2021 SENATE GOVERNMENT AND VETERANS AFFAIRS

SCR 4004

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

SCR 4004
1/28/2021

To rescind all extant applications by the ND Legislature to call a convention to propose amendments to the US Constitution under Article V of the US Constitution.

Chair Vedaa opened the hearing at 9:00 a.m. with Sen Vedaa, Sen Meyer, Sen Elkin, Sen K Roers, Sen Wobbema, Sen Weber and Sen Marcellais present.

Discussion Topics:

- History of Equal Rights amendment

Senator Clemens introduced in support of SCR 4004 #4011
Robert Brown testified in favor #4017
Duane Stahl testified in favor #4060
Rose Christensen testified in favor #4026
Jeremy Neuharth testified opposed #4059
Curtis Olafson testified via Zoom opposed #3972
Mark Meckler testified via Zoom opposed #3928
Representative Kasper testified opposed
Lynn Mahr testified opposed #4056
Dale William Burke testified opposed #4064
Karmen Siirtola testified opposed #4063
Ken Clark testified via Zoom opposed #3816
Ron Hooper testified via Zoom opposed #3392, #3391, #3390
Jeffrey Ebsch testified via Zoom opposed #3962
Karen Ebsch testified via Zoom opposed #3958

Additional written testimony:

Ariss Marquard – in favor #3963
Randy Harder – opposed #3952
Andy Schlafly – in support #3903
Joanna Martin – in support #3871
Lydia Scarnici – in support #3837
David Deile – opposed #3776
Loren Enns – opposed #3333
James Phipps – opposed #4057
Judi Caler – opposed #3979, #3978, #3977, #3976

Adjourned at 10:30 a.m.

Pam Dever, Committee Clerk

January 28, 2021

Senate Government and Veterans Affairs

Senate Resolution 4004

Chair Senator Vedaa and Committee, I am David Clemens, Senator from District 16 in West Fargo and Fargo. I am here to introduce Senate Resolution 4004.

This Resolution calls for rescinding all extant applications by the North Dakota Legislative Assembly to Congress for calling a convention to propose amendments to the United State Constitution.

To further explain the Resolution and take questions, I would like to call on Robert Brown.

We ask for a "Do Pass" on this Resolution.

Historical Precedent: Was the 1787 Convention a "runaway" convention?

#1. Some said, "We don't have the power and should not proceed."

Patrick Henry

*"**That they exceeded their power is perfectly clear**...The federal convention ought to have amended the old system –for this purpose they were solely delegated. The object of their mission extended to no other considerations."*[1]

Robert Whitehill

*"Can it then be said that the late convention did not **assume powers to which they had no legal title**? On the contrary, Sir, it is clear that **they set aside the laws under which they were appointed**, and under which alone they could derive any legitimate authority, they arrogantly exercised any powers that they found convenient to their object, and in the end **they have overthrown that government which they were called upon to amend**, in order to introduce one of their own fabrication."*[2]

William Paterson (New Jersey delegate)

*"We ought to keep within its limits, or we should be charged by our constituents with usurpation . . . let us **return to our States, and obtain larger powers, not assume them of ourselves**."*[3]

Charles Pinckney (South Carolina delegate) & Elbridge Gerry (Massachusetts delegate)

*"General PINCKNEY expressed **a doubt whether** the act of Congress recommending the Convention, or the **commissions of the Deputies** to it, **would authorize a discussion** of a system founded on different principles from the Federal Constitution. Mr. GERRY seemed to entertain the same doubt."*[4]

John Lansing (New York)

"the power of the Convention was restrained to amendments of a Federal nature . . . The acts of Congress, the tenor of the acts of the States, the commissions produced by the several Deputations, all proved this. . . . it was unnecessary and improper to go further. "[5]

Luther Martin (Maryland delegate)

*"...we apprehended but one reason to prevent the states meeting again in convention; that, when they discovered the part this Convention had acted, and how much **its members were abusing the trust** reposed in them, **the states would never trust another convention**."*[6]

#2. Others said, "We don't have the power but should proceed anyway."

Edmund Randolph (Virginia)

*"**Mr. Randolph. was not scrupulous on the point of power**. When the salvation of the Republic was at stake, it would be treason to our trust, not to propose what we found necessary."*[7]

Alexander Hamilton (New York)

*"The States sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate to these exigencies, merely because it was **not clearly within our powers**, would be to sacrifice the means to the end."*[8]

James Madison (Virginia)

*"...it is therefore essential that such changes be instituted by some informal and **unauthorized propositions**...."*[9]

George Mason (Virginia)

In answering John Lansing's concern of "the want of competent powers in the Convention" to make the changes they were proposing, George Mason justified exceeding their powers, "there were besides certain crisises, in which all the **ordinary cautions yielded to public necessity**."[10]

#3a. NONE said, "The 1787 convention acted well within their state delegate power."

No such citations exist from the Founding era.

Claims of this nature originated with modern convention promoters, and are pure historical revisionism.

In fact, Judge Caleb Wallace, a supporter of the new constitution, was so concerned about the precedent the "runaway" convention had set, he advocated re-doing the entire convention, with full authority granted first! Said he:

*"I think the calling another continental Convention should not be delayed . . . for [the] single reason, if no other, that **it was done by men who exceeded their Commission**, and whatever may be pleaded in excuse from the necessity of the case, something certainly can be done to **disclaim the dangerous president** [i.e., precedent] which will otherwise be established."*[11]

Rather, to justify the actions of the 1787 convention having *"departed from the tenor of their commission"* issued by the states,[12] **they pointed to a higher power as the source for their authority: THE PEOPLE THEMSELVES.**

#3b. They appealed to the ultimate, sovereign power of the PEOPLE (not the state commissions) for their authority

*"The people were in fact, the fountain of all power, and by resorting to them, all difficulties were got over. **They could alter constitutions as they pleased**."*[13]

*"a rigid adherence in such cases to the former [limits of power imposed by the states], would render nominal and nugatory the transcendent and precious **right of the people to 'abolish or alter their governments** as to them shall seem most likely to effect their safety and happiness'"*[14]

*"The plan to be framed and proposed was to be submitted **to the people themselves**, the disapprobation of this supreme authority would destroy it forever. . . "*[15]

*"Col. Mason: **The Legislatures have no power to ratify it**. They are the mere creatures of the State Constitutions, and cannot be greater than their creators . . . Whither then must we resort? To the people with whom all power remains that has not been given up in the Constitutions derived from them."*[16]

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[1] June 4, 1788, Speech at the Virginia Ratifying Convention
[2] Pennsylvania Ratifying Convention, 28 Nov. 1787
[3] Madison's notes of the 1787 convention, 16 June 1787
[4] Madison's notes of the 1787 convention, 30 May 1787
[5] Madison's notes of the 1787 convention, 16 June, 1787, comments of Delegate John Lansing, Jr. from New York, who LEFT the Convention July 10th after realizing they exceeded their authority.
[6] Letter by Luther Martin, opposing ratification of the 1787 Constitution, http://oll.libertyfund.org/titles/1905#Elliot_1314-01_3767

[7] Madison's notes of the 1787 convention, 16 June 1787
[8] Madison's notes of the 1787 convention, 18 June 1787
[9] Madison, Federalist 40
[10] Madison's notes of the 1787 convention, 20 June 1787

[11] Judge Caleb Wallace to William Fleming, 3 May 1788
[12] Madison, Federalist 40
[13] Madison, Madison's notes of the 1787 convention, 31 Aug 1787
[14] Madison, Federalist 40
[15] Madison, Federalist 40
[16] George Mason, Madison's notes of the 1787 convention, 23 Jul 1787

Legal Precedent: Conventions represent the ultimate sovereign power of the people

Notably, court decisions have continued to follow the 1787 precedent, declaring conventions empowered to draft or amend constitutions represent the **people**, not the states, and cannot have their power limited by the state legislatures.

Corpus Jurus Secundum (a legal summary of 5 court decisions)
"The members of a Constitutional Convention are **the direct representatives of the people** and, as such, they may exercise all sovereign powers that are vested in the people of the state. They derive their powers, not from the legislature, but from the people: and, hence, **their power may not in any respect be limited or restrained by the legislature**. Under this view, it is a Legislative Body of the Highest Order and may not only frame, but may also enact and promulgate, [a] Constitution."
- Corpus Jurus Secundum 16 C.J.S 9, Cases cited: Mississippi (1892) Sproule v. Fredericks; 11 So. 472, Iowa (1883) Koehler v. Hill; 14 N.W. 738, West Virginia (1873) Loomis v. Jackson; 6 W. Va. 613, Oklahoma (1907) Frantz v. Autry; 91 p. 193, Texas (1912) Cox v. Robison; 150 S.W. 1149

Additionally, numerous state conventions have also declared they represent the power of the **people**, not the legislature, and cannot have any limits placed upon their power:

"We have been told by the honorable gentleman from Albany (Mr. Van Vechten) that we were not sent here to deprive any portion of the community of their vested rights. Sir, the people are here themselves. They are present by their delegates. **No restriction limits our proceedings.** What are these vested rights? Sir, we are standing upon the foundations of society. The elements of government are scattered around us. All rights are buried; and from the shoots that spring from their grave we are to weave a bower that shall overshadow and protect our liberties." - Mr. Livingston, New York Convention of 1821

"When the people, therefore, have elected delegates, ... and they have assembled and organized, then a peaceable revolution of the State government, so far as the same may be effected by amendments of the Constitution, has been entered upon, limited only by the Federal Constitution. **All power incident to the great object of the Convention belongs to it**. It is a virtual assemblage of the people of the State, sovereign within its boundaries, as to all matters connected with the happiness, prosperity and freedom of the citizens, and supreme in the exercise of all power necessary to the establishment of a free constitutional government, except as restrained by the Constitution of the United States." - Report, The Committee on Printing of the Illinois Convention of 1862

"He had and would continue to vote against any and every proposition which would recognize any restriction of the powers of this Convention. We are... the sovereignty of the State. We are what the people of the State would be, if they were congregated here in one mass meeting. We are what Louis XIV said he was, 'We are the State.' **We can trample the Constitution under our feet as waste paper, and no one can call us to account save the people.**" - Onslow Peters, Illinois Convention of 1847

"**It is far more important that a constitutional convention should possess these safeguards of its independence** than it is for an ordinary legislature; because the convention acts are of a more momentous and lasting consequence and because it has to pass upon the power, emoluments and the very existence of the **judicial and legislative officers who might otherwise interfere with it**. The convention furnishes the only way by which the people can exercise their will, in respect of these officers, and their control over the convention would be wholly incompatible with the free exercise of that will." - Elihu Root, Proceedings of the New York Constitutional Constitution, 1894, pages 79-80.

"We are told that we assume the power, and that we are merely the agents and attorneys, of the people. Sir, we are the delegates of the people, chosen to act in their stead. **We have the same power and the same right, within the scope of the business assigned to us, that they would have, were they all convened in this hall.**" - Benjamin F. Butler, Massachusetts Convention of 1853

"Sir, that **this Convention of the people is sovereign, possessed of sovereign power, is as true as any proposition can be**. If the State is sovereign the Convention is sovereign. If this Convention here does not represent the power of the people, where can you find its representative? If sovereign power does not reside in this body, there is no such thing as sovereignty." - General Singleton, speech, The Committee on Printing of the Illinois Convention of 1862.

Courts decisions and state conventions have followed the precedent set by the 1787 constitutional convention. As the 1787 convention did, a convention today can ignore limits of power imposed by the states, and appeal to the ultimate power of the people themselves. State legislatures have no reason to expect they can control the convention.

Thus, a "limited" convention is a myth.

Government and Veterans Affairs Committee
SCR 4004

Chairman Shawn Vedaa; Vice-Chairman Scott Meyer; Members Jay Elkin, Richard Marcellais, Kristin Roers, Mark Weber, Mike Wobbema"

SCR 4004 is a legislative attempt to rescind all applications from previous sessions that request the U.S. Congress to call an Article V convention of states, no matter for what reasons. I hope you will recommend its passage.

Many think that delegates to a convention of states could be controlled by state legislatures, but would that be possible? And if delegates from states like North Dakota and Wyoming could be limited by their states, would that hold true for the hundreds from very liberal states like California and New York? But if I came from a big liberal state, would I accept being limited?

However, there might be only one delegate per state, but then would the big states think that fair? In the Electoral College, a state like California has 50-plus votes, and a state like ours has three. Proponents of an Article V convention claim delegates could be controlled by passing "faithful delegate" laws. In the convention that gave us our present Constitution, the "father of the Constitution" James Madison wrote in his journal that the delegates voted to keep their proceedings secret. If delegates in a present-day convention voted to act by secret ballot, the legislatures might never know who did what.

At the end of the 1787 Constitutional convention, a group called the "anti-

federalists" wanted another convention because they did not trust the Constitution that had just been formed. Madison and Hamilton went along with adding the second Article V method because they understood a people always have the right to meet in convention and draft a new constitution whether that right is in the constitution or not. But right away they started warning against using it. And our very first Supreme Court Chief Justice John Jay wrote that another convention would be an "extravagant risque." Madison "trembled" with the thought, and Hamilton "dreaded" it.

While still relatively young in 1979, future Supreme Court Justice Antonin Scalia voiced his opinion that an Article V convention might be reasonable. However, after a number of years on the Court, he changed his mind. In 2014 he said, "I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?" And the next year he added: "A Constitutional Convention is a horrible idea. This is not a good century to write a constitution."

So, in 2015, Scalia seemed worried about a convention ending with a new constitution, not just with a new amendment or two.

Those who insist that a convention called by Congress is safe say that no matter what amendments come from it, they need to be ratified by three-fourths of the

states—a safeguard against bad amendments. However, that many states did ratify Amendment 16 which gave us the personal income tax that takes in billions of dollars each year—but never enough. The states also ratified Amendment 17 which took away the power of state legislatures to select their U.S. senators.

Then the country dealt with Amendment 18 prohibiting alcohol. As one might reason, Utah's legislature was quite hesitant about getting rid of that amendment. To pass the 21st amendment to again allow alcohol, a special ratification group was formed, especially for that purpose.

An Article V convention could change the ratification method for any amendments the delegates might propose. (The 1787 convention changed ratification requirements from all the thirteen states to only nine.)

Our constitution is a contract with the people. Let's say another person and I sign a contract and soon I start violating and ignoring parts of it. Eventually, I completely disregard the entire agreement. If the other signer doesn't do anything about it, can we blame the contract? That's why we have a debt of over 25 trillion, plus other problems. But we still have the best constitution ever written. We can still downsize the federal government to its enumerated powers —by eliminating federal departments like education, energy, agriculture, environmental protection, housing, etc. The states have the right to get into these areas--not the federal government.

The tenth amendment says: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." And that's why Madison said: "The powers delegated by the proposed constitution to the federal government are few and defined. Those which are to remain in the state governments are numerous and indefinite."

Logically then, the federal government does not have a budget because Congress's spending was limited from the beginning. Congress is to appropriate funds to carry out the handful of enumerated powers and then pay the bills with receipts from the kinds of taxes stipulated. On the other hand, state constitutions created state governments of general, almost unlimited powers. Accordingly, state governments may lawfully spend money on just about anything and therefore need budgets to limit their decisions.

The ultimate solution, then, is strict adherence to the federal constitution as written, not by going into territory that made our greatest forefathers "tremble" with "dread" because of its "extravagant risque."

I urge a YES vote on SCR 4004 to rescind all applications asking Congress to call an Article V convention of states.

In 1787 the Continental Congress of the 13 colonies in America Called for a convention to "revise" the Articles of Confederation to be held in Philadelphia in May of that year. The following is the last paragraph of that report.

"RESOLVED: that in the opinion of Congress it is expedient that on the second Monday in May next a Convention of delegates who shall have been appointed by the several states be held at Philadelphia FOR THE SOLE AND EXPRESS PURPOSE OF REVISING THE ARTICLES OF CONFEDERATION and reporting to Congress and the several legislatures such alterations and provisions therein as shall when agreed to in Congress and confirmed by the states render the federal constitution adequate to the exigencies of Government & the preservation of the Union."

When the Constitutional Convention met in Philadelphia in May 1787, that directive "FOR THE SOLE AND EXPRESS PURPOSE OF REVISING THE ARTICLES OF CONFEDERATION" was ignored. From the moment Edmund Randolph stood and proposed what was known as "The Virginia Plan", the Constitutional Convention of 1787 became a "runaway convention" and the Articles of Confederation were consigned to the scrap-heap of history.

This brief history ESTABLISHES THE HISTORIC PRECEDENT that even if a 2017 "call" for a Constitutional Convention declares its " SOLE AND EXPRESS PURPOSE" is to propose a "Balanced Budget Amendment", delegates may IGNORE that limitation and do as they please, including changing or discarding the current ratification procedures, just as they did in 1787. The ratification procedure of the Articles of Confederation called for unanimous consent to amendments; the new Constitution that replaced the Articles of Confederation , contained its own, different ratification method, and used its own, new ratification procedure to ratify ITSELF!

Testimony of Jeremy Neuharth

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January 28, 2021

Mister Chairman and distinguished members of the committee,

My name is Jeremy Neuharth, a North Dakota native who grew up on one of many family farms here in this great state. I am honored to be a veteran of the North Dakota Army National Guard, blessed to have a wonderful family including two children, and proud to own a small business located in Fargo, North Dakota.

I am here today in **opposition of SCR 4004** as a citizen of North Dakota and as a past state leader for the North Dakota Convention of States effort. Although I am happy to answer any questions about the merits of an Article V Convention, or address details regarding the passing of the original resolution (HCR 3006 in the 65th Assembly), I want to focus my testimony on why I believe this Legislative Assembly made the right decision two sessions ago.

This year alone, just 28 days in, the US national debt has increased by 93 billion dollars, President Biden has signed a record 28 exective orders in just the first six days of his Presidency, and the neverending titlewave of dictates from Washington, DC continue. I find myself questioning, "Is there any part of my life where the Federal Government is not involved?" I would ask the commiittee members, "How many policy decisions for the citizens of North Dakota are dictated or heavily influenced by the Federal level?"

In my opinion, the most significant benefit of our COS resolution (HCR 3006) is to bring the voice of the states back into the decision making. Our Republic is so valuable because it allows different things to work for different people. Our goal should not be to create unity by requiring the conformity of all as determined by the Federal Government. Our individual states are unique in their own ways; our different views and ways of living give our country its rich fabric. Therefore, deciding what is best for North Dakota citizens should not be established through the opinion of other states or the US Government at large.

I also want to remind you I did not stand alone when the resolution was orginally passed. At that time, we had **over 1,600 North Dakota citizens** across every district in the State of North Dakota supporting this resolution. Each one of those citizens with deep concerns regarding the direction of outside power and influence inflicted upon our state. The resolution endured through the process of committee hearings just like this, floor votes in both Chambers, open debate, and thoughtful discussion. We made a statement, as a state, regarding the need and desire to rein in the abuse of power and uncontrolled spending at the Federal level.

Without doubt, we did the right thing by passing the Convention of States resolution. We evaluated many options and took the Constitutionally provided method to take back our voice. We live in the United States of America, and it's important to recognize how key the word "States" truly is. It is critical for the states to have their place in the system. It is time for us to have the freedom of diversity in thought and solutions. To those who want to maintain the status quo, North Dakota needs to make clear it wasn't an acceptable answer then, and we are not about to accept that answer now. I trust in our people, our Framers, and the Constitution. I trust you will join me in reaffirming we made the right choice by opposing SCR 4004.

North Dakota Senate Concurrent Resolution 4004

Senate Government and Veterans Affairs Committee

January 28th, 2021

Testimony of Former North Dakota State Senator Curtis Olafson

Our Founding Fathers wisely included three provisions in the United States Constitution and they were adopted as part of the Constitution for the very same reason. They instinctively knew that the major population centers would come under one party rule and that the major population centers could run roughshod over the rest of the Republic, so they had to implement a remedy. The three provisions that they adopted to prevent that were: 1) Equal representation in the Senate irrespective of population 2) The Electoral College 3) Article V which provides a method for the state legislatures to address problems that are not being resolved by the federal government.

North Dakota Senate Concurrent Resolution 4004 is part of a nationwide effort in many states for many years (led mainly by the John Birch Society) to revoke previously passed applications for an Article V Amendment(s) Convention. Baseless fear mongering over the Article V process has been a linchpin of their agenda since the 1960's. It has all the markings of being a marketing tool to politically and financially empower themselves. Unfortunately, their reprehensible condemnation of a process wisely included in our Constitution by our Founding Fathers has hamstrung the ability of state legislatures to perform their constitutional duties.

Opponents to the Article V process invariably assert that you should tremble in fear that using the process will result in a "runaway convention." There are complex legal and constitutional reasons why one need not fear a runaway convention, but there are also some very compelling political reasons why the process should not be feared.

In order for an Amendment(s) Convention to "run away" and ultimately result in the adoption of an extremist or dangerous amendment, the following implausible (impossible) sequence of events would need to transpire:

1. In order for an Article V Amendments Convention to ever happen in the first place, 34 states need to pass resolutions which propose, in effect, the same amendment(s). This requirement assures that a tremendous groundswell of political will must amass across America in support of a specific idea.

2. Delegates (more correctly called "Commissioners") to an Amendment(s) Convention are selected by the state legislatures (barring any alternative method already in code in any particular state) and would act as agents of their legislature. It is inconceivable to think that they would vote to ignore the will of their state and the mandate that they would receive to limit their deliberations to the amendment(s) specifically identified in the resolution. If they did the unthinkable and ignored the mandate from their state legislature, they could and should be immediately recalled and replaced.
3. A convention voting to consider ideas beyond the scope and call of the resolution (ultra vires amendments) would immediately be challenged with court action. The court would need to brazenly ignore the clear intent of the Founding Fathers and wrongly rule that the convention is valid.
4. The convention delegates would then need to agree on a radical, extremist or dangerous amendment even though it was not within the scope and call of the convention.
5. Congress, in its ministerial capacity of submitting to the states any proposal agreed to in a convention, has the authority **and responsibility** to refuse to send any proposed amendment(s) to the states for ratification that went beyond the scope and call of the convention.
6. 38 states would need to ignore the fact that the convention delegates went beyond the scope and call of the convention and would need to ratify the proposed amendment(s). Any bad amendment idea can be stopped by the action of only 13 state chambers.
7. The most important protection against the adoption of a radical, extremist, or dangerous amendment was wisely designed into the Article V process by our Founding Fathers: **Unless and until 38 states ratify a proposed amendment, the Constitution is untouched and nothing changes**.

It is clear that our Founding Fathers intended that state legislators would understand that, not only do they have a right to use Article V, but moreover, that they have a **duty** to use Article V when they see a serious challenge facing our nation that is not being solved by Congress. If ever there was a time in the history of our nation when we need Article V, it is now. You have the power to quash this rescission resolution and keep in place our existing Article V resolutions. Our Founding Fathers believed in you.

SCR 4004 is wholly deserving of your **Do Not Pass** recommendation.

"We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority." Alexander Hamilton in Federalist 85"

CONVENTION of STATES ACTION

TESTIMONY OF MARK MECKLER, J.D.
NORTH DAKOTA SENATE COMMITTEE ON GOVERNMENT AND FEDERAL AFFAIRS
SCR 4004 - JANUARY 28, 2021

My name is Mark Meckler. I am an attorney residing in Texas, and I am the Co-Founder and President of Citizens for Self-Governance and Convention of States Action.

Back in 2017, the North Dakota legislature passed HCR 3006, applying for an Article V Convention to propose amendments that would impose fiscal restraints on the federal government, limit its power and jurisdiction, and set term limits for federal officials.

Convention of States Action is a grassroots organization with around five million supporters nationwide. We have volunteer leaders and teams in all 50 states, and as of today we have passed applications substantially similar to North Dakota's HCR 3006 in 15 states.

With our federal government now poised to implement more radical, socialist policies than ever before, the structural solution to federal overreach--provided by Article V--is needed more than ever. But the resolution before you would have you *stand down* from the neverending flood of federal usurpations of the powers reserved to the states under the Constitution. Now is not the time to retreat from using your constitutional power as a state legislature; now is the time to advance.

The rationale this resolution offers for rescinding your extant Article V applications demonstrates a very basic, fundamental misunderstanding of the Article V process and constitutional law. It suggests that because the Declaration of Independence recognizes the basic right of people to alter or abolish a government that fails to secure their rights, an Article V convention would have "inherent power" to deny limitations imposed upon it by the states and "impose sweeping changes" to the Constitution. This is utter nonsense.

There is no link between those two ideas. Article V doesn't authorize a convention to form a new government. If you just read it, you see that it authorizes a convention only to propose amendments to "this" Constitution—the one we already have. An Article V convention called pursuant to your 2017 application would have no more legal power to abolish the government than you have as you sit here today.

As for convention delegations disregarding the limitations placed on them by their state legislatures, that is also nonsense. Every law student learns that pursuant to the principles of basic agency law, an agent cannot simply disregard the instructions and limitations of his or her

principal. Commissioners sent to act as agents of their state legislatures in an interstate convention cannot ignore the state legislature's instructions and limitations. And if they did, their actions would be legally void.

