



# TOM TIFFANY

STATE SENATOR • 12TH SENATE DISTRICT

## Senate Committee on Insurance, Financial Services, Government Oversight and Courts

### Public Hearing: Senate Joint Resolution 57

**October 3, 2019**

Good Afternoon Chairman Craig and members. Thank you for holding a public hearing on Senate Joint Resolution 57. I'd like to thank my co-author, Representative Dan Knodl, for all his hard work on this. He will be making some remarks following my testimony.

Senate Joint Resolution 57 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.

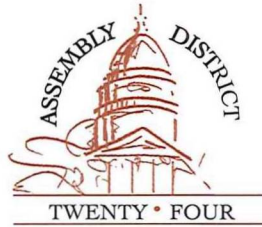
Currently, the federal debt is more than \$22.5 trillion and the federal deficit recently hit \$1 trillion. In Wisconsin, when we sit down to craft the state budget every two years, one of the requirements we have from the people of Wisconsin is that our budget must be balanced. Why? Because it's in 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 10<sup>th</sup> 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. Senate Joint Resolution 57 does just that.

I'm happy to answer any questions after Rep. Knodl concludes his testimony.



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# DAN KNODL

STATE REPRESENTATIVE • 24<sup>TH</sup> ASSEMBLY DISTRICT

## **Senate Joint Resolution 57**

Public Testimony

Senate Committee on Insurance, Financial Services, Government Oversight and Courts

October 3, 2019

Thank you, Chairman Craig and members of the committee for holding this hearing on Senate Joint Resolution 57.

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.



**Testimony by Executive Director Matt Rothschild  
regarding Senate Joint Resolution 57  
before the Committee on Insurance, Financial Services,  
Government Oversight and Courts**

October 30, 2019

Chairman Craig and distinguished members of the committee, it's nice to see you again.

My name is Matt Rothschild, and I'm the executive director of the Wisconsin Democracy Campaign, a nonprofit, nonpartisan watchdog group that's been around since 1995. We track and expose the problems of big money and dark money in our politics, and we advocate for clean and transparent government and a democracy where everyone has an equal voice.

We strongly oppose this joint resolution.

I came before this committee two and a half years ago to testify on a closely related effort calling for an Article V Convention of the States.

This joint resolution is even worse than that one was.

As you'll recall, that effort, we were earnestly told, was solely for the purpose of enacting a balanced budget amendment.

This joint resolution is much vaguer and broader, and would open up the door of any Convention of the States even faster and wider for a wholesale rewrite of our founding document, thus jeopardizing our fundamental rights.

This concern for protecting our cherished rights that are enshrined in the Constitution is why one of the most conservative U.S. Supreme Court

Justices of the last century, Antonin Scalia, opposed the Article V route. Here's what he said in 2014: "I certainly would not want a Constitutional Convention. Whoa! Who knows what would come out of it? ... A Constitutional Convention is a horrible idea."

It is surprising to me that so many conservatives are ignoring the prudent advice of one of their patron saints.

The vagueness, and the broadness, of the joint resolution is obvious in the following places:

At the very top, it says "Relating to: convention of the States for one or more Constitutional amendments." "One or more?" We don't even know how many amendments the Convention would be considering!

Toward the end of the whereas clauses, it says, "Whereas, the federal government has ceased to live under a proper interpretation of the Constitution of the United States." Now, that's a sweeping claim if ever I heard one, and what exactly is the "proper interpretation"? It's not spelled out.

And then the last whereas clause says the purpose of the Convention of the States is for "restraining these and related abuses of power." What "these abuses" are is unclear, except for a reference to the size of the national debt and to "unfunded mandates" -- and what the "related abuses of power" are is anybody's guess.

Then in the "Resolved" section of the Joint Resolution, it says the purpose of such a Convention of the States is to "impose fiscal restraints on the federal government, limit the power and jurisdiction of the federal government, and limit the terms of office."

All three of those are vague:

What would those "fiscal restraints" be?

How would it "limit the power and jurisdiction of the federal government"?

And what would the term limits be?



Please note that the second question really lets the horses out of the barn door. By calling a Convention of the States to “limit the power and jurisdiction of the federal government,” you’ve invited a top-to-bottom redrafting of our Constitution because the entire Constitution deals with the power and jurisdiction of the federal government.

So you shouldn’t pretend that somehow this Convention of the States would somehow be self-limiting.

