

Twenty Legal Rules for Conventions for Proposing Amendments

(To learn more about this topic, listen Justin Longo's interview with Rob Natelson — [“What Would an Article V Convention Look Like?”](#))

This is the third in a series of three articles about the Constitution's OTHER method of constitutional amendment – that is, rather than the amendment coming from Congress, the states force a “**convention for proposing amendments**” that drafts amendments and sends them to the states for ratification or rejection. The first two articles are posted immediately below this one.



Even though we have never held such a convention, evidence from history and both historical and modern court decisions provide a good idea of how the state-application-and-convention process is to operate. Here are 20 rules on the subject:

- (1) To trigger the process, two thirds of the state legislatures must adopt resolutions “applying” to Congress for a convention for proposing amendments on one or more subjects (or, if they wish, for a convention at which all subjects may be considered).
- (2) State governors have no formal role in the application process.
- (3) Ideally, each application should specify only one subject, so that there are no relevant differences among applications. Differences can give Congress an excuse to refuse to aggregate them toward the two thirds threshold.
- (4) The applications may include recommended amendments or convention rules, but must not purport to *require* particular wording for the amendment or particular rules. Ideally, any recommendations should be placed in a separate resolution (rather than in the application) to avoid confusion.
- (5) Upon receiving 34 applications (two thirds of the state legislatures) on the same general subject(s), Congress **MUST** “call” a convention.
- (6) The congressional duty to call, unlike the congressional legislative power, is enforceable judicially.
- (7) The President has no formal role in the resolution calling the convention.
- (8) The convention call is limited to specifying place, time and subject matter. Perhaps Congress may name a temporary presiding officer to call the convention to order and preside until the convention selects its own president.
- (9) The convention consists of delegations from all states that wish to participate, with one vote per state.
- (10) The convention adopts its own rules. Neither Congress nor the states may prescribe rules to the convention. The convention may, by one vote per state, alter the rule of voting.
- (11) Each state legislature decides how its own delegates are to be chosen and how many delegates it will send. However, no matter what the delegation size, the voting rule at the convention is “one state, one vote” unless the convention adopts a rule to the contrary.
- (12) As a matter of prudence and comity, each state should limit the size of its delegation to three or (at most) five. A state's vote is cast according to the sentiment of the majority of the delegates present from that state. If the delegates from a particular state then on the floor are tied, no vote is cast from that state.

- (13) Although a state's application may not require a particular amendment, delegates are subject to instructions from their state legislatures (or the legislative agents designated for the purpose).
- (14) As a matter of prudence, therefore, the delegates probably should be selected by the state legislature rather than appointed by the governor or elected by the people. The delegate selection method is, however, within the discretion of each state legislature.
- (15) The convention may refuse to propose any amendments. The convention may not propose an amendment outside its prescribed agenda.
- (16) Like any agent, the convention may make any recommendations it wishes, but recommendations that are outside the scope of the convention agenda or otherwise not qualifying as "proposed amendments" have no legal force and may not be ratified.
- (17) If the convention proposes one or more amendments, Congress MUST decide on one of the two modes of ratification the Constitution allows – ratification by three fourths of the state legislatures or ratification by three fourths of state conventions. This duty is enforceable judicially.
- (18) The President has no formal role in the mode-of-ratification selection process and state governors have no role in the ratification process.
- (19) The convention has no power to alter the mode of ratification.
- (20) The election and make-up of state conventions are determined in each state by state law.

These conclusions are based on three exhaustive studies undertaken for the Goldwater Institute: *Amending the Constitution by Convention: A Complete View of the Founders' Plan*, <http://www.goldwaterinstitute.org/article/5005>; *Amending the Constitution by Convention: Lessons For Today from the Constitution's First Century* (forthcoming), and *Amending the Constitution by Convention: Practical Guidance for Citizens and Policymakers* (forthcoming).

Tags: [amendment applications](#), [amendments convention](#), [Article 5](#), [Article V](#), [balanced budget amendment](#), [constitution](#), [constitutional amendment](#), [constitutional convention](#), [constitutional law](#), [convention for proposing amendments](#), [Natelson Rob](#), [Rob Natelson](#)

Comments