

# How an Article V Amendment Convention will work

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*by Dr. Ed Berry*

This article is based upon what I learned from Ron Natelson's talk on October 21, 2013, in Kalispell, Montana.

## The Problem

We have a freedom problem. Liberals and socialists have changed the interpretation of our Constitution in a manner that helps them achieve their objectives. The jurisprudence they have established can take 200 years to reverse by using the means we are presently using. In fact, we may never achieve our freedom goals if we only keep using the methods we now use.

Conservatives have tried many ways to stop the progress of America toward socialism. We have tried:

- Political action
- Better citizen education
- Commissions
- Deals to reduce our deficit
- State interpositions other than Article V

So far, all our efforts have failed to stop or even slow down the progress of the liberals and socialists. The Founders of our Constitution provided a way to solve our present problem in Article V. Here's what an Article V Amendment Convention can accomplish:

1. Its Amendments can change law overnight and quickly reverse the gains made by the liberals and socialists over the last 200 years.
2. It can redefine the jurisprudence in our legal system to give immediate advantage to conservative views.
3. It will force judges to obey the new legal rules.

In short, an Article V Amendment Convention called by two-thirds of the states can accomplish what no other alternative can accomplish. There is no other way to reverse the gains made by the liberals and socialists. Most conservatives want to try it but the more extreme conservatives are fighting it. Until the conservatives can get together on this, it looks like the liberals will continue to win. Here's why the more extreme conservatives are fighting against an Amendment Convention:

1. They think the liberals will gain control the Convention and remove our remaining Constitutional protections.
2. They think it won't work.
3. They think it will be a waste of time.

Let's review the concerns of those who are fighting against an Article V Amendment Convention. Here are some beliefs that are really myths. We learn they are myths via the extensive legal research by Rob Natelson. Myths about Article V:

1. The 1787 Convention is our only legal precedent.
2. Congress called it to amend the Articles.
3. It exceeded its instructions.
4. Madison opposed Article V conventions.
5. It's a con-con that can't be controlled.
6. The N&P Clause gives Congress power to control convention rules and selection.

Over the years, the following people made the above claims:

1. Anti-Federalists who claimed the 1787 convention exceeded its powers.
2. People in the late 19th century who claimed an Article V Convention is an unlimited con-con.
3. People against the Dirksen re-apportionment amendment in the 1960s.
4. Supporters of Senators Bobby Kennedy (D-NY) and Joe Tydings (D-MD).
5. Professors and judges who wanted to protect liberal Supreme Court decisions without much research.

These false claims, not any present research, form the basis of the present belief by those who fight against an Article V convention. These false claims show how right the King was in "The King and I" song "The Puzzlement":

*And it puzzle me to learn That tho' a man may be in doubt of what he know, Very quickly he will fight... He'll fight to prove that what he does not know is so!*

It is always wise to study the latest research on any subject, because if new data contradicts your beliefs the you should change your mind. Here's what Rob Natelson's research proves:

1. The Framers created the Article V process precisely for the kind of crisis we now face.
2. The Constitution gives the Convention all its power and the Convention can only propose.
3. The convention is a meeting of committees (of commissioners) from state legislatures.
4. If 34 states apply on a topic, Congress must call for that topic.
5. Each legislature decides how to choose, commission, and instruct its committee.
6. Each state gets one vote.
7. The Convention adopts its own rules.
8. The Convention decides whether to propose amendments and draft them.
9. Resolutions outside the authority are mere suggestions and not ratifiable.
10. States may ratify or reject valid proposals.
11. These rules can be enforced by the states, by Congress and by the courts.

**So what is Article V?** Here's the whole Article V:

"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 Convention in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."

But before we attempt to interpret Article V by ourselves, we must remember one very important fact: It is settled constitutional law that the meanings of the words in Article V are fixed by Founding-Era and other historical evidence. Here are some of the important cases:

- Hollingsworth v. Virginia, 3 U.S. 381 (1798)
- Dillon v. Gloss, 256 U.S. 368 (1921)
- Leser v. Garnett, 258 U.S. 130 (1922)
- State ex rel. Donnelly v. Myers, 127 Ohio St. 104, 186 N.E. 918 (1933)
- Dyer v. Blair, 390 F.Supp. 1291 (N.D. Ill. 1975),
- Idaho v. Freeman, 529 F.Supp. 1107 (D. Idaho 1981), etc.