Finally, SCR 4004 claims that you don't ever *need* to use your power under Article V because we can all just rely on Congress to propose needed amendments. I submit to you that a quick read of the daily news is all it takes to see that this plan of relying on Congress to do what the nation needs is not working.

Now, more than ever before, the nation needs you to use the constitutional authority the Founders gave you to intervene on behalf of the people and stop federal overreach. Please oppose SCR 4004.

Thank you for allowing me to testify today.

Testimony in Opposition to SCR 4004

Lynn Mahr
Email: lynn.mahr@gmail.com

My name is Lynn Mahr.
My husband and I have lived in Bismarck for eleven years.
I have been a District Captain for Convention of States, District 30 for over two years.
I oppose SCR 4004.

Not only do I do computer follow up work for Convention of States, but I have the great honor of speaking to the amazing people all over the great state of North Dakota.

When I make my call backs to simply thank the person for reading about Convention of States and signing the petition, frequently I'll have conversations with them.

All of the conversations have a similar theme. "I'm so worried about our country, what can I do?"

They deeply fear the loss of our freedoms and feel that the government has become too powerful.

Which is exactly what this movement is all about. People from all over the state who love this country and appreciate our freedom.

Thank you very much.

#4064

Mr. Dale W. Burke

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January 27, 2021

Subject: Convention of States committee hearing

I'm a North Dakota resident who was transplanted from Rapid City, South Dakota in 1970, graduated Bismarck High School in 1980 and immediately joined the US Army in communications. I served nearly eight years before an injury ended my military career and I returned to North Dakota in October 0f 1987. I am a 100% Disabled American Veteran (based on unemployability) and an award-winning journalist. In fact, my personal column, "The Outdoor Corner" was chosen as the 1st place winner by the 1991 North Dakota Newspaper Association at convention. I've lived and worked in North Dakota for most of my life and currently reside in Grand Forks County. It's my intention to bring forth the following points in addressing the committee which will be hearing commentary on S 4004 being held in room 216 of the North Dakota State Capital building.

1. That the grass roots work put into positioning North Dakota to help lead the nation in holding a Convention of States under Article 5, Section II of the United States Constitution is proof there is a significant interest among the citizens of North Dakota to use that option to address those charged with serving our interests and exercise our constitutional right to have our grievances heard in this manner and by use of this option.

2. Having members of the North Dakota State Senate attempt to rescind participation by its citizens in the constitutional process afforded them by the Founders is exactly the kind of heavy-handed legislative tyranny those brilliant men had the wisdom to anticipate and provide remedy for by including Part II in Article 5.

3. In my opinion, the kind of legislator that would attempt to deny the citizenry of their Constitutionally protected recourse in addressing those who have taken an oath to serve those same constituents is to be viewed as suspect, at best, and deserving of challenge in the next election cycle. I'm certain there are qualified candidates with less inclination to rule than serve who would step forward in that regard.

January 28, 2021

My name is Karmen Siirtola. I am a co-vice chair for District 31 in Mandan.

I am in support of a Convention of States for many reasons. Now, more than ever, we see our individual rights, as well as livelihoods, being dictated and taken from us by a federal government that is out of control. We have become not only dependent, but it seems more like desperate, to cower to Washington or "lose funding." As a proud North Dakotan testifying to a room of legislators whom I believe share that proud heritage, I believe we must take our rights and the power of our state legislature, counties, cities, towns, and families back to more local control of our time, talent, and treasure.

The Convention of States will address several key areas and are not allowed to deviate from these specified areas:

1.The public debt shall not be increased except upon a super majority vote in Congress.
2. Term limits on Members of Congress.
3. Limiting federal overreach by restoring the Commerce Clause to its original meaning.
4. Limiting the power of federal regulations by allowing for a congressional override.
5. Requiring a super majority of Congress to increase federal taxes and repealing the 16th Amendment.
6. Giving the states (by a 3/5ths vote) the power to abrogate any federal law, regulation, or executive order.

Thirty-four state legislatures need to agree to calling a convention for one to even take place. Once it has occurred, three-fourths of states in the nation have to approve of the amendments passed at the convention in order for them to be implemented—leaving no room for a "runaway convention."

Our founders were brilliant by including the right of citizens to petition their government (Article V) if a time came when that government had overreached and abused its power. That time has come.

As a state, we need to step up now. Before we have nothing left to give our children and grandchildren except stories of what it was like when we had a state that governed itself, without the federal government deciding what we could and couldn't do, based on the power of an overreaching federal system as well as their power of the purse. The Convention of States is the avenue we still have that can enable us to live out our constitutional rights of Life, Liberty, and the Pursuit of Happiness.

I recommend a DO NOT PASS on this action to rescind SCR 4004.

Karmen Siirtola

My Testimony in favor of **SCR 4004**

Ken Clark, Hilton Head Island, SC

Good Morning Chairman, and distinguished committee members. My name is Ken Clark, I live in Hilton Head Island SC and am the Regional Director for US Term Limits which is seeking to hold an amendments convention for proposing an amendment to the US Constitution, limiting the term of members of the United States Congress, we are a single issue organization.

"Experience must be our only guide, reason may mislead"

For my testimony this today, I'd like to quote John Dickinson, a delegate to the 1787 Federal Convention: "Experience must be our only guide, reason may mislead us. The following historical references will demonstrate that not only do we have a rich history of State Conventions, but also hundreds of State Constitutional Conventions and State Amendments Conventions proving that the myth of a runaway convention is not only false but denies the facts of our history and our true experience with conventions. The supporting evidence will address the following points:

The 1787 Federal Convention was not a "runaway"convention. The convention was not called by Congress for the "sole express purpose to revise the Articles of Confederation, but was called by the state of Virginia "to devise such further provisions as shall appear to them necessary to render the Constitution of the federal government adequate for the exigencies of the Union. James Madison refutes the false "runaway"charge in Federalist 40.

An Article V convention is limited to the amendment(s) or topic(s) of the applications submitted by 2/3 of the states. Congress has absolutely no authority on the subject. (Federalist 85)

There have been numerous State Conventions prior to and after our nation's independence. (Rob Natleson, "The 37th Convention of States Discovered!".

The state legislatures control the convention process and the commissioners at the convention. (Maine appointment of commissioners for the Washington Peace Conference of 1861).

There have been hundreds of State Constitutional Conventions and Amendment Conventions throughout our nation's history. Approximately 233 constitutions and 12,000 amendments ratified. New Hampshire has experienced 17 conventions, mostly for proposing amendments, none of these conventions has ever been a "runaway."NH conventions have proposed 215 amendments and the people ratified 119 of them. (The Council of State Governments).

State Conventions have been held every year since 1892! The association is the National Conference of Commissioners on Uniform State Laws, known today as the Uniform Law Commission. The rules and processes used by the ULC are virtually identical to an Article V convention, except that uniform state laws are proposed instead of amendments to the Constitution.

#3392

US Term Limits Amendment

● US Term Limits Proposal has the highest bi-partisan support of any issue.

87% support among Republicans o
86% support among Independents o
83% support among Democrats

● The Center for Responsive Politics estimates that it takes almost $2.5 million to beat an incumbent in Congress.

● Roughly 95% of all congressional incumbents win their re-election, which makes it almost impossible to challenge an incumbent. Approval for congress falls around 15% along with used car salesmen.

● A November 2019 survey by Pulse showed that voters are 80% more likely to vote for a state legislator who will vote for US Term Limits.

● A Term Limits Amendment is supported by many members of Congress, including Rand Paul, Ted Cruz, Mike Lee and Ambassador Nikki Haley among many others, see https://www.termlimits.com/wp-content/uploads/2019/01/2019StateA5PledgeSigners.pdf

● The resolution language has no financial impact, and there are very few legislators interested in voting against term limits for Congress.

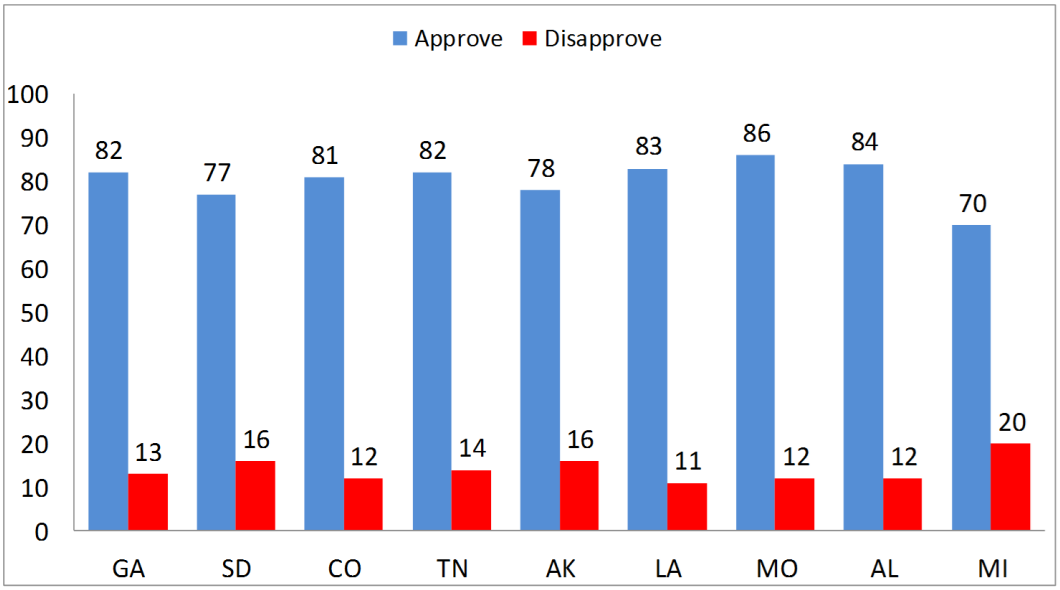
McLaughlin & Associates

To: United States Term Limits
From: John McLaughlin
Re: Term Limits – Executive Summary
Date: May 26, 2016

Survey Summary:

Americans strongly support term limits for Congress.
The results of our recently completed surveys show that voters across the United States overwhelmingly support term limits for members of Congress. Support for term limits is broad and strong across all political, geographic and demographic groups. Among the states surveyed, an average of 4-in-5 voters (80%) approve of a Constitutional Amendment that would place term limits on members of Congress, while only 14% disapprove.

Do you approve or disapprove of a Constitutional Amendment that will place term limits on members of Congress?



The voters want a convention to place term limits on Congress.
An average of 4-in-5 voters (79%) would want their state representative and state senator to vote in favor of an amendment proposing convention to implement term limits on members of Congress. Again, their support for the convention crosses all political and demographic groups.

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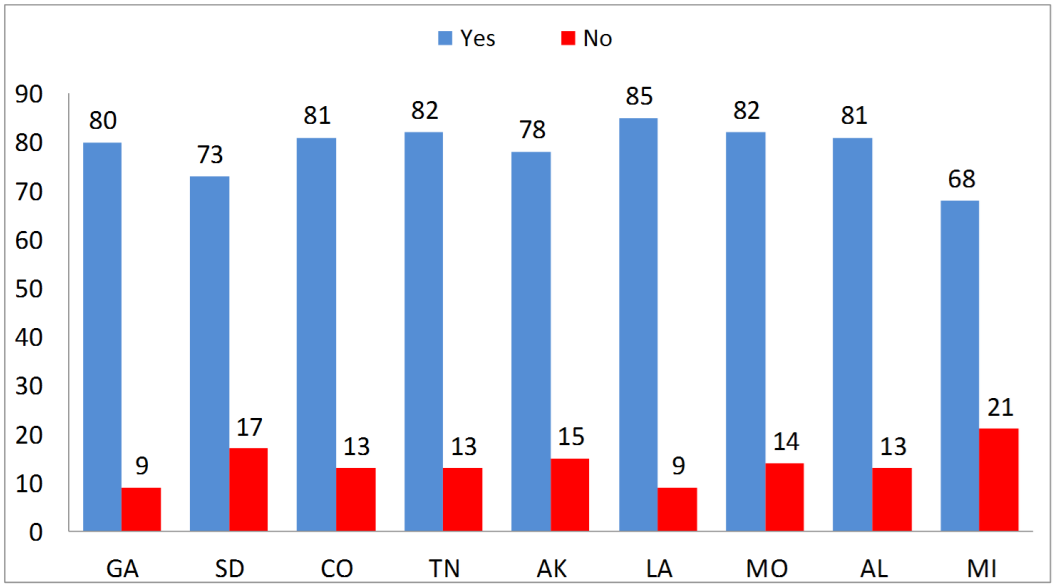
If the state legislatures of two-thirds of the states vote to call an amendment proposing convention to recommend an amendment to place term limits on members of Congress, would you want your state senator and state representative to vote yes or no on this bill?

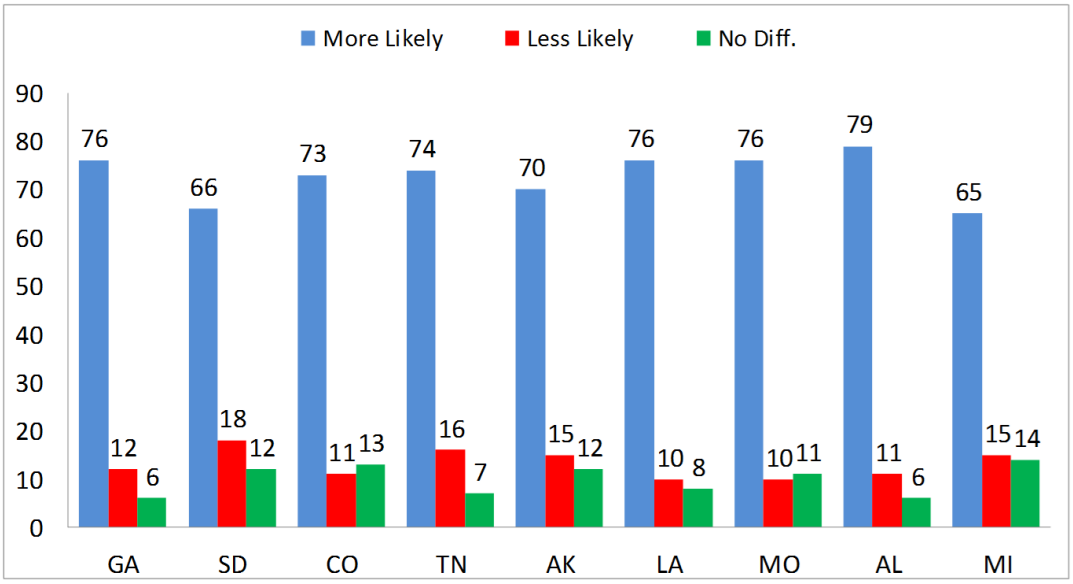


**Georgia survey contained slightly different wording*

<u>Three-in-four voters are more likely to support candidates who support term limits.</u>

An average of three-in-four voters, 73%, are more likely to vote for a candidate for State Legislature who supports implementing term limits on Congress, 44% are much more likely. This is true in each state we tested, across key political and demographic segments.

Would you be more likely or less likely to vote for a candidate for State Legislature who <u>supports</u> implementing term limits for members of Congress?



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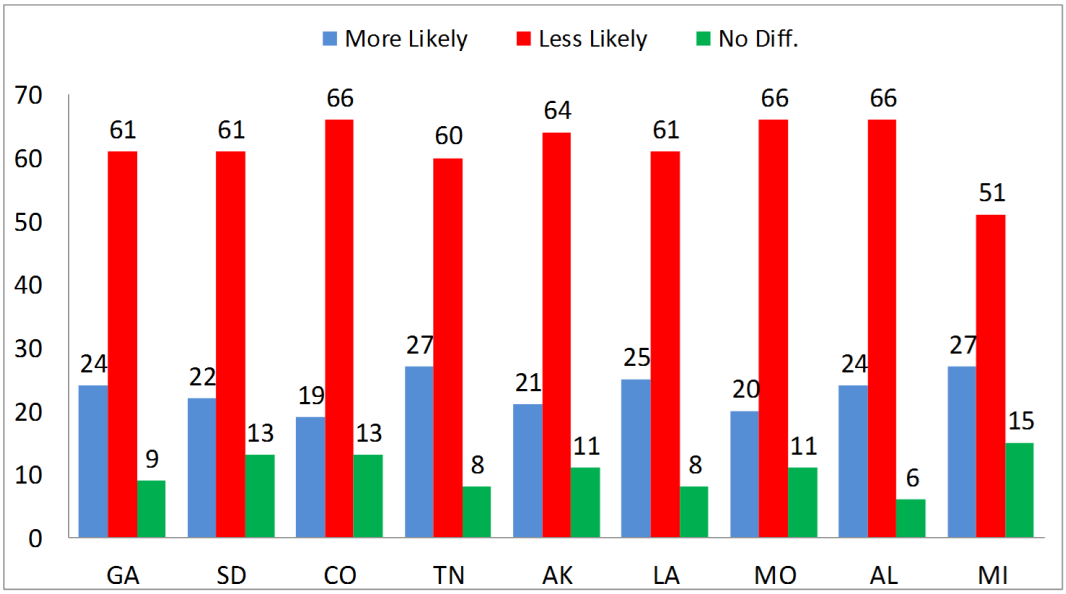
Six-in-ten voters in most states are less likely to vote for opponents of term limits.

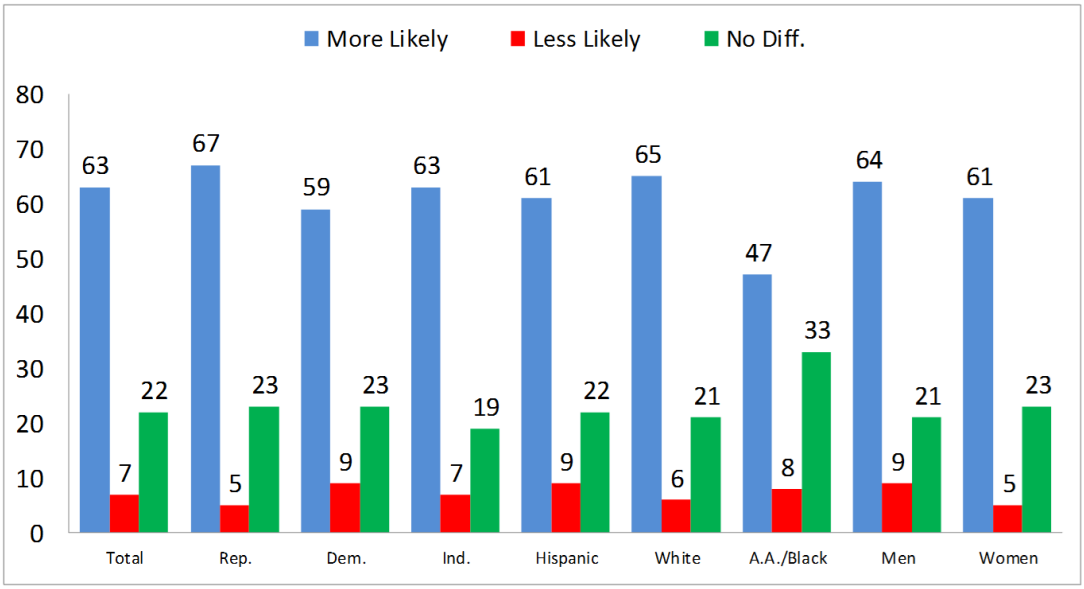
An average of six-in-ten voters, 62%, are less likely to vote for a candidate for State Legislature who opposes implementing term limits on Congress, 38% are much less likely.

Would you be more likely or less likely to vote for a candidate for State Legislature who opposes implementing term limits for members of Congress?



In our February national poll, nearly two-thirds of the electorate, 63%, said they would be more likely to vote for a candidate for Congress or U.S. Senate if they knew that candidate supports a Constitutional Amendment that would impose term limits on Congress, while only 7% say they would be less likely to vote for this candidate.

Would you be more likely or less likely to vote for a candidate for Congress or U.S. Senate if you knew the candidate supports a Constitutional Amendment that would impose term limits on Congress? If it would make no difference just say so.



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Conclusions:

Voters in the United States overwhelmingly support term limits for Congress and they want to call an amendment proposing convention to place term limits on members of Congress. The intensity of this support is measured in their drive to vote for both federal and state legislators who will vote "yes" on term limits, and against those who will vote "no" against term limits for members of Congress. While support may fluctuate slightly from state-to-state and among differing demographic groups, there remains a clear and consistent majority that support implementing term limits for Congress, a notion that cannot be contested. Term Limits are a broad, bipartisan popular issue that should be a major national issue this fall.

Methodology:

All interviews were conducted via telephone by professional interviewers. Interview selection was random within predetermined election units. Approximately 30% of the sample size of each survey was completed on cell-phones. These samples were then combined and structured to correlate with actual voter turnout in a general election.

	GA	SD	CO	TN	AK	LA	MO	AL	MI
Sample	**500**	**300**	**400**	**400**	**300**	**400**	**400**	**400**	**400**
Margin of Error	**+/-4.4%**	**+/-5.6%**	**+/-4.9%**	**+/-4.9%**	**+/-5.6%**	**+/-4.9%**	**+/-4.9%**	**+/-4.9%**	**+/-4.9%**
Cell Phone Interviews	**150**	**90**	**120**	**120**	**94**	**120**	**120**	**118**	**120**
Cell Phone %	**30%**	**30%**	**30%**	**30%**	**31%**	**30%**	**30%**	**29%**	**30%**
Interview Date	**11/30/15-12/1/15**	**1/6/16-1/7/16**	**1/10/16-1/11/16**	**1/10/16-1/12/16**	**1/31/16-2/1/16**	**3/7/16-3/8/16**	**3/16/16-3/17/16**	**3/23/16-3/24/16**	**4/24/16-4/25/16**

National Survey Methodology:

This survey of 1,000 likely general election voters nationwide was conducted on February 12th to 16th, 2016. All interviews were conducted online; survey invitations were distributed randomly within predetermined geographic units. These units were structured to correlate with actual voter turnout in a nationwide general election. This poll of 1,000 likely general election voters has an accuracy of +/- 3.1% at a 95% confidence interval. The error margin increases for cross-tabulations.

