# ADDITIONAL WRITTEN TESTIMONY

**See this link for what constitutional scholars warn, both liberal and conservatives, about "detonating the nuclear bomb" called an Art. V Convention. http://caavc.net/wp-content/uploads/2018/04/Brilliant-men-r1-2.pdf**

**By voting FOR an article V Convention, you are literally lighting a fuse. Why? You would be opening up our ENTIRE constitution to be put on the chopping block. THAT IS the "nuclear bomb"of the Constitution! The subjects cannot be limited nor the outcome predicted. Again, See Par. 2, Declaration of Independence. As Madison explained in the Federalist Papers, ART V is for changing errors in the Constitution, and was a "compromise" NEVER meant for "adding amendments." For NO AMENDMENT is worth the risk!!!**

**Did you know that Nothing in Article V or the Constitution limits a convention to a single subject or amendment? The Delegates, as direct representatives of "We the People," cannot be controlled by *federal or state law.* Pretended limits are a marketing gimmick by its proponents, designed to give Legislators a false sense of security and control so they will vote for a process which will be totally out of their control. Forget "faithful delegate bills," fines, etc., something even a monkey could get around!**

**DEFEND, Don't AMEND. Art VI is your BEST offense and defense to convention advocates.**

**Why? HONOR YOUR ART VI OATH. Actually, You too should "tremble" at the very thought of an Art V Convention, as James Madison said he did, in the Federalist Papers. *The truth is that any part of the constitution you hold dear will be subject to change or deletion.* Read Par. 2, Declaration of Independence.**
**Listen to this short video where a REPUBLICAN SPONSOR of a Art. V. Convention application asked that his bill be voted AGAINST. He SAW the "flaws." It is a short video. He learned a painful, but freeing, lesson. A True Statesman admits he was misled.**

# Convention of States Resolution Republican Sponsor State Rep BRAD TSCHIDA Testifies Against His Own Resolution

Published on Mar 3, 2017

**https://www.youtube.com/watch?v=WmkbgmvRr4I ;;**

**Respectfully submitted,**
**Kay Causey**

Senate State Government Committee,
Please oppose all bills promoting an Article V Constitution Convention. That is not the right tool to rein in our government. Opening up our Constitution to a Convention is a dangerous risk. Our Constitution already provides for restraint and accountability. It just needs to be obeyed. Imagine the fierce division in our nation, outspoken interest groups, protesters and the media frenzy. It would be the incivility of the Kavanaugh hearing times 100. Defeat these bills like we did in South Dakota and 17 other states have done this year.

*Blessings,*
*Linda Schauer*
*State Director*
*Concerned Women for America of South Dakota*

Please include my email in the packets you prepare for the members of the Committee.

.....

Senate State Government Committee:

**Pennsylvania must VOTE NO on SR133 (HR187); SR254 (HR357); SR134; and any other applications asking Congress to call an Art. V convention.**

**All sorts of deceptive con-con arguments are now resoundingly defeated! READ this explanation of the "con" job —** http://thewashingtonstandard.com/con-con-lobbys-new-strategy-exposes-their-web-of-deceit/

Quote from above article:
*"The convention lobby is **betraying the state legislators** who believed them and cast their votes accordingly. Convention proponents now appear to have a multi-pronged approach with contradictory spins, depending upon their audience. They are appealing to Congress to call a general convention based on assorted, existing applications; and to state legislators to pass still more "limited" applications or possibly affirm applications from decades, even centuries ago–whatever works!"*

HERE is our flyer explaining why Pennsylvania legislators should defeat all applications for an A5C.

**There is no need for an Article V convention (or in "Newspeak", a "convention of states").**

If our Constitution (as is) is followed, the improprieties we've fought for decades (budget concerns and more) can be readily resolved. If the Constitution is NOT rigorously followed, how can additions to it make any change?

It is the **LACK of following our Constitution** that is the issue. Remedy THAT first.

**Thank you for your consideration of these significant issues. Pennsylvania must VOTE NO on SR133 (HR187); SR254 (HR357); SR134**

Trudy Stamps

I would like to present the following as written testimony against SR133, SR134 and SR254 for the Oct. 17th hearing.

Please vote NO on SR133 (HR187) (COSP); SR254 (HR357) (WP); SR134 (Regulation Freedom).

Pennsylvania will not be able to control the agenda if an Article V convention is called by Congress. If you will review the history of the 1787 Convention you will see that the agenda was changed by the delegates once the convention started. This could happen again.

The Andy Griffith Show is one of my favorite TV shows. Calling for an Article V convention reminds me of how Barney thought he was a great Constitutional scholar and sets out to prove it to Andy by quoting the preamble to the Constitution. You would be shocked by how few elected officials at both the state and federal level who have not even read the Constitution for years but claim like Barney to be an expert on it. Please don't be a "Barney Fife" and vote for Congress to call an Article V convention.

Here is the clip about the Barney and the Constitution:

https://www.youtube.com/watch?v=oBuPQgV8yBM&index=34&list=WL&t=0s

Thank you.

Sincerely,
Howard Burnette

Our family in Montgomery Co., PA is against SR133, SR134 and SR254 – please add our note to committee members' packets.

Please Vote NO to a convention of states, a concon, or No on any other applications from Pennsylvania asking Congress to call an Art. V convention.

We love our State and want to *thank you for your service* and for *defending our Constitution!*

- The Harts of Montgomery Co., Pa.

**Dear Senator,**

**We can lose our Constitution at a convention! PLEASE VOTE "No!" on SR133 (HR187); SR254 (HR357); SR134; and any other applications from Pennsylvania asking Congress to call an Art. V convention.**

**I'm including an Article which I Know you will Enjoy as you consider this very important issue:**
http://www.renewamerica.com/columns/caler/180906

**Respectfully,**
**Beverly Manning**

**Why the Pennsylvania Legislature should reject SR 133, SR 134, SR 254 and any other applications for an Article V convention**

Chairman Folmer, Minority Chair Williams, and Honorable Members of the Senate State Government Committee: My name is Joanna Martin. I'm a former Army JAG officer, a retired litigation attorney, and have an undergraduate degree in philosophy where I specialized in political philosophy. I write and speak on our federal Constitution and the false remedy of an Article V convention.

This paper outlines why you should vote against all applications for an Article V convention.

The prospect of an Article V convention should make us "tremble", for the same reason it made **James Madison,** Father of our Constitution, "tremble": [1] A convention gives the enemies of our Constitution the opportunity to get rid of it and impose a new one. And *that's* what I'll prove to you below.

Article V of our Constitution provides two methods of amending it. *Congress*:

- Proposes amendments; or
- Calls a convention to propose amendments if two thirds of the States apply for it.

The first method was used for *the existing* 27 amendments: *Congress* proposed them and sent them to the States for ratification or rejection.

Under the second method, *Congress* calls a convention. We've never had a convention under Article V – *they are dangerous* – and James Madison, Alexander Hamilton, 4 US Supreme Court Justices, and other eminent jurists and scholars, [2] warned against it.

But the pro-convention lobby has been pushing for a convention for some 60 years – ever since the Ford Foundation produced the Constitution for the Newstates of America. Read *this* proposed Constitution and tremble for your Country.

In the past, conservatives defeated the periodic pushes for a convention. So the convention lobby changed tactics. Now they are marketing a convention to appeal to conservatives: They are saying *the only way* to "limit the power and jurisdiction of the federal government" is *to amend our Constitution* – and we can only get the amendments which will do that *at a convention.*

## 1. Our existing Constitution & its enumerated powers

So let's look at the Constitution the convention lobby says must be *amended* in order to "limit the power and jurisdiction of the federal government".

When we ratified our Constitution of 1787, we *created* the federal government. It is

- a *federation* of sovereign States united under a national government ***only*** *for those limited purposes itemized* in the Constitution;

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[1] Madison's letter of Nov. 2, 1788 to Turberville.

[2] See part 10 below

- with all other powers reserved by the States or the People.

We listed every power we delegated to the national [federal] government: Most of the powers delegated over the Country at Large are listed at Article I, §8, clauses 1-16.
All our Constitution authorizes the federal government to do over the Country at Large falls into four categories:

1. Military defense, international commerce and relations;
2. Immigration and naturalization;
3. Domestically, create a uniform commercial system with uniform weights and measures, patents and copyrights, a money system based on gold and silver, bankruptcy laws, mail delivery and some road building; and
4. With some of the Amendments, secure certain civil rights.

All other powers are reserved by the States or the People.

This one-page Chart

- illustrates *the federal structure* of our government; and
- lists *the powers* delegated to the federal government – *as you see, it's a short list.*

It's ***only*** with respect to the enumerated powers *listed* in the Constitution that the federal government has lawful authority:

- If it's *on the list*, Congress may make laws about it.
- But if it's **not** *on the list*, Congress usurps power and acts unlawfully when it interferes.

When a government merely secures God given Rights, as ours was *created* to do, [3] we are never put in conflict with each other, because no one has his hand in anybody else's pocket, or is telling them what to do.

## 2. Why did the federal government turn into Frankenstein?

Everybody *ignores* the Constitution.
It is *ignorance* of our Constitution - *along with* the collapse of religion, morality and personal responsibility, which brought us to the brink of destruction.
We forgot that the federal government has lawful authority *only* over the few powers *enumerated* in the Constitution.

Because we didn't know what our Declaration of Independence and Constitution say, the federal government was able to usurp thousands of powers which are *not on the list* of delegated powers. State governments *collaborated* with the usurpations by taking federal funds to implement unconstitutional federal programs.

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[3] "...That to secure these rights, Governments are instituted among Men..." (Declaration of Independence, 2nd para)

To claim these problems can be fixed by amending our Constitution is like saying a wicked nation can be fixed by amending The Ten Commandments.

### 3. COSP says we have to *amend* our Constitution before the federal government will obey it.

The Convention of States Project (COSP) *insists* the problem is … the Constitution.

They say amendments will "limit the power and jurisdiction of the federal government."

But our Constitution *already limits the power and jurisdiction of the federal government* to those "few and defined" powers listed in the Constitution. [4]
So the claim that we can control those who ignore the Constitution, by amending the Constitution, is absurd!

Yet Mark Levin and Michael Farris are aggressive promoters of the COSP application for an Article V convention. They say we need a convention so we can get amendments which "limit the power and jurisdiction of the federal government."

So let's look at *their* proposed amendments:

### 4. COSP's proposed amendments *increase* the powers of the federal government!

Michael Farris' "parental rights" amendment ***delegates power*** over children to the federal government! Section 3 says:

> "Neither the United States nor any state shall infringe these rights without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served." [5]

Mark Levin's "liberty amendments" also do the opposite of what he claims.

- His amendment **"to limit the federal bureaucracy"** *legalizes* what are now unconstitutional federal agencies: Education, Energy, Agriculture, Environmental Protection, etc., etc., etc. Our Constitution doesn't authorize these agencies! They are **not** *on the list!* But Levin's amendment legalizes all such agencies for as long as Congress re-authorizes them.

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[4] "The powers delegated by the proposed Constitution to the federal government are few and defined." Federalist Paper No. 45 , 3rd para from the end (Madison).

[5] Under our Constitution, the federal government now has ***no*** lawful authority (over the Country at Large) over the rearing of children!

- Article I, §1 of our Constitution says only *Congress* may make laws. But since Woodrow Wilson, federal agencies have been writing "rules" – the Code of Federal Regulations. All these rules are unconstitutional as outside the scope of powers delegated, and as in violation of Art. I, §1. But Levin's amendment to "limit the federal bureaucracy" *legalizes* these rules and rulemaking as long as Congress approves them!

- Levin's amendment "**to limit federal spending**" also does the opposite of what he says. Our Constitution limits federal spending to the enumerated powers. **If you go thru the Constitution and highlight all the powers delegated to Congress and the President, you will have a complete list of the objects on which Congress is authorized to spend money.** That's how our Constitution controls spending. But everyone ignores it!

  Levin's amendment substitutes a budget for the enumerated powers, and thus *legalizes* the current practice where Congress spends money on *whatever* is put in the budget. His amendment thus **changes the constitutional standard for spending *from*** whether the object is an enumerated power; **and creates a new *constitutional authority* to spend on *whatever* Congress or the President want to spend money on!**

  And while his amendment *pretends* to impose a limit on ***the amount*** of spending, the limit is *fictitious* because it can be waived whenever Congress votes to waive it. [6]

It is not surprising that Mr. Farris' and Mr. Levin's proposed amendments would increase the powers of the federal government: It is *impossible* to rein in the federal government by amendments because amendments can't take away powers which weren't delegated in the first place!

**Accordingly, COSP can't produce even one amendment which would fix the federal government's violations of our Constitution.**

During September 2016, with great fanfare and hoopla, COSP staged a 3-day "simulated convention" at Williamsburg, Virginia, apparently to make us believe that at a convention called by Congress under Article V of our Constitution, the Delegates would come up with *wise* amendments which would "limit the power and jurisdiction of the federal government".

But as shown in COS Project's "simulated convention" dog and pony show and what they did there, one of the amendments was for term limits, the other five would markedly *increase* the power of the federal government. Yet the Delegates from Pennsylvania voted for the amendments marked with a * ! [7]

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[6] These and other of Levin's proposed amendments are addressed in Mark Levin's "liberty" amendments: legalizing tyranny.

[7] The Delegates from Pennsylvania were Senator John Eichelberger and Eugene Geesey. See footnote 7 here: **COS Project's "simulated convention" dog and pony show and what they did there.** One assumes they didn't understand the ramifications of these amendments, and were misled by persons of "insidious views" who were present and steered Delegates to the desired conclusion. **Statecraft is serious business – it takes systematic study of history, political philosophy, and original source documents to master.**

- One would make Congress's existing - and unconstitutional - practice of spending wildly on whatever they want, *constitutional* for as long as Congress continues to approve increases in the debt. *

- Another would delegate to the federal government dictatorial new powers over individual Americans such as I witnessed over 40 years ago in Communist East Europe and the Soviet Union: *it delegates to the federal government total power over the "movement" or "transportation" of "persons" across state lines!* That amendment also would delegate to the federal government additional dictatorial powers over Americans. *

- Under our existing Constitution, only Congress has the power to make law [Article I, §1], but one of the amendments would transform into "law" every word, order, dictate, ruling, opinion issued by anyone *in the Executive Branch* of the federal government. *

- Another would authorize Congress to impose a national sales tax & a national value added tax.

- Another would legalize the regulatory administrative law state and rulemaking by federal executive agencies. All those rules and the rulemaking process are now unconstitutional as in violation of Article I, §1, and as outside the scope of the enumerated powers. *

So their amendments **don't** limit the power of the federal government – the amendments would ***increase*** the powers of the federal government by delegating new powers over Americans [some soviet style] and by legalizing powers the federal government has *already usurped.*

**5. COSP says we must amend the Constitution because people in Washington don't understand it.**

*Rubbish!* Our Constitution is so simple Alexander Hamilton said *The People* are "the natural guardians of the Constitution". Hamilton expected **us** to be "enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority." [Federalist No. 16, next to last para].

If it's *on the list*, the federal government may do it. But if it's **not** *on the list*, they can't lawfully do it.

For clauses the Supreme Court perverted, such as the "interstate commerce", "general welfare" and "necessary and proper" clauses: We don't need a convention to draft amendments to show what the clauses mean – just look them up in The Federalist Papers! I've already done it – here it is on 1 page.

## 6. The George Mason Fabrication

COSP's whole case is based on a fabricated George Mason quote. COSP claims Mason said the Article V convention was given to State Legislatures because the federal government "would violate its constitutional limitations and the States would need to make adjustments to the constitutional text in order to rein in the abuse of power by the federal government." [8]

Mason ***never said*** that. Nor did any of the other Framers say such a silly thing!

James Madison kept a Journal at the federal convention of 1787. I went through it, pulled out every reference to what became Article V, and wrote it up – here it is. This is what *really* happened: Under the Articles of Confederation (our first Constitution), amendments had to be approved by the Continental Congress and all of the then 13 States.

A dispute at the convention of 1787 was whether Congress – under the second Constitution then being drafted (the one we now have) - should have any power over amendments.
George Mason wanted the people to be able to make amendments without approval of Congress. He said if only *Congress* can propose amendments, the People won't get the amendments *they* want if Congress doesn't agree. [9] So the convention method was added. [10]
Mason *did not say* that when the federal government usurps powers not delegated, the remedy is to amend the Constitution: *That's not in Madison's Journal*; and Mason and the others had just spent four months creating a Constitution which delegates only *a handful of powers* to the federal government.
Amendments cannot restrain federal power when the federal government usurps powers not delegated – they are ignoring *the existing* limitations on their powers! *And no one at the federal convention of 1787 suggested amendments could be used for such a purpose!*
George Mason agreed with the other Delegates that *the purpose* of Amendments is to remedy *defects in the Constitution*. Madison's Journal shows that on June 11, 1787, George Mason said,

> **The Constitution now being formed "will certainly be defective", as the Articles of Confederation have been found to be. "Amendments therefore will be necessary**, and it will be better to provide for them, in an easy, regular and Constitutional way than to trust to chance and violence. It would be improper to require the consent of the Natl. Legislature, because they may abuse their power, and refuse their consent…" [boldface added]

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[8] Michael Farris' paper, "Answering the John Birch Society Questions about Article V." HERE or HERE.

[9] See Madison's Journal for Sep. 15, 1787 on page 629.

[10] That the convention method was added doesn't mean that all thought it a great idea! It was a compromise [like slavery]; and the Delegates knew they couldn't keep future generations from doing what they had already done twice: Invoking the Right, acknowledged in the 2nd para of our Declaration of Independence, to throw off one government and set up a new one. They invoked that Right during 1776 to throw off the British Monarchy; and during 1787, to throw off the Articles of Confederation – and the government it created – and set up a new Constitution which created a new government. See Federalist No. 40, 15th para (Madison).

For more information, see The George Mason Fabrication.

Our problem today is **not** a defective Constitution. Our problem is *disobedient state and federal governments* and *ignorant people*. That calls for different remedies and our Framers spelled them out.

### 7. States have *no power* over an Article V convention.

COSP insists the States will appoint the Delegates; each State gets one vote; and Congress and the Delegates have *no power* over the convention – the States run the whole show.

That's not true. Article V says States may "apply" for a convention.
*Congress* "calls" it. Article I, §8, last clause, delegates *to Congress* the power to make the laws "necessary and proper" to carry out its power to "call" the convention.
Article V imposes no requirement that Congress permit States to select Delegates or even participate in the convention.

The April 2014 Report of the Congressional Research Service (CRS) shows that Congress sees Article V as *delegating to Congress* exclusive authority over setting up the convention; that Congress has traditionally claimed power to determine *the number and selection process* for Delegates; that Congress has planned to apportion Delegates to match Electoral Votes (so California would get 55 Delegates; Pennsylvania 20); and that in Congress' preparations for Article V conventions in the past, Congress has provided that Delegates would receive immunity from arrest.[11]
See the excerpt from Judge Van Sickle's paper HERE which points out that the text of Article V doesn't authorize States to submit "limited" or "conditional" or "single subject" applications to Congress. The text of Article V shows that *the convention is the deliberative body – and it cannot be limited or restricted by State legislatures!*

COSP insists they know *exactly* how a convention will operate. But page 27 of the CRS Report says:

> **"In the final analysis, the question what sort of convention? is not likely to be resolved unless or until the 34-state threshold has been crossed and a convention assembles."**

We'll have to *get* a convention before we know how it is going to operate.

This chart shows what State Legislatures, Congress, and Delegates have the power to do. The only power the States have is to ask ***Congress*** to call a convention. Once that's done, it's **out of the States' hands**.
So it's not a "convention of states" - it's a *federal* convention, called by the *federal* government, to perform a *federal* function. The States have no power at all – except to ask Congress to "call" it.

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[11] For more CRS quotes and page numbers see the Exhibit List HERE.

Why do they call it a "convention of states"?
Former law professor and COSP guru Rob Natelson said on Sep 16, 2010, that he would ***stop*** calling it a "constitutional convention"; henceforth, he would call it, among other things, a "convention of states".
The term is *an Orwellian marketing gimmick* to make people believe that Article V provides for a convention controlled by States. See Convention of States adopts Newspeak to sell the Con-Con.
The Delegates won't be under State authority. They will be Sovereign Representatives of The People performing a federal function. As Sovereign Representatives, they can impose a new Constitution which *eliminates* the States and the federal government.

So! *Congress* sets up the convention.
And *then* the Delegates - as Sovereign Representatives of The People - have the power to throw off our Constitution and the form of government it created and set up a completely new one.

## 8. COSP's false assurances of safety

COSP claims a convention is safe because three fourths of the States have to ratify whatever comes out".

*That's not true.* Here's why:

**The Declaration of Independence** says **it's the Right of the People to alter or abolish their *Form* of government, and set up a new government.**

- Our Representatives invoked that Principle in 1776 to throw off British rule. In 1778, we ratified The Articles of Confederation, to establish our new government.
- In 1787, we invoked *that same Principle* to throw off the Articles of Confederation and the government it created; and we set up a *new* Constitution which created a *new* government.
- If there is an Article V convention today, the Delegates will have the same power to get rid of our second Constitution and impose a third Constitution which creates a new government.

How did we get from our first Constitution to our second Constitution?
**There was a convention to propose Amendments to our first Constitution!** Pursuant to Article XIII of The Articles of Confederation, the **Continental Congress** resolved on February 21, 1787 to call a convention to be held at Philadelphia:

**"for the sole and express purpose of revising the Articles of Confederation".**

But the Delegates *ignored* this limitation, and they ignored the instructions from their States [12] and they *wrote* ***our second Constitution***. Because of *the inherent authority of Delegates to throw off their Form of government;* it is impossible to stop it from happening at another convention.
If we have a convention now, George Washington, James Madison, Benjamin Franklin, and Alexander Hamilton won't be there to protect you. You don't know who the delegates will be. But they will have the power to impose a third Constitution.

PLEASE UNDERSTAND: A third Constitution will have its own *new mode* of ratification. Our first Constitution required the Continental Congress and *all* of the then 13 States to ratify Amendments.

