

Article V Movement Gathers Steam, Critics Seethe



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One of the sure signs that your federal government is in a state of disarray is when record numbers of Americans begin turning to the U.S. Constitution to figure out just where it all went wrong. Until recently, these readers might have skipped right past Article V, not noticing that therein lies [the most potent of solutions](#).

As readers of Mark Levin's book [The Liberty Amendments](#) have learned, Article V includes a lesser-known means by which the states can propose amendments. This was precisely the method the founders intended to be used to check an expansionist federal government.

Thanks to Levin, [ConventionofStates.com](#), and Lawrence Lessig's [CallaConvention.org](#), the effort to get state legislatures to demand the first ever amendments convention seems to be hitting its stride.

But the movement is not without its critics.

Enter constitutional speaker [KrisAnne Hall](#), who would prefer that states engage in out-and-out nullification of unconstitutional federal overreaches. Though less clear constitutionally, the idea has precedent and is also advocated by the [Tenth Amendment Center](#). But unlike the Tenth Amendment Center, Ms. Hall has decided that an Article V amendments convention competes with nullification, and has taken the position that an amendments convention is a road to disaster because she has discovered a clandestine plot by Congress to take over the amendments convention process from start to finish.

In a novel approach, Ms. Hall does not begin with the [discredited conspiracy theories](#) of the John Birch Society and Phyllis Schlafly's Eagle Forum, hyping fears of a so-called "runaway convention." Instead, she advises her listeners in a [5-part podcast series](#) to ignore the siren call of Article V, suggesting that Congress has shown their hand in [an obscure report](#) by the little-known Congressional Research Service. She then inverts the relationship of the CRS to Congress, maintaining that rather than reporting to Congress, the CRS instead publishes the definitive policy of Congress:

If you know anything about politics ... the CRS issues the opinions that Congress is willing to die for.

This would surely come as a surprise to the CRS, as would some of the pronouncements that Ms. Hall attributes to the 32-page report with few specific citations. In effect, Hall incongruously suggests that the Article V movement should surrender because of what Congress *might do* with the amendments convention process – effectively granting veto power over the entire Article V process to a lone federal researcher: Thomas H. Neale, the July 9, 2012 CRS document's author.

Curiously, Ms. Hall seemed to be unaware of a newer, more comprehensive version of the report published by CRS on March 7, 2014, a full 10 days before her first podcast installment.

The newer CRS report, while somewhat tighter, is like the original in that it is a discussion of the possible interactions between the federal government and the states, should the states meet the requirements to trigger the first ever Convention for Proposing Amendments. Both reports are historical in nature, essentially benign to the Article V movement, and are anything but heavy-handed, dictatorial policy

documents.

Among Ms. Hall's more interesting constructs is that Congress has changed the rules, to require ratification of proposed amendments to be contemporaneous, limiting the process to 7 years (part 1, 26:40).

But the July 9, 2012 CRS report clearly states (pg. 2) that this has become "standard procedure when Congress proposes amendments" and that the precedent would "likely be followed for an amendment or amendments proposed by an Article V Convention."

Hardly a requirement.

Ms. Hall then takes the imagined "requirement" regarding congressionally proposed amendments and makes the case (part 2, 24:35) that this would also be the case for state-submitted Article V applications!

Beginning with the 18th Amendment, Congress began appending ratification deadlines as part of amendment proposals, and it was this that the Supreme Court later ruled acceptable. "Acceptable" does not mean "mandatory," and the ruling spoke not at all of state applications.

This begets a disturbing pattern where Ms. Hall references a topic covered in the report, then twists it into an antagonistic pronouncement of policy by the CRS, supposedly acting in its capacity as "the brain of Congress" (part 1, 8:48).

The CRS report takes up a number of questions about the Article V process and diligently explores a range of answers to each. Once such is asked on page 8: "Is Congress required to call a convention?" In the report's analysis, Article V is quoted, including the all-important mandate that Congress "shall call a convention" when the states meet the necessary requirements. Discussing an outlying view by mid-20th-century counsel to the House Judiciary Committee Cyril Brickfield (pg. 9), the report quotes the council's arguments that, in Brickfield's opinion, Congress might not be compelled to call the amendments convention.

Brickfield's opinion is contradicted by the CRS report, thus:

Ultimately, it is difficult to conceive that Congress would fail to heed the deliberate call of a substantial majority of the nation's citizens, acting through the agency of their state legislatures, and meeting the clearly stated requirements of Article V.

Ms. Hall's version ignores the CRS conclusion and, in referencing Brickfield's statement (part 1, 26:20), falsely ascribes the view as a statement of advocacy by the CRS (part 1, 29:30):

You have the CRS, the current brain of Congress, declaring that Congress doesn't need to worry ... if you don't want to call a convention, don't worry about it because if you choose not to do it, there is no recourse available to the states. So go ahead and refuse to call a convention. There's nothing that's going to happen.

The pattern continues throughout the entire 5-part series. Ms. Hall selectively references one side or another of an argument and misrepresents it as the policy of CRS, and thereby, Congress.

Each state's legislature has some form of a research service. These provide background and historical data designed to be of use to lawmakers as they consider legislation. In this, all such research services

are not in the business of making or pronouncing policy. The same is true for the Congressional Research Service. For anyone, let alone a constitutional “expert,” to contend that the CRS has any role in establishing or even reporting policy is beyond absurd.

Ultimately, Congress’s role is to receive state applications, aggregating them by subject until the two-thirds threshold is reached. At that point, Congress is to set a time and a place for the amendments convention. It is solely the province of the states as to how delegates are selected, and each state may send as many as it likes – but each state gets only one vote, just as in every convention of states in U.S. history.

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