

THE ASSEMBLY OF STATE LEGISLATURES

COMMITTEE RESPONSIBILITY FORM

Below are the items (numbered) that each committee will be responsible for addressing. Clarifying comments were added in bullet point format after each item to help the committee members better understand that item.

Additional items may be added as discussion takes place. All committees are included below so review can be made to see if another committee may already be addressing the addition item. Communication between committees is encouraged if this takes place.

Committee: Rules and Procedures

1. Convention stance on the state delegate selection process:
 - o The delegate selection takes place at the state level but does the Convention have any authority or desire to specify number of delegates, who delegates should be (state legislator, elected delegate, governor, etc.), or other details related to delegates?
2. Deliberative authority of body after a call is made:
 - o There is a question as to what an Article V Convention could discuss as part of its proceedings to draft amendments. Article V is clear, in both its verbiage and the founding era documents, that a rewrite of the constitution is not within the authority of the body. It is described as a "Convention for Proposing Amendments"; therefore it is limited to amendments. Madison, in Federalist 43 said it enables state governments "to originate the amendment of errors." This is very different from the language used by 10 states in their resolution for the Philadelphia Convention, which called to recommend any and all expedient changes to the federal constitution.
 - o Can any amendment be discussed once in session or is it restricted to the call? The call will specify the purpose. The purpose comes from the 34+ resolutions from the States, thus it's the only authority by which the Convention exists. Anything that is outside of the specific authority may not have legal standing. Note that Congress has no authority to define the call if it is in any way discretionary (Federalist 43).
 - o Will other subject matter be allowed to be discussed, and if so what are the parameters, or bounds, of the discussions, if they are outside of the call? Should this trigger a recall of the delegate or is it acceptable for discussion purposes only? The body very clearly has deliberative authority and at times related subjects may need to be discussed for possible impact. The rules should consider not hindering prudent discussion to ensure all angles and impacts are properly looked into.
 - o The Judiciary Committee will be working to define the content of the call and process of delivering that information to Congress, so communication is recommended to ensure full coverage and congruency of subject.
3. General rules creation, revision and adoption process:
 - o One of the first items on legislative and historical convention agendas is adoption of rules. Thomas Jefferson's Manual of Procedure, Mason's Rules or Roberts Rules of Order are several examples that could be utilized for general rules and procedures.
 - o Since it is likely that many of the delegates, and even officers, will be state legislators, it may be beneficial to select one that is commonly followed by the various state legislatures.
4. Verbiage for rules continuity clause that would be adopted and carried into the next meeting of the body:

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- A body can chose to include in its rules a clause that would carry the adopted rules of that session into the next session. This ensures that the new body, upon convening, has order.
 - This will be an essential clause in order to properly address concerns that, upon the convening of an Article V Convention for Proposing Amendments, the delegates would not be governed by a specific set of rules and thus would be able to "act in any regard".
 - An example is Wisconsin's State Assembly Rule 92, which states:
"Continuity of assembly rules. The rules of the assembly remain in effect until amended or rescinded by the assembly. At the beginning of a new biennial session, the rules of the assembly in effect at the conclusion of the preceding regular session remain in force until superseded by assembly rules adopted in the new session of the legislature."
 - If existing rules are in place, resolutions could be passed at the state level that are predicated on these rules. There are many ways to do this, but one example would be that if a rules change takes place upon convening of an Article V Convention for Proposing Amendments, the legislature has 24 hours after that rules change is adopted to review such change. If the changes are not acceptable they can give the delegate the instructions to propose new rules that would be acceptable, and if the changes are not accepted by the Convention within 48 hours, the delegate will be recalled from the convention (assuming recall rules exist that allow the states to do this per 8.).
5. Selection, term and responsibilities of officers:
- Define the selection process of officers.
 - Define what offices should exist.
 - What is term, and what is replacement procedure if officer is removed or resigns?
 - Define circumstances under which officers should be removed.
6. Committee structure and their process for discussion, voting and communicating to the body:
- Committee Chairs can be:
 - appointed by President
 - elected by body
 - elected by committee
 - other
 - Committee members can be
 - appointed by President
 - elected by the body with highest vote earners
7. Speaking rights of delegates on floor:
- Length of time
 - Number of times
8. Process of delegate recall, including state authority:
- The process of delegate recall is something that would be initiated by either an individual state or by the convention body, and will thus need to be addressed in the rules of a convention.
 - State Legislature Initiation: A state would most likely notify the convention in writing of its desire to recall/remove its delegate(s). As the Convention is seen as an independent legislative body, there are legal concerns of a state's ability to have the authority to take this action. The Convention could chose to issue the required authority by recognizing each state legislative body's ability to recall. There would then need to be a process to accumulate each states recall rules. It may be prudent for the Convention to, at a minimum, request that each state

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notify the presiding officer of the convention in writing, signed by the presiding officer of that legislative body, of the recall of authority of the specified delegate (s).

