

An Article V Convention of the States

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By David Barton

Article V of the Constitution provides the means whereby a so-called “Constitutional Convention” can be convened to amend the Constitution of the United States:

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

If thirty-four (that is, two-thirds) of the states issue a formal call for a convention to propose an amendment(s) to the Constitution, then such a Convention must be assembled. (Any such Convention is not led or supervised by Congress, but rather by delegates selected by the state legislatures.) Some 10,000 amendments to the Constitution have been proposed in Congress, ¹ but in two centuries, two-thirds of the states have never requested the same amendment. But that began to change in 1957.

Under the growing economic difficulties of the 1940s following World War II and the widespread implementation of Progressive economic policies under President Franklin Roosevelt, Indiana sought to curb uncontrolled congressional spending and growing national debt by issuing the first call for a Balanced-Budget Amendment to the federal Constitution. As federal economic problems only increased across subsequent decades, other states joined the call, ² and eventually thirty-four – the required two-thirds – did request such a Convention, but apparently the threshold was not met, for during that same time, some states had rescinded their call for an amendment. ³

Some conservatives had begun to loudly warn that if a gathering to write a Balanced Budget Amendment were ever convened, it could result in a “runaway convention.” As proof, they pointed to the original Constitutional Convention, claiming that it had met only for the purpose of repairing the Articles of Confederation but ended up writing a new Constitution instead. It was therefore argued that if a gathering was convened to write a Balanced Budget Amendment, that the entire Constitution could be set aside and replaced with an entirely new one – and that liberals had already written a substitute and were awaiting an opportunity to implement it. (Of course, subsequent experience has proven that Progressives don’t write a new constitution; they simply ignore the old one and have their judges rewrite it through activist decisions.)

I had heard these arguments for years and even repeated them to express my opposition to an Article V “Constitutional Convention,” but I now support such a Convention. Why? Because I personally researched the documents related to Article V and discovered that the portrayal of history I had been told was wrong – and it is a proven lesson that if you get your history wrong, then public policy positions based on that bad history will also be wrong.

As a point in fact, the 1787 gathering to write the U. S. Constitution was definitely *not* a runaway convention – the delegates did *not* ignore their state’s instructions about revising the Articles of Confederation and then come up with a renegade Constitution. This is affirmed by the fact that the states ratified the Constitution after it was written – they supported what occurred at the Convention. Furthermore, history also shows that throughout the construction of American government, the states had full control over their delegates.

For instance, during the Second Continental Congress (which, like the Constitutional Convention, was a gathering outside the normal governmental bodies of the time), Pennsylvania instructed its delegates not to support any separation from Great Britain,⁴ and their delegates followed those instructions. But Pennsylvania later changed its instructions and authorized their delegates to vote with the other states,⁵ and thus for the Declaration of Independence. When several of their delegates ignored those instructions and voted against the Declaration, Pennsylvania recalled them and replaced them with new ones.⁶ Clearly, the states had control of their delegates and could stop any runaway convention.

(There are many excellent resources available to bring an accurate historical perspective to any examination of Article V. See, for example, the historical information at www.conventionofstates.com, particularly under “Convention of States Handbook” and “Opposition Response.”)

So both history and the explicit language of the Constitution make four points evident:

- 1. The original Constitutional Convention was not a runaway convention*
- 2. The current proposed gathering is not a “Constitutional Convention,” for it is not a gathering to write a constitution; rather, it is a “Convention of the States” convened for the purpose of suggesting a specific constitutional amendment(s) to limit the federal government*
- 3. The Constitution itself specifically stipulates that any such Convention can only “propose Amendments to this Constitution,” not produce a new one*
- 4. The states have extensive authority to control their delegates and prevent them from going afield from the purpose for which they were sent to the convention*

One other crucial point that conservative opponents of an Article V Convention have failed to acknowledge is that it does not endanger the Constitution to use the Constitution. The Founders specifically placed Article V into the Constitution as a tool whereby states could enforce federalism and limit federal overreach, and to not use this part of the Constitution for fear of losing the Constitution is like not using the First Amendment for fear of losing the First Amendment, or not using the Second Amendment for fear of losing the Second Amendment, or not using Trial by Jury for fear of losing Trial by Jury. If something is in the Constitution, then conservatives can't be like Progressives and pick and choose which parts they embrace.