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Key Demographics:

Party:

	GA	SD	CO	TN	AK	LA	MO	AL	MI
Republican	38%	45%	35%	39%	27%	33%	35%	41%	31%
Democrat	36%	31%	33%	36%	20%	47%	35%	32%	39%
Independent/Other/Refused	27%	21%	31%	26%	59%	20%	30%	28%	30%

Gender:

	GA	SD	CO	TN	AK	LA	MO	AL	MI
Men	45%	47%	47%	45%	50%	45%	46%	45%	47%
Women	55%	53%	53%	55%	50%	55%	55%	55%	53%

Ideology:

	GA	SD	CO	TN	AK	LA	MO	AL	MI
Liberal	22%	18%	31%	22%	17%	18%	25%	18%	24%
Moderate	27%	38%	34%	30%	37%	24%	28%	26%	34%
Conservative	46%	42%	32%	46%	41%	56%	43%	52%	38%

Race:

	GA	SD	CO	TN	AK	LA	MO	AL	MI
Hispanic	1%	0%	15%	5%	4%	1%	2%	0%	3%
African American	29%	2%	2%	17%	3%	29%	12%	28%	14%
Asian	1%	1%	1%	0%	3%	1%	1%	1%	2%
White	64%	80%	805	76%	70%	61%	82%	65%	78%
Native American	--	7%	1%	1%	--	--	--	--	--
Alaskan Native/Aleut	--	--	--	--	16%	--	---	--	--
Other	4%	4%	0%	2%	5%	5%	4%	5%	4%
Refused	1%	6%	1%	0%	--	3%	0%	1%	1%

Age:

	GA	SD	CO	TN	AK	LA	MO	AL	MI
18-29	15%	14%	16%	12%	11%	15%	14%	14%	13%
30-40	16%	19%	19%	18%	22%	17%	15%	15%	16%
41-55	30%	18%	21%	21%	30%	27%	30%	28%	30%
56-65	16%	21%	25%	24%	20%	20%	20%	21%	20%
Over 65	23%	27%	20%	26%	17%	21%	21%	22%	20%
Refused	--	2%	--	0%	--	1%	1%	--	0%
MEAN	50.0	51.2	49.5	51.9	49.0	49.8	50.1	50.5	50.0

Interview:

	GA	SD	CO	TN	AK	LA	MO	AL	MI
Cell	30%	30%	30%	30%	31%	30%	30%	29%	30%
Landline	70%	70%	70%	70%	69%	70%	70%	71%	70%

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#3390

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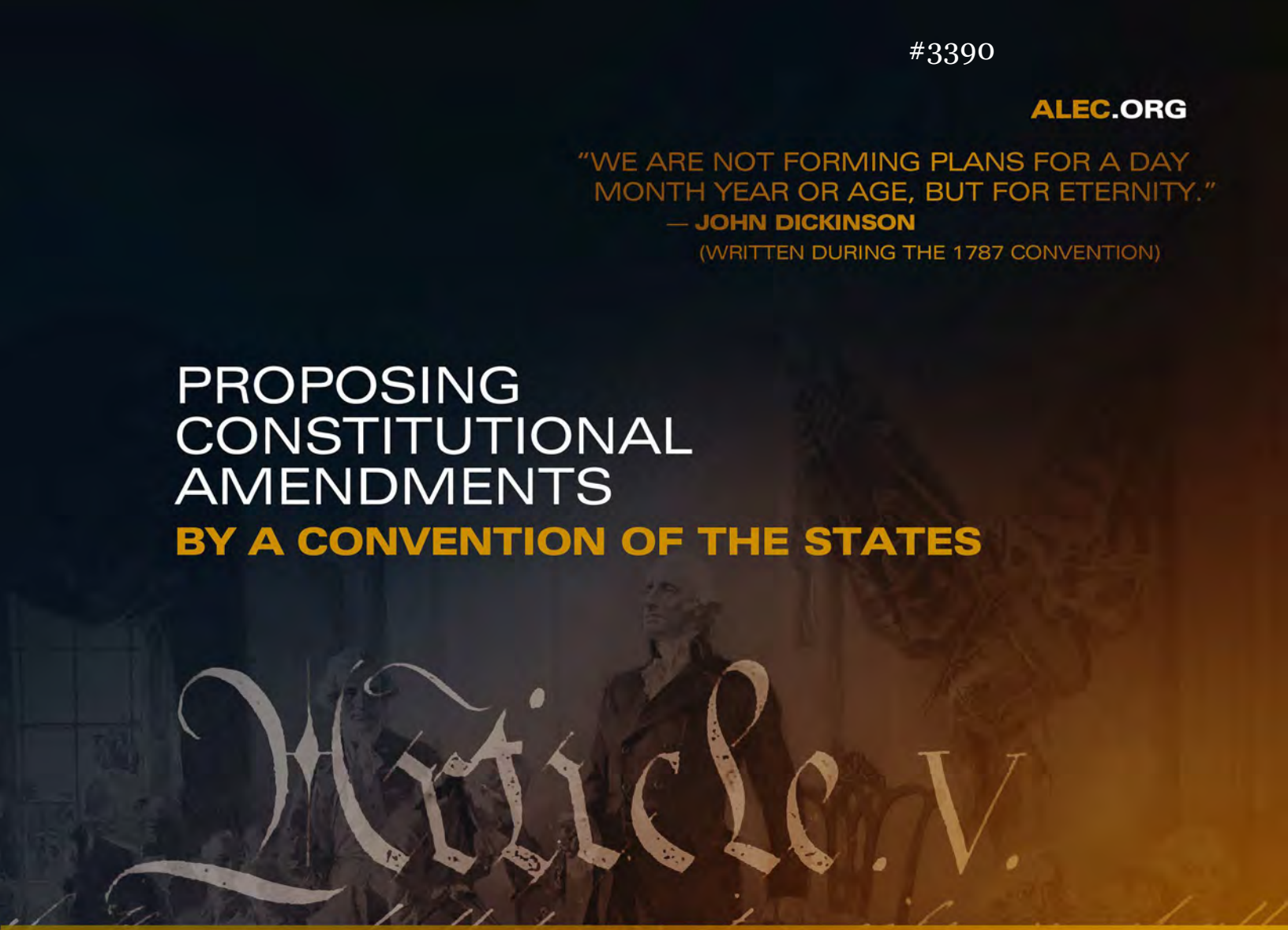
"WE ARE NOT FORMING PLANS FOR A DAY MONTH YEAR OR AGE, BUT FOR ETERNITY."
— JOHN DICKINSON
(WRITTEN DURING THE 1787 CONVENTION)

PROPOSING CONSTITUTIONAL AMENDMENTS
BY A CONVENTION OF THE STATES



A HANDBOOK
FOR STATE LAWMAKERS

BY ROBERT G. NATELSON

FOREWORD
BY INDIANA SENATOR **JIM BUCK**

ALEC American Legislative Exchange Council
LIMITED GOVERNMENT • FREE MARKETS • FEDERALISM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Proposing Constitutional Amendments by a Convention of the States: A Handbook for State Lawmakers has been published by the American Legislative Exchange Council (ALEC) as part of its mission to discuss, develop, and disseminate public policies, which expand free markets, promote economic growth, limit the size of government, and preserve individual liberty. ALEC is the nation's largest non-partisan, voluntary membership organization of state legislators, with 2,000 members across the nation. ALEC is governed by a Board of Directors of state legislators, which is advised by a Private Enterprise Board, representing major corporate and foundation sponsors. ALEC is classified by the Internal Revenue Service as a 501(c)(3) nonprofit, public policy and educational organization. Individuals, philanthropic foundations, corporations, companies, or associations are eligible to support ALEC's work through tax-deductible gifts.

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The mission of ALEC's Tax and Fiscal Policy Task Force is to explore policy solutions that reduce excessive government spending, promote sound tax policy, and enhance transparency of government operations.

Public Sector Chairman: Indiana Sen. Jim Buck
Private Sector Chairman: Bob Williams
Task Force Director: Jonathan Williams

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Proposing Constitutional Amendments by a Convention of the States: A Handbook for State Lawmakers

Nothing in this Handbook should be construed as legal advice; seek competent counsel in your own state.

About the Author

Rob Natelson is one of America's best known constitutional scholars. He served as a law professor for 25 years at three different universities. Among other subjects, he taught Constitutional Law and became a recognized national expert on the framing and adoption of the United States Constitution. He pioneered the use of source material, such as important Founding Era law books, overlooked by other writers, and he has been the first to uncover key facts about some of the most significant parts of the Constitution. Rob has written for some of the most prestigious academic publishers, including Cambridge University Press, the *Harvard Journal of Law and Public Policy,* and *Texas Law Review.*

There are several keys to Rob's success as a scholar. Unlike most constitutional writers, he has academic training not merely in law or in history, but in both, as well as in the Latin classics that were the mainstay of Founding-Era education. He works hard to keep his historical investigations objective. Most critical, however, have been lessons and habits learned in the "real world"—before his academic career began, Rob practiced law in two states, ran two separate businesses, and served as a regular real estate law columnist for the *Rocky Mountain News*. Later, he created and hosted Montana's first statewide commercial radio talk show and became Montana's best known political activist—leading, among other campaigns—the most successful petition referendum drive in the history of the state. He also helped push through several important pieces of Montana legislation, and in June 2000, was the runner-up among five candidates in the party primaries for Governor of Montana. For recreation, Rob spends time in the great outdoors, where he particularly enjoys hiking and skiing with his wife and three daughters.

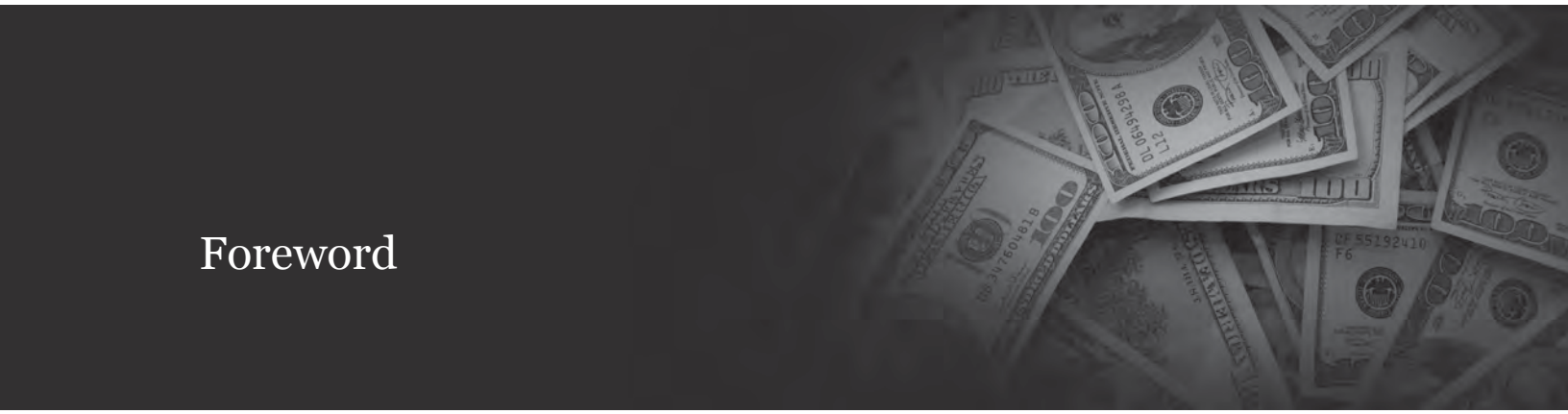
Rob currently serves as Senior Fellow in Constitutional Jurisprudence at the Independence Institute in Denver, Colorado, and Senior Fellow in Constitutional Jurisprudence at the Montana Policy Institute in Bozeman, Montana.

Acknowledgements

The American Legislative Exchange Council wishes to acknowledge the following parties who also contributed to this Handbook:

First, we thank Jonathan Williams, Meaghan Archer, Laura Elliott, Kati Siconolfi, Kailee Tkacz, and Christine Harbin for their work on this publication. We also thank Ron Scheberle, Michael Bowman, and the rest of the ALEC staff who helped make this publication possible.

Finally, we thank Indiana Senator Jim Buck, Arizona Senator Don Shooter, Bob Williams, Dr. Barry Poulson, Lou Barnett, Pete Sepp, and Brent Mead for their support and expertise.



Foreword

Dear ALEC Member,

Time is running out. Our nation is trillions of dollars in debt without a credible plan to stop spending. The battle in Congress has escalated to a point where politics outweighs the cost of our economic future, and there is little hope our nation's leaders will make the tough choices that need to be made in order to reign in our debt and revive our economy. Fortunately, there is a solution outside of Congress—a solution that Professor Rob Natelson outlines in this Handbook.

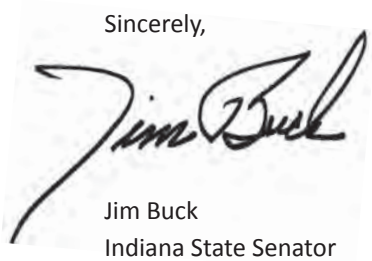
Our Founders knew the importance of checks and balances. In the United States Constitution, they enumerated one of the most important roles states have in keeping the federal government in check. Under Article V, states are granted the right to require Congress to call a convention of the states, during which states can propose amendments to the Constitution. For decades we have allowed Congress to run rampant, spending as it pleases. In 30 years, Congress has managed to balance the budget only twice.

It is far too easy for the appropriators of our nation's funds to spend without limit and outside of reason, but that is something that can be remedied. The solution is an amendment to the Constitution that imposes greater accountability on Congress and requires a balanced budget. The stipulations of such an amendment would need to ensure spending does not exceed revenue and prohibit borrowing money to make up for any shortfalls. In 1957, my state of Indiana was the first to apply for a convention to propose a balanced budget amendment to the Constitution. Since then, many other states have followed suit.

Balancing our budget transcends party politics. No matter who controls Congress or the presidency, our $15 trillion dollar (and growing) national debt will remain an ever-present hurdle to economic growth and recovery. The problem won't be going away any time soon, either. More than 30 years of deficits cannot be solved with only one year of policy.

Today America faces an uncertain economic future. Millions of Americans are unemployed, and some even suggest America faces a new normal in economic mediocrity. Spending ourselves into more debt won't solve that problem; in fact, doing so will only make it worse. State legislators must take the long-sighted view and exercise our rights within the Constitution to limit Congress's ability to drive our nation into further economic decay. This Handbook is your guide to achieving that goal.

Sincerely,



Jim Buck
Indiana State Senator
Chair, Tax and Fiscal Policy Task Force
American Legislative Exchange Council

Executive Summary

The balanced budget amendment is overwhelmingly supported by the American people.Polls by CNN, Fox News, and Mason-Dixon show that nearly three-fourths of Americans favor a balanced budget amendment to the U.S. Constitution. With the national debt reaching its peak of more than $15 trillion and rising, the time to balance the budget is now. Nearly every state in the nation is legally bound by their constitutions to balance its budget. With experience in balancing budgets year after year, states are most suited to propose an amendment to the U.S. Constitution that requires a balanced *federal* budget. State legislators can accomplish this by calling an Article V Convention of the states.

The Handbook you are about to read, written by constitutional scholar Robert G. Natelson, provides state legislators the proper tools to use the Article V process legally and effectively. Additionally, it offers reliable information about the state application and convention process based on thorough and objective scholarship.

In the first section of the Handbook, Natelson lays the groundwork for the Article V process. Importantly, he explains what the convention process is not: "plenipotentiary," or the complete rewriting of our Constitution. Natelson also summarizes the Founder's intention behind including Article V in the Constitution and describes how history can be a lesson for what a convention would look like today. Many questions about the process concern the role of courts in Article V. Using both case law and his extensive constitutional law background, Natelson highlights how the courts might be involved in this process.

After discussing Article V history and its key players, Natelson takes state legislators through the process step-by-step. From making an application to ratification, state legislators will learn the minutia of the Article V process and how best to prepare an application in their states.

Further, this Handbook debunks the myth of a runaway convention. Natelson makes a compelling argument for why states should not worry about critics' fears that a convention of the states would result in a complete takeover of the U.S. Constitution.

Finally, Natelson provides practical recommendations for states that choose to apply for a convention through the Article V process. Natelson encourages legislators to promote the right amendments, use the right amount of specificity, and keep the process within the states' control.

We hope that you will find this Handbook informative and useful as you embark on an adventure never before accomplished in our nation's history. We wish you the best of luck.

Table of Contents

I. Introduction

Through Article V, our American Founders added a way for the states to promote amendments to the Constitution directly, rather than by merely petitioning Congress. This is called the *state application and convention process*. Recent debate over a balanced budget amendment to the Constitution has provoked interest in this procedure. This Handbook is your guide to understanding and using it.

> "Federalism works only if the states respond effectively when the federal government exceeds or abuses its powers."

This Handbook is written for state lawmakers, support staff, and other interested Americans. The goal is to enable state lawmakers to employ the state application and convention process as the Founders intended: legally, effectively, and safely. This Handbook offers accurate, well-researched information about the process, including how to trigger it, valuable safeguards, and legal forms. This Handbook also corrects common myths about the procedure—perhaps the foremost of which is that the convention authorized by Article V is a "constitutional convention."

Many state lawmakers, like Americans generally, believe that politicians in Washington, D.C. have not successfully controlled spending in recent years. That helps to explain strong public interest in a balanced budget amendment, among other proposals. Besides amassing a huge debt, federal officeholders often have disregarded individual liberty and constitutional limits on their own power. Moreover, many federal officeholders seem to neglect the constitutional role of the states. Increasingly, state lawmakers understand what the Founders said repeatedly: *Federalism works only if the states respond effectively when the federal government exceeds or abuses its powers.*

This Handbook:

- offers reliable information about the state application and convention process, based on thorough and objective scholarship;
- corrects misinformation; and
- makes it easier for state lawmakers to use the process legally and effectively.

One reason the Founders inserted into the Constitution a method of amendment was to enable future generations

to keep our Basic Law up to date—but that was not the only reason. The Founders also inserted the amendment procedure as a tool for resolving constitutional disputes and for correcting excesses and abuses. Because they recognized that excesses and abuses could come from either the states or the federal government, they fashioned two alternative ways for proposing amendments for state ratification:

- by a resolution adopted by two-thirds of both houses of Congress, and

- by a gathering of delegates of state legislatures that the Constitution calls a *convention for proposing amendments.*

Other acceptable names for a convention for proposing amendments are *amendments convention*, *convention of the states*, and *Article V convention*. (For reasons explained in section II it is inaccurate and misleading to call a convention for proposing amendments a "constitutional convention.")

The congressional-proposal method has been used several times to correct *state* abuses. For example, Congress proposed the 14th, 15th, and 24th Amendments to restrain state oppression of minorities.[1] But thus far the states have never exercised their corresponding power to correct *federal* abuses. As a result, the constitutional design has become unbalanced.

To correct for this imbalance, the American Legislative Exchange Council (ALEC) has recommended several constitutional amendments to limit some of the worst abuses of federal power—among these, a balanced budget amendment (BBA).[2] Except for repeal of Prohibition, however, Congress has not forwarded to the states any amendment limiting its own power since approving the Bill of Rights in 1789. Thus, despite recurrent hopeful talk about how Congress might adopt a BBA or other corrective amendments on its own, history suggests reformers cannot depend on that. The states must do the job, as our Founders expected them to do.

Although state lawmakers have initiated the state application and convention process many times, they never have carried it to completion. Historically, there are many reasons for this, but since the 1960s a principal reason for this neglect has been alarmism based on misinformation (a topic explained later in section V). Indeed, many of the writings published about the state application and convention process since the 1960s have been based more on guesswork than on serious historical or legal investigation. Many more writings on the subject are simply briefs promoting an agenda rather than a source of complete and accurate information. However, there have been a few solid studies of the process, and the recommendations in this Handbook are based on their research and conclusions (see Appendix D).

II. The Constitution's State Application and Convention Process: What It Is

The 55 Framers who met in Philadelphia during the spring and summer of 1787 understood that they were drafting a Constitution to last a very long time. "We are not forming plans for a Day Month Year or Age," delegate John Dickinson wrote, "but for Eternity."

Of course, a document designed to last a very long time must include a method of amendment. In crafting their amendment procedures, the Framers resorted to two mechanisms widely employed at the time: legislatures and conventions.

During the Founding Era, a "convention" was usually an *ad hoc* assembly designed to pinch-hit for a legislature. Today we tend to think of a convention as a "constitutional convention," but during the Founding Era most of those gatherings were not "constitutional" at all. Most were simply task forces assigned to recommend solutions to pre-specified problems. Others were established to ratify the work done by others. The Constitution authorizes three kinds of limited purpose conventions: One kind to ratify the Constitution itself, another to ratify amendments, and a third to act as a task force to recommend solutions to pre-specified problems. The convention for proposing amendments is in the third category.

The historical record tells us what the Founders had in mind when they authorized a convention for proposing amendments: They envisioned an interstate or "federal" convention—that is, an assembly composed of state delegations ("committees") responsible to their respective state legislatures and operating, at least initially, according to a rule of one state/one vote. Although the fact is not widely known today, inter-colonial and (after Independence) interstate conventions were commonplace during the 18 century: There were well over twenty of them.[3] They were modeled after diplomatic conventions among separate sovereignties.

The agenda and powers of interstate conventions were fixed by the participating states, sometimes after congressional recommendation, sometimes not. Usually the agenda was fairly narrow. For instance, the interstate convention held in Yorktown, Pennsylvania in 1777 was entrusted only with issues of price inflation. The 1781 interstate convention held in Providence, Rhode Island was restricted to military supply for a single year.

The scope of a convention for proposing amendments is similarly narrow. As James Madison made clear, it is not what leading Founders called a "plenipotentiary convention." In other words, it is not an assembly with very wide authority, such as one charged with drafting or adopting a Constitution. *Thus, it is simply incorrect to refer to a convention for proposing amendments as a "constitutional convention."* They are different creatures entirely.[4]

The convention for proposing amendments was based on comparable provisions in state constitutions that predated the U.S. Constitution. One of these was Article 63 of the 1777 Georgia Constitution. It granted to a majority of counties the power to petition for an amendment,

upon which "the assembly [legislature] shall order a convention to be called for that purpose, specifying the alterations to be made, according to the petitions preferred to the assembly by the majority of the counties as aforesaid." In other words, the Georgia Constitution enabled the counties to designate what kind of amendment they wanted, ordered the legislature to call the convention, and empowered that convention to write the specific language.

In the U.S. Constitution two-thirds of state legislatures (now 34 of 50) petition instead of a majority of counties:

> 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 State, without its Consent, shall be deprived of its equal Suffrage in the Senate.[5] (Italics added.)

As in the Georgia prototype, the U.S. Constitution grants named assemblies (legislatures, conventions) designated roles in the amendment process. The Constitution gives Congress authority to propose amendments and, for any amendment (however proposed), to choose among two modes of ratification. The Constitution also empowers state legislatures to force Congress to call an amendments convention and empowers the convention to propose. The Constitution further authorizes state legislatures and state conventions to ratify. This view of Article V—as a grant of enumerated powers to named assemblies—has been adopted by the U.S. Supreme Court.

We know the convention process works as a practical matter, because long after the Constitution was adopted, the states used essentially the same procedure for the Washington Conference Convention in 1861.

In summary, please note:

- Just as other parts of the Constitution grant Congress certain listed ("enumerated") powers, Article V also grants enumerated powers. Article V grants them to *named assemblies (conventions and legislatures) and not to states or the federal government as a whole*.[6] The executive branch of federal and state governments does not have any role in the amendment process.

- Proposing amendments through a convention, as in Congress, is still only a method of *proposing* amendments. No amendment is effective unless ratified by three-fourths of the states (now 38 of 50).

- To be duly *ratified,* an amendment first must be duly *proposed* by Congress or by an interstate convention called at the behest of two-thirds (now 34) of the state legislatures.

- A convention for proposing amendments has precisely the same power that Congress has to propose amendments. Its power to propose is limited by the subject matter specified in state applications—*but by no other authority whatsoever*. The convention is a deliberative body whose members answer to the state legislatures they represent.

- The convention for proposing amendments is basically a drafting committee or task force, convened to reduce one or more general ideas to specific language.

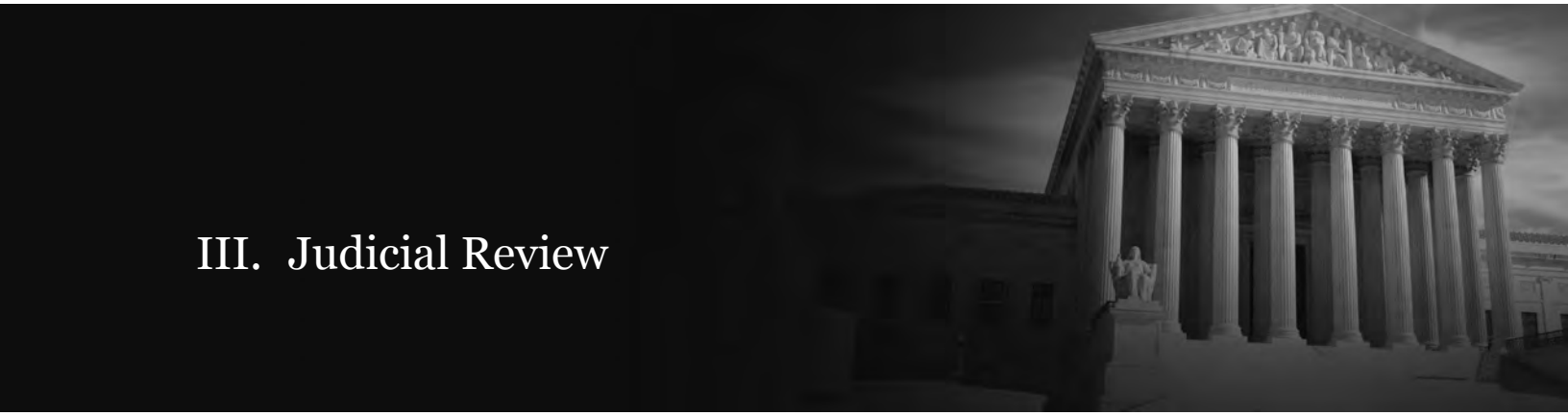
Why Not Just Leave Amendments to the Discretion of Congress Alone?

The records of the Constitutional Convention show that initially the delegates considered a plan under which *only* an interstate convention would draft and ratify amendments. On the suggestion of Alexander Hamilton of New York, the Framers altered the plan so that Congress became the sole drafter/proposer and the states became ratifiers. Hamilton argued that Congress should have power to propose because its daily activity would suggest needed changes.

This bothered George Mason of Virginia, who observed that Congress might become oppressive and refuse to propose corrective amendments—particularly amendments limiting its own power. So by a unanimous vote of the states, the delegates added an amendments convention to allow the states to bypass Congress. The final wording of Article V is essentially the work of James Madison.

