

How Do We Know an Article V Amendments Convention is a “Convention of the States?” Because Both the Founders and the Supreme Court Said So

Article V of the Constitution authorizes a “Convention for proposing Amendments.” However, it did not specify how the convention is to be composed. People unfamiliar with constitutional history sometimes claim the makeup of an amendments convention is either a complete mystery or subject to the determination of Congress.

Nonsense. For one thing, the Supreme Court already has spoken on the matter. In 1831, the Court decided *Smith v. Union Bank*, in which it specifically characterized (on page 528) an amendments convention as a “convention of the states”—that is, a gathering of representatives of state legislatures.

The Court’s characterization was, in fact, the dominant one in America until misunderstandings on the subject arose in the mid-to-later 20th century. It was also the Founders’ view of an amendments convention.



[The history of the 30+ conventions held among colonies and states before and during the Founding Era](#) shows that they always were gatherings of state “committees” (delegations) of “commissioners” (delegates) appointed by the several states. Furthermore, [participants in the ratification debates repeatedly referred to this process as one in which the states were the drivers.](#)

But beyond that, there is a series of Founding-Era official documents specifically identifying a convention for proposing amendments as a “convention of the states.” For example:

* The very first Article V application was adopted by the Virginia legislature on November 14, 1788. It recited that “happily . . . the Constitution hath presented an alternative, by admitting the submission [of an amendment] to the **convention of the states.**”

* The Pennsylvania legislature did not favor Virginia’s application, and said so in a resolution adopted on March 5, 1789. The resolution recited that “it must ever be [pain]ful to the House, when obliged to dissent from the opinion of that [Virginia] Assembly upon any point of common concern to the two states, as members of the union; and particularly, on a measure of such importance as the one proposed, the calling of **a convention of the states for amending the constitution** . . .” Minutes, Pa. Gen. Assembly, 124-25 (March 5, 1789)

* On the other hand, New York’s governor, George Clinton, favored such a convention. A letter from the Virginia legislature to Governor Clinton reproduced in the New York legislative journals successfully urged New York to adopt its own Article V application: “The propriety of immediately calling a **Convention of the States**, to take into consideration the defects of the Constitution, was admitted, and, in consequence thereof, an application agreed to, to be presented to the Congress, so soon as it shall be convened, for the accomplishment of that important end.” Letter from John Jones & Thomas Mathews to Gov. George Clinton, Nov. 20, 1788, reproduced in N.Y. Assem. J., p. 25 (Dec. 27, 1788).

* On February 4, 1789, during debate in the New York legislature over its proposed application for an Article V convention, lawmakers twice referred to such a gathering as a “**convention of the states.**” (23 [Doc’y History of the](#)

[Ratification of the Constitution](#), pp. 2522 & 2523) One of the references was by Samuel Jones, who had served as a leading New York ratifier. The other was by John Lansing, Jr., who had been a delegate to the Constitutional Convention.

* The Rhode Island legislature generally looked favorably on the idea, and responded as follows:

“Whereas, His Excellency George Clinton, president of the convention of New York, hath transmitted to the legislature of this state a proposal, that a **general convention of the states** should take place, in order that such necessary amendments may be made in the constitution proposed for a federal government, as will secure to the people at large their rights and liberties, and to remove the exceptionable parts of the said proposed constitution:

It is therefore voted and resolved, that the secretary forthwith cause to be printed a sufficient number of copies of Governor Clinton’s letter, with the amendments proposed by the convention of the state of New York, and transmit one as soon as possible to each town clerk in the state; who is hereby directed, upon receipt thereof, to issue his warrant to call the freemen of such town to convene in town meeting, to take the same into consideration, and thereupon to give their deputies instructions whether they will have delegates appointed to meet in convention with the state of New York, and such other states as shall appoint the same; or such other instructions as they may deem conducive to the public good; that this General Assembly may know their determination at the session to be holden by adjournment on the last Monday in December next. . . .”

Records of the State of Rhode Island, vol. 10, pp. 309-10 (Oct. 27, 1788).

By contrast, a convention held within a state was thought of as a convention of *the people*.

All of these documents were issued while discussion over ratification of the Constitution was continuing. Eleven states had ratified, but in North Carolina and Rhode Island the outcome was still very much in doubt. Moreover, these are all official documents, not the product of individual eccentrics. As such, they are powerful evidence that a “Convention for proposing Amendments” was understood to be a gathering of the states. The Framers of Article V didn’t need to spell it out, precisely because everyone knew it.

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