been the prospect, had they not derived consolation from a full expectation of its imperfections being speedily amended. In this resource, therefore, they placed their confidence, a confidence that will continue to support them, whilst they have reason to believe that they have not calculated upon it in vain.

"In making known to you the objections of the People of this Commonwealth to the new plan of Government, we deem it unnecessary to enter into a particular detail of its defects, which they consider as involving all the great and unalienable rights of freemen. For their sense on this subject, we beg leave to refer you to the proceedings of their late Convention, and the sense of the House of Delegates, as expressed in their resolutions of the thirtieth day of October, one thousand seven hundred and eighty-eight.

"We think proper, however, to declare, that, in our opinion, as those objections were not founded in speculative theory, but deduced from principles which have been established by the melancholy example of other nations in different ages, so they will never be removed, until the cause itself shall cease to exist. The sooner, therefore, the public apprehensions are quieted, and the Government is possessed of the confidence of the People, the more salutary will be its operations, and the longer its duration.

"The cause of amendments we consider as a common cause; and, since concessions have been made from political motives, which, we conceive, may endanger the Republic, we trust that a commendable zeal will be shown for obtaining those provisions, which experience has taught us are necessary to secure from danger the unalienable rights of human nature.

"The anxiety with which our countrymen press for the accomplishment of this important end, will ill admit of delay. The slow forms of Congressional discussion and recommendation, if, indeed, they should ever agree to any change, would, we fear, be less certain of success. Happily for their wishes, the Constitution hath presented an alternative, by admitting the submission to a convention of the States. To this, therefore, we resort as the source from whence they are to derive relief from their present apprehensions.

"We do, therefore, in behalf of our constituents, in the most earnest and solemn manner, make this application to Congress, that a convention be immediately called, of deputies from the several States, with full power to take into their consideration the defects of this constitution that have been suggested by the State Conventions, and report such amendments thereto as they shall find best suited to promote our common interests, and secure to ourselves and our latest posterity the great and unalienable rights of mankind.

"JOHN JONES, *Speaker Senate.*
"THOMAS MATHEWS, *Speaker Ho. Del.*"

After the reading of this application,

Mr. BLAND moved to refer it to the Committee of the whole on the state of the Union.

Mr. BOUDINOT.—According to the terms of the Constitution, the business cannot be taken up until a certain number of States have concurred in similar applications; certainly the House is disposed to pay a proper attention to the application of so respectable a State as Virginia, but if it is a business which we cannot interfere with in a constitutional manner, we had better let it remain on the files of the House until the proper number of applications come forward.

Mr. BLAND thought there could be no impropriety in referring any subject to a committee, but surely this deserved the serious and solemn consideration of Congress. He hoped no gentleman would oppose the compliment of referring it to a Committee of the whole; beside, it would be a guide to the deliberations of the committee on the subject of amendments, which would shortly come before the House.

Mr. MADISON said, he had no doubt but the House was inclined to treat the present application with respect, but he doubted the propriety of committing it, because it would seem to imply that the House had a right to deliberate upon the subject. This he believed was not the case until two-thirds of the State Legislatures concurred in such application, and then it is out of the power of Congress to decline complying, the words of the Constitution being express and positive relative to the agency Congress may have in case of applications of this nature. "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." From hence it must appear, that Congress have no deliberative power on this occasion. The most respectful and constitutional mode of performing our duty will be, to let it be entered on the minutes, and remain upon the files of the House until similar applications come to hand from two-thirds of the States.

Mr. BOUDINOT hoped the gentleman who desired the commitment of the application would not suppose him wanting in respect to the State of Virginia. He entertained the most profound respect for her—but it was on a principle of respect to order and propriety that he opposed the commitment; enough had been said to convince gentlemen that it was improper to commit—for what purpose can it be done? what can the committee report? The application is to call a new convention. Now, in this case, there is nothing left for us to do, but to call one when two-thirds of the State Legislatures ap-

ply for that purpose. He hoped the gentleman would withdraw his motion for commitment.

Mr. BLAND.—The application now before the committee contains a number of reasons why it is necessary to call a convention. By the fifth article of the Constitution, Congress are obliged to order this convention when two-thirds of the Legislatures apply for it; but how can these reasons be properly weighed, unless it be done in committee? Therefore, I hope the House will agree to refer it.

Mr. HUNTINGTON thought it proper to let the application remain on the table, it can be called up with others when enough are presented to make two-thirds of the whole States. There would be an evident impropriety in committing, because it would argue a right in the House to deliberate, and, consequently, a power to procrastinate the measure applied for.

Mr. TUCKER thought it not right to disregard the application of any State, and inferred, that the House had a right to consider every application that was made; if two-thirds had not applied, the subject might be taken into consideration, but if two-thirds had applied, it precluded deliberation on the part of the House. He hoped the present application would be properly noticed.

Mr. GERRY.—The gentleman from Virginia (Mr. MADISON) told us yesterday, that he meant to move the consideration of amendments on the fourth Monday of this month; he did not make such motion then, and may be prevented by accident, or some other cause, from carrying his intention into execution when the time he mentioned shall arrive. I think the subject however is introduced to the House, and, perhaps, it may consist with order to let the present application lie on the table until the business is taken up generally.

Mr. PAGE thought it the best way to enter the application at large upon the Journals, and do the same by all that came in, until sufficient were made to obtain their object, and let the original be deposited in the archives of Congress. He deemed this the proper mode of disposing of it, and what is in itself proper can never be construed into disrespect.

Mr. BLAND acquiesced in this disposal of the application. Whereupon, it was ordered to be entered at length on the Journals, and the original to be placed on the files of Congress.

DUTIES ON TONNAGE.

The House then resumed the consideration of the Report of the Committee of the whole on the state of the Union, in relation to the duty on tonnage.

Mr. JACKSON (from Georgia) moved to lower the tonnage duty from thirty cents, as it stood in the report of the committee on ships of nations in alliance, and to insert twenty cents, with a view of reducing the tonnage on the vessels of Powers not in alliance. In laying a higher duty on foreign tonnage than on our own, I presume, said he, the Legislature have three things in contemplation: first, The encouragement of American shipping; 2ndly, Raising a Revenue; and, 3dly, The support of light-houses and beacons for the purposes of navigation. Now, for the first object, namely, the encouragement of American shipping, I judge twenty cents will be sufficient, the duty on our own being only six cents; but if twenty cents are laid in this case, I conclude that a higher rate will be imposed upon the vessels of nations not in alliance. As these form the principal part of the foreign navigation, the duty will be adequate to the end proposed. I take it, the idea of revenue from this source is not much relied upon by the House; and surely twenty cents is enough to answer all the purposes of erecting and supporting the necessary light-houses. On a calculation of what will be paid in Georgia, I find a sufficiency for these purposes; and I make no doubt but enough will be collected in every State from this duty. The tonnage employed in Georgia is about twenty thousand tons, fourteen thousand tons are foreign; the duty on this quantity will amount to £466 13s. 4d. Georgia currency. I do not take in the six cents upon American vessels, yet this sum appears to be as much as can possibly be wanted for the purpose of improving our navigation.

When we begin a new system, we ought to act with moderation; the necessity and propriety of every measure ought to appear evident to our constituents, to prevent clamor and complaint. I need not insist upon the truth of this observation by offering arguments in its support. Gentlemen see we are scarcely warm in our seats, before applications are made for amendments to the Constitution; the people are afraid that Congress will exercise their power to oppress them. If we shackle the commerce of America by heavy imposition, we shall rivet them in their distrust. The question before the committee appears to me to be, whether we shall draw in, by tender means, the States that are now out of the Union, or deter them from joining us, by holding out the iron hand of tyranny and oppression. I am for the former, as the most likely way of perpetuating the federal Government. North Carolina will be materially affected by a high tonnage; her vessels in the lumber trade will be considerably injured by the regulation; she will discover this, and examine the advantages and disadvantages of entering into the Union. If the disadvantages preponderate, it may be the cause of her throwing herself into the arms of Britain; her peculiar situation will enable her to injure the trade of both South Carolina and Georgia. The disadvantages of a high tonnage duty on foreign vessels are not so sensibly felt by the Northern States; they have nearly vessels enough of their own to carry on all their trade, consequently the loss sustained by them will be but small; but the Southern States employ mostly foreign shipping, and unless their produce is carried by them to market it will perish. At this mo-

U.S. Department of Justice
Office of Legal Policy

Report to the Attorney General

Limited Constitutional Conventions under Article V of the United States Constitution

September 10, 1987

LIMITED CONSTITUTIONAL CONVENTIONS UNDER ARTICLE V OF THE UNITED STATES CONSTITUTION

(September 10, 1987)

EXECUTIVE SUMMARY

The attached paper examines the process of amending the Constitution through a constitutional convention. Specifically, the paper explores the question of whether such a convention, authorized by Article V of the Constitution, can be limited to the consideration of particular subjects.

The paper concludes that Article V permits the states to apply for, and the Congress to call, a constitutional convention for limited purposes, and that a variety of practical means to enforce such limitations are available. The language and structure of Article V, as well as the history of its drafting, support this conclusion because the two methods of constitutional amendment, Congressional initiative and the state-called convention, are treated by Article V as equally available procedural alternatives. There is no suggestion that the alternative modes are substantively distinct, that one is subordinate to the other, or that use of one mode is restricted to particular topics or circumstances.

Since it is undisputed that Congress possesses the authority to propose amendments limited to a single topic or group of topics, it follows that the applications of the states for calling a constitutional convention also may be limited. This understanding is reinforced by the normal practice of the states in limiting by subject their applications to the Congress.

The paper also notes that the requirements of Article V are designed to ensure that a consensus exists as to the desirability of amendment, whichever method of amendment is employed. As the Supreme Court has held, an Article V consensus is a super-majority agreement on the same subject at the same time that has been made manifest and clear by following the procedures outlined in Article V. If the states choose to condition their application for a convention on discussion of a particular amendment or subject, then the Congress must call a convention of that kind if the principle of consensus is to be vindicated.

After establishing that Article V does permit limited constitutional conventions, the paper examines the procedural strictures available to ensure that such limitations are enforced. In particular, the paper concludes that Congress has the authority to adopt legislation providing for the enforcement of limitations. The report also suggests that judicial review to curb convention irregularities and the possibility of holding

convention delegates to their oaths of office are other potentially effective enforcement devices.

The paper concludes by recognizing that there are inevitable uncertainties associated with any as-yet-untried process. However, it is suggested that the adoption of convention-procedures legislation by the Congress would minimize greatly any remaining uncertainties associated with the convention method of amendment.

scientist Paul J. Weber has concluded that there are so many political constraints on a Article V convention that it is, in fact, "a safe political option." He puts his own characterization on some of the principles already discussed in this paper and adds others:

> What Professor Tribe ignores are the *political* constraints which insure that no convention is likely to get out of control. There are a number of such constraints: the previously cited character of the delegates elected; the media attention which will be given to discrepancies between the campaign statements and promises and the delegates' actual words and actions; the number of delegates and divisions within the convention itself which would make it extraordinarily difficult for one faction or a radical position to prevail; the delegates' awareness that the convention results must be presented to Congress which might not forward any amendment that went beyond the convention mandate; the Supreme Court which might well declare certain actions beyond the constitutional powers of the convention; and most important of all, the need to get the proposed amendment ratified not only by the 34 states that called for the convention, but by 38 states. More effective constraints on a constitutional convention can hardly be imagined. * * *
>
> The original Constitution was not only a legal document; it was a political document. It set out not simply legal principles but legal principles hammered out of political compromise and anchored in political realism. The primary safeguards of democracy envisioned by the Framers were political, not legal.[118]

CONCLUSION

Because the convention method has never been successfully invoked, and despite the collection of potential enforcement devices reviewed above, there will still be political uncertainties the first time that two-thirds of the states apply for a limited convention. But allowing for such uncertainties, we are convinced that Article V was designed to permit limited conventions and that a variety of legal and political means

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[118] Weber, *The Constitutional Convention: A Safe Political Option*, 3 J. L. & Politics 51, 65-66, 69 (1986) (emphasis in original).

are available to help to enforce such limits. The successful triggering of the convention method would be an extraordinary political event. Precedent and tradition are important in constitutional democracies such as ours, and there is no precedent to guide us here. But we also think that uncertainties should not lead to a questioning of the legitimacy of the convention method nor to a shirking of the duties of the various parties to put into effect, despite difficulties, the meaning of the various clauses of Article V. And we find persuasive the view that convention-procedures legislation would greatly minimize the uncertainties and potential chaos that might be encountered in the Article V convention process.

Appendix

Limited Constitutional Conventions Under Article V
(A Compendium of Selected Authorities)[a]

"In *The Federalist* James Madison urged ratification of the Constitution on the ground that Article V 'equally enables the General and State Governments to originate the amendment of errors as they may be pointed out by the experience on one side or the other.' Professor Black finds this observation fully consistent with his view that limited conventions are unconstitutional, since Madison 'simply points out that amendment may be set in train by the State Legislatures as well as by Congress — and so it may, whether the convention they may petition for be limited or not.' But Congress can propose such amendments as its requisite majorities desire, without thereby creating an organism that is empowered to propose amendments that Congress opposes. If the state legislatures' power to initiate amendments is not free from the juridical condition and political risk posed by a general convention, then Madison was wrong to say that Congress and 'the state Governments' were 'equally' enabled to originate amendments." — *Professor Grover Rees III, Constitutional Convention and Constitutional Arguments; Some Thoughts About Limits*, 6 Harv. J. L. and Pub. Policy 79, 90 (1982).

"The usefulness of the alternative amendment procedure as a means of dealing with a specific grievance on the part of the States will be defeated if the States are told that it can be invoked only at the price of subjecting the Nation to all the problems, expense, and risks involved in having a wide-open constitutional convention." — *Professor Paul Kauper, University of Michigan Law School, The Alternative Amendment Process: Some Reflections*, 66 Mich. L. Rev. 903, 912 (1968).

"This construction [that a convention cannot be limited] would effectively destroy the power of the States to originate the amendment of errors pointed out by experience, as Madison expected them to do. Alternatively, under that construction, applications for a limited convention deriving in some States with a dissatisfaction with the school desegregation cases, in others because of the school prayer cases, and in still others by reason of objection to the *Miranda* rule, could all be combined to make up the requisite two-thirds of the States needed to

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[a] All but one of these authorities were compiled by the Senate Judiciary Committee. *See Senate Report, supra* note 2, at 58-62.

meet the requirements of Article V." — *U.S. Senator Sam Ervin, Chairman, Subcommittee on the Constitution, The Convention Method of Amending the Constitution*, 66 Mich. L. Rev. 875, 883 (1968).

"It is our conclusion that Congress has the power to establish procedures governing the calling of a national constitutional convention limited to the subject-matter on which the legislatures of two-thirds of the States request a convention . . . there is no justification for the view that Article V sanctions only a general convention. Such an interpretation would relegate the alternative method to an 'unequal' method of initiating amendments." — *American Bar Association, Amendment to the Constitution by the Convention Method Under Article V*, at 9, 16 (1973).

"The reason for including the convention system in Article V seems to have been perfectly clear: to provide a means for correcting errors, that is, specific concrete errors or abuses by the National government. Moreover, the language of Article V speaks specifically of 'amendments' . . . Surely it was not thought that by petitioning for an innocuous amendment, for example, on daylight savings time, the State would open up the way for a constitutional convention that would be free to revise the entire taxing authority of the United States or to abolish the House of Representatives." — *Professor Wallace Mendelson, University of Texas, Testimony Before United States Senate Judiciary Committee*, October 31, 1967.

"If the subject matter of amendments were to be left entirely to the convention, it would be hard to expect the States to call for a convention in the absence of a general discontent with the existing construction of the Constitution . . . The intention of Article V was clearly to place the power of initiation of amendments in the State legislatures. The function of the convention was to provide a mechanism for effectuating this initiative." — *Professor Phillip Kurland, University of Chicago Law School, Memorandum to U.S. Senate Judiciary Committee* (1967), 1979 Hearings, p. 1222.

"It is perfectly remarkable that some have argued for a construction [of Article V] not merely limiting the power of State legislatures to have a convention, but limiting that power to its least expected, least appropriate, most difficult (and yet most dangerous) use." — *Professor William Van Alstyne, Duke University Law School, The Limited Constitutional Convention*, 1979 Duke L. Journal 985-98.

"If the States apply for a Convention on a balanced budget, Congress must call a convention on a balanced budget. It cannot at its pleasure enlarge the topics. Nor can the Convention go beyond what Congress has specified in the call. The Convention's powers are derived from Article V and they cannot exceed what Article V specifies. The Convention meets at the call of Congress on the subject which the States have set out and Congress has called the Convention for." — *Professor John Noonan, University of California School of Law, Testimony Before California State Assembly*, February 15, 1979.

"The constitutional convention is the representative of sovereignty only in a very qualified sense and for the specific purpose and with the restricted authority to put in proper form the question of amendment upon which the people are to pass." — *Professor Thomas Cooley, A Treatise on Constitutional Limitations* 88 (1927).

"A constitutional convention has no authority to enact legislation of a general sort, and if the convention is called for the purpose of amending the Constitution in a specific part, the delegates have no power to act upon and propose amendments in other parts of the Constitution." — *Professor Henry Campbell Black, Handbook of American Constitutional Law* 45 (1927).

"The Constitutional Convention is . . . as its name implies, constitutional not simply as having for its object the framing of constitutions, but as being within, rather than without, the pale of fundamental law: as ancillary and subservient and not hostile and paramount to it . . . it always acts under a commission, for a purpose ascertained and limited by law or by custom. Its principal feature is that, at every step and moment of its existence, it is subaltern — and it is evoked by the side and at the call of a government preexisting and intended to survive it, for the purpose of administering to its especial needs." — *Professor John Alexander Jameson, A Treatise on Constitutional Conventions: Their History, Powers, and Modes of Proceeding* 10 (1887).

"On the strict legal question, the better view is that there is nothing in Article V to prevent the Congress from limiting the constitutional convention to the subject that made the States call for it." — *Professor Paul Bator, Harvard Law School, A Constitutional Convention: How Well Would it Work?* at 7-8 (American Enterprise Institute Forum, 1979).

"The power of amendment in Article V is itself constitutionally limited . . . Thus Congress should have the power to restrict the convention to those amendments that deal with the general issue or problem that had inspired two-thirds of the States to call for a convention." — *Amendment by Convention: Our Next Constitutional Crisis?*, 53 N.C. L. Rev. 491, 508 (1975).

"The two amendment processes, therefore, must be viewed as equal alternatives. The reports of the Convention do not rebut this conclusion and provide no indication that the Framers intended for state legislatures to concern themselves only with total constitutional revision, while Congress alone would initiate specific amendments." *Robert M. Rhodes, A Limited Constitutional Convention*, 26 U. Fla. L. Rev. 1, 9 (1973).

"I think the convention can be limited. * * * [T]he fact is that the majority of the scholars in America share my view." — *Hon. Griffin Bell, Attorney General of the United States, Issues and Answers*, February 11, 1979.

"While this question then has never been directly decided by the Congress or by the courts, it seems that the whole scheme, history and development of our government, its laws and institutions, require the control of any convention and the most logical place for exercising that control would be in the enabling act convening it, or in some other federal statutory law. Under Article V, Congress calls the convention after the required number of states have submitted petitions. It has the duty to announce the will of the state legislatures in relation to the scope of the convention's business and, under the necessary and proper clause, it may set the procedures and conditions so that the convention may not only function, but that it may control the convention's actions to make certain that it conforms to the mandates and directives of the Congress, the state legislatures, and ultimately the people. This does not mean that the convention may not exercise its free will on the substantive matters before it; it means simply that its will shall be exercised within the framework set by the Congressional act calling it into being." — *Cyril Brickfield, Problems Relating to a Federal Constitutional Convention*, reprinted by House Judiciary Committee, 85th Congress, 1st Session (1957), p. 18.

"The argument that an Article V convention is sovereign and therefore beyond control is specious. The convention is but a constitutional instrumentality of the people, deriving all its powers from Article

V . . . an agreement that a convention ought to be held is required among two-thirds of the state legislatures before Congress is empowered to convene such a body. If the agreement contemplates a convention dealing only with a certain subject matter, as opposed to constitutional revision generally, then the convention must be logically limited to that subject matter. To permit such a body to propose amendments on any other subject would be to recognize the convention's right to go beyond that specific consensus which is the absolute prerequisite for its creation and legitimate action." — *Professor Arthur Earl Bonfield, The Dirksen Amendment and the Article V Convention Process*, 66 Mich. L. Rev. 949, 994 (1968).

"It would seem to be consistent with, if not compelled by, the article for Congress to limit the convention in accordance with the express desires of the applicant states. If Article V requires that a convention be called by Congress only when a consensus exists among two-thirds of the states with regard to the extent and subject matter of desired constitutional change, then the convention should not be free to go beyond this consensus and address problems which did not prompt the state applications." — *Note, The Proposed Legislation on the Convention Method of Amending the United States Constitution*, 85 Harv. L. Rev. 1612, 1628 (1972).

"The most natural reading of the history behind Article V supports the view that the framers wished to assure the people that even if the central government were unresponsive to defects in the Constitution, the people have another option . . . This [constitutional convention] check on the central government . . . . is not effective if people have only the option of an all or nothing approach. The convention method was supposed to be an equal means of amending the Constitution." — *Professor Ronald Rotunda, University of Illinois Law School, Letter to Subcommittee on Constitution*, Sept. 27, 1979, Hearing Record, p. 507.

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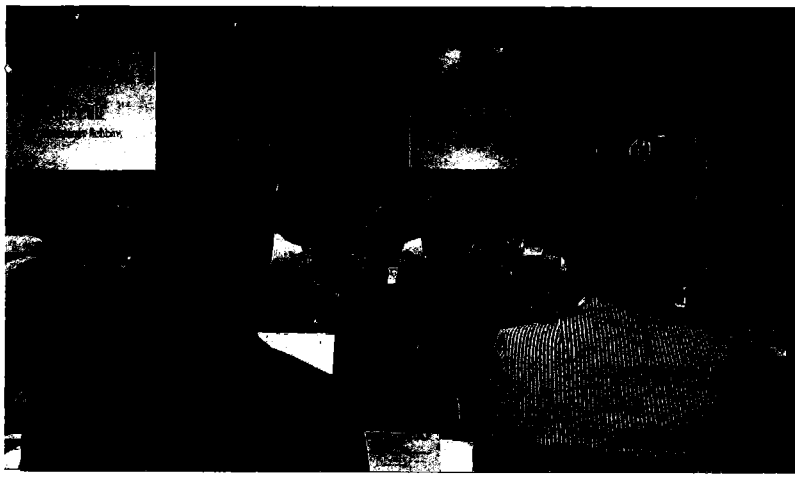

"The fact that the states today are hosting annual meetings based on the same set of rules that our Founding Fathers followed over 200 years ago, proves that these rules are not dead, or lost, or ignored as some claim. To the contrary, they are vibrant, and healthy, and followed to this day."