In summary, please note:

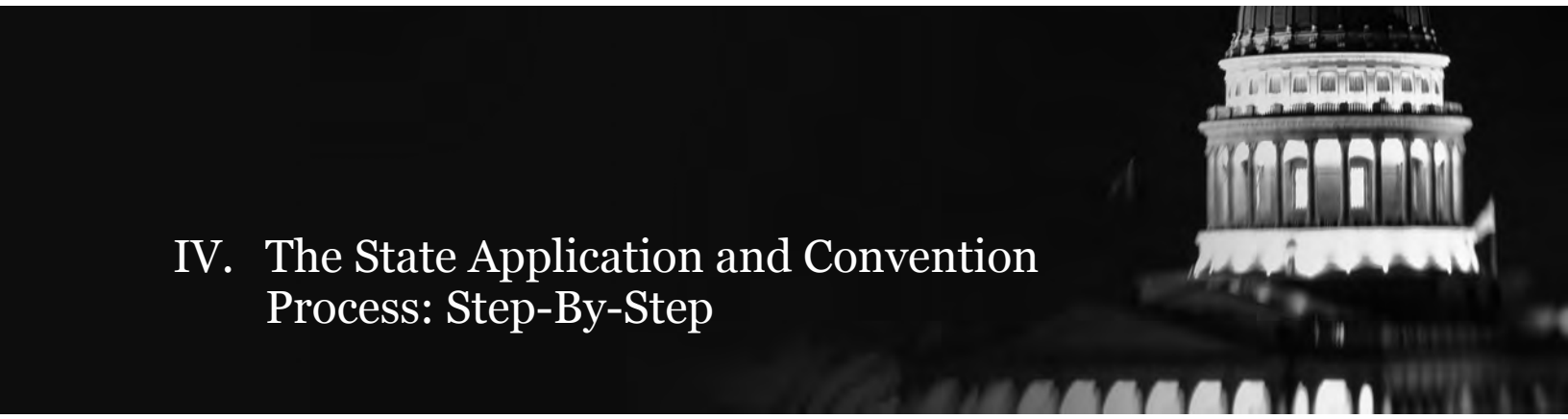
- The principal reason for the state application and convention process is to enable the states to check an oppressive or runaway Congress—although the Constitution does not actually limit the process to that purpose.
- The Framers explicitly designed the process to enable the states to substantially *bypass* Congress.



III. Judicial Review

Despite some language to the contrary from an old Supreme Court decision,[7] it is now clear that *the courts can and will resolve Article V disputes*. A court might have to decide whether a legislative resolution qualifies as an "application," applications are sufficient to require Congress to call a convention, or a convention resolution is a valid "proposal" that can be ratified.

For state lawmakers, the bad news in judicial review is that groups opposed to amendments may sue to block them. The good news outweighs that, because it is better that the courts, rather than Congress, define and enforce the state application and amendment process. If Congress refuses to carry out the duties mandated by Article V, the courts can order Congress to do so. In addition, judicial review should protect the constitutional role of the state legislatures. Recall that the central purpose of the state application and convention process to enable state legislatures to bypass Congress in proposing amendments. Courts routinely construe legal provisions to further their central purpose.



IV. The State Application and Convention Process: Step-By-Step

A. *Making an application*.

What is an application? A state legislature seeking an amendments convention adopts a resolution called an "application." The application should be addressed to Congress. It should assert specifically and unequivocally that it is an application to Congress for a convention pursuant to Article V. The resolution should not merely request that Congress propose a particular amendment, nor should it merely request that Congress call a convention. An example of effective language is as follows:

> The legislature of the State of _____ hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states . . .

Who may apply? The Constitution grants the right to apply exclusively to the state *legislatures*. Applications need not be signed by the governor, and may not be vetoed, anything in the state constitution or laws notwithstanding. Moreover, applying cannot be delegated to the people via initiative or referendum, anything in the state constitution or laws notwithstanding. However, the signature of the governor does not invalidate an application, nor does an initiative or referendum that is purely *advisory* in nature.

The scope of the convention sought. A legislature may apply for an open convention—that is, not limited as to subject matter. Such an application might read:

> The legislature of the State of _____ hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states for proposing amendments to the Constitution.

Few people, however, are interested in an open convention or in a convention for the sake of a convention. Generally, the goal is to advance amendments of a distinct type, with the convention limited to that purpose. An application for a limited convention might read:

> The legislature of the State of _____ hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing an amendment to the Constitution of the United States requiring [*here state general nature of the amendment*]. [8]

Although applications may limit a convention to one or more subjects, the existing case law *strongly* suggests that an application may not attempt to dictate particular wording or rules to the convention nor may the application attempt to coerce Congress or other state legis-

latures. As the courts have ruled repeatedly, assemblies (Congress, state legislatures, and conventions) are entitled to some deliberative freedom when involved in Article V procedures. An application may *suggest* particular language or rules for the convention, but to avoid confusion, suggestions should be placed only in separate, accompanying resolutions.

Some applications, while not attempting to impose specific language on the convention, attempt to dictate the details of the amendment's terms. The more detail the application mandates, the more likely a court will invalidate it as attempting to restrict unduly the convention's deliberative freedom. Additionally, the more terms an application specifies, the less likely it will match the terms of other applications, resulting in congressional or judicial refusal to aggregate them together toward the two-thirds threshold.

Thus, a pair of rules governs legislatures applying under Article V: (1) They may limit the subject matter of the convention but (2) they may not dictate particular wording. These boundaries make sense if you think of the convention as what it really is: A committee or task force charged with solving designated problems. When charging a task force in business or government, you inform its members of the problems you want them to address. You don't tell them to investigate anything they wish. Additionally, once you have given the task force an assignment, you don't dictate a solution. To serve its purpose the task force has to be free to consider different solutions. Otherwise there would be no good reason for the task force.

In summary, please note:

- An "application" is a state legislative resolution directing Congress to call a convention for proposing one or more amendments.
- Applications may limit the scope of the convention to particular subject matter.
- Applications may recommend, but not dictate, particular wording to the convention.
- Applications setting forth detailed terms for the amendment are inadvisable both on legal and practical grounds.
- Recommendations are best stated in accompanying resolutions.

B. *How long does an application last?*

An application probably lasts until it is duly rescinded. Some have argued that older applications grow "stale" after an unspecified time and lose their validity. However, this argument probably does not have merit. The power to rescind continues until the two-thirds threshold is reached, or perhaps shortly thereafter.[9]

An application probably may provide that it is automatically terminated as of a particular date or on the occurrence of a specific event—as long as the terminating condition is not an effort to coerce Congress, other states, or the convention. Thus, a provision is most likely valid if it says, "This application, if not earlier rescinded, shall terminate on December 31, 2015." Also valid would be this language: "This application, if not earlier rescinded, shall be null and void if Congress shall propose a balanced budget amendment to the U.S. Constitution." On the other hand, courts may deem some kinds of automatic terminations to be coercive, and therefore void. A clear example would be a provision automatically terminating the application unless the convention followed specified rules or adopted an amendment in specified language.

C. *The applications in Congress and the "call."*

"*Aggregation" of applications*. When 34 state legislatures have submitted applications on the same subject,

the Constitution *requires* Congress to call a convention for proposing amendments. Both the historical and legal background of Article V and modern commentary clarify that the congressional role at this point is merely "ministerial" rather than "discretionary." In other words, the Constitution assigns Congress a routine duty it must perform. It is important to note, however, that congressional receipt of 34 applications is not sufficient; those applications must relate to the same subject matter.

Historically some members of Congress have tried to find excuses for avoiding any duty to call a convention.[10] One possibility is that Congress may refuse to "aggregate" toward the two-thirds threshold any applications that try to dictate to the convention different ways of solving the same problem. Thus, if 17 states have applied for a clean balanced budget amendment and another 17 have applied for a balanced budget amendment with a requirement of a two-thirds vote to raise taxes, Congress may refuse to treat both groups as addressing the same subject. The more differences exhibited by the applications, the more justification Congress will have in refusing to aggregate them.

One way to forestall such obstruction is to specify in the application that it be aggregated with certain other state applications. For example, an application may include the following language:

> This application is to be considered as covering the same subject matter as any other application for a balanced budget amendment, irrespective of the terms of those applications, and shall be aggregated with them for the purpose of reaching the two thirds of states necessary to require the calling of a convention.

An alternative might be to name applications already submitted by other states:

> This application is to be considered as covering the same subject matter as presently-outstanding balanced budget applications from Nebraska, Kansas, and Arkansas, and shall be aggregated with them for the purpose of reaching the two-thirds of states necessary to require the calling of a convention.

This process is for the states, not Congress. In the past, well-meaning members of Congress have introduced bills to resolve issues that properly are for the state legislatures or for the convention to resolve. If adopted, these bills would have dictated how delegates are selected, how many delegates each state may have at the convention, and what voting and other rules the convention must follow.

That kind of legislation is probably unconstitutional for several reasons. First, congressional efforts to control the convention would handicap its fundamental purpose as a mechanism for the *states* to amend the Constitution without interference from Congress. Also, the historical record shows that such provisions exceed the scope of what the Constitution means by "calling" an interstate convention. The power to "call" an interstate convention authorizes Congress only to count and categorize the applications by subject matter, announce on what subjects the two-thirds threshold has been reached, and set the time and place of the convention. Any further prescriptions by Congress exceed the scope of powers reasonably incidental to the constitutional power to "call."[11]

D. *Selection of delegates ("commissioners")*

As noted above, the Founders modeled the interstate convention on international diplomatic practice. As in diplomatic meetings, each sovereignty decides how to select its own delegation or "committee" and how many to send. The records of the Founding-Era interstate conventions tell us that states selected delegates ("commissioners") in any of several ways:

(1) Election by one house of the state legislature, subject to concurrence by the other, with a joint committee negotiating any differences;

(2) Election by joint session of both houses of the state legislature;

(3) Designation by the executive;

(4) Selection by a designated committee.

Moreover, when selecting delegates to the Confederation Congress (which, strictly speaking, was a legislative body rather than a convention), Rhode Island provided for direct election by the people.

For the 1861 Washington Conference Convention, which served as a sort of "dry run" for an amendments convention, most state legislatures selected their own commissioners, but some authorized the executive to appoint commissioners or nominate them subject to the consent of the state senate.

Election by legislative joint ballot has several advantages. First, it makes sense for the legislature to select commissioners, because they serve as legislative agents subject to legislative instruction and removal. Second, joint ballot elections are less prone to deadlock than election by each chamber seriatim. Third, because the applications and legislative instructions will define the policy behind the amendment, the commissioners' role at the convention is primarily to serve as a legal drafting committee, calling for technical abilities and diplomatic skills. Lawmakers are likely to know which individuals possess those abilities.

Each commissioner is empowered to act by a document called a "commission," issued in such matter as the state legislature directs.

E. *The Convention.*

All states, not merely the applying states, are entitled to send committees to a convention for proposing amendments. The convention is, as James Madison once asserted, "subject to the forms of the Constitution." In other words, it is not "plenipotentiary" (or "constitutional") in nature. Accordingly, a convention for proposing amendments has no authority to violate Article V or any other part of the Constitution. According to the rules in Article V, the convention may not propose a change in the rule that each state has "equal Suffrage in the Senate,"[12] nor may it alter the ratification procedure.[13]

Prior rules and practice governing interstate conventions show that conventions must honor the terms of their call and limit themselves to the scope of the subject matter they are charged with addressing. The scope of the subject matter is set by the scope of the 34 or more successful applications, and ideally Congress should reproduce that scope in its call.

Delegates to American conventions generally have had power to elect their own officers and adopt their own rules, and this has been universally true of interstate conventions. These rules include the standards of debate, daily times of convening and adjourning, whether the proceedings are open or secret, and other matters of internal procedure. Interstate conventions traditionally have determined issues according to a "one state/one vote," although a convention is free to change the rule of suffrage. The convention also may limit how many commissioners from each state can occupy the floor at a time.

Like other diplomatic personnel, convention commissioners are subject to instruction from home—in this case from the legislature or the legislature's designee.[14] The designee could be a committee, the executive, or another person or body. Although state applications cannot specify particular wording for an amendment, a state could instruct its commissioners to not agree to any amendment that did not include particular language. In accordance with Founding Era practice and the convention's purpose, each state should pay its own delegates.

The convention may opt to propose one or more amendments within the designated subject matter or it may adjourn without proposing anything. Unless altered by convention rule, proposal requires only a majority vote. Some have argued that a formal proposal requires a two thirds convention vote—or that Congress may impose such a rule—but there is nothing in law or history to support this argument.

The Constitution does not require that a proposal be transmitted to Congress or to any other particular entity; the proposal is complete when the rules of the convention says it is. Because Congress must choose a mode of ratification, however, the convention should officially transmit the proposal to Congress.

Once amendments are proposed or the delegates decide not to propose any, the purpose of the convention has been served, and it must adjourn.

In summary, please note:

- Each state sends a committee of commissioners to the convention, chosen by the state legislature or as the state legislature directs.
- The convention elects its own officers and sets its own rules.
- Initial suffrage is one state/one vote with decisions made by a majority of states, but the convention may change both rules.
- The convention must follow the rules of the Constitution, including those in Article V. The convention cannot change the ratification procedure.
- The commissioners must remain within the charge as set by the applications and (derivatively) by the congressional call.
- Within the charge and during the convention, each committee is subject to instruction from its home state legislature or the legislature's designee and is subject to recall as well.
- Within the charge, the commissioners may propose one or more amendments, or may propose none at all.
- Once that decision is made, the convention must adjourn.

F. *Ratification.*

In general, ratification of convention-proposed amendments is the same as for congressionally-proposed amendments.

If the convention validly proposes one or more amendments, Article V *requires* Congress to select one of two "Mode(s) of Ratification" for each. Congress may decide that the amendments be submitted to state conventions elected for that purpose (the mode selected for the 21st Amendment, repealing Prohibition) or to the state legislatures (the mode selected for all other amendments). The obligation of Congress to select a mode should be enforceable judicially, but it is completely up to Congress which of the two modes it chooses. Neither the applying state legislatures nor the convention may dictate which mode Congress selects.

Of course, the obligation of Congress to choose a mode depends on the measure qualifying as a valid "proposal." A proposal would not be valid if, for example, it exceeded the scope of the subject matter defined by the applications or if it altered equal suffrage in the Senate or the Constitution's rules of ratification. Congress would be under no obligation to select a mode for such a "proposal," nor would it have the legal right to do so.

V. The Myth of a Runaway Convention

The *runaway convention scenario* was conjured up in the 19th century to dissuade state lawmakers from bypassing Congress through the state application and convention process. The scenario became famous during the 1960s, when liberal activists, legislators, and academics raised it to defeat an application campaign for amendments that would have overturned some Supreme Court decisions. Various groups have employed the same tactic to defeat balanced budget amendment proposals over the years.[15] In one of the ironies of history, some deeply *conservative* groups now promote the scenario as well. One can expect both liberal and conservative opponents to promote it again if another application campaign begins to gain traction.

In the "runaway convention" scenario, state legislatures attempt to limit the convention through their applications, but once the convention meets the commissioners disregard the applications and their subsequent instructions. Instead, heedless of their reputations, their political futures, and all ties of honor, the commissioners issue proposed amendments that are *ultra vires*—that is, beyond their legal authority.

In the more extreme versions of the runaway scenario, the convention's proposed amendments reinstate slavery, abolish the Bill of Rights, or otherwise completely alter the American form of government. To prevent the states from blocking their proposals, the convention also changes the method of ratifying to a method it finds more congenial. While the Congress, the President, the courts, and the military all inexplicably sit by and permit this *coup d'état* to unfold, the convention imposes a new, more authoritarian, government on America.

In the more moderate versions of the runaway scenario, the convention is unable to change the ratification process, but three-fourths of the states nevertheless ratify amendments they did not authorize and do not want.

> "At the very least, commissioners who willfully disregarded limits on their authority would suffer severe loss of reputation and probably compromise fatally their political futures."

Of course, even the more moderate version of the runaway convention scenario shows a slender regard for political reality. At the very least, commissioners who willfully disregarded limits on their authority would suffer severe loss of reputation and probably compromise fatally their political futures. This may explain why, in the long history of the hundreds of American state and interstate conventions, only an odd handful of delegates have actu-

ally suggested "going rogue." Advocates of the runaway scenario do not dispute this, but argue that the 1787 Constitutional Convention disregarded its instructions. Unfortunately for their position, the widespread claim that the 1787 Constitutional Convention disregarded its instructions is substantially false (for articles documenting what actually happened, see Appendix C). Another practical political factor is that Congress, and to some extent the President, are institutional rivals of the convention, and unlikely to remain inactive while it runs wild.

"There are far more political and legal constraints on a runaway convention than on a runaway Congress."

In addition to the constraints of practical politics, there are redundant legal protections against *ultra vires* proposals:

(1) Because convention commissioners are subject to state legislative instruction, legislatures can correct or recall any attempting to exceed their power.

(2) If, nevertheless, legislatures failed to do this AND the convention purported to adopt an *ultra vires* amendment, it would not be a constitutionally valid "proposal." Hence Congress would not be obligated to select a "Mode of Ratification"—and, indeed, would have no right to do so.

(3) If state legislatures failed to stop commissioners from acting beyond their powers, AND if the convention reported an *ultra vires* amendment, AND if Congress nevertheless selected a mode of ratification, the courts could declare Congress's decision void.

(4) If the state legislatures did not stop their commissioners from acting beyond their powers, AND if the convention reported an *ultra vires* amendment, AND if Congress still selected a mode of ratification, AND if the courts failed to declare Congress's decision void, then the states could refuse to ratify it.

(5) In the unlikely event that the states insisted on ratifying a proposal they (1) did not apply for, and (2) was issued contrary to their instructions, then the courts—or, indeed, any government agency—could treat the "amendment" as void.

In sum, there are far more political and legal constraints on a runaway convention than on a runaway Congress.

VI. Practical Recommendations for the State Application and Convention Process

The constitutional amendment process can be messy. Indeed, people occasionally argue that one or more existing amendments never were approved properly. Nonetheless, lawmakers employing the state application and convention process must try to follow the rules as closely as possible. There are too many politicians, lobbying groups, and judges willing to seize on procedural mistakes to block amendments they don't like.

Here are some practical rules to follow:

Promote the right amendments.

Most people have one or more causes dear to their hearts that they would love to see written into the Constitution. But the state application and convention process is no place for unpopular, ineffective, or idiosyncratic causes. Each potential amendment should comply with at least four criteria:

(1) Like most amendments already adopted, it should move America back toward Founding principles.

(2) It should promise substantial, rather than merely symbolic or marginal, effect on public policy.

(3) It should be widely popular.

(4) It should be a subject that most state lawmakers, of any political party, can understand and appreciate.

The most successful application campaign ever—for direct election of U.S. Senators—met all of these criteria. The cause was widely popular and well understood by state lawmakers because, year after year, legislative election of Senators had fostered legislative deadlocks, corruption, and submersion of state elections by federal issues. Direct election advocates represented the campaign as necessary to restore Founding principles and predicted substantial improvement in the quality of government.

As of this writing, a balanced budget amendment probably meets all four criteria; an amendment to abolish the income tax probably does not.

***Don't work alone*.**

Some of America's most successful reform campaigns were based on close cooperation among states. For example, the American Revolution was coordinated first through interstate "committees of correspondence." Congress proposed direct election of Senators only after 31 of the then-48 states (one shy of two-thirds) had submitted closely similar applications for a convention. In the latter instance, the legislatures of several states coordinated the national effort by erecting standing legislative committees—that is, funded command centers

that prepared common forms and assisted the common effort.

Future application campaigns will succeed only if state legislatures work together. They should establish standing "committees of correspondence" to further the cause. Each applying legislature should designate a contact person for official communications to and from other states. Each applying legislature should notify all other state legislatures of its actions. Applications should follow certain standard forms. Examples of such forms appear in Appendix A.

All applications should be sent to as many recipients as possible, especially (of course) Congress. As the campaign builds, state legislatures should communicate with each other on such issues as how they will choose their commissioners, what the convention rules will be, and the size of state delegations. The exchange of information will enable states to address differences in advance of the amendments convention, maintain momentum and control over the process, and protect it from congressional interference.

⚙ *Don't make applications too general.*

A convention for proposing amendments is basically a problem solving task force, and it rarely makes sense to tell a task force to find any problems in anything they choose. Moreover, few lawmakers want a convention merely for the sake of a convention or because they think the Constitution needs a complete overhaul. Therefore, applications should specify the subject of the proposed convention. If the legislature wishes to address several subjects, those subjects should be in separate applications. In that way, the defeat of one application will not compromise others.

⚙ *Don't make applications too specific; let the convention do its work.*

Once a task force is told the problem to address, it should be allowed to do its job. In other words, although the task is preset, the precise solution cannot be. Both Founding Era practice and modern court decisions tell us that it is unconstitutional for some assemblies working under Article V (such as the legislatures) to try to dictate a solution to others (such as the convention). The courts may invalidate any applications that limit the convention to an up or down vote on specific wording.[16]

There also are some practical reasons for avoiding too much specificity. The more specific an application is, the more difficult it is to garner the broad coalition necessary to induce 34 states to approve it. Further, the more specific it is, the more likely it will deviate enough from other applications to give Congress a reason for refusing to aggregate it with other applications. Finally, the convention probably will do a better job of drafting an amendment than dispersed state lawmakers. Consisting as it will of experienced personnel from all states, the convention may very well craft a solution more deft—and more politically palatable—than any specified in the applications.

Consider a balanced budget application as an example. An application could seek to dictate detailed terms to the convention (spending caps, rules for tax increases, planning or appropriation details) or it could call simply for "a balanced budget amendment with any appropriate limitations on revenue and/or expenditures." If the former route is followed, not only does it become difficult to garner sufficient political support for the application, but Congress or the courts may treat it as invalid. If the latter route is followed, neither Congress nor the courts have any such excuse, but the convention still may include the desired terms in any amendment it proposes.

⚙ *Don't make applications conditional.*

Some applications are conditional on a prior event (e.g., congressional failure to report a similar amendment). These are probably valid, but in the absence of a court decision on point, we cannot be certain. Applications that use conditions to try to coerce other bodies in the Article V process are more surely invalid. Thus, the application should not assert that it is void unless the convention adopts particular wording or a particular rule, or unless Congress adopts a particular mode of ratification.

An application stating that it is void after a particular date or if a particular (non-coercive) event has occurred is probably acceptable legally. However, it would be better to leave out conditions entirely. The legislature can rescind the application later, if necessary.

⚙ *Move fast.*

America is in serious trouble; don't be sidetracked by alarmism or by hope that Congress may propose an amendment limiting its own power. History shows this is unlikely.

Older applications should be renewed from time to time. Some people have argued that applications automatically expire or "grow stale" with the passage of time. There is little constitutional basis for this argument, but some in Congress have advanced it to weaken the state application and convention process. If possible, an entire application campaign should be planned for completion in three to four years.

⚙ *Keep the application as simple as possible.*

As previously noted, an application should not be overly specific: State the problem and let the convention do its job. Do not try to dictate particular wording or specific approaches to the problem.

Also, don't put recommendations or statements of understanding in your legislature's applications. If you wish to issue a non-binding recommendation to other legislatures, Congress, or the convention, then do so in a separate resolution.

To be sure, a recommendation or statement of understanding in an application does not necessarily void it. In fact, several of the state conventions ratifying the Constitution included recommendations and declarations without affecting the validity of their ratifications. But recommendations and similar wording are not always clearly drafted, and opponents may challenge them with the claim that they really are terms or conditions that invalidate the application or prevent it from being aggregated with other applications toward the two-thirds threshold. Therefore, recommendations, declarations, and statements of understanding always should be adopted in resolutions separate from the application. Appendix A provides a form resolution for that purpose.

⚙ *Retain state control over the convention.*

The state application and convention process was designed specifically as a way for state legislatures to bypass Congress. Unfortunately, some past members of Congress have expressed willingness to interfere with or control the process. For the sake of the Constitution, this must not be allowed to happen.

State legislators applying for a convention must send a clear message to Congress that this procedure is within the control of the states. Congress's obligations are to count the applications, call the convention on the states' behalf, and choose a mode of ratification. Congress has no authority to define the convention's scope, its rules, or the selection of its commissioners. Those are the prerogatives of the state legislatures and of the convention commissioners responsible to the state legislatures.

⚙ *The state legislature should choose its own commissioners.*

The Founding Era record, supplemented by subsequent practice, tells us that when an interstate convention is called, each state decides, under its own laws, how many representatives will make up its delegation or "committee," and how they are selected.

Although selection could be delegated to popular vote or to the executive, in the case of a convention for proposing amendments such delegation makes little sense. Since the policy agenda for the convention will be fixed by the applications and by subsequent legislative instructions to the commissioners, service in the convention requires more in the way of negotiation skills and legal drafting ability than popular political appeal or passion on the issues. Ideally, commissioners will be seasoned and tested leaders of unquestioned probity.

Another reason for legislative selection is that the commissioners will be subject to state legislative instructions and recall.

In some states there will be pressure for popular election. If a legislature does opt for popular election, it still must clarify that a commissioner's failure to follow legislative instructions could lead to his or her removal. This is required to serve the core purpose of the state application and convention process: To enable state legislatures to advance amendments targeted at problems those legislatures have identified. Unless a state legislature can control its own committee at the convention, that core purpose is defeated.

Some have suggested that states adopt statutes providing that commissioners who exceed the scope of the convention or disregard legislative instructions are deemed immediately recalled. It is uncertain whether such a law would be enforceable against a state legislature acting within Article V. However, such a law can serve an educational function, and may act as an implicit legislative rule. [17]

Respond to the "minority rule" argument.

If history is any guide, opponents will claim the state application and convention process is a license for "minority rule" because, in theory, states with a minority of the American population could trigger a convention. Advocates should respond by pointing out that this is improbable as a practical matter because political realities will place some larger states on the same side as smaller states. A heavily populated state like Texas is much more politically akin to a sparsely populated state like South Dakota than to another heavily populated state like Massachusetts. Further, the application stage is only an initial step in a three-step process. Once the convention meets, a majority of state delegations will have to approve any amendment, and in the glare of publicity the commissioners are unlikely to propose measures most Americans find distasteful. After the convention issues the proposal, that proposal will have to be ratified by 38 states—including, in all probability, some states that failed to apply. The ratifying states will almost certainly represent a supermajority of the American people.