As to the proposed purpose to “impose fiscal restraints on the federal government,” let me simply point out that any fiscal handcuffing would risk imperiling our economy in times of a downturn. The only reliable medicine for bringing large economies like ours out of a recession is deficit spending. It’s like the economy has cancer and you won’t give it radiation or chemotherapy. It’s like the economy has diabetes, and you won’t give it insulin. You’ll just let the economy die.

Had “fiscal restraints” been in place in 1933, we would never have gotten out of the Great Depression or been able to win World War II. Had they been in place in 2009, we would never have gotten out of the Great Recession, which would have turned into another Great Depression, with millions more lives ruined.

At the Wisconsin Democracy Campaign, let me note that we also don’t believe in term limits. We believe that the people should be able to decide for themselves who should represent them.

And please let me note that we are not categorically opposed to amending the Constitution. In fact, we strongly favor a constitutional amendment that would say, “Corporations aren’t persons, and money isn’t speech.” But we believe the Article V route for amending the Constitution is reckless. We believe the Constitution should be amended the old-fashioned way, by having Congress pass, by a two-thirds margin in the House and the Senate, any legislation to amend it, and that three-quarters of the state legislatures must approve it. This is a cleaner, safer way to go about the amendment process.

Thank you for hearing me out.



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October 3, 2019

To: Senate Committee on Insurance, Financial Services, Government Oversight and Courts

Re: Opposition to SJR 57 / AJR 77

The League of Women Voters of Wisconsin opposes any proposal seeking to convene an Article V Constitutional Convention for a purpose "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."

**With regard to imposing fiscal restraints on the federal government:** While we understand people's concerns about the growing federal deficit, an Article V convention could result in fiscal restraints that would have drastic economic consequences. The League believes that efficient and economical government requires both adequate financing as well as flexibility in order to serve the citizenry through good times and bad. This is needed in order for the federal government to respond to an economic recession or a national disaster or emergency.

**With regard to limiting the power and jurisdiction of the federal government:** An Article V Convention is a particularly dangerous path to take. It would put at risk every citizen right that is protected in the Constitution, including our right to vote, our right to free speech, and our right to know what government is up to. There are no rules outlined in the Constitution for such a convention; it could go in many different directions, regardless of any efforts that Wisconsin lawmakers might employ to restrict the role of our own state's delegates. The broad language in this proposal could result in prohibiting the federal government from setting policies in areas such as immigration, trade and environmental standards.

**With regard to limiting the terms of office for the federal government's officials and for members of Congress:** The League of Women Voters opposes term limits because such limits would adversely affect the accountability, representativeness, and effective performance of government. We believe the voters should hold politicians accountable in elections.

Our Constitution is more than 200 years old. It has served us well, with individual amendments, to keep up with the ever-changing needs of the American people. Calling for an Article V Constitutional Convention is a reckless and radical proposal. It should be rejected.

## Testimony of Ken Quinn, Regional Director of U.S. Term Limits in Support of SJR57

Dear Chairman Craig, Vice-Chairman Stroebel and committee members,

My name is Ken Quinn Regional Director with US Term Limits. I am here today to testify in support of SJR57 because this resolution would allow the states to propose an amendment that has been the desire of the American people for decades and currently polls at an overwhelming support of 82% of voters (McLaughlin & Associates) and that amendment is Congressional Term Limits.

We all know Congress is broken. It has become dysfunctional and unresponsive to the American people. Members of Congress no longer listen to the voice of the voters, instead they fulfill the desires of 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 10,000 years of combine “institutional knowledge” in Congress and what is that getting us? \$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!

Benjamin Franklin stated “...there are two passions which have a powerful influence on the affairs of men. These are ambition and avarice; the love of power, and the love of money. Separately each of these has great force in prompting men to action; but when united in view of the same object, they have in many minds the most violent effects. Place before the eyes of such men, a post of honour that shall be at the same time a place of profit, and they will move heaven and earth to obtain it.” Elections cannot fix this problem because we cannot change human nature by voting at the polls.