Runaway Convention? Meet the ULC: An Annual Conference of States Started in 1892 That Has Never Run Away

Ken Quinn, Regional Director for Convention of States Action

For decades fearmongers and naysayers have been claiming that the 1787 Constitutional Convention was a "runaway" convention and therefore if an Article V convention for proposing amendments were held today that it would "runaway" also.

Constitutional attorney Michael Farris (Can We Trust The Constitution? Answering The Runaway Convention Myth) has conducted a thorough inspection of the commissions from the state legislatures and concluded that the delegates to the Constitutional Convention acted well within their powers. The charge that the delegates exceeded their authority was originally refuted by James Madison in Federalist 40, The Powers of the Convention to Form a Mixed Government Examined and Sustained.

Leading Article V scholar Professor Robert Natelson has discovered and researched over thirty multi-colony and multi-state conventions, proving that the process of states convening to address critical issues was a well-established practice (Founding Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments").

CONVENTION of STATES
ACTION

Moreover, the procedures at the conventions were incredibly uniform: each state is represented by "commissioners" appointed in a manner determined by the state legislature, commissioners had no authority to act outside the scope of their commission, each state had one vote regardless of its population or how many commissioners it sent. Not a single one of these thirty-plus conventions "ran away."

Still the naysayers persist and claim that times have changed and a convention could never be held in today's partisan political climate without running away and destroying our Constitution. Reality, however, paints a different picture. In fact, the States have been meeting together every single year since 1892 (except 1945) to propose laws through the Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws).

The Uniform Law Commission: Federalism in Practice

Few people are familiar with the Uniform Law Commission, but almost everyone benefits from their work—in fact, anyone who has ever purchased goods from a seller in another state has been the beneficiary of laws drafted by the ULC. The States created the ULC as a way to promote federalism and exercise their Tenth Amendment powers.

The States recognized that the Tenth Amendment gave them great power to shape the development of American society, but they also realized that with that power came certain dangers. The reservation of certain powers to the States meant that the States could enact different laws on the same subjects creating all kinds of a confusion and difficulty for people dealing with multiple states.[1] Of course in some cases this can be a good thing: California and Texas are different states with different heritages and different people—they should be able to enact different laws to represent their citizens. But in others it can be positively crippling. Just ask the Founders who watched their newly founded country nearly tear itself apart due to different commercial systems and regulations in the States.

This has been the perpetual struggle of all federal systems throughout history. One solution is to centralize power in a federal government, and have it enact laws forcing the States to act together. The other is for the States to voluntarily come together and cooperate on issues of common concern, like commerce. In 1892, the States chose the second option and created the Uniform Law Commission.[2]

Thanks in large part to the ULC, today the States have uniform laws on a number of topics, including the Uniform Commercial Code, effectively keeping the federal government at bay and preserving the fragments of federalism. If not for the foresight of the States in 1892, much of the legal framework that allows for seamless and efficient cooperation between the States in our modern commercial system would never have been developed, or, perhaps even worse, would have been created and preempted by the federal government.

This reservation of certain powers to the States, however, created the possibility that the States could and would enact diverse statues on the same subjects, "leading to confusion and difficulty in areas common to all jurisdictions."[1] The first annual meeting of the ULC was held in Saratoga, New York. Twelve representatives from seven states attended: Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania (Mississippi's appointed commissioners were unable to attend).[3] The States recognized that this was a historic moment. The report of the first meeting proudly stated that "It is probably not too much to say that this is the most important juristic work undertaken in the United States since the adoption of the Federal Constitution."

In the more than one hundred years that have elapsed since that time, there has been no official effort to obtain greater harmony of law among the States of the Union; and it is the first time since the debates on the constitution that accredited representatives of the several states have met together to discuss any legal question from a national point of view.[4]

Every year, without fail, the commissioners from the States come together at the ULC's annual meeting to draft and vote on legislation to propose to their states, functioning much like an annual Article V Convention of States, except that instead of proposing amendments, they propose legislation. Today the ULC has nearly 350 commissioners representing all 50 states as well as Washington, D.C., Puerto Rico, and the Virgin Islands.

The Uniform Law Commission Follows the Same Rules that Have Governed Multi-State Conventions Throughout American History

The ULC's process of drafting and proposing legislation is almost identical to the process for an Article V Convention of States and the process used by the Founders at their many multi-state conventions. Much like an Article V Convention of States, at the ULC:

> Each state is represented by "commissioners." The number and selection of commissioners for each state is determined by that state's legislature. [5]
>
> Each commissioner is required to present the commission (credentials) issued to them by their state legislature before they can represent their state. [6]
>
> The ULC's "Scope and Program Committee" reviews all proposed topics up for consideration by the ULC to ensure that they are consistent with the ULC's mission. [7]
>
> The ULC appoints drafting committees to draft the text of each legislative proposal. [8]
>
> Each piece of legislation that is drafted must be approved by the entire body of commissioners sitting as a committee of the whole.
>
> Finally, the commissioners vote on each piece of legislation by state, with each state having one vote. A majority of the States present must approve the legislation before it is formally proposed to the States.
>
> Even once the legislation is formally proposed to the States as a model act, the state legislatures must adopt that legislation to make it binding. Until it is adopted by the state legislatures it remains only a proposal. [9]

The fact that the States today are hosting annual meetings based on the same set of rules that our Founding Fathers followed over 200 years ago, proves that these rules are not dead, or lost, or ignored as some claim. To the contrary, they are vibrant, and healthy, and followed to this day.

Since its beginning in 1892, the Uniform Law Commission has proposed over 300 acts to the state legislatures for adoption. Over the course of that time the commissioners have never exceeded their authority nor has there ever been a "runaway" conference that exceeded the authority or mission of the ULC.

Conclusion

The preposterous notion that the States are incapable of holding a meeting today to debate, draft, and propose amendments to the Constitution because it will "runaway" is not only historically baseless, but is completely undercut by the hard work of the ULC over the past 124 years. It is an undeniable fact that the States are fully capable today of appointing highly intelligent and qualified individuals to research, draft, and propose laws. There is no need to speculate how the States will come together to hold an Article V Convention of States; they are already in the habit of doing so. There is no need to speculate about the rules for a convention; the same rules our Founders followed centuries ago are still followed today when the States assemble to propose laws through the Uniform Law Commission.

1. Walter P. Armstrong, Jr., A Century of Service: A Centennial History of the. National Conference of Commissioners on Uniform State Laws 12 (1991) at 13 (as cited in Robert A. Stein, Forming A More Perfect Union, A History of the Uniform Law Commission, at 3).
2. Robert A. Stein, A More Perfect Union, A History of the Uniform Law Commission, Forward by Sandra Day O'Connor, at x.
3. Walter P. Armstrong Jr., A Century of Service: A Centennial History of the. National Conference of Commissioners on Uniform State Laws 12 (1991) at 11 (as cited in Robert A. Stein, Forming A More Perfect Union, A History of the Uniform Law Commission, at 7).
4. Robert A. Stein, Forming a More Perfect Union: A History of the Uniform Law Commission 8 (2013) (quoting 41 Cent. L.J. 1, 165 (1895)).
5. Uniform Law Commission Constitution, Article II, Membership, Section 2.2 Commissioners. http://www.uniformlaws.org/Narrative.aspx?title=Constitution
6. Uniform Law Commission Constitution, Article II, Membership, Section 2.6 Credentials. http://www.uniformlaws.org/Narrative.aspx?title=Constitution
7. Uniform Law Commission website, ULC Drafting Process, http://www.uniformlaws.org/Narrative.aspx?title=ULC%20Drafting%20Process
8. Ibid.
9. Ibid.

The time has arrived for our state legislatures to stop falling victim to the fear-mongering tactics and conspiracy theories of extremist groups.

The John Birch Society Denies Its History and Betrays Its Mission

Ken Quinn, Regional Director for Convention of States Project

For decades The John Birch Society (JBS) has been using fear tactics to manipulate state legislators into believing that an Article V convention for proposing amendments is a Constitutional Convention. To further their agenda they make the false claim that the 1787 Constitutional Convention was called by Congress to solely revise the Articles of Confederation and that the convention "ran away" because the delegates wrote an entirely new Constitution instead.

These claims are false and have been refuted by historical facts and even the writings of the Framers themselves (see **"Can We Trust The Constitution,"** by Michael Farris, and **Federalist 40**, written by James Madison).

This marketing campaign of fear titled "Stop a Con-Con" has silenced the voice of the people and has paralyzed some state legislatures from fulfilling their duty as the barrier against encroachments by the national government (see **Federalist 85**).

USA PENNSYLVANIA NEBRASKA IDAHO OKLAHOMA MISSISSIPPI INDIANA FLORIDA NEW MEXICO DELAWARE WASHINGTON ILLINOIS WYOMING VIRGINIA NORTH DAKOTA KANSAS SOUTH CAROLINA OREGON TEXAS ARIZONA NEW JERSEY VERMONT CONNECTICUT ARKANSAS NEW HAMPSHIRE KENTUCKY NORTH CAROLINA NEVADA WEST VIRGINIA UTAH HAWAII MICHIGAN ALASKA MASSACHUSETTS CALIFORNIA IOWA LOUISIANA MONTANA RHODE ISLAND WISCONSIN MAINE MINNESOTA MARYLAND SOUTH DAKOTA GEORGIA OHIO MISSOURI TENNESSEE NEW YORK COLORADO ALABAMA

CONVENTION *of* STATES

Instead of supporting the states in their efforts to fight back against an overreaching federal government, JBS has actually helped the federal government to go unchecked by preventing the states from using the very tool the Framers provided to stop such usurpation of power.

The John Birch Society claims to be for "less government and more responsibility," yet when state legislatures try to pass resolutions to actually propose such amendments, JBS actively opposes them and even works to rescind resolutions that have passed!

According to JBS President John McManus, it does not matter what amendment is being advocated by the states; they will oppose it regardless of the topic. JBS works to rescind resolutions even for amendments that they claim they would like to see proposed by Congress, such as repeal of the Seventeenth Amendment (direct election of senators) and the Sixteenth Amendment (federal income tax).

McManus states that only Congress should be allowed to propose amendments to the Constitution. Stop and consider that for a minute. He is actually trying to convince his membership and you as state legislators that those who are daily usurping the Constitution are the only ones who can be trusted to propose amendments to it! Does anyone truly believe that Congress will propose amendments to limit their own power? Of course not!

You see, JBS does not trust you as a state legislator or the people to govern themselves. Does that sound like an organization that supports "less government and more responsibility" to you? JBS will give lip service to the Constitution, but when it comes to the states actually trying to use the Constitution to defend themselves as intended by the Framers, JBS is anti-Constitutional.

However, former JBS leaders were strong supporters of the states calling for an Article V convention for proposing amendments. As you are about to see, they not only understood Article V but they fully advocated for the states to hold a convention to propose an amendment that would fulfill their goal of "less government and more responsibility." That amendment was known as the Liberty Amendment.

In 1944, Willis E. Stone, a descendant of Thomas Stone, a signer of the Declaration of Independence, drafted the Liberty Amendment, which sought to vastly restrict federal authority, cut government cost, protect private enterprises, and repeal the Sixteenth Amendment. Stone ultimately organized the Liberty Amendment Committee in all 50 states and worked for decades to have his amendment proposed either by Congress or by the states in an Article V convention.

Shortly after JBS was founded in 1958 by Robert

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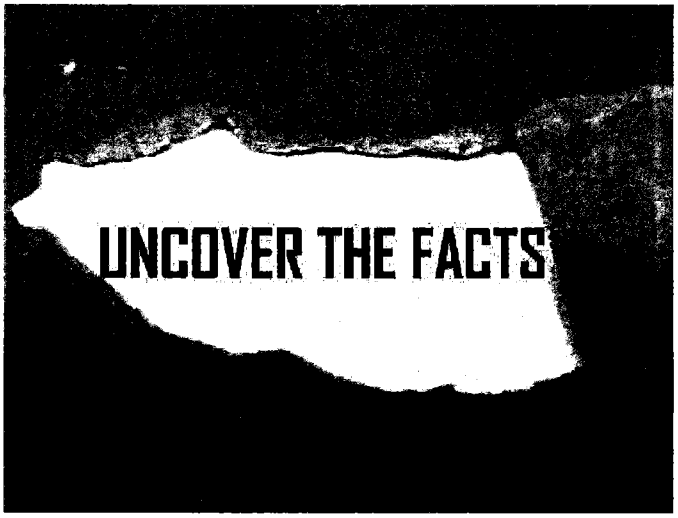

"This country consists of a union of sovereign States which hold the only power to ratify amendments... State legislatures hold concurrent power under the Constitution to initiate such amendments as they, the States and the people within them, require."

— Representative Larry McDonald, John Birch Society National Council & Chairman

Continued from front page

Welch, JBS members began supporting state legislatures in their efforts to pass resolutions for the Liberty Amendment.

As one newspaper reported, "Members of the four Birch societies in Bismarck, the state capital [of North Dakota], were pushing in the legislature a proposal for a constitutional convention to act on an amendment...[the Liberty Amendment]." [1]

In August of 1963, Welch sent an urgent request asking all JBS chapter leaders and members to send telegrams and letters urging the Alabama Senate to pass the resolution calling for the Liberty Amendment. [2]

Welch also produced a 15-minute radio program for JBS called "Are You Listening Uncle Sam," and, in 1967, he dedicated two programs to the Liberty Amendment. On the program Stone explained that his organization was using both methods (Congress and an Article V convention) to propose the Liberty Amendment.

In 1967 California State Senator John Schmitz, who was also a National Director for the John Birch Society, introduced the Liberty Amendment and called for a "national convention." [3]

In 1968 Welch joined Senator Schmitz as special guests at the National Convention of the Liberty Amendment Committee. [4]

Obviously, Welch supported Stone's efforts to have either Congress or the states propose the Liberty Amendment, and he used his time, resources, and relationships to make it happen.

On October 9, 1975, Representative Larry McDonald from Georgia, who served at the time on the John Birch Society's National Council, introduced the Liberty Amendment in Congress and gave extensive testimony — including advocating for the states to propose it in an Article V convention. [5]

In his book titled "*We Hold These Truths,*" Representative Larry McDonald accurately explains that Congress and the states are authorized to propose amendments:

"Congress is authorized to propose constitutional amendments if it pleases. It is obligated to call a special convention to propose constitutional amendments if two-thirds of all state legislatures demand that it do so."

Nowhere in the writings of Welch or McDonald do you find them concerned about a "runaway convention" or that the entire Constitution could be thrown out in an Article V convention. In fact, they were one hundred percent behind the states in their efforts to use Article V to propose amendments.

It is only under the current leadership of JBS that this organization has turned its back on the Constitution and the process the Framers gave us to defend our security and liberties. In so doing, The John Birch Society has denied its history and betrayed its mission.

In fact, in his article, "Falsehoods Mark the Campaign for a Constitutional Convention," McManus denies all of the evidence to the contrary. Though a "constitutional convention" is not the same thing as an Article V convention for proposing amendments, McManus and other current JBS leaders insist upon referring to an Article V convention of states as a "constitutional convention." If the President of JBS is this misleading about the history of his own organization, why would anyone in his right mind trust him in regards to the history of our Constitution?

The time has arrived for our state legislatures to stop falling victim to the fear-mongering tactics and conspiracy theories of extremist groups. As representatives of the people and guardians of the Republic, you are the last resort in defending us against this overreaching federal government by proposing amendments to restore the balance of power back to the states.

Time is running out. Will you be led by fear or will you be a fearless leader?

1. The Warren County Observer, March 27, 1961, page 5
2. The John Birch Society, August 30, 1963, Interim Bulletin
3. Daily Independent Journal February 24, 1967, page 2
4. Colorado Springs Gazette-Telegraph, June 13, 1968, page 36
5. Congressional Record – House, October 9, 1975, 32634-32641)

CONVENTION *of* STATES

A PROJECT OF CITIZENS FOR SELF-GOVERNANCE

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Testimony Against a "Convention of States" (AJR77)

Wisconsin Assembly Committee on Federalism and Interstate Relations
By Andy Schlafly, Esq., on behalf of Eagle Forum of Southeast Wisconsin
(Hearing on Nov. 13, 2019)

Representative Vorpagel, Chair, Representative Schraa, Vice-Chair, and Members of the Assembly Committee on Federalism and Interstate Relations:

Thank you for the opportunity for me to submit this testimony against the so-called "Convention of States" resolution, AJR77.

I submit this testimony on behalf of Eagle Forum of Southeast Wisconsin, which has been active in Wisconsin for more than a decade. I am an attorney who practices before the U.S. Court of Appeals for the 7th Circuit, which presides over federal appeals from Wisconsin and two other states.

Wisconsin has rejected term limits, which is part of AJR77. It does not make sense to vote for an Article V constitutional convention to propose something which Wisconsin itself rejects. Additional reasons to reject AJR77 include the following:

1. ***An Article V convention cannot be limited in scope.*** AJR77 calls for an Article V convention, but the wording of Article V does not allow limiting the scope of it. The delegates themselves will propose amendments without any limitation under Article V. Many scholars, such as the former Chief Justice of the United States Warren Burger, have emphasized that:

> there is no effective way to limit or muzzle the actions of a constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda. The meeting in 1787 ignored the limit placed by the Confederation Congress "for the sole and express purpose." ... A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Letter by Chief Justice Warren Burger (ret.) to Phyllis Schlafly, dated June 22, 1988.[1]

[1] http://www.pseagles.com/Warren_Burger_letter_1988 (viewed 11/10/19).

Phyllis Schlafly opposed use of an Article V convention by anyone in the political spectrum, whether conservative or liberal. Her testimony three decades ago in Oregon against an Article V convention is available on YouTube, where she concluded with:

> Frankly, I don't see any James Madisons, George Washingtons, Ben Franklins, or Alexander Hamiltons around today who could do as good a job as they did in 1787, and I am not willing to risk making our Constitution the political plaything of those who think they are today's Madisons, Washingtons, Franklins, or Hamiltons.[2]

The attendees at the Constitutional Convention 1787 were not only brilliant, but they had also sacrificed their lives to establish freedom for the new United States. They were not influenced by special interests, social media, and so on. They were able to focus entirely on what was best for the future of our country.

AJR77, in contrast, does not impose any limits on how delegates to a new Article V convention could be influenced. They could receive money directly from special interests, in order to push the self-serving agenda of those special interests. Moreover, Wisconsin cannot limit what delegates from California and New York might do or how they might be influenced. AJR77 does not even protect the Bill of Rights.

Our civil rights and liberties would be put at terrible risk by such an Article V convention, and calling for one is the wrong move at the wrong time, amid our current, highly politicized culture. Once the floodgate is opened to this horrible idea, there is no way to contain it.

2. *It Would Not Be a "Convention of States," but a Convention Called by Congress.*

An Article V convention is not a "convention of the States," as AJR77 puts it. Under Article V, ***it is Congress alone that would call an Article V convention***. California would have the most influence over a "convention of the States" because the Supreme Court requires that all representative bodies, other than the U.S. Senate, be based on population: "one man, one vote." AJR77 relies on a false hope by pretending that each state would have an equal vote.

The real name should be a "Convention called by Congress," because that is what it would be under the Article V referenced by AJR77. Changing its name to call it a "convention of the States" is nothing more than a euphemism, and does not alter the fact that Congress alone makes the call.

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[2] https://www.youtube.com/watch?v=7spVo-61_fY (quotation begins at 17:13).

The role of the States is merely to apply to Congress to call the convention. The States cannot limit what Congress does, or what an Article V convention does. Article V itself states that a constitutional convention shall be "for proposing amendments," ***plural***.

Simply put, AJR77 would grant Congress more power to pursue mischief. This would not be good for our Nation.

3. ***State legislatures cannot stop proposed amendments that would come out of a Convention of States.*** One of the biggest myths spread about the Convention of States is that the Constitution will be protected by the ordinary process requiring that 38 state legislatures must ratify any proposed amendments. But that is not true. State legislatures may not even be involved in the ratification process.

Article V of the Constitution permits a constitutional convention ***to create its own ratification process***, using conventions in each state which bypass state legislatures. The 21st amendment was ratified by conventions in each state, not by ratifying votes in state legislatures. In addition, once amendments are recommended by a constitutional convention, the media pressure will be overwhelming to ratify, as it was for the 17th Amendment which was against the interests of state legislatures.

An Article V convention could even change the 3/4th requirement to amend the Constitution. After all, if an Article V convention can change other provisions of the Constitution, then it might revise the requirements for ratification too. The original Constitutional Convention changed the rules in place then for revising the Articles of Confederation.

4. ***Our Constitution is not the problem, and it needs to be defended rather than criticized.*** Opening the door to vague, sweeping changes of our Constitution is a recipe for disaster. Even supporting such a concept is harmful, because it undermines the need to strongly defend our Constitution, which has produced the greatest freedom and prosperity ever known to mankind.

Some argue that the problems faced by our Nation are too immense to be handled by the current Constitution, and that revisions are needed. Supposedly we need a solution as big as the problem. But it is obviously a mistake to bet the family farm on a roulette wheel at a casino as a way to deal with any problem.

Several of the leading advocates for a Convention of States are politicians who abandoned their offices early, without even completing the terms of office that they ran for. Did they tell voters prior to their elections that they were not going to complete their terms of office? Tom Coburn's constituents sent him to Washington, D.C., to represent them and defend the Constitution. Instead, he quit early (around the end of 2014) and became a paid lobbyist to push the Convention of States for the next five years. He

should have done what he was elected to do, instead of abandoning his job and becoming a lobbyist instead.

While Coburn was in the Senate, he voted to confirm as Solicitor General someone who had no courtroom experience and who does not support adhering to the original meaning of the Constitution. The Constitution gave Coburn, as senator, the power to block nominees who lack appropriate experience and do not defend the Constitution. It was Coburn who failed, not the Constitution.

Similarly, Jim DeMint left his Senate seat early, before he had even completed half of that term of office. Why didn't he simply finish the job he was elected to do?

The Constitution is not the problem. What is needed is to elect candidates who will do their job and defend the Constitution, rather than pretending it is somehow the problem.

