

What Would an Article V Convention of States Actually Be Like?

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(AP Photo/J. Scott Applewhite)

How would an Article V “convention for proposing amendments” work? What would be its agenda? What about its procedures? How would voting be conducted?

History and constitutional law provide the answer to most of those questions, but it also helps to have a specific modern example. That is why [Citizens for Self Governance](#) sponsored a simulated convention of states at Colonial Williamsburg in Virginia on September 21 through 23.



[Some have conjured up images of an amendments convention acting like a national party convention](#), with a mob of thousands of screaming attendees. This simulation was more realistic: It included 137 commissioners (delegates) from all 50 states. The number of commissioners was similar to the number (133) in the last national convention of states, the [Washington Conference Convention of 1861](#). In practice, both bodies acted much like sober legislative chambers.

In Williamsburg, each state was represented by one, two, or three commissioners. The overwhelming majority were state lawmakers, but some delegations included non-legislators involved in public affairs. For example, California was represented by [John Eastman](#), a well-known constitutional law professor and former candidate for state attorney general.

The agenda was fixed by the standard “convention of states” legislative application formally adopted by eight of the necessary 34 state legislatures. That application empowers the convention to propose amendments imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, and fixing term limits for members of Congress and for federal officials.

The rules for the simulation were based on rules earlier drafted for a real convention. I drafted both sets, with input from [Michael Farris](#), a noted constitutional attorney and educator. In crafting both sets of rules we relied heavily on the actual rules of previous conventions of states. The source for resolving issues outside the rules was [Mason’s Manual of Legislative Procedure](#), the authority on parliamentary procedure for 70 of the 99 American state legislative chambers.

On the first day, the commissioners elected a president and vice president, and then broke into three principal committees. Each committee was to address certain discrete areas: (1) fiscal restraints, (2) limiting federal legislative and executive power, and (3) term limits plus limiting federal judicial power. The committees worked mostly from proposals submitted previously by their members, and each committee was permitted to propose up to three amendments. Each of the three committees was advised by a senior constitutional lawyer: Dr. Farris, [Professor Randy Barnett](#) of Georgetown Law Center, and myself.

The committees ultimately sent eight amendments to the full convention.

The following day, the full session met again. It debated, amended, and approved or rejected the committees’ proposals. By the end of the day the assembly had proposed six amendments. In the real world, these then would

have gone to the states for ratification. The six amendments are as follows:

Fiscal Restraints Proposal 1:

SECTION 1. The public debt shall not be increased except upon a recorded vote of two-thirds of each house of Congress, and only for a period not to exceed one year.

SECTION 2. No state or any subdivision thereof shall be compelled or coerced by Congress or the President to appropriate money.

SECTION 3. The provisions of the first section of this amendment shall take effect 3 years after ratification.

Federal Legislative & Executive Jurisdiction Proposal 1:

SECTION 1. The power of Congress to regulate commerce among the several states shall be limited to the regulation of the sale, shipment, transportation, or other movement of goods, articles or persons. Congress may not regulate activity solely because it affects commerce among the several states.

SECTION 2. The power of Congress to make all laws that are necessary and proper to regulate commerce among the several states, or with foreign nations, shall not be construed to include the power to regulate or prohibit any activity that is confined within a single state regardless of its effects outside the state, whether it employs instrumentalities therefrom, or whether its regulation or prohibition is part of a comprehensive regulatory scheme; but Congress shall have power to define and provide for punishment of offenses constituting acts of war or violent insurrection against the United States.

SECTION 3. The Legislatures of the States shall have standing to file any claim alleging violation of this article. Nothing in this article shall be construed to limit standing that may otherwise exist for a person.

SECTION 4. This article shall become effective five years from the date of its ratification.

Federal Term Limits & Judicial Jurisdiction Proposal 1:

No person shall be elected to more than six full terms in the House of Representatives. No person shall be elected to more than two full terms in the Senate. These limits shall include the time served prior to the enactment of this Article.

Federal Legislative & Executive Jurisdiction Proposal 2:

SECTION 1. The Legislatures of the States shall have authority to abrogate any provision of federal law issued by the Congress, President, or Administrative Agencies of the United States, whether in the form of a statute, decree, order, regulation, rule, opinion, decision, or other form.

SECTION 2. Such abrogation shall be effective when the Legislatures of three-fifths of the States approve a resolution declaring the same provision or provisions of federal law to be abrogated. This abrogation authority may also be applied to provisions of federal law existing at the time this amendment is ratified.

SECTION 3. No government entity or official may take any action to enforce a provision of federal law after it is abrogated according to this Amendment. Any action to enforce a provision of abrogated federal law may be enjoined by a federal or state court of general jurisdiction in the state where the enforcement action occurs, and costs and attorney fees of such injunction shall be awarded against the entity or official attempting to enforce the abrogated provision.

SECTION 4. No provision of federal law abrogated pursuant to this amendment may be reenacted or reissued for six years from the date of the abrogation.

Fiscal Restraints Proposal 2:

SECTION 1. Congress shall not impose taxes or other exactions upon incomes, gifts, or estates.

SECTION 2. Congress shall not impose or increase any tax, duty, impost or excise without the approval of three-fifths of the House of Representatives and three-fifths of the Senate, and shall separately present such to the President.

Federal Legislative & Executive Jurisdiction Proposal 3:

Whenever one quarter of the members of the United States House of Representatives or the United States Senate transmits to the President their written declaration of opposition to any proposed or existing federal administrative regulation, in whole or in part, it shall require a majority vote of the House of Representatives and Senate to adopt or affirm that regulation. Upon the transmittal of opposition, if Congress shall fail to vote within 180 days, such regulation shall be vacated. No proposed regulation challenged under the terms of this Article shall go into effect without the approval of Congress. Congressional approval or rejection of a rule or regulation is not subject to Presidential veto under Article 1, Section 7 of the U.S. Constitution.

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