VII. Conclusion.

The state application and convention process was not inserted in the Constitution merely to increase the length of the document. It was an important component—perhaps the most important component—in the federal balance between states and central government. It was, in Madison's terms, the ultimate constitutional way for curbing an abusive or out of control federal government. In more modern terms, it is the analogue to the initiative process at the state level: Just as the initiative enables the people to make reforms the state legislature refuses to undertake, the state application and convention process enables the state legislatures to effectuate reforms Congress refuses to propose.

If we could address one or more of the leading Founders today, we might tell them what has happened to American federalism—that the states are increasingly mere administrative subdivisions for the convenience of Washington, D.C. After we related the situation, those Founders doubtless would ask, "Well, have you ever called a convention of the states under Article V?" And when we admitted we never had, they might well respond, "In short, you refused to use the very tools we gave you to avoid this situation. The sad state of American federalism is clearly your own fault."

Thus, the responsibility for reclaiming constitutional government is very much ours.


Article. V.

ngress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendme
of two thirds of the several States, shall call a Convention for proposing Amendments, whic
rt of this Constitution, when ratified by the Legislatures of three fourths of the several States, or
Ratification may be proposed by the Congress; Provided that no Amendment which may be m
shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first
ed of its equal Suffrage in the Senate.

Appendix A: Annotated Forms

This Appendix offers forms for state legislative resolutions for the state application and convention process. Among the forms are applications for a convention, separate resolutions for legislative declarations and recommendations, and commissioner credentials.

These forms are not intended to be definitive and certainly do not represent legal advice. They are designed to serve as a starting point for legislative drafters familiar with the law and usages in each state.

Sample Form:
The Application in General

(With a "Clean" Balanced Budget Amendment to Illustrate)

An application should be kept as simple as possible. Extra language may lead to confusion, invalidity, or congressional refusal to aggregate the application with those from other states. If a state legislature wishes to make recommendations or issue declarations or statements of understanding, those items should appear only in an accompanying resolution. Credentialing of and any instructions to commissioners also should be placed in separate resolutions.

The starting point for the following form was one of two forms commonly employed by state legislatures during their highly successful application campaign for direct election of U.S. Senators.[18] The BBA wording is similar to that used in some currently outstanding states' BBA applications from the late 1970s and early 1980s. Additional material has been added. The language in *italics* is optional.

Application under Article V of the U.S. Constitution
For a Convention to Propose a Balanced Budget Amendment

Be it resolved by the legislature of the State of _____:

Section 1. The legislature of the State of _____ hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing an amendment to the Constitution of the United States requiring that in the absence of a national emergency the total of all Federal outlays for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year.

Section 2. The secretary of state is hereby directed to transmit copies of this application to the President and Secretary of the Senate and to the Speaker and Clerk of the House of Representatives of the Congress, and copies to the members of the said Senate and House of Representatives from this State; also to transmit copies hereof to the presiding officers of each of the legislative houses in the several States, requesting their cooperation.

Section 3. This application is to be considered as covering the same subject matter as the presently-outstanding balanced budget applications from other states, including but not limited to previously-adopted applications from _____ and _____; and this application shall be aggregated with same for the purpose of attaining the two-thirds of states necessary to require the calling of a convention, but shall not be aggregated with any applications on any other subject.

Section 4. This application constitutes a continuing application in accordance with Article V of the Constitution of the United States until the legislatures of at least two-thirds of the several states have made applications on the same subject. *It supersedes all previous applications by this legislature on the same subject.*

***

Notes to Clean BBA Form:

- Observe how simple this application is. For one thing, it does not include a lengthy preamble ("whereas" clauses), which might be construed as creating limitations or qualifications on the application.

- Further, although the application provides that the convention is to be limited to the subject of a balanced budget amendment, it does not require the convention to adopt, or reject, particular wording. If it did, it might be void.[19]

- This application also avoids listing other specific terms. Insertions of additional requirements—such as a two-thirds requirement for Congress to raise taxes—may critically reduce support among lawmakers and the public.

- Adding additional terms also reduces the chances of obtaining 34 matching applications, thereby offering Congress a reason not to call a convention. This form, on the other hand, is designed to be aggregated easily with several relatively simple applications adopted in the late 1970s and early 1980s.

- This application refers to the convention as a "convention of the states." This was a common way of referring to a convention for proposing amendments during the Founding Era and for many years after. The phrase clarifies that the convention is a *federal* meeting of delegations from the several states rather than a "national" convocation.

- The resolution does not have a condition stating that it is void if the convention is called for any other subject. Such condition may compromise the legality of the application. Moreover, applications probably cease to exist (and therefore are not terminable) once the convention is called. A limitation on subject matter appears in Section 1 and can be enforced, if necessary, through instructions to commissioners, by public opinion, and by legal action.

- Section 4 clarifies the legislative intent that the application shall not grow "stale" with the passage of time. Of course, the application always can be rescinded.

- The *italicized* wording is optional language for lawmakers desiring to "clear the deck" of previous BBA applications from their state.

Sample Form:
BBA with Option for Further Fiscal Restraint

If the legislature wishes to add additional terms to a basic BBA, the legislatures should describe those terms in general words. In this example, Sections 2, 3, and 4 remain the same, but Section 1 is re-written to read as follows:

Application under Article V of the U.S. Constitution
For a Convention to Propose a Balanced Budget Amendment
and Further Fiscal Restraints

Section 1. The legislature of the State of _____ hereby applies to Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention of the states limited to proposing an amendment to the Constitution of the United States requiring that in the absence of a national emergency the total of all Federal outlays for any fiscal year may not exceed the total of all estimated Federal revenues for that fiscal year, together with any related and appropriate fiscal restraints.

***

Notes to BBA with Option for Further Fiscal Restraint:

- This calls for a broader convention agenda than the "clean" BBA form. The language "together with any related and appropriate fiscal restraints" enables the convention to consider limits on taxes, spending, and the like.

- We do not recommend that the application cite specific caps on federal spending as a share of the economy. This is because:

  - It raises the odds that different state applications will vary in wording and therefore not be aggregated toward the required 34.

  - If the percentage expenditure limit is as high as what the federal government has spent during any year in recent decades (e.g., 18 percent or more of GDP), courts may read the amendment as "constitutionalizing" all federal spending programs in force as of when the Congress was last spending that percentage of GDP. In other words, such an amendment might forestall future challenges to the validity of programs otherwise outside federal authority.

Sample Form: Resolution of Declarations, Statements of Understanding, and Recommendations

Sometimes legislatures submitting Article V applications decide to insert declarations or understandings of how they expect the state application and convention process to work. For example, the application might assert that the applying legislature expects the convention to apply the rule of "one state/one vote." Similarly, the legislature might include in the application recommendations pertaining to the convention, to the language of the amendment, or to the mode of ratification.

For reasons discussed earlier, a legislature desiring to issue recommendations or declarations should do so in resolutions *separate* from the application.

Following is a sample declaratory and recommendatory resolution:

Declaratory and Recommendatory Resolution to Accompany Application for a Convention to Propose a Balanced Budget Amendment

Whereas, the legislature of the State of ____ has applied to Congress under Article V of the United States Constitution for a convention to propose an amendment to the Constitution requiring a balanced budget;

Whereas, a convention for proposing amendments has not previously been held;

Whereas, in the interest of clarifying uncertainties it is desirable for the legislature to declare its understandings and expectations for the convention process;

Whereas, if the convention decides to propose a balanced budget amendment, then the convention will have the task of drafting same; and

Whereas, it is desirable for the legislature to issue recommendations as to the content of any such proposed amendment,

Be it resolved by the legislature of the State of _____:

Section 1. The legislature hereby declares its understanding that:

(a) a convention for proposing amendments is a device included in the Constitution to enable the state legislatures to advance toward ratification amendments without the substantive involvement of Congress;
(b) the convention is a gathering of representatives appointed pursuant to state law or practice, with an initial suffrage rule of one vote per state;
(c) the convention's delegates are commissioners commissioned by the state legislatures that send them and are subject to instructions therefrom;
(d) the scope of the convention and of any proposals it issues are limited by the scope of the applications issued by the states applying for the convention; and

(e) commissioners from the State of ___ will be recalled from any convention that purports to exceed the scope defined in the applications.

Section 2. The legislature hereby recommends that:

(a) Each state send not more than five commissioners to the convention;
(b) The convention retain the suffrage rule of "one state/one vote" throughout its proceedings;
(c) Any proposed amendment include provisions as follows:
  (i) requiring that total outlays not exceed total estimated receipts for any fiscal year;
  (ii) requiring the setting of a fiscal year total outlay limit;
  (iii) providing that, for reasons other than war or other military conflict, the limits of this amendment may be waived by law for any fiscal year if approved by at least two-thirds of both houses of Congress;
  (iv) allowing for the provisions of the amendment to take effect within specified time periods;
  (v) providing for the waiver of the provisions of the amendment for any fiscal year in which a declaration of war is in effect or the United States is engaged in military conflict that causes an imminent or serious military threat to national security;
  (vi) allowing for congressional enforcement; and
  (vii) preventing the courts from ordering Congress to raise any taxes or fees as a method of balancing the budget.

Section 3. This declaratory and recommendatory resolution is not a part of the application, and shall not be deemed as such.

Section 4. The secretary of state is hereby directed to accompany all transmissions of the aforesaid application for a convention with copies of this declaratory and recommendatory resolution as well.

* * *

Notes to Declaratory and Recommendatory Resolution:

- The "Whereas" clauses form a preamble setting forth the reasons for the application. Lengthy preambles are best kept out the applications.

- Section 1 sets forth the legislature's general understanding of the nature of the convention.

- Section 2 includes items inappropriate to be mandated in an application, but recommendations for the convention to consider.

- Items (c) (i) - (vi) in Section 2 are taken from a proposed application known as Florida Senate Concurrent Resolution No. 4 (2011), adopted by the Florida Senate but not by the House. That resolution attempted to include these items as mandates; in this form, however, they are restated as recommendations. Item (vii) is another often-recommended provision.

Sample Form: Resolution Electing Commissioners

(with "Trap Door")

As noted earlier, the mode of commissioner selection is determined by the state legislature, with the best alternative probably selection by joint ballot of the legislature itself. Some lawmakers have suggested that one way to reassure those skeptical of a convention is for an applying state to announce in an accompanying resolution who its commissioners will be. Hence the following form:

Resolution Electing Commissioners to Convention for Proposing a Balanced Budget Amendment

Whereas, the legislature of the State of ____ has applied to Congress under Article V of the United States Constitution for a convention to propose an amendment to the Constitution requiring a balanced budget; and

Whereas, the legislature has decided to select its commissioners to the convention, if such is held:

Be it resolved by a joint session of the Senate and the House of Representatives of the State of _____,

That (commissioner 1), (commissioner 2), (commissioner 3), (commissioner 4), and (commissioner 5) are hereby elected commissioners from this state to such convention, with power to confer with commissioners from other states on the sole and exclusive subject of whether the convention shall propose a balanced budget amendment to the United States Constitution and, if so, what the terms of such amendment shall be; and further, by the decision of a majority of the commissioners from this state, to cast this state's vote in such convention.

Be it further resolved that, unless extended by the legislature of the State of ____, voting in joint session of the Senate and House of Representatives, the authority of such commissioners shall expire at the earlier of (1) December 31, 2016 or (2) upon any addition to the convention agenda or convention floor consideration of potential amendments or other constitutional changes other than a balanced budget amendment to the United States Constitution.

* * *

Notes to election-of-commissioners form:

- No legislature can bind a later legislature in this way; therefore this resolution can be rescinded later.
- The selection in this resolution is by a joint vote of both houses.
- The resolution limits the length of the commissioners' terms.
- The resolution also includes a "trap door" by which designation ceases if the convention goes beyond the specified purpose.

Appendix B: Definitions of Terms

Amendments convention - a common synonym for *convention for proposing amendments,* which is the official name given to the gathering by the Constitution.

Application - the legislative resolution whereby a state legislature tells Congress that if it receives applications on the same subject from two-thirds of the state legislatures (34 of 50), Congress must call a convention for proposing amendments on the subject.

Article V convention - a common synonym for *convention for proposing amendments*, which is the official name the Constitution gives to that gathering.

Commissioner - the formal title of a delegate to a convention for proposing amendments, so named from his or her empowering commission.

Committee - a state's delegation to a convention for proposing amendments.

Constitutional convention - a convention charged with writing an entirely new Constitution; a kind of *plenipotentiary* convention.

Convention - originally just a synonym for "meeting." As used by the Founders and in the Constitution itself, *convention* means a legal assembly that pinch-hits for a legislature in performing designated tasks.

Convention for proposing amendments - a convention of representatives of the state legislatures meeting to propose one or more amendments on one or more subjects specified in the state legislative applications and (derivatively) in the congressional call. A convention for proposing amendments is a limited convention serving as an *ad hoc* substitute for Congress proposing amendments.

Interstate convention - a generic term referring to any convention of delegates representing three or more states or state legislatures. There were numerous interstate conventions held between 1776 and 1787, which in turn were preceded by several inter-colonial conventions.

Plenipotentiary convention - A Founding Era term borrowed from international diplomatic practice. It refers to a convention where the commissioners have unlimited or nearly unlimited power to represent their respective sovereignties. The First Continental Congress was a plenipotentiary convention. As to most of the commissioners, the 1787 Constitutional Convention was close to plenipotentiary. Most interstate conventions, however, have been more restricted.

Propose - In Article V of the Constitution, *propose* can mean either (1) the power of Congress or of a convention for proposing amendments to validly tender a suggested amendment to the states for ratification or rejection, or (2) the power of Congress to designate whether proposed amendments will be sent to the state legislatures or to state conventions for ratification.

Ratify, ratification - In Article V of the Constitution, *ratification* refers to the process by which state legislatures or state conventions convert a proposed amendment into a legally effective part of the Constitution. Approval by three-fourths of the states (38 of 50) is necessary for ratification.

Appendix C: Answers to Criticisms

A tactic employed by promoters of the "runaway convention scenario"[20] is to challenge lawmakers with a list of supposedly unanswerable questions.[21] Several lists are used and they vary somewhat, but all appear to be based on questions published over three decades ago by Professor Lawrence Tribe of Harvard Law School, a liberal opponent of conventions for proposing amendments.[22]

Although it is claimed the questions are unanswerable, most do, in fact, have good answers. Because state lawmakers may encounter them while considering Article V applications, those questions, supplemented by a few others, are listed in this appendix. They are organized by topic, although the questions can be presented in any order. The questions are reproduced verbatim, together with their sometimes-odd phrasing and punctuation. An answer immediately follows each question.

Questions Pertaining to Applications

Q1. How is the validity of applications from the states to be determined?

A. Initially by Congress, although congressional decisions are subject to judicial review.

Q2. How specific must the state legislatures be in asking for an amendment?

A. The legislatures may apply either for an unrestricted convention or one devoted to particular subject matter. There is no ironclad rule as to specificity, except that the more a legislature tries to dictate the specific language of the amendment (as opposed to the general topic), the more it endangers the application's validity.

Q3. Must all the applications be in identical language?

A. No. It is enough if they identify the same problem(s) or subject(s). However, prudence suggests that state legislatures coordinate with one another.

Q4. Within what time period must the required number of applications be received?

A. Adoption of the 27th amendment—proposed over 200 years earlier—has convinced most observers that there is no time period. Because, however, some still claim that applications can go "stale," prudence suggests that a campaign be completed within a few years. The application campaign for direct election of senators took 14 years.

Questions Pertaining to Congress

Q5. Can Congress refuse to call a convention on demand of two-thirds of the states, and if it does, can it be compelled to act by the courts?

A. Nearly all scholars have concluded that Congress may not refuse. Supreme Court precedent strongly suggests that the courts can compel it to act.

Q6. Would Congress decide to submit Con Con [*sic*] amendments for ratification to the state legislatures or to a state constitutional convention as permitted under Article V of the constitution?

A. Article V specifies that the question is up to Congress—as is true of any amendment, whether proposed by Congress or by a convention. Incidentally, the convention that ratifies an amendment is called a "state ratifying convention," not a "state constitutional convention."

Questions Pertaining to Delegates and Delegate Selection

Q7. Who are the delegates, and how are they to be chosen? (Other versions of this are (1) *How would Delegates be selected or elected to a Constitutional [sic] Convention?* and (2) *What authority would be responsible for electing the Delegates to the convention?*)

A. Delegates (more properly called "commissioners") are representatives of their respective state legislatures and are chosen as the state legislature directs.

Q8. What authority would be responsible for determining the number of delegates from each state?

A. This and related questions are determined in each state by that state's legislature—just as is true for delegates to other conventions, such as state conventions for ratifying amendments.

Q9. Would delegates be selected based on population, number of registered voters, or along party lines?

A. See the answer to Question #8.

Q10. Would delegates be selected based on race, ethnicity or gender?

A. The Equal Protection Clause of the Fourteenth Amendment, the Due Process Clause of the Fifth Amendment, and the Supreme Court cases interpreting them forbid election on these grounds.

Questions Pertaining to Convention Organization and Procedure

Q11. Can the convention act by a simple majority vote, or would a two-thirds majority be required,

as in Congress, for proposing an amendment? (Other versions are (1) *Would proposed amendments require a two-thirds majority vote for passage?* and (2) *How would the number of votes required to pass [or propose] a Constitutional Amendment be determined?*)
A. The convention acts by a simple majority of the represented states. The convention may, by a simple majority of the represented states, alter that voting rule.

Q12. How is a convention to be financed, and where does it meet? (Related versions of are (1) *What authority would be responsible for selecting the venue for the Convention?,* and (2) *Where would the Convention be held?,* and *(3) Who will fund this Convention?*)
A. A convention for proposing amendments is a conclave of state "committees," each made up of state commissioners. It therefore is financed by the states. Congress, in the convention call, specifies the initial meeting place, but the convention may alter that meeting place.

Q13. May the convention propose more than one amendment?
A. Yes—but only if they are all within the agenda of the convention, as prescribed by the applying states.

Q14. Is there a time limit on the proceedings, or can the convention act as a continuing body?
A. There is no fixed time limit—the convention can meet until it decides whether to propose amendments and which ones to propose. But a convention is, by definition, not a continuing body. It has no authority beyond deciding whether to propose amendments within the subject matter prescribed in the applications. Once that is performed, it must adjourn. Additionally, states may recall and/or replace their commissioners at any time.

Q15. What authority would be responsible for organizing the convention, such as committee selection, committee chairs and members, etc.? (A related question is, *How would the Chair of the Convention be selected or elected?*)
A. Organizational details such as these are fixed in rules adopted by the convention itself, in accordance with nearly universal American convention procedures. Conventions universally elect their own permanent officers.

Q16. How would the number of delegates serving on any committee be selected and limited?
A. See answer to Question 15.

Q17. What authority will establish the Rules of the Convention, such as setting a quorum, how to proceed if a state wishes to withdraw its delegation, etc.?
A. See answer to Question 15.

Q18. Would non-Delegates be permitted inside the convention hall? (A related version is, *Will demonstrators be allowed and/or controlled outside the convention hall?*)
A. Inside the convention hall, convention rules control. The outside environment is subject to the same rules governing the space outside any public body, convention, or legislature.

Q19. What would happen if the Con Con [*sic*] decided to write its own rules so that two-thirds of the states need not be present to get amendments passed?
A. Nothing requires the convention to follow a two-thirds adoption or quorum rule for proposing an amendment. Adoption and quorum rules are set by each convention in accordance with universal practice. As for the *ratification* procedure: According to both the constitutional text and the U.S. Supreme Court, the convention receives all its power from the Constitution. So it cannot alter the rules in the Constitution that specify the ratification procedure. See also the preceding answers.

Q20. Could a state delegation be recalled by its legislature and its call for a convention be rescinded during the convention?
A. The legislature may recall its commissioners. The rest of the question inaccurately assumes the states "call" the convention; actually, the states apply and Congress calls. It is unlikely a state could withdraw its application after two thirds of the states have acted on it. However, if a state disagrees with the amendment language that is crafted during the convention, it can instruct its commissioners to oppose it, and can vote against it during the ratification process.

A Question Pertaining to the Courts

Q21. Can controversies between Congress and the convention over its powers be decided by the courts?

A. Controversies over the scope of the convention's powers may be decided by the courts. However, the states, not Congress, fix the scope of such powers. The most likely area of controversy between Congress and the convention would be if the convention suggests an amendment that Congress believes is outside the convention's agenda as defined in the state applications. If (as is proper) Congress then refused to prescribe a "Mode of Ratification" for the suggested amendment, the courts could resolve the dispute.

Questions Based on Historical Claims Made About James Madison and the 1787 Convention

Q22. Didn't James Madison express uncertainty about the composition of an Article V convention, and wasn't he "horrified" at the prospect of one?

A. Quite the contrary. Madison later promoted the convention idea as a reasonable way to resolve constitutional disputes. It is true that during the Constitutional Convention debate he initially expressed uncertainty as to how amendments conventions were to be constituted. But he must have been satisfied with the answer he received, since he dropped his objections. It is also true that he was "horrified" by a 1789 New York proposal for an unlimited convention to rewrite the entire constitution with *over 30 amendments*. Who wouldn't be? However, Madison repeatedly asserted that his objection was directed only at that particular proposal at that particular time.

Q23. Isn't it true that the 1787 Constitutional Convention was a "runaway"—that Congress convened it under the Articles of Confederation only to propose amendments to the Articles, but it ended up drafting an entirely new Constitution?

A. The truth is quite to the contrary: Most commissioners had full authority to recommend a new Constitution, as explained in the article cited in this endnote.[23]

Appendix D:
Where Does This Handbook Get Its Information?

As observed in Part I (Introduction), most writing on the state application and convention process has been poorly-researched, agenda-driven, or both. However, not everything published on the subject has been biased or shallow.

Serious scholarship on the topic began in 1951 with an extraordinary Ph.D. thesis written by the late William Russell Pullen, then a political science graduate student at the University of North Carolina. The Pullen study suffered from the author's lack of legal or historical training (Pullen was a political science graduate student, not a historical or legal scholar), but it presented an excellent and thorough summary of applications and history up to that time.[24]

More recent scholarship (defined as work that makes a serious attempt to marshal the historical and legal evidence) falls chronologically into two groups. The first group of studies was published during the 1970s and 1980s. It included a research report from the American Bar Association; a lengthy legal opinion composed by John M. Harmon at the Office of Legal Counsel at the U.S. Department of Justice; and Russell Caplan's book, *Constitutional Brinksmanship*, published by Oxford University Press.[25] Although the findings of these studies differed in detail, they all agreed on some important conclusions—including the conclusion that state legislative applications could limit the scope of the convention.

The second group of studies includes several published from 2011 to 2013 by the author of this Handbook, a retired constitutional law professor and constitutional historian. These encompass a three-part paper initially written for the Goldwater Institute and updated for the Independence Institute; full-length articles published by Florida Law Review and Tennessee Law Review, and shorter works for a book chapter and for the Harvard Journal of Law and Public Policy. This research takes into account (1) more recent court decisions, (2) formerly untapped records from the Constitution's ratification debates, (3) the re-discovered journals of numerous 18th century federal conventions, (4) the journal and other writings pertaining to the Washington Conference Convention, and (5) other formerly-neglected information.

Also belonging in this latter group is an article by Professor Michael Rappaport that examines only the Founding Era record.

This second group of studies largely corroborates the conclusions of those dating from the 1970s and 1980s, but they also make some corrections to earlier work. The accompanying endnote tells the reader where to obtain these studies.[26]

(Endnotes)

1 The Fourteenth Amendment extended certain federal guarantees to all citizens; the Fifteenth Amendment protected the right to vote, despite "race, color, or previous condition of servitude;" and the Twenty-Fourth Amendment eliminated the poll tax system sometimes used to suppress voting by minorities.

2 ALEC has also recommended, among others, (1) a general BBA application (2011), (2) the Vote on Taxes Amendment (2010), (3) the National Debt Relief Amendment (2011) (which requires approval by a majority of the state legislatures before the federal government can go deeper into debt), (4) the Repeal Amendment (2011) (permitting two-thirds of state legislatures to invalidate federal laws and regulations), (5) An Accountability in Government Amendment (1996) (limiting federal mandates on states), (6) a Government of the People Amendment (1996) (similar to the Repeal Amendment, but with a seven-year repeal limit), and (7) a States' Initiative Amendment (1996) (permitting three quarters of the states to propose amendments without a convention, subject to congressional veto). To see model legislation on any of these bills, contact Jonathan Williams at 202-466-3800 or jwilliams@alec.org.

3 For a survey of 18th century conventions, including the rules that governed them, see Robert G. Natelson, *Founding-Era Conventions and the Meaning of the Constitution's "Convention for Proposing Amendments," 65 Fla. L. Rev. 615 (2013).*

4 The Founding-Era evidence for distinguishing an Article V convention from a "constitutional convention" is overwhelming. *See* Robert G. Natelson, *Amending the Constitution by Convention: A More Complete View of the Founders' Plan* (Independence Institute, 2010) (updated and amended version of an earlier paper published by the Goldwater Institute), available at http://constitution.i2i.org/files/2010/12/IP_7_2010_a.pdf.