Furthermore, it is time to change our mindset about using the Constitution. Long ago, Founding Father John Jay, an author of the *Federalist Papers* and the original Chief Justice of the U. S. Supreme Court, wisely advised:

*Every member of the State ought diligently to read and to study the constitution of his country, and teach the rising generation to be free. By knowing their rights, they will sooner perceive when they are violated and be the better prepared to defend and assert them.*⁷

We have been defending the Constitution. It is now time to assert it.

Significantly, the National War College in Washington, D. C., teaches the brightest American military officers both the philosophy and the tactics necessary not just to engage in war but to win that war. A course central to that training is “The Nine Principles of War,” and offense is one of those key doctrines of war, but defense is not. In fact, defense is only considered a temporary condition during which assets are reorganized in order to go back onto offense. Going on offense, and then sustaining a strong offense, is the key to ultimate victory. It is time for states to go on the

offensive to limit the overreach of the federal government.

Bad history not only engenders bad policy, it also produces straw-men arguments that inflame the emotions and limit offensive aggressiveness by raising fears of what MIGHT happen – that if an Article V gathering is convened, it MIGHT turn into a runaway convention, and it MIGHT replace the Constitution with a new one (and it is alleged that George Soros is currently funding such efforts). But we also MIGHT be wiped out by a falling meteor tomorrow afternoon at 3PM; or Hawaii MIGHT experience a blizzard on July 18th; or in the last two years of his presidency, Barack Obama MIGHT become the greatest constitutional conservative in American history. There are too many “MIGHTS” – too much fear – and fear keeps citizens on defense rather than offense. Because of what MIGHT happen, then nothing is done.

By the way, suppose for a moment that all of history and the explicit language of the Constitution is wrong, and that the critics’ worst fears do come to pass, and that the Convention does write an entirely new Constitution. What then? The new document could take effect *only* after it was ratified by BOTH bodies of the legislature in three-fourths, or 38 of the states. Thus, it takes only one legislative body in thirteen different states – either the house or the senate – to stop such any such new document. There are 99 state legislative chambers in America (Nebraska has a unicameral legislature with only one body), so then this means that 87 of the 99 legislative bodies would have to vote to dump the current Constitution before a new one could be implemented. No Progressive – no matter how optimistic – can identify anywhere close to 87 state legislative bodies that would support such a plan. Similarly, no conservative – no matter how pessimistic – should have any trouble naming 13 States in which either the House or Senate would refuse to ratify and thereby put that state in the “no” column. Again, only 13 States saying “no” would stop such a plan. But it will not come to this, for the Constitution explicitly stipulates that an Article V gathering can *only* propose amendments to the Constitution, not replace it.

These are some of the many reasons why I support an Article V Convention of the States. It is time to reject straw-men arguments, relearn our history, and embrace what the Constitution authorizes. It is time to act on the Constitution and limit the federal government before it becomes so large and intrusive that it can no longer be restrained.

I was recently asked to provide a letter of support for a state legislature that was voting on a call for an Article V Convention of the States. Here are my comments to that body:

Fellow Patriots,

It is exciting to see such a renewed interest in basic constitutional principles. Liberty lovers across America are studying their past in order to find ways to stop our federal government’s explosive growth and sprint towards socialism.

Fortunately, our Founding Fathers, with their thorough understanding of human nature, created constitutional means to restrain the federal government when it exceeded its jurisdiction. One specific means was the Constitution’s Article V amendment process by means of a Convention of the States. This is a proper solution.