5. ***Dark money is pushing the Convention of States, and we do not want billionaires rewriting our Constitution.*** We have many laws against corruption of politics by money. But billionaires find ways around these laws, and would control a constitutional convention to write amendments that advantage them the most.

There is not bipartisan support for the Convention of States, but there is bipartisan opposition. Both the Republican and Democratic National Platforms have declined to endorse a Convention of States. Less than a year before he died, the late Justice Antonin Scalia called an Article V convention a "horrible idea," as I personally witnessed and which was published by a reporter. But the Convention of States project has misled people by ignoring this strong statement by Justice Scalia, and instead has exaggerated an ambiguous comment he made in 1979 long before he became a Supreme Court Justice.

Our Bill of Rights could be rewritten, or simply removed. Our Electoral College, which makes Wisconsin one of the most important states in the upcoming presidential election, could be eliminated. Civil rights could be terminated by a convention sought by AJR77, which does not even purport to protect the Bill of Rights.

Our Constitution was a providential result of a unique time, written entirely by Framers who had sacrificed their own lives for our country. It was made possible in 1787 without the overwhelming pressures of the modern media, special interest groups, and hired political agitators.

Billions were spent on the last presidential election, but hundreds of billions would be at stake in rewriting the Constitution. Monied interests and the media would easily take control of the process, and no one should favor giving them the keys to our Constitution.

6. ***Important Questions Convention of States Promoters Refuse to Answer.***

The Convention of States is being pushed by dark money, with a secret agenda. The recipients of that money conceal the identity of their billionaire donors, and hide their agenda. ***Ask their spokesmen who is bankrolling them to the tune of millions of dollars, and watch how they will not provide an honest and complete answer***. No one should entrust billionaire manipulators of politics with rewriting our Constitution.

The vague stated goals of AJR77 could mean almost anything. The phrase "fiscal restraints" can require reducing the pensions of those in the armed forces. The phrase "limit the power and jurisdiction of the federal government" can undermine our national security, or end drug enforcement. ***What is the real agenda behind the push for a Convention of States?*** Tough questions about this need to be asked of the Convention of States promoters.

7. ***A Fiscal Note Is Necessary.***

Wisconsin could lose billions of dollars in funds from the federal government if AJR77 were adopted, and a convention were held. There should be a proper fiscal note attached to AJR77.

Please reject AJR77. Thank you for allowing me to submit this testimony on behalf of Eagle Forum of Southeast Wisconsin.

Andy Schlafly, Esq.
Eagle Forum of Southeast Wisconsin
(908) 719-8608

Written Testimony against Wisconsin AJR77 (SJR57)
by Judi Caler
November 13, 2019

To The Honorable Tyler Vorpagel, Chair; The Honorable Michael Schraa, Vice-Chair; and Members of the Wisconsin Assembly Committee on Federalism and Interstate Relations:

My name is Judi Caler, and I'm President of Citizens Against an Article V Convention. Thank you for the opportunity to submit written testimony against AJR77 (SJR57).

All Applications asking Congress to call an Article V convention jeopardize our federal Constitution and endanger our Liberty.

With or without Article V, convention Delegates, as sovereign Representatives of "We the People," have the inherent Right "to alter or to abolish" our "Form of Government," as expressed in the Declaration of Independence, para 2. And we don't know who those Delegates would be or how they'd be selected!

That's why James Madison, Father of our Constitution, **trembled** at the prospect of a second convention. [Letter to Turberville, Nov. 2, 1788, para 2.]

Legislators have been assured by the Convention of States Project (COSP) that State Legislatures would appoint convention Delegates, set the Rules, and thereby control the convention. Wisconsin passed delegate bills in 2017 to this effect. ***But state law can't control convention Delegates!***

Article V provides that when 2/3 of the State Legislatures ***apply*** for it, ***Congress*** calls a convention. The convention would be ***a federal convention called by Congress*** to perform ***the federal function*** of addressing ***a federal constitution***. The Necessary and Proper clause of the U.S. Constitution [Art. I, Section 8, last clause] puts ***Congress*** in charge of setting the Rules to carry out the Call. Any delegate bill Wisconsin passes is superseded by the U.S. Constitution!

And once the convention is convened, the Delegates can change the rules and do whatever they want. State laws limiting Delegates serve only to give legislators a false sense of security, so they'll vote ***for*** the application. After the convention convenes, it will be too late to stop it.

COSP claims they know the rules, because there have been dozens of "interstate conventions" setting historical precedent. But in fact, there is ***no precedent*** for an Article V convention, as we've never had one. Interstate conventions are irrelevant.

The closest precedent we have to an Article V convention is the Constitutional Convention of 1787 called by the Continental Co*ngress "for the sole and express purpose of revising the Articles of Confederation,*" our first Constitution. That convention resulted in the Delegates' ignoring their instructions and proposing a new Constitution which created a new Form of Government.

And don't expect the "safeguard" of ratification by ¾ of the states to save us. The Delegates can change that process too, just as they did in 1787.

You are entering unchartered territory! Imagine Delegates with more power than Congress and State Legislatures; subject to bribes and threats from special interests; rewriting our Rule of Law in these politically charged times! And for what? COSP claims the purpose is to get us back to the original intent of the Constitution--the enumerated powers--something already written into our Constitution. The Constitution isn't the problem!

What's more likely? That the **globalists** funding the push for an Article V convention think they can do a better job than the Framers in securing our Liberty? Or that our Constitution, as written, is getting in their way?

Please don't risk our Constitution by triggering an Article V convention! VOTE "No!" on AJR77 (SJR57), and any other applications from Wisconsin asking Congress to call an Article V convention. Thank you for your consideration.

Respectfully,

Judi Caler, President
Citizens Against an Article V Convention
judicaler@hotmail.com

Written Testimony in OPPOSITION to AJR77

Honorable Representative Vorpagel, Chair, Representative Schraa, Vice-Chair, and Members of the Assembly Committee on Federalism and Interstate Relations:

We are American citizens, born under the Rule of Law: the ***United States Constitution***, which guarantees us certain unalienable [God-given] rights:

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."
http://www.archives.gov/exhibits/charters/declaration_transcript.html

And now, in the 50 states, we see **legislators** are being convinced **they** can **vote away** our constitutional compact with the *United States of America*!

How is it possible that our country, through its elected officials, has come to such a **gross misunderstanding** of the limits government was given over the rights of "We the People"?

Please listen to why on February 15, 2017, **Montana Representative Brad Tschida, a COS sponsor, testified against his own legislation after getting the facts:** https://www.youtube.com/watch?v=WmkbgmvRr4I

Where were we when 300 million people **asked** for state legislators to **take away** their birthright protections afforded by the *U.S. Constitution*? Asking citizens *hasn't* happen, and it *isn't* happening now!

Promoters of an Article V constitutional convention have created an ever growing **mirage** of excuses to justify opening our *U.S. Constitution*, saying edits and amendments can be safely made! The historic facts could not be further from the truth, as seen in the voiding of the *Articles of Confederation,* in order to replace it with the *U.S. Constitution in 1787*!!

WHAT is the "elephant in the room" about opening our *U.S. Constitution?* WHO are these "delegates", who will **by federal law** hold *plenipotentiary* powers within a constitutional convention?

ANSWER: The Article V constitutional convention "delegates" will exercise *sovereign power*, which is **superior to the states and the federal government**, to proceed with their **own rules of law**! Once called by the *U.S. Congress*, the constitutional convention "delegate body" is **unencumbered by government, thereby legally empowered to supersede all laws existing before its assembly**.

QUESTION: WHO will be "given the keys" to opening the *U.S. Constitution*? WHO will decide the persons, **now unknown to us,** who will be given the *most extraordinary powers on earth* over the American people?

WHO are YOU giving **all your rights** away to? WHO do YOU **trust** with the power to **irreversibly** change the rest of your life and that of generations to come? What **price** will YOUR freedom pay to chase the promised return for giving up your cherished constitutional compact with the *United States of America...?*

We implore you to carefully consider your position. Our children's future to live in a free society and the greatest nation on earth is in your hands.

"Abide By The Constitution, Not Change It"

Respectfully,

Betty Lucas
Mechanicsville, Virginia 23111
804-212-1165

November 13, 2019

Assembly Committee on Federalism and Interstate Relations

Subject: Support for Assembly Joint Resolution 77

Dear Members of the Committee:

I am submitting this testimony to explain my support for Assembly Joint Resolution 77. The resolution before the Committee, AJR 77, is a call for a convention of state delegations to be convened pursuant to Article V of the federal Constitution the purpose of deliberating on whether to propose amendments related to three subject areas: (1) term limits for federal officials; (2) limit the scope and jurisdiction of the federal government; and (3) impose fiscal restraints on the federal government.

AJR 77 is a resolution about the right to self-government and federalism. The idea of self-government means different things to different people, of course, but the key defining characteristics under any modern conception of the phrase is a combination of popular sovereignty and individual rights. In today's hyper-polarized, unconventional political climate, the idea that each individual is a sovereign unto himself is a core tenant of all modern political movements, from conservatives and libertarians to liberals and democratic socialists (i.e. progressives). Notably, a belief in self-government is the theoretical difference between "democratic socialism" from Socialism with Chinese Characteristics and Soviet style socialism. *Everyone believes in self-government.*

In the United States, of course, the power of self-government has always existed in the form of representative democracy. In a functioning representative democracy, sovereign political power truly flows from the people to elected representatives, such that election outcomes and consequences are driven by the will of the people. *The people lead the government.* Our representative democracy has historically been a functioning one. That's why politicians have always been focused on understanding and alleviating "voter concerns"—at least when they are campaigning for reelection.

It is safe to assume that self-government cannot exists when too much power centralized power in the hands of too few elected representatives, even if elections are completely free and fair on paper. As an extreme example, imagine if the President were the only elected official. As a more realistic example, consider if state governments were administrative arms of the federal government. In such a system, only a miniscule amount of power is vested in the individual. amount of political power. The individual becomes one in a million instead of one in ten thousand. Influencing election outcomes and consequences becomes such an expensive and competitive undertaking that only the wealthiest, most well connected people have the means to meaningfully participate. Meanwhile, hierarchy replaces competing ambitions, rival political interests become

aligned, and most legislative power gets delegated to unelected officials. The list of pernicious effects goes on and on. If the states were merely fifty regional administrative districts of the federal government, then we would live in an autocracy, not a representative democracy. *The government would lead the people.*

Unlike arguments in favor of self-government, arguments in favor of Federalism are commonly received with skepticism, especially by self-described Liberals and progressives. The skepticism rooted the history of the argument in favor of states' rights as the mainstay rallying cry of racist tyrants in the south, and is now also based on concerns about state and local government discrimination against other minority groups.[i] The federal government supreme power to protect the individual against racial discrimination at the hands of state governments is the result of a long and violent struggle that ended less than a lifetime ago. The national guard was mobilized to enforce a Supreme Court decision *less than two generations ago.* The federal government's power to protect individuals against racial discrimination at the state and local level was settled by violence and force. People fought to secure it, and people would fight to protect it. Thus, while racial discrimination remains a central topic in political discourse, it is now a question of what should be decided as opposed to who decided. This is a reality that many progressives have come to acknowledge. As the Dean of Yale Law School and leading federalism scholar Heather Gerken wrote, "States cannot shield their discrimination from national norms, as they did during the days of Jim Crow. If a national norm exists, the federal government can enforce it, provided it's willing to spend the political capital to do so."[ii]

The state-federal balance of power has ebbed and flowed over time. The first era was "enumerated powers" federalism. Dean Gerken and Randy Barnett, a leading federalism scholar who is a self-described originalist, recently co-authored a brief history of Supreme Court federalism doctrine. The article is noteworthy because it reflects the fact that everyone agrees where we have been and where we are now. Supreme Court doctrine on this issue of federalism can be divided into four distinctive eras. The first era was "enumerated powers federalism," when state power was limited almost exclusively by state constitution. The second era, "fundamental rights federalism," is marked by attempts to limit state power via the reconstruction amendments. While Congress' efforts were marginally successful, the efforts were mostly thwarted by the Supreme Court in cases such as *Plessy v. Ferguson* (1896). Fundamental rights federalism was followed by the era of "New Deal federalism." In that era, President Franklin D. Roosevelt and Congress adopted, and the Supreme Court approved, broad interpretations of the Commerce Clause and Necessary and Proper clause to effectively eviscerate all constraints of the enumerated powers doctrine. Finally, over the course of the past thirty-years, the Rehnquist and Roberts court have attempted to place some limit federal supremacy of regulatory power by delineating "zones of state autonomy" which are

protected against federal encroachment. This modern era of federalism is termed "state sovereignty federalism," and has had nominal to no effect in limiting the scope of federal regulatory power.

The legal scholars writing about federalism today can mostly be divided into two broad categories. One category is the originalists who support traditional "state sovereignty federalism." The originalists favor maintaining and reinvigorating state sovereignty over certain areas of government concern. The other category is often referred to as "process federalism." Scholars who favor process federalism argue that the idea of dual-sovereignty is an antiquated view of federalism and that we should transition to an era in which the federal government reigns supreme over all areas of government concern, subject only to the political will of voters. There are many variations of process federalism, but the basic idea is that the state-federal balance of power should be entirely a matter of electoral politics. The people are free to go to the voting booth and vest their power in whichever level of government they chose.

Recently, a third brand of federalism has started to emerge, "national federalism" or "progressive federalism." This conception of federalism was first set forth by Heather K. Gerken, the Dean of Yale Law School and one of the co-authors of the article discussed above. Progressive federalism falls somewhere between the other two camps. Gerken's progressive federalism rejects the idea that the states truly have sovereign power, but argues that they should continue to operate as semi-autonomous units of government. As she puts it, we should "focus on the power of the sovereign, but the power of the servant." "State power comes from integration and reliance, not separation and autonomy." According to Dean Gerken, before President Trump was elected, her writings went over with her colleagues like a lead balloon. Since 2016, however, many of colleagues in the "process federalism" camp have begun to see great value in her arguments, as they seek to use state and local autonomy as an outlet to "resist" federal policies they oppose.

Progressive legal scholars are not the only people starting to rethink their views about the virtues of hyper-centralized government power. Democrat politicians are taking note too. In 2017, Speaker of the House Paul Ryan and House Minority Leader Nancy Pelosi established the Speaker's Taskforce on Intergovernmental Affairs to "examine ways to restore the balance of power between the federal government and states, tribes, and local governments." Among other things, the Task Force recommended reestablishing the U.S. Advisory Commission on Intergovernmental Relations (ACIR) established by President Eisenhower in 1959 and operated until 1996. The "Restore the Partnership Act" (HR 3883) was recently introduced as a bill to do just that.

Bipartisanship was a major theme of the subcommittee hearing on HR 3883, which was held this July. Chairman Gerald Connolly (D, VA), a former long-time county elected official, wrote in his opening statement:

> A federated system that works and delivers real results for our constituents is a fundamental to our system of governance as free and fair elections. Without either, confidence and trust in our institutions are diminished."

The sands of the federalism discussion are shifting. Contrary to popular opinion, the political landscape today is conducive to finding common ground at an Article V convention. Progressives are looking and President Trump and asking themselves whether decentralized power might play an important role in protecting and advancing their political interests.

* * * *

In my opinion, an in-depth risk assessment of our current system of federalism as a check against tyranny would result in consensus on some structural changes. I think two potential threats warranty particularly close attention.

The first threat is the federal government's monopoly power to coin money in an international monetary system based on fiat currency rather than commodity-back currency. The federal government's power to coin money is relevant to self-government and federalism because it provides a major fiscal advantage to the federal government relative to the states, and the advantage today is greater than ever before.

The power to coin money has always been somewhat of a fiscal advantage because it provides a third means for financing spending: printing money. A State, on the other hand, may only financing spending by taxing its citizens, borrowing on its own credit, or through "fiscal transfers" of government funds. The technical term for creating new money to finance government spending is "debt monetization." To monetize debt, Fed creates new currency (by changing numerical inputs on a computer) and using the new money to purchase Treasury bonds. When the bonds mature, the Fed roll its bonds over for new bonds, thereby alleviating the Treasury's obligation to pay down debt. The Treasury then uses the money that it saved by not paying the Fed to cover the budget deficit. The Treasury then uses to the newly minted money to cover the budget deficit.[iii] *Money does grow on trees*, just ask Congress.

The Treasury's balance with the Fed is kept secret from all elected officials. *The Fed's balance sheet is not subject to any Congressional or White House oversight.*

The power to monetize debt allows Congress to claim the credit for politically popular spending without shouldering the blame of politically unpopular taxes. States, on the other hand, must finance their spending through by taxing, borrowing, or "fiscal

transfers" from the federal government (i.e. federal grant money, which may or may not have grown on trees).

Historically, the ability of a government to simply print and spend money has been greatly constrained by the destructive effects of inflation and hyperinflation. When new money is created out of thin air, there is more money chasing the same amount of goods and services, resulting in a rise in prices (i.e. inflation). The precisely predictable, devastating effects of inflation have always placed a hard practical constraint on the ability of the governments to print and spend money to its own advantage.

Whether inflation will continue to provide a hard constraint limiting debt monetization to historic level is an open question. In 1976, President Nixon snipped the last thread tying the U.S. dollar (USD) to gold when he issued an executive order stating that the U.S. would no longer redeem foreign currencies for gold, thereby ending the thirty-year era of the post-war Bretton Woods system.

The significance of this change for purposes of federalism because it has improved the ability of the federal government to borrow money and monetize debt. At the start of the Bretton Woods era in 1948, to total amount of international reserves held by all central banks was $49.5 billion, of which $34.5 billion was gold and $13.4 billion was "foreign exchange."[iv] By 1968, those number had increased to $73.5 billion, $37.8 billion, and $29.1 billion respectively. At that time, the $29.1 billion of total foreign exchange holdings (dollars plus other currencies) was just over 2% of United States GDP. In 2011, by contrast foreign central banks held roughly $10 trillion in foreign exchange reserves. Of the $10 trillion, roughly $6 trillion, or 33% of United States GDP, was held in dollars. "This enormous international appetite for safe dollar assets has given the U.S. government the largest credit line in economic history."

A second important fact to consider is advancement in the science of fiat currency monetary policy. In 2005, Federal Reserve Chairman Alan Greenspan made the following statements in testimony to Congress:

> [C]entral bankers began to realize in the late 1970s how deleterious a factor the inflation was. And, indeed, since the late 70s central bankers generally have behaved as though we were on the gold standard. . . . So that the question is: Would there be any advantage, at this particular stage, in going back to the gold standard? And the answer is: I don't think so, because we're acting as though we were there.

Roughly one year earlier, Ben Bernanke, later succeeded Greenspan as Fed Chairman in 2006, co-authored a paper titled, Monetary Policy Alternatives at the Zero Bound: An Empirical Assessment. Most of the paper is highly technical—far too technical for me to understand. The topic is simple enough though. The paper is an empirical-based

discussion of alternative "tools" that might be available to central banks in times of economic crises under a fiat based international monetary system that were not available under a gold-based standard.

Berneke put some of his theories into practice during his tenure as Fed Chariman. In 2008, the Fed engaged in the largest round ever of debt de-montization by selling roughly $300 billon in Treasury to banks in exchange for bank debt. When attempt to stave off the Great Recession failed, the Fed began to monetize debt at rates unseen since World War II. At the same time, the Fed began purchasing large amount of debt, much of which was comprised of mortgage-backed securities. (Fed purchases of Treasury bonds and GSE debt are shown in the attached graphs.

The Fed's large injections of money into the economy through debt monetization have not yet lead to inflation in the Consumer Price Index (CPI). This phenomenon has people scratching their heads and wondering if the Fed has figured out how to defy the laws of the gold-standard. (A graph plotting the historical rates of debt monetization and CPI inflation is attached).

Finally, the Great Recession has also resulted in another unprecedented outcome: while annual inflation rates averaged 1.50 percent from 2011 to 2017, the rate on the one-year Treasury bill averaged 0.44 percent. Thus, for much of the Great Recession the federal government has been "borrowing money" at negative interest rates. The effect of the spread between the inflation rate and interest rate is the same as a bank loaning $1,000.00 today in return for repayment of $900 later. In a negative interest rate scenario, the creditor pays the borrower to borrow.

The fact that the federal government was able to "borrow" money at negative interest rates combined with the fact that we are not yet seeing CPI inflation from the quantitative easing. This apparent detachment between currency creating and inflation has important implications for the future of state-federal relations, as advancements in the science of monetary policy have the potential to greatly increase the federal government's fiscal position relative to state governments. I count myself among those who believe that the inflation is merely sitting dormant, and the bursting of another economic bubble is on the horizon. However, even if that happens, there is no guarantee that the Fed will always fail in the future.

* * * *

A second threat to the future of self-government the potential for the federal government to weaponize its national security powers to interfere in elections. Specifically, the use of federal national security powers to sabotage of elections.

The federal government spies on all of us all of the time, and it has an overwhelming mandate to do so. The mandate is a preference for maximum national security over minimum privacy, *on the condition that the government strictly uses the privacy intrusions to advance national security interests*. Intelligence officials and elected officials can weaponize the ederal government the power to spy on all of us all of the timeconstitutional protection, the federal government has the power to weaponize the information against certain politicians or candidates for office. In my political science college course, I remember people wondering out loud how many presidential administrations would pass before the government's new spying apparatus would insert itself into the political process. It did not take long to get the answer.

The involvement of our intelligence agencies in the 2016 election should terrify everyone, including President Trumps most ardent supporters and opponents. President Trump's supporters should be terrified by the prospect of our federal government using its power to interfere in the election, while his opponents should be terrified by the need for our intelligence agencies to use their power to protect the integrity of elections. The idea of massive government surveillance programs conducted without any suspicion of wrongdoing would have been inconceivable to an American in 1976: *a prediction about the fate of the Soviet Union*.

* * * *

The time is ripe for a serious discussion about the security of our right to self-government in the face of emerging technological and societal changes in the 21st century. An Article V Convention provides the best forum for discussing these important issues because it would present an opportunity to fulfill the role of virtuous statesman—a status that very few politicians manage to achieve. The delegates at an Article V Convention would have little incentive to engage in unconstructive political theater and every incentive to search for common ground on non-partisan issues of first principles.

I hope that you will join me in supporting AJR 77.

Sincerely,

Taylor Rens

Taylor Rens

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[i] *See, e.g.*, Heather K. Gerken, Federalism 3.0, 105 Calif. L. Rev. 1695, 1697.

[ii] Heather K. Gerken, Distinguished Scholar in Residence Lecture: A User's Guide to Progressive Federalism, 45 Hofstra L. Rev. 1087, 1095 (2017).