5 U.S. Const., Art. V.

6 The courts, including the Supreme Court, have affirmed this repeatedly.
Note that Article V grants eight distinct enumerated powers, four powers at the *proposal* stage and four at the *ratification* stage. At the proposal stage, the Constitution (1) grants to two-thirds of each house of Congress authority to propose amendments; (2) grants to two-thirds of the state legislatures power to require Congress to call a convention to propose amendments; (3) then empowers (and requires) Congress to call that convention; and (4) authorizes that convention to propose amendments.
At the ratification stage, (1) the Constitution authorizes Congress to select whether ratification shall be by state legislatures or state conventions; (2) if Congress selects the former method, the Constitution authorizes three fourths of state legislatures to ratify; (3) if Congress selects the latter method, the Constitution empowers (and requires) each state to call a ratifying convention; and (4) the Constitution further empowers three-fourths of those conventions to ratify.

7 Coleman v. Miller, 307 U.S. 433 (1939). That language actually was not part of the ruling, but only *dicta* (non-authoritative side comments) by four justices.

8 Appendix A contains model legislation that can be used to apply for a convention to discuss a balanced budget amendment.

9 Exactly when the power to rescind ends has not been determined judicially, but presumably it ends when the application triggers larger legal consequences—i.e., when the 34-state threshold is reached, Congress calls the convention, or the convention actually meets. Once the 34-state threshold is reached, the call and meeting become merely "ministerial" (not discretionary), which would suggest that the power to rescind ends as soon as 34 states have applied.

10 The late Senator Sam Ervin (D.-N.C.) reported disapprovingly on the obstructionism of some of his senatorial colleagues during the 1960s. Sam J. Ervin, Jr., *Proposed Legislation to Implement the Convention Method of Amending the Constitution*, 66 Mich. L. Rev. 875, 878 (1968-68).

11 An "incidental" power is an unmentioned and subordinate power implicitly granted along with a power expressly granted. The link is created by the intent behind the document, generally shown by custom or necessity. When the Constitution grants a specified power it generally grants incidentals as well. The Constitution's direction to Congress to call a convention of the states includes authority to set the time and place because that authority is properly incidental. On the other hand, some powers are too substantial to be incidents of a mere power to call, such as prescribing convention rules and methods of delegate selection. On incidental powers and the Constitution, see Gary Lawson, Geoffrey P. Miller, Robert G. Natelson, and Guy I. Seidman, The Origins of the Necessary and Proper Clause (Cambridge University Press, 2010). Chief Justice Roberts followed this analysis of incidental powers in NFIB v. Sebelius, 132 S.Ct. 2566, 2591-93 (2012) (the "ObamaCare" case).

12 U.S. Const., Art. V. ("Provided that . . . no State, without its Consent, shall be deprived of its equal Suffrage in the Senate."). This means that an amendment may not alter the Constitution's rule that each state has equal weight in the U.S. Senate. An amendment could increase the number of Senators from each state to three, or require voting by state delegations. But it could not, for example, give New York more voting power than Nebraska.

13 *Id. ("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").

14 State legislative authority to instruct state commissioners has been universal to all interstate conventions, both during the Founding Era and at the 1861 Washington Conference Convention. See also Ray v. Blair, 343 U.S. 214 (1952) (upholding state authority to instruct members of the electoral college).

15 Notable among those publicizing the scenario were Yale's Charles Black and Harvard's Lawrence Tribe; Supreme Court Justices Warren Burger and Arthur Goldberg; Senators Joseph Tidings (D.-Md.) and Robert F. Kennedy (D.-N.Y); and individuals within the "Kennedy circle," such as Goldberg and speechwriter Theodore Sorensen.

16 Among the cases emphasizing that assemblies (legislatures and conventions) meeting under Article V must have a certain amount of deliberative freedom are Hawke v. Smith, 253 U.S. 221 (1920); In Re Opinion of the Justices, 132 Me. 491, 167 A. 176 (1933); State ex rel. Harper v. Waltermire, 213 Mont. 425, 691 P.2d 826 (1984); AFL-CIO v. Eu, 36 Cal.3d 687, 206 Cal. Rptr. 89 (1984), *stay denied sub nom*. Uhler v. AFL-CIO, 468 U.S. 1310 (1984); Donovan v. Priest, 931 S.W. 2d 119 (Ark. 1996), *cert. denied*, 117 S.Ct. 181 (1997) (no official report) (requiring an assembly that can engage in "intellectual debate, deliberation, or consideration"); League of Women Voters of Maine v. Gwadosky, 966 F.Supp. 52 (D. Me. 1997); Barker v. Hazetine, 3 F. Supp. 2d 1088, 1094 (D.S.D. 1998) ("Without doubt, Initiated Measure 1 brings to bear an undue influence on South Dakota's congressional candidates, and the deliberative and independent amendment process envisioned by the Framers when they drafted Article V is lost."); Gralike v. Cooke, 191 F.3d 911, 924-25 (8th Cir. 1999), *aff'd on other grounds sub nom*. Cook v. Gralike, 531 U.S. 510 (2001); Miller v. Moore, 169 F.3d 1119 (8th Cir. 1999). *Cf.* Kimble v. Swackhamer, 439 U.S. 1385, *appeal dismissed*, 439 U.S. 1041 (1978) (Rehnquist, J.) (upholding a referendum on an Article V question because it was advisory rather than mandatory); Dyer v. Blair, 390 F.Supp. 1291, 1308 (N.D. Ill. 1975) (Justice Stevens) (upholding a rule of state law on an Article V assembly, but only because the assembly voluntarily adopted it).

17 *See* Dyer v. Blair, 390 F. Supp. 1291 (N.D. Ill. 1975) (Stevens, J.)

18 The form was developed by the Minnesota legislature, and originally read as follows:

SECTION 1. The legislature of the State of Minnesota hereby makes application to the Congress, under the provisions of Article V of the Constitution of the United States, for the calling of a convention to propose an amendment to the Constitution of the United States *making United States Senators elective in the several States by direct vote of the people*.

Notice how simple and direct the italicized wording is; drafting details are left to the convention. As it turned out, however, Congress rather than a convention drafted the details. After 31 states (one short of the needed 32 of the then 48) had approved similar applications, the U.S. Senate, which had resisted the change, finally consented to congressional proposal of what became the 17th Amendment.

19 In proposing other amendments, it is equally important to avoid trying to mandate particular wording. For example, the proposed National Debt Relief Amendment (which ALEC has endorsed), provides that "An increase in the federal debt requires approval from a majority of the legislatures of the separate States." An application might describe the subject matter as "an amendment to the Constitution of the United States forbidding increases in the debt of the United States unless approved by a specified proportion of state legislatures."

20 See Part V: "The Myth of a Runaway Convention."

21 Thus, one list trumpets: "If these questions cannot be answered (and they CANNOT!), then why would any state legislator even consider voting for such an uncertain event as an Article V Constitutional Convention?"

22 Lawrence H. Tribe, *Issues Raised by Requesting Congress to Call a Constitutional [sic] Convention to Propose a Balanced Budget Amendment*, 10 Pac. L.J. 627 (1979) (republishing earlier legislative testimony). This article offers virtually no supporting evidence from the historical record or case law.

23 The facts appear in Robert G. Natelson, *Proposing Constitutional Amendments by Conventions: Rules Governing the Process*, 78 Tenn. L. Rev. 693, 719-23 (2011), available at http://constitution.i2i.org/files/2011/08/Rules_for_Art_V_Conventions.pdf.

24 William Russell Pullen, *The Application Clause of the Amending Provision of the Constitution* (Univ. of North Carolina, 1951) (unpublished). Pullen worked largely from the long-collected files of his mentor, Professor W.S. Jenkins. Pullen later became a distinguished academic librarian.

25 The citations of the studies are as follows: *Amendment of the Constitution by the Convention Method Under Article V* (American Bar Ass'n, 1974); John M. Harmon, *Constitutional Convention: Limitation of Power to Propose Amendments to the Constitution*, 3 Op. Off. Legal Counsel 390 (1979); Russell Caplan, *Constitutional Brinksmanship* (Oxford University Press, 1988).

26 The studies by the author of this Handbook are available at http://constitution.i2i.org/articles-books-on-the-constitution-by-rob-natelson/ (second topic). The Rappaport study is Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis,* 28 Const. Comment. 53 (2012).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#3962

January 27, 2021

Senate Government and Veteran's Affairs Committee

RE: SCR 4004

Dear Committee Members

I am writing to you to encourage the State of North Dakota's continued support for being part of the Convention of States and the Powers and the Actions available to the States as Authorized under Article V of the Constitution of the United States of America.

I strongly oppose SCR 4004 and ask that you vote against this resolution.

The language of the resolution is misleading and deceptive. The Convention of States would not "undermine the philosophical foundation of instituting government based on the principle of securing god-given rights", but rather would return power back to the people by reigning in the massive federal government.

Thank you for allowing me to share comments on this resolution.

Sincerely,

Jeffrey L. Ebsch
411 4th Street SE
Stanley, ND. 58784

#3958

January 27, 2021

North Dakota Legislators

RE: SCR 4004

Dear Legislators,

I am writing to you in support of the Convention of States and the Powers and the Actions available to the States as authorized under Article V of the Constitution of the United States of America.

I Oppose SCR 4004 and I ask you to object to this Resolution.

Sincerely,

Karen S. Ebsch

Karen S. Ebsch
411 4th St. SE
Stanley, ND 58784

Arissa L Marquard SCR 4004

I have lived in ND for 30 years & I am interested in the Convention of States for the main fact that we have an out of control congress & executive that needs to be reigned in. I want it reigned in not only for my sake, but for my niece & nephews. I have been a volunteer for the convention of states for one year & four months.

Good morning.

My name is Randy Harder. I live in Bowman, part of the 39th district. I moved to North Dakota in 1996 and raised 5 children here. I now have 4 grandchildren and such a joy!

I am in opposition to changing a decision made by North Dakota to join the movement to take back the peoples' power. It makes no sense to me that the good folks of North Dakota are better served by allowing the continued deterioration of what our country stood for when formed and should still stand for today. That needs to be for what's right, not who's right and it needs to start by telling career politicians we aren't willing to be “led” by a few.

I want my grandkids to be taught in all manners of God, family, and country. I want them to know our generation helped reel in politicians more concerned with their our interests, rather than those who placed their trust in them to do the right thing. It's time to continue on the path to leading other states in our efforts, rather than burying our heads because of false information and fear.

Thank you for your service, and for allowing me to voice my thoughts.

Randy Harder

Testimony in Favor of SCR 4004 (Rescission of Con Con applications)

North Dakota Senate Government and Veterans Affairs Public Hearing
By Andy Schlafly, Esq., on behalf of Phyllis Schlafly Eagles
(Hearing on January 28, 2021)

Thank you for the opportunity for me to submit this testimony in favor of Senate Concurrent Resolution 4004, to rescind all pending applications for a Constitutional Convention or "Convention of States" ("Con Con").

I submit this testimony on behalf of Phyllis Schlafly Eagles, a national group which defends the Constitution. I am an attorney who practices before the U.S. Court of Appeals for the Ninth Circuit, which presides over federal appeals from North Dakota and many western states.

Reasons to support SCR 4004 include the following:

1. ***An Article V convention cannot be limited in scope*****.** The wording of Article V in the U.S. Constitution does not allow limiting the scope of a convention convened under it. The delegates themselves would propose amendments without any limitation under Article V. Many scholars, such as the former Chief Justice of the United States Warren Burger, have emphasized that:

> there is no effective way to limit or muzzle the actions of a constitutional Convention. The Convention could make its own rules and set its own agenda. Congress might try to limit the Convention to one amendment or to one issue, but there is no way to assure that the Convention would obey. After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda. The meeting in 1787 ignored the limit placed by the Confederation Congress "for the sole and express purpose." … A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

Letter by Chief Justice Warren Burger (ret.) to Phyllis Schlafly, dated June 22, 1988.[1]

Phyllis Schlafly opposed use of an Article V convention by anyone in the political spectrum, whether conservative or liberal. Her testimony three decades ago in Oregon against an Article V convention is available on YouTube, where she concluded with:

> Frankly, I don't see any James Madisons, George Washingtons, Ben Franklins, or Alexander Hamiltons around today who could do as good a job as they did in 1787, and I am not willing to risk making our Constitution the political plaything

[1] http://www.pseagles.com/Warren_Burger_letter_1988 (viewed Jan. 27, 2021).

of those who think they are today's Madisons, Washingtons, Franklins, or Hamiltons.[2]

The attendees at the Constitutional Convention 1787 were not only brilliant, but they had also sacrificed their lives to establish freedom for the new United States. They were not influenced by special interests, social media, and so on. They were able to focus entirely on what was best for the future of our country.

Applications for a Con Con fail to impose effective limits on how delegates to a new Article V convention could be influenced. They could receive money directly from special interests, in order to push the self-serving agenda of those special interests. Moreover, North Dakota cannot limit what delegates from California and New York might do or how they might be influenced.

Our civil rights and liberties would be put at terrible risk by such an Article V convention, and calling for one is the wrong move at the wrong time, amid our current, highly politicized culture. Once the floodgate is opened to this horrible idea, there is no way to contain it.

2. *An Article V Convention Would Not Be a "Convention of States," but a Convention Called by Congress*.

An Article V convention is not a "convention of the states," as one of North Dakota's applications implies. Under Article V, ***it is Congress alone that would call an Article V convention***. California would have the most influence over a "convention of the States" because the Supreme Court requires that all representative bodies, other than the U.S. Senate, be based on population: "one man, one vote." Article V applications rely on a false hope by pretending that each state would have an equal vote.

The real name should be a "Convention called by Congress," because that is what it would be under Article V Calling this a "convention of the states" is nothing more than a euphemism, and does not alter the fact that Congress alone makes the call.

The role of the States is merely to apply to Congress to call the convention. The States cannot limit what Congress does, or what an Article V convention does. Article V itself states that a constitutional convention shall be "for proposing amendments," ***plural***.

Simply put, North Dakota's pending applications would grant Congress more power to pursue mischief. This would obviously not be good for our Nation. SCR 4004 would properly rescind these harmful applications to rewrite our beloved U.S. Constitution.

[2] https://www.youtube.com/watch?v=7spVo-61_fY (quotation begins at 17:13).

3. ***State legislatures cannot stop proposed amendments that would come out of a Convention of States.*** One of the biggest myths spread about the Convention of States is that the Constitution will be protected by the ordinary process requiring that 38 state legislatures must ratify any proposed amendments. But that is not true. State legislatures may not even be involved in the ratification process.

Article V of the Constitution permits a constitutional convention ***to create its own ratification process***, using conventions in each state which bypass state legislatures. The 21st Amendment was ratified by conventions in each state, not by ratifying votes in state legislatures. In addition, once amendments are recommended by a constitutional convention, the media pressure will be overwhelming to ratify, as it was for the 17th Amendment which was against the interests of state legislatures.

An Article V convention could even change the 3/4th requirement to amend the Constitution. If an Article V convention can change other provisions of the Constitution, then it might revise the ratification requirements too. The original Constitutional Convention changed the rules in place then for revising the Articles of Confederation.

4. ***Our Constitution is not the problem, and it needs to be defended rather than criticized.*** Opening the door to vague, sweeping changes of our Constitution is a recipe for disaster. Supporting such a concept is harmful because it undermines defense of our Constitution, which has produced the greatest freedom and prosperity ever.

Some argue that the problems faced by our Nation are too immense to be handled by the current Constitution, and that revisions are needed. But it would be a mistake to bet the family farm on a roulette wheel at a casino as a way to deal with any problem.

Several of the leading advocates for a Convention of States have been politicians who abandoned their offices early, without even completing the terms of office that they ran for. Why don't they simply finish the job they were elected to do?

The Constitution is not the problem. What is needed is to elect candidates who will do their job and defend the Constitution, rather than blaming the Constitution.

5. ***Dark money is pushing the Convention of States, and we do not want billionaires rewriting our Constitution.*** We have many laws against corruption of politics by money. But billionaires find ways around these laws, and would control a constitutional convention to write amendments that advantage themselves the most.

There is not bipartisan support for the Convention of States, but there is bipartisan opposition. Both the Republican and Democratic National Platforms have declined to endorse a Convention of States. Less than a year before he died, the late Justice Antonin Scalia called an Article V convention a "horrible idea," as I personally witnessed and

which was published by a reporter. But the Convention of States project has misled people by ignoring this strong statement by Justice Scalia, and instead has exaggerated an ambiguous comment he made in 1979 long before he became a Supreme Court Justice.

Our Bill of Rights could be rewritten, or simply removed. Our Electoral College could be eliminated. Civil rights could be terminated by a Con Con.

Our Constitution was a providential result of a unique time, written entirely by Framers who had sacrificed their own lives for our country. It was made possible in 1787 without the overwhelming pressures of the modern media, special interest groups, and hired political agitators.

Billions were spent on the last presidential election, and trillions would be at stake in rewriting the Constitution. Monied interests and the media would easily take control of the process, and no one should favor giving them the keys to our Constitution.

No one should entrust billionaire manipulators of politics with rewriting our Constitution. Even if the intentions behind an application for an Article V Convention were good, such a Con Con could quickly get taken over by radical Leftists and the liberal media.

Please support SCR 4004. Thank you for allowing me to submit this testimony.

Andy Schlafly, Esq.
Phyllis Schlafly Eagles
(908) 719-8608

Written Testimony of Joanna Martin, J.D.

In support of SCR 4004 to *rescind* North Dakota's existing applications for an Article V Convention

For Committee Meeting on January 28, 2021 at 9:00 AM

Mr. Chairman Davison, Vice Chairman Meyer, and Honorable Members of the Senate Government and Veterans Affairs Committee:

My name is Joanna Martin, and this Testimony is offered in my capacity as a private citizen. I'm a retired litigation attorney, and have an undergraduate degree in philosophy where I specialized in political philosophy. I write under the pen name, Publius Huldah, on the genuine meaning of our federal Constitution and the false remedy of an Article V convention.

Those who don't know how we got *from* our first Constitution (Articles of Confederation) *to* our present Constitution can be deceived by those who falsely assure them that Delegates to an Article V convention are limited to proposing the amendment(s) described in the application sent to Congress for Congress to call a convention. The convention lobby is falsely assuring State Legislators that Delegates can do nothing except propose an amendment for a "balanced budget amendment", or for "term limits", or to "limit the power and jurisdiction of the federal government", or for whatever else is set forth in a State's application to Congress for Congress to call a convention.

But as our History illustrates, Delegates to a convention cannot be controlled and have that "self-evident Right", described in **our Declaration of Independence**, to throw off the Constitution we now have and write a new Constitution which creates a new Form of Government. The "Declaration of Independence" flyer **HERE** shows **why** Delegates to a convention have the power to propose a new Constitution (which would have its own new mode of ratification).

New Constitutions are already prepared or waiting in the wings for a convention. The "How to get a new Constitution *under the pretext* of proposing amendments" Flyer **HERE,** *shows that our Framers always understood that it's when you want a new Constitution that you need a Convention*. The Flyer also links to several of the proposed new constitutions. One of them, the Constitution for the Newstates of America, is *ratified by a National Referendum*!

Furthermore, it's impossible to rein in the federal government with amendments because when the federal government usurps powers not delegated, they are ignoring the existing constitutional limits on their powers. Our existing Constitution limits the federal government to a small handful of powers: **This one page chart** lists those enumerated powers. Our problems are caused by a century of *ignoring the existing limits* on federal power.

Accordingly, organizations lobbying for a convention, such as the "Convention of States Project", cannot produce even one amendment which would fix the federal government's violations of our Constitution. The 6 amendments approved at COS's "simulated convention" would INCREASE the powers of the federal government by delegating new powers to the federal government or by legalizing powers already usurped. This paper, *COS Project's "simulated convention" dog and pony show and what they did there* [**LINK**], describes the horrible amendments approved at the COS simulated convention.

Likewise, a balanced budget amendment would also have the opposite effect of what you are told. Instead of limiting federal spending, it legalizes spending which is now unconstitutional as outside the scope of the enumerated powers; transforms the federal government into one which has lawful power over whatever *they* decide to spend money on; and does nothing to reduce spending [**LINK]**.

The simple Truth is that there is no amendment on the face of this Earth which can make those who ignore the Constitution obey the Constitution. Our problems arose because for the last 100 years, everyone has ignored the Constitution we have. Americans generally have no idea what it says.

A convention is so dangerous, that the only prudent course of action is for States to rescind their existing applications for a convention. T**his danger is why** James Madison, Alexander Hamilton, four US Supreme Court Justices, and other eminent jurists and scholars warn against another convention: **James Madison** "trembled"; **Alexander Hamilton** felt "dread"; and our first **Supreme Court Chief Justice John Jay** said another convention would run an "extravagant risque". Supreme Court **Justices Arthur Goldberg** and **Warren Burger** said the convention can't be controlled. **Justice Scalia** said, "I certainly would not want a constitutional convention. I mean whoa. Who knows what would come out of that?" For their actual words and links to where they said it, see the "Brilliant Men" flyer **HERE.**

And **HERE** is a Legal Policy paper from well-known constitutional litigators, William J. Olson & Herbert W. Titus, who show that Convention of States Project's (COS) "false assurances" are "reckless in the extreme".

When James Madison, who is the Father of our Constitution; liberal *and* conservative Supreme Court Justices, and other eminent Jurists and Scholars agree that a convention can't be controlled; one marvels that some refuse to heed the warnings.

So please support SCR 4004 to RESCIND North Dakota's existing applications for an Article V convention.

At your service,

Joanna Martin, J.D.
publiushuldah@gmail.com

January 25th 2021

Testimony in support of SCR 4004

Committee members,

I strongly support the resolution to rescind all applications by the ND Legislature to call a convention to propose amendments to the US Constitution.

An Article V convention (constitutional convention or states convention) provides the opportunity, under the pretext of merely seeking amendments to replace our existing Constitution with a new constitution which moves us into a completely new system of government.

Nothing in Article V of the United States Constitution limits the convention to subjects specified by state legislatures. The subject of a state's application for a convention is nothing more than bait designed to attract specific groups of people to get them to support a convention.

There are a number subjects that are used to promote an Article V convention, but I will only address the two that I most commonly hear of, namely a proposed balanced budget amendment and a proposed amendment to enforce term limits.

It is important to point out that a balanced budget could be managed without a new amendment at all, that is, by following the guidelines stipulated in the U.S. Constitution as it is already written. Much could be done by stopping unconstitutional spending. If these guidelines are not followed now, why would they be followed with a new amendment?

In regards to term limits, according to data from the Congressional Research Service (updated as of December 17th, 2020) the average length of service for Representatives at the beginning of the 116th Congress was 8.6 years (4.3 House terms); for Senators, 10.1 years (1.7 Senate terms). These statistics hardly support the need for enforcing term limits.

More could be said on these and other issues that provoke the idea of a constitutional convention, however the point I want to drive home with this testimony is that there is extreme danger in an Article V convention. Calling a convention of the states could open the door to a total rewriting of the United States Constitution. This is evident by the historical precedent set by the Constitutional Convention of 1787 in which the Articles of Confederation were completely rewritten and the ratification process was changed. There is too much at stake to even consider an Article V convention. If proposed amendments cannot be reached in the same way the last 27 amendments have been, it is better to keep working on them, instead of jeopardizing what our Constitution already contains and protects.

The answer is not in amending errors in the Constitution, but rather in upholding the Constitution. Defend it, don't amend it!

Sincerely,

Lydia Scarnici
Lisbon, ND

#3776

January 27, 2021

North Dakota Legislature

RE: SCR 4004

Respective Legislators,

I write to you in favor of Convention of States and the Powers and the Actions available to the States as provided under Article V of the Constitution of the United States of America.

I Oppose SCR 4004

Sincerely,

David Deile

3120 25th Street S.
Fargo, ND 58103

Mr. Chairman, members of the committee, my name is Loren Enns. I run the national campaign for a Balanced Budget Amendment to the U.S. Constitution. I am president of the Center for State-led National Debt Solutions. Our Board of Directors includes former governors such as Mike Huckabee, Scott Walker and North Dakota's own Ed Schafer. It also includes former U.S. Senators such as George Allen and Judd Gregg. www.csnds.org/leadership

As you might imagine, I stand in opposition to SCR 4004 which would rescind North Dakota's 2015 call for a convention strictly limited to the proposal of a Balanced Budget Amendment. Presently, 28 of the 34 required states have passed matching convention calls.

First point:

The primary purpose of this campaign is NOT to call a convention. The goal is to use the looming threat of a convention to pressure Congress to propose a Balanced Budget Amendment.

This strategy has two highly authoritative sources:

(1) **Ronald Reagan –** President Reagan supported the state-led Balanced Budget Amendment campaign in the 1970s and 80s in hopes that it would reach 33 states, just one shy of the 34 required to call a convention. Upon reaching 33 states, he intended to use the looming threat of a convention to pressure Congress to propose a Balanced Budget Amendment. Unfortunately, the campaign stalled out at 32 states in 1983.