But our second Constitution, drafted at the *amendments* convention of 1787, provided at Article VII that it would require only 9 States for ratification:

- 13 States and the Continental Congress needed to ratify *amendments* to *our first Constitution*; but only
- 9 States needed to ratify *our second Constitution*.

If we have a convention today, there is *nothing* to stop Delegates from proposing a ***third*** Constitution with its own new mode of ratification.

New Constitutions are already prepared or in the works. E.g.,

- The Constitution for the Newstates of America is **ratified by a national referendum** [Art 12, § 1]. The States are dissolved and replaced by regional governments answerable to the new national government.

- Here's the proposed Constitution for "The New Socialist Republic in North America".

- The Constitution 2020 movement **is backed by George Soros, Eric Holder, Cass Sunstein,** and Marxist law professors. They want a Progressive Constitution *in place* by the year 2020.

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[12] Article XIII of the Articles of Confederation required approval of amendments by the Continental Congress and by every State. The Instructions to Delegates from their States said the purpose of the Convention was:

- for "alterations to the Federal Constitution which, **when agreed to by Congress and the several States, would become effective**": Virginia, Pennsylvania, Delaware, Georgia, S. Carolina, Maryland, & New Hampshire;
- "**for the purpose of revising the Federal Constitution**": Virginia, Pennsylvania, North Carolina, Delaware, and Georgia;
- "**for the sole and express purpose of revising the Articles of Confederation**": New York, Massachusetts, and Connecticut;
- "**provisions to make the Constitution of the federal Government adequate**": New Jersey.

Do you know about the North American Union? During 2005, George W. Bush met on his ranch with the Prime Minister of Canada and the President of Mexico and they sketched it out. The three Countries merge and a Parliament is set up over them. Read the Task Force Report on the North American Union. **It erases our Country.** [13]

They need a new Constitution to transform us ***from*** a sovereign nation ***to*** a member state in the North American Union; and they need *a convention* to get that new Constitution.

How do they get a convention? Tell the American People that the purpose of a convention is to get amendments to "limit the power and jurisdiction of the federal government".

### 9. COSP claims States can control Delegates with "unfaithful delegate" laws

They can't.
Delegates would be the Sovereign Representatives of the People performing a *federal* function – not a state function - and wouldn't be under the control of the state or federal legislatures which are merely "creatures" of the Constitutions which created them. [See para 2 of this Flyer for Pennsylvania and these two papers: Why states *can't prevent* a runaway convention and Delegates to an Article V Convention Can't be Controlled by State Laws!]

As Sovereign Representatives of The People addressing our federal Constitution, Delegates would have Sovereign Immunity for whatever they do.

And remember! The second paragraph of the Declaration of Independence recognizes their right to throw off our present Constitution and set up a new constitution which creates a new system of government.

**"Faithful delegate" bills are dangerous and misleading because they create the false impression that an Article V convention is "safe". Persons who believe that would do well do heed the warnings of the "Brilliant Men" in the next section.**

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[13] The Establishment Elite and the Council on Foreign Relations (CFR) want to move the United States into the North American Union. If the CFR takes down its link to the Report of the Task Force, go HERE.

**10. Brilliant men have warned that delegates to a convention can't be controlled**

- During April 1788, our future 1st US Supreme Court Chief Justice John Jay wrote that another convention would run an "**extravagant risque.**"

- In **Federalist No. 49**, James Madison said a convention is **neither proper nor effective** to restrain government when it encroaches.

- In his Nov. 2, 1788 letter to **Turberville**, Madison said he "trembled" at the prospect of a 2nd convention; and if there were an Article V convention: "the most violent partizans", and "individuals of insidious views" would strive to be delegates and would have "a dangerous opportunity of sapping the very foundations of the fabric" of our Country.

- **In Federalist No. 85 (last para)**, Hamilton said he "dreads" the consequences of another convention because the enemies of the Constitution want to get rid of it.

- **Justice Arthur Goldberg** said in **his 1986 editorial in the Miami Herald** that "**it cannot be denied that**" the Philadelphia convention of 1787 "**broke every restraint intended to limit its power and agenda**", and "**any attempt at limiting the agenda [at an Article V convention] would almost certainly be unenforceable.**"

- **Chief Justice Warren Burger** said in his **June 1988 letter to Phyllis Schlafly:** "...there is no effective way to limit or muzzle the actions of a Constitutional Convention... After a Convention is convened, it will be too late to stop the Convention if we don't like its agenda... A new Convention could plunge our Nation into constitutional confusion and confrontation at every turn..."

- **Justice Scalia** said on April 17, 2014 **at the 1:06 mark of this video**: "**I certainly would not want a Constitutional Convention. I mean whoa. Who knows what would come out of that?**"

- **Other eminent legal scholars have said the same – Neither the States nor Congress can control the Delegates. See THIS.**

Yet convention supporters ridicule these warnings as "fear mongering." And they quote *law professor* Scalia ***in 1979, before*** his decades of experience as a Supreme Court Justice, to "prove" otherwise.

Ask yourself, "Is it possible that James Madison, Alexander Hamilton, Chief Justice Jay, Justice

Goldberg, Chief Justice Burger and Justice Scalia understood something about the plenipotentiary powers of Delegates to an Article V convention which the pro-convention lobby hasn't grasped? And are there "violent partizans" and "individuals of insidious views" among us today? Yes, and they want a convention.
But COSP says only "moral and wise" people will be Delegates. Let's look at that claim. There are three ways to select delegates:

- **Congress:** Do you trust Congress to appoint "moral and wise" people as Delegates?
- **State Legislators**: Do you trust State Legislatures *in the other States* to appoint "moral and wise" people as Delegates?
- **Popular Election**: Do you trust the People to elect "moral and wise" Delegates?

This is the most corrupt period in our history; and "moral and wise" people haven't been in charge of anything for 100 years.

### 11. Why Americans have been misled

COSP has been able to mislead people because *they don't know* that our Constitution ***already limits*** the federal government ***to*** the "few and defined" enumerated powers listed in the Constitution; and that our Constitution ***already limits*** Congress' spending ***to*** the enumerated powers.

Because they don't know, they can be *manipulated* to believe *the Constitution* is the problem. But Amendments don't control governments which already ignore the Constitution:

- The First Amendment didn't stop them from banning Christian speech.
- The Second Amendment didn't stop them from restricting guns.
- The Fourth Amendment didn't stop them from spying on us without a warrant.
- The Fifth Amendment didn't stop them from uncompensated regulatory takings; and
- The Tenth Amendment didn't stop them from usurping thousands of other powers not delegated.

### 12. With federal money comes federal control

The Tenth Amendment says all powers not delegated to the United States by the Constitution are reserved to the States or the People. *What happened to these reserved powers*?
The States *sold them* to the federal government.
According to the PEW Report, for FY 2016, 32.6% of **the State governments'** average revenue was from federal funds.

The States aren't victims of federal tyranny - they *go along* with federal tyranny. They do it for the money, and all that money is added to the national debt.

### 13. The push for an Article V convention is from the top down – it is not "grass roots"

Billionaire globalists are funding this push for an Article V convention. Many people are being paid lots of money to push this. [14] See, e.g.,

- Kochs Bankroll Move to Rewrite the Constitution
- Mega-rich conservative donors are behind Texas' obsession with amending the Constitution
- Disturbing Radical Agenda Behind Article V Amendment Convention (Con-Con)
- Socialists and Soros Fight for Article V Convention
- Working Together to Rewrite the Constitution
- Soros in Vermont: Leftist billionaire behind state's call to keep money out of politics

WHY does Big Money want an Article V convention? To get a new Constitution.

**14. Our Framers told States to nullify unconstitutional acts of the federal government**

State officials take an Oath to support the federal Constitution – Article VI, clause 3, US Constitution.

Our Framers said that when the federal government violates the Constitution, the States **must obey the *Constitution*** and refuse to go along with the violation. See "Nullification Made Easy" and "What Should States Do When the Fed gov't Usurps Power?"

Nullification is what our Framers advised when acts of the federal government are unconstitutional.

**And the States, as the "creators" of the federal government, are *the final authority* on whether acts of their "creature" violate the constitutional compact the States made with each other.**

Please contact me with your questions or comments.

At your service,

Joanna Martin, J.D.
publiushuldah@gmail.com
https://publiushuldah.wordpress.com/

[14] COSP's[COS Action] tax return for 2016 shows that former US Senator Tom Coburn was paid $240,000. to lobby for the COSP application during 2016.

Please oppose the following bills:

**SR133(HR187) (COSP); SR25(HR357) (WP); SR134 (Regulation Freedom);**

**Any Article V Convention, no matter the name or reason will be automatically set in motion if 34 states apply. And once Congress calls for a convention we have no way of knowing who the delegates will be, that are charged with running the convention and there are no clear rules limiting the scope of the convention. In other words we could end up with a convention that completely re-writes the US Constitution just like they did in 1787. And additionally at the 1787 convention, they changed the rules for adopting that new Constitution and they succeeded in putting said document into effect.**

**I don't know how you feel about all that, but I have little faith that a delegation put together by Congress of today can be trusted to give us any improvements on the US Constitution. Not without destroying the delicate balance and careful distribution of power that has kept this country more free than any other in history.**

**Most Respectfully, Christopher Affleck, Philadelphia, PA**

I agree that an Article V Convention is dangerous and would put the Constitution in harm's way. Any such call should be opposed. Roseann Affleck, Huntingdon Valley,Pa

Regardless of the desired amendment or stated subject, an Article V Convention (ConCon) or Convention of the States opens the Constitution to extensive rewrite or to potentially to be replaced altogether as the Articles of Confederation were at the original Philadelphia convention in 1787.

I am writing in opposition to SR 133, SR 134, and SR 254, and to any and all calls for an Article V Convention (or Convention of States, Constitutional Convention, or a similar convention call under any other name).

The most fundamental reason for my opposition to an Article V Convention is because of its inherent potential to become a "runaway" convention, which could fundamentally alter (or even abolish) our Constitutional form of government, based on the People's unalienable right to do so, as expressed in the Declaration of Independence.

It is undeniable that the federal government has far exceeded its Constitutional limits and usurped powers rightfully reserved to the States and to the People. The American People and our representatives in the state and federal government have failed to restrain these federal usurpations. The only possible remedy will come from education among the People and our consequent election of Constitutionalist who will join the few already in office in restraining the federal government and reversing their past encroachments. You, dear Senators, have the power to limit the encroachments of the federal government under our current Constitutional system. We, the People, must help you by electing more Constitutionalists who will assist you in this grave duty.

Without this, no additional Constitutional restraints will be sufficient. With proper education and action on the part of the People and the States, no such amendments are necessary. The system devised by our Founders is sound, and it would be foolish, especially in this politically charged climate, to attempt to change their framework which involves a delicate balance of power between the States and federal government, as well as between the several branches of the latter.

Altering our Constitutional system via an Article V Convention would be especially foolish because of its potential to become a "runaway" convention and make wholesale changes to our Constitution. Anyone who dismisses such claims as crazy, or mere "fear-mongering", is either ignorant or deceitful. It is undeniable that there are those who oppose the Constitution and the basic principles of Americanism, and who would use their influence in the media, academia, and society at large, to control the convention, propose dangerous amendments, and push for their ratification. Constitutionalists could, and would, oppose this; however, to deny there is any danger in calling a Convention is to ignore the obvious.

We must therefore resist the Siren Song of an "easy way out", hoping for a convention that could magically fix all of our problems. We must roll up our sleeves and do the difficult work of taking action in the States to oppose federal usurpations. This is the only real solution to our Constitutional crisis.

I would like to close by reiterating my opposition to SR 133, SR 134, and SR 254, and to any and all calls for an Article V Convention. Thank you for your time and attention.

Sincerely,
Jon Affleck
Lansdale, PA

I have learned that the Pennsylvania Senate plans to address applications for an Article V Convention this Wednesday, October 17. I have read through the bills to understand specifically what has been requested in these calls. I have been, and remain, firmly convinced that a convention of this nature in today's political climate will put our current US Constitution at risk of profound changes from which we will not recuperate our freedoms currently granted therein. To spark thought on the matter, only a few of the considerations are:

- If Congress does not adhere to the US Constitution now (which it does not), why do we believe it will adhere to new amendments particularly as it relates to a balanced budget or federal overreach?
- Is our problem actually with the Constitution and the Bill of Rights or is it with Washington?
- Will amending the Constitution change the thinking, behavior and action of Congress?
- If we were currently adhering to the Constitution, would we not already be maintaining a balanced budget? At a convention could delegates, for example, craft a BBA which would exclude "essential benefits (i.e.welfare spending)" or military funding? What is our recourse if they did?
- Are we electing constitutionalists to the highest positions of government? Do our representatives even know or understand the US Constitution? Do they uphold their oath of office to protect the Constitution?
- Who would represent our State at a constitutional convention? The only stated power of the legislatures is to call the convention. It is not guaranteed they will have power over delegate selection, convention rules, requirements for ratification....
- Considering the current political climate, is this an optimal time for such a convention?
- Do we believe that big money could intercede in the process? How would a convention be funded? What would it cost? Is the bill on taxpayers?
- Both "sides" have their issues. The Right champions a balanced budget and term limits while the Left would like an Campaign Finance Amendment and repeal of the 2nd Amendment.

The unsavory truth is that the right way is not always the easiest. In order to reform election expenditures, balance our federal budget, term limit our representatives, the people must elect statesmen who will vote for these principles in coordination with our existing Constitution. Those who do not abide now will neither abide by an amended version.

Please vote NO on SR133, SR254, SR134. Thank you for your serious consideration of this matter. Regards,
Stacey West

For the hearing this wed. oct 17 2018, I request you vote no on sr133 (hr187) ; sr254 (hr357) ; sr 134 and

any other application from pennsylvania asking congress to call an article V convention or convention of states.

These bills put our constitution at great risk, at the convention of 1787 the delegates ignored congress's and

the states limiting instructions and wrote a new constitution, the one we have now.

Delegates would have the right, as recognized in the 2nd paragraph of our declaration of independence to

completely change the constitution and write a new one, which can create a new government.

Seeing things that can and went wrong, our Founding Fathers James Madison and Alexander Hamilton

trembled and feared at the prospect of another convention.

Please, vote no.

Thank You,

Ronald Falk

October 15, 2018

Senate State Government Committee:
I urge you to vote NO on all 3 Senate Bills and all other bills which apply to Congress for an Article V convention.
James Madison and Alexander Hamilton were Delegates to the "amendments convention" of 1787, and had personal knowledge that Delegates can't be controlled. That's why Madison trembled at the prospect of an Article V convention; Hamilton dreaded one; and future Chief Justice John Jay said another convention would run "extravagant risques".
We can lose our Constitution at a convention. Vote "NO" on SR133 (HR187); SR254 (HR357); SR 134 and any other applications from Pennsylvania asking Congress to call an Art. V convention.

Jim Barr
200 Frankfort Ave
Pittsburgh, PA 15229

Senator:

I urge you to VOTE NO ON SENATE RESOLUTIONS NO. 133, No 134, AND NO. 254 for the following reasons.

I see these Bills as getting us further away from the Constitution. Even the premise of the Convention of States Project regarding the purpose of amendments distances us from what the Founders said. The COSP people say that the Founders foresaw the day when the federal government would become so large that it would need to be reined in, so they gave us Article V as a way to do that. James Madison kept a journal of the proceedings of the 1787 convention, so we know what was said and who said it. George Mason said that the constitution they were giving us would be found to be defective, so they were providing us with ways (in Article V) to amend it. They understood that amendments are to correct flaws in documents, which you do in the state legislature. Amendments are not to be used to correct human problems with power.

SJR 133

Our Constitution already provides for a government with limited, enumerated powers, so why would you propose an amendment to do what the Constitution already does? In *Sovereign Duty* by KrisAnne Hall, she reminds us that it is the duty of our elected state legislatures to keep the federal government in check. It is up to you to use the power of nullification whenever a law or regulation comes to you that is unconstitutional. You have let the federal government usurp the power that should be yours, and Congress has let agencies usurp its legislative powers by writing regulations which have the power of law.

The federal government's spending powers are also limited and enumerated. The balanced budget amendments that have been proposed so far have no spending limits. This has the potential to result in unlimited spending on anything that is approved by the states, thereby making the federal government no different from the states. This will increase the national debt and grow the federal bureaucracy, not limit it. It will make Constitutional all the spending that is presently unconstitutional and will send us further away from the Constitutional republic our Founders gave us.

We already have term limits; they are called elections. If the people are not properly educated, they will keep electing the wrong people to represent them; term limits will not help that. With term limits, the baby is being throw out with the bath water, because good representatives will have to leave when their terms are up. Having many more Congressmen will mean more spending on benefits. Robert Brown says, "If we had term limits on Congress, once your congressman begins his final term, you are no longer his constituent! Now, his only constituents are the lobbyists, for his entire final term (2 years in the House, 6 years in the Senate). If you think lobbyists have too much influence on Congress now, just wait until a large portion of Congress have no citizens as constituents!"

It is the failure of the electorate to elect the right people to represent them and to hold them accountable. That is the problem.

Most Constitutional scholars say that a Constitutional Convention cannot be limited in scope; it must be general. Delegates cannot be bound, because once the convention is convened, it is sovereign and is doing the work of the people, not of the states. The only power the states have is to call the convention and to vote on amendments. The Congressional Services Report, last modified in 2014, tells us what Congress believes it can do at a Constitutional Convention; and it is a lot more than what the COSP people are saying! That is why the second part of Article V is intentionally vague, according to Don Fotheringham. Delegates will have plenipotentiary power to do whatever they want at an Article V convention because of the second paragraph of the Declaration of Independence. The Electoral College could be eliminated; the ratification process could be changed; much or all of our Constitution could be changed or eliminated.

Koch money is pushing for an Article V convention because they and other corporatists and globalists want a North American Union, to be governed by a Parliament. What would happen to our Constitution, our rights, and our sovereignty? George Soros wants a new constitution by the year 2020—gotten at a Constitutional Convention. I have a copy of the Constitution for the Newstates of America, which, I understand has been in the works since the 1970's. You can bet that that one will be enforced!

What is particularly disturbing is that some of you have been so easily swayed by smooth-talking, compelling people. Go to the sources; James Madison's journal, The Federalist Papers, etc. Publius Huldah is an exceptionally knowledgeable retired litigation attorney who blogs about the Constitution (www.Publiushuldah.com). There are others. Her comments are below concerning SR 254.

SR 254 (Citizens United)

*The federal government does not now have the constitutional authority over the country at large to restrict* ***any*** *form of speech, to restrict campaign contributions, or to limit the spending of money. These are not enumerated powers delegated to the federal government. Furthermore, the exercise of such powers is expressly forbidden by the First Amendment.*[1]

*The effect of the amendments suggested by Wolf-PAC would be to increase the powers of the federal government over The People by delegating to the federal government the power to* ***prevent*** *or* ***restrict*** *certain groups and combinations of people from speaking in the public square on the critically important area of political speech. And we won't find out until the amendments are drafted, which groups or combinations of people will be allowed to speak out on political issues and donate money to the causes or candidates they support; and which groups or combinations of people will be prohibited from doing the same. Wolf-PAC proposals are a major step in eliminating free speech and private use of money in this country.*

*Our problem isn't that corporations donate money to political campaigns - our problem is that everyone ignores the Constitution. How many of us know the enumerated powers delegated to the federal government? How many know that our Constitution created a federal government of enumerated powers only? If "We the People" had demanded that Congress restrict itself to the enumerated powers, no one would want to spend large sums to influence federal legislation. Who would pay large sums of money to influence Congress's laws respecting the Bankruptcy Code*

*(Art. I, §8, cl. 4); the patent and copyright office (Art. I, §8, cl. 8); and the standard of Weights and Measures (Art. I, § 8, cl. 5)?!*

*Our federal government is corrupt because it exercises thousands of usurped powers – and special interest groups pay large sums to get unconstitutional legislation favorable to them passed; and unconstitutional legislation unfavorable to them killed.*

*i To the extent that Congress and the federal courts have in the past restricted such speech and contributions, their acts have been unconstitutional as outside the scope of powers delegated by our Constitution, and as in violation of the First Amendment.* ____Publius Huldah

Thank you.

Lorrie Gloede

ljog1@yahoo.com

## Exposing the Convention of the States (COS) as an Article V Constitutional Convention

*December 9, 2013* *Article V Amendment Convention, Constitutional Convention* Secure Arkansas

**The Convention of the States (COS) is an Article V Constitutional Convention (Con-Con) supported and funded by the elitists.**

**The Constitutional Convention, or Con-Con, that's being sold to the legislators is a lie and has to be stopped.** At least three White House advisers and officials, including President Obama's regulatory czar, Cass Sunstein, have ties to an effort funded by billionaire George Soros to push for a new "progressive" U.S. Constitution by the year 2020. Don't fall for the lies of the elitists. Say NO to a Con-Con or whatever label they call it.

U.S. Constitution Article V

Under Article V (five) of the Constitution, our founding fathers established two methods for future generations to add amendments to the Constitution.

**Method 1**: Two-thirds of both houses of Congress can propose an amendment, and then three-fourths of the states ratify it… or not. (This is the only safe method.)

**Method 2**: Two-thirds (34) of the states call for a federal constitutional convention, and then three-fourths of the states ratify whatever amendments are proposed by the convention. (This method must be avoided at all costs. This method could lead to a runaway convention in which our original Constitution would be scrapped and a new Constitution would be substituted consequently stripping us from our bill of rights.) There is a proposed Constitution already waiting for the New States of America.

We Have Been Infiltrated

Many grassroots, Tea Party, and Christian groups are being infiltrated with progressive ideas by people presenting themselves as Conservatives, Christians, or Patriots. **We must all be truth**

**seekers.** Don't accept any information without checking out both the message **AND** the person. That includes everything. Just because someone claims to be something, that doesn't mean they are. Everyone and everything needs to be vetted. Sometimes the truth is hard to swallow, but it is the truth.