[iv] Simon Johnson and James Kwak, White House Burning: The Founding Fathers, Our National Debt, and Why it Matters to You, 66 (2012).

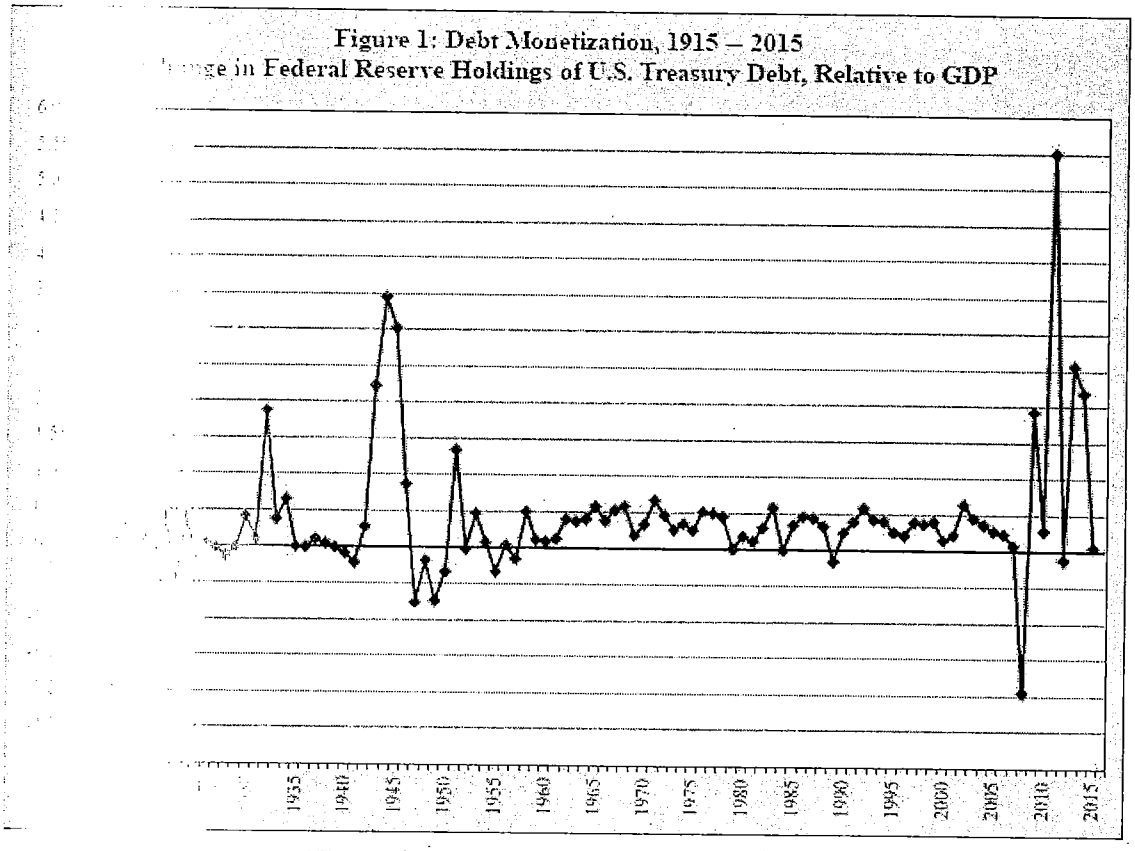


Figure 1. Debt Monetization, 1915-2015

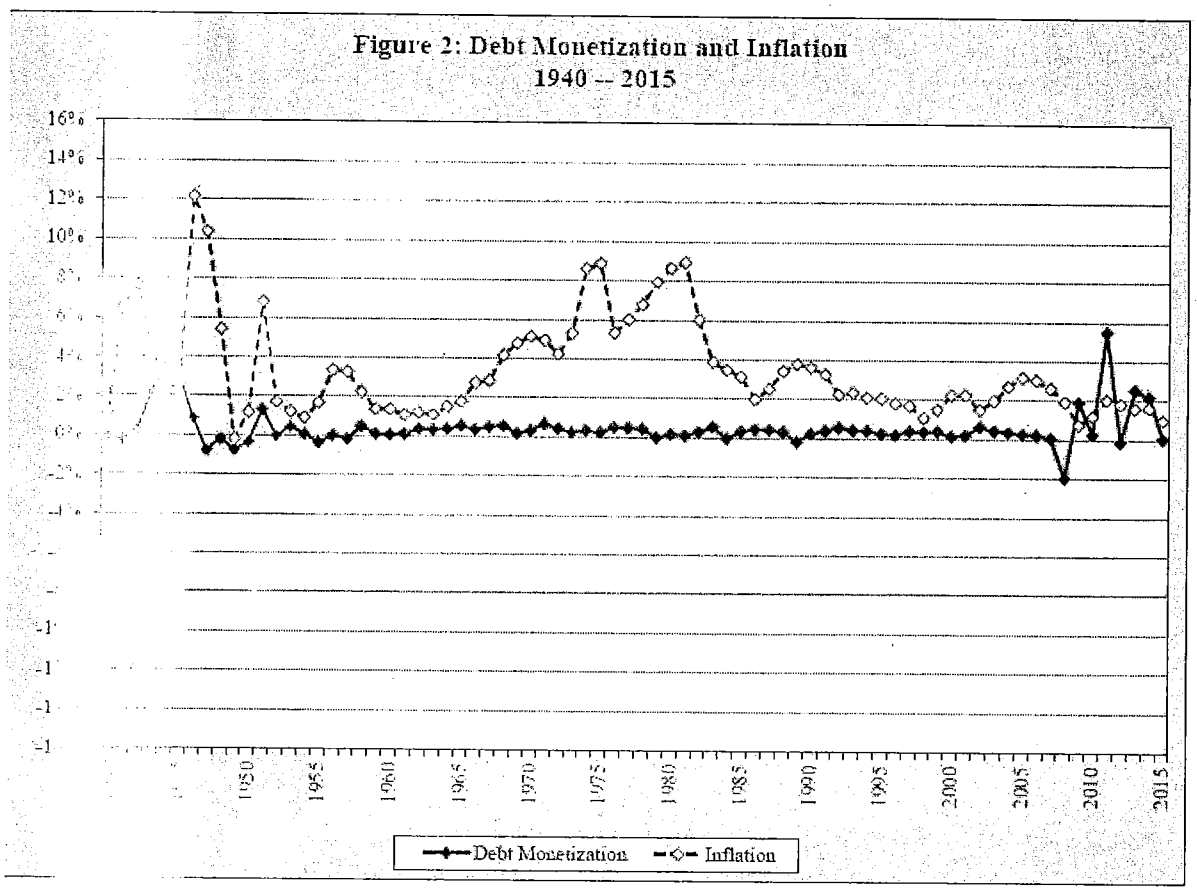
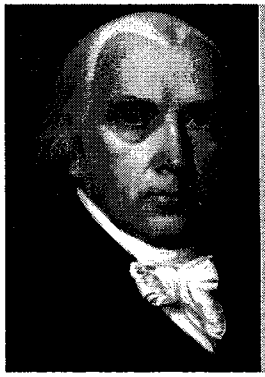


Figure 2. Debt Monetization and Inflation, 1940-2015

Article 5 of the US Constitution: What "Convention of States Project" (COS) isn't telling you



Having witnessed the difficulties and dangers experienced by the first Convention, which assembled under every propitious circumstance, I should tremble for the result of a Second

James Madison's letter of Nov. 2, 1788 to Turberville

By Joanna Martin, J.D.

1. Article 5 provides two ways to amend our Constitution: *Congress* (1) proposes amendments and sends them to the States for ratification (this was done with our existing 27 Amendments); or (2) calls a convention for proposing amendments if 2/3 of the State Legislatures apply for it. We've never had a convention under Article V - *they are dangerous*! [1]

2. But today, various well-funded factions are lobbying State Legislators to ask Congress to call an Article V convention. One faction, the "Convention of States Project" (COS), claims to be for limited government and is marketing the convention to appeal to conservatives. **COS claims (falsely) that our Framers told us to *amend* the Constitution when the federal government *violates* the Constitution.**[2]

3. COS's claim is **absurd** – it's like saying that since people *violate* the Ten Commandments, God should *amend* the Ten Commandments.

4. COS's claim is **false**. Not only did our Framers never say what COS claims,

- Our Constitution *already limits the power and jurisdiction of the federal government to a small handful of enumerated powers* (they are listed on this one page chart).[3] Furthermore, it's impossible to rein in the federal government with amendments because when the feds usurp powers not delegated, they are ignoring *the existing constitutional limitations on their powers*.

- All of the proposed amendments produced by COS and their sympathizers markedly INCREASE the powers of the federal government by delegating powers the federal government has already usurped; by granting new powers to the federal government; by transferring power *from* Representatives elected by the People *to* the Deep State; or by stripping States of their existing sovereign powers.[4] See:

  Mark Levin's "liberty" amendments: legalizing tyranny,
  COS Project's "simulated convention" dog and pony show and what they did there,
  The "Regulation Freedom" Amendment and Daniel Webster,
  Parental Rights Amendment: Selling You and Your Kids Out to Big Government
  Wolf PAC's Amendment for "fair and free elections", and
  Term Limits: A Palliative not a Cure [5]

5. *So what's the real agenda of those (primarily George Soros and the Kochs) who are financing the push for a convention?* **A convention provides the opportunity to replace our existing Constitution with a new constitution which moves us into a completely new system of government, such as the North American Union (NAU). Under the NAU, Canada, the United States, and Mexico are economically and politically integrated and a Parliament and combined militarized police force are set up over them.**[6]

The phrase within Article V, "a Convention for proposing Amendments", doesn't restrict the Delegates to the Convention to merely proposing Amendments. Our Declaration of Independence recognizes that a People have the "self-evident Right" to throw off their government and set up a new government.[7] We've already invoked that Right twice: In 1776 we invoked it to throw off the British Monarchy; and in 1787, James Madison invoked it to throw off our *first* Constitution, the Articles of Confederation (AOC), and set up a new Constitution [the one we now have] which created a new government.

This is what happened:

There were defects in the AOC, so on Feb. 21, 1787, the Continental Congress called a convention to be held in Philadelphia

"for the sole and express purpose of revising the Articles of Confederation"

But the Delegates ignored their instructions from Congress, and similar instructions from their States [8] and wrote a new Constitution which created a new government. Furthermore, the new Constitution had its own new mode of ratification: Whereas amendments to the AOC had to be approved by the Continental Congress and all of the then 13 States; [9] the new Constitution provided at Article VII thereof, that it would be ratified when only 9 States approved it.

And in Federalist No. 40 (15th para), James Madison, who was a Delegate to the Federal "amendments" Convention of 1787, invoked that same Right as justification for the Delegates' ignoring their instructions and writing a new Constitution which created a new government.[10]

6. If we have a convention today, the Delegates will have that same power to get rid of our *second* Constitution and impose a *third* Constitution. **New Constitutions are already prepared or in the works!** One of them, the Constitution for the Newstates of America, is ratified by a national referendum (See Art. XII, §1). The States don't vote on it – they are dissolved and replaced by regional governments answerable to the new national government.

7. So why was the convention method added to Article V? **The Anti-federalists wanted it added because they wanted another convention so they could get rid of the Constitution just drafted**. James Madison and Alexander Hamilton understood that a people have the right to meet in convention and draft a new constitution whether the convention method were in Article V or not. So *this is why* Madison and Hamilton went along with adding the convention method to Article V; and *this is why, as early as April 1788,* they and our future first US Supreme Court Chief Justice John Jay started warning against another convention.

8. Using the *pretext* of merely getting amendments, the Globalists want a convention so they can complete their coup against us and get a new Constitution which moves us into the New World Order.

9. States should rescind the applications they have already submitted to Congress.

Endnotes:

[1] That is why James Madison, Alexander Hamilton, four US Supreme Court Justices, and other jurists & scholars warn against it! See their words **HERE**.

[2] See Michael Farris's quote **HERE**. None of our Framers said such a silly thing as Farris claims! Our Framers actually said the purpose of Amendments is to remedy *defects* in the Constitution; and they all knew that *the real purpose of a convention is to get another constitution*.

[3] IGNORANCE is our problem. Americans don't know what our Constitution says. Can *you* recite by heart the enumerated powers granted to Congress over the Country at Large?

[4] Mark Levin's amendment to "grant the States authority to check Congress" [p. 169 of "The Liberty Amendments"] provides that three-fifths of the state legislatures may vote to override a federal statute and certain Executive Branch regulations *provided that* the States do so within a certain time period. When that time period has expired, the States are forever prohibited from exercising the override.

Levin's amendment would strip the States of their long recognized **individual** *natural right* - much written about by our Framers - to **NULLIFY all acts of any Branch of the federal government which violate our Constitution**. See Nullification: The Original Right of Self-Defense and What Should States Do When the Federal Government Usurps Power?

[5] The federal term limits amendment would transfer power *from* US Senators and Representatives (elected by the People) *to* the Deep State (a massive body of nameless, faceless, and unelected bureaucrats who would become the PERMANENT AND TOTALLY UNACCOUNTABLE GOVERNING BODY).

[6] **For the Love of God, your Country and your posterity, READ the Council on Foreign Relations'** Task Force Report on the NAU. This is what the Establishment Elite want *and can get* with a convention!

[7] The Declaration of Independence is part of the "Organic Law" (the ***Fundamental Law***) of our Land.

[8] This Delegate Flyer summarizes the instructions the States gave the Delegates.

[9] See ART. 13 of the Articles of Confederation.

[10] In Federalist No. 40 (15th para), James Madison says the Delegates knew that reform such as was set forth in the new Constitution was necessary for our peace and prosperity. **They knew that sometimes great and momentous changes in established governments are necessary – and a rigid adherence to the old government takes away the "transcendent and precious right" of a people to "abolish or alter their governments as to them shall seem most likely to effect their safety and happiness,"** … "and it is therefore essential that such changes be instituted by some INFORMAL AND UNAUTHORIZED PROPOSITIONS, made by some patriotic and respectable citizen or number of citizens…".

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WISCONSIN
1848

CONVENTION *of* STATES ACTION
WISCONSIN

Dear Committee Members,

We have been asking constituents around the state to write their representatives and explain why this Convention of States movement is important to them. As committee members deciding whether our resolution should move forward or not, we felt it may be important for you to read the reasons why Wisconsin citizens feel the idea of a Convention is the way to keep our country moving forward.

We have also included several articles addressing common questions, issues and objections. Thank you for taking the time to read these letters and moreover, thank you for your consideration.

Vince Gorichan

Wauwatosa WI

I give my thanks to the committee for hearing from my fellow citizens and me.

My name is Vince Gorichan. I am a lifelong resident of Wisconsin. I was born, raised, educated and worked my entire life in Wisconsin. I have to say that I have thrived.

In a moment of boastfulness, I might say I thrived because I was smart, hard working, crafty, clever, lucky, and had good contacts. Maybe **some** of that is **partially** true, but the part that is **fully true** is that I was lucky. I was born in a country that provided freedom, opportunity, choices, and security through the wisdom and sacrifices of others.

Our forefathers fought the most dominate military in the world and prevailed. After they prevailed, they had the unique opportunity to found a government from scratch. That does not happen very often. The founding fathers were very knowledgeable and educated people. The writings of Aristotle, Socrates, and Cicero were part of their knowledge base. They had studied the history of western civilization including that of the Greeks and Romans. They experienced the tyranny of a king. They saw that the dark nature of man seeks, power, fortune and dominance over others. They read John Locke regarding the relationship between the governors and the governed in a just society and governing at the will of the people.

Based on this knowledge and experience, they closely defined the limits and responsibilities of the new government and the relationship between the three branches of the government. They took great pains to provide the checks and balances we have all learned about to blunt the coarse nature of government that can arise. For the most part they were successful.

However, over the course of over two centuries, the power of the government has self expanded. The founding fathers would not be surprised this happened. We now have a central government the reaches into our daily lives and tries to control almost every part of our lives. They have expanded their authority and have caused spending to explode. The national debt is about doubling every decade while the GDP increases about 50% per decade. This is a formula for economic catastrophe. The founders, bless their hearts, have provided us a safety valve to attack this problem. It is the ability of the governed to roll back the power and influence of the government that the founding fathers imbedded in Article V. The other witnesses have and will detail the process, means, and methods on how we can bring back the power and influence back to the States and the People. You do not need an old man droning on about it again.

Our State has already recognized the need to attack the reckless debt. You recently passed a resolution for a balanced budget amendment. Our more mature resolution provides for

reduced government reach and less entrenched deep rooted power that thrives with big spending. This provides the tools to reduce spending. Do you think there is a relationship between full time lobbyists courting entrenched government made millionaire Senators and Congressmen and expanding government spending? I do.

I started this testimony with the statement that I thrived in Wisconsin. That is very true. I live a safe, secure, comfortable life with a wonderful wife. I could have slept late today instead of driving to Madison. If we wanted, we could avoid this cold weather and have a nice second home in Florida or wherever. But we don't. We love Wisconsin with our friends and relatives. We reflect on how lucky we are. When I retired, I thought long and hard on how I would fill my remaining days. As I thought about it, I realized it was my duty to think of the future like the founders did. I in no way compare myself to the founders. I am just an old man in the twilight of my life. But I feel it is my turn to continue the lucky streak for those who will come after me. A lucky streak that continues freedom, opportunity, choices, and security for the next generation.

That is why I am here. That is why I ask you to pass this resolution.

Thank You

Good morning, my name is Dwayne Parkinson from Medford WI.

My wife and I took our kids out of school today, used vacation time and made the 3.5 hour drive; well, 4 with kids; just so I could talk to you for a few minutes about this legislation. It's that important.

In my daily life I'm a Solution Architect. I help organizations solve complex problems using technology. The first step is to identify the problems. Then we determine the scope of the problems to see how big they are. Finally, we make a plan to fix the problems and we execute that plan.

Today, I'm just here to do my job. This legislation identifies problems, but it doesn't define the scope of the problems. How can we agree that these issues deserve our attention if we don't understand how big they are?

So let's give it a try. I bought this hotdog for $1 at a gas station. Our national debt is now over 23 trillion dollars. Every gas station in America would have to sell 137 million hotdogs to equal our debt. That's hard to imagine isn't it?

Maybe we could line up 23 trillion hot dogs end to end to represent the debt. We could lay them out to Mars, and back, 31 times!

See the problem with the debt is it's just too big. We can't wrap our heads around it. What does 137 million hot dogs even look like? I've never been to Mars. I can't grasp how far that is.

Let's take a different approach. A 23 trillion-dollar debt is 310,800 hot dogs for every kid under 18 in America, including vegetarians. That's 31,000 pounds of hot dogs each. That happens to be the exact same weight as a John Deer 700K construction bulldozer.

Finally, we can visualize this problem. Every kid in this country has a big yellow construction bulldozer worth of hotdogs strapped to their back; and more hotdogs magically fall from the sky every single day.

The scope of this problem is huge. Hot dogs aside, if we do nothing, we will crush every child in America under this debt.

As someone who makes a living solving problems, the obvious question to me is: Why wouldn't we solve this problem? We can do basic math.

In my work experience, some people are afraid to tackle really big problems. They think that if they tinker with them, things might get worse and they'll get blamed. So, the safest thing to do is nothing. Just live with it.

But we've got to be the adults in the room here. If we take that approach and kick this down the road, we know it'll only get worse and we'll only have ourselves to blame.

Maybe we don't trust ourselves and the other states. Can we actually execute the plan that was laid out by the Founding Fathers for just such an occasion?

Or maybe we don't trust that plan. After all, none of us has ever seen a convention of states.

In the technology field, you can't be an expert in everything, so we defer to other experts all the time. The Founding Fathers were experts on the topic of a convention of states. Before we had a Constitution, they would get together in "conventions of states" as their normal way of governing.

We should defer to those experts. They gave us this tool for a reason. They expected, yes, expected the states would reign in the very government they were creating, if it ever got out of control.

This legislation simply approves a process for some people, to make some proposals, about some things. It isn't scary. You authorize the process. You approve the changes. You hold the power.

So on one hand we have an unfamiliar process that you control which tackles the problem.

What's on the other hand? Fear, uncertainty, conjecture, doubt? But what else?

An out of control 23 trillion dollar debt that grows by a million dollars every 33 seconds? Another ten million while I'm talking to you today.

Career politicians who game the system and magically become very wealthy while in office?

A federal government that has put itself in charge and uses our tax money as "incentives" to insure that states must comply with their whims. Over 27% of Wisconsin's budget now comes from this increasingly powerful and far reaching federal government.

The Federal Government created this. They haven't fixed it. They've proven they want to expand it and have no intention to ever fix it.

What we have in this hand are the reasons democracies fail. This is what we should fear the most.

You are no different than the founding fathers. You hold the same positions they held. You have the same authority they did. They weren't a bunch of mystical gurus from a far-off land. They were people from the states who fought to change things for the better.

Is it impossible to imagine the states banding together now, to reclaim the republic that they created? If not now, then when?

Is it impossible to imagine bold state legislators signing this bill to change the course of history for the better? If not through this legislation, then how?

Our founding fathers changed history. Now it's our turn, because truly, if not us, then who?

We have to fight for our republic. If we don't fight now, we will sit idly by and watch, absolutely powerless, as our kids get buried in hot dogs.

I encourage you to be bold. Use the power the Founding Fathers gave you and expected you to use. Choose to change history for the better.

Thank you.

Joanne Laufenberg,
Lake Geneva, WI

Hello, I'm here with my 3 sons (Joe, Ben and Bruce). This is even more for them than it is for me

Michael Farris explained the Convention of States Project to us back in 2014 during its infancy.

He explained, "by and large we don't have a personnel problem, we have a structural problem in Washington. The 3000 page, case law, annotated constitution we follow today would be basically unrecognizable by the framers. Modern language has eroded the enumerated powers and they've been allowed to do 'any fool thing' they wish without restraint."

This completely resonated with me instantaneously.

While working at my parent's small lighting agency in the early 90s we were hit with retroactive unemployment insurance increases which totaled almost $8K right after a move, without warning, "due upon receipt". It nearly sunk us. This young kid didn't understand how it was even legal. This is shaky, someone must have forgot to pay the premium. Not a case of gov. overreach
Then I learned about the company income (or FICA?) tax while helping them do payroll. I collected paychecks for roughly 7 years before realizing the federal government actually collected twice the amount in (FICA?) taxes than had been listed on my pay stubs. Then I learned how they appropriated all of FICA money into the general fund and just left IOU's in the FICA fund and squandered it in many areas I was completely opposed to. I'll spare you any more details. Nevertheless, all of this taught me the federal government was legally allowed to do whatever they wanted, because "we" elected them and just had to sit back and take it.