- Convention Initiation: The Convention will also need to draft its own rules on removing a delegate from the body and what would trigger that event.
 - A responsible party for removal will need to be determined. For example, if a delegate from Hawaii performs an action that triggers recall, who would carry out the recall? The sergeant-at-arms would typically do this with the help of the state police. The committee will need to look into how to give that authority to the proper party and who that party would be (State Police, Capitol Police, local law enforcement, etc.). Would each state need to send one of their own or could this be done by the hosting state/Washington DC? The point is, whoever is going to do it must have the legal authority to do so.
9. Process for drafting of amendment language:
- Define the drafting process as to who will do drafting, proofing, final language, etc.
 - Will legal counsel be utilized, and if so how would they be selected?
10. Number of votes required for passage of an amendment:
- Thresholds for voting on amendment language, such as simple majority, two-thirds, three-fourths, will need to be defined.
11. Process around one state one vote precedent:
- Historical proceedings and the Article V inference to the Senate clearly lay out a one state one vote precedent, but this will need to be clearly defined in the rules.
12. Process of transmission to states of any passed amendment:
- Upon passage of an amendment by the body, the notification process to Congress and to all states will need to be defined.
 - Congress's only enumerated discretionary power is selection of one of two ratification methods. The decision and notification process back to the Convention will need to be defined as to who, when, where, etc.
 - Each state will need to be communicated with that an amendment has been passed, along with its language. The first 27 amendments, having been drafted by Congress, have been communicated via a process defined in the US Code (1 U.S.C 106b). It will need to be determined if this code is to be followed for a Convention drafted amendment, or if a separate process is to be followed.
13. Applicability of rules to the body:
- It should also be clearly stated that we see a Convention of the States as the same legislative body, no matter if convened for the purpose of an Article V Convention for Proposing Amendments, or for any other purpose. It is the same precedent as if the Indiana House, for example, was in regular or special session; it is still the same body even though it is convened under a different purpose.
 - Specify what types of "session" the rules would govern. Are the rules just going to apply to Convention of the States when in session under an Article V Convention for Proposing Amendments, or will they apply for any Convention of the States no matter the purpose?
 - Clarity should be given between a meeting that is more for an interstate compact type situation, where several states are meeting for a specific purpose to those states vs. a Convention of the States meeting to address issues of national concern, such as a Convention to Write the Rules or an Article V Convention for Proposing Amendments

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Committee: Planning, Communication and Finance

1. Process of admittance and credentials required:
 - o Historical conventions provide ample evidence on what to do here.
2. Convention staffing and security
 - o Where will staffing come from?
 - o Who will handle security?
3. Oath of office necessity/language for delegates:
 - o Most, if not all, state legislators take an oath of office, which includes swearing to uphold the Constitution of the United States, but this will need to be confirmed.
 - o Not all delegates may be state legislators under oath, so should there be an oath taken by each attending delegate and what should it be?
4. Define if meetings will be open or closed, and if open how communicated:
 - o The Philadelphia Convention of 1787 was done under secrecy in order to allow delegates not be subjected to undue pressure from outside forces or try to "glorify" themselves. In today's terms, we could say it was to keep delegates focused on the task at hand instead of showboating for the cameras for their own personal gain. There will no doubt be special interest groups applying significant pressure on delegates during a Convention, so should this secrecy rule still apply for portions (committee for example), or all, of the Convention proceedings?
 - o How should proceedings be communicated to public?
5. Method of recording proceedings of full body and committees
6. Time and location selection process of Convention:
 - o This is part of the information that will need to be sent to Congress to be included in the Call
 - o Criteria should be defined as to what should be considered when determining a location, such as accessibility, lodging/accommodations, staffing and security.
 - o Possible locations could be identified and recommended.
7. Convention financing:
 - o There are costs to holding a convention. This is a federally authorized action; therefore should the federal treasury cover the costs? Do state legislatures hold the responsibility since it is a state option?
8. Budget creation and communication process:
 - o Policy should be set so that a budget is prepared and communicated to the responsible party. This puts in place a level of accountability to the taxpayers, who will be paying the costs through their tax dollars.
9. Tracking and allocation of convention costs:
 - o There should be an accounting of costs and an approval/authorization process established for any expenditures. Materiality levels should be considered here.
10. Collection process:
 - o How will expenses be funded? Should an account be funded up front to ensure expenditures can be made in a timely manner so as not to hold up the process of the Convention, or should authorization be obtained prior to expenditure?