The approval ratings of Congress are consistently below 20%, yet the re-election rates for incumbents is over 95%! Obviously, there is a huge disconnect here. The current system protects incumbents in office and makes it virtually impossible 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 this problem with term limits. Term limits for Congress will reduce corruption, allow new people with fresh ideas from a variety of backgrounds to participate in our government, provide the voters more choices, increase voter participation, 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.*

“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.” Robert Yates

“Nothing is so essential to the preservation of a republican government as a periodical rotation. Nothing so strongly impels a man to regard the interest of his constituents as the certainty of returning to the general mass of the people, from whence he was taken, where he must participate their burdens.” George Mason

I encourage you on behalf of your constituents and the American people to please vote to pass SJR57.

Ken Quinn

## Testimony of Ken Quinn, Regional Director of U.S. Term Limits in Support of SJR57

I have provided the following documents to address many of the false accusations about an Article V convention for proposing amendments:

- **An Article V Convention Is Not a Constitutional Convention** – This research explains the differences between a Constitutional Convention called to draft a new Constitution and an Article V convention to propose an amendment to our current Constitution.
- **The Formulation of Article V during the 1787 Federal Convention** – In these panels I show every substantive discussion and vote on the amending provision during Philadelphia Convention which became Article V. This proves beyond a doubt that the Framers intended an Article V convention to be a limited convention for an amendment that the state legislature applied for to propose.
- **Federalist 40 by James Madison** – James Madison refutes that the 1787 Federal Convention commissioners exceeded their authority; the “runaway” convention myth. He explains that the authority came from the commissions provided by the state legislatures and that they were given full authority to draft a new Constitution.
- **Federalist 85 by Alexander Hamilton** – Alexander Hamilton explains that the Article V convention is limited to the amendment the states concur in proposing. He argues against the call for a second convention to revise the Constitution in favor of proposing the amendments once the current Constitution is ratified because it would be easier to do that than conduct another Constitutional Convention.
- **James Madison letter to George Turberville** – In this letter Madison explains why he opposes New York’s desire for a second Constitutional Convention because it would require unanimous consent and seeing how hard the ratification fight was, he did not want to go through that again. In this letter he describes the two types of conventions; Constitutional Convention and Article V convention.
- **Debate in Congress on May 5, 1789 on Article V application submitted by Virginia** – Over fifty of the members in this 1<sup>st</sup> Congress were either commissioners 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 states needed to apply for the same amendment in order for Congress to call a convention.
- **Runaway Convention? Meet the ULC: An Annual Conference of States Started in 1892 That Has Never Runaway** – In this article I demonstrate that the states are currently participating in a Convention of States every year to propose uniform state laws. The National Conference of Commissioners on Uniform State Laws (ULC) is an official meeting of the states and functions almost virtually the same as an Article V convention. This proves that the states utilize convention rules today and that the rules work.
- **The John Birch Society Denies Its History and Betrays Its Mission** – In this article I provide you the evidence that JBS was a strong advocate for an Article V convention to propose an amendment. It was one of their top five issues back in the 1960s and 1970s. To learn more, I recommend watching this video [youtube.com/watch?v=olDrFO9gENc](https://www.youtube.com/watch?v=olDrFO9gENc)



**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
<b>Approve</b>	<b>82%</b>	<b>89%</b>	<b>76%</b>	<b>83%</b>	<b>72%</b>	<b>70%</b>	<b>86%</b>
Strongly	56%	63%	45%	63%	45%	46%	61%
Somewhat	26%	26%	31%	20%	27%	24%	26%
<b>Disapprove</b>	<b>9%</b>	<b>6%</b>	<b>12%</b>	<b>8%</b>	<b>18%</b>	<b>15%</b>	<b>6%</b>
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
<b>Important</b>	<b>79%</b>	<b>91%</b>	<b>69%</b>	<b>79%</b>	<b>80%</b>	<b>60%</b>	<b>83%</b>
Very	54%	62%	45%	54%	51%	43%	57%
Somewhat	26%	29%	24%	25%	29%	17%	26%
<b>Not Important At All</b>	<b>12%</b>	<b>6%</b>	<b>19%</b>	<b>11%</b>	<b>13%</b>	<b>27%</b>	<b>9%</b>
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
<b>Yes</b>	<b>77%</b>	<b>82%</b>	<b>69%</b>	<b>80%</b>	<b>68%</b>	<b>64%</b>	<b>81%</b>
<b>No</b>	<b>6%</b>	<b>6%</b>	<b>7%</b>	<b>5%</b>	<b>10%</b>	<b>10%</b>	<b>5%</b>
<b>Undecided</b>	<b>17%</b>	<b>12%</b>	<b>24%</b>	<b>15%</b>	<b>21%</b>	<b>26%</b>	<b>14%</b>

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.