From my vantage point, the three federal branches are enabling each others' addiction of unrestrained authority to the detriment of our national stability. The need for an intervention is obvious.

I understand this fear of the unknown; but if you haven't already, please consider the reason this additional amendment proposing option was inserted into the

constitution. George Mason stood up and said, "No amendments of the proper kind would ever be obtained by the people if the government should become oppressive". Then Madison's notes list "nem. Con". Nemine contradicente, meaning "with no one dissenting".

They were all fully aware of how often governments grow beyond their authority and eventually destroy themselves.
Former Senator Tom Coburn reminds us no other government has come back from the fiscal situation we've gotten ourselves into, but we can cheat history. We have the ability to reset the original intent of the constitution using a convention of the states.

We have allowed congress, along with their agencies, to spend us into the danger zone and we are in essence responsible. Given that there are $110 trillion worth of unfunded liabilities coming down the pike, which is more than all of our combined personal assets as a nation. We need an unprecedented restoration of constitutional limitations implemented.

We also have a duty to stop this misuse of congressional powers to intrude into our personal lives dictating health care/the training of our children/diet/land use/business transactions, etc., and the complete distortion of our core beliefs regarding right and wrong. This is where the power and jurisdiction limitations help us.

The third issue listed in our resolution is best defended by someone other than me. James Hedemann from Baraboo couldn't join us today, but his sentiments mirror those I've heard from thousands of Wisconsin residents while thanking them for signing the petition.

He wanted me to tell you he's "tired of career politicians enriching themselves and taking advantage of us." He went on to explain how many enter congress with limited incomes and become wealthy while in office, then said, "The founders originally intended for them to serve for a limited amount of time." He couldn't remember the exact term, but thought they may have been called gentleman farmers...end of quote.

From me here… please don't consider yourselves hypocrites by proposing term limits on federal officials and members of congress. State legislators live near their constituents. They can't exempt themselves from the laws they pass and are much more accessible to the people.

Historically and in modern times the state legislatures have consistently been comprised of more people who work to preserve our foundational liberties and fiscal sanity. We realistically must rely on you to represent us in this battle to restore self governance in public policy. You are our only hope to rescue us from the consequences of those who've gone before us. We need the states to join together and implement this last check and balance on the federal government.

The states created the federal government who was supposed to carry out their wishes. Today that setup appears to be reversed. Take back your authority legally and protect us from this unaccountable entity before it destroys us completely. We can give our children and children's children a chance for a bright future despite our mistakes.

Brian Higgins,

Oconomowoc, WI

My name is Brian Higgins and I come before this committee in support of SJR-57. I will limit my comments to the central theme of this resolution, to "limit the power and jurisdiction of the federal government."

All government must be approached with both a full understanding of its usefulness, but also a healthy respect for the dangers it presents. Government is not inherently evil, but it is operated by mere mortal human beings who are flawed. They make mistakes. They engage in self-interested behavior. They covet power. Government needs a set of ground rules and operating procedures. We call that the Constitution.

But this (*hold up pocket constitution*) is not the Constitution we follow today. Today our Constitution has nearly as many pages as this Constitution has words. Today's Constitution is full of court decisions that undermine this Constitution. The commerce clause has effectively been rewritten with decisions such as the 1937 National Labor Relations v Jones & Laughlin Steel, and 1938 Wickard v Filmore. Likewise, the general welfare clause has been rewritten with decisions such as the 1936 US v Butler.

In short, we have drifted away from the structure the framers enshrined in the Constitution such as separation of power and federalism. Federalism and

separation of powers were designed to work in tandem to protect individual liberty by preventing any one person or group of people from accumulating too much power. The federal courts have time and again undermined separation of powers by legislating from the bench. Here in Wisconsin federal courts prevent our own DNR from managing our wolf population; have attempted to step in and interfere in our local elections. These are matters that should be decided in our own state courts.

SJR-57 is the answer to restoring the 10th Amendment and federalism. State legislatures can "limit the power and jurisdiction of the federal government" by passing amendments that give state legislatures the ultimate say on major federal laws, major federal regulations, major court decisions; should say 3/5ths of the state legislatures act to override overreaching mandates within a reasonable period. It won't matter what the federal government does, the states would have the power to say no.

The convention of states process is quintessential federalism, it's the purest form of representative government we have, it bypasses the federal government which is exactly the purpose.

There are other myopic Article V projects out there that address a single issue. But why go through the very difficult task of calling a convention of the states to address one problem when multiple problems need to be resolved? SJR-

57 provides multiple solutions and I urge you to vote in the affirmative and move this legislation to the floor of the senate. Thank you.

Ann Brigham,
Tomahawk, WI

Good afternoon Honorable Committee Chair and Members. I hope to illustrate my support for SJR57 by sharing a brief story with you.My name is Ann Brigham. I was born in Central Wisconsin and 20 years ago moved to the North woods; Tomahawk. I'm here today as a mother, a private citizen, and a communications industry veteran. Some time ago, a group of leaders from southern Wisconsin chartered a bus and visited several locations in the northern counties of Forest, Vilas, and Oneida. Before boarding the bus leaving the first site, the leaders were informed that if they needed access to their phones, they only had about a 15-minute ride on the bus before they would lose cell signal between here and the next site visit. They were astonished that there are places without cell phone signal at all and they were confounded that we could live like this. The point of the story is, if a group of leaders from roughly 280 miles away didn't understand the challenges faced by their neighbors in the same state, how are legislators in Washington, D.C. 1,000 miles away going to make the right decisions for Wisconsin? Or any state, for that matter? As you know, the federal government was never designed to function as it is, and I don't believe the intent that started this runaway train was malice. But as constitutionally literate Wisconsinites and American citizens, it is our duty and responsibility to use the emergency brake built into our Constitution.

My name is Lisa Thompson-Bingenheimer, I am a volunteer with Convention of States and live in West Milwaukee.

Conservatives are Deplorables

Liberals are Snowflakes

Democrats are all baby killers on welfare

Republicans are all fanatical gun toting Christians

Red States respect the country

Blue States are all going to hell in a handbasket

These statements were taken from my social media feed, read in the paper or seen on television over the past 12 months. Name calling, personal attacks, fake news, he said, she said and more...

As this continues people are growing more and more weary of partisan politics in Washington and as of late, in Wisconsin. We all want the same things, a safe place to live, for our kids to get a decent education and something to look forward to in our Golden years.

Most voters are starting to become aware of how party finances, lobbyists, special interests and large donors have an effect how our DC politicians vote. This concern is becoming louder and louder as voters see each party behaving badly toward the other and there appears to be no cooperation in sight. Some voters are looking for a way to change our current system for the better by taking some of the power from Washington and bringing it back to the States. Using a Convention of States as given to us in the second part of Article V in the Constitution is a way to do that.

Our Founders really could write... Breaking it down in today's terms, if 34 states pass an application for a Convention for the purpose of proposing amendments, a Convention of States shall be called.

Once debated and accepted by the delegate members, any and all proposed amendments are taken back to each state's legislatures. The state legislators then have the power to approve or disapprove those amendments. If those proposed amendments are then ratified by 38 states, those amendments are added to the current Constitution and become law.

In today's Blue vs Red climate, what a Convention of States does is take the law-making ability that is currently given to 535 bought and paid for professional politicians in Washington and moves it to over 5000 state lawmakers nationwide. Forget Team Red or Team Blue, imagine 50 delegates getting together to propose amendments for TEAM AMERICA... Again, any and all proposed amendments within the scope of the Convention call, would have to go back to each state legislature for approval. Thirty-eight states would have to approve the verbiage for it to become law. TEAM AMERICA will be composed of members of both teams. We need TEAM AMERICA to move forward!

This process by it's inherit design is meant to take years... It has taken several years to get 16 states to approve an application, there are still 18 states needed to get the Convention called. Once the delegates/commissioners are at Convention they are still under the purview of their state's legislatures and can be called back if those legislators feel the delegate is exceeding their authority. There could be hundreds of amendments proposed, debated on, destructed and reconstructed ever before being sent back to the states for ratification. All to the benefit of TEAM AMERICA.

We have thousands of petition signers here in Wisconsin and millions nationwide that acknowledge this kind of reform needs to happen to stop our over-spending, over-reaching, over-taxing, over-bearing federal government and bring the power back to the states, to the people that work where we work, shop where we shop and do business with the people we do business with, not the people in Washington.

Setting our egos and affiliations aside, working TOGETHER we can stop the Team Red and Team Blue partisanship and function as one, TEAM AMERICA to benefit all people regardless of allegiance. You can start that process with a positive vote for ARJ 77.

I urge the members of the Wisconsin Assembly to Pass AJR77 (calling a Convention of States).

Our country was founded on the principles of Freedom and Liberty!

With unbelievable courage, our founding fathers wrote the Declaration of Independence and pledged their lives, fortunes and sacred honor against the most powerful military of the time.

In it, those men declared that:

- All men are created equal.
- Our unalienable rights come from God and not government.
- Government derives its power from the consent of the governed.

The Constitution of the United States is the greatest governing document ever created!

Why: Because the Constitution of the United States was created to protect our unalienable rights as outlined in the Declaration of Independence.

It was created to ensure that all men would be free and equal under a Self-Governing Republic and never become slaves to a large centralized Tyranny.

It is the oldest constitution still in use.

Col George Mason and the Framers of the Constitution were visionaries

They understood that Elected Representatives are born with the same selfish human nature that makes government necessary in the first place.

They took great care to:

- Preserve the authority of state governments.
- Separate powers into 3 coequal branches with checks and balances on each other.
- Prevent a tyranny by any branch.

Those checks and balances were designed to limit any one branch from exercising the core functions of another.

- Legislative - Make laws
- Executive - Administer laws
- Judicial - Interpret laws

Article V – The 2nd method of amending the Constitution was added for a good reason

At this time the colonies were separate and not united.

The Framers had a major challenge, as they were debating many issues, to create a new Union.

To get the Constitution adopted at that time they could not address all of the desired amendments including ending the evils of slavery.

So they realized the need for a process to amend the Constitution rather than to trust chance and violence.

15-September 1787, just 3 days before the close of the Convention, Article V Amendment Provision text provided 2 methods to amend the Constitution:

- Congress propose amendments
- Congress call for a Convention of States

The issue: Both methods provided sole power to the Congress.

Col George Mason rose to his feet and forcefully objected:

- His basic message was that it is dangerous to give Congress sole power over amendments because Congress will not restrain their own Tyranny.
- This man understood Congress would refuse any amendments that would regulate them and return power back to the states and people.

Col Mason's motion was accepted and the language was changed to require Congress to call a convention upon application of 2/3 of the states.

It was adopted without debate in a convention where everything was strongly debated.

If you believe in the Constitution then you must believe in all of it. While this may sound harsh, one must realize: that to reject and remove one part or cherry pick another destroys the entire context and can easily undermine the founder's intent.

The language in Article V is very clear.

There are 2 methods to propose amendments:

- 2/3 of both houses in Congress.
- 2/3 of states (34 States) call a convention of states.

The Convention is for the purpose of "proposing amendments" to the existing constitution.

It is not a Constitutional Convention.

It is simply a meeting of delegates assigned by Legislatures of all 50 states:

- Legislatures determine the subject matter.
- Delegates are accountable to the Legislatures.

Each proposed amendment must be passed by the majority of Delegates.

Each proposed amendment has a HUGE CHECK AND BALANCE requiring ratification by ¾ of both houses of the State Legislatures (38 States).

Runaway Convention? We are in more danger of a runaway government

Our Constitution has been under constant attack from within for over 100 years.

The Ideology of large centralized control and power has been undermining the Constitution and the freedoms it protects.

We now have a huge, increasingly centralized and powerful federal government that:

- Is making many decisions about every aspect of our lives from Washington.
- As of this month, has created a crushing $22 Trillion national debt with spending growing way faster than the economy can grow.
- Passes laws while exempting themselves from the consequences.
- Imposes unfunded mandates on States and makes them beholding to it (2/3 of Wisconsin's budget).
- Does not always follow the Constitution.
- Has used federal agencies like the IRS, FBI and CIA to restrict or penalize individuals based on their political party.

What is the current state of our Checks and Balances?

Congress is the only Constitutional branch with the authority to create laws yet:

- To be unaccountable, Congress passes 1000+ bills that no one reads, which setup huge unelected bureaucratic agencies that are creating and enforcing laws.
- Presidents are bypassing Congress through Executive Orders.
- Judges are creating laws from the bench vs. interpreting based on Constitutionality.

Congress refuses to debate spending items and does not even pass an annual budget.

The political party is placed before the nation. Congress refuses do what is right for the country and act on bills for fear the other political party may receive credit.

Members of Congress no longer represent their constituents:

- How do they become multi-millionaires with a $150,000 - $200,000 per year salary?
- A very low % of incumbents get voted out due to the competing money required.

We are fighting to keep what is left of our Constitution

This movement is supported by millions of concerned citizens who revere the Constitution.

It is clear that Article V is the only tool that will allow us to reverse course from an increasing centralization back towards a Self-Governing Republic.

It is clear that added checks and balances are needed:

- Impose fiscal restraints on the federal government.
- Limit the power and jurisdiction of the federal government.
- Limit the terms of office for its officials and members of Congress.

A majority of people agree on these three things, and that the lobbyists influence our representatives more than their constituents.

Yet, left to their own devices, our federal Congress will not implement any change.

This is the definition of corruption, and we have a shrinking window of opportunity to affect a change for the sake of our country and future generations.

The forces that are undermining the constitution are also opposed to a Convention of States.

- They claim to be preserving the Constitution while they work to undermine it.

It is sad that we have become so complacent as to allow our Federal Government to get so out of control.

Our Founding Fathers would ask why we did not use Article V earlier.

It is time for us to have the courage to step up and call for a Convention of States.

It is more dangerous to let the Government stay the course and continue to undermine the Constitution and our freedoms.

It is the solemn duty of the States to protect the liberty of our people.

Scott D. Petersen
Westfield, WI

For quite a few years now I have been distraught by the reckless behavior of many of our federal government in the stifling of state sovereignty and the immense growth of the federal government.

The federal overreach of state sovereignty is inhibiting the state's ability to take care of its own people in an effective manner. Medicare, road and education are a few examples of funding provided to the state with strings attached; dictating how it may used, where it may used and under what conditions it may be used. Some necessary federal funding is actually turned down due to these exact contingencies; the prerequisite to fund extremely unpopular or irrelevant healthcare options, requiring some type of unneeded form of mass transit to be included with road or infrastructure repair, or making every school teach from a national curriculum without even considering the education needs of the individual student within the local community.

The commerce clause, originally intended to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes", is now being used to control what goods and services people may purchase, how they may receive them and if the purchase is even lawful in the eyes of the federal government.

In the annotations of Article 1, Section 8, Clause 3 of the US Constitution, it is stated that "today, 'commerce' in the constitutional sense, and hence 'interstate commerce,' covers every species of movement of persons and things, whether for profit or not, across states lines, every species of communication, every species of transmission of intelligence, whether for commercial purposes or otherwise, every species of commercial negotiation that will involve sooner or later an act of transportation of person or things, or the flow of services or power, across state lines."

So as you can see, the commerce clause has become one of the most powerful weapons against the people who want to have a business, purchase products or even think about anything that could cross a state line without strict federal governance. And it even includes a "transmission of intelligence"? It appears this would be a mere thought a person would have if it went across a state line.

Unacceptable.

These two examples of federal overreach are just a drop in the bucket of what's really going on. The people of the State of Wisconsin and of this great Country do not need such blatant disregard to personal liberty and will not stand idly by as even more rights are infringed.

Our founding fathers provided us an option in Article V to call a Convention of States in order to amend the US constitution and address other grave concerns when the federal government fails to represent the people in a respective and proper manner.

In conclusion I respectfully request that the legislature of the Great State of Wisconsin pass Senate Joint Resolution 57 in order to give the rights back to the people and the states as originally intended.

Scott D. Petersen
Westfield, WI

Argument for Article V Convention of States

Good afternoon and thank you so much for the privilege of coming to speak on the Convention of States Resolution _____

My name is Sarah Peloquin and I am a fervent history buff. I am so proud to be a citizen of the United States of America and more locally, a constituent in the State of Beer and Cheese curds...and of course the Wisconsin Badgers.

I am speaking to you in order to address some concerns many people have regarding an Article V Convention, so I appreciate your forbearance if you have already heard these arguments and concerns a hundred times before.

As a strong proponent of learning from our past rather than rewriting it, I felt it would be a good time to address our Founders' original intent for the second best document on governance in the world (losing only to the Judeo-Christian Scriptures by virtue of its being the only inspired Word of God in the world).

We learn very little about the 56 signers of the Declaration of Independence and the 39 signers of the Constitution in our history books these days. We hear about Jefferson, Franklin, and Washington, but we're told that the signers of both of these inspired documents were Deists, Atheists, or just token Christian men, dismissed as racist, sexist, bigoted, classist white men who may have had a few good ideas, but had no foreknowledge or wisdom to extend to us in modern times. We're told they are best left to the past, where they can collect dust along with the archaic documents they penned in a fancy hand, while we "enlightened" moderns can progress to greater heights and breathe new life into our "Living Constitution".

This is just a nice, fancy way of saying that our government is as fluid as a running river and changeable on the whims of a select few who hold the power at the Federal level. The same people who are now turning to other nations for advice on how to run a country in these woke times. Because asking for advice from countries who average a new constitution every 17 years and can't seem to figure out how to protect their own borders or pay for free healthcare is an excellent resource for the freest, most innovative and highly developed country in the world.

There is a reason America is the land of the free and the home of the brave with a Constitutional Republican form of government and a 232 year old document that holds true in its original form, in spite of the butchery our Federal government has performed on its pages in the last several decades.

America is a country founded on principles. Unchanging, unalterable principles firmly rooted in the acknowledgement of the laws of nature, nature's God, and the immutable facts about human nature.

Men are not angels and thus they need government. However, because they are at their core, made in God's image, they are also able to create societies based on principles that ALL men are created equal, endowed by their Creator with certain unalienable rights, and these rights are protected from government overreach and power by a fully informed, virtuous citizenry checking the government periodically to make certain their God-given rights are not abused.

The Constitution was written for one purpose and one purpose alone: To create boundaries and checks and balances on a multi-level, multi-branched government wherein the powers given to this government were enumerated (that means written down, specific, and defined with clear boundaries). These enumerated powers were put in place, divided amongst three federal branches with the sole purpose of protecting and defending the God-given rights of US citizens. Whatever powers were NOT enumerated to the Federal government were firmly in the hands of the state governments and individuals who are to act as a parental figure over our Federal government, keeping it in check on one more level.

Every one of the founders were firm on this point. The federal government cannot touch our God-given rights.

And yet here we are, 232 years later, steadily losing our rights one by one. We the People have grown complacent in our peaceful, prosperous nation and we have allowed the Federal government to usurp the power from their parent states, glutting themselves until our Constitution has become barely recognizable under the weight of its overreach. We flipped our government on its head and we're in deep trouble.

We need a fix and Congress isn't going to give it to us. It's up to the states to remind the Feds that We the People are the parents and its time that we clarified the rules for them.

Enter a tiny, little known article in our Constitution called Article V. Our founders were convinced (and argued for days about it) that there would come a time when our Federal government got too big for its britches and they put in a failsafe, that would return us to the correct track, righting our course before we fell into complete and utter tyranny. After all, they'd just fought a long, bloody war to escape that very problem.

The founders placed Article V in the Constitution as carefully and coherently as they did for the rest of the document, and you can easily access the full notes on the debate surrounding this thanks to James Madison's meticulous records. While the first part of Article V was vigorously debated and argued before they accepted it, the second part regarding the rights of the states to propose a convention was accepted with not ONE dissenting voice. We have George Mason to thank for reminding us that,

Any arguments people have against Article V can be debunked easily by reading pages of writings by many of the founders during that time. The Federalist Papers are a great place to start. Since we don't have that kind of time right now, let me nutshell it a bit.

One argument that always stands out is the "runaway convention" argument. I find it fascinating that after all the meticulous care the founders took to place checks and balances on their government, we would imagine that they left a massive Achille's heel open for the complete destruction of that government. A runaway convention implies that 34+ states would convene, propose a complete overhaul of our Constitution, and then leave anarchy and mob rule in its destructive wake. This is patently ridiculous. For one, reading the original instructions given to the delegates for the 1787 convention, we quickly see that the founders were honorable men who acted within the boundaries of their authority and did exactly what they purposed to do.

Convention of States wants to call a convention on a particular subject, NOT a particular amendment. We can all agree our Federal government is out of bounds. It is the state's job to reign them in, and the best way we can do that is to call an Article V convention to propose amendments. That is all we can do at this convention. We can argue, debate, and discuss the merits of various amendments to the original Constitution and propose (by a one vote per state process) amendments that will tackle the particular subject of Federal government overreach and abuse of power. We cannot put amendments in place at convention, and we cannot overhaul the entire Constitution. There are specific guidelines and boundaries that our founders put in place as to how this convention is run and how the states can reign in rogue delegates or rogue states. The whole point of the COS is to bring the states together to start the process of proposing Constitution saving measures that will clarify the few enumerated powers as laid down within its pages. On that note, it would only take 13 states to vote down any crazy, runaway amendment proposed at convention. And once convention is called, the very specific rules relating to how it is conducted would legally bind the states to its purpose and prevent destructive deviation.

Another objection is that men are not angels and therefore need a strong, centralized government to keep them in line. So, we're putting a relative few non-angelic men at the top of the hierarchy of authority and trusting just those non-angelic men to govern the rest of us wisely without ever falling back on their very human desires for power and money? How is that working for us? Once again, the Constitution was written to distribute the power in many ways in order to check the abuses of men. Centralizing power only enhances and encourages man's natural tendencies, rather than controlling and channeling them into pathways that harness the government to protect and defend.

In closing, the problem isn't the Constitution itself. It is the abusive interpretations by the Federal government in all three branches that has led us to calling a Convention of States. Our

Original Constitution is again, the best and closest to perfect document on governance that it can humanly get, but men in power interpret it for their own gain and in an effort to create a centralized Federal government that will have its fingers in every aspect of its citizens' public and private lives. Amending the Constitution will be our best chance at clarifying the boundaries between what the Federal government can and cannot do and will allow American citizens to continue to live as free, self-governing men and women, created equal by their creator God and with the protections of their divinely given rights to life, liberty, and property once more firmly in place.