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- If funded by either federal or state treasuries, what process must be established to ensure proceedings and progress are not obstructed?
- Consider ensuring that Delegates are not held responsible for costs

Committee: Judiciary

1. Process to ensure that the Compact Clause in Article I Section 10 of the Constitution is not triggered:
 - The Compact Clause should be reviewed and a policy established as to its applicability as well as precautions that are taken to ensure there is no infringement that would trigger Congressional oversight. With Congress being so limited in its role, and only one enumerated discretionary task (selection of method of ratification) there is little risk here, but it should still be addressed
2. Criteria for a qualified application:
 - The criteria for an application has to be defined by the States, as this power is not enumerated to Congress in the Constitution. The sovereignty and uniqueness of each state should be taken into account when considering this. It would be unreasonable to require that applications mirror each other.
 - The Article V resolutions that have been passed in states throughout our history (nearly 700 by some counts) vary significantly as to single subject, single amendment, multi-subject, open, etc. The process of counting applications toward the required 34 will need to specify how the total is compiled.
 - The Constitution did not specify the form the application should be in, thus it would appear unreasonable to disqualify any resolution on any basis related to format. This includes states that may go as far as specifying what they want the language of the amendment to be. We know this is the responsibility of the delegates at the convention, but a state specifying language simply signifies a desired outcome. It is important to note there that if amendment language is drafted and adopted by an Article V convention, it goes back to the states for ratification. If they do not agree with the wording they do not pass it.
 - Most applications to date have been around a specific subject or issue, or simply open; however, there are applications that exist that cover multiple subjects. If a situation arises where a count is being determined on the number of applications towards a specific subject (assuming there are a large number of single subject applications around a specific subject), if that subject is included in a multi-subject application, it is clearly the intent of that state to deal with the subject, so it would be reasonable to include that application in the cumulative count towards that subject.

As an example, if there are 25 live applications to make the Green Bay Packers the official football team of the United States. There is also a separate state that has an application that resolves this plus having the Wisconsin Badgers as the official basketball team of the United States. It is reasonable to say that there are 26 applications desiring the Green Bay Packers to be the official football team of the United States. Essentially, by not counting the multi-subject application in this example, the will of the people would be muted.

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Open applications don't address this specific subject so it appears reasonable that they would not count toward this call.

- The scope of open applications (in regards to subject matter) should also be defined as part of this. It is a Convention for Proposing Amendments and not a Constitutional Convention (limited vs. plenipotentiary). Only amendments may be offered and not a new Constitution written.
3. Number of live applications that have been submitted to Congress:
 - The Committee should establish a process for counting live applications, as this power was not enumerated to Congress.
 - Process will need to include the number as well as what the authority of debate (subject(s)) are for those applications.
 - A regular count should be given to the states, so how should it be done and who should do it.
 4. Length of time a state application submitted to Congress is valid:
 - Does a resolution that has been submitted to Congress as an Article V application ever go stale, or lose its validity, if a termination date is not specified? It is issuing the intent of the legislature of that state. Until such time as that legislature pulls back, or terminates, the application, or unless an expiration date was included in the resolution, there seems to be little evidence suggesting it should go stale. Should not the will of the legislatures continue until such time as that will is changed by action?
 5. Content of the Call:
 - Article V language simply states that "Congress shall call". Determining what should be in the call would be using discretion, and that is clearly outside of the authority of Congress according to Madison in Federalist 43, therefore it will be prudent for the states to design all of the details of that content.
 - To ensure there is no question about reaching the threshold, consider designing a Document of Notification that the Convention would use that includes all of the necessary data the states would need to know in a call.
 6. Process for notifying Congress that a call must be made:
 - It would be prudent for the Convention to have the Document (see 5.) personally delivered by defined individuals, possibly its presiding officer(s), so there is no debate on Congress's responsibility to make the call.
 - This notification document will need to include all of the necessary information for the Call, as no power of discretion was given to Congress. Any missing details may lead to a Call being delayed or not made at all.
 7. Length of time Congress has to make a call once the 34 qualified applications threshold is met:
 - The call is essentially the invitation to an Article V Convention for Proposing Amendments. What is a reasonable amount of time for Congress to send out this invitation?
 8. Ability to rescind Article V applications that have been submitted to Congress:
 - There is little evidence as to why a state legislature, which represents the will of the people, cannot rescind its Article V application once submitted to Congress. This can and will change for many reasons that are outside of the authority of the Convention.
 - Define at what point an application can no longer be rescinded. One option to consider is up until the call is made. Another option is up until the Convention is actually called to

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order. Once that happens the new legislative body is active and has legal grounds to begin the process of forming an amendment.

9. Length of time a convention is open for and what events would "terminate" it:
 - o One concern to be addressed is what if an amendment is not drafted, does the Convention remain open perpetually? What action should be written into the rules so there is no doubt the Convention is over, both if there is passage or no passage of an amendment/amendments?
10. Length of time an amendment that has been sent to the states for ratification remains valid for the required 38 ratifications:
 - o Clarify who has the authority to implement a time limit, should one be put in place, or does it remain open until such time as 38 ratify?
 - o Once an amendment is sent to the states for ratification, should there be a process for the Convention to pull back an amendment should the will of the people change, or is it that once sent for ratification it is out of the hands of the Convention and in the hands of the people via the ratification method prescribed by Congress?
11. Role that the District of Columbia and U.S. territories would play in the Convention, if any:
 - o Can they participate in any way? Voting vs participate in discussions but not vote, observation only, or simply not a part of the process?
12. Define proper usage of the words "resolution" vs. "application" so there are no legal delays on verbiage or intent.