# McLaughlin & Associates

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

	Total	Rep.	Dem.	Ind.	Hispanic	A.A.*	White
<b>More Likely</b>	<b>73%</b>	<b>80%</b>	<b>64%</b>	<b>77%</b>	<b>71%</b>	<b>58%</b>	<b>78%</b>
Much More	42%	45%	33%	49%	39%	27%	46%
Somewhat More	31%	35%	31%	27%	32%	31%	31%
<b>Less Likely</b>	<b>8%</b>	<b>5%</b>	<b>11%</b>	<b>8%</b>	<b>15%</b>	<b>16%</b>	<b>5%</b>
Somewhat Less	5%	3%	7%	4%	9%	7%	3%
Much Less	3%	2%	3%	4%	6%	9%	1%
<b>No Difference</b>	<b>11%</b>	<b>9%</b>	<b>16%</b>	<b>6%</b>	<b>6%</b>	<b>13%</b>	<b>11%</b>
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. 5<sup>th</sup> to 11<sup>th</sup>, 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





“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

Ken Quinn, Regional Director for Convention of States Project

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, in a letter to G.L. Turberville, ESQ. N. York, Nov. 2, 1788:

“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 2/3 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 2/3 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 2/3 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

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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....

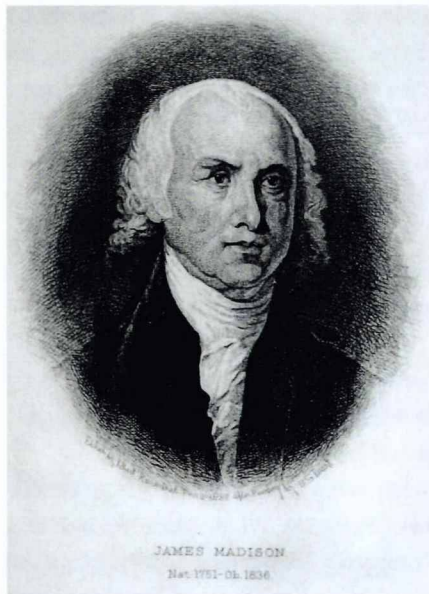
"But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly... The will of the

requisite number would at once bring the matter to a decisive issue. And consequently, whenever nine, or rather ten States, 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.

**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, establish a new constitution.



"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



# CONVENTION of STATES

A PROJECT OF CITIZENS FOR SELF-GOVERNANCE



**The Article V Limited Convention :**

**THE FRAMERS' INTENT**



THOMAS JEFFERSON

ON EVERY QUESTION OF CONSTRUCTION LET US CARRY OURSELVES BACK TO THE TIME WHEN THE CONSTITUTION WAS ADOPTED, RECOLLECT THE SPIRIT OF THE DEBATES, AND INSTEAD OF TRYING WHAT MEANING MAY BE SQUEEZED OUT OF THE TEXT, OR INVENTED AGAINST IT, CONFORM TO THE PROBABLE ONE IN WHICH IT WAS PASSED.

**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?

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.

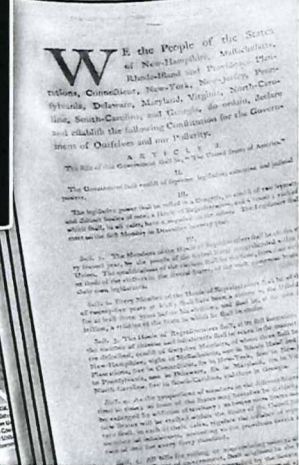
Pinckney's provision also allowed Congress to propose amendments if two-thirds of each House consented and required approval from two-thirds of the state legislatures to become part of the Constitution.



CHARLES PINCKNEY

ART. XVI. IF TWO THIRDS OF THE LEGISLATURES OF THE STATES APPLY FOR THE SAME THE LEGISLATURES OF THE UNITED STATES SHALL CALL A CONVENTION FOR THE PURPOSE OF AMENDING THE CONSTITUTION; OR SHOULD CONGRESS, WITH THE CONSENT OF TWO THIRDS OF EACH HOUSE, PROPOSE TO THE STATES AMENDMENTS TO THE SAME, THE AGREEMENT OF TWO THIRDS OF THE LEGISLATURES OF THE STATES SHALL BE SUFFICIENT TO MAKE THE SAID AMENDMENTS PARTS OF THE CONSTITUTION.