We propose this Article V Convention because we realize that **every** generation has a duty to pledge our lives, our fortunes, and our sacred honor to fight against the forces of oppression and tyranny to remain free, as our Founders and as God himself intended. This is our time to join that fight.

Thank you.

I have two goals here today.

First, is to bring into high relief the fact that our **great Social Contract**, that is, the Constitution of the United States of America has been in ways too numerous to cite here, unilaterally and repeatedly violated such that today, it is the Supreme Law of the Land, largely in name only.

Second is to argue that the hope, the only real chance, to halt and correct the dysfunction of the federal government is the courage by State Legislators to call a **Convention of States** with a commission appropriate to the task. That commission is AJR77

The States are the parents of the federal government. The federal government was created by the States not as an entity to commandeer them as clerks , carrying out tassks and following orders from afar, but only to delegate to it a few things that the Sovereign States could do better in unity than separately.

Here I quote a warning.

"If Congress can employ money indefinitely, for the general welfare, and are the sole and supreme judges of the general welfare, they may take the care of religion into their own hands; they may appoint teachers in every state, county, and parish, and pay them out of the public treasury; they may take into their own hands the education of children, establishing in like manner schools throughout the union; they may assume the provision of the poor; they may undertake the regulation of all roads...; in short, every thing, from the highest object of state legislation down to the most minute object of police, would be thrown under the power of Congress. Were the power of Congress to be established in [this way], it would subvert the very foundations, and transmute the very nature of the limited government established by the people of America." James Madison 1792

And would you believe that some of his contemporaries said he was ridiculously paranoid? And yet try to convince anyone that we are not exactly at that destination.

George Washington in 1796 near the end of his term of office, did not give a speech but rather he wrote his Farewell Address. In part I quote:

> "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 in the way which the constitution designates, but let there be no change by usurpation for though this in one instance may be the instrument of good it is the customary weapon by which free governments are destroyed."

I believe there is no question that our "free government" degree by degree, and ever more readily and rapidly with every passing decade has been worked with that weapon already for more than a century,

Not many years after that farewell letter, in 1802 to be precise, came the first breach in the dike of the enumerated powers specified in (A1S1) with the famous case of Marbury v Madison where the SC "established" or more accurately, usurped- the right and power to interpret and define the meaning of every jot and tittle of the Constitution under the rubric of "Judicial Review". From then on the Constitution faded from what the Founders and the People said it was to be, but only what 5 people wanted it to say.

Notwithstanding that this power is nowhere in the Constitution accorded to any part of the Judiciary. This power... this usurption, is the very thing of which Jefferson and Madison so vociferously opposed and which was therefore specifically NOT granted to the courts, saying, and I paraphrase here "we must never let the Courts be the final arbiter of what is or is not Constitutional for if we do, it will not be a Republic but an Oligarchy". This, as the Arabs say, was the camel's nose under the tent.

I can't speak for others but I find it galactically ironic that the first violation of "the Rules of the House" was by the Judiciary itself. And what did the Parents do to nip this behavior in the bud? Crickets. And so it reminds us of the old saw: "Spare the rod, spoil the child".

Article 5 of the Constitution, defines two ways, and only two ways, by which additions, subtractions, or clarifications of the Constitution can be made, legally. Any questions of Constitutionality was to be decided by the States. Nevertheless, this power was usurped by the federal Judiciary, such that ever since, 5 unelected people could through "interpretation" create federal powers, new Rights, infringe others, and create law from whole cloth; while the People's representatives in the Sovereign States, your predecessors

lifted not a finger, raised not a voice, did not use their Constitutionally guaranteed power to halt them. So it is that through that progression today we see unaccountable lifetime appointed Federal District judges, not even the SCOTUS, usurping the power to veto decisions and policy by any and all elected officers of the Federal government and those of the States.

In a hot and humid room, on the 15th of September in 1787, as the delegates were putting the final touches on their work, the author of Virginia's version of the Bill of Rights, George Mason took the floor of the Convention and pointed out that if or when their creation could or would exceed its enumerated powers allowing only it to propose amendments "no amendments of the proper kind would ever be obtained by the people" and therefore by unanimous agreement the COS provision was lodged in Article 5.

The States no longer rule their creation and anyone arguing the opposite has simply not been paying attention. Like that of Dr. Frankenstein all its parts have come together to take on a will entirely of its own, with only disdain for its creator.

I'm sorry to say that your predecessors merely fiddled while Rome began to burn either through lack of statesmanship, ignorance or cooption. But, to borrow the by now famous phrase, "at this point, what difference does it make?"

We are here, now, and the only real question to be answered is what is it that this State... this Legislature, you, want for our children, grandchildren and the generations to come, and what will you do about it?

Will we leave them the Blessings of Liberty, the Republic that is our Founding Heritage? or the dreary dehumanization of an existence under an ever more centralized, dictatorial collectivism.

The only hope we have of bringing about a lasting change to the course we are on is to convene a COS.

Not one of the three branches will correct themselves. On their own they will never admit their errors or usurpations and willingly be governed by the Constitutionally enumerated powers as plainly articulated in A1s1

Now..... is the time. Your time.

To save this Republic, Patriot Legislators, you must stand up just as did those other Patriots did so many years ago, take your rightful place in history, do the duty of disciplining your willful, wastrel, spoiled and self-righteous teenager. Reclaim for Wisconsin its rightful place as one of the heads of the national household. Already, 15 of your sister States have passed this resolution and they ask you now as well as I, to join them in this great undertaking. In this case, to borrow another phrase, "it takes a village", a village of 34 of which Wisconsin must be one.

We can not risk going one step further down the path of pretending to be a nation of laws where the laws change with the will, emotion or indigestion of five black robed people or that only applies to the "little people". Or daily moving away from a market disciplined economy and toward one of crony corporate command and drunken public spending and borrowing

We don't need to be Cassandras but only humble enough to turn our eyes and minds to the lessons of history to know what in governance does and does not work.

For instance, in 1964 Congress kicked off President Johnson's War on Poverty with new programs and administrative overhead across the country to eradicate poverty. In this effort, just through 2016 the government had expended over $22 trillion on WOP programs, yet today the poverty rate stands not measurably different than it was in 1964. And even more disgraceful, is that not one thing has been or is being done to dismantle this horrific waste of time and resources today.

Like a child that has never worked to earn a dollar but has unrestrticted access to a bottomless piggybank Congress continues to burden us, your children, grandchildren and their children with debt they can never repay. Congress has long ago abdicated its fiduciary responsibilities, and if anyone thinks this can go on much longer without a galactically destructive consequence, I assure you it cannot.

Likewise, Congress and only Congress has the legal power to create laws. Nevertheless it has usurped a power to delegate Law-making to an unelected, unaccountable, unmanageable Administrative State of monstuous proportions.

Today, no one knows the actual number of federal crimes on the books, but my research indicates that there are at least 5,500. Apparently our Congressmen can add but not subtract.

Crazy right? Anyway, I think so.

But wait… there's more. On top of that the Federal Register contains more than 450,000 regulations, and all of them have the force of law.

Before I conclude, I must address those that want the States to do nothing, those that are comfortable with the status quo. For instance I would wager that the vast majority of the residents of the D.C. area especially would count among them and these clearly are their simpaticos. But there are also some "chicken littles" pretty sure that "somebody ought to do something" but gravely warn of the danger of a "runaway" convention, or it's too risky" and we don't know how it could turn out.

To them I say this: if the delegates to a COS are so addled or malevolent and manage, in spite of the fact that the Legislatures can recall rogue delegates at their pleasure, somehow still manage to violate their COS and State commissions and produce crazy amendment ideas I hardly believe a rational argument can be made that 38 State Legislatures so equally addled could be found to ratify them.

From this AJR77 Convention of States, only three legal things MAY possibly come of it, amendment proposals that result in:

1. Establishment and enforcement of Federal fiscal responsibilities
2. Term limits for some or all federal officials
3. Measures that will corral the federal government back to within its Constitutionally enumerated operational guardrails, and once again cause it to fear the opinions of the States and their People.

I ask you now to stand up as Patriots, to be better than your sleepy parochial predecessors. Be the Statesmen of the People, restore the governing lines of authority and jurisdiction that our Founders intended and designed.

In closing I wish to remind us that wisdom, no matter how old or whatever the source, never, ever, ceases to be wise. It was the 18th century Irish philosopher Edmund Burke who said

"The only thing necessary for the triumph of evil is for good men to do nothing".

And so I implore you now -- this Legislature -- not to be just "good people" and ACT, and act now.

Forward this resolution to the floor and let Wisconsin's voice be heard in D.C. and across the Nation that we will no longer allow the sellout of our children's future or their heritage.

Thank you

An open letter to Wisconsin lawmakers regarding Resolutions AJR77 and SJR57

The impending weather makes me think about making chili. I know quite a few people that make their home-made chili in different ways. I have a friend that makes it in a giant pot on her stovetop, another that uses a slow cooker and one guy that uses the same pan he fries the meat in.

I have also been lucky enough to travel around the country and I REALLY LIKE chili! In the Southwest most of the chili I ate was super spicy, in Ohio they put noodles in their chili and on the East Coast I had chili made with chicken and beans (it was white, not red?). You know here is Wisconsin people use their home grown tomatoes, peppers, onions and venison. You are probably wondering what this has to do with Convention of States?

When a state accepts Federal money, there is usually a recipe attached relating to how and where that money can be spent. That recipe serves all 50 states regardless of ingredients, the flavor that results or even the method of preparation.

Limiting the power and scope of the Federal Government should lead to less tax dollars being sent to Washington to be allocated nationwide in a Federal budget. Instead that money could be collected and held here in Wisconsin. This will enable US/YOU to decide how our "chili" should be prepared by using the ingredients that benefit your constituents the most.

Thank you for your consideration for AJR77 and SJR 57

Lisa Thompson-Bingenheimer

Lisa Thompson-Bingenheimer

West Milwaukee, WI

P.S. Some people think there is only one way to make chili because that is the way it has been done for hundreds of years. What I have learned is sometimes things done differently yield different and sometimes better results.

In highschool, I had to memorize the Declaration of Independence and the Constitution. I thought it was a pain in my butt at the time, but as I learned each word and read the history surrounding these world-altering documents, something changed. I began to understand and Love what I read. I can't recite either of these documents word for word anymore, but the principles have stayed with me all these years later. Now I have children of my own and I want them to understand what our Founding Fathers fought and died for... the unalienable rights of all human beings to life, Liberty, and the Pursuit of Happiness. No government on earth has the power to give those rights to us, and no government on earth has the power to take those rights away from us.

As an American citizen, I have come to understand that what our Founders created was something absolutely unprecedented and no other government on earth has accomplished what America has: a nation of free peoples whose Judeo-Christian and Enlightenment ideologies have been a beacon of hope for the rest of the world.

I cannot and will not stand by while our very government continues to undermine and even deride the patriots of this country who still hold fast to these God-given principles. I will, along with my family, fight to preserve and protect our liberties, even from our own elected officials if need be.

For Everyone who should be concerned

Our federal government is out of control! They are wasting our hard earned tax money as free give-aways to foolish and unconstitutional programs ie Planned Parenthood. They also are giving too many Americans an easy ride and making them lazy by supporting too many give-away programs!

Our country is being ruined by special interest group and politicians who want their representation in the Senate and Congress a life long career.

We must stop the federal government from doing things that control "We the People".

Our freedoms are being undermined

Reduce federal over reach, limit federal terms, and cut federal spending.

Sincerely
Randall Bonde

Newton, WI 53063-9518

May 6, 2019

Joanne Laufenberg
N3165 Robin Road
Lake Geneva, WI 53147

I think it is time for all United States citizens to come together to amend how governmental business gets done. Our federal government has grown to a bloated state that has too much power. The founders never intended for that to happen. But greed and power have corrupted this fine democratic republic model for the world.

I am totally in favor of a united-state based organization to come together to discuss what are acceptable constitutional amendments and legal restrictions for our country. Programs, laws and ideas that are often thwarted upon them by the federal government must be curtailed and modified.

In essence, we may revert back to what the founders intended for the country.

Sincerely,

Kathleen Now

Kathleen Now
440 Mystic Drive
Hortonville, WI 54944

Sept 16, 2019

Dear Representative Allen

I hope that you will support COS. Please consider Co-Sponsoring the Bill.

I feel very strongly that the fiscal restraint connections needed for the country will not come from the Federal Government. We must initiate this through Artical V, COS

Please feel free to contact me if you would like to discuss this.

Thank You —

Don Gross
1209 Sweetbriar Dr.
Waukesha WI 53186
414-881-9054

Sept. 16, 20

Dear Senator c/o Tonya Johnson,

As one of your constituents I am asking you to support Convention of States to limit the power and jurisdiction of the Federal Government.

I am self-employed and do not hire any employees due to the expense of having to afford an employee.

Also I now am a landlord and had a terrible experience with more than $1,000.00 of damage from a tenant I had to evict!!! I do not want to have to deal with Section eight and give a one year!!!

Respect fully,

[illegible] Peebles 2119A W Highland Blvd

Sept. 16, 2019

Dear Representative Evan Goyke,

As one of your constituents I am asking you to support the Convention of States by limiting the power and jurisdiction of the federal Government.

I am self-employed and do not hire any employees due to the "too great" cost of having an employee!!!

Also I have a rental property... from my experience of evicting a bad tenant as they continued to destroy my property during that process - the damages were just over $7000.00!!! I do not want to have to accept the federal Section 8 as I DO NOT want to offer a one year lease!!!

Respectfully,

Shannon Fabry

4119A W. Highland Blvd.
Mil. WI 53208

To Whom it May Concern:

I support the Convention of States Project, a group which looks to propose amendments which will impose fiscal restraints on the federal government, limit the scope and jurisdiction of the federal government, and impose term limits on federal officials and members of congress. The intent of the amendments proposed during this Convention will place restraints on the federal government in areas we can not rely on them to restrain themselves.

These amendments will bring the power back to the states. Problems within our community that can be solved in our community will be able to be solved on the lowest level as opposed to the federal government intervening. Problems that plague are community are generally able to be solved by the very people in our community, however because the federal government's power has ballooned to a size that the founding father's considered unimaginable, problems in our community are no longer able to be solved by the community, but rather the federal government. This simply just causes more problems, in fact, since 1997, US Consumer goods and services that have become more expensive such as hospital services, college tuition, housing, childcare, and medical care services all have gotten heavily subsidized by the government. Whereas services and goods like new cars, cellphone service, and household furnishings have become more affordable with less government intervention.

In short, the government needs to become smaller in size and a Convention of States can accomplish that to promote the common good. For more information please visit www.conventionofstates.com

Sincerely,

Sam Solowicz

Marquette University

947 N. 15th St. Milwaukee, WI 53233

samuel.solowicz@marquette.edu

(920)470-5730

John H. Bintliff
3467 S Strothmann Drive
Greenfield, WI 53219-4746
(414) 429-3963
jbintliff@att.net

November 12, 2019

Representative Tim Carpenter
Wisconsin State House
Madison, WI

November 12, 2019

Representative Tim Carpenter

Dear Sir,

I have been proud to call my home Wisconsin for the last forty years. As a native of New Jersey, a retired postal Letter Carrier of 25 years, and Naval Vietnam veteran, I have sworn to preserve, protect and defend our Constitution twice in my lifetime – not my party; not my president; not my flag – but our Constitution. I clearly share that sacred oath with you, and thank you for your commitment and service in the state Legislature to that end.

Like you, I am concerned about the future of our country and our state. Their fates are inextricably linked. And this concern has prompted me to write this letter to you. I hope you will share it with your fellow legislators.

We are at a turning point in world history, and must decide whether we will seize the opportunity to confirm or abandon our legacy as the greatest example of self-government this troubled world has ever known. We have embraced that opportunity many times in our history. We cannot fail to embrace it once more in these dangerous days.

Our national Congress has lost its way. It relinquishes its most germane powers to countless numbers of unelected bureaucrats, and daily seeks to take power from duly-elected representatives of the people. You are relentlessly handcuffed with mandates, fiscal manipulations, presidential orders and judicial constraints. Yet, you are the most potent voice We the People of Wisconsin have. As a State representative, our working lives, recreational activities, money matters, health care plans, homes and properties, Social Security and quality of life for future generations – all are entrusted to you and our body of State lawmakers – not to Congress.

Washington DC's politicians have been given their blueprint – It is contained in Article I of the very Constitution you and I have sworn to preserve, protect and defend against all enemies, foreign and domestic. They have ignored their enumerated powers, and usurped those of the States.

Our domestic strife is due entirely to this daily, domestic attack Congress has mounted against our most foundational document. We must act soon, or risk losing our country, our state and our way of life.

A complete case for this would require more time and a face-to-face meeting. So, let me number my three greatest concerns and let you get back to the business of The People you have been entrusted to serve.

IMPOSING FISCAL CONSTRAINT

Can we agree that Congress is spending more (of our money) than they are taking in? President Trump has increased spending over that of President Obama's administration, which was already beyond our means. The national debt and annual deficits will ultimately bring our country, our state and our lives down around us. It will happen, and we must address it as surely as we must address ecological, immigration and criminal justice concerns. These issues should all be non-partisan – instead, they divide us by party instead of principle. Surely, controlling our spending must be moved up on our list of priorities.

CONGRESSIONAL TERM LIMITS

Our national leadership has been involved in political gamesmanship since the earliest days of our founding. We will never escape this reality, but we can change the players so as to prevent the aggregation of power and long-term, petty political rivalries from overtaking the mandate that Congress prioritize its service to We The People. We currently endorse behavior that encourages graft, corruption and petty grievance-settling over much more important policy exigencies. We need to debate the value of imposing term limits on the Congress. I understand there are two ways of looking at this item. Could we at least agree to talk about it as a possibility?

LIMITING SIZE AND SCOPE OF FEDERAL GOVERNMENT

The thirst to perpetuate power and influence has led Congress to create thousands of bureaucracies, countless more department heads and their employees. All are unelected, and yet, have the power of law at their disposal to compel you, me and millions of other Americans to do their bidding. This has been true under every administration, regardless of party or ideology. Giving

unelected, faceless bureaucrats greater power than our elected representatives of The People (like yourself) cannot end well. We must rein in the federal bureaucrats and limit Congress' power to grow them in the future. This is nothing more than an avenue for avoidance of accountability on the part of those who rule from Washington, DC. We cannot touch these people who wield this power over us – they are both created and protected by the presidents and Congresses who appoint them. Do you agree that the Founders never intended for this to happen?

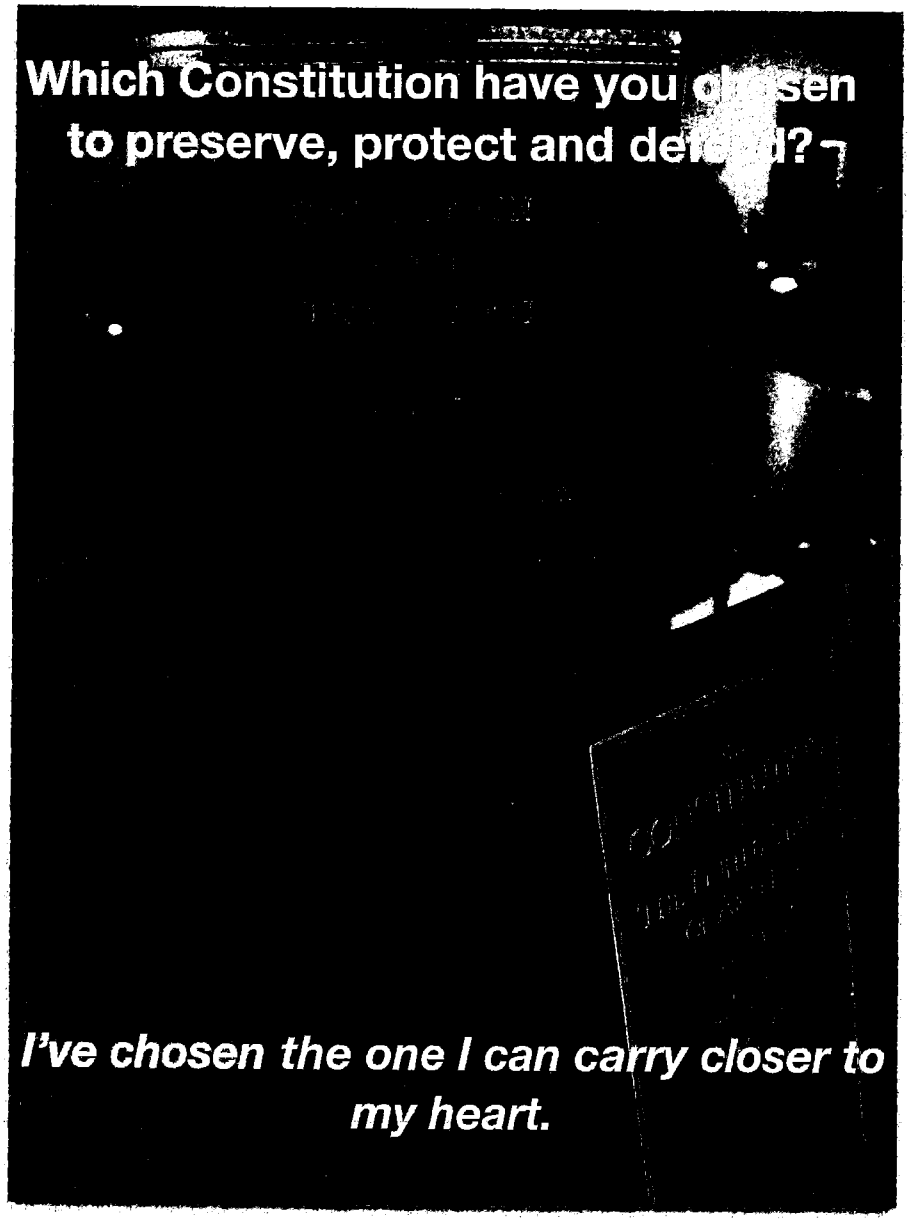
I don't know about you, Mr. Carpenter, but I do not take to being told how to live my life by people I've never met and cannot take measure of. Fortunately, the document being asserted; the same one you and I have sworn to protect, preserve and defend; gives us a way to deal with our situation. Proposed by George Mason, and contained in Article V – a convention of the States to propose amendments to the Constitution can return control to We the People and our elected representatives.

In summary, this letter has been respectfully written and sincerely composed. I urge and entreat you to vote in favor of the Convention of States proposal soon to come before the Wisconsin Legislature. I can assure your vote of 'aye' will advance a great many more constituents than it will suppress in the cause of freedom. We need to restore the power to We the People, and representatives like you, who most accurately reflect our local and national interests. The risk of not acting is great. But the rewards of acting are far greater.