Direct proof of this can be found in a letter Ronald Reagan wrote to a Montana State Senator in 1987. The most important part can found highlighted below. The full letter can be seen at the end of this document.

I therefore believe that further action by the States, and particularly by the Montana Legislature, in petitioning Congress to call for a constitutional convention for the sole purpose of writing a balanced budget amendment will go far towards convincing Congress to pass and submit to the States an amendment for this purpose. If your effort is successful, Montana would be the 33rd State to pass such a resolution, just one short of the 34 required to call a constitutional convention. I believe this may finally convince Congress to act on an amendment of its own, which has always been my goal.

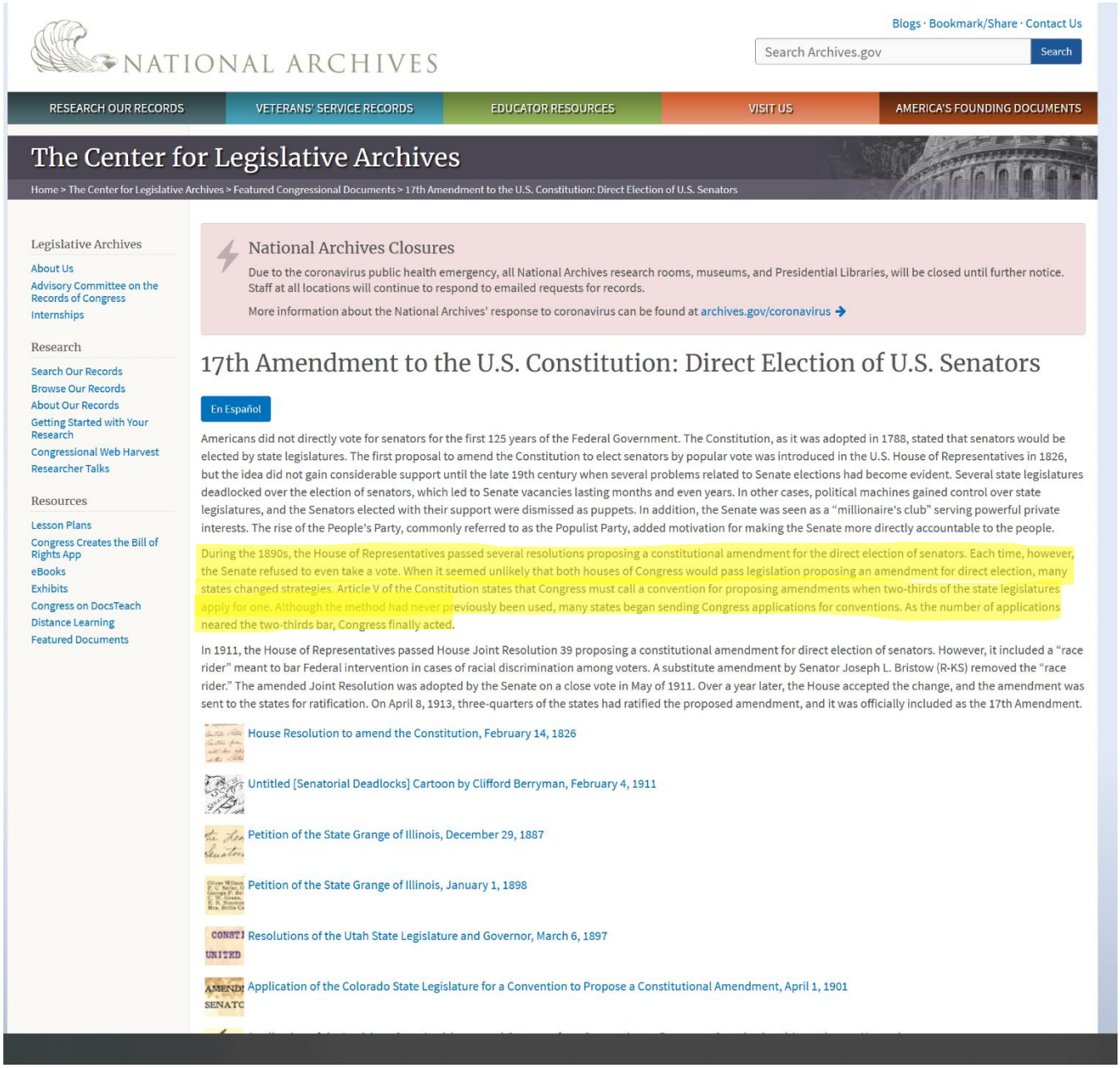
I hope these views will be helpful to you as you continue your deliberations.

Sincerely,

Ronald Reagan

The Honorable Gary Aklestead
Minority Leader
Montana State Senate
Helena, Montana 59620

(2) **The 17th Amendment** – The 17th amendment was only proposed by Congress after the states came within one state of calling for a convention to propose it in 1911. Direct proof of this can be found on the 17th amendment page on the National Archives website. Read the highlighted text below.



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National Archives Closures

Due to the coronavirus public health emergency, all National Archives research rooms, museums, and Presidential Libraries, will be closed until further notice. Staff at all locations will continue to respond to emailed requests for records.

More information about the National Archives' response to coronavirus can be found at archives.gov/coronavirus

17th Amendment to the U.S. Constitution: Direct Election of U.S. Senators

En Español

Americans did not directly vote for senators for the first 125 years of the Federal Government. The Constitution, as it was adopted in 1788, stated that senators would be elected by state legislatures. The first proposal to amend the Constitution to elect senators by popular vote was introduced in the U.S. House of Representatives in 1826, but the idea did not gain considerable support until the late 19th century when several problems related to Senate elections had become evident. Several state legislatures deadlocked over the election of senators, which led to Senate vacancies lasting months and even years. In other cases, political machines gained control over state legislatures, and the Senators elected with their support were dismissed as puppets. In addition, the Senate was seen as a "millionaire's club" serving powerful private interests. The rise of the People's Party, commonly referred to as the Populist Party, added motivation for making the Senate more directly accountable to the people.

During the 1890s, the House of Representatives passed several resolutions proposing a constitutional amendment for the direct election of senators. Each time, however, the Senate refused to even take a vote. When it seemed unlikely that both houses of Congress would pass legislation proposing an amendment for direct election, many states changed strategies. Article V of the Constitution states that Congress must call a convention for proposing amendments when two-thirds of the state legislatures apply for one. Although the method had never previously been used, many states began sending Congress applications for conventions. As the number of applications neared the two-thirds bar, Congress finally acted.

In 1911, the House of Representatives passed House Joint Resolution 39 proposing a constitutional amendment for direct election of senators. However, it included a "race rider" meant to bar Federal intervention in cases of racial discrimination among voters. A substitute amendment by Senator Joseph L. Bristow (R-KS) removed the "race rider." The amended Joint Resolution was adopted by the Senate on a close vote in May of 1911. Over a year later, the House accepted the change, and the amendment was sent to the states for ratification. On April 8, 1913, three-quarters of the states had ratified the proposed amendment, and it was officially included as the 17th Amendment.

House Resolution to amend the Constitution, February 14, 1826

Untitled [Senatorial Deadlocks] Cartoon by Clifford Berryman, February 4, 1911

Petition of the State Grange of Illinois, December 29, 1887

Petition of the State Grange of Illinois, January 1, 1898

Resolutions of the Utah State Legislature and Governor, March 6, 1897

Application of the Colorado State Legislature for a Convention to Propose a Constitutional Amendment, April 1, 1901

*** This is the historic precedent that moved Ronald Reagan to support the use of the same strategy when it came to attaining the proposal of a Balanced Budget Amendment by Congress.

Second point:

Even if a convention were called, it is perfectly safe – despite the claims made by convention opponents. They typically base their claims that a convention would "run away" on the U.S. Constitution's (1) lack of rules for a convention, and (2) lack of procedures by which the state legislatures would commission their convention delegations.

The reason that our founding fathers didn't put anything specific about the convention in the U.S. Constitution is because they didn't have to. They were absolute pros at holding conventions. During the colonial and founding eras, our founders held more than 30 conventions. They didn't need any instructions and they knew that we wouldn't either because we'd have the historic record they left behind.

We have copies of the rules they used at dozens of conventions. We also have copies of the legislative resolutions which each colony/state used to commission its convention delegation.

Convention opponents claim that we don't know how a convention would be run or how the states would select their delegations. Clearly, that is false. They simply haven't done their research.

To conduct a modern convention, all we'd have to do is go back to the historic record left behind by the brilliant men who founded our country and the 30+ conventions they held.

Ultimately, I would ask that you vote NO on SCR 4004 in order to preserve North Dakota's 2015 call for a Balanced Budget Amendment to the U.S. Constitution. That concludes my remarks.

THE WHITE HOUSE

WASHINGTON

March 16, 1987

Dear Senator Aklestead:

I am pleased to respond to your request for my views on the resolution now before the Montana Legislature, petitioning Congress to call for a constitutional convention for the purpose of drafting an amendment that would require a balanced Federal budget.

I have long supported an amendment to the Constitution that would require the Federal budget to be balanced. I have championed that cause in Congress on several occasions, calling on the public and State officials and legislators to make their views known. Thus far, all of these efforts have not been successful in persuading Congress, although last year such an amendment failed to gain the necessary two-thirds affirmative vote in the Senate by the slimmest margin of one vote. It has now become obvious that without further State initiatives Congress will not act to impose a limit on its own spending.

I therefore believe that further action by the States, and particularly by the Montana Legislature, in petitioning Congress to call for a constitutional convention for the sole purpose of writing a balanced budget amendment will go far towards convincing Congress to pass and submit to the States an amendment for this purpose. If your effort is successful, Montana would be the 33rd State to pass such a resolution, just one short of the 34 required to call a constitutional convention. I believe this may finally convince Congress to act on an amendment of its own, which has always been my goal.

I hope these views will be helpful to you as you continue your deliberations.

Sincerely,

Ronald Reagan

The Honorable Gary Aklestead
Minority Leader
Montana State Senate
Helena, Montana 59620

Testimony in Opposition to SCR 4004

James W. Phipps Jr., 21 Main Street P.O. Box 1, Alamo, ND, 58830
Phone: (701) 651-3766 | Email: jwphipps01@gmail.com

Chairman Vedaa and members of the committee,

My name is James Phipps and I am a Veteran (1983-2004) who served on three continents and six years in Alaska. I served under four presidents. I lived in Colorado when I got out of the Army. I was very displeased with the direction its government was going with all the Californians moving in. As a father of five and grandfather of eleven, I looked for a Veteran friendly state, one that supported, mirrored my family's values, and selected North Dakota as my new home. I purchased several lots in Alamo and moved an old farm house onto the lots. We are active in our church, community, and we work hard to support our family.

I'm submitting testimony in **opposition to SCR 4004**. As we have recognized an active assault and public demonizing of our values. My wife and I chose to home school our children. In my home we are magna cum laudi graduates and recognize the power grab by the Elitists in Washington DC. Our representatives have forsaken the people who elected them. Our infra-structures are on par with 3rd world dictatorships. My wife is a naturalized citizen originally from Venezuela. We can educate many on the horrors of socialism and communism.

Criminals now have more rights than law abiding citizens. Our national debt is disgusting as the moneys went to foreign interests and to line crooked politicians' pockets and their friends' pockets. Now, the same individuals are criminalizing my values and demonizing civility, decency, family values, Christian beliefs, hard work, individualism, free speech, free and rational thought, and most troubling the concept of questioning everything. These were major ideals that we saw in North Dakotans and chose to move here. Our representatives no longer represent the ideals of our founding fathers, nor support anyone who does. Further, NO FOREIGN body, be it nation, country, territory, or society determine nor dictate our local, state, or national views, policies, procedures, status quo, nor our political or religious views.

We as a family do not support SCR 4004, and expect our legally elected representatives to acknowledge, support, and make decisive actions affirming our mutually, publicly, affirmed beliefs, and ideals.

Written Testimony in Support of North Dakota SCR 4004 (Rescission)
Judi Caler
January 28, 2021

To Senator Kyle Davison, Chairman; Senator Scott Meyer, Vice Chairman; and Members of the North Dakota Senate Government and Veterans Affairs Committee:

My name is Judi Caler, and I'm President of Citizens Against an Article V Convention, a citizens group passionate about preserving the Constitution we have. Thank you for letting me submit written testimony.

The Article V convention movement is a decades-old, top-down scheme by the **global elite** to get a new Constitution. The easiest way to get a new Constitution, short of a hostile takeover, is through an Article V convention.

Throughout the years, North Dakota has passed applications asking Congress to call a constitutional convention to propose amendments to the U.S. Constitution on one subject or another. And in 2001, North Dakota wisely rescinded all its previously-passed applications, including a Balanced Budget Amendment. But a decade later, lessons learned were forgotten, and North Dakota began passing more applications.

All Applications asking Congress to call an Article V convention jeopardize our federal Constitution and endanger our liberty.

Delegates to an Article V convention, as sovereign Representatives of "We the People," have the inherent right "to alter or to abolish" our "Form of Government," as expressed in the Declaration of Independence, para 2. And we have no idea who those Delegates would be or how they'd be selected! See attached flyers **HERE** and **HERE**.

That's why our Framers and **Brilliant Men** from both sides of the political spectrum, including four U.S. Supreme Court Justices and other luminaries have warned that convention Delegates can't be controlled. We are fools if we don't heed their advice.

The convention lobby, financed by tens of millions of dollars from undisclosed sources, gives false assurances that state legislators can control the convention from start to finish and whatever else it takes to win your vote. But in fact, *all* you can control as a state legislator is the application process itself. After that, it is out of your hands. See "**WHO** has the Power to do **WHAT** under Article V": **HERE**.

Congress sets the convention rules per Article I, Sec. 8, last clause, U.S Constitution. And after the convention convenes, the Delegates can do whatever they want, including write a new Constitution with a new and easier ratification process, as our Framers did at the constitutional convention of 1787, our closest precedent.

Lobbyists and operatives that interface with Legislatures continue to insist conventions are limited to the subject of the application, because they know you wouldn't vote for their applications if you knew the truth. But behind the scenes, pro-convention strategists admit in **articles** and **papers** that conventions can't be limited, and Congress can call only a general convention where ***any and all*** amendments can be proposed.

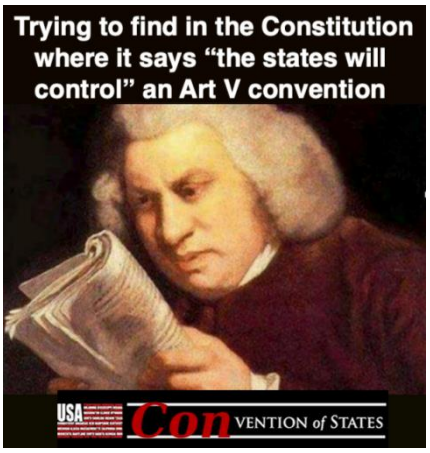
We are dangerously close to Congress's calling an Article V Convention where our Constitution is on the line.

The Constitution isn't the problem. *The Constitution you took an oath to support requires that you defend it, not amend it. (Article VI, Clause 3, U.S. Constitution).*

Please Vote "Yes!" on SCR 4004 to once again rescind all previously-passed applications asking Congress to call an Article V convention.

Thank you for your consideration.

Why "faithful delegate" laws can't control Delegates



As recognized in our Declaration of Independence (DOI), a People always have the "self-evident right" to assemble in a convention to alter or abolish their government and set up a new one.

So James Madison agreed to add the convention method to Art. V: he knew People have this right whether or not the convention method were added to Art. V, & he wanted anti-federalists to support the new constitution.[1] And he, John Jay & Hamilton *promptly* started warning *against* another convention.

In an attempt to gloss over these warnings, the Convention of States Project (**COSP**) is ***falsely marketing*** the convention provided for at Art. V as a "convention of states" which is controlled by state legislatures. COSP further claims (falsely) that by passing "faithful delegate" laws, state legislatures will be able to dictate the amendments Delegates may propose; and will be able to prevent Delegates from proposing "unauthorized amendments" or writing a new Constitution.

1. A Lesson from History: The federal "amendments" convention of 1787

Delegates to a convention are the Sovereign Representatives of the People [2] and have the power to abolish one government and set up a new one. We've already thrown off one Constitution and set up a new one!

Our first federal Constitution, the Articles of Confederation (AOC), had defects. So on February 21, 1787, the Continental Congress called a convention to be held in Philadelphia "*for the sole and express purpose of revising the Articles of Confederation*..."

Article 13 of the AOC provided that amendments had to be approved by the Congress and all of the then 13 States. Accordingly, the States' Instructions to the Delegates encompassed:

- "alterations to the Federal Constitution which, when agreed to by Congress and the several States, would become effective": Va., Penn., Delaware, Georgia, S. Carolina, Maryland, & New Hampshire.
- "for the purpose of revising the Federal Constitution": Va., Penn., N. Carolina, Delaware, & Georgia.
- "for the sole and express purpose of revising the Articles of Confederation": New York, Mass. & Conn.
- "provisions to make the Constitution of the federal Government adequate": New Jersey.

But the Delegates *ignored* the instructions and wrote a new Constitution. And the new Constitution provided at Art. VII thereof that it would be ratified when only 9 States approved it!

In Federalist No. 40 (15th para), James Madison invoked the "transcendent and precious right" to abolish one government and set up a new one as justification for the Delegates' ignoring their instructions.

So even though Art. V speaks of a "convention for proposing amendments", the DOI, as part of the "organic law" of our Land, may be invoked *again* to impose a new constitution which creates a new gov't. [3]

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[1] Madison's Nov. 2, 1788 letter to Turberville p. 299 at 2 &3. George Mason **hated** our Constitution & so wanted another convention.

[2] But in our venal times, Delegates are more likely to represent the Koch Brothers or George Soros, since ***they*** have the cash and are the ones financing the push for an Art. V convention.

[3] Soros wants a Progressive Constitution. The Globalists need a new constitution to move us into the North American Union.

2. *Congress decides* how Delegates are selected

The convention provided for at Art. V is a *federal* convention, called by the *federal* government, to perform the *federal* function of addressing our *federal* Constitution.

Art. V provides that when 2/3 of the state legislatures ***apply*** for it, ***Congress calls*** a convention. At that point, it is out of the state legislatures' hands. Pursuant to Art. I, §8, last clause, *Congress* has the power to make the laws necessary and proper to carry out its power to "call" the convention.

Accordingly, the Congressional Research Service Report (CRS) of April 11, 2014 says:

> "First, Article V delegates important and exclusive authority over the amendment process to Congress…" (p.4)
>
> "Second . . .Congress has traditionally laid claim to broad responsibilities in connection with a convention, including . . . (4) *determining the number and selection process for its delegates;* (5) *setting internal convention procedures, including formulae for allocation of votes among the states*; . . ." (p. 4) [italics added]

Congress is not required to permit States to appoint Delegates. Congress may appoint *themselves* as Delegates!

3. Foundational Principles

- **State legislatures are "creatures" of their State Constitutions, and have no competent authority to control the Sovereign Representatives of The People at an Art. V Convention**. The People create governments by means of constitutions. Since a government is the "creature" of its constitution, it can't be superior to its Creator, The People. [4]

  The Delegates, as Sovereign Representatives of The People, have the power to *eliminate* the federal & state governments! [5]

- Art. V grants *to the Convention* the power to "propose amendments". So the Convention is the deliberative body. *State Legislatures violate the US Constitution when they pass laws which purport to strip Delegates of their power, granted by Article V, to "propose amendments".* [6]

4. States *can't* hold Delegates accountable

Madison's Journal of the Federal Convention of 1787 shows that on May 29, 1787, the Delegates voted to make their proceedings secret. What if the Delegates of today make the proceedings secret? And if they vote by secret ballot, the States would *never* know who did what.

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[4] At the federal "amendments" convention of 1787, where our present Constitution was drafted, James Madison said on July 23, 1787 (pages 92-93) that state legislatures were not competent to ratify the proposed new Constitution - that "ratification must of necessity be obtained from the people".

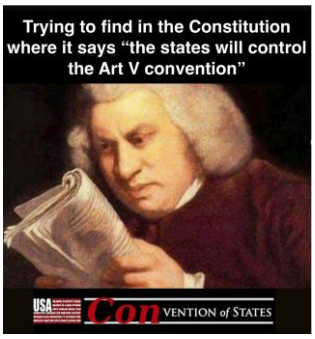
[5] The proposed Constitution for the Newstates of America dissolves the States & replaces them with regional governments answerable to the new national gov't. Art. XII, §1 thereof provides that it is ratified *by a national referendum.*

[6] See the "supremacy clause" at Art. VI, clause 2, US Constit.

WHO has the power to do WHAT under Article V of the US Constitution?

Article V, US Constitution, says:

"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 [****mode #1****], or by Conventions in three fourths thereof [****mode #2****], as the one or the other Mode of Ratification may be proposed by the Congress…"*



So, there are two ways to propose Amendments to the Constitution:

1. Congress proposes them and sends them to the States for ratification or rejection; **or**
2. When 2/3 of the States (34) apply for it, Congress calls a convention.

All our 27 existing amendments were proposed under the 1st method: Congress proposed them. We have never had a convention under Article V.

The Constitution grants ***only the following powers*** to four different bodies regarding an Article V convention:

Body	Power (s)
State Legislatures	a. Apply to Congress for a convention b. Ratify proposed Amendments, **if Congress chooses mode #1**
Congress	a. Calls the convention b. Makes all laws necessary and proper for calling a convention (per Article I, §8, last clause) c. Selects Ratification **mode #1 or #2**
Delegates to Article V Convention	Propose Amendments [assuming they don't exercise their plenipotentiary powers and write a new Constitution.]
State Ratifying Conventions	Ratify proposed Amendments, **if Congress chooses mode #2**

But what are convention proponents telling state legislators? (See back)

Myths that convention proponents are telling state legislators	
Myth	**Fact**
States can bypass Congress in the amendment process	a. The only powers granted to State Legislatures are to *ask Congress* to call a convention, and b. to ratify or reject proposed Amendments [if Congress chooses mode #1]
Congress will play only a ministerial role in setting the time and place of the convention.	a. Article I, §8, last clause: delegates to Congress the power to make the necessary laws to organize and set up the Convention. b. According to the **Congressional Research Service Report** (4/11/14) Congress "has traditionally asserted broad and substantive authority over the full range of the Article V Convention's procedural and institutional aspects from start to finish." (p.18).
States make the rules for a convention, by custom.	a. There are no customs, as there has never been an Article V convention; proponents cite regional gatherings of a few states on common topics as "custom." b. The Constitution delegates to Congress the power to make the laws to organize and set up the Convention. But once the convention is convened, ***the Delegates are the Sovereign Representatives of the People and can make whatever rules they want***. At the federal "amendments" convention of 1787, the Delegates made rules on **May 29, 1787** to make their proceedings secret.
State voting power will be "one state, one vote."	a. This will be up to Congress, and Congress has already demonstrated its intent to make those rules. In 1983, when we were 2 states away from a convention, 41 federal bills were introduced; and although none passed, apportionment of delegates was generally set by population, like the Electoral College, not by one state, one vote.
A "Convention of States" is an "amendments" convention, **not** a "constitutional convention." So, the Constitution is not at risk.	a. In the real world of English grammar and common sense, *"constitutional convention"* and *"Art. V convention"* are synonymous. Any convention dealing with drafting or amending a constitution is a *"constitutional convention."* b. Also, any convention provided for in a constitution is, by definition, *a "constitutional convention."*
An Article V convention can be "limited" to a topic or set of topics.	a. Nothing in Article V or the Constitution limits a convention to a single topic(s). The convention is the deliberative body! b. Under the supremacy clause at Article VI, clause 2, US Constitution, any State law which contradicts the Constitution is void. c. Delegates to a convention have the inherent right to alter or abolish our Form of Government, as expressed in the Declaration of Independence, paragraph 2. The 1787 constitutional convention is a case in point. d. Some convention proponents are finally admitting that a convention can't be limited by subject and that Congress can call only a ***general*** convention. See **this article**. e. Pretended limits are a marketing gimmick by its promoters designed to give Legislators a false sense of security and control over a process which will be totally out of their control. So they can get legislators' votes.
State Legislatures can control their delegates.	a. **State law cannot control delegates to a convention**. The convention is the highest authority in our Republic since it emanates directly from "We the People." b. If Delegates **choose to meet in secret as they did in 1787**, State Legislatures wouldn't know what the Delegates were doing.
The ratification process ensures no bad amendments will be passed.	a. A precedent was set in 1787 when the "amendments" convention called "**for the sole and express purpose of revising the Articles of Confederation**" resulted in a new Constitution ***with an easier mode of ratification***; this could happen today! Even if Delegates only proposed amendments, were the 16th (Income Tax), 17th (Direct vote for Senators), and 18th (Prohibition) Amendments good ideas?