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.



Art. XIX. On the application of the legislatures of two thirds of the states in the Union, for an amendment of this Constitution, the legislature of the United States shall call a convention for that purpose.

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

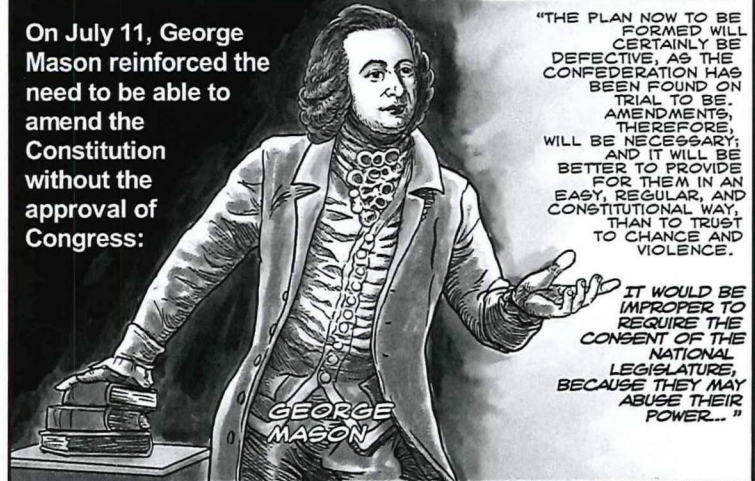
ON MAY 29, THE FIRST WORKING DAY OF THE 1787 FEDERAL CONVENTION, GOVERNOR EDMUND RANDOLPH INTRODUCED FIFTEEN RESOLUTIONS KNOWN AS THE VIRGINIA PLAN WHICH CONTAINED A PROVISION TO AMEND THE CONSTITUTION WITHOUT THE APPROVAL OF THE CONGRESS.



GOVERNOR EDMUND RANDOLPH

13. RESOLVED, THAT PROVISION OUGHT TO BE MADE FOR THE AMENDMENT OF THE ARTICLES OF THE UNION WHENSOEVER IT SHALL SEEM NECESSARY; AND THAT THE ASSENT OF THE NATIONAL LEGISLAURE OUGHT NOT TO BE REQUIRED THERETO.

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



GEORGE MASON

"THE PLAN NOW TO BE FORMED WILL CERTAINLY BE DEFECTIVE, AS THE CONFEDERATION HAS BEEN FOUND ON TRIAL TO BE AMENDMENTS, THEREFORE, WILL BE NECESSARY; AND IT WILL BE BETTER TO PROVIDE FOR THEM IN AN EASY, REGULAR, AND CONSTITUTIONAL WAY, THAN TO TRUST TO CHANCE AND VIOLENCE.

IT WOULD BE IMPROPER TO REQUIRE THE CONSENT OF THE NATIONAL LEGISLAURE, BECAUSE THEY MAY ABUSE THEIR POWER..."

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.



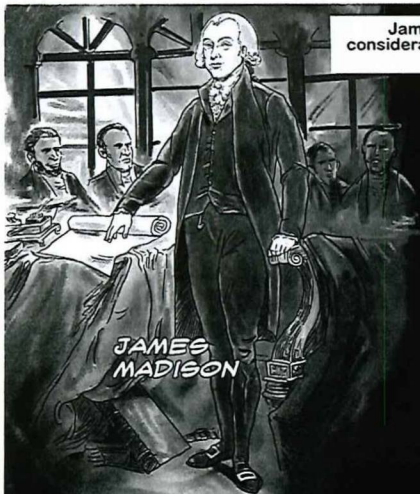
ROGER SHERMAN

JAMES WILSON

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:



JAMES MADISON

"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.



GEORGE MASON

"THE PLAN OF AMENDING THE CONSTITUTION IS EXCEPTIONABLE AND DANGEROUS. AS THE PROPOSING OF AMENDMENTS IS IN BOTH THE MODES TO DEPEND, IN THE FIRST IMMEDIATELY, AND IN THE SECOND ULTIMATELY, ON CONGRESS, NO AMENDMENTS OF THE PROPER KIND WOULD EVER BE OBTAINED BY THE PEOPLE, IF THE GOVERNMENT SHOULD BECOME OPPRESSIVE, WHICH I BELIEVE WILL BE THE CASE."