Thank you for your consideration.

Respectfully,

John H. Bintliff


Which Constitution have you chosen to preserve, protect and defend?
I've chosen the one I can carry closer to my heart.

"If we do nothing to halt these abuses, we run the risk of becoming, as Alexis de Tocqueville warned, nothing more than 'a flock of timid and industrious animals, of which the government is the shepherd.'"

Washington, D.C., Is Out of Control and Will Not Relinquish Power

We see *four major abuses* perpetrated by the federal government:

- The Spending and Debt Crisis
- The Regulatory Crisis
- Congressional Attacks on State Sovereignty
- Federal Takeover of Decision Making

These abuses are not mere instances of bad policy. They are driving us towards an age of "soft tyranny" in which the government "softens, bends, and guides" men's wills. If we do nothing to halt these abuses, we run the risk of becoming, as Alexis de Tocqueville warned in 1840, nothing more than "a flock of timid and industrious animals, of which the government is the shepherd."

1. The Spending and Debt Crisis

The $20 trillion national debt is staggering, but it only tells a part of the story. If we apply the normal rules of business accounting, the federal government owes at least $100 trillion more in vested Social Security benefits and other programs. This is why the government cannot tax its way out of debt. Even if it confiscated everything owned by private citizens and companies, there would still not be enough to cover the debt.

2. The Regulatory Crisis

The federal bureaucracy has created a complex, contradictory regulatory scheme that is crushing businesses. Little accountability exists when unelected bureaucrats—rather than Congress—enact the real substance of the law. Research from the American Enterprise Institute, shows that since 1949 federal regulations have lowered the real GDP growth by 2% and made America 72% poorer.

3. Congressional Attacks on State Sovereignty

For years, Congress has been using federal grants to keep the states under its control. By attaching mandates to federal grants, Congress has turned state legislatures into their regional agencies rather than treating them as truly independent republican governments.

A radical social agenda and an erosion of the rights of the people accompany all of this. While substantial efforts have been made to combat federal expansion and protect peoples' rights, we have missed one of the most important principles of the American founding. State legislatures need to be free to implement the will of the voters in their own states, not the will of Congress.

4. Federal Takeover of the Decision Making Process

The Founders believed the structures of a limited government would provide the greatest protection of liberty. There were to be checks and balances at the federal level. And everything not specifically granted to Congress for legislative control was to be left to the states and the people.

Collusion among decision makers in Washington, D.C., has overrun these checks and balances. The federal judiciary supports Congress and the White House in their ever-escalating attack upon the jurisdiction of the fifty states. This is more than an attack on the independence of the states. This robs the people of their most fundamental liberty—the right of self-governance.

We need to realize that the structure of decision making matters. Who decides what the law will be is even more important than what is decided. The protection of liberty requires a strict adherence to the principle that power is limited and delegated.

Washington, D.C., does not believe this principle, as evidenced by an unbroken practice of expanding the boundaries of federal power. In a remarkably frank admission, the Supreme Court rebuffed a constitutional challenge to the federal spending power by acknowledging its approval of programs that violate the original meaning of the Constitution:

> *This framework has been sufficiently flexible over the past two centuries to allow for enormous changes in the nature of government. The Federal Government undertakes activities today that would have been unimaginable to the Framers in two senses; first, because the Framers would not have conceived that any government would conduct such activities; and second, because the Framers would not have believed that the Federal Government, rather than the States, would assume such responsibilities. Yet the powers conferred upon the Federal Government by the Constitution were phrased in language broad enough to allow for the expansion of the Federal Government's role.*
>
> *New York v. United States*, 505 U.S. 144, 157 (1992).

This is not a partisan issue. Washington, D.C., will never voluntarily relinquish power—no matter who is elected. The only rational conclusion is this: unless some political force outside of Washington, D.C., intervenes, the federal government will continue to bankrupt this nation, embezzle the legitimate authority of the states, and destroy the liberty of the people. Rather than securing the blessings of liberty for future generations, Washington, D.C., is on a path that will enslave our children and grandchildren to the debts of the past.

"We need to realize that the structure of decision-making matters. Who decides what the law will be is even more important than what is decided." "This is not a partisan issue. Washington, D.C., will never voluntarily relinquish power — no matter who is elected."

Article V's convention process is part of the beautiful constitutional machinery built to protect the states and the people from an overreaching federal government.

Five Myths About An Article V Convention

Rita Dunaway, Esq., National Legislative Strategist for the Convention of States Project

The constitutional boundaries separating the three federal branches and setting outer limits on their power are barely visible anymore. Many Americans are turning toward Article V of the Constitution to restore those boundaries. Constitutional amendment is strong medicine, to be sure, but it is *the* medicine that our Founders prescribed for the disease of federal overreach that is otherwise terminal to our Republic.

Here are five myths about the Article V antidote and its side effects.

1. An Article V convention is a "Constitutional Convention" or "Con-Con."

This point can get confusing, because Article V is a provision of the Constitution, so a convention held pursuant to its terms could be described as "constitutional" in that sense. But what most people mean when they describe an Article V convention as a "Con-Con" is that it is the same type of gathering as the one in 1787 that produced our Constitution. And that implication is clearly wrong.

The distinction between the Philadelphia Convention of 1787 and a convention held pursuant to Article V lies in the source of authority for each. The states gathered in 1787 pursuant to their residual powers as individual sovereigns—*not* pursuant to any provision of the Articles of Confederation for proposing amendments.

An Article V convention, on the other hand, derives its authority from the terms of Article V itself and is therefore limited to proposing amendments to the Constitution we already have, pursuant to the prescribed procedures.

2. We have no idea how an Article V convention would operate.

Article V itself is silent as to the procedural details of a convention, leading some to speculate that we are left clueless as to how the meeting would function. But while it's true that there has never been an Article V convention, *per se*, the states have met in conventions at least 33 times. There is a clear precedent for how these meetings work.

In fact, many of the Framers had attended one or more conventions, and the basic procedures were *always* the same. For instance, voting at an interstate convention is always done as states, with each state getting one vote, regardless of population or the number of delegates in attendance (that's why it's a convention of states—not a convention of delegates).

The more detailed, parliamentary rules of the convention are decided by the delegates at the convention itself.

3. The topic of an Article V convention cannot be limited, so convention delegates could re-write the entire Constitution once they assemble.

If states weren't free to define the scope of an Article V convention, then America would have already witnessed many of them. Over the course of our nation's

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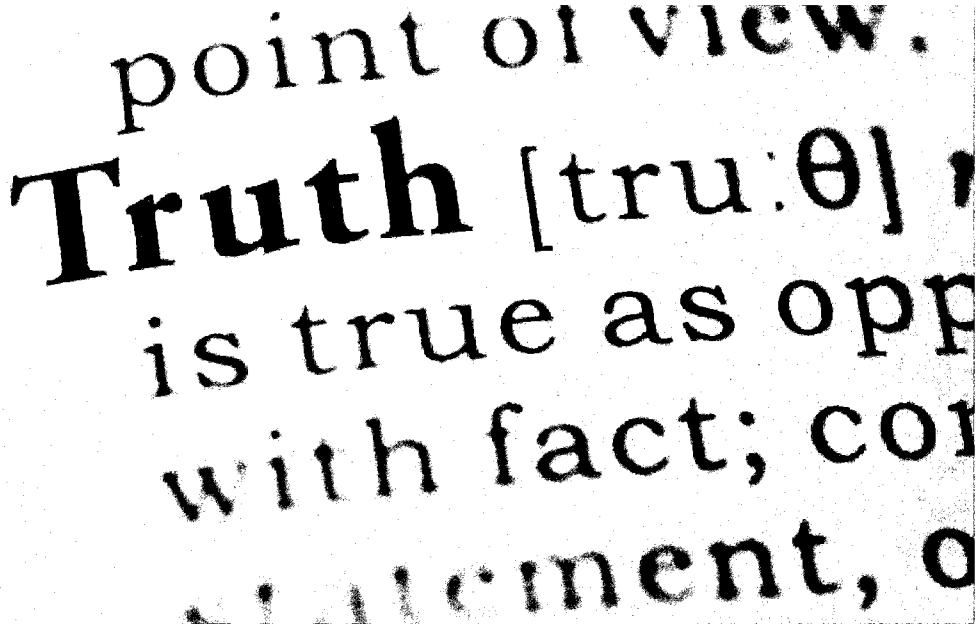
COS

CONVENTION *of* STATES ACTION



The process is so well-safeguarded that it has proven incredibly difficult to invoke.

Continued from front page

history, states have filed over 400 applications for Article V conventions. The reason we haven't had one yet is because there have never been 34 applications requesting a convention on the same topic.

Moreover, this proposition makes no sense from a historical, practical or legal perspective. In every interstate convention ever held, there was *always* a specified topic or agenda for the meeting. Practically speaking, some limitation on the topic is necessary in order for the state legislatures to provide instructions to the delegates they send as their agents (states always instruct their delegates).

4. Congress would control an Article V convention.

Anyone who has read James Madison's record of the Philadelphia Convention proceedings knows that the very reason the drafters added the convention method of proposing amendments to Article V was to give the states a way to bypass Congress—which has its own, express power to unilaterally propose amendments. They would never have given Congress control over both methods.

Congress only has two powers related to the convention: to issue the formal call, setting the date and location of the convention once 34 similar applications are received, and to choose between two methods of state ratification for any proposals offered by the convention. That's it.

In fact, at least one federal court has definitively ruled that Congress cannot use any of its Article I powers—including its power under the Necessary and Proper Clause—to affect Article V procedures.

5. The Article V convention process has no safeguards to protect our Constitution from rogue delegates or big-money special interest groups.

To the contrary, the process is so well-safeguarded that it has proven incredibly difficult to invoke! There are numerous, redundant safeguards on the process.

First, the topic specified in the 34 applications that trigger the convention act as an initial limitation on it. These applications are the very source of authority for the convention, so any proposals beyond their scope would be out of order.

Second, state legislatures can recall any delegates who exceed their authority or instructions. Convention delegates are the agents of their state legislature and are subject to its instructions. As a matter of basic agency lawany actions taken outside the scope of a delegate's authority would be void.

But the final and most effective protection of the process is the simple fact that it takes 38 states to ratify any amendment proposed by the convention. This means that it would only take 13 states to block any ill-conceived or illegitimately advocated proposal.

Article V's convention process is part of the beautiful constitutional machinery built to protect the states and the people from an overreaching federal government. It is time for us to use it.

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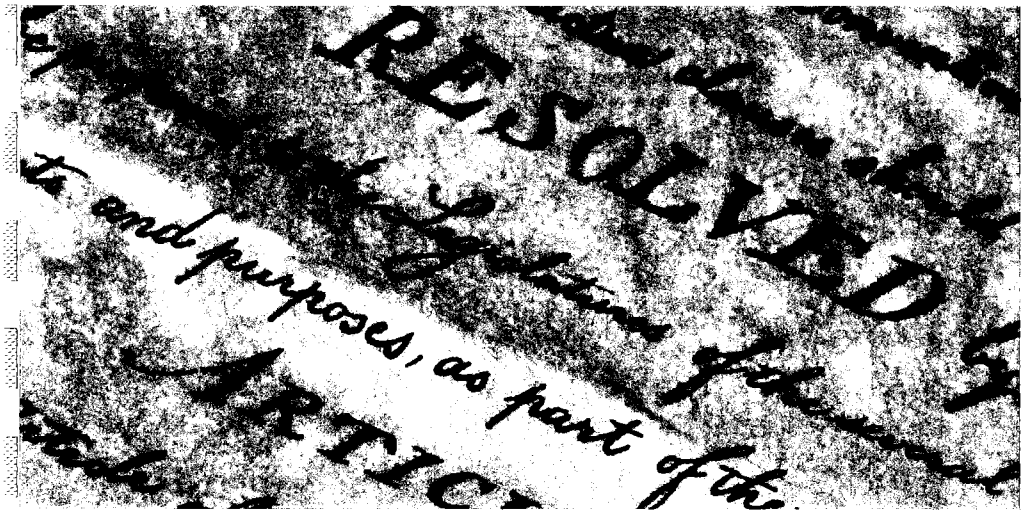

We can't walk boldly into our future, without first understanding our history.

Can We Trust the Constitution? Answering The "Runaway Convention" Myth

By Michael Farris, JD, LLM

Some people contend that our Constitution was illegally adopted as the result of a "runaway convention." They make two claims:

1. The convention delegates were instructed to merely amend the Articles of Confederation, but they wrote a whole new document.
2. The ratification process was improperly changed from 13 state legislatures to 9 state ratification conventions.

The Delegates Obeyed Their Instructions from the States

The claim that the delegates disobeyed their instructions is based on the idea that Congress called the Constitutional Convention. Proponents of this view assert that Congress limited the delegates to amending the Articles of Confederation. A review of legislative history clearly reveals the error of this claim. The Annapolis Convention, not Congress, provided the political impetus for calling the Constitutional Convention. The delegates from the 5 states participating at Annapolis concluded that a broader convention was needed to address the nation's concerns. They named the time and date (Philadelphia; second Monday in May).

The Annapolis delegates said they were going to work to "procure the concurrence of the other *States* in the appointment of Commissioners." The goal of the upcoming convention was "to render the constitution of the Federal Government adequate for the exigencies of the Union."

What role was Congress to play in calling the Convention? None. The Annapolis delegates sent copies of their resolution to Congress solely "from motives of respect."

What authority did the Articles of Confederation give to Congress to call such a Convention? None. The power of Congress under the Articles was strictly limited, and there was no theory of implied powers. The states possessed residual sovereignty which included the power to call this convention.

Seven state legislatures agreed to send delegates to the Constitutional Convention *prior to the time that Congress acted to endorse it.* The states told their delegates that the purpose of the Convention was the one stated in the Annapolis Convention resolution: "to render the constitution of the Federal Government adequate for the exigencies of the Union."

Congress voted to endorse this Convention on February 21, 1787. It did not purport to "call" the Convention or give instructions to the delegates. It merely proclaimed that "in the opinion of Congress, it is expedient" for the Convention to be held in Philadelphia on the date informally set by the Annapolis Convention and formally approved by 7 state legislatures.

Ultimately, 12 states appointed delegates. Ten of these states followed the phrasing of the Annapolis Convention with only minor variations in wording ("render the Federal Constitution adequate"). Two states, New York and Massachusetts, followed the formula stated by Congress ("solely amend the Articles" as well as "render the Federal Constitution adequate").

Every student of history should know that the instructions for delegates came from

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CONVENTION OF STATES

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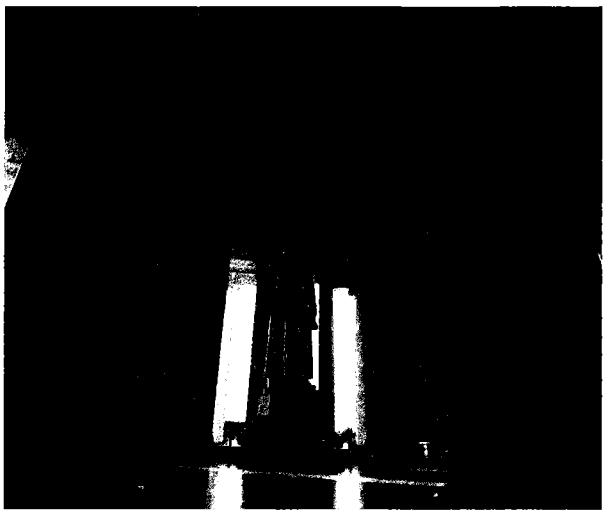

History tells the story.

The Constitution was legally adopted.

Now, let's move on to getting our nation back to the greatness the Founders originally envisioned.

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the states. In *Federalist 40*, James Madison answered the question of "who gave the binding instructions to the delegates." He said: "The powers of the convention ought, in strictness, to be determined by an inspection of the commissions given to the members by their respective constituents [i.e. the states]." He then spends the balance of *Federalist 40* proving that the delegates from all 12 states properly followed the directions they were given by each of their states. According to Madison, the February 21st resolution from Congress was merely "a recommendatory act."

The States, not Congress, called the Constitutional Convention. They told their delegates to render the Federal Constitution adequate for the exigencies of the Union. And that is exactly what they did.

The Ratification Process Was Properly Changed

The Articles of Confederation required any amendments to be approved by Congress and ratified by all 13 state legislatures. Moreover, the Annapolis Convention and a clear majority of the states insisted that any amendments coming from the Constitutional Convention would have to be approved in this same manner—by Congress and all 13 state legislatures.

The reason for this rule can be found in the principles of international law. At the time, the states were sovereigns. The Articles of Confederation were, in essence, a treaty between 13 sovereign nations. Normally, the only way changes in a treaty can be ratified is by the approval of all parties to the treaty.

However, a treaty can provide for something less than unanimous approval if all the parties agree to a new approval process before it goes into effect. This is exactly what the Founders did.

When the Convention sent its draft of the Constitution to Congress, it also recommended a new ratification process. Congress approved both the Constitution itself and the new process.

Along with changing the number of required states from 13 to 9, the new ratification process required that state conventions ratify the Constitution rather than state legislatures. This was done in accord with the preamble of the Constitution—the Supreme Law of the Land would be ratified in the name of "We the People" rather than "We the States."

But before this change in ratification could be valid, *all 13 state legislatures would also have to consent to the new method.* All 13 state legislatures did just this by calling conventions of the people to vote on the merits of the Constitution.

Twelve states held popular elections to vote for delegates. Rhode Island made every voter a delegate and held a series of town meetings to vote on the Constitution. Thus, every state legislature consented to the new ratification process thereby validating the Constitution's requirements for ratification.

Those who claim to be constitutionalists while contending that the Constitution was illegally adopted are undermining themselves. It is like saying George Washington was a great American hero, but he was also a British spy. I stand with the integrity of our Founders who properly drafted and properly ratified the Constitution.

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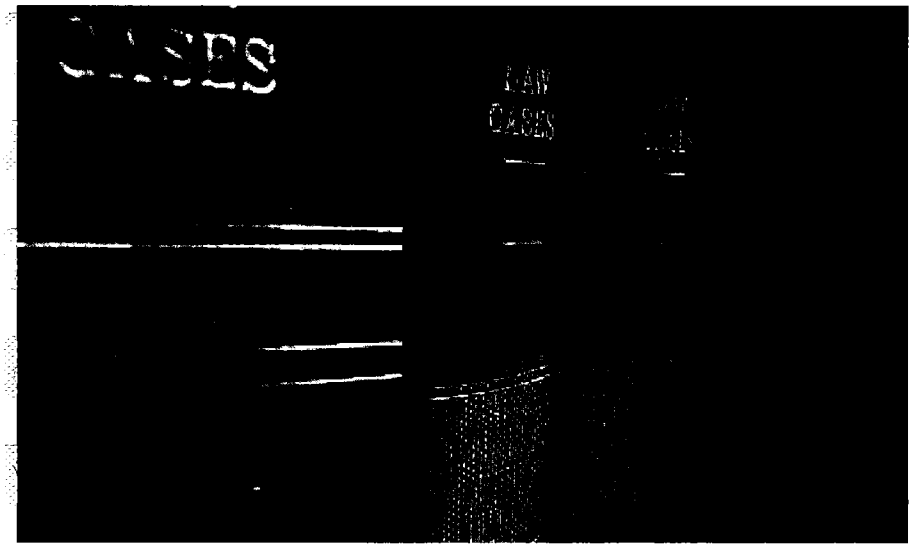

One source of security we have... is the courts' long history of protecting the integrity of the [amendment] procedure.

How the Courts have Clarified the Constitution's Amendment Process

Robert Natelson, Independence Institute's Senior Fellow in Constitutional Jurisprudence and Head of the Institute's Article V Information Center

One source of security we have in using the Constitution's amendment process is the courts' (including the U.S. Supreme Court) long history of protecting the integrity of the procedure.

Many of those who pontificate on the subject are largely unaware of this jurisprudence. As a result, they often debate questions that the courts have long resolved or promote scenarios (such as the "runaway" scenario) that the law has long foreclosed.

Here are some of the key issues the courts have addressed, either in binding judgments or in what lawyers call "persuasive authority." This listing of cases is only partial.

• Article V grants enumerated powers to named assemblies—that is, to Congress, state legislatures, conventions for proposing amendments, and state conventions. When an assembly acts under Article V, that assembly executes a "federal function" different from whatever other responsibilities it may have. *Hawke v. Smith*, 253 U.S. 221 (1920); *Leser v. Garnett*, 258 U.S. 130 (1922); *State ex rel. Donnelly v. Myers*, 127 Ohio St. 104, 186 N.E. 918 (1933); *Dyer v. Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975) (Justice Stevens).

• Article V gives authority to named assemblies, without participation by the executive. *Hollingsworth v. Virginia*, 3 U.S. (3 Dall.) 378 (1798).

• Where the language of Article V is clear, it must be enforced as written. *United States v. Sprague*, 282 U.S. 716 (1931).

• That does not mean, as some have claimed, that judges may never go beyond reading the words and guessing what they signify. Rather, a court may consider the history underlying Article V. *Dyer v. Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975) (Justice Stevens). It may also consider what is implied as well as what is expressed. *Dillon v. Gloss*, 256 U.S. 368 (1921). In other words, courts apply the same rules of interpretation to Article V as elsewhere.

• Just as other enumerated powers in the Constitution bring with them certain incidental authority, so also do the powers enumerated in Article V. *State ex rel. Donnelly v. Myers*, 127 Ohio St. 104, 186 N.E. 918 (1933). This point and the one previous are important in determining the scope of such Article V words as "call," "convention," and "application."

• The two-thirds vote required in Congress for proposing amendments is two thirds of a quorum present and voting, not of the entire membership.

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USA PENNSYLVANIA NEBRASKA IDAHO FLORIDA NEW MEXICO DELAWARE VIRGINIA NORTH DAKOTA KANSAS ARIZONA NEW JERSEY VERMONT NORTH CAROLINA NEVADA WEST VIRGINIA UTAH HAWAII LOUISIANA MONTANA RHODE ISLAND WISCONSIN MAINE MISSOURI TENNESSEE NEW YORK COLORADO ALABAMA

CONVENTION *of* STATES

The courts are very much in the business of protecting Article V procedures, and they have done so for more than two centuries.

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State of Rhode Island v. Palmer, 253 U.S. 320 (1920).