American Constitution Foundation

Strategic Initiative for Restoration of the Constitution as the Governing Document for America

White Paper on an Article V General Convention of States

June 15, 2018

The American Constitution Foundation (ACF) is focused on a strategy to trigger a Congressional call for an Article V convention of states for proposing amendments. The strategy (a) promotes a general convention and disrupts the current paradigm that believes a convention can only be called based on applications for a "limited subject of set of subjects" convention and (b) provides the framework for a convention being held prior to the November 2020 national elections. Following a comprehensive analysis (described herein) of published scholarship and the historical record, ACF contends Congress can only call a *general* convention for proposing amendments, *irrespective of the subject or set of subjects* specified in applications. This would be a plenary convention by nature (i.e., commissioned delegates have full constitutional authority to set the agenda and rules for considering and recommending amendments) and is commonly referred to as a general convention or a constitutional convention[1] (only for proposing amendments to the Constitution). This paper addresses key concepts and definitions, naysayers to an Article V convention, application aggregation history, and closes with findings, implications, and recommendations.

Concepts and Definitions

Article V provides two methods for proposing amendments to the Constitution: one by Congress and one by a convention of states. The actual text for the second method reads, "on the Application of the Legislatures of two thirds of the several States, [Congress] shall call a Convention for proposing Amendments." It is important to understand concepts and definitions.

Application. The nature and meaning of the word application is critical to understanding the amending process. An application is simply a notice to Congress, and other State legislatures, of a State legislature's perceived need or value for a convention for proposing amendments. One State might see a particular need for issue X, another for issue Y, another for issue Z, and so forth. If two thirds of the State legislatures convey such a need, without exclusionary language (e.g., "for the sole purpose of," "null and void, if," etc.) via an application, then Congress "shall call a convention for proposing amendments." This appears to be the understanding of the post-Constitutional era, as reflected in the actual record of applications, especially between 1789 and 1899. During this period, 12 applications were filed.[2] Ten were for general conventions (Virginia, 1789; New York, 1789; Georgia, 1833; South Carolina, 1833; Indiana, 1833; Kentucky, 1861; Ohio, 1861; New Jersey, 1861, Illinois, 1861; and Texas, 1899). One application was for direct election of senators (Nebraska, 1893). One application was for tariffs and other issues (Alabama, 1833). The latter could arguably qualify as a general convention application because it did not have exclusionary language.

Convention. A convention called under Article V authority is an assembly of commissioned

[1] Unfortunately, special interest groups have invented a "con-con" slur to generate fear of a runaway convention.
[2] Data are from the Article V Library, available at http://article5library.org/

delegates representing the several States for the function of proposing amendments. Numerous adjectives are commonly used to qualify the meaning of a convention, such as constitutional, general, plenary, and limited.

Constitutional convention. By "constitutional convention," ACF understands this to mean an equivalent expression for a convention for proposing amendments under the authority of Article V. This meaning was clearly understood in the post-Constitutional era because the record reveals State legislatures used this expression when making application for a convention under Article V. For example, the record reveals some Article V applications actually used the expression, "constitutional convention" in its language (Indiana, 1907; Missouri, 1913; Louisiana, 1920; Nevada, 1925; etc.).

General convention. By "general" convention, ACF means an Article V convention for proposing one or more amendments to be determined by the commissioned delegates during the convention. The first mention of a general convention was by the State of New York in 1789. Their Article V application stated, ". . . in the fullest confidence of obtaining a revision of the said Constitution by a General Convention; . . ." The application further stated, "we, the Legislature of the State of New York, do, in behalf of our constituents, in the most earnest and solemn manner, make this application to the Congress, that a Convention of Deputies from the several States be called as early as possible, with full powers to take the said Constitution into their consideration, and to propose such amendments thereto, as they shall find best calculated to promote our common interests, and secure to ourselves and our latest posterity, the great and unalienable rights of mankind" (H.R. Jour., 1st Cong., 1st Sess. 29-30 [May 6, 1789]).[3] This application has never been repealed. It is the first such application filed by a State after the Constitution's ratification in 1789.

Plenary convention. By "plenary" convention, ACF means that the commissioned delegates would have "full powers to take the said Constitution into their consideration, and to propose such amendments thereto, as they shall find best calculated to promote our common interests, and secure to ourselves and our latest posterity, the great and unalienable rights of mankind."[4] On the other hand, a "plenipotentiary" convention would exercise full and independent power to amend the Constitution, to include ratification. The Compact for America initiative advocates plenipotentiary power and is contrary to the intent of Article V that separates authority for proposing and ratifying. The result of such a convention would have no force of law because it would be considered *ultra vires* in relation to Article V authority. None of the other Article V organizations presume this level of power. They understand that a convention can only propose amendments. Amendments must still be ratified by three-fourths of the States.

Limited convention. By "limited" convention, ACF believes this means that a convention called under Article V is limited to the "function" of proposing amendments. One scholar asserts that a limited convention is limited by subject: "In order to carry out its agency responsibility, Congress has no choice, when counting applications toward the two-thirds need for convention, but to group them according to

[3] Article V application by the State of New York, H.R. Jour., 1st Cong., 1st Sess. 29-30 (May 6, 1789)
[4] The notion of a plenary convention is explicit in the language of the Article V application by the State of New York, H.R. Jour., 1st Cong., 1st Sess. 29-30 (May 6, 1789).

subject matter."[5] After surveying the literature and historical record, another scholar claimed: "The illimitability theory currently holds the edge among constitutional scholars."[6] Yet, another scholar is even more explicit:

> If the legislatures of thirty-four states request Congress to call a general constitutional convention, Congress has a constitutional duty to summon such a convention. If those thirty-four states recommend in their applications that the convention consider only a particular subject, Congress must still call a convention and leave to the convention the ultimate determination of the agenda and the nature of the amendments it may choose to propose. If, however, a state's application is based on the erroneous assumption that Congress is empowered to impose subject-matter limits on the convention, such an application must be considered invalid. Many of the state applications calling for a convention on a balanced budget amendment are invalid under this test. Congress has no authority to call a convention in the absence of valid applications from two-thirds of the states. Therefore, even if the total number of applications reaches thirty-four, Congress must decline to call a constitutional convention.[7]

Even if all Article V organizations agreed to the notion that Congress can only call a general convention limited only to the function of proposing amendments not by subject, the effort faces formidable opposition by naysayers.

Naysayers

There are two types of naysayers: special interest groups and judicial activists. The special interest groups represent political agendas on both ends of the political spectrum and use FUD (i.e., a deliberate attempt to inject **f**ear, **u**ncertainty, and **d**oubt) tactics and are generally united in opposing attempts to use Article V to restore a balance of power and federalism as a Constitutional Republic. These special interest groups represent the factions that Madison warned about in *Federalist 10*: "The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular Governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations." The lack of unity among the various Article V organizations is no defense against the unified set of special interest groups.

The other type of naysayers represents judicial activism. Reflecting the progressive vision of

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[5] Natelson, Robert G., (2010, December), Amending the Constitution by convention: A more complete view of the founders' plan," The Independence Institute, IP-7-2010, p. 16. Retrieved on May 6, 2018 from http://robnatelson.com/wp-content/uploads/2016/11/II-Paper-I-Founders-Plan-II-webversion.pdf

[6] Caplan, Russell L., (1988), *Constitutional Brinksmanship: Amending the Constitution by national convention*, (New York, NY: Oxford University Press), p. 138.

[7] Dellinger, Walter E. (1979), The recurring question of the "limited" constitutional convention*, Yale Law Journal, 88*, 1623-1640, p. 1640. Note: Dellinger's understanding of the Framer's intent is that Congress can only call a general convention. Applications that attempt to limit an Article V convention to a specific subject is in violation of the constitutional plenary authority granted to assembled convention delegates.

Herbert Croly,[8] judicial activists believe it is far more expedient and efficient for highly educated elite to softly amend the Constitution through judicial rulings. The major manifestation of the progressive vision in modern America is a living constitution[9] that reflects tradition and legal precedent (similar to Great Britain's approach, which has no written constitution). The "progressive" tradition is a created tradition based on ideas of a more perfect union, not the inherited "traditional" tradition that is based on tried and tested wisdom. This shift in thinking has now been institutionalized in "the *Constitution of the United States of America: Analysis and Interpretation* (popularly known as the *Constitution Annotated*), which contains legal analysis and interpretation of the United States Constitution, based primarily on Supreme Court case law."[10]

Having examined key concepts and definitions in defense of ACF's position that Congress can only call a general convention for proposing amendments, are there a sufficient number of valid applications that can be aggregated to reach the two-thirds (or 34 State legislatures) threshold for the call?

Aggregation History

To our knowledge, there have been six attempts at aggregation: two by Professor Michael Stokes Paulsen, one by attorney Robert Biggerstaff, one by Professor Robert Natelson, one by attorney John Cogswell of Campaign Constitution,[11] and one by ACF. A table summarizing the various studies is attached.

Paulsen aggregations. Paulsen first conducted two aggregation analyses, in 1993[12] and 2011.[13] Of 399 active applications in 1993, Paulsen identified 45 valid applications to justify a Congressional call for a convention. His criteria were that an application was valid if (a) it had not been repealed and (b) it was for a general convention or recommended a subject with no exclusionary language. He used the convention of the light is "on" for valid applications or "off" for no valid applications. After the study, he notified Congress but was ignored. His second study, in 2011, revealed that many of the 399 applications had been repealed, resulting in only 33 applications that were valid—one short of the necessary 34 threshold.

Biggerstaff aggregation. Robert Biggerstaff, Curator of the Article V Library dataset, updated Paulsen's 2011 analysis, discovering three applications had since been repealed. Since the Convention

[8] For an excellent analysis of Herbert Croly's vision, advanced through his book, *The Promise of American Life*, see Pearson, Sidney, (2013, March 14), Herbert D. Croly: Apostle of progressivism, *Political Process Report*, The Heritage Foundation. Retrieved on May 20, 2018 from https://www.heritage.org/political-process/report/herbert-d-croly-apostle-progressivism

[9] See, for example, Strauss, David A., (2010), *The living constitution*, (New York, NY: Oxford University Press).

[10] The legal requirement for this document was enacted by a Joint Resolution of Congress and as of today consists of 2,880 pages. This document is available at https://www.congress.gov/constitution-annotated/

[11] For more information on Campaign Constitution, see http://www.campaignconstitution.com/

[12] Paulsen, Michael Stokes, (1993), A general theory of Article V: The constitutional lessons of the Twenty-Seventh Amendment, *Yale Law Journal, 103*, 677-789.

[13] Paulsen, Michael Stokes, (2011), How to count to thirty-four: the constitutional case for a constitutional convention, *Harvard Journal of Law & Public Policy*, *34*, 837-872.

of States Project (COSP) organization claims its application is a "limited subject" application, we infer that Biggerstaff has not considered these applications eligible for aggregation. ACF disagrees because the actual language calls for a convention for the "sole purpose of proposing amendments" or "limited to proposing amendments," which ACF argues is the limited "function" of the convention. The application then includes broad "topics" for consideration. The second topic, "power and jurisdiction," is what the Constitution is all about: the delegation of enumerated powers.

Natelson aggregation. Natelson conducted an aggregation study using the set of 28 Balanced Budget Amendment (BBA) applications as the baseline and then added active general applications. His scheme produced 33, which included 27 BBA applications (he eliminated one from Mississippi) and added six general applications. The major flaw in this scheme is that 26 of the 28 BBA applications have "null and void, if" language that prevents aggregation with any other application.

ACF aggregation. Not aware of any aggregation attempts (to include Paulsen's and Natelson's), ACF conducted an aggregation scheme starting with active general applications, followed by COSP applications and others that use nonexclusionary language. ACF's study produced 35 valid applications for aggregation purposes. ACF then sought peer reviews from nearly 40 constitutional scholars, with no rebuttals and a recommendation by Yale's Jack Balkin to consult with Michael Stokes Paulsen. It was at this time that ACF discovered Paulsen's work and the similarity in aggregation schemes. Since then, ACF has identified two additional applications for a total of 37 States.

Cogswell aggregation. ACF asked John Cogswell of Campaign Constitution for a legal opinion of ACF's aggregation study. Cogswell defaulted to Paulsen's 2011 aggregation study to update it with any changes between 2011 and 2018. His analysis is currently pending. His analysis is considering changes that include (a) three previous valid applications had since been repealed (Delaware, Nevada, and New Mexico), (b) one valid application from South Dakota (a 1909 anti-polygamy application), and (c) five COSP applications that were issued since 2011 (Alaska, Arizona, Georgia, North Dakota, and Tennessee). While the COSP resolution language uses "for the sole purpose of proposing amendments" and then lists three broad topics, it is inferred that the topics attempt to provide some specificity in terms of the nature of constitutional issues and are the closest to a general application. For example, the topic of "power and jurisdiction" is essentially what the Constitution is all about in combination with the concept of federalism. Cogswell's pending analysis may range from 30 to 37 valid applications.

Findings, Implications, and Recommendations

ACF's assessment of the Article V movement and its grounding in published scholarship and the historical record can best be summarized in Table 1.

Table 1. ***Summary of Findings, Implications, and Recommendations***

Findings	Implications	Recommendations
1. Concepts and definitions matter	• Concepts and definitions matter because they add the clarity needed for a problem that is abstract and complex	• Promote a disciplined and consistent presentation of concepts and definitions

2. Article V organizations operate from a flawed proposition that an Article V convention must be limited by subject	• The position that an Article V convention must be limited by subject makes the Article V movement vulnerable to opposition • The position weakens an otherwise unified effort that could benefit from the innovative potential of an actual Article V convention	• Encourage a disciplined and consistent understanding of a general convention as the only constitutional approach • Rally Article V organizations around this notion
3. More evidence exists to support a general convention, limited only to the "function" of proposing amendments	• The Article V group has a greater chance of their subjects being addressed at a general convention • Concerns about a runaway convention can be assuaged in the commissioning and instruction process. Commissioned delegates remain, throughout a convention, agents of the States they represent	• Encourage Article V organizations to avoid or to change exclusionary language in recommended resolutions • In the commissioning process, consideration of the extent of any prohibitions should be balanced with the benefit of having a voice/vote on unanticipated topics/issues
4. The Article V movement is obstructed by		
a. Internal confusion based on concepts and definitions	• Confusion in concepts and definitions weakens the Article V effort and promotes a lack of confidence among State legislators	• Instill confidence in Article V organizations in advancing terminology such as constitutional convention as a general convention for the sole purpose (function) of proposing amendments. Terminology such as the "con-con" slur reflects the ignorance of the person using it.
b. A flawed proposition about a general convention that is plenary by nature	• A united Article V community regarding the safety of a general convention would instill confidence in State legislators, especially with the power to regulate delegate behavior through commissions and instructions	• Emphasize the critical role of our State legislators in taking ownership for the Article V convention
c. Unified opposition	• A unified Article V effort is stronger against a unified opposition	• Working with State legislators, focus on the innovative opportunity of an Article V convention to address constitutional issues and the critical role State legislators play in the commissioning process
5. Aggregation of applications is supported by scholars (Paulsen, Natelson), Biggerstaff, Cogswell, and the ACF		
a. Paulsen's (1993/2011) scheme based on defendable logic	• Once the Article V community recognizes the futility of a convention limited by subject, a more concerted effort can unfold to advance an actual convention where specific issues/subjects have a venue for consideration	• Promote a general convention and the opportunity to aggregate applications for this purpose • States without applications are opportunities to approach State legislators to advance either a general application or a nonexclusionary recommended subject application

b. Biggerstaff	• COS applications not used because of the "sole purpose" or "limited" language	• Convince Biggerstaff that (a) the sole purpose or limitation is for proposing amendments using broad topics, not subjects, and (b) the topic of "federal power and jurisdiction" is what the Constitution is about
c. Natelson's (2018) scheme is compromised by undefendable logic and exclusionary language	• Although approached differently, application aggregation is plausible	• Given the evidence, convince advocates of the current flawed reasoning that Congress can call a convention limited by subject
d. Cogswell's (2018) updates Paulsen's 2011 study	• A solid legal opinion supporting 37 valid applications for aggregation purposes	• Use this legal opinion in conjunction with ACF's analysis for justifying a Congressional call when the time is right (sufficient confirmation by the leadership of State legislatures that they support a Congressional call)
e. ACF's study is consistent with Paulsen (1993/2011) and Cogswell (2018)	• **An independent analysis identified 37 valid applications that is consistent with schemes advanced by Paulsen and supported by Cogswell**	• **Since ACF independently arrived at 37 valid applications, use this study as the basis for a Congressional call and for preparing the several States for a convention**

Conclusion

There is a growing body of literature on the subject of an Article V convention of states for proposing amendments. While there remains some debate regarding what kind of Article V convention Congress can call, the existing evidence favors a general convention. Current efforts to trigger a convention limited by subject are not supported by the evidence, have contributed to a failure to achieve the necessary number of applications for a subject-limited convention, and have empowered opposition groups to further damage the Article V movement. ACF is focused on disrupting this dynamic to better position the Article V movement for success.

Additionally, attempts to aggregate applications have demonstrated the plausibility of counting applications to trigger a call. Although ACF believes their study indicates the condition has been met to trigger a call, they also understand Congress is likely to seek affirmation from the States in affirming their intent for a convention. State legislators will be the key in this affirmation. It is imperative that ACF and other Article V organizations work in concert with State legislators (and State Attorneys General, if needed) to promote a general convention and to be prepared to properly commission convention delegates for effective conduct/proceedings at a convention. Failure to do this will perpetuate the status quo, or, even worse, enable expanding institutional corruption, to continue into the future.

State	Paulsen 1993 (399 Applications)	Paulsen 2011	Biggerstaff	ACF 2018 (275 Applications)	Cogswell 2018	Natelson 2018
Alabama	Revenue Sharing--1967	Revenue Sharing--1967	On	COSP--2015	Revenue Sharing--1967	BBA--2015
Alaska	Off	Off	Off	COSP--2014	Pending	BBA--1982
Arizona	Coercive Fed Funds-1980	Off	Off	COSP--2017	Pending	BBA--2017
Arkansas	Federal Debt Limit-1975	Federal Debt Limit-1975	On	Apportionment--1963	Federal Debt Limit-1975	BBA--1979
California	Proceeds of Fed Taxes on Fuels-1952	Proceeds of Fed Taxes on Fuels-1952	On	Federal Labor Regulation--1935	Proceeds of Fed Taxes on Fuels-1952	None
Colorado	Apportionment--1967	Apportionment--1967	On	General--1910	Apportionment--1967	BBA--1978
Connecticut	State Taxing Power--1958	State Taxing Power--1958	On	State Taxing Power--1958	State Taxing Power--1958	None
Delaware	Right to Life--1978	Right to Life--1978	Repealed	None	None	None
Florida	Revenue Sharing--1969	Revenue Sharing--1969	On	COSP--2014	Revenue Sharing--1969	BBA--2014
Georgia	State Control of Public Educ--1965	Off	Off	COSP--2014	Pending	BBA--2014
Hawaii	Off	Off	Off	None	None	None
Idaho	Apportionment--1965	Off	Off	None	None	None
Illinois	Apportionment--1965	Apportionment--1965	On	General--1861	Apportionment--1965	Plenary
Indiana	Right to Life--1977	Right to Life--1977	On	General--1861	Right to Life--1977	BBA--1979
Iowa	General--1909	General--1909	On	General--1909	General--1909	BBA--1979
Kansas	Federal Taxing Power--1951	Federal Taxing Power--1951	On	General--1910	Federal Taxing Power--1951	BBA--1979
Kentucky	School Assignment--1975	School Assignment--1975	On	General--1861	School Assignment--1975	Plenary
Louisiana	Off	Off	Off	COSP--2016	COSP-2016	BBA--2016
Maine	Direct Election of Senators--1911	Direct Election of Senators--1911	On	Direct Election of Senators--1911	Direct Election of Senators--1911	BBA--2016
Maryland	Apportionment--1965	Apportionment--1965	On	None	None	None
Massachusetts	Right to Life--1977	Right to Life--1977	On	Right to Life--1977	Right to Life--1977	None
Michigan	Federal Taxing Power--1941	Federal Taxing Power--1941	On	Anti-Polygamy--1913	Federal Taxing Power--1941	BBA--2014
Minnesota	Direct Election of Senators--1901	Direct Election of Senators--1901	On	Anti-Polygamy--1909	Direct Election of Senators--1901	None
Mississippi	Balanced Budget--1979	Balanced Budget--1979	On	BBA--1979	Balanced Budget--1979	BBA--1979 (excluded)
Missouri	Right to Life--1975	Right to Life--1975	On	General--1910	Right to Life--1975	BBA--1983
Montana	Apportionment--1965	Off	Off	None	None	None
Nebraska	Apportionment--1965	Apportionment--1965	On	General--1907	Apportionment--1965	BBA--1979
Nevada	Coercive Fed Funds-1975	Coercive Fed Funds-1975	Repealed	None	None	None
New Hampshire	Federal Revenue Sharing--1969	Off	Off	None	None	BBA--2012
New Jersey	School Prayer--1973	School Prayer--1973	On	General--1861	School Prayer--1973	Plenary
New Mexico	Apportionment--1966	Apportionment--1966	Repealed	None	None	None
New York	Anti-Polygamy--1906	Anti-Polygamy--1906	On	General--1789	Anti-Polygamy--1906	Plenary
North Carolina	General--1910	General--1910	On	General--1910	General--1910	BBA--1979
North Dakota	Apportionment--1967	Off	Off	COSP--2017	Pending	BBA--2015
Ohio	Revenue Sharing--1965	Revenue Sharing--1965	On	General--1861	Revenue Sharing--1965	BBA--2014
Oklahoma	School Assignment--1973	Off	Off	COSP--2016	Pending	BBA--2016
Oregon	Townsend Plan--1939	Townsend Plan--1939	On	General--1901	Townsend Plan--1939	Plenary
Pennsylvania	Coercive Federal Funding--1943	Coercive Federal Funding--1943	On	Coercive Federal Funding--1943	Coercive Federal Funding--1943	BBA--1979
Rhode Island	Off	Off	Off	None	None	None
South Carolina	Apportionment--1965	Off	Off	None	None	None
South Dakota	Apportionment--1965	Off	Off	Anti-Polygamy--1909	Anti-Polygamy--1909	BBA--2015
Tennessee	Coercive Federal Funding--1976	Off	Off	COSP--2016	Pending	BBA--2016
Texas	Revenue Sharing-1967	Revenue Sharing-1967	On	COSP--2017	Pending	BBA--2017
Utah	Off	Off	Off	None	None	BBA--2015
Vermont	Anti-Polygamy--1913	Off	Off	Anti-Polygamy--1913	Anti-Polygamy--1913	None
Virginia	Apportionment/Revsion to Article V--1965	Off	Off	None	None	None
Washington	Apportionment--1965	Apportionment--1965	On	General--1910	Apportionment--1965	Plenary
West Virginia	Anti-Polygamy--1907	Anti-Polygamy--1907	On	Anti-Polygamy--1907	Anti-Polygamy--1907	BBA--2016
Wisconsin	Presidential Electors--1963	Presidential Electors--1963	On	General--1911	Presidential Electors--1963	None
Wyoming	Revision to Article V--1963	Off	Off	None	None	BBA--2017
Total	**45**	**33**	**30**	**37**	**30 to 37**	**33**

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

SCR 4004

1/29/2021

Rescind all extant applications by the ND Legislative Assembly to call a convention to propose amendments to the US Constitution under Article V of the US Constitution.

Chair Vedaa called to order at 9:15 a.m. with Sens Vedaa, Meyer, Elkin, K Roers, Wobbema, Weber, and Marcellais present.

Discussion Topics:

- Article 5
- Runaway convention

Committee will study this a week.

Adjourned at 9:25.

Pam Dever, Committee Clerk

2021 SENATE STANDING COMMITTEE MINUTES

Government and Veterans Affairs Committee
Room JW216, State Capitol

SCR 4004
2/4/2021

A concurrent resolution to rescind all extant applications by the North Dakota Legislative Assembly to call a convention to propose amendments to the United States Constitution, under Article V of the United States Constitution.

Senator Vedaa opened the hearing at 10:14 AM. All members present**: Vedaa, Meyer, Elkin, Marcellais, Roers, Weber, Wobbema.**

Discussion Topics:

- States approval of Article 5 in the Constitution
- Runaway Convention

[10:14] **Senator K.Roers** moved DO NOT PASS
[10:14] **Senator Meyers** second.

Senators	Vote
Senator Shawn Vedaa	Yes
Senator Scott Meyer	Yes
Senator Jay Elkin	Yes
Senator Richard Marcellais	Yes
Senator Kristin Roers	Yes
Senator Mark Weber	No
Senator Michael Wobbema	Yes

Roll Call vote 6-1-0. Do Not Pass.

Senator Wobbema will carry SCR 4004.

Senator Vedaa adjourned the hearing at 10:23 AM.

Rose Laning for Pam Dever, Committee Clerk

REPORT OF STANDING COMMITTEE

SCR 4004: Government and Veterans Affairs Committee (Sen. Vedaa, Chairman) recommends **DO NOT PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). SCR 4004 was placed on the Eleventh order on the calendar.