Authored by Ken Quinn



Immediately Gouverneur Morris and Elbridge Gerry moved to amend the article.

"REQUIRE A CONVENTION ON APPLICATION OF TWO-THIRDS OF THE STATES."

Note: The calling of a convention upon application from two-thirds of the states was originally in Pinckney's amending provision, Art. XVI.

GOUVERNEUR MORRIS

ELBRIDGE GERRY

James Madison's response to the motion demonstrates that he understood that the convention was limited to amendments applied for by two-thirds of the states;

"I DO NOT SEE WHY CONGRESS WOULD NOT BE AS MUCH BOUND TO PROPOSE AMENDMENTS APPLIED FOR BY TWO-THIRDS OF THE STATES, AS TO CALL A CONVENTION ON THE LIKE APPLICATION."

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](https://oll.libertyfund.org/titles/1909#Elliot_1314-05_1595)



# 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 States<sup>1</sup> 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 premitting 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,"<sup>2</sup> 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,<sup>1</sup> 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<sup>2</sup> 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 Congress 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."<sup>2</sup> 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 ocsent 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 NOV. 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.<sup>1</sup> 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  $\frac{3}{4}$  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

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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).

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PERMALINK <https://founders.archives.gov/documents/Madison/01-11-02-0243>

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H. OF R.]

*Answer to the President.*

[MAY 5, 1789.]

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 peo-

ple through so many difficulties, to cherish a conscientious responsibility for the destiny of republican liberty; and to seek the only sure means of preserving and recommending the precious deposit 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. SINICKSON, 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



MAY 5, 1789.]

*Application of Virginia.*

[H. OF R.]

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 pro-

mote 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, wherever 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-



H. OF R.]

*Duties on Tonnage.*

[MAY 5, 1789.]

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-





“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”).

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.<sup>1</sup> 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. <sup>2</sup>



CONVENTION of STATES  
ACTION





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 statutes on the same subjects, “leading to confusion and difficulty in areas common to all jurisdictions.”<sup>1</sup> 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).<sup>3</sup> 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.<sup>4</sup>

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:

- ξ Each state is represented by “commissioners.” The number and selection of commissioners for each state is determined by that state’s legislature.<sup>5</sup>
- ξ Each commissioner is required to present the commission (credentials) issued to them by their state legislature before they can represent their state.<sup>6</sup>
- ξ 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.<sup>7</sup>
- ξ The ULC appoints drafting committees to draft the text of each legislative proposal.<sup>8</sup>
- ξ Each piece of legislation that is drafted must be approved by the entire body of commissioners sitting as a committee of the whole.
- ξ 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.
- ξ 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.<sup>9</sup>

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

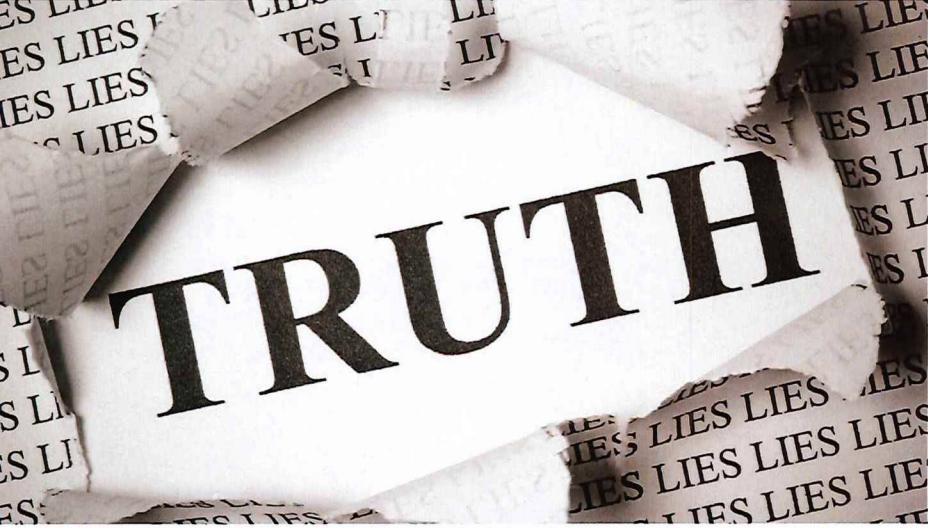
The preposterous notion that the States are incapable of holding a meeting today to debate, draft, and propose amendments to the Constitution because it will “runaway” is not only historically baseless, but is completely undercut by the hard work of the ULC over the past 124 years. It is an undeniable 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.