• A convention for proposing amendments is, like all of its predecessors, a "convention of the states." *Smith v. Union Bank*, 30 U.S. 518, 528 (1831). The national government is not concerned with how Article V conventions or state legislatures are constituted. *United States v. Thibault*, 47 F.2d 169 (2d Cir. 1931).

• No legislature or convention has power to alter the ratification procedure. That is fixed by Article V. *Hawke v. Smith*, 253 U.S. 221 (1920); *United States v. Sprague*, 282 U.S. 716 (1931). Some "runaway" alarmists have suggested that a convention for proposing amendments could decree ratification by national referendum, but the Supreme Court has ruled this out. *Dodge v. Woolsey*, 59 U.S. 331 (1855). Neither can a state mutate its own ratifying procedure into a referendum. *State of Rhode Island v. Palmer*, 253 U.S. 320 (1920).

• Congress may not try to manipulate the ratification procedure, other than by choosing one of two specified "modes of ratification." *Idaho v. Freeman*, 529 F. Supp. 1107 (D. Idaho 1981), a judgment vacated as moot by Carmen v. Idaho, 459 U.S. 809 (1982); compare *United States v. Sprague*, 282 U.S. 716 (1931).

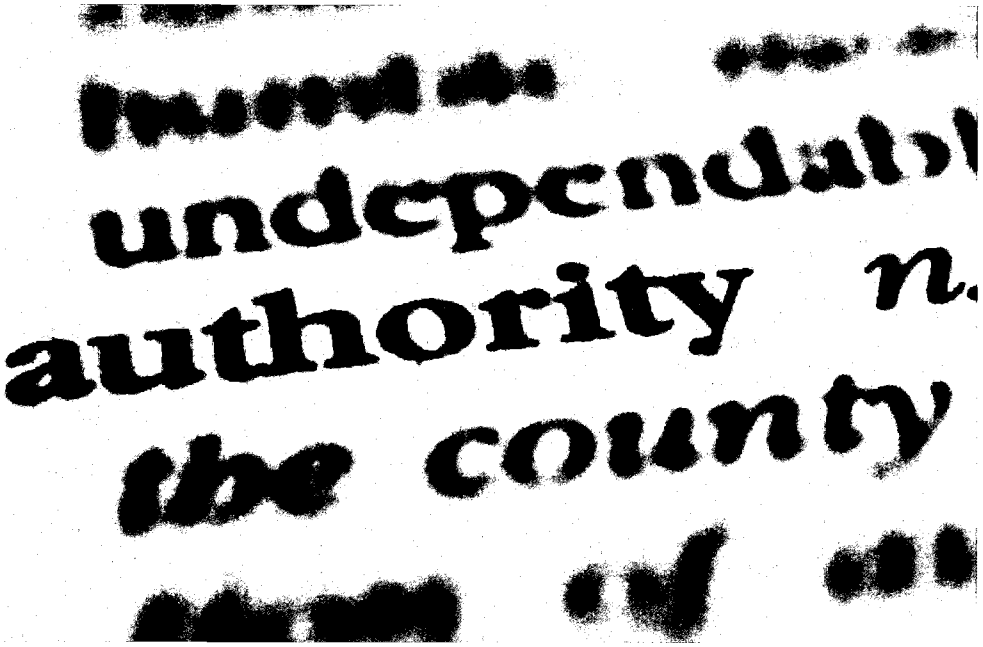
• A convention meeting under Article V may be limited to its purpose. *In Re Opinion of the Justices*, 204 N.C. 306, 172 S.E. 474 (1933).

• But an outside body may not dictate an Article V assembly's rules and procedures. *Leser v. Garnett*, 258 U.S. 130 (1922); *Dyer v. Blair*, 390 F. Supp. 1291 (N.D. Ill. 1975) (Justice Stevens).

• Nor may the assembly be compelled to resolve the issue presented to it in a particular way. *State ex rel. Harper v. Waltermire*, 691 P.2d 826 (1984); *AFL-CIO v. Eu*, 686 P.2d 609 (Cal. 1984); *Miller v. Moore*, 169 F.3d 1119 (8th Cir. 1999); *Gralike v. Cook*, 191 F.3d 911, 924-25 (8th Cir. 1999), affirmed on other grounds sub nom. *Cook v. Gralike*, 531 U.S. 510 (2001); *Barker v. Hazeltine*, 3 F. Supp. 2d 1088, 1094 (D.S.D. 1998); *League of Women Voters of Maine v. Gwadosky*, 966 F. Supp. 52 (D. Me. 1997); *Donovan v. Priest*, 931 S.W.2d 119 (Ark. 1996).

• Article V functions are complete when a convention or legislature has acted. There is no need for other officials to proclaim the action. *United States ex rel. Widenmann v. Colby*, 265 F. 398 (D.C. Cir. 1920), affirmed 257 U.S. 619 (1921).

As these cases illustrate, the courts are very much in the business of protecting Article V procedures, and they have done so for more than two centuries.



Article V is the ultimate nullification procedure.

The Article V Solution — The Way to Implement the Tenth Amendment

Rita Dunaway, Esq., National Legislative Strategist for the Convention of States Project

It's the elephant in the room. The Tenth Amendment boldly declares:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

But if the daily news is any indication, there is no subject exempt from federal power. Through its power of the purse, which is virtually unlimited under the modern interpretation, Congress can impact, influence, or coerce behavior in nearly every aspect of life.

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The question, then, that holds the key to unlocking our constitutional quandary, is this: How do states protect their reserved powers under the Tenth Amendment?

On a piecemeal basis, states can certainly challenge federal actions through lawsuits, arguing that the federal government lacks constitutional authority to act in a particular area. But what if the court, as it is wont to do, "interprets" the Constitution as providing the disputed authority? What then?

In their frustration and disbelief over the growing extent of federal abuses of power (and the refusal of our Supreme Court to correct them), some conservatives argue that states should engage in "nullification," whereby the states simply refuse to comply with federal laws they deem unconstitutional.

While there are some, less dramatic forms of nullification that are perfectly appropriate and constitutional—such as states refusing to accept federal funds that come attached to federal requirements—this state-by-state, ad hoc review of federal law is fraught with legal and practical pitfalls.

First of all, which state officer, institution, or individual decides whether a federal action is authorized under the Constitution? Is it the state supreme court, the legislature, the attorney general—or can any individual make the determination? After all, the Tenth Amendment reserves powers to individuals as well as to states.

Secondly, how can a state enforce its nullification of a federal law? For instance, if a state decides that the Affordable Care Act's individual mandate is unconstitutional, how can it protect its citizens against the "tax" that will be levied against them if they fail to comply? It's difficult to envision an effective nullification enforcement method

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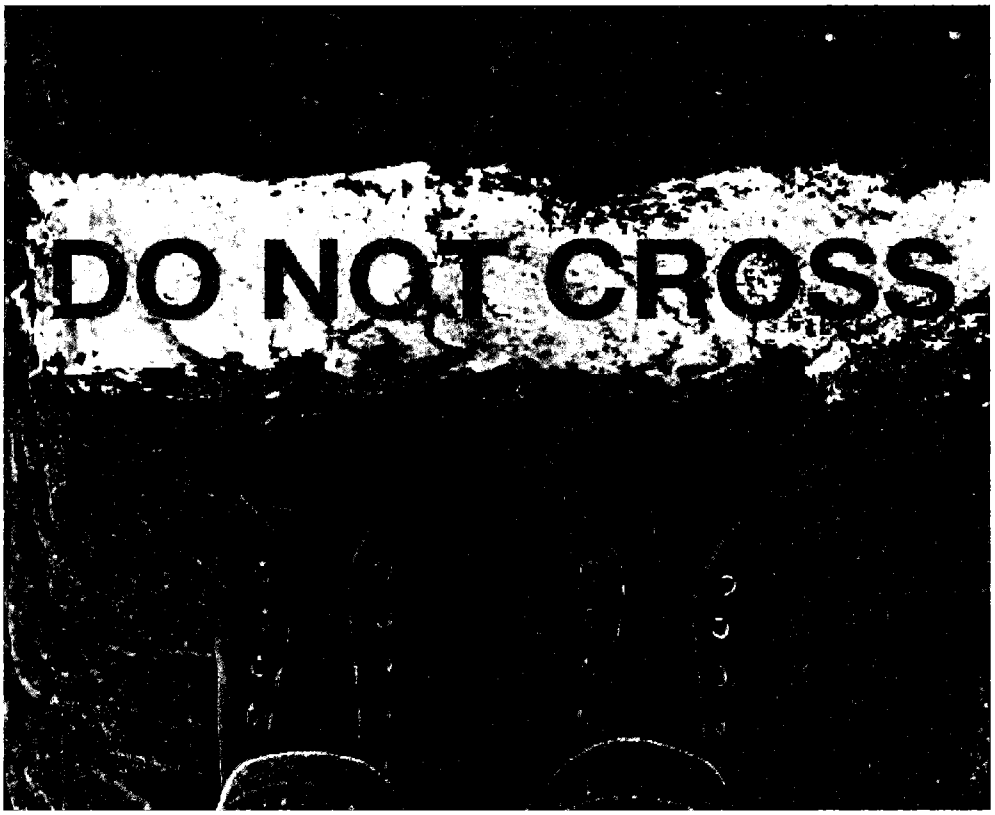

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

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that doesn't end, at some point, with armed conflict.

But for true conservatives whose goal is to conserve the original design of our federal system, the far more fundamental problem with this type of in-your-face nullification is the fact that it was not the Founders' plan.

Article VI tells us that the Constitution, and federal laws passed pursuant to it, is the "supreme law of the land." Under Article III, the United States Supreme Court is considered to be the final interpreter of the Constitution. While some claim that this was not the Founders' intention, historical records such as Alexander Hamilton's Federalist 78 demonstrate it was, in fact, the judiciary that they intended to assess the constitutionality of legislative acts.

And then we have the Tenth Amendment itself. It establishes a principle, but it does not establish a remedy or process for protecting the reserved powers from federal intrusion.

That missing process is found in Article V. Faced with a federal government acting beyond the scope of its legitimate powers—and a Supreme Court that adopts erroneous interpretations of the Constitution to justify the federal overreach—the states' constitutional remedy is to amend the Constitution to clarify the meaning of the clauses that have been perverted. In this way, the states can assert their authority to close the loopholes the Supreme Court has opened.

You don't have to take my word for it.

In an 1830 letter to Edward Everett, James Madison wrote:

"Should the provisions of the Constitution as here reviewed be found not to secure the Govt. & rights of the States agst. usurpations & abuses on the part of the U.S. the final resort within the purview of the Constn. lies in an amendment of the Constn. according to a process applicable by the States."

In other words, Article V is the ultimate nullification procedure. For states that have the will to stand up and assert their Tenth Amendment rights, they can do so by applying for an Article V convention to propose amendments that restrain federal power.

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Amendments work.
In fact, amendments have had a major impact on American political life, mostly for good.

The Lamp of Experience: Constitutional Amendments Work

Robert Natelson, Independence Institute's Senior Fellow in Constitutional Jurisprudence and Head of the Institute's Article V Information Center

Opponents of a Convention of States long argued there was an unacceptable risk that a convention might do too much. It now appears they were mistaken. So they increasingly argue that amendments cannot do enough.

The gist of this argument is that amendments would accomplish nothing because federal officials would violate amendments as readily as they violate the original Constitution.

Opponents will soon find their new position even less defensible than the old. This is because the contention that amendments are useless flatly contradicts over two centuries of American experience — experience that demonstrates that *amendments work*. In fact, amendments have had a major impact on American political life, mostly for good.

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The Framers inserted an amendment process into the Constitution to render the underlying system less fragile and more durable. They saw the amendment mechanism as a way to:

- correct drafting errors;
- resolve constitutional disputes, such as by reversing bad Supreme Court decisions;
- respond to changed conditions; and
- correct and forestall governmental abuse.

The Framers turned out to be correct, because in the intervening years we have adopted amendments for all four of those reasons. Today, nearly all of these amendments are accepted by the overwhelming majority of Americans, and all but very few remain in full effect. Possibly because ratification of a constitutional amendment is a powerful expression of popular political will, amendments have proved more durable than some parts of the original Constitution.

Following are some examples:

Correcting Drafting Errors

Although the Framers were very great people, they still were human, and they occasionally erred. Thus, they inserted into the Constitution qualifications for Senators, Representatives, and the President, but omitted any for Vice President. They also adopted a presidential/vice presidential election procedure that, while initially plausible, proved unacceptable in practice.

The founding generation proposed and ratified the Twelfth Amendment to correct those mistakes. The Twenty-Fifth Amendment addressed some other deficiencies in Article II, which deals with the presidency. Both amendments are in full effect today.

Resolving Constitutional Disputes and Overruling the Supreme Court

The Framers wrote most of the Constitution in clear language, but they knew that, as with any legal document, there would be differences of interpretation. The amendment process was a way of resolving interpretive disputes.

The founding generation employed it for this purpose just seven years after the Constitution came into effect. In *Chisholm v. Georgia*, the Supreme Court misinterpreted the wording of Article III defining the jurisdiction of the federal courts. The Eleventh Amendment reversed that decision.

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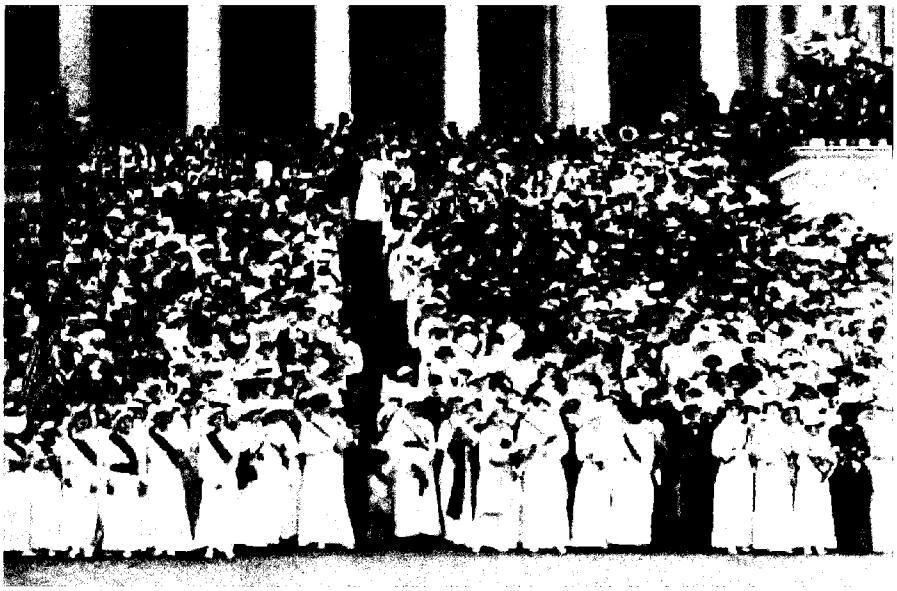

Women's Suffrage envoys on and about the East Steps of the Capitol, May 9, 1914. The Nineteenth Amendment was ratified August 18, 1920.

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In 1857, the Court issued Dred Scott v. Sandford, in which it erroneously interpreted the Constitution to deny citizenship to African Americans. The Citizenship Clause of the Fourteenth Amendment reversed that case.

In 1970, the Court decided Oregon v. Mitchell whose misinterpretation of the Constitution created a national election law mess. A year later, Americans cleaned up the mess by ratifying the Twenty-Sixth Amendment

All these amendments are in full effect today, and fully respected by the courts.

Responding to Changed Conditions

The Twentieth Amendment is the most obvious example of a response to changed conditions. Reflecting improvements in transportation since the Founding, it moved the inauguration of Congress and President from March to the January following election.

Similarly, the Nineteenth Amendment, which assured women the vote in states not already granting it, was passed for reasons beyond simple fairness. During the 1800s, medical and technological advances made possible by a vigorous market economy improved the position of women immeasurably and rendered their political participation far more feasible. Without these changes, I doubt the Nineteenth Amendment would have been adopted.

Needless to say, the Nineteenth and Twentieth Amendments are in full effect many years after they were ratified.

Correcting and Forestalling Government Abuse

Avoiding and correcting government abuse was a principal reason the Constitutional Convention unanimously inserted the state-driven convention procedure into Article V. Our failure to use that procedure helps explain why the earlier constitutional barriers against federal overreaching seem a little ragged. Before looking at the problems, however, let's look at some successes:

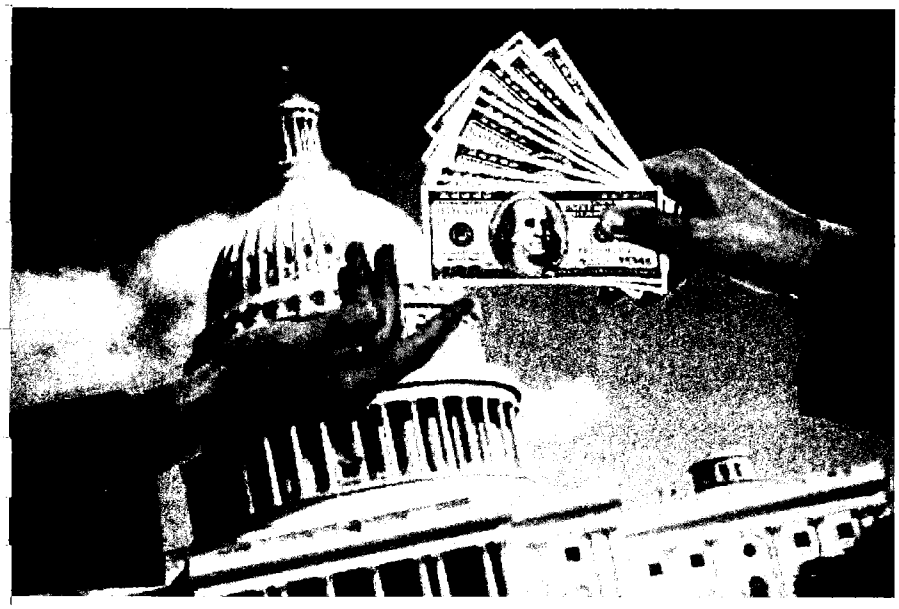
- We adopted the Thirteenth, Fourteenth, Fifteenth , and Twenty-Fourth Amendments to correct state abuses of power. All of these are in substantially full effect.
- In 1992, we ratified the Twenty-Seventh Amendment, 203 years after James Madison first proposed it. It limits congressional pay raises, although some would say not enough.
- In 1951, we adopted the Twenty-Second Amendment, limiting the President to two terms. Eleven Presidents later, it remains in full force, and few would contend it has not made a difference.

Now the problems: Because we have not used the convention process, the first 10 amendments (the Bill of Rights) remain almost the only amendments significantly limiting congressional overreaching. I suppose that if the Founders had listened to the "amendments won't make any difference" crowd, they would not have adopted the Bill of Rights either. But I don't know anyone today who seriously claims the Bill of Rights has made no difference.

"I have but one lamp by which my feet are guided; and that is the lamp of experience," Patrick Henry said. "I know of no way of judging of the future but by the past."

In this case, the lamp of experience sheds light unmistakably bright and clear: Constitutional amendments work.

Originally appeared in the American Thinker



American taxpayers have lost multiple billions of dollars on companies owned by big political donors who received federal funding and then went bankrupt.

How Can the Convention of States Project Help Curb the Corrupting Influence of Money in Politics?

Vickie Deppe

Most Americans are legitimately suspicious of lobbyists and big-money political donors...so much so, that the Supreme Court's *Citizens United* decision sparked its own Article V movement.

But an Article V Convention to limit the power and jurisdiction of the federal government and establish spending controls and term limits upon its officials gives the states the power to propose amendments that can address this problem in a variety of ways.

Big-money donors are not usually ideologically motivated, but they do expect favorable treatment for themselves or their business interests once their candidate is sworn in as a legislator. We believe taking away the favors politicians have to dispense will dry up this money and restore the level playing field Americans hold dear, far more effectively than continued attempts at a regulatory solution...for which someone always finds a workaround, anyway.

One of the most common means for politicians to reward their supporters is through regulatory exemptions. An amendment that prohibits members of Congress from exempting themselves and their friends from the laws they make for the rest of us not only enjoys the unanimous support of voters we've surveyed, but also removes a powerful incentive for business owners to attempt to "buy" candidates. A companion amendment removing de facto lawmaking authority from unelected bureaucrats will help prevent members of Congress from hiding these activities from voters. Such amendments will also help locally-owned businesses compete more effectively with large corporations who can afford lobbyists and attorneys to keep them in compliance with ever-more burdensome and complex federal regulations. Americans agree that a business should succeed because it offers a superior product or service to its customers...not because it has friends in Washington.

Another vehicle for cronyism rests in the power of politicians to use taxpayer money to invest in and award grants, loans, and loan guarantees to for-profit businesses. Why should the politically-

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Americans agree that a business should succeed because it offers a superior product or service to its customers... not because it has friends in Washington.

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connected get to shake down the American taxpayer when they couldn't convince local banks and investors to fund their projects? American taxpayers have lost multiple billions of dollars on companies owned by big political donors who received federal funding and then went bankrupt. Moreover, when the federal government invests in businesses, even as it regulates them and the financial markets in which they function, it acts as both referee and player. This creates an additional dimension of conflict-of-interest that everyday Americans find unacceptable. The only way this practice will be stopped is for the states to propose and ratify an amendment prohibiting it; there is too much power and money involved to expect Congress to reform itself.

Finally, term limits can serve to disrupt the ability of lobbyists and big donors to groom and maintain politicians. Term limits are wildly popular among voters, but many legislators have serious and legitimate reservations. There are two reasons that legislators opposed to term limits can feel good about supporting our initiative:

The state legislatures, not the Convention of States Project or voters directly, are in the driver's seat at the convention. Our application provides the opportunity for term limits to be discussed, but in no way guarantees that they will be included on the agenda, much less adopted or ratified. Those who oppose term limits will have the opportunity to argue forcefully against them, and states may instruct their delegation to vote "no" if such a measure comes to a floor vote.

Momentum for term limits is largely driven by dissatisfaction with legislators over the issues and abuses discussed above. When common sense reforms are adopted to curb these abuses, the pressure for term limits will likely subside. It may seem counterintuitive, but our application offers the best avenue to avoid term limits because it has the potential to remedy the root causes behind the push for them. Absent such measures, term limits will continue to gain popular support. U.S. Term Limits, a group dedicated to enacting term limits on legislators, makes gains every election cycle, and has recently announced a new Article V effort to complement its legislator pledge initiative.

Otto von Bismarck once compared laws to sausage. He said it's probably best if people don't watch them being made. Here at the Convention of States Project, we're working to put the kitchen in plain view of the diners.

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