**The Con-Con is being introduced in various forms, and they are as follows:**

1) National Debt

2) Constitutional Convention (Old and Outdated)

3) Balanced Budget

4) Article V Amendment Convention

5) Compact for America

6) National Debt Reduction Act (NDRA)

7) Mark Levin's book, *The Liberty Amendments* (Article V Amendment Convention)

8) Convention of States (COS)

**The groups pushing for a Constitutional Convention (Con-Con) are as follows:**

1) *American Legislative Exchange Council* (ALEC)

2) *10 Amendments for Freedom, Inc*, chaired by William Fruth, President of POLICOM Corporation

3) Americans for Prosperity

4) Council on Foreign Relations (CFR)

5) Goldwater Institute

6) Trilateral Commission (TC)

7) Tea Party Patriots (TTP), funded by Freedom Partners and Center to Protect Patient Rights

8) Career elitist politicians from both the Republican and Democratic parties

9) Mark Levin – Sponsored by Americans for Prosperity

10) Citizens for Self-Governance (CSG)- Michael P. Farris, Senior Fellow for Constitutional Studies, Head of Convention of the States (COS) Project (connected to Grover G.Norquist, a CFR member. This is the latest organization that came on line to destroy our U.S. Constitution via a Con-Con.

11) American Constitution Society (ACS). ACS is the main organization behind the Con-Con movement to ensure a more "progressive" constitution, having received more than $2,201,500 from

Soros' Open Society since 2002. The funders for ACS are the Barbra Steisand Foundation, the Sandler Foundation, and George Soros' Open Society Foundations.

The Convention of States (COS) Project, along with many other Con-Con groups, has connections to various elitist organizations. Some of the connections are shown below. Click on all the hot links below to see the connections.

**The officers of the Convention of States (COS) are as follows:**

Michael P. Farris is Head of Convention of the States Project [He is no longer with them .)

Mark Meckler is the President of Citizens for Self Governance and was the co-founder of Tea Party Patriots but has since left that group.

Mark Wohlschlegel II is the Convention of the States Project Executive Director

Laura Fennig is the Convention of the States Project – Coalitions Director

Jordan Sillars is the Convention of the States Project – Communications Director

Michael P. Farris Connection

Michael P. Farris is Head of Convention of the States Project or better known as a Constitutional Convention (Con-Con) and President of Parentalrights.org in which Council on Foreign Relation (CFR) member Grover G. Norquist is the Director. Mr. Farris is also the advisory board member of Christian Freedom International. George Soros is also a member of the Council on Foreign Relations with Grover P. Norquist.

Grover P. Norquist Connection

Grover P. Norquist is the director for Council for National Policy, Founder and President of Americans for Tax Reform, Executive Director of National Taxpayers Union, Director of American Conservative Union, President of American Society of Competitiveness, advisory board member of America's Future Foundation, co-founder of Janus-Merritt Strategies, advisory council member of GOProud, Field Director of Citizens for America, lobbyist for Joseph E. Seagram & Sons Inc., contribution editor of American Spectator, member of Council on Foreign Relations, and political ally of Jack Abramoff.

Donald L. Nickles Connection

Donald L. Nickles (former Senator from Oklahoma) is an advisory board member of Christian Freedom International with Michael P. Farris. Donald L. Nickles is a member of Burning Tree Club along with members John A. Boehner, Antonin Scalia, Bob Schieffer, George W. Bush, Robert H. Michel, Jon T. O'Rourke, Tom C. Koroiogos, W. DeVier Pierson, Bryant Gumbel, Stanley Ebner, R. Scott Pastrick, John W. Warner, Lloyd N. Hand, and James C. Free

Burning Tree Club Connections

(shows some of the current and former members) This is a very exclusive "men's only" club.

Donald L. Nickles is a member of the Burning Tree Club. The Burning Tree Club is a private, all-male golf club in Bethesda, Maryland. The initiation fee is $75,000 while membership fees are $500 per month.

George Soros Connection

George Soros is a member of Council on Foreign Relations along with Grover P. Norquist

Kenneth C. Griffin is a contributor to Americans for Prosperity and was also the fundraiser for the 2008 Barack Obama and the 2008 John McCain Presidential Campaigns at the same time. Mr. Griffin was also a major contributor to the Rahm Emanuel 2011 Chicago Mayoral Campaign. Mr. Griffin's wife, Anne Dias Griffin, is the analyst for Soros Fund Management

Richard H. Fink is the Director of Americans for Prosperity, co-founder and Director of Americans for Prosperity foundations, Executive VP of Koch Industries, former co-founder & Director of Koch Industries, member of Freedom Partners which is the funder for Tea Party Patriots.

Timothy R. Phillips is the President of both Americans for Prosperity and Americans for Prosperity Foundation.

Mr. Phillips is also the co-founder of Century Strategies of which Ralph Reed Jr. is the founder and President

David H. Koch is the Chairman of Americans for Prosperity Foundation and a Donor for Americans for Prosperity.

Mr. Koch is also the EVP of Koch Industries.

**Many of the organizations listed below are connected through think tanks and the State Policy Network all pushing for a Constitutional Convention (Con-Con).**

American Constitution Society (ACS) Eric H Holder Jr. is a board member, Janet Reno is a Board of Advisor member, and ACS is funded by George Soros Open Society Foundations, Barbra Streisand Foundation, and Sandler Foundation).
Americans for Limited Government

Americans for Prosperity Funded by Koch Brothers

Americans for Tax Reform

American Conservative Union

American Society of Competitiveness

America's Future Foundation

Cato Institute George Soros Open Society Foundations is a funder of Cato Institute and both are members of the State Policy Network.

Center to Protect Patients Rights

Christian Freedom International

Citizens for America

Club for Growth CFR Member J. Kenneth Blackwell is one of the Directors with Director Frayda Levin Levy. Frayda Levin Levy is also a Director of Americans for Prosperity

Council for National Policy

Freedom Partners

FreedomWorks

Goldwater Institute

GOProud

Heritage Foundation 1 of 2

Heritage Foundation 2 of 2

Janus-Merritt Strategies

Parentalrights.org

Roe Foundation

State Policy Network

Tax Foundation

Tea Party Patriots

**Reasons against a Con-Con**

1) Barry Goldwater said: "[I am] totally opposed [to a Constitutional Convention]...We may wind up with a Constitution so far different from that we have lived under for two hundred years that the Republic might not be able to continue."

2) Chief Justice Warren Burger said: "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."

3) With George Washington as chairman, they were able to deliberate in total secrecy, with no press coverage and no leaks. A Constitutional Convention today would be a free-for-all for special interest groups, television coverage, and press speculation.

**Reason why we must NOT promote an Article V Amendment Convention:**

**There is no provision in Article V empowering state legislators to choose the delegates to a Constitutional Convention or to "limit" the scope of a Con-Con. There are no rules, no regulations or instructions, and once a Convention is underway, the delegates answer to NOBODY!**

**According to Corpus Juris Secundum** 16 C.J.S. 9

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.

**The members of a Constitutional Convention are the direct representatives of the people, and as such**

**•(1) They may exercise all sovereign powers that are vested in the people of the state.**

**•(2) They derive their powers not from the legislature, but from the people.**

**•(3) Their power may not in any respect be limited or restrained by the legislature.**

**•(4) Under this view, it is a Legislative Body of the Highest Order and may not only frame, but may also enact and promulgate.**

**Citations:**

•(1) Mississippi (1892) Sproule v. Fredericks; 11 So. 472

•(2) Iowa (1883) Koehler v. Hill; 14 N.W. 738

•(3) West Virginia (1873) Loomis v. Jackson; 6 W. Va. 613

•(4) Oklahoma (1907) Frantz v. Autry; 91 p. 193

•(5) Texas (1912) Cox v. Robison; 150 S.W. 1149

**The U.S.A. is in Danger**! Once 34 states pass a bill asking for an Amendment Convention in which they are requesting a Constitutional Convention, we will have the possibility of a runaway convention. About 26 states have a current resolution calling for some sort of a Constitutional Convention. There is no way to control a Constitutional Convention or the outcome. Ford and Rockefeller Foundation spent $25 million and 10 years writing a constitution called "The New States Constitution".

**Dangers of a Con-Con**

1) With a Constitutional Convention, the whole constitution can be thrown out and a new one substituted in its place.

2) With a Constitution Convention, it is the delegates that control the outcome.

3) You can NEVER trust the delegates with the Constitution. The outcome of a Constitutional Convention is always worse and not what you would expect.

**Hegelian Principle**

1) The Hegelian Principle is being used against the people to push for a Constitutional Convention. The technique is as old as politics itself. The Hegelian principle brings about change in a three-step process: Thesis, Antithesis, and Synthesis.

2) The first step (Thesis) is to create a problem (Old Constitution is outdated, needs grammar changes and is hard to follow because of its many amendments)

3) The second step (Antithesis) is to generate opposition to the problem. (Government cannot operate if Constitution is not changed and it is hard to follow because of the many amendments)

4) The third step (synthesis) is to offer the solution to the problem created in step one. (New Constitution that corrects only GRAMMAR and makes for easy to follow constitution)

**Past History**

1) There has been only one Constitutional Convention in the history of the nation – that was in 1787. At the time, the nation was held together by the Articles of Confederation. The states were having a difficult time performing commerce among themselves. So it was decided to hold a Constitutional Convention to simply discuss how interstate commerce might be better organized. As the delegates were selected, **delegations from a majority of states were given specific orders by their states to discuss nothing else beyond the commerce issue.**

2) However, some delegates including James Madison had a very specific agenda planned for the convention and as soon as the delegates arrived at Independence Hall in Philadelphia, they closed and locked the door, pulled down the shades and met in secret for a month. When they were finished, they had created an entirely new nation. We were very lucky that the convention was attended by men like Ben Franklin and George Washington and Madison. They produced the most magnificent document ever devised for the governance of man.

**Present Day**

Today, we have entrenched power forces led by the likes of Barack Obama, Nancy Pelosi, and Harry Reid. And we have notoriously weak leaders like current House Speaker John Boehner and Senate Minority Leader Mitch McConnell who rarely miss a good compromise to keep the peace. These are the people who will decide the rules for the convention, including delegate selection. Do you trust them to follow the rules dictated by state legislatures? Do you think Pelosi and Reid would pass up an opportunity to set their own rules to guarantee a Constitution to their liking?

**Rules were changed in 1787**

And there's more. Concerning the argument that no matter what the delegates produce, the states still must ratify it – thus serving as a safeguard to foolish behavior, consider this fact: the Articles of

Confederation required that any changes be ratified by 100% of the states. That was the document that was the law of the land – until something else was put into place. But, when the new Constitution was put to the states for a vote of ratification, suddenly they needed only two thirds to approve it. Why? The fact is, Article V of the new Constitution was used – even before the Constitution which contained it was approved. Now, what do you think Reid and Obama and company would do with that precedent? What if the new document produced by the Con-Con said ratification only required a vote of Congress – or of some special commission? The precedent of 1787 says that could happen. So much for protection by the states.

**Safe Solution**

1) States Must Enforce, Not Revise, the Constitution!

2) Find and support candidates who understand the Constitution, obey it, and agree to work to dismantle the unconstitutional federal apparatus.

3) The states must rein in our out-of-control federal government by enforcing the Constitution through nullification of unconstitutional federal laws, rather than by revising the Constitution through an inherently risky constitutional convention process.

4) States must enforce the 10th Amendment State Nullification.

5) We must be forceful and vigilant in demanding our legislators obey their oath of office to the Constitution. The legislators cannot be allowed to rewrite the very document that is our last protection against total destruction of our God-given unalienable rights.

**Ending Statements**

1) "The prudent see danger and take refuge, but the simple keep going and pay the penalty." Proverbs 27:12

2) "If you will not fight for the right when you can easily win without bloodshed; if you will not fight when your victory will be sure and not too costly; you may come to the moment when you will have to fight with all the odds against you and only a small chance of survival. There may even be a worse case: you may have to fight when there is no hope of victory, because it is better to perish than to live as slaves."

~Sir Winston Churchill

3) **Only** an Amendments or Article V Convention **ITSELF** CAN LEGALLY MAKE ITS OWN RULES – not an Interstate Compact, per U.S. Constitution Article V.

4) If Congress willfully ignores the authority of the U.S. Constitution now, why would we expect it to obey the Constitution when amended?

5) **A NEW CONSTITUTION** was already devised in 1970 by the *Center for the Study of Democratic Institutions* and funded by the *Ford Foundation*!

6) Billionaire George Soros has VOWED to replace the U.S. Constitution by year 2020 and is in a position to take advantage of a convention to do so.

7) The ratification process originally required 100% of the states to ratify amendments. Now it is set to 75%. This weakening precedent exists and holds weight in future conventions

8) **Say NO to all Con-Cons!**

Please post my testimony in OPPOSITION to SR133(HR187) COSP, SR254(HR357) WolfPAC, SR134 REG Freedom, and All Other Article V Convention Legislation online and distribute it to committee members with their packets.

Respectfully,

Betty Lucas
Mechanicsville, VA

Honorable Senators:

Please allow me to share some of my correspondence with a COS Supporter in which I asked him:

*"Will you share with me what the deciding factor was in your decision to support this Article V application to Congress? As Congress makes all the rules per federal law, how do you know that Congress won't chose themselves as delegates? Should that happen, all that Nebraska has accomplished is to give up its state sovereignty to Congress."*

I also shared this with him:

*Here is the language of Article V of the U.S. Constitution*: https://www.archives.gov/federal-register/constitution/article-v.html

**Article V, U.S. Constitution**

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**Article V**

**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 **conventions in three fourths thereof**, as **the one or the other mode of ratification may be proposed by the Congress;** provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.

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"There is no such thing as a "COS" under Article V. Show me where a reference is to such in Article V."

"Article V is a federal procedure controlled by federal law i.e., the Constitution. Even when the states act under Article V they do so under authority delegated to them by the

Constitution, not state authority and they are performing a "federal function" not a state function.[i] Article V is short and clear in its meaning.[ii] "

"Show me one place in Article V where it requires a state to give a subject or topic in a state's application for Congress to "call" an AVC let alone the authority of a state to limit an AVC to a subject or topic."

"Every resolution I have seen applying for an Article V convention specifically references Article V. If it is "controlled by the states" why do the states invoke the federal Constitution?"

"But, the 143 word long Article V does not give the states any authority beyond applying to Congress for Congress to "call" the ad hoc AVC and to hold one of two ratifying procedures as Congress directs to occur in the states."

"By common practice and parliamentary procedure the entity that "calls" an ad hoc convention gets to set up the initial rules of the convention and determine the qualification for the delegates. Such power is given to Congress under the "necessary and proper" clause of Article I §8 ¶18. "

"In my opinion there is technically a difference between a "constitutional convention" and a AVC. But, under our Constitution it is a difference without a distinction. This is so because there is virtually no limit on the breadth or depth of an amendment(s) under Art. V.[iii] Such can result in the change of one comma, or the change of everything but one comma."

"Our concern is that our sovereign status will be changed such that "We the People" become "subjects" to the government and the elites that manipulate and control the governments, state and central. There need not be a complete re-write of the Constitution for this to happen. This can occur with four little words: "

"State sovereignty is abolished."

"This would collapse the "compound Republic" the Framers established and end American federalism. The states would become adjuncts of the central government and their duty to keep the central government in check and to protect our rights would be washed away in a flow of ink. (This is what the Tugwell Constitution proposed which was being advocate between 1975 and the late 1980s.)"

"A great step was taken in this direction when the states adopted the 17th Amendment which striped the states of their constitutional right to appoint Senators to the federal Senate. Recall that this effort started at the state level by the states themselves applying for an Article V to strip themselves of this right."

"The "federal" government being out of control is not the problem but a symptom of "We the People's" failure to hold both the state and central "public servants" accountable. It is even more clear that their proposed solution, re-writing the Constitution, will not solve

the "problem" they have identified. If these corrupt politicians will not follow the current Constitution how in the world should we ever believe they will follow an amended Constitution? "

Richard D. Fry, November Patriots – founder, General Counsel, Patriot Coalition

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[i] **Leser v. Garnett,** 258 U.S. 130, 137 (1922), "But the function of a state legislature in ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a **federal function** derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State." (Emphasis added.); **Hawke v. Smith,** 253 U.S. 221, 230 (1920)

[ii] **Hawke v. Smith,** 253 U.S. 221, 227 (1920) " The language of the article [V] is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed...."

[iii] **U.S. Const. Art. V-** " ...Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate...."http://www.usconstitution.net/xconst_A5.html

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Honorable Senator:

Here is a "fact" that is undeniable on its face:

On February 15, 2017, **Montana Representative Brad Tschida, a COS sponsor, *testified against his own legislation after getting the facts:*** https://www.youtube.com/watch?v=WmkbgmvRr4I

When the truth was told, the Montana Legislature killed all of its Article V legislation!

Likewise, in 2004, VA Delegate Lingamfelter said, after Virginia rescinded all Article V constitutional convention resolutions, "...the operations of a convention are unknown and the apportionment and selection of delegates, method of voting in convention, and other essential procedural details are not specified in Article V...the prudent course requires the General Assembly to rescind and withdraw all past applications for a convention to amend the Constitution...". *Virginia has not adopted any Article V convention legislation since - including 2018!*

Your constituents do not yet know of the grave danger Article V *constitutional convention* bills have placed **their** U.S. Constitution in. But, COS proponents do!

Listen [at 46 seconds] where ***Robert Kelly, COS** staff attorney,* **admits** that the subject of "the power and jurisdiction of the federal government", which is written into **every COS application**, is broad enough to **amend the bulk of the Constitution**! https://www.youtube.com/watch?v=kCApyUYvuRE&feature=youtu.be

Please **OPPOSE SR133(HR187) COSP, SR254(HR357) WolfPAC, SR134 REG Freedom, and All Other Article V Convention Legislation.**

We will all sleep better knowing our Rule of Law, which has given us liberty for over 200 years, remains intact for future generations.

Respectfully,

Betty Lucas

Mechanicsville, VA
804-212-1165

# Meckler Admits That COS Cannot Solve the Problem

By

Judi Caler

There may not be a question more difficult to answer for Mark Meckler, President of Citizens for Self-Governance and spokesman for its Convention of States Project (COS), than this:

Since the federal government ignores the Constitution as now written, why would it obey an amended Constitution?

This is a fair question, considering COS has spent several years and millions of dollars from undisclosed sources[1] on paid lobbyists and "senior advisors" who crisscross the country leaning on legislators to pass resolutions asking Congress to call an Article V convention to propose amendments to the U.S. Constitution, ostensibly to limit the federal government.

All the while, at the local level, COS has been carrying out a massive public relations campaign claiming to be a grassroots movement with a "solution as big as the problem."

But Meckler's group has a solution that has nothing to do with the problem! Since the problem is a federal government that has overreached its powers by ignoring our Constitution, logic alone tells us that amending our Constitution, the very document being ignored, can't possibly fix the problem.

**On 7/6/17 (Part 2 at 37:00), Mark Meckler was heard on Red Eye Radio** answering that question in an interesting and illogical way:

A caller asked:

Once the amendments are proposed and ratified, how are they actually implemented?

In response, Meckler said:

… [the amendments] just automatically become part of the Constitution … part of the **structure** of governance in America … and that means that government then has to begin operating according to those amendments in the same way that they do with the rest of the Constitution.

(He continued) And functionally, ultimately that means government will shrink, they will have the authority to do less. And if they fail to follow those amendments, then obviously, **there is litigation that ensues up to the federal courts and ultimately up to the Supreme Court, if necessary. (Emphasis added.)**

But wait! COS has contended for years that the Constitution needs to be amended **precisely *because of* decisions by activist judges** who have undermined the original intent of the Constitution and allowed the federal government to usurp powers not delegated by our Constitution.

In other words, Meckler gives us a circular argument. He's saying that COS will add more verbiage to the Constitution to counter activist judges; and then, when the federal government ignores the new wording, as they have in the past, there will be lawsuits to force the government to follow the original intent of the framers. And lawsuits generate still more decisions by activist judges!

It should be noted, too, that our Constitution already limits the federal government to its enumerated powers; and any changes, such as a **Balanced Budget Amendment,** will **expand** the power of the federal government.

State governments already **have the power to resist unconstitutional acts of the federal government**—they simply need a backbone!

The last caller, only 10 minutes later, hit upon the circular argument and got a different response from Meckler:

**Caller:** … What happens, if say, we call a "convention of states" [and] we get some great reform amendments made to the Constitution to undo a lot of damage that has been done by activist judges and left-wing congressional majorities and presidents. What happens if we have future … laws … that violate the new amendments … and … new activist judges on the Supreme Court that then give rubber stamp approval [to the unconstitutional laws]. … Is there a bullet-proof, really good way to stop the same process from cycling over and over again after we get new amendments [at a convention]?

**Meckler:** " You know, I think that's one of the best questions there is. **And I'm going to give you the short and blunt answer which is NO!**

That's right, Mark Meckler asserts there is no way to stop the federal government from ignoring amendments proposed by a convention that later become ratified! And the entire process places our current Constitution at risk—for what?!

Meckler elaborated philosophically:

There is no way to prevent the cycle from happening because the cycle is the cycle of human nature. In our history, you can go back to the Roman Empire and look at what happens … So, I think what happens is, you correct course, you put the ship on course, and eventually it will begin to be blown off course.

History tells us it takes about 100 years for amendments to stop being effective … I think, for example, the first amendment about 100 years ago started to come under assault. So, it had been in place for well over 100 years; so, I expect the slide to happen.

Let's get this straight. The convention lobby is pouring massive resources into putting our Constitution at risk in convention because Mark Meckler is trying to steer the ship back on course, somehow predicting that in 100 years our children's descendants will need to go through the same process, subjecting our Constitution to risk once again (assuming it survives the second

federal convention he is trying so hard to invoke?) Why haven't he, his lobbyists, or "senior advisors" brought **this** up at legislative hearings?

Why not work on enforcing the Constitution we have, instead of rewriting 2,000 annotated pages of Supreme Court decisions, and very probably the entire Constitution? Why not encourage our State Legislators to stand up against and refuse to comply with unconstitutional federal dictates now—that's what they are supposed to do, according to **our Framers**.

**Article V was meant to correct defects in the Constitution**, and this explains why it is not a solution for reining in an overreaching federal government.