## CONVENTION of STATES ACTION





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*).

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*

**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**



UNCOVER THE FACTS

“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].”<sup>1</sup>

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.<sup>2</sup>

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.”<sup>3</sup>

In 1968 Welch joined Senator Schmitz as special guests at the National Convention of the Liberty Amendment Committee.<sup>4</sup>

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.<sup>5</sup>

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)

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

A PROJECT OF CITIZENS FOR SELF-GOVERNANCE



David Lewis  
Appleton, Wisconsin

Testimony against SJR57 for a Convention of States

Senate Committee on Insurance, Financial Services, Government Oversight & Courts

October 3, 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 SJR57.



Wisconsin

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October 3, 2019

**Testimony of ACLU of Wisconsin**

**In Opposition to Senate Joint Resolution 57 and Assembly Joint Resolution 77**

**Joint Committee on Insurance, Financial Services, Government Oversight and Courts**

Chair Craig and Members of the Committee:

Thank you for the opportunity to provide testimony in opposition to Senate Joint Resolution 57 and Assembly Joint Resolution 77, which petition Congress to call a constitutional convention to amend the constitution to impose fiscal restraints on the federal government and make other changes. The ACLU of Wisconsin is deeply concerned about the dangerous and unintended consequences that are likely to result from calling a constitutional convention for the first time in the history of our republic.

**A constitutional convention places our entire form of government and all of our carefully crafted freedoms and liberties at great risk.**

In the entire history of our republic, a constitutional convention has never been convened, and with good reason. To do so is a radical act that places our entire Constitution at risk.

Under Article V of the Constitution, there are two methods to amend the constitution. While a constitutional convention has never been convened, the other method of approving a specific amendment by two-thirds of the House and senate and three-fourths of the states has been repeated 27 times.

While the idea of a constitutional convention may sound desirable and perhaps even necessary, the problem is that a convention is likely to create far worse problems than its proponents aim to solve.

This is because, most importantly, a constitutional convention **may not** be confined to a single subject, nor is there any way to protect against a convention rewriting our nation's founding document wholesale. This means that those calling for various rights-limiting constitutional amendments in years past will undoubtedly advocate for additional changes on subjects as varied as gun control and reproductive rights.

- There are no standards governing the conduct and procedures of a constitutional convention.
- There is no way to ensure that delegates will truly represent the will of the people.
- There is no mechanism for ensuring that the rules governing the convention's conduct are fair.

The delegate selection process is not spelled out in the constitution. If each state has the same number of delegates and it takes a simple majority to pass an amendment, then the 26 smallest states—which make up less than 18 percent of the U.S. population—could pass an amendment. This is undemocratic.



A convention could choose proportional representation like in the House of Representatives, in which case California would receive approximately 53 more votes than Wyoming.

The ACLU finds the prospect of such a convention particularly troubling in light of the fact that many of our contemporary policymakers have strayed far from the wisdom of our Founders, particularly in the realm of checks on government power. We live in an age when national security is often used as the basis for the violation of individual rights. In order to challenge abuses of power, such as the overreaching of the NSA and executive branch secrecy, we all too often have to call on our Founders' wisdom, rooted in our Constitution and Bill of Rights. Such wisdom should not be lightly abandoned simply because we are frustrated and disillusioned by politics, particularly when we have no idea exactly which direction such a decision will take us.

Despite the efforts of this package of proposals, states cannot limit the agenda of a Constitutional Convention. A Constitutional Convention would open up the Constitution to whatever amendments its delegates chose to propose, just as the convention that produced the current Constitution ignored its original charge, to amend the Articles of Confederation, and instead wrote an entirely new governing document. In fact, ratification fails to be a safeguard. Conventions have the authority to change the process for ratifying amendments.

What we are here to warn you against, is the mistaken belief that a federal constitutional convention is the remedy to what ails our political system. Rather than placing our Constitution and all of the protections contained therein at risk, we strongly urge you to vote against these bills.

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<sup>i</sup> To give a few examples, the ACLU has lobbied against a Flag Desecration Amendment (criminalizing expression), a School Prayer Amendment (giving school officials authority to mandate how, when and where students pray), and a Federal Marriage Amendment (denying same-sex couples marriage rights).