



# CONVENTION OF STATES

A PROJECT OF CITIZENS FOR SELF-GOVERNANCE

## SHORT ANSWERS TO COMMON QUESTIONS

### 1. The Constitution is not the problem—federal officials are. So how will amending the Constitution help?

Most of the problems we now face are the result of constitutional *interpretations* that capitalize on ambiguities in the wording of certain phrases (i.e., the General Welfare Clause—now interpreted as unlimited power to spend). We can restore the federal government to its proper, limited place only by clarifying the original meaning of those phrases through constitutional amendments—effectively overturning the bad Supreme Court precedents that have eviscerated our federal system.

### 2. Article V says Congress “calls” the convention, so won’t Congress control the convention?

Once 34 states apply, Congress has no discretion whether to call a convention and no control over the delegates (see Federalist No. 85). The reason we have the convention mechanism in Article V is because George Mason thought Congress had too much control over the amendment process. The Framers unanimously agreed with him. It makes no sense to interpret Article V to give more power to Congress, when the whole point was to take power away.

The states control the Article V convention process from beginning to end. Congress’ role is limited to issuing the “call,” once it receives 34 applications for a convention on the same topic. The “call” simply sets the date, time and location of the meeting. The state legislatures control the selection and commissioning of their convention delegates.

Remember that Virginia “called” the Philadelphia Convention of 1787. Did it get to choose the delegates for Massachusetts? Of course not. Massachusetts did. Each state chooses its own delegates regardless of who calls the convention.

### 3. But what about the Necessary and Proper Clause in Article I?

The Necessary and Proper Clause does not apply to Article V at all, because when Congress acts pursuant to Article V, it is not acting in its regular, legislative capacity. The Necessary and Proper Clause is part of the regular legislative power found in Article I. The federal courts have ruled that Congress’ attempt to use Article I power to affect the Article V process through ordinary legislation was unconstitutional. See *Idaho v. Freeman*, 529 F.Supp. 1107, 1151 (D. Idaho 1981) (“Thus Congress, outside of the authority granted by article V, has no power to act with regard to an amendment, i.e., it does not retain any of its traditional authority vested in it by article I.”).

### 4. Are you sure the Article V convention process is safe?

Yes. Despite a common myth that was promoted by liberal groups beginning in the 1960’s, there is absolutely no precedent for a “runaway convention.” And there are redundant protections against *ultra vires* amendment proposals:



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- (1) The scope of authority for the convention is defined by the topic specified in the 34 applications that trigger the convention. Any proposals beyond that scope would be out of order.
- (2) Convention commissioners are the agents of their state legislature and are subject to the instructions given by their state legislature. The state legislature can recall delegates who attempt to exceed their authority, and actions taken outside the scope of a commissioner’s authority would be void.
- (3) If state legislatures failed to stop commissioners from acting beyond their powers, AND if a majority of the state delegations voted to propose an *ultra vires* amendment, AND if Congress nevertheless sent that amendment to the states for ratification, the courts could declare the action void.
- (4) Even if ALL of those protections failed, it borders on insanity to think that 38 states (the requirement for ratification) would ratify an amendment under these circumstances.

## 5. How will voting be done at an Article V Convention?

The universal precedent for voting at an interstate convention is on a one-state, one-vote basis. It is not a convention of commissioners but a convention of states. This is the reason Article V does not specify the number of delegates. In 1788, the Virginia legislature correctly called this process a “convention of states” in the first application ever passed under Article V. Nothing has changed since then. The Supreme Court has also referred to it as a “convention of states.” States vote as states.

## 6. Even if the states try to limit the scope of the Article V Convention to proposing amendments that limit federal power, can’t those with other intentions hijack the process?

No. Please refer to the list of redundant protections on the process, above. There are many different groups working to achieve an Article V Convention to propose various types of amendments, and they have every right to seek to use this constitutional process. But groups seeking amendments for other purposes are not involved in *our* effort, because they know they cannot achieve their goals at a convention called pursuant to our application, which limits the topic of amendments to restraining federal power.

## 7. What about the Congressional Research Service Report?

While one report lists a number of past attempts to affect the convention process, all such attempts have FAILED. Even Congress knows that it has no constitutional authority to interfere with an Article V Convention of States. And besides, Article V gives Congress its own means of proposing amendments. The trouble is that Congress won’t propose amendments that limit its own power. We need the states to do that.