We have not come to this conclusion lightly. Like many of our conservative friends, we initially avoided this constitutionally-specified process due to a fear of what might occur, or what could happen. But after years of research and studying the Founders’ original intent for this amendment process – and after years of witnessing an unconstitutional reshaping of our federal government – we are confident that this is the correct course of action.

The Federalist Papers declare that the Constitution specifically furnishes each part of government “with constitutional arms” for its own “effectual powers of self-defense.” One such arm of self-defense

that the Constitution gives to the states is an Article V Convention of States. For states to refuse to use this tool would be like going into a street fight, but refusing to use one of your biggest and most effective weapons. And it is illogical to consider the use of any constitutional provision as a threat to the Constitution. It makes as much sense as violating the free-market system to save it, or breaking health care to fix it.

We urge you to support all of the Constitution, and thus the efforts of the Convention of States to pass their extremely well-thought-out and strategic legislation in your home state and thus join us in a call to restore our constitutional republic.

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Endnotes

1. [“Measures Proposed to Amend the Constitution,”](#) *Senate.gov* (accessed on June 5, 2014).
2. Russell Caplan, *Constitutional Brinkmanship: Amending the Constitution by National Convention* (New York: Oxford University Press, 1988), pp. 78-89. So far, 34 states have issued such a call, including Alabama, Alaska, Arizona, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Wyoming, Michigan, and Ohio.
3. [“List of Rescissions of Article V Convention Applications ,”](#) *Wikipedia* (accessed on June 5, 2014). Alabama, Florida, Louisiana, North Dakota, and Georgia have resubmitted calls for convention starting in 2011. The rescinded states include Alabama (rescinded 1988; new call 2011); Arizona (rescinded 2003); Florida (rescinded 1988 ; new call issued 2010, renewed in 2014 with 2 other provisos); Georgia (rescinded 2004; new call issued 2014); Idaho (rescinded 1999); Louisiana (rescinded 1990; new call issued 2008; renewed in 2011 and 2014); New Hampshire (rescinded 2010; new call issued 2012); North Dakota (rescinded 2001; new call issued 2011); Oklahoma (rescinded 2009); Oregon (rescinded 1999); South Carolina (rescinded 2004); South Dakota (rescinded 2010); Tennessee (rescinded 2010; new call issued 2014); Utah (rescinded 2001); Virginia (rescinded 2004); and Wyoming (rescinded 2009).
4. Peter Force, *American Archives: Four Series. Containing a Documentary History of the English Colonies in North America, from the King’s Message to Parliament of March 7, 1774, to the Declaration of Independence* (Washington: M. St Clair Clarke & Peter Force, 1840), Vol. III, pp. 1792-1793, instructions to the Delegates from the Province [of Pennsylvania] in Congress, November 9, 1775.
5. Peter Force, *American Archives: Four Series. Containing a Documentary History of the English Colonies in North America, from the King’s Message to Parliament of March 7, 1774, to the Declaration of Independence* (Washington: M. St Clair Clarke & Peter Force, 1840), Vol. VI, pp. 862-863, instructions to the Delegates [of Pennsylvania] in Congress, June 14, 1776.
6. Thomas F. Gordon, *The History of Pennsylvania from Its Discovery by Europeans to the Declaration of Independence in 1776* (Philadelphia: Carey, Lea, & Carey, 1829), pp. 537-538. See also, Peter Force, *American Archives: Fifth Series. Containing a Documentary History of the English Colonies in North America, from the Declaration of Independence to the Definitive Treaty of Peace with Great Britain, September 3, 1783* (Washington:

M. St Clair Clarke & Peter Force, 1848), Vol. I, p. 1586, Pennsylvania's appointment of new delegates, July 20, 1776.

7. John Jay, *The Correspondence and Public Papers of John Jay*, Henry P. Johnston, editor (New York: G. P. Putnam's Sons, 1890), Vol. I, pp. 163-164, Charge to the Grand Jury of Ulster County, September 9, 1777.