Here are the key words in Article V:

- The Congress . . . shall propose . . . or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing . . .
- which, in either Case, shall be valid . . . when ratified by the Legislatures of three fourths of the several States, or by Convention in three fourths thereof,
- as the one or the other Mode of Ratification may be proposed by the Congress
- Provided that no Amendment . . . [etc.]

You will note there are 4 distinct steps in Article V. These 4 steps are:

- A proposal
- A ratification
- A selection of the mode of ratification
- Limits on the amendment power

Here are some convention facts: A convention is a meeting, other than a legislature, to deal with one or more political problems. Our Founding Generation held many conventions. During the life of Ben Franklin (1706-1790), there were at least 25 conventions among the colonies or states. Here are some multi-colony conventions:

- 1711 – Boston, MA
- 1744 – Lancaster, PA
- 1745 – Albany, NY
- 1754 – Albany, NY
- 1765 – Stamp Act Congress, NYC
- 1768 – Fort Stanwix (Rome), NY

- 1774 – First Continental Congress, Philadelphia

Here are some multi-state conventions:

- 1776-77: Providence, RI (finance & war)
- 1777: York Town, PA (inflation)
- 1777: Springfield, MA (finance & trade, excluding matters within Congress's powers)
- 1778: New Haven, CN (inflation)
- 1779: Hartford, CN (inflation and trade)
- 1780: Philadelphia, PA (inflation).
- 1780: Boston, MA (war strategy)
- 1780: Hartford, CN (war strategy)
- 1781: Hartford, CN (war supply)
- 1786: Annapolis, MD (commerce)
- 1787: Philadelphia, PA ("rendering federal constitution adequate to the exigencies of the union")

Here are some conventions called but never held:

- 1777 & 1778: Charleston, SC (inflation)
- 1778: Frederickburg, VA (inflation)
- 1781: Providence, RI (conduct of war)
- 1783: Hartford, CN (taxation)
- 1786: Philadelphia? (navigation in Susquehanna & Chesapeake)

All these conventions led to these standard rules:

- The Convention "application" or "call" sets the topic
- Each state instructs and sends a "committee" of "commissioners"
- One state gets one vote
- Convention adopts its own rules and elects officers
- Unless authorized to "pledge faith," convention only proposes.

Most leading Founders also had served as commissioners to a convention. Since the procedures were standard, they inserted in Article V only a few clarifications:

- The convention is to propose only
- If states apply, Congress must call
- A states' convention is not a "plenipotentiary" (constitutional) convention

Natelson's research also discovered:

- The Constitutional Convention was called by Virginia and New Jersey, not by Congress.
- It did not exceed its authority.
- Madison did not oppose Article V conventions. He later recommended them. (Letter to Edward Everett, Aug. 28 1830).

The ratification debates confirm that the states control the convention. James Madison, Federalist No. 43:

"[The Constitution] equally enables the general and the State governments to originate the amendment of errors. . ."

NY Ratifier Samuel Jones

"It could not be known to the framers of the constitution, whether there was too much power given by it or too little; they therefore prescribed a mode by which Congress might procure more, if in the operation of the government it was found necessary; and they prescribed for the states a mode of restraining the powers of the government, if upon trial it should be found they had given too much."

Tench Coxe:

". . . two thirds of the states can always procure a general convention for the purpose of amending the constitution, and . . . three fourths of them can introduce those amendments into the constitution, although the President, Senate and Federal House of Representatives, should be unanimously opposed to each and all of them."

George Washington:

"a constitutional door is open for such amendments as shall be thought necessary by nine States."

Alexander Hamilton, Federalist No. 85:

"But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly. . . . And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place."

After the Founding, the Supreme Court confirmed that a "convention for proposing amendments" is a convention of the states. *Smith v. Union Bank*, 30 U.S. 518 (1831) After the Founding, these actions give precedent to how an Amendment Convention shall operate:

- Several major application campaigns
- Ratification of 21<sup>st</sup> Amendment by state conventions
- Several more multi-state conventions

The Washington Conference Convention just before the Civil War was a "dry run" for convention procedures:

- Called by VA in Jan. 1861 (before its secession) to avoid Civil War.
- Met February 4 – Feb. 27, 1861.
- Chaired by former President John Tyler
- Followed standard procedures.
- The Convention proposed a compromise amendment, then adjourned.