If the main COS proponent thinks his "Solution" is a temporary "fix;" and his method of implementing Amendments resulting from an Article V convention is no different than the system that created the problem in the first place, one must wonder …

What is the real reason COS is being bankrolled to advance an Article V convention whose Delegates, as direct Representatives of the People, would have the inherent Right "to alter or to abolish" our "Form of Government"? (Declaration of Independence, paragraph 2.)

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**Endnote:**

[1] While we are unable to determine all the sources of the funding for Meckler's group, the ultimate source of much of the **funding for the push for an Article V convention** is the mega billionaire Koch Brothers of Texas.

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About the Author

Judi Caler lives in California and is Article V Issues Director for Eagle Forum of CA. She is passionate about holding our public servants accountable to their oath to support the U.S. Constitution.

**What are they not telling you?**

# The Article V Convention

## As defined by Article V

**Part 2 in a series by Robert Brown**
May 15, 2014

Various groups from across the political spectrum are calling for changes to the US Constitution, some seeking to remove limitations on government power, while others seek to add limitations. Although their goals are diametrically opposed, these groups agree on the method: The Article V Convention (*aka*: Constitutional Convention, Amendments Convention, the Convention of States, etc.).

### Powers delegated to States and Congress

Clearly, from the text of Article V, the role of state legislatures is to apply for a convention.

Once 34 states have submitted applications, Congress has the power and obligation to call a convention.

Any time Congress is granted a power by the Constitution, the "**necessary and proper**" clause applies (See text box below).

Since Congress is vested with the power to call the convention, the "necessary and proper" clause indicates they also have the "power to make **all laws**" regarding a convention.

Congress has historically recognized this authority and has considered many bills concerning the selection of delegates, the number of delegates each state would have, and immunity laws to protect delegates from arrest while serving in that capacity.

In stark contrast to the history of Congress and the wording of the Constitution, promoters of an Article V convention often assure state legislators that a convention is a way to "bypass Congress" and would be "totally controlled by the states." Based on this false assumption, state legislators from various states have convened to begin writing the rules of a convention—**a power clearly given to Congress.**

### What Article V says:

Congress has sole authority to call a convention

States have authority to apply for a convention

**"The Congress, … on the application of the legislatures of two thirds of the several States, shall call a convention for proposing amendments…."** — Article V

Convention delegates have sole authority to propose amendments for a convention

**The first portion of Article V, above, assigns specific powers to three distinct groups: State Legislatures, US Congress, and the delegates to a convention. These text boxes show what power is delegated and to whom.**

Opinions vary widely concerning the role of state legislatures in an Article V convention—especially within the ranks of those calling for one.

Despite the confusion, the US Constitution is quite clear on the matter. These text boxes show what the Constitution allows.

### The "necessary and proper" clause:

**"The Congress shall have power to make all laws which shall be necessary and proper for carrying into execution** the foregoing powers, and **all other powers vested by this Constitution…"** — Article I, Section 8, Clause 18

Color coding indicates powers delegated to Congress in purple, powers delegated to States in red and power of delegates to an Article V convention in blue.

## Powers delegated to the Convention

Article V defines a convention as "a convention for proposing amendments." Thus, only the convention delegates have the power to **propose** amendments, not state legislatures. Amendment proposals from the states may be considered, but have no authority.

Despite the clarity of Article V, convention promoters assure state legislators they can control the convention. Legislators have been told they have the power to: (1) propose or limit amendment topics, (2) specify certain amendment provisions, and even (3) propose the precise amendment wording.

Shifting these powers to state legislatures would deprive a convention of its primary purpose of proposing amendments, and clearly has no basis in the Constitution.

## Ratification options

Promoters of a convention assure legislators the ratification process would protect against ill-conceived, flawed, or malicious amendments. *This may not be the case*, as the Constitution provides three possibilities for the ratification process. The first two options, in the middle of Article V, specify the proposed amendments become part of the Constitution when ratified (**Option #1**) "by the legislatures of three-fourths of the several States," or (**Option #2**) "by the conventions in three-fourths thereof."

It continues, "*... as the one or the other Mode of Ratification may be proposed by the Congress*"....Hence, for ratification, Congress chooses either state legislatures, or special ratifying conventions held in each state. This means: Once state legislatures have submitted their applications for a convention, they could be excluded from the remainder of the process—a far cry from the convention being "totally controlled by the states!"

A third ratification process is possible, based upon precedent set by the 1787 Constitutional Convention, which gave us the US Constitution. Under the original rules of that convention, all 13 out of 13 state legislatures were needed to ratify the new constitution. Recognizing the difficulty of achieving unanimous consent, the convention wrote new rules for ratification, bypassing state legislatures, and lowering the majority to only 2/3 of the states. This ratification process is in Article VII of the Constitution. It states:

"The ratification of the conventions of nine States, shall be sufficient for the establishment of this Constitution ..." —Article VII

***Based on this rather shocking precedent from Article VII, a convention would have the power to scrap the ratification process outlined in Article V, and write entirely new rules for ratification*** (**Option #3**). What those rules would be is anyone's guess.

## Trojan Horse vs. Real Solutions

Claims that a convention can be limited, controlled by state legislators, with the outcome protected by the ratification process, are **unfounded.** Unwittingly or deceptively, the siren song of convention supporters neglects the plain text and clear meaning of Article V.

Convention promoters have countered that a convention should be totally controlled by the states, based upon the precedent of dozens of interstate conventions called by the states (none of which were Article V conventions).

However, conventions called outside the authority of Article V are not subject to the delegation of powers outlined in Article V, are not called by Congress, do not have authority to propose amendments to the Constitution, and **do not set any precedent for an Article V convention.** The wording of the Constitution trumps any "precedent" of non-Article V interstate conventions.

Amending the Constitution does not address the root of the problem. The Constitution is not the problem, Washington DC *ignoring* the Constitution is the problem.

They don't play by the rules because We The People don't *know* the rules. When enough people understand and demand adherence to the Constitution, it will be honored again.

**As Thomas Jefferson so eloquently said, *"If a nation expects to be ignorant and free ... it expects what never was and never will be."***

## Delegated Powers for an Article V Convention

**State Legislatures:**
Apply to Congress for a convention
Ratification Option #1 *

**Congress:**
Calls the convention
Makes ALL laws for convention
Selects Ratification Option #1 or #2

**The Convention:**
Proposes amendments
Ratification Option #3 *

**State Ratifying Conventions:**
Ratification Option #2 *

* Note that Congress chooses between Ratification Option #1 or #2, and State legislators may be cut out of the process.

**About the author:** *Robert Brown is a popular speaker and produced the DVD series* **The Constitution is the Solution,** *available at* www.shopjbs.org.

**To Chairman Mike Folmer and members of the Pennsylvania Senate State Government Committee (October 17, 2018):**

I respectfully submit this written statement in opposition to resolutions, **SR133 (HR187)** (COSP); **SR254 (HR357)** (Free and Fair Elections); and **SR134** (Regulation Freedom Amendment); all of which ask Congress to call a so-called "Convention of States" for consideration of their proposed amendments.

I am the Chair of *No Convention of States North Carolina (NoCOS-NC)*, a non-partisan grassroots committee made up of individual North Carolina citizens. (SEE FULL DESCRIPTION BELOW.) It is not my usual practice to contact Members of other State Legislatures regarding their legislation. In this case, I am writing to you in Pennsylvania because an Article V convention affects ALL AMERICANS.

I understand that the organization, *Convention of States Project (COSP)*, has scheduled a rally and lobby day for Wednesday, October 17, 2018, the day of your Committee hearing. The rally will feature former U.S. Senator Tom Coburn who is a well-paid Senior Advisor and lobbyist for *COSP*.

Also, I have **ATTACHED** to this written testimony a *No Convention of States North Carolina (NoCOS-NC)* flyer that, as the Chair of *NoCOS-NC* and as a citizen of North Carolina, I distributed to the offices of North Carolina State Legislators the day before former Senator Coburn visited the North Carolina General Assembly on April 11, 2017 to lobby for a Convention of States. The flyer gives reasons to oppose a Convention of States. Although the flyer was created over a year ago, and some of *NoCOS-NC's* contact information at the bottom of the flyer has since been updated, statements in the flyer are quite current regarding Senator Coburn's usual talking points to promote the Convention of States. As recently as Sunday, August 19, 2018, I heard him state such points on Mark Levin's *Fox News* program, *Life, Liberty and Levin*.

The recent revival of an outcry for an Article V convention is not genuinely from "We the People." It is fueled by out-of-state special interest organizations, such as COSP, that show up just about every twenty years with a newly-devised ploy to convene a very risky convention – then they pass it off as a grassroots movement. The movement is driven in the background by powerful wealthy elites (from both the Right and the Left) who want to change the Constitution beyond recognition to suit their personal agendas.

IN 1991, when a similar attempt to call for a Convention was in play, respected law Professor Christopher Brown (Univ. of Maryland) stated: "[A Convention] "would create a major distraction to ordinary concerns, imposing a disabling effect on this country's domestic and foreign policies." THINK WHAT COULD HAPPEN TODAY in this current politically-charged atmosphere fueled by a the lack of knowledge!

All this while the world looks on! The Constitution stands between us and tyranny.

Please **VOTE NO on SR133 (HR187); SR254 (HR357)**; **SR134** and any other Article V convention applications.

Yours for the Constitution,

Wynne Coleman

Chair,

*No Convention of States North Carolina (NoCOS-NC)*

Raleigh, North Carolina

919-744-0014

**No Convention N★C of States NC**

**Their Solution is the Problem...**

***No Convention of States North Carolina (NoCOS-NC)*** **is a grassroots committee made up of individual NC citizens dedicated to preserving the U.S. Constitution by opposing a North Carolina application for an Article V Convention of States. NoCOS-NC opposes all North Carolina applications for any proposed form of Article V convention. This committee is non-partisan. It is not connected to other organizations of like mind. Its purpose is to inform the people of North Carolina about the dangers of an Article V Convention of States and to enable the people to communicate directly with their legislators on this critical issue. You may contact us at wynne@nocosnc.com. Website: nocosnc.com. Phone: 919-744-0014 between 9 a.m. and 9 p.m. (EST).**

No Convention of States NC

Their Solution is the Problem...

# COBURN COMING TOMORROW TO PITCH CONVENTION OF STATES!

(Article V Convention, Convention of States, Compact for a Balanced Budget, all the same)

**Are you tired of visits from out-of-state lobbyists from *Convention of States Project (COSP)* claiming they have "a solution as big as the problem" of an-out-of control federal government? We certainly are! Effective solutions to restore the proper balance of power ARE IN THE CONSTITUTION NOW! There is no need for an invented form of Article V convention that could easily weaken or destroy the U.S. Constitution. Last Session, Michael Farris visited the NCGA several times. In February 2017, it was Mark Meckler. Tomorrow, April 11, 2017, former U.S. Senator Tom Coburn, senior advisor for *COSP* will state his case. Here is some revisionist history you may hear tomorrow:**

- **The assumption that the term "Convention of States" (COS) or "convention of the states" is in Article V.**

The name "Convention of States" and the process for conducting its convention are not in Article V. One group pushing for an Article V convention has named itself the *Convention of States Project*. In all our history, however, there has never been any such thing as a "Convention of States". Even though a similar term "convention of the states" was used in 1787, the Convention was neither conducted by, nor controlled by, the states.

- **The Founding Fathers gave the states the Article V convention method of proposing amendments to our Constitution for the primary purpose of reining in the power and jurisdiction of the federal government?**

Tom Coburn has been known to quote a false statement which originated with former COSP lobbyist, Michael Farris. The COSP lobbyists have made up a statement they attribute to Founding Father, George Mason. The yarn varies slightly from state to state, but essentially, this is it: **"Our Founding Fathers gave the states a method of proposing amendments to our Constitution to rein in the power and jurisdiction of the federal government. Proud Virginian George Mason insisted that one day the federal government would outgrow its bounds, and when that day came, the states would need to have the ability to amend the Constitution to limit the power of the federal government. An Article V Convention of States is the specific recourse he and our Founders put in the Constitution for that purpose."** (Quoted from Ken Cuccinelli, former Attorney General of Virginia)

**"Did I say that?"**

Not one word of the above statement from Mason is true. Mason never made that statement. It cannot be found in any of our founding documents or U.S. history books or in the University of Chicago Law Journal where Michael Farris said it is found. The false Mason story is a crucial point because the convention lobby relies heavily on this unfounded statement to instill a guilty conscience in legislators who refuse to support their high pressure drive for a COS.

The *COSP* lobby has misinformed state legislators, telling them that our problems are caused by a defective Constitution and that the Founders provided Article V as the means for future Americans to restore the balance of state and federal power.

- **The assumption that the States have the authority to control the COS process**

Article V says States may "apply" for a convention. Period. Congress "calls" it (a "call" being the official summons for a convention to take place.)

Article V is silent on who the delegates will be. According to the 2016 Congressional Research Service Report (CRSR) 2016, Congress has indicated that it can choose the delegates, but this is yet to be decided. Delegates could be diverse. Any unknown combination of individuals could show up! **At the convention, delegates can make entirely new rules, propose all types of amendments, or even create an entirely new constitution.** Delegates have the authority to throw out convention rules made under Article V of the U.S Constitution, **including rules for ratification of amendments and who can ratify them. What a risk!**

- From time to time, Senator Coburn has been known to to quote *Law Professor* Antonin Scalia from 1979, when Scalia supported an Article V convention.

He fails to mention that, by 2014, **the wiser *Justice* Scalia had changed his mind and no longer supported it.** On April 17, 2014, he said "I certainly would not want a Constitutional Convention. I mean Whoa! Who knows what would come out of that?" https://www.youtube.com/watch?v=z0utJAu_iG4&feature=youtu.be&t=1h6m2s

The *COSP* version of history and procedure is questionable and unsupportable. *NoCOS-NC* maintains that there are many solutions within the Constitution RIGHT NOW that restore the proper balance of power in government. *NoCOS-NC* looks forward to continued communication with you regarding these better solutions. A good first step would be to:

**VOTE NO on HJR 44 and SJR 36 for a Convention of States!**

**VOTE YES on HJR 52 to rescind (repeal, cancel) all previously passed Article V convention resolutions in North Carolina!**

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***No Convention of States North Carolina (NoCOS-NC)*** **is a grassroots committee made up of individual North Carolina citizens dedicated to preserving the U.S. Constitution by opposing a North Carolina application for an Article V Convention of States. In addition to Article V Convention of States, NoCOS-NC opposes all North Carolina applications for any proposed form of Article V convention. This committee is non- partisan. It is not connected to other organizations. It is willing to work side-by-side with other organizations of like mind. Its purpose is to educate the people of North Carolina on the dangers of an Article V convention of States and to enable the people to communicate directly with their legislators on this critical issue.**
**If you have questions or would like to work with us, you can contact us at wynne@nocosc.com.**
**Or call Wynne Coleman at 919-616-1650 between the hours of 9am-9pm**
**Facebook: https://www.facebook.com/NoCOSNC?fref=ts**
*Coming soon! A website which is currently under construction.*

Sen Mike Folmer, Chairman
Sen Anthony Williams, Ranking Minority Member

Re: Constitutional Convention Hearing

I was a member of the Virginia General Assembly for 26 years. I offer my observations below for your deliberations on proposals you are considering concerning an application by the Legislature of Pennsylvania requesting the Congress to issue a call for a Constitutional Convention pursuant to Article V. Thank you.

Robert Marshall

PS My parents were born and raised in Johnstown. And I spent summers both there and in McKeeys Rocks in Alleghany County when I was younger. I still have relatives in Pennsylvania.

**Observations in Opposition to an application from the Legislature of Pennsylvania petitioning Congress to call a Constitutional Convention**

Scholars, legislators and individuals of good will disagree over every aspect of an Article V Convention how it is called, how it would operate, who would attend, compensation of delegates, the precise wording of which amendments might be proposed and how ratified. Open-ended Article V "solutions" should be met with skepticism, not enthusiasm. Moreover, alleged single purpose conventions may be difficult to enforce as to limiting their scope.

Members of Congress, state legislatures, Attorneys General and Judges attended the 1787 Convention as delegates from their states. Could such persons serve as delegates to a present day Article V Convention to change our Constitution?

State legislatures *appointed* delegates to the 1787 Convention. Bills in Congress governing the operations of a Constitutional Convention routinely propose the election of delegates to a Convention. Would political parties nominate persons seeking to be delegates to a Constitutional Convention? Would state or federal campaign finance laws apply to prospective Convention delegates?

Some convention proposals include elimination of parts of the Bill of Rights. *The Second Constitutional Convention* written by law professor Richard Labunski calls for repeal of the Second Amendment.

Constitutional Convention proponents uniformly insist that voting would be "one-state, one vote." Yet, bills introduced in Congress governing the operation of a Constitutional Convention or an "Amendments Convention" consistently assume proportional representation at a Convention like the Electoral College giving larger, liberal states more clout. And Convention of States' legal authority, Rob Natelson, stated that voting and convention rules will be made by the convention (See htW://www.alec.org/doe/ArticleVHandbood.-Odf at p17)

The 1787 Convention ratified the original Constitution with 9 states instead of the 13 as required by the Articles of Confederation. So, could proposed amendments or even a new

Constitution be ratified by a majority of states instead of 3/4ths, or by state or a national voter referenda (with non-citizens voting?), rather than by state legislatures or state conventions as is now provided in Article V What process would prevail? Original precedent would support changing the mode of ratification of Amendment.

Voting at the 1787 Convention was in secret. Meetings of legislators planning an Article V Convention have been closed to the public. Could proceedings and votes at an Article V Convention also be held in secret?

Article V provides for ***Congress*** to call a Convention after 34 states apply for it and ***Congress*** decides how amendments will be ratified Article 1, Section 8 of the US Constitution gives ***Congress*** the power to pass laws "necessary and proper" to fulfill their functions Congress exercises a federal function under Article V

Most legal scholars agree a Convention cannot be limited in scope. Convention of States' Robert Kelly acknowledged that every article of the U S Constitution (except 5 and 7) can be amended (changed) at such a convention. COS' Jordan Sillars wrote on Facebook: we have people capable of re-writing our Constitution.

The Constitution's TEXT is not the problem. Should the Ten Commandments be changed because they are not always obeyed? Congress does NOT follow the current Constitution, they won't follow an amended one.

Claims have been made that delegates to a Convention could be prevented from approving amendments not sought be their state by being penalized if they voted for amendments not consistent with such instructions. How could a state penalize delegates for their actions at a federal convention? If the final work product contained amendments supported by and opposed by a state, how could a Convention delegate break such restrictions? Moreover, if a vote on the final work product of such a convention took place on the last day of such a convention, there would be no recourse to "undo" the vote.

Lastly, what would the public understand about a Constitutional Convention? A recent Woodrow Wilson Foundation survey found that only 19 % of American Citizens 45 and under could answer six or more questions correctly which is administered to applicants for citizenship.

Common Cause
Pennsylvania
Holding Power Accountable

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October 15, 2018

Dear members of the Senate State Government Committee,

On behalf of Common Cause's more than 34,000 members and supporters in Pennsylvania, I am writing to urge to vote against SR 133, SR 254, AND SR 134. These resolutions would call a dangerous Article V constitutional convention that could put every American's fundamental constitutional rights and civil liberties at risk. Common Cause is a nonpartisan grassroots organization dedicated to upholding the core values of American democracy. In the last few years, Common Cause has successfully helped rescind Article V convention applications in Delaware, New Mexico, Maryland, and Nevada and lobbied against passing Article V convention applications in states across the country, including Texas, Hawaii, Illinois, Colorado, Nebraska, Kentucky, Wisconsin, Connecticut, and Rhode Island.

An Article V convention would put at great danger our most cherished civil liberties and system of government. It would give unelected delegates and special interest groups the power to potentially rewrite our entire constitution.

According to one of the nation's most esteemed constitutional law scholars, Professor Laurence Tribe of Harvard Law School, a constitutional convention would put "the whole Constitution up for grabs."[1]

Another of our nation's foremost constitutional law scholars, Dean Erwin Chemerinsky, recently wrote that "no one knows how the convention would operate. Would it be limited to considering specific proposals for change offered by the states or could it propose a whole new Constitution? After all, the Constitutional Convention in 1787 began as an effort to amend the Articles of Confederation, and the choice was made to draft an entirely new document."[2]

Simply put, there are no rules governing an Article V convention in the U.S. Constitution. A constitutional convention would create an unpredictable Pandora's Box.

Several Supreme Court justices have warned about the potential outcomes of constitutional conventions. Former Chief Justice Warren Burger wrote that a "Constitutional Convention today would be a free-for-all for special interest groups.[3]"

Former Justice Arthur Goldberg wrote that "[t]here is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights."[4] The late Justice Antonin Scalia said that he "certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?"[5]

Prof. Tribe enumerated a number of questions about a constitutional convention that he says are "*beyond resolution by any generally agreed upon political or legal method.*"[6]

Specifically, Prof. Tribe explained the following questions have no agreed upon answer:

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[1] Michael Leachman & David A. Super, "States Likely Could Not Control Constitutional Convention on Balanced Budget Amendment and Other Issues," Center for Budget and Policy Priorities, July 6, 2014, *available at* http://www.cbpp.org/sites/default/files/atoms/files/7-16-14sfp.pdf.
[2] Erwin Chemerinsky, "Is It a Good Time to Overhaul Constitution?," Orange County Register, Jan. 21, 2016, http://www.ocregister.com/articles/constitutional-700670-convention-constitution.html.
[3] Robert Greenstein, "A Constitutional Convention Would be the Single Most Dangerous Way to 'Fix' American Government," Wash. Post, Oct. 21, 2014, https://www.washingtonpost.com/posteverything/wp/2014/10/21/a-constitutional-convention-could-be-the-single-most-dangerous-way-to-fix-american-government/.
[4] *Id.*
[5] *Id.*
[6] Laurence Tribe, "Conference on the Constitutional Convention: Legal Panel," Harvard Law School, Sept. 24, 2011, *available at* https://www.youtube.com/watch?v=ZbJ7NOF3HRU&t=52m56s (uploaded Oct. 6, 2011).

1. May a state application insist that Congress limit the convention's mandate to a single topic, or a single amendment?
    - If Congress can call a convention independent of state applications (as Professor Sandy Levinson argues it may), then how could state applications possibly constrain a convention's mandate?
    - If applications are constraining, then how are applications proposing related (but different) topics to be combined or separated?
    - Are they added up or not added up?
    - When do you hit the magic number 2/3 of the states submitting applications?
2. May the Convention propose amendments other than those it was called to consider?
3. May Congress prescribe rules for the convention or limit its powers in any way?
4. May the Convention set its own rules, independent of Article V, for how amendments that it proposes may be ratified – which is what the Philadelphia Convention did? The Philadelphia Convention was called under a scheme that said ratification required unanimity among the states – but they departed from that. What if ratification is decided by a national referendum?
5. Are the states to be equally represented, or does the one-person, one-vote rule apply? What about the District of Columbia? Do the citizens of the District have a role in a convention?
6. Could delegates be bound in advance by legislation or referendum to propose particular amendments or vote in a particular way? If delegates are chosen by lottery, it's hard to imagine how they could be bound in advance.
7. Could the convention propose amendments by a simple majority, or a supermajority of 2/3?
8. If each state gets one convention vote, must delegates representing a majority of the population nonetheless vote for an amendment in order for it to get proposed?
9. Conversely, if the convention uses the one-person, one-vote formula, must the delegations of 26 states – perhaps including the District of Columbia – vote in favor of a proposed amendment?
10. What role, if any, would the Supreme Court play in resolving conflicts among Congress, state legislatures, governors, referenda, and the convention itself? Can we rely on the Court to hold things in check? The Court has assumed that questions about the ratification process are non-justiciable political questions that it can't get involved in.

It risks too much to discover the answers to the above questions after-the-fact.

In terms of SR 254, which attempts to call a constitutional convention to deal with the corrosive influence of money in politics, Common Cause fully supports a constitutional amendment to overturn the *Citizens United* decision and similar Supreme Court decisions, but we believe a constitutional convention is too dangerous of a path to amend the Constitution.

Common Cause is one of 240 organizations that is opposed to calling an Article V convention and urges legislators to opposing calling a new constitutional convention.[7] There is far too much at stake to risking putting the entire Constitution up for a wholesale re-write as part of a constitutional convention – including all of the civil

[7] "Constitutional Rights and Public Interest Groups Oppose Calls for an Article V Constitutional Convention," April 14, 2017, *available at* https://www.commoncause.org/our-work/constitution-courts-and-democracy-issues/article-v-convention/

rights, protections, and liberties that we enjoy today. For these reasons, I urge you to vote against SR 133, SR 254, and SR 134.

For more information, below is a list of quotes from legal scholars and law professors warning of the dangers of an Article V convention

Sincerely,

Micah Sims

Executive Director, Common Cause Pennsylvania

## Legal Scholars Warn of the Dangers of an Article V Convention

"[T]here is no way to effectively 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 one issue, but there is no way to assure that the Convention would obey." – **Warren Burger, Chief Justice of the U.S. Supreme Court (1969-1986)**

"I certainly would not want a constitutional convention. Whoa! Who knows what would come out of it?" – **Antonin Scalia, Associate Justice of the U.S. Supreme Court (1986-2016)**

"There is no enforceable mechanism to prevent a convention from reporting out wholesale changes to our Constitution and Bill of Rights." – **Arthur Goldberg, Associate Justice of the US. Supreme Court (1962-1965)**

"First of all, we have developed orderly procedures over the past couple of centuries for resolving [some of the many] ambiguities [in the Constitution], but no comparable procedures for resolving [questions surrounding a convention]. Second, difficult interpretive questions about the Bill of Rights or the scope of the taxing power or the commerce power tend to arise one at a time, while questions surrounding the convention process would more or less need to be resolved all at once. And third, the stakes in this case in this instance are vastly greater, because what you're doing is putting the whole Constitution up for grabs." –**Laurence Tribe, professor of constitutional law at Harvard Law School**

"The bigger threat is that a constitutional convention, once unleashed on the nation, would be free to rewrite or scrap any parts of the U.S. Constitution. Do we really want to open up our nation's core defining values to debate at a time when a serious candidate for the White House brags about his enthusiasm for torture and the surveillance state, wants to "open up" reporters to lawsuits, scoffs at the separation of powers and holds ideas about freedom of religion that are selective at best?" – **David Super, professor of law at Georgetown University**

"Note what [Article V] does not say. It says not a word expressly authorizing the states, Congress, or some combination of the two to confine the subject matter of a convention. It says not a word about whether Congress, in calculating whether the requisite 34 states have called for a convention, must (or must not) aggregate calls for a convention on, say, a balanced budget, with differently worded calls arising from related or perhaps even unrelated topics. It says not a word prescribing that the make-up of a convention, as many conservatives imagine, will be one-state-one-vote (as Alaska and Wyoming might hope) or whether states with larger populations should be given larger delegations (as California and New York would surely argue)."- **Walter Olson, senior fellow at the Cato Institute's Center for Constitutional Studies**

"Danger lies ahead. Setting aside the long odds, if California and 33 more states invoke Article V, there's a risk that we'd end up with a "runaway" convention, during which delegates would propose amendments on issues including abortion, gun rights and immigration." – **Rick Hasen, Chancellor's Professor of Law and Political Science at the University of California, Irvine**

"Holding a Constitutional convention when the U.S. is embroiled in extremely toxic, uninformed and polarized politics is a really, really bad idea." – **Shelia Kennedy, professor of law and policy at Indiana University Purdue University Indianapolis**

"But no rule or law limits the scope of a state-called constitutional convention. Without established legal procedures, the entire document would be laid bare for wholesale revision. Article V itself sheds no light on the most basic procedures for such a convention. How many delegates does each state get at the convention? Is it one state, one vote, or do states with larger populations, like California, get a larger share of the votes? The Supreme Court has made at least one thing clear — it will not intervene in the process or the result of a constitutional convention. The game has neither rules nor referees." - **McKay Cunningham, professor of law at Concordia University**

"The result will be a disaster. I hate to think of the worst-case scenario. At best, the fight over every step along the way would consume our country's political oxygen for years." – **David Marcus, professor of law at the University of Arizona**

"At present, there are no rules regarding who can participate, give money, lobby or have a voice in a constitutional convention. There are no rules about conflicts of interest, disclosure of who is giving or expending money. No rules exist that address political action committees, corporate or labor union involvement or how any other groups can or should participate. Not only might legitimate voices of the people be silenced by convention rules, but special interests may be given privilege to speak and affect the deliberations...there are no rules limiting what can be debated at a constitutional convention. Given the potential domination by special interests, who knows the result?" - **David Schultz, political science and election law professor at Hamline University**

"An Article V convention might propose an amendment to restore or expand the liberties of the American people, but it also could propose an amendment that diminishes the liberties of the American people, or of some of the people. " – **John Malcolm, former director of the Heritage Foundation's Edwin Meese III Center for Legal and Judicial Studies**

"But nothing in the Constitution limits such a convention to the issue or issues for which it was called. In other words, anything and everything could be on the table, including fundamental constitutional rights. Nor are there any guarantees about who would participate or under what rules. Indeed, for these reasons, no constitutional convention has been called since the first in 1787." - **Helen Norton, professor and Ira C. Rothgerber, Jr. Chair in Constitutional Law at the University of Colorado, and David Super, professor of law at Georgetown University**

"The lack of clear rules of the road, either in the text of the Constitution itself or in historical or legal precedent, makes the selection of the convention mechanism a choice whose risks dramatically outweigh any potential benefits." – **Richard Boldt, professor of law at the University of Maryland**

"We live in deeply partisan times. There are no certainties about how a constitutional convention would play out, but the most likely outcome is that it would deepen our partisan divisions. Because there are no clear constitutional rules defining a convention's procedures, a convention's "losers" may deem illegitimate any resulting changes. Regardless of the ultimate outcome, the process itself would likely worsen our already vicious national politics." – **Eric Berger, associate dean professor of law at the University of Nebraska College of Law**

"There are no such guarantees. This is uncharted territory...We should not now abandon the very document that has held us together as a nation for over two and one quarter centuries. Rewriting the Constitution is a dangerous errand that would not only unravel the legal ties that have kept us together for so long but would also undermine our sense of national identity and the way that view ourselves as a people." – **William Marshall, professor of law at University of North Carolina**

"Terrible idea...Today's politicians don't have the timeless brilliance of our framers. If we were to rewrite our constitution today, we wouldn't get a particularly good one." – **Adam Winkler, professor of constitutional law and history at the University of California, Los Angeles**

"I believe it's a time for constitutional sobriety. It's a time to keep our powder dry and not to move on an uncharted course. We are not the founding fathers. This would be disastrous." – **Toni Massaro, constitutional law professor at the University of Arizona**

"Having taught constitutional law for almost 40 years, and having studied constitutions from around the globe, I have difficulty imagining anything worse." - **Bill Rich, professor of law at Washburn University in Topeka, Kansas**

"There are no constitutional limits on what the convention could do, no matter what the states say going into it." - **David Schwartz, professor of law at the University of Wisconsin Law School**

"The Constitution allows for the calling of conventions on a petition of enough states, but not limited conventions of enough states. If the delegates decide they don't want to be bound by the (state) resolution, they are right that they can't be bound." - **Richard H. Fallon Jr., constitutional law professor at Harvard University**

"Once you open the door to a constitutional convention, there are no sure guidelines left. This is the constitutional equivalent of opening a can of worms." - **Miguel Schor, constitutional law professor at Drake University School of Law**

"Thus, neither the states nor Congress may limit the convention to specific subjects. While the goal to propose a balanced budget amendment may provide guidance to the convention, it would not have the force of law...Put simply, the rewards of any constitutional change is not worth the risks of a convention. " - **Sam Marcosson, professor of law at the University of Louisville**

"Even more frightening is that the entire Constitution will be in play during a convention. The First Amendment could disappear, so could gun rights. There is no guarantee that any of our current constitutionally protected rights would be included in a new constitution. The only guarantee is that all of those rights would be imperiled." - **Mark Rush, the Waxberg Professor of Politics and Law at Washington and Lee University in Lexington**

"Most significantly, we advise the Legislature that a federal constitutional convention called with this resolution could potentially open up each and every provision of the United States Constitution to amendment or repeal. In other words, a federal constitutional convention could propose amendments to eliminate the protections of free speech; the protections against racial discrimination; the protections of freedom of religion; or any of the other myriad provisions that presently provide the backbone of American law." – **March 2018 legislative testimony of Russell Suzuki, Acting Attorney General, and Deirdre Marie-Iha, Deputy Attorney General, of the state of Hawaii**

"Whatever one thinks about these proposed amendments, trying to pass them through an Article V convention is a risky business. The Constitution does not specify how the delegates for such a convention would be chosen, how many delegates each state would have, what rules would apply at the convention or whether there would be any limits on what amendments the convention could consider. A convention that was called to address a specific issue, such as budget deficits, might propose changes to freedom of speech, the right to keep and bear arms, the Electoral College or anything else in the Constitution. There is no rule or precedent saying what the proper scope of the convention's work would be." - **Allen Rostron, associate dean for students, the William R. Jacques Constitutional Law Scholar, and a professor at the University of Missouri**

"Whether I like or dislike the specific proposal is not the point — the point is that a constitutional convention is a risky and potentially dangerous way to propose amendments." - **Hugh Spitzer, professor of law at the University of Washington School of Law**

*From Karen Sykes*

*Camp Hill, PA*

*Volunteer with PA United to Amend*

I support SR254. Here's why:

As a teenager in the 60's and 70's, I saw firsthand that there were flaws in our representative democracy. So many issues were being discussed and even protested. Today these same issues and even more are causing chaos in our American life. To restore balance and integrity in our government, we must work for campaign-finance reform.

Crony capitalism has crept into the process of creating legislation, and too often we espouse free speech but there are ways that legislators have to ignore the voices of voters. The US Constitution guarantees American citizens the right to a representative government, yet too often I have received responses to my phone calls and letters to my legislators that don't even answer my questions. When requesting a meeting with some of my legislators, I have been ignored and put off. I wonder who is contributing to their elections and whose agendas are they promoting. I feel like my opinions aren't even heard by my legislators.

Therefore, I am volunteering with PA United to Amend to put my voice to my belief that American citizens deserve decency and fairness from our legislators. We must rein in our out of control government. I believe we must work to address campaign finance reform so that we can strengthen our representative democracy. Our democratic process should not up for sale. We need to maintain the integrity of the process.

**Why I Support SR254 and Campaign-Finance Reform**
*For Senate State Government Committee hearing, Oct. 17, 2018*

*By Brian Mintey*
*Philadelphia, PA*

I've been a Pennsylvania resident for the last year, living in Philadelphia. From 2012 to 2014 I was a Peace Corps volunteer living in a small village in Indonesia. During my service there — completely separated from my home, language and culture — I came to feel a deeper pride in the United States than I had before.

The people I met in the young but promising democracy of Indonesia spoke with admiration of the U.S. "You have no corruption there, do you? Police don't pull you over just for bribes? Government officials don't insist on a kickback when you go in for a permit, or document?"

I proudly confirmed that was true. After my return to the U.S. in 2014, I renewed my driver's license, and I paid no bribe. I applied and accepted a federal government job, and my family did not have to contribute generously to a political official for me to get it. Both would have been commonplace in Indonesia.

But as I became more involved in civic and political life in the U.S. after my return, I began to see a different kind of corruption. I looked at the behavior of elected officials in Washington and saw that they did not meet with their constituents. They regularly voted against the will of their constituents. But they always seemed to have time to meet with lobbyists and special interests. When it came time to vote, those same special interests always seemed pleased with the outcome.

I had misled my friends in Indonesia. There *is* corruption in the U.S. It's not the petty, everyday kind. It is harder to spot because the corruption is the fundamental way that the influence of special interests infects the way our political system operates. Special interests buy influence that drowns out the voices and the votes of constituents. Where I had once spoken with such pride about the lack of corruption in the U.S., I began to feel shame. I want that pride back — that is why I support SR254 to end corruption and restore free and fair elections.

**Me, SR254 and Campaign-Finance Reform**
*For Senate State Government Committee hearing, Oct .17, 2018*

*By Joan Pelc*
*Newtown Square, PA*

The current system that allows big-money interests to spend unlimited amounts to influence congressional elections — and elected members of Congress to do favors for big donors — amounts to legalized corruption.

Fixing this problem is essential to having free and fair elections. I joined PA United to Amend's work toward campaign-finance reform because I want to see it fixed. I want to send a message to those who make the laws that there are citizens who care about this issue.

Our vote is the cornerstone of democracy. When "dark money," or even too much money from a known source, buys influence, it simultaneously dilutes the power of our votes. It renders citizens' needs unmet and those in office hearing only the voices of the large donor. In many cases, these voices are detrimental to the general electorate. I've lived in Pennsylvania for most of my 70 years, and I want a government that taxes and spends fairly and responsibly, so it's important that campaign contributions are transparent and that we taxpayers don't end up footing the bill for legislators' special favors to others.

The progress toward campaign-finance reform is so incremental that it seems like a fight without end. I consider it an issue of equality and social justice. I'm fighting to strengthen representative democracy by eliminating legalized bribery and extortion.

**Testimony against SR 133 ("Convention of States"), SR 134 (Regulation Freedom) and SR 254 (Wolf PAC) applications for an Article V convention**

Chairman Folmer, Minority Chair Williams, and Honorable Members of the Senate State Government Committee: My name is Mark Affleck and I am volunteer leader of the John Birch Society in Bucks County Pennsylvania.

This paper outlines why you should vote against all applications for an Article V convention.

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

**Article V, United States 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 of our 27 existing amendments were proposed under the 1st method: Congress proposed them. We have never had a convention under Article V.

**And there are two ratification methods in the Constitution:**

1. By the Legislatures of three fourths of the States
2. By conventions in three fourths of the States

Note: It is also possible that the convention itself could write a new mode of ratification as was done in 1787.

The Constitution grants powers to four different bodies regarding an Article V convention:

### The State Legislatures

The several State legislatures have the power to apply to congress for a convention and **if Congress chooses mode #1**, then they also ratify the amendments proposed by the convention. Regardless of what proponents tell you, the States cannot bypass Congress in the amendment process.

The States **do not set the rules** for a convention. 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.

### The Congress

The Congress has the power to call the convention (per Article V) and to make all laws necessary and proper for calling a convention. (Article I, §8, last clause). Congress also chooses between the two modes of ratification. Proponents say Congress will play only a ministerial role in setting the time and place of the convention, but 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). Proponents have also assured some legislators that each State would get one vote in convention. 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**.

**Delegates to an Article V Convention**

Delegates have the power to propose amendments. As representatives of the Sovereign will of the people they can also exercise their plenipotentiary power to write a new Constitution. This was done in 1787 and is supported by the Declaration of Independence when it states: "… Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is **the Right of the People to alter or to abolish it, and to institute new Government**, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness.

Nothing in Article V or the Constitution limits a convention to a single topic(s). The convention is the deliberative body! Under the supremacy clause at Article VI, clause 2, US Constitution, any State law which contradicts the Constitution is void. Proposed limits are a political ploy designed to mislead Legislators into a false sense of security and control over a process which will be totally out of their control. It is a trick to gain votes. Those who think State Legislatures will control the delegates should consider that: State law cannot control delegates to a convention because a convention is the highest authority in our Republic. It emanates directly from "We the People" and if Delegates **choose to meet in secret as they did in 1787**, the State Legislatures wouldn't know what the Delegates were doing.

**Ratifying Conventions**

If Congress chooses Mode #2, ratifying conventions in each state, the power to ratify proposed amendments lie entirely with them. Even if method #1 were chosen by congress, it would not guarantee protection against bad amendments. Consider that the 16th Amendment (Income Tax), the 17th Amendment (Direct Election of Senators) and the 18th Amendment (Prohibition) were ratified.

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.

**Conclusion:**

Once the General Assembly of Pennsylvania applies for a convention, it is out of their hands. At that point, the rights of the citizens of our Commonwealth are at the mercy of the remaining Legislatures. If enough follow course and apply for a convention, the entire federal system is in the hands of Congress and the Delegates. There is no guarantee that the results of a convention will be presented to the General Assembly of Pennsylvania for ratification. All applications for a convention pursuant to Article V of the United States Constitution should be rejected.

Mark J. Affleck
federalexpression14@gmail.com
https://federalexpression.wordpress.com/

**Attached**: (a) A Chart of the powers delegated by Article V

# A Chart of the Powers Delegated by Article V

| BODY | POWER(s) |
|---|---|
| State Legislatures | • Apply to Congress for a convention<br>• Ratify proposed Amendments, ***if Congress chooses mode #1*** |
| Congress | • Calls the convention<br>• Makes all laws necessary and proper for calling a convention. (per Article I, §8, last clause)<br>• 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 |

Written testimony against SR133, SR134 and SR254 - Art. V Convention Applications

To: Sen. Mike Folmer, Chair; Sen. Tom Killion, Vice-Chair; and members of the Pennsylvania Senate State Government Committee

RE: SR133, SR134 and SR254

Dear Senator,

My name is Judi Caler, and I'm president of Citizens Against an Article V Convention. Thank you for the opportunity to submit written testimony against **SR133, SR134, and SR254**, Art. V convention applications from Pennsylvania.

You are not being told the truth by convention proponents. An Article V convention cannot be limited to one or more subjects or amendments. That's because Delegates to an Article V convention would have more power than State Legislatures or Congress; and cannot be limited by the state application or state and federal law.

Delegates to a federal convention would be direct Representatives of "We the People" and, as such, have the inherent right "to alter or to abolish" our "Form of Government," as expressed in the Declaration of Independence, paragraph 2. And we don't know who those Delegates would be or how they'd be selected!

A precedent was set in 1787 when the "amendments" convention called by the Continental Congress **"for the sole and express purpose of revising the Articles of Confederation**" (our first Constitution) resulted in a new Constitution with an easier mode of ratification for that new Constitution (our current Constitution).

The Convention of States Project will tell you they are not asking for a "constitutional convention," but rather a "convention of states" or an "amendments convention." They are **playing with words**, and they are risking our Constitution. Any convention dealing with drafting or amending a constitution is a "constitutional convention."

They will tell you they know what the rules will be at such a convention because of custom. But 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."

More importantly, there is nothing wrong with the Constitution we have. The problem is that it isn't being enforced. To ***change*** the Constitution because the federal government isn't ***following*** the Constitution makes no sense.

**Brilliant Men** have warned that Delegates to an Article V convention can't be controlled. James Madison, Father of our Constitution, said in his Nov. 2, 1788 letter to **Turberville** that he "trembled" at the prospect of a second convention. We are fools if we don't take heed of their warnings!

The attached "Myth v. Fact" **Chart** will explain **WHO** has the power to do **WHAT** at an Article V Convention. **State legislators have no power to control Delegates.** Under Article V, State Legislatures can only 1) ask Congress to call a convention and 2) ratify proposed amendments if Congress ***choose*****s** State Legislatures as the ratification mode. This assumes Delegates don't exercise their plenipotentiary powers and write a new Constitution.

No State has passed Convention of States Project's application (SR133) since May 12, **2017** and Wolf-PAC's application (SR254) since June 17, **2016** for good reason. Let's not let Pennsylvania bring our nation one step closer to losing our Constitution!

Please **VOTE NO on SR133, SR134, SR254** and any other applications from Pennsylvania asking Congress to call an Article V convention. Thank you for your consideration.

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

**Article V, United States 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<br>b. Ratify proposed Amendments, **if Congress chooses mode #1** |
| **Congress** | a. Calls the convention<br>b. Makes all laws necessary and proper for calling a convention (per Article I, §8, last clause)<br>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<br>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.<br>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."<br>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."*<br>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!<br>b. Under the supremacy clause at Article VI, clause 2, US Constitution, any State law which contradicts the Constitution is void.<br>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.<br>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**.<br>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."<br>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. Amendments 16 (Income Tax), 17 (Direct vote for Senators), and 18 (Prohibition) were duly ratified. Were they good ideas? |

# Testimony of Steve Davies
# Senate Resolution 133
# Senate State Government Committee
# October 17, 2018

Chairman Folmer, distinguished members of the Senate State Government Committee, thank you for this opportunity to present testimony in support of Senate Resolution (SR) 133. SR 133 is a concurrent resolution, and once adopted by both chambers of the General Assembly, will serve as an application by Pennsylvania under Article V of the US Constitution (USC) for a convention to consider and propose amendments to the USC related to term limits for federal officials, restrictions on federal spending and limits on federal scope and jurisdiction.

My name is Steve Davies, I live at 565 Hollow Road in Beaver County, PA. I am married, retired, and have three adult children. Since March 2014 I have been a volunteer for the Convention of States Project (COSP) and have served in a variety of leadership roles over that period. I am not a grassroots activist nor a political activist. I have never run for nor held an elected office.

I have believed for some time that our republic is in big trouble. Apathy towards and ignorance of our inalienable rights, our founding and constitutional principles by successive generations of Americans over the past 100 years or so have resulted in government policies and programs that destroy individual freedom and liberty by design. We elect people to public office based on their promises to benefit us at the expense of other citizens. We have essentially turned the Constitution into a fiscal suicide pact, and in doing so may have consigned our children and grandchildren to a lifetime of economic servitude. The game seems permanently rigged in favor of a ruling elite in Washington, DC, and most Americans believe there is no recourse except via federal elections. That all changed for me in 2013 after reading Mark Levin's book, *The Liberty Amendments*. It became clear that there is a way to restore the Constitution and its original intent without relying solely on federal election outcomes and actions by those in federal elected offices, but it requires the efforts of ordinary citizens.

After reviewing the COSP resolution, it was my initial view that an Article V application for the right topics should be something that would enjoy strong support from Pennsylvania state legislators. As a concurrent resolution, SR 133 is an action solely by the General Assembly, with no approval by the governor required. The resolution is obviously not complex legislation, does not involve money or taxes, is bi-partisan in nature and could result in massive transfers of jurisdiction and authority from the federal government back to the state legislatures consistent with the separation of powers as outlined in the US Constitution. The resolution does nothing more than document PA's official position that a convention should be called to discuss and potentially approve proposed amendments to the USC related to three specific topics. The convention delegates have no power to change anything. Any proposed amendments passed by the convention would have to be sent to the states for ratification per Article V.

Soon after beginning work on the COSP, I discovered that there is very vocal opposition to convening an Article V convention and, consequently, reluctance on the part of elected officials to embrace it. I have spent a significant amount of time over the past 4 years researching and debating opposition arguments. Most of the arguments advanced by individuals and organizations who are actively opposing SR 133 fall into one of three categories:

- Fear that a "runaway convention" will result, causing great damage to/elimination of the Constitution
- The belief that Article V is for correcting errors, not limiting federal power
- The belief that "nullification" is the way to go.

My testimony will focus on these issues.

**Runaway Convention**

This argument is based on the belief that the Philadelphia Convention in 1787 was in fact a "runaway" convention, and that the delegates, despite being limited to only developing amendments and alterations to the Articles of Confederation ("Articles"), instead produced a new constitution. In addition, it is believed the delegates proposed a ratification process that was not in accordance with the convention call. Consequently, opponents fear that Article V convention, once assembled, could in effect ignore the convention call and any delegation directives from the state legislatures and not only significantly weaken/eliminate Constitutional protections for the states and individuals, but even produce a new constitution.

To understand the runaway convention argument, several historical events in the months prior to and immediately after the start of the convention need to be pointed out. These events are summarized below:

| Date | Action |
|---|---|
| | |
| November 23, 1786 | Virginia establishes a delegation to attend the 1787 Philadelphia Convention |
| November 24, 1786 | New Jersey establishes a delegation to attend the 1787 Philadelphia Convention |
| December 30, 1786 | Pennsylvania establishes a delegation to attend the 1787 Philadelphia Convention |
| January 6, 1787 | North Carolina establishes a delegation to attend the 1787 Philadelphia Convention |
| February 3, 1787 | Delaware establishes a delegation to attend the 1787 Philadelphia Convention |
| February 10, 1787 | Georgia establishes a delegation to attend the 1787 Philadelphia Convention |
| **February 21, 1787** | **Congress passes resolution stating a convention in Philadelphia in May, 1787 would be expedient; resolution language reflects sole purpose would be to amend the Articles of Confederation** |
| February 28, 1787 | New York establishes a delegation to attend the 1787 Philadelphia Convention |
| March 7, 1787 | Massachusetts establishes a delegation to attend the 1787 Philadelphia Convention |
| March 8, 1787 | South Carolina establishes a delegation to attend the 1787 Philadelphia Convention |
| May 17, 1787 | Connecticut establishes a delegation to attend the 1787 Philadelphia Convention |
| May 26, 1787 | Maryland establishes a delegation to attend the 1787 Philadelphia Convention |
| June 27, 1787 | New Hampshire establishes a delegation to attend the 1787 Philadelphia Convention |

At the core of the runaway convention concern is the belief that the resolution passed by Congress on February 21, 1787, as shown in the table above, was the call for the convention and defined its scope. That resolution language is:

**"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."** (see https://histcsac.wiscweb.wisc.edu/wp-content/uploads/sites/281/2018/03/Confederation-Congress-Call-Constitutional-Convention.pdf)

It is clear the resolution contains two specific provisions related to the convention: (1) it is for "the sole and express purpose of revising the Articles of Confederation", and (2) any alterations/provisions must be "…agreed to in Congress and confirmed by the states…".

This resolution is the basis for the "runaway convention" argument that opponents are using to try to stop passage of the COSP and other Article V convention resolutions. They argue that the convention delegates ignored the convention call by proposing a new Constitution rather than amendments to the Articles, and by proposing a ratification/confirmation process that allowed for something other than unanimous approval by the 13 states. Consequently, they allege, the delegates to an Article V convention, no matter what it is called for, are free to change any aspect of the Constitution, including replacing it, and are free to set a much lower bar for ratification of whatever they propose. This, opponents claim, is a risk we cannot take.

The debate over the authority of the convention to propose a new form of government and a new ratification process began before the 1787 convention ended and continues to this day. None of the six states that commissioned their delegations prior to passage of the Feb 21, 1787 resolution by Congress limited their delegates to only proposing amendments to the Articles. Of the remaining six states, three did include the resolution language limiting the convention scope to amendments to the Articles. While the case can be made that a few states did limit their delegations to only considering amendments to the existing Articles, the overwhelming majority of the states did not. There are other facts that do not support the runaway convention allegation:

- The Articles had no provision for amendments by convention and the Articles gave no authority to Congress to call such a convention. The Feb 21, 1787 resolution was an endorsement of a convention that had already been called.

- At the convention on July 23, 1787, Governeur Morris made this statement during convention proceedings:

**"The amendment moved by Mr. Elseworth [sic] erroneously supposes that we are proceeding on the basis of the Confederation. This Convention is unknown to the Confederation".** (see http://oll.libertyfund.org/titles/farrand-the-records-of-the-federal-convention-of-1787-vol-2 at 92)

No delegates expressed opposition to this statement.

- When the convention ended, the Articles were still in full force and effect. The convention work products were a Ratification and Transition Plan and the Constitution. They were transmitted to Congress and the states. Absent affirmative action by the states, the Constitution would never have gone into effect irrespective of anything said or done during the convention.
- All 13 states took action to establish ratification conventions as recommended by the Transition and Ratification Plan, including Rhode Island, which had boycotted the convention.
- On February 1, 1788, the New York legislature, which had instructed its delegation to only consider amendments to the Articles, and whose delegation cast no votes in the convention after July, rejected a motion to condemn the Convention for violating its instructions (see http://www.harvard-jlpp.com/wp-content/uploads/2017/03/Farris_FINAL.pdf, page 118)
- As set forth in the Ratification Plan and in Article VII of the Constitution, no state that did not ratify the Constitution could be bound by it. At no point did any state lose its right to reject the Constitution, and the Convention had no ability to force any state to accept the new Constitution.
- Finally, and most importantly, unlike the Articles, the Constitution does contain a provision that outlines the process for proposing amendments via a convention. The Framers were clear that they wanted the states to be able to propose amendments in the event Congress refused to do so. They no doubt recognized that not having a convention option outlined in the Articles had caused them much difficulty. Consequently, in drafting Article V, they specified who calls the convention, that the convention scope is limited to amending the Constitution (and consequently not proposing a new one) and they specified the ratification process. It is clear that what the Framers intended an Article V convention to be was very different from the convention they experienced in 1787.

Opponents commonly use the term "constitutional convention" to refer to both types of conventions. This, along with insisting the 1787 convention was a "runaway

convention" is obviously a deliberate tactic to create as much confusion and fear on the part of average citizens regarding an Article V convention as possible.

Probably the most comprehensive and well-researched scholarship on the topic of whether the 1787 Philadelphia Convention was a runaway convention is work done by Michael Farris, J.D., and published in the Harvard Journal of Law and Public Policy, Volume 40, Number 1. I encourage members of the Committee to have their staff review this document.

**Article V is For Correcting Errors**

The John Birch Society (JBS) and other opponents of an Article V convention claim that Article V was intended for correcting errors in the Constitution, not limiting federal power. There is no evidence from the record of the Philadelphia Convention that this was the Framers' intent. The most direct evidence of the Framers' intent is this statement by George Mason on September 5, 1787 as recorded in Madison's notes:

**"Col: MASON thought the plan of amending the Constitution exceptionable & dangerous. As the proposing of amendments is in both the modes to depend, in the first immediately, in the second, ultimately, on Congress, no amendments of the proper kind would ever be obtained by the people, if the Government should become oppressive, as he verily believed would be the case."**

While correcting errors is clearly an appropriate use of Article V, that is not the only reason Article V exists. Robert Natelson, Independence Institute's Senior Fellow in Constitutional Jurisprudence and Head of the Institute's Article V Information Center, has summarized the various reasons why amendments have been made to the Constitution via Article V (see Attachment 1).

In conjunction with this argument regarding the intent of Article V, JBS claims that the real answer is using Article VI and enforcing the Constitution rather than amending it. The problem with this approach is the Constitution has, in effect, been extensively modified by decades of federal judicial activism. Consequently, the Constitution as modified <u>is</u> being enforced. The root problem is this judicial activism has been enabled by language in the Constitution that has, over the centuries, become vague and ill-defined. Article V is the only way to restore the original intent of the Framers and reverse the effects of judicial activism. Also, amendments would significantly impede future attempts by the judiciary to modify the Constitution, and would do so irrespective of future federal election outcomes.

**Nullification**

Many opponents of an Article V convention point to the 10th Amendment and nullification as the answer to dealing with an out-of-control federal government that routinely ignores constitutional limits on its power. An excellent analysis of this issue was written by Rita Dunaway, Esq., National Legislative Strategist for the Convention of States Project (see Attachment 2). As Dunaway notes, the problem with the 10th Amendment is that while it establishes nullification in principle, "it does not establish a remedy or process for protecting the reserved powers from federal intrusion".

Finally, there is no effort on the part of COSP to stop nullification efforts, and an Article V convention does not impede any nullification efforts. It is not apparent to me why nullification proponents are so adamant about preventing an Article V convention from ever being called.

**Final Comments**

At the core of the COSP effort is how this question is going to be answered: "Who is going to make decisions about what is best for the citizens of Pennsylvania?" For the past 100 or so years, the answer increasingly has been the federal government, which is overwhelmingly comprised of people who relatively little about Pennsylvania. As the federal government continues to drive the republic to a fiscal disaster, it is time for the People to remember how the federal government came into existence and for what purposes. The federal government exists at the pleasure of the elected officials and citizens of the states. The collective will of 38 states is all it takes to repeal any law, rule, regulation, executive order and federal court decision, including those by the Supreme Court. The federal government can and must be controlled by the People, both by direct election of federal officials and by their state legislatures exercising the will of the People via Article V and all other constitutional tools.

So the federal government needs to be restrained and re-calibrated consistent with original intent. And action by the state legislatures is how that process starts.

As the members of the Committee may know, there were more signers of the Declaration of Independence and the Constitution from Pennsylvania than any other state. The Declaration was signed by members of the Continental Congress in Philadelphia. The Constitution was created in Philadelphia. Pennsylvania has a unique place among the states with respect to the creation of the Republic. And Pennsylvania should be a leader in restoring the foundational law of the Republic and in restoring freedom and liberty to all Americans.


Amendments work.
In fact, amendments have had a major impact on American political life, mostly for good.

# The Lamp of Experience: Constitutional Amendments Work

**Robert Natelson, Independence Institute's Senior Fellow in Constitutional Jurisprudence and Head of the Institute's Article V Information Center**

Opponents of a Convention of States long argued there was an unacceptable risk that a convention might do too much. It now appears they were mistaken. So they increasingly argue that amendments cannot do enough.

The gist of this argument is that amendments would accomplish nothing because federal officials would violate amendments as readily as they violate the original Constitution.

Opponents will soon find their new position even less defensible than the old. This is because the contention that amendments are useless flatly contradicts over two centuries of American experience — experience that demonstrates that *amendments work*. In fact, amendments have had a major impact on American political life, mostly for good.


The Framers inserted an amendment process into the Constitution to render the underlying system less fragile and more durable. They saw the amendment mechanism as a way to:

- correct drafting errors;
- resolve constitutional disputes, such as by reversing bad Supreme Court decisions;
- respond to changed conditions; and
- correct and forestall governmental abuse.

The Framers turned out to be correct, because in the intervening years we have adopted amendments for all four of those reasons. Today, nearly all of these amendments are accepted by the overwhelming majority of Americans, and all but very few remain in full effect. Possibly because ratification of a constitutional amendment is a powerful expression of popular political will, amendments have proved more durable than some parts of the original Constitution.

**Following are some examples:**

### Correcting Drafting Errors

Although the Framers were very great people, they still were human, and they occasionally erred. Thus, they inserted into the Constitution qualifications for Senators, Representatives, and the President, but omitted any for Vice President. They also adopted a presidential/vice presidential election procedure that, while initially plausible, proved unacceptable in practice.

The founding generation proposed and ratified the Twelfth Amendment to correct those mistakes. The Twenty-Fifth Amendment addressed some other deficiencies in Article II, which deals with the presidency. Both amendments are in full effect today.

### Resolving Constitutional Disputes and Overruling the Supreme Court

The Framers wrote most of the Constitution in clear language, but they knew that, as with any legal document, there would be differences of interpretation. The amendment process was a way of resolving interpretive disputes.

The founding generation employed it for this purpose just seven years after the Constitution came into effect. In *Chisholm v. Georgia*, the Supreme Court misinterpreted the wording of Article III defining the jurisdiction of the federal courts. The Eleventh Amendment reversed that decision.

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Women's Suffrage envoys on and about the East Steps of the Capitol, May 9, 1914. The Nineteenth Amendment was ratified August 18, 1920.

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In 1857, the Court issued *Dred Scott v. Sandford*, in which it erroneously interpreted the Constitution to deny citizenship to African Americans. The Citizenship Clause of the Fourteenth Amendment reversed that case.

In 1970, the Court decided *Oregon v. Mitchell*, whose misinterpretation of the Constitution created a national election law mess. A year later, Americans cleaned up the mess by ratifying the Twenty-Sixth Amendment.

All these amendments are in full effect today, and fully respected by the courts.

**Responding to Changed Conditions**

The Twentieth Amendment is the most obvious example of a response to changed conditions. Reflecting improvements in transportation since the Founding, it moved the inauguration of Congress and President from March to the January following election.

Similarly, the Nineteenth Amendment, which assured women the vote in states not already granting it, was passed for reasons beyond simple fairness. During the 1800s, medical and technological advances made possible by a vigorous market economy improved the position of women immeasurably and rendered their political participation far more feasible. Without these changes, I doubt the Nineteenth Amendment would have been adopted.

Needless to say, the Nineteenth and Twentieth Amendments are in full effect many years after they were ratified.

**Correcting and Forestalling Government Abuse**

Avoiding and correcting government abuse was a principal reason the Constitutional Convention unanimously inserted the state-driven convention procedure into Article V. Our failure to use that procedure helps explain why the earlier constitutional barriers against federal overreaching seem a little ragged. Before looking at the problems, however, let's look at some successes:

- We adopted the Thirteenth, Fourteenth, Fifteenth, and Twenty-Fourth Amendments to correct state abuses of power. All of these are in substantially full effect.
- In 1992, we ratified the Twenty-Seventh Amendment, 203 years after James Madison first proposed it. It limits congressional pay raises, although some would say not enough.
- In 1951, we adopted the Twenty-Second Amendment, limiting the President to two terms. Eleven Presidents later, it remains in full force, and few would contend it has not made a difference.

Now the problems: Because we have not used the convention process, the first 10 amendments (the Bill of Rights) remain almost the only amendments significantly limiting congressional overreaching. I suppose that if the Founders had listened to the "amendments won't make any difference" crowd, they would not have adopted the Bill of Rights either. But I don't know anyone today who seriously claims the Bill of Rights has made no difference.

*"I have but one lamp by which my feet are guided; and that is the lamp of experience," Patrick Henry said. "I know of no way of judging of the future but by the past."*

In this case, the lamp of experience sheds light unmistakably bright and clear: Constitutional amendments work.


Article V is the ultimate nullification procedure.

# The Article V Solution — The Way to Implement the Tenth Amendment

**Rita Dunaway, Esq., National Legislative Strategist for the Convention of States Project**

It's the elephant in the room. The Tenth Amendment boldly declares:

*"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."*

But if the daily news is any indication, there is no subject exempt from federal power. Through its power of the purse, which is virtually unlimited under the modern interpretation, Congress can impact, influence, or coerce behavior in nearly every aspect of life.

The question, then, that holds the key to unlocking our constitutional quandary, is this: How do states protect their reserved powers under the Tenth Amendment?

On a piecemeal basis, states can certainly challenge federal actions through lawsuits, arguing that the federal government lacks constitutional authority to act in a particular area. But what if the court, as it is wont to do, "interprets" the Constitution as providing the disputed authority? What then?

In their frustration and disbelief over the growing extent of federal abuses of power (and the refusal of our Supreme Court to correct them), some conservatives argue that states should engage in "nullification," whereby the states simply refuse to comply with federal laws they deem unconstitutional.

While there are some, less dramatic forms of nullification that are perfectly appropriate and constitutional—such as states refusing to accept federal funds that come attached to federal requirements—this state-by-state, ad hoc review of federal law is fraught with legal and practical pitfalls.

First of all, which state officer, institution, or individual decides whether a federal action is authorized under the Constitution? Is it the state supreme court, the legislature, the attorney general—or can any individual make the determination? After all, the Tenth Amendment reserves powers to individuals as well as to states.

Secondly, how can a state enforce its nullification of a federal law? For instance, if a state decides that the Affordable Care Act's individual mandate is unconstitutional, how can it protect its citizens against the "tax" that will be levied against them if they fail to comply? It's difficult to envision an effective nullification enforcement method

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USA
PENNSYLVANIA NEBRASKA IDAHO
OKLAHOMA MISSISSIPPI INDIANA
FLORIDA NEW MEXICO DELAWARE
WASHINGTON ILLINOIS WYOMING
VIRGINIA NORTH DAKOTA KANSAS
SOUTH CAROLINA OREGON TEXAS
ARIZONA NEW JERSEY VERMONT
CONNECTICUT ARKANSAS NEW HAMPSHIRE KENTUCKY
NORTH CAROLINA NEVADA WEST VIRGINIA UTAH HAWAII
MICHIGAN ALASKA MASSACHUSETTS CALIFORNIA IOWA
LOUISIANA MONTANA RHODE ISLAND WISCONSIN MAINE
MINNESOTA MARYLAND SOUTH DAKOTA GEORGIA OHIO
MISSOURI TENNESSEE NEW YORK COLORADO ALABAMA

CONVENTION of STATES


**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.**

*Continued from front page*

that doesn't end, at some point, with armed conflict.

But for true conservatives whose goal is to conserve the original design of our federal system, the far more fundamental problem with this type of in-your-face nullification is the fact that it was not the Founders' plan.

Article VI tells us that the Constitution, and federal laws passed pursuant to it, is the "supreme law of the land." Under Article III, the United States Supreme Court is considered to be the final interpreter of the Constitution. While some claim that this was not the Founders' intention, historical records such as Alexander Hamilton's Federalist 78 demonstrate it was, in fact, the judiciary that they intended to assess the constitutionality of legislative acts.

And then we have the Tenth Amendment itself. It establishes a principle, but it does not establish a remedy or process for protecting the reserved powers from federal intrusion.

That missing process is found in Article V. Faced with a federal government acting beyond the scope of its legitimate powers—and a Supreme Court that adopts erroneous interpretations of the Constitution to justify the federal overreach—the states' constitutional remedy is to amend the Constitution to clarify the meaning of the clauses that have been perverted. In this way, the states can assert their authority to close the loopholes the Supreme Court has opened.

You don't have to take my word for it.

In an 1830 letter to Edward Everett, James Madison wrote:

*"Should the provisions of the Constitution as here reviewed be found not to secure the Govt. & rights of the States agst. usurpations & abuses on the part of the U.S. the final resort within the purview of the Constn. lies in an amendment of the Constn. according to a process applicable by the States."*

In other words, Article V is the ultimate nullification procedure. For states that have the will to stand up and assert their Tenth Amendment rights, they can do so by applying for an Article V convention to propose amendments that restrain federal power.

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CONVENTION of STATES
A PROJECT OF CITIZENS FOR SELF-GOVERNANCE

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Please do all in your power to preserve and defend our current, matchless, U.S. Constitution against any and all who for whatever purpose wish to call a convention to alter it. Any flaws in our government were caused by FAILING to follow it as written. There are no reasons to subject our founding charter to the whims of todays political appitites. If enough states were to pass this terrible con-con idea, a convention would be forced upon us. Contrary to what proponents say, the is NO way to contain a convention to spesific issues even if those issues were justified ,which they are not. The whole document goes up for revision that , under todays climate, could be the end of the Republic as we have known it.The issues they use can be adressed by the existing ledgistlature without this dangerous convention which was not done since 1787. Please urge your peers and anyone else who will be evenually voting on this to OPPOSE : SR133 (HR187) , SR254 (HR357) SR134 and any SIMILAR bills ! Thank you for your attention.

Sincerely, Timothy L. Sabia

334 Stagecoach Road

Northampton, Pa 18067

Please vote **NO on Article V convention legislation, SR133; SR254; SR134.** Nearly 1.4 million troops have died in America's history to guard the Constitution. Please do not let the false claim that amending a document being ignored is what the Founders wanted. It is not. A changed document being ignored will not be followed because it is changed. That is ridiculous! The Founders never said to change the Constitution to make the federal government obey it. Such claims are distortions of the record of the 1787 Philadelphia Convention.

**In 2018 so far, EIGHTEEN state legislatures took action to NOT pass Convention of States resolutions while ZERO have passed it.** Your counterparts in other states are learning the truth that this movement isn't telling the full story based in facts.

The Founders did tell us that citizens should learn our Constitution and be engaged with our elected leaders. Citizens were to engage their representatives in Congress, ensuring adherence to the Constitution, and when such efforts failed, to join their state legislatures in resisting the unconstitutional usurpation. If needed, they were to elect more faithful representatives to Congress to guard their liberties. (Footnotes 1)

Dr. Natelson, attorney for Convention of States, admitted (Footnote 2) that a convention can change the "one state, one vote" rule, opposite of what many convention advocates claim. Should a convention call be made by Congress, they will attempt to define such a convention as they have previously asserted (41 times) is their right. (Footnote 3) Petitions for Article V may be counted for an unrestricted convention no matter the limitations of a state resolution or law.

In 1973, the U.S. Senate clearly acted to change a draft law from one state, one vote, to the Electoral College allocation (Footnote 3). With only 20 votes out of 538 possible, Pennsylvania could simply be ignored. Congress is sure to pass legislation similar to the Federal Convention Act of 1973 (Footnote 4) if an Article V convention gets called. Under such a law, states will not have one state one vote as promised, and they will not be able to limit a convention topic by controlling delegates, as delegates will be protected from prosecution.

An Article V convention would be a disaster and Article V proponents can not argue this point. As you likely know, Article V advocates assert Congress has no such power. An Article V call can only lead to three to five years of litigation. There are numerous states that would litigate to protect their rights

in what would become an international embarrassment, further diminishing our Constitution's illuminating light of Liberty.

**There can be no disputing that this issue will end up in voluminous state and federal litigation.** Under the Political Question Doctrine, courts should refuse to hear Article V litigation. If in fact courts do not intervene, just who will have control? (Footnote 5) An Article V convention is a recipe for constitutional chaos. Americans would likely tremble at the prospect of states further losing power during a constitutional convention defined by the Supreme Court.

Please vote NO on Article V resolutions. The People of the United States are looking to Pennsylvania to lead on this issue. I have provided some key thoughts and references below (Footnotes 6) that should cause any legislator to question the reality of how an Article V would play out and whether advocates are being completely honest with them.

Thank you very much Director Totino.

In Liberty,

<<Signed>>
**Shawn M. Meehan, Master Sergeant, USAF, Retired**
**Founder, Guard The Constitution Project**

**Footnotes:**

**(Footnotes 1)**

"If the interposition of the State legislatures be necessary to give effect to a measure of the Union, they have only NOT TO ACT, or to ACT EVASIVELY, and the measure is defeated"
-- Federalist Papers : No. 16 - Hamilton

The People are “the natural guardians of the Constitution” as against federal judges “embarked in a conspiracy with the legislature”; and the People are to become “enlightened enough to distinguish between a legal exercise and an illegal usurpation of authority.”
-- Federalist No.16, 10th para.

"...Beside this security, there is a great probability that such a declaration in

the federal system would be inforced; because the state legislatures will jealously and closely watch the operations of this government, and be able to resist with more effect every assumption of power than any other power on earth can do; and the greatest opponents to a federal government admit the state legislatures to be sure guardians of the people's liberty…."
-- James Madison Speech Introducing Bill of Rights to U.S. House of Representatives, June 8, 1789

Thomas Jefferson was clear: “Then it is important to strengthen the state governments: and as this CANNOT BE DONE BY ANY CHANGE IN THE FEDERAL CONSTITUTION, (for the preservation of that is all we need contend for,) it must be done by the states themselves, erecting such barriers at the constitutional line as cannot be surmounted either by themselves or by the general government. The only barrier in their power is a wise government….”
-- Thomas Jefferson To Archibald Stuart written December 23, 1791

"I know no safe depositary of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power.”
--Thomas Jefferson to William C. Jarvis, 1820

"In the first instance, the success of the usurpation will depend on the executive and judiciary departments, which are to expound and give effect to the legislative acts; and in the last resort a remedy must be obtained from the people who can, by the election of more faithful representatives, annul the acts of the usurpers."
-- James Madison in Federalist 44, January 25, 1788

"The truth is, that this ultimate redress may be more confided in against unconstitutional acts of the federal than of the State legislatures, for this plain reason, that as every such act of the former will be an invasion of the rights of the latter, these will be ever ready to mark the innovation, to sound the alarm to the people, and to exert their local influence in effecting a change of federal representatives."
-- James Madison in Federalist 44, January 25, 1788

"On the other hand, should an unwarrantable measure of the federal government be unpopular in particular States, which would seldom fail to be

the case, or even a warrantable measure be so, which may sometimes be the case, the means of opposition to it are powerful and at hand. The disquietude of the people; their repugnance and, perhaps, refusal to co-operate with the officers of the Union; the frowns of the executive magistracy of the State; the embarrassments created by legislative devices, which would often be added on such occasions, would oppose, in any State, difficulties not to be despised; would form, in a large State, very serious impediments; and where the sentiments of several adjoining States happened to be in unison, would present obstructions which the federal government would hardly be willing to encounter...."
-- Federalist 46, "The Influence of the State and Federal Governments Compared, New York Packet, Tuesday, January 29, 1788, Madison

"Either the mode in which the federal government is to be constructed will render it sufficiently dependent on the people...it will not possess the confidence of the people, and its schemes of usurpation will be easily defeated by the State governments, who will be supported by the people."
-- Federalist 46

"Now, more than ever before, the people are responsible for the character of their Congress. If that body be ignorant, reckless, and corrupt, it is because the people tolerate ignorance, recklessness and corruption. If it be intelligent, brave, and pure, it is because the people demand these high qualities to represent them...."
-- President James Garfield

"Now more than ever before, the people are responsible for the character of their Congress. If that body be ignorant, reckless and corrupt, it is because the people tolerate ignorance, recklessness and corruption. If it be intelligent, brave and pure, it is because the people demand these high qualities to represent them in the national legislature ... If the next centennial does not find us a great nation...it will be because those who represent the enterprise, the culture, and the morality of the nation do not aid in controlling the political forces. "
-- President James Garfield, 1877

“If ever a time should come, when vain and aspiring men shall possess the highest seats in Government, our country will stand in need of its experienced patriots to prevent its ruin.”
-- Samuel Adams

**(Footnote 2)** "Interstate conventions traditionally have determined issues according to a “one state/one vote,” although a convention is free to change the rule of suffrage." Dr. Natelson writing in the ALEC Handbook, "Proposing Constitutional Amendments by a Convention of the States," a Handbook for State Lawmakers, 2013 version, Section E, page 15.

**(Footnote 3)** The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress by Thomas H. Neale, Specialist in American National Government, April 11, 2014, Congressional Research Service, 7-5700, R42589, Pg. 36, "Providing a Framework: The Precedent of Congressional Proposals to Shape an Article V Convention" PDF Copy of report available here: http://fas.org/sgp/crs/misc/R42589.pdf

**(Footnote 4)** The U.S. Senate passed Federal Convention Act of 1973 on July 9, 1973. Two key sections from that act are:

“SEC. 7. (a) A convention called under this Act shall be composed of as many delegates from each State as it is entitled to Senators and Representatives in Congress.”

“SEC. 7. (c) Delegates shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at a session of the convention, and in going to and returning from the same and for any speech or debate in the convention they shall not be questioned in any other place.”

When the Act was originally drafted and referred to the Judicial Committee, 7(a) called for one state, one vote, but was changed to this Electoral College model. As passed, it would handicap states.

7(c) makes it pretty clear that Congress intends to exempt all delegates from any potential prosecution upon their return to their state. Legislators also must consider that most parliamentary rules provide for “executive session” as was used for the entire 1787 Constitutional Convention. Delegates might not be able to be communicated with, controlled, or recalled. In executive session, the events within the convention would not be known so the states would have no knowledge of delegate performance and if a recall of delegates was necessary.

**(Footnote 5)** "And the few cases that have been asked to deal with issues comparable to the one now tendered to this Court have uniformly held questions as to compliance with Article V's requirements are within the sole

province of Congress and not the courts -- in the language that has come to characterize such issues, they are political" (that is, nonjusticiable) questions." -- United States of America, Plaintiff, v. Wayne Wojtas, Defendant, No. 85 CR 48, United States District Court for the Northern District of Illinois, Eastern Division, 611 F. Supp. 118; 1985 U.S. District. Lexis 19914, May 10, 1985

"As a rule, the Constitution speaks in general terms, leaving Congress to deal with subsidiary matters of detail as the public interests and changing conditions may require, and Article V is no exception to the rule."
-- Dillon v. Gloss 256 U.S. 368 (1921)

**(Footnotes 6)**

To begin, can we all agree that no matter a person's employment condition, wealth, and favorite flavor of politics, our very basic rights to be who we are, and to strive for who we want to be, free of unnecessary interference, is protected by rights we are born with? Our Constitution is the firewall of last resort in protecting this robust compilation of personal rights from those that would seek to damage or abolish them. That firewall should not be fooled with by heavily-financed advocates devoid of documented facts on topic or a failure to embrace the reality as to how an Article V convention would play out.

Advocates of an Article V constitutional convention fundamentally misunderstand the procedures, laws, and mostly, the realities that will develop. Research clearly demonstrates the Founders did not enshrine Article V in the Constitution for when the Constitution is being ignored.

In arguing for ratification of the new Constitution, James Madison wrote in Federalist 78, “Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? ...experience assures us, that the efficacy of the provision has been greatly overrated” They knew paper barriers could not control morally bankrupt, self-interested leaders.

In a speech in 1798, John Adams warned America, “We have no government armed with power capable of contending with human passions unbridled by morality and religion... Our Constitution was made only for a moral and religious people. It is wholly inadequate to the government of any other."

The Constitution is not the problem. The Constitution is the solution.

September 10, 1787, during the constitutional convention, Alexander Hamilton testified that amendments remedy “defects” in the Constitution. He tells us in Federalist No. 85 that useful amendments would address the “organization of the government, not…the mass of its powers.” As a correct example, defects corrected to date have included ending slavery and giving women the vote, not an “OK, we are serious you must obey this document” amendments.

The convention option of Article V was designed to adjust the organization of the government when Congress refused to. It was not designed to adjust the abuse of power by one part of government over another. As shown above, the Founders knew it could not. A moral and involved “We The People” is clearly the restraining force the Founders had in mind.

Article V was not put in The Constitution to change it when it is being ignored. It was inserted to ensure the balance of power was proper based on experience. James Madison, known as the “Father of the Constitution,” in Federalist No. 43 wrote, “[The Constitution] equally enables the general and the State governments to originate the amendment of errors, as they may be pointed out by the experience on one side, or on the other."

The April 11, 2014 Congressional Research Service Report asserts that Congress will define a convention, not the states. Convention advocates assert Congress has no such power. In 1973 the U.S. Senate passed Federal Convention Act authorizing delegate representation and voting at a convention matching state representation in the Electoral College. The bill also provided immunity to all delegates, ensuring states can not control their delegates to a convention. While the bill did not become law, it illuminates Congress' predilection to define a convention as the report documents they have attempted 41 times.

Mr. Farris of Convention of States, in testimony to the Arizona Legislature and other venues, and Nick Dranius of The Heartland Institute, in an online discussion with me, both Article V convention movement leaders, have both admitted the likelihood of litigation should an Article V convention be called.

A convention call will lead to litigation. Under the Political Question Doctrine, Federal courts should refuse to hear a case if they find it presents a political question. If in fact courts do not intervene, just who will have control? An Article V convention is a recipe for constitutional chaos. There are numerous states that would litigate to protect their rights in what would become an international embarrassment, further diminishing our Constitution's illuminating

light of Liberty.

**The problem is not The Constitution. The problem is we do not follow The Constitution. We The People must get involved to guard, not amend our Constitution.**

Several well known Conservatives have been conned into believing that an Article V Convention would fix all the problems in DC. Mark Levin—Hawking a book, Sen Tom Coburn-turn lobbyist, Tea Party Patriots- delusional all think that a Con-Con will only be used to fix problems that Conservatives want. Meanwhile George Soros and the far left is working with them to take away the FREEDOM granted in the Constitution. He would be happy to repeal the Second Amendment. Meanwhile I stand with Eagle Forum & the John Birch Society because their mission is to protect the the Constitution as written, that has served this country so well for the last 231 years.

If Congress does not adhere to the US Constitution now (which it does not), why do we believe it will adhere to new amendments particularly as it relates to a balanced budget or federal overreach. At a convention could delegates, for example, craft a BBA which would exclude welfare spending or military funding. The Federal Government currently has many Department's that are unconstitutional. Education & EPA come to mind. All these were created by people who swore to uphold the Constitution

So how can we trust SWAMP DWELLERS *read below* to do the right thing. James Madison and Alexander Hamilton are not available as delegates and in 1787 they trembled at the prospect of an Article V convention

Article V provides that if two thirds of the states apply for it, Congress shall call a convention for proposing Amendments to the US Constitution. However, Delegates would have the right, as recognized in the 2nd paragraph of our Declaration of Independence to throw off the Constitution we have and write a new constitution which creates a new government

The Convention of States Project (COSP) implicitly acknowledges the danger of a convention when they say state legislatures should pass "unfaithful delegate" laws which they claim will control Delegates. But such laws can't control Delegates because since Congress sets the rules for a convention, they have traditionally claimed the power to determine the number and selection process for Delegates. Congress may appoint themselves as Delegates. Nothing requires Congress to permit States to participate in the convention. The convention lobby has another agenda, and they need a convention to get it implemented

**TOO MANY WAYS FOR FREEDOM TO BE LOST WITH AN ARTICLE V CONVENTION**

**Christopher H Fromme 113 Pittview Rd Pittsburgh PA 15237**

# WHY A CONSTITUTIONAL CONVENTION IS DANGEROUS

## TO ALL STATE LEGISLATORS

## DO NOT BE FOOLED ! ! !

Dear Senator:
If you vote 'yes' for ANY Article V Convention, and it passes; if enough states call for it, you'll be crying: "Oh my God! What have I done?" A
s you know, if this should happen it happens to every single one of us – including you and your loved ones. Please take this very seriously. Once it's done there's no turning back; and the "Constitution for the NewStates of America" waiting in the wings, is a constitution straight from Hell. (see below)

The proponents of the Convention are lying to some of the state legislators, telling them that George Soros is against it. If you know who George Soros is, you know it's a lie, and that he's panting to get it done because until they get our Constitution they can not have their NEW WORLD ORDER!

YOUR BIG QUESTION SHOULD BE: Since the U.S. Congress tramples over the current constitution as it is, how could you possibly believe they'll pay attention to any new amendments??? I believe with all my heart you want to do good. And believe me when I say an Article V Convention will destroy our liberty and our lives. May our Heavenly Father bless and guide you.

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## WHY AN ARTICLE V CONVENTION IS DANGEROUS!!!

The last really big push for a Conference of States - aka Article V Convention - was in 1995 headed by Utah Governor Mike Leavitt.
The Conference of States was scheduled to take place in "historic" Philadelphia, October 22nd through 25th, 1995 – coincidentally falling on October 24th, the Fifty-year Anniversary of the United Nations

So sure of success were the powers behind the effort, a Canadian newspaper in '95 informed its readers that British Prime Minister, Margaret Thatcher, would be out of the country in October, attending an "important convention" in Philadelphia. We discovered later that Margaret Thatcher's secretary was an advisor to the COS.
Here is a statement from Gov. Leavitt's ten-page white paper:

**"Congress tried to limit the convention's authority by stating that it would meet 'for the sole and express purpose of revising the Articles of Confederation'.**

**As we all know, the delegates to the great Constitutional Convention in 1787 in Philadelphia did much more than that.**

**THEY THREW OUT THE ARTICLES OF CONFEDERATION AND DRAFTED A NEW CONSTITUTION."**

http://www.sweetliberty.org/issues/concon/leavitt.htm

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## Some Modern History

The proponents of a con-con have been at it for nearly fifty years now:

In **1964** the **Ford and Rockefeller Foundations** funded and orchestrated, via the CSDI (Center for the Study of Democratic Institutions), the drafting of a new constitution for America. This model constitution, drawing upon the efforts of more than 100 people, took ten years to write. The 40th draft was published in a book titled "**The Emerging Constitution**", by Rexford G. Tugwell (Harper & Row, **1974**). [available at Amazon.com]

**The project produced the proposed Constitution for the NewStates of America**
http://www.sweetliberty.org/issues/concon/newstates.htm

> **"In the event you would be inclined to dismiss the relevance of the proposed new constitution, bear in mind that it is the product of a tax-exempt think-tank which took ten years, $25,000,000.00 and the collaboration of over one-hundred like-minded individuals. . . It would be folly to believe this investment is intended to be merely an exercise in political theory. The frightening reality is, the planners are serious in their efforts to impose a new constitution upon the people of America as we enter the 21st Century."** — Col. Arch Roberts, Committee to Restore the Constitution

One year following publication of Tugwell's plan - **1975** - **Nelson Rockefeller**, then president of the U.S. Senate, engineered the introduction of HCR 28 calling for an unlimited Con-Con to be held in the Bicentennial year, **1976**. With this time line, we can clearly see they meant business and certainly wasting no time to get it done.

> **"Visible collusion of the U.S. Congress with world government organizations created a backlash which doomed the grandiose**

**Fourth of July Constitutional Convention in Philadelphia. . . . Arrogance was the seed of its undoing."** Col. Arch Roberts.

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Abandoning plan one, the conspirators moved directly to the state legislatures and, operating behind a screen of 'conservative' organizations, began lobbying the states.

**ALEC's hired lawyer, John Armor**, was the foremost lobbyist to state legislators in the decades-long effort to win the required number of state calls via the "balanced budget amendment" resolution. They nearly won. Missouri passed it in 1983, leaving just three more states needed. There began an awakening of the dangers and it stopped the onslaught. In the interim several states rescinded their calls. All was quiet until 1993 when once again 12 states, one after another, were attempting to get the call. As the state legislators were warned of the dangers, every one of them voted down the resolution. The last BIG try, as stated above, was from Utah's Governor, Mike Leavitt.

**It seems probable the proponents of the Con-Con waited those ten years (`83 – `93) hoping enough new legislators, not aware of the dangers, would fall for their lies and get the job done. We pray it doesn't work.**

**ALEC has been in the forefront of this dangerous plan for decades.** One could wonder if this was ALEC's main purpose. **ALEC was founded in 1973. Paul Weyrich was one of the founders of ALEC. Paul Weyrich, like Governor Mike Leavett, wanted a new constitution also.** See this:

**A Conservative's Lament: After Iran, We Need to Change Our System and Grand Strategy**

http://www.sweetliberty.org/issues/wolves/lament.htm#.WNmHfU11rGI

By: **Paul M. Weyrich** - **The Washington Post** - Sunday, March 8, 1987 B-5

> **"It is time for a new national grand strategy. Nothing less will address the real problem. Conservatives have a responsibility to take the lead in developing one. . . . our current system institutionalizes amateurism.**
>
> **"Unlike European parliamentary democracies, we have no "shadow cabinet", no group of experts who are groomed by their party for decades before they take high office. Our presidents can be peanut farmers or Hollywood actors. They can choose their top advisors either from among "professionals" who may not share their goals or supporters who often have no background or expertise in policy. Either way, they lose, and so does the country."**

Some -not all - of the other players in the scheme were the **National Taxpayers' Union** (NTU), **Republican National Committee** (RNC), **Committee on the Constitutional System** (CCS), **former Secretary of the Treasury, C. Douglas Dillon**, and **former Counsel to the President, Lloyd N. Cutler**. Recently, the **Goldwater Institute** was visibly working with **ALEC**, testifying to legislative committees and touting the same fabrications found in the ALEC Handbook. The NCSL (**National Conference of State Legislators**) is also in lockstep with **ALEC**.

[It has been said that the CCS wants to wait to call a Con-Con until the United States is in a 1929 type depression, because only then would the people accept the radical changes they intend to make. They were not kidding.]

PLEASE DON'T LET IT HAPPEN!!!!

**ROBERT G. NATELSON**
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# MEMORANDUM

To: Rita Dunaway, Convention of States Project

From: Rob Natelson

Re: Scope of Simulated Convention's Proposed Amendments

Date: October 5, 2018

## INTRODUCTION

In October, 2016, the Convention of States Project of Citizens for Self-Governance held a simulated convention for proposing amendments in Williamsburg, Virginia. You have requested me to review the six amendments recommended by that gathering to determine if the adoption of any of them would increase the power of the federal government.

Since I understand that this memorandum may be made public, I provide the following personal background: I have been a licensed attorney at law since March, 1974. I practiced law, initially in New York and subsequently in Colorado, for about a decade. I permitted my New York license to lapse after ceasing practice there, but I remain licensed as an attorney in Colorado. From 1985 to 2010 I served as a professor of law, becoming a tenured full professor in 1992. Most of my academic career was spent at the University of Montana, where I taught a wide range of courses, including Constitutional Law, Constitutional History, First Amendment, and Advanced Constitutional Law. My works of academic research, which include several articles on the Constitution's amendment process, have been published in numerous scholarly legal journals. *See* https://i2i.org/constitution/articles-books-by-rob-natelson/. In addition, I currently serve as director of the Article V Information Center in Denver, articlevinfocenter.com, which seeks to provide unbiased and non-partisan information on the amendment process to the general public.

## THE SIMULATED CONVENTION IN WILLIAMSBURG

The Williamsburg simulation was designed to re-introduce state lawmakers to the "convention of the states" procedure—a procedure used often in American history but that has become unfamiliar to the general public over the past few decades.[1] Re-introduction to "convention of the states" protocol was deemed important because any potential convention for proposing amendments held under the U.S. Constitution would be a convention of the states. *Smith v. Union Bank*, 30 U.S. 518 (1831).[2] The lessons of the Williamsburg simulation were reinforced and built upon when an actual convention of the states was held in Phoenix, Arizona in 2017.

The simulated convention recommended six amendments to the U.S. Constitution designed to fit within the model application of the Convention of States project of Citizens for Self-Governance. One would impose term limits on Congress. The others were designed to impose fiscal restraints on the federal government and reduce the size and scope of that government.

## REASONS FOR THIS REASSESSMENT

Despite the purpose of these proposed amendments, some polemicists have charged that the actual effect of five of them would be to increase federal power. The initial source of this charge seems to be an Internet blogger named Joanna Scutari, aka Joanna Martin. Scutari is well known for her attacks on prominent conservatives and libertarians, particularly those involved in the Article V movement, and her writings frequently serve as justification for lobbying efforts against an amendments convention.

Scutari's writings are signed with the pseudnym "Publius Huldah"—the first name presumably derived from the pseudonym of the writers of the *The Federalist*—and the latter from the name of a prophetess mentioned in 2 Kings 22:14–20 and 2 Chronicles 34:22–28. The pseudonym thereby communicates that the writer is claiming the mantle of an authoritative constitutional prophetess.

This opinion examines each proposed amendment to determine whether it can be reasonably construed to increase federal power. For completeness, I have added

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[1]For a list of conventions of states and colonies held throughout American history, see *The Story of Conventions of States in American History*, at http://articlevinfocenter.com/convention-states-american-history/.

[2]*See also* Robert G. Natelson, *Why The Constitution's "Convention for Proposing Amendments" is a Convention of the States* (Heartland Institute, 2017) (citing extensive founding-era material identifying an amendments convention as a convention of the states).

short references to Scutari's claims about each.

## CONSTITUTIONAL AMENDMENTS: SOME GENERAL PRINCIPLES

The Founders expected constitutional amendments to serve a number of purposes, and their expectations have been fully justified. One purpose is to alter procedures in the light of working experience. An example is the Twelfth Amendment, which changed the way the Electoral College operates. Some amendments respond to new conditions, such as the Twentieth Amendment, which took account of technological advances in transportation to shorten the time between the presidential election and inauguration. Still others, such as the first eight amendments in the Bill of Rights and the Fourteenth and Fifteenth Amendments, were designed to end or forestall abuses. Some, such as the Ninth, Tenth, and Eleventh Amendments, were ratified to clarify constitutional rules.

In the course of making such changes, some amendments increase federal power, some decrease federal power, and some make no change in federal power.

Much of the Constitution consists of grants of enumerated powers, and the language for doing so takes three forms. The language may simply state that a power is granted, *e.g.*, Article I, Section 8 ("The Congress shall have Power . . . "); it may employ a permissive verb, *e.g.*, Art. I, § 5, cl. 2 ("Each House may determine the Rules. . ."); or it may imply a power by reason of a future imperative imposing a duty that requires power to fulfill, *e.g.*, Art. I, § 5, cl. 1 ("Each House shall be the Judge of the Elections . . ."); Art. II, § 3 (the president "shall take Care that the Laws be faithfully executed"); Art. IV, § 4 ("The United States shall guarantee to every State in this Union a Republican Form of Government").

Amendments that increase federal power have followed the practice of expressing those grants in clear words and in these three ways. *See, e.g.*, Amend. XIV, § 5 ("The Congress shall have power...."); Amend. XV (same); Amend. XVI (same); *cf.* Amend. XVII ("the legislature of any State may empower"); Amend. XX ("The Congress may by law. . .").[3]

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[3]Many would argue that the Constitution's so-called Executive Vesting Clause," Art. II, § 1, cl. 1, and its Judicial Vesting Clause, Art. III, §, also serve to convey power. The Supreme Court has taken that position with respect to the Executive Vesting Clause. Myers v. United States, 272 U.S. 52 (1926). I think the historical evidence is pretty clear that such was not the original understanding, Robert G. Natelson, *The Original Meaning of the Constitution's "Executive Vesting Clause" – Evidence from Eighteenth-Century Drafting Practice*, 31 WHITTIER L. REV. 1 (2009), but the point is not relevant to the present issue because none of the simulated convention's proposed amendments contains vesting language.

It is elementary that while exceptions may confirm stated grants, in the absence of granting language they do not add to existing grants. For example, the Fourth Amendment's protection against "*unreasonable* searches and seizures" does not create federal power to engage in *reasonable* searches and seizures. Rather, the exercise of that authority must rest on powers the Constitution enumerates. Indeed, none of the first eleven amendments add to federal authority because they are restricted to declaring limits on that authority (Amendments IX - XI) or carving exceptions to authority that might otherwise exist (Amendments I-VIII). *Cf. Congressional Preamble, Bill of Rights* (distinguishing between "declaratory" and "restrictive" provisions). In other words, to add to federal power, an amendment must say so specifically.

One last principle: Other than the amendments in the Bill of Rights, all amendments have been adopted to address real, rather than possible, conditions. For example, when the Supreme Court extended its jurisdiction in an improper manner in *Chisholm v. Georgia*, 2 U.S. 419 (1793), the founding generation ratified the Eleventh Amendment to clarify that the Court's holding was erroneous. The Founders did not merely expostulate about how the Constitution "ought" to be interpreted; instead, they adopted a constitutional amendment correcting the Court. The Citizenship Clause of the Fourteenth Amendment, Amend. XIV, § 1, operated similarly to overrule *Dred Scott v. Sanford*, 60 U.S. 393 (1857). Thus, it is not proper to declare that an amendment that *reduces* the practical power of the federal government actually *increases* federal power simply because the amendment seems to acknowledge wider authority than the declarer would prefer.

With these principles in mind we examine each of the simulated convention's six proposed amendments to see whether there is a basis for the charge that they augment federal power.

## THE DEBT AMENDMENT

The simulated convention's proposed amendment on federal debt reads as follows:

> SECTION 1. The public debt shall not be increased except upon a recorded vote of two-thirds of each house of Congress, and only for a period not to exceed one year.
>
> SECTION 2. No state or subdivision thereof shall be compelled or coerced by Congress or the President to appropriate money.
>
> SECTION 3. The provisions of the first section of this amendment shall take effect 3 years after ratification.

*Analysis.* Section 3 of this amendment is merely a transitional measure. Section 1 creates an additional condition precedent and a time limit on the increase of public debt. It is a procedural limitation on existing authority—essentially an exception just as, for example, the First Amendment limits congressional authority to regulate interstate commerce or the post office. Significantly, the proposal contains none of the constitutional language customarily used to grant power.

Section 2 codifies part of the Supreme Court's existing "anti-commandeering" doctrine, expressed in cases such as *New York v. United States*, 505 US 144 (1992), *Printz v. United States*, 521 U.S. 898 (1997), and *Murphy v. NCAA* ___ U.S. ___ (2018). According to this doctrine, Congress may not issue direct orders to states to exercise (or not exercise) their sovereign authority unless Congress does so through a statute of general applicability—that is, a statute applying to the private sector as well as the states. This is true even when Congress otherwise acts within its enumerated powers.

Both the *New York* and *Printz* decisions were accompanied with vigorous dissents, because some justices disputed whether the anti-commandeering doctrine is valid within the scope of enumerated federal powers. The effect of Section 2, therefore, is to ensure—within the area of appropriations—the preservation of the anti-commandeering doctrine from judicial reversal and to extend that doctrine to congressional laws of general applicability.

Ms. Scutari objects to this amendment in these words:

> So! Congress can't increase the debt unless they decide to increase the debt. Wow. This is "fiscal restraints"?
>
> * * * *
>
> To say that State Legislators display hypocrisy when they decry "out of control federal spending" when they have their hand out for all the federal money they can get, is an understatement. The amendment authorizes such spending to continue for as long as Congress continues to approve increases in the debt! The amendment legalizes—makes constitutional—all such spending and debt increases!
>
> * * * *
>
> Section 2 gives us nothing. Our existing Constitution doesn't permit the federal government to require States or local governments to spend money.

Of course, her comment on Section 2 displays ignorance of the scope, limitations, and potential reversibility of the anti-commandeering doctrine. No one conversant with that doctrine could claim, as she does, that "Section 2 gives us nothing."

Scutari's claim that "the amendment authorizes such spending to continue" is

inaccurate because the amendment contains no authorization. Rather, it creates an additional condition precedent—a two thirds vote of each house of Congress—to increase debt and imposes a time limit. If, for example, the United States were to enter a war and needed to borrow additional funds for that purpose, this amendment would render a two-thirds vote of each house necessary and the increase would last only a year.

Scutari claims that raising the requirement for increasing the debt from a majority of each chamber of Congress to two thirds of each chamber is not a "fiscal restraint." Long experience shows her to be wrong: On controversial issues two thirds majorities can be more difficult to obtain in Congress than simple majorities and can lead to better decision-making. *See generally*, John O. McGinnis & Michael B. Rappaport, *Our Supermajoritarian Constitution*, 80 TEX. L. REV. 703 (2002).

Finally, Scutari complains of existing debt, much of which she claims is illegitimate. However, the Constitution forbids Congress from repudiating it. Amend. XIV, § 4.

As a practical matter, the ability of Congress to create more debt is now almost unlimited, but the effect of this amendment would be to impose procedural limitations.

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## COMMERCE POWER AMENDMENT

This proposed amendment reads as follows:

> SECTION 1. The power of Congress to regulate commerce among the several states shall be limited to the regulation of the sale, shipment, transportation, or other movement of goods, articles or persons. Congress may not regulate activity solely because it affects commerce among the several states.
>
> SECTION 2. The power of Congress to make all laws that are necessary and proper to regulate commerce among the several states, or with foreign nations, shall not be construed to include the power to regulate or prohibit any activity that is confined within a single state regardless of its effects outside the state, whether it employs instrumentalities therefrom, or whether its regulation or prohibition is part of a comprehensive regulatory scheme; but Congress shall have power to define and provide for punishment of offenses constituting acts of war or violent insurrection against the United States.
>
> SECTION 3. The Legislatures of the States shall have standing to file any claim alleging violation of this article. Nothing in this article shall

be construed to limit standing that may otherwise exist for a person.

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

*Analysis.* Sections 3 and 4 are enforcement and transitional provisions. Section 1 would reduce the scope of the Commerce Clause as currently understood—for example, it would overrule the holding in *United States v. South-Eastern Underwriters Association*, 322 U.S. 533 (1944) to the effect that "commerce" includes all insurance. Indeed, in some respects Section 1 actually reduces the scope of the Commerce Clause as *originally* understood. This is because at the Founding "regulating commerce" was understood to include certain powers not on the list in Section 1, such as regulating marine insurance and negotiable instruments. *See generally*, Robert G. Natelson, *The Legal Meaning of "Commerce" In the Commerce Clause*, 80 ST. JOHN'S L. REV. 789 (2006) (reviewing hundreds of founding-era usages of the word "commerce"). The power to "regulate commerce" also included governance of navigation (including construction of navigation facilities) and other forms of transportation (not including construction of facilities). *Id.*

Scholars dispute whether "commerce" as originally understood included the mere non-economic movement of persons. However, there is no question that Congress now exercises the Commerce Power that way. Thus, the proposed amendment's reference to "movement" authorizes nothing that is not already happening.

As for Section 2: The Necessary and Proper Clause was designed to communicate that under the Constitution, unlike the Articles of Confederation, congressional powers were to be construed to include "incidental" powers. GARY LAWSON, GEOFFREY MILLER, ROBERT NATELSON & GUY SEIDMAN, THE ORIGINS OF THE NECESSARY AND PROPER CLAUSE (Cambridge University Press 2010). Incidental powers were those of lesser value than enumerated powers but tied to those enumerated by custom or reasonable necessity. The exercise of an incidental power had to be part of a bona fide effort to exercise the enumerated power. *Id.*

Since 1941, however, the Supreme Court has interpreted the Necessary and Proper Clause to include powers as great as those enumerated, so long as they are economic in nature and "substantially affect" the exercise of enumerated powers. *United States v. Darby Lumber Co.*, 312 U.S. 100 (1941); *Wickard v. Filburn,* 317 U.S. 111 (1942); *Gonzales v. Raich*, 545 U.S. 1 (2005). Section 2 carves this claimed authority down to something approximating its original scope. In fact, the resulting scope may be slightly more restrictive than the original understanding, because it prohibits congressional exercise of authority over "any activity that is confined within a single state" even if that might have been incidental to an enumerated power under founding-era law.

Scutari claims Section 1 would "delegate to the federal government dictatorial new powers over individual Citizens such as I witnessed in Communist East Europe and the Soviet Union: it delegates to the federal government total power over the 'movement' or 'transportation' of 'persons' across state lines." She apparently is unaware that the Commerce Clause, even as originally understood, always included power to regulate transportation across state lines. She apparently also is unaware that the courts protect a constitutional right to domestic travel, derived from the Privileges and Immunities Clause of Article IV, the Privileges or Immunities Clause of the Fourteenth Amendment, and the Equal Protection Clause of the Fourteenth Amendment. ERWIN CHEMERINSKY, CONSTITUTIONAL LAW: PRINCIPLES AND POLICIES 857-68 (3d ed. 2006).

Scutari further takes issue with the proposed amendment's provision that "Congress shall have power to define and provide for punishment of offenses constituting acts of war or violent insurrection against the United States." But this provision merely restates authority the Constitution already grants to Congress. Specifically, such authority was recognized at the Founding as inherent in the authority to "declare War," Art. I, § 8, cl. 11, and "define and punish . . . Offenses against the Law of Nations." Art. I, § 8, cl. 10. That is why it was unnecessary for the framers to include a separate grant to Congress for defining treason: treason violates the rules of war and the law of nations, over which the Constitution granted Congress authority. Instead, the Constitution merely limits the permissible definition and application of treason law. Art. III, § 3, cl. 1.[4]

In other words, this provision merely clarifies the meaning for those who might otherwise question it.

## FEDERAL TERM LIMITS

The text of this proposed amendment is as follows:

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[4]There is a separate grant for punishing treason, but it serves primarily as a limitation. Art. III, § 3, cl. 2.

Scutari's writings take on a hue of dark humor, when she ascribes this language to Professor Randy Barnett of the Georgetown University Law Center, and questions his motives ("Why does Barnett, who attended the 'simulated convention' as 'Committee Advisor', want the federal government to have this new power? "). The dark implications are obvious; her statement is humorous to the extent that it suggests Professor Barnett is an authoritarian. In fact, Professor Barnett is one of the leading libertarians in America, with an distinguished record of protecting individual liberty and of constitutional interpretations that favor liberty. *See, e.g.*, RANDY E. BARNETT, RESTORING THE LOST CONSTITUTION: THE PRESUMPTION OF LIBERTY (2004). Scutari appears to be unaware of this.

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

*Analysis.* This amendment extends to members of Congress the term limits principle already applied to the president by the Twenty-Second Amendment. Scutari does not claim it increases federal power, but dismisses it as a " feel-good palliative." She does not indicate whether she believes the Twenty-Second Amendment was a mistake.

### STATE ABROGATION AMENDMENT

This proposed amendment reads as follows:

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

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

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

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

Like the other proposed amendments considered so far, this grants no power to any federal entity and, in fact, sharply constrains federal legislative and executive authority. Scutari nevertheless states that because the Constitution vests the legislative power in the legislature, that this amendment elevates to the status of "law"

every order or regulation burped out by bureaucrats in the executive branch; every executive order signed by every President; and every order barked out by jack-booted thugs working for federal agencies. And unless three fifths of States agree that you don't have to obey – you must obey or bear the consequences of violating what would be—thanks to this amendment—"federal law".

This assertion betrays ignorance of legal terminology. Although the word "law" sometimes is used to mean a statute, the word commonly carries much broader meanings as well. For example, the text of the Constitution uses "law" several times to communicate concepts outside of the statutory meaning. Thus, while the Constitution is not a statute, it still identifies itself as "the supreme Law of the Land." Art. VI. The Constitution also refers to "common law," meaning the case law deriving originally from the English courts of Exchequer, Common Pleas, and King's Bench, Amend. 7. It further mentions "Indictment, Trial, Judgment and Punishment, according to Law" Art. I, § 3, cl. 7, although in this context the "law" on critical points might be declared by case law or court rule rather than by statute. Similarly, the Constitution refers to the "Law of Nations," which at the time of the Founding—as today—was often fixed by treaty, executive agreement, convention, or international custom. Article I, § 8, cl. 10; *see also* EMER (OR EMMERICH) DE VATTEL, THE LAW OF NATIONS (London, 1787); SAMUEL VON PUFENDORF, THE LAW OF NATURE AND NATIONS (4th ed., London, 1779).

Valid federal executive orders and administrative regulations are not statutes, but have the force of law, both de jure and de facto. For better or worse "you must obey" them today or face punishment. This proposed amendment does nothing but *reduce* the power of the federal government to promulgate such decisions.

## TAX LIMITATION AMENDMENT

Here is the text of this proposal:

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

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

SECTION 3. This Article shall be effective five years from the date of its ratification, at which time the Sixteenth Article of amendment is repealed.

*Analysis.* Even as originally understood, the Constitution granted the federal government wide taxing power. Indeed, the breadth of this federal taxing power was the subject of extensive commentary, both favorable and unfavorable, during the debates over the document's ratification.) On the scope of the power, see Robert G. Natelson, *What the Constitution Means by "Duties, Imposts, and Excises"—and Taxes (Direct or Otherwise),* 66 CASE WESTERN RES. L. REV. 297 (2015); *cf.* ALEXANDER HAMILTON, THE FEDERALIST NO. 30 ("A complete power, therefore, to procure a regular and adequate supply of revenue, as far as the resources of the community will permit, may be regarded as an indispensable ingredient in every constitution.").

The Constitution does impose some limitations: Taxes must be for the purposes of paying the debts, the common defense, and general welfare. Art. I, § 8, cl. 1. Levies on exports are prohibited. Art. I, § 9, cl. 5. Direct taxes (including, originally, the income tax) must be apportioned among the states by population. Art. I, §§ 2, cl. 3 & 9, cl. 4. Indirect taxes (such as sales taxes, value added taxes, and other excises) must be uniform throughout the country. Art. I, § 9, cl. 6. But otherwise, the taxing power is very broad.

Scutari claims that "This amendment . . . authorizes Congress to impose new and different taxes on us! . . . 'Any tax' includes a national sales tax and a national value added tax (VAT)."

Apparently she is unaware that the Constitution already gives Congress authority to impose a both a VAT and sales taxes. (They are "excises," authorized by Art. I, § 8, cl. 1. ) Apparently she is also unaware that Congress imposes sales taxes now: One pays federal sales tax whenever one purchases gasoline.

What this proposed amendment actually does is reduce the scope of the taxing power in several ways. First, it adds to the list of banned levies "exactions upon incomes, gifts, or estates." Second, it provides that to impose or raise other taxes a three-fifths vote of each House of Congress is necessary. Third, it provides that each tax bill must be presented separately to the president. Finally, it repeals the Sixteenth Amendment, which lifted the requirement that income taxes be apportioned among the states, because the ban on income taxes renders the Sixteenth Amendment superfluous.

## AMENDMENT IMPOSING A CHECK ON FEDERAL REGULATION

This proposal provides as follows:

> Whenever one quarter of the members of the United States House of Representatives or the United States Senate transmits to the President their written declaration of opposition to any proposed or existing federal

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

*Analysis*: This amendment restricts the power of the executive branch by providing for congressional veto of any federal administrative regulation.

The Founders recognized that some regulations and orders within the executive branch were inevitable. For example, the responsibility of the president to administer the executive branch would be impossible to carry out if he could not issue regulations and orders to subordinates. Ever since the Founding, Congress has authorized the executive to make regulations as part of recognizing that, within limits, discretion is part of the executive power. For example the Postal Act of 1792 granted to the Postmaster General power to "prescribe such regulations to the deputy postmasters, and others employed under him, as may be found necessary. 2 Stat. c. 7 (1792), § 3. *See also id.* § 21 ("[E]very printer of newspapers may send one paper to each and every other printer of newspapers within the United States, free of postage, *under such regulations, as the Postmaster General shall provide.*"). (Emphasis added).

To be sure, the Founders would not have approved of the current massive administrative state, and one can argue that Congress is now unconstitutionally delegating legislative authority, rather than merely acknowledging executive, power. PHILIP HAMBURGER, IS ADMINISTRATIVE LAW UNLAWFUL? (2014). However, this proposed amendment does not grant power to maintain the administrative apparatus. It grants only power to Congress to *prevent or repeal* what the executive branch has done. As a practical matter, therefore, it reduces federal authority.

In response to this amendment, Scutari writes, "[R]ulemaking by federal agencies is unconstitutional as in violation of Art. I, §1 of our Constitution. . . . The proposed amendment would supersede Art. I, §1 and legalize such rulemaking!"

However, as shown above, her claim that all "rulemaking by federal agencies is unconstitutional" is simply inaccurate. Rule making within the scope of *executive* discretion is perfectly constitutional. Does anyone claim, for example, that the Department of State cannot issue regulations imposing standards of conduct on its diplomats? Or that the post office cannot issue regulations governing deposit and delivery of the mail?

Nevertheless, this proposed amendment would provide an additional check on

such rule making, whether or not otherwise proper.

## CONCLUSION

Reasonable people may differ over the merits of each of these proposed amendments. However, there is no reasonable basis for claiming any of them augments the current power of the federal government. Indeed, as a former legal educator and practitioner, I am of the opinion that such claims do not rise to even the minimal standards of legal interpretation expected of a lawyer. If a litigating attorney inserted in a pleading the claim that the amendment reducing the taxing power somehow increases the taxing power, the court might well rule it sufficiently frivolous to justify sanctions on that attorney. *See, e.g*, Fed. R. Civ. Pro. 11 (providing for sanctions on attorneys presenting unreasonable legal arguments).

We can conclude with confidence, therefore that the assertion that the simulated convention's proposals would increase federal power is unquestionably false.

Sincerely,

ROBERT G. NATELSON
Colo. Atty. Regis